



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

Lisa Madigan
ATTORNEY GENERAL

November 15, 2010

[REDACTED]
Via e-mail to:
[REDACTED]

RE: FOIA Pre-approval Request – 2010 PAC 7540

Dear [REDACTED]

We have received from the Village of Lisle (Village) two written notices of its intention to assert the Section 7(1)(f) exemption in response to portions of a Freedom of Information Act (FOIA) request submitted by [REDACTED]. [REDACTED] request sought 14 categories of records relating to the "proposed 2600 Warrenville Road TIF District." Category 2 of the FOIA request sought a "[c]opy of the TIF term sheet for 2600 Warrenville Rd proposed TIF district (per Kane McKenna March 2010 invoice)" and category 3 sought a "[c]opy of Kane McKenna Financial Projection/TIF Analysis based on new EAV (per Kane McKenna March 2010 invoice)." Initially, the Village indicated its intention to withhold certain responsive records as exempt under Section 7(1)(f), because they contain opinions or relate to the formulation of policies or actions by the Village relating to the subject TIF District. Subsequently, the Village submitted a second Notice, expanding the scope of the documents it sought to exempt under Section 7(1)(f) to include certain documents it had provided to our office in response to our request for further information.

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 Village’s Section 7(1)(f) assertion, the records at issue appear to fall within the scope of the Section 7(1)(f) exemption. These documents consist of draft and evaluative documents which constitute part of the Village’s deliberative process concerning the TIF development project referenced in [REDACTED] OIA request. Further, the Village has indicated that these records have not been publicly cited and identified by the head of the public body. Accordingly, the Village 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:

[REDACTED]
Matthew M. Sebek
Assistant Public Access Counselor

cc:

[REDACTED]

7540 pa al 7(1)(f) prelim draft mun