



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

November 18, 2010

Trisha Crowley
City of Champaign
Via e-mail to:
trisha.crowley@ci.champaign.il.us

RE: FOIA Pre-approval Request – 2010 PAC 10318

Dear Ms. Crowley:

We have received from the City of Champaign (City) a written notice of its intention to assert the Section 7(1)(f) exemption in response to a Freedom of Information Act (FOIA) request submitted by [REDACTED] and [REDACTED] (Requesters). Requesters' FOIA request sought records relating to certain specified individuals. The City claims that certain responsive records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by the City. The City also claims that information that appears in responsive EMS reports pertaining to medical care received by individuals referenced in those reports is exempt under Section 7(1)(c).

Section 7(1)(c) of FOIA permits a public body to withhold "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." That provision further defines an "unwarranted invasion of personal privacy" as "the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information." It also provides that "[t]he disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

Section 7(1)(f) of the Freedom of Information Act (5 ILCS 140/7(1)(f)) allows withholding of:

[p]reliminary drafts, notes, recommendations, memoranda or other documents 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.

In *Harwood v. McDonough*, 344 Ill. App. 3d 242 (1st Dist. 2003), the Illinois Appellate Court ruled that "as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process." *Id.* at 247. In considering the matter, the *Harwood* court adopted the defendant's argument that the word "preliminary" does not refer to the "posture of the particular document sought to be disclosed" but rather to "predecisional intra-agency communications." *Id.* at 247-248. The court noted that no previous Illinois cases interpreted the use of the word preliminary and, as such, stated that it was helpful to look to cases interpreting the parallel language of the Federal Freedom of Information Act. The court determined that the exemption is intended to protect "predecisional, deliberative communications that are part of an agency's decision-making process." *Id.* at 248 (quoting *Parmalee v. Camparone*, No. 93 C 7362, 1998 WL 704181 (N.D. Ill October 1, 1998)).

With respect to the City's Section 7(1)(c) assertion, we have determined that it is appropriate for the City to decline to disclose the portions of the EMS reports responsive to this request which contain information detailing the nature of medical care provided to certain individuals by EMS under Section 7(1)(c). The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy under Section 7(1)(c). This type of information is highly personal by its very nature and these individuals' right to privacy outweighs any legitimate public interest in disclosing this information.


With respect to the City's Section 7(1)(f) assertion, the documents at issue appear to fall within the scope of the Section 7(1)(f) exemption. These documents consist of communications between members of the City's staff which constitute part of the City's deliberative process concerning alleged violations of City ordinances. Further, the City has indicated that these records have not been publicly cited and identified by the head of the public body. Accordingly, the City has met its initial burden of demonstrating that these records are exempt from disclosure under Section 7(1)(f).

If you have any questions, please feel free to contact me at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By:


Matthew M. Sebek
Assistant Public Access Counselor

cc:

