



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 17, 2010

Ms. Shelia Chernis
Freedom of Information Act Officer
Department of Commerce and Economic Opportunity
Shelia.chernis@illinois.gov

RE: FOIA Pre-Authorization Request - 2010 PAC 10588

Dear Ms. Chernis:

We have received and reviewed the written notice from the Department of Commerce and Economic Opportunity (Department) of its intention to withhold certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended.

Specifically, on September 29, 2010, Antonio Olivo, Staff Reporter, *Chicago Tribune*, submitted a FOIA request to the Department seeking copies of information relating to the February 2010 designation of a "Targeted Employment Area" in Lakewood, Illinois and the surrounding unincorporated areas of McHenry County.

On November 5, 2010, the Department sought our Office's approval to withhold approximately 20 e-mails pursuant to Section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f)), which exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies 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."

Determinations

The Department's request for approval of its decision to withhold information pursuant to Section 7(1)(f) is approved.

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. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill.App.3d 473,

511 N.E.2d 759 (1st Dist. 1987). Section 7(1)(f) also exempts from disclosure documents produced by outside consulting firms hired to advise public bodies on a particular course of action. *Harwood v. McDonough*, 344 Ill.App.3d 242, 248 (1st Dist. 2003). Our Office has reviewed the e-mails supplied to us by the Department and we have concluded that they reflect preliminary recommendations and opinions about the Targeted Employment Area.

Additionally, there is no evidence that this information has been publicly cited and identified by the head of the public body. 5 ILCS 140/7(1)(f).

Based on this analysis, the Department has met its initial burden under 7(1)(f) and may withhold the documents in question.

Please be advised that the Department's Pre-Authorization Request was submitted to this Office approximately three weeks after the deadline was extended to October 13, 2010. The Department failed to comply with the requirements of FOIA by not submitting a timely Notice of Intent to Deny with respect to the September 30, 2010 request. Any subsequent failure by the Department to strictly comply with the pre-approval process set out in Section 9.5(b) may result in the Public Access Counselor's denial of asserted exemptions.

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

Sincerely,

Cara Smith
Public Access Counselor



Matthew C. Rogina
Assistant Public Access Counselor
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Cc: Antonio Olivo
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