



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 16, 2011

Via electronic mail

Mr. Tom Reuter
Freedom of Information Act Officer
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794
Tom.Reuter@illinois.gov

RE: FOIA Pre-Authorization Request - 2010 PAC 8453

Dear Mr. Reuter:

We have received and reviewed the written notice from the Illinois Environmental Protection Agency (IEPA) of its intention to deny disclosure of certain information pursuant to section 7(1)(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010). On June 11, 2010, Mr. Gregory Berlowitz, formerly of the law firm Mayer Brown, LLP, submitted a FOIA request to the IEPA seeking records relating to the Metropolitan Water Reclamation District of Greater Chicago.

Section 7(1)(f) of FOIA exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body." 5 ILCS 140/7(1)(f) (West 2009 Supp.), as amended by Public Act 96-1378, effective July 29, 2010. The IEPA supplied us with copies of internal memoranda and drafts that it seeks to withhold pursuant to section 7(1)(f). On July 23, 2010, this Office concluded that certain drafts and memoranda supplied to us by the IEPA fall within the scope of section 7(1)(f) and may be withheld from disclosure. This Office, however, sought further review of a May 13, 1991, memorandum concerning a clean-up objective at the Sandoval, Inc. site in Sandoval, Illinois. On July 30, 2010, the IEPA supplied us with a copy of this memorandum and a further explanation of the applicability of section 7(1)(f) to the memorandum.

Mr. Tom Reuter
May 16, 2011
Page 2

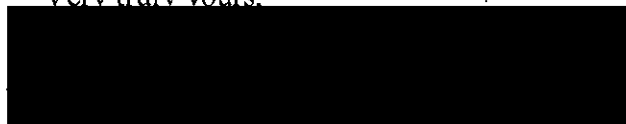
DETERMINATION

The IEPA's use of the exemption in section 7(1)(f) to the withhold the memorandum is **approved**. The section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (1st Dist. 2003). "[T]he deliberative process privilege protects pre-decisional, deliberative communications that are part of an agency's decision-making process." *Parmelee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill. October 1, 1998).

We have reviewed the May 13, 1991, memorandum and the IEPA's supplemental explanation of the applicability of section 7(1)(f) to the memorandum and conclude that IEPA has met its initial burden of demonstrating that the record is preliminary in nature and properly falls within the scope of section 7(1)(f). In addition, there is no evidence that the memorandum has been publicly cited or identified by the Director of the IEPA. As a result, the IEPA may withhold the memorandum.

If you have any questions, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Very truly yours,



MATTHEW C. ROGINA
Assistant Attorney General
Public Access Bureau

cc: Mr. Michael Olson
Mayer Brown, LLP
71 South Wacker Drive
Chicago, Illinois 60606

8453 pre-auth at 7(1)(f) prelim sa