



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

Lisa Madigan
ATTORNEY GENERAL

November 16, 2010

Ms. Angela D. Moreno
Lake County Health Department and Community Health
Freedom of Information Officer
3010 Grand Ave.
Waukegan, IL. 60085-2321

RE: FOIA Pre-approval Request – 2010 PAC 8283

Dear Ms. Moreno:

We have received from the Lake County Health Department and Community Health Center (Department) 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]. [REDACTED] FOIA request sought copies of "all interdepartmental and internal Lake County written and electronic correspondence regarding the award of Bid #10118 from June 1 through June 25 (including, but not limited to, reports, memos, evaluations, emails, etc.)." The Department claims that responsive records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by the OAG.

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 Department’s Section 7(1)(f) assertion over pre-award communications, the documents the Department has provided 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 Department’s deliberative process concerning its handling of this bid. Further, there is no evidence to suggest that these records have been publicly cited and identified by the head of the public body. With respect to [REDACTED] contention that certain of these documents involve Departmental communications after the Department had selected the winning bid, the documents the Department has provided which post-date the award of this bid also consist of draft and evaluative documents which constitute part of the Department’s deliberative process concerning its handling of the protest that was initiated with respect to this bid. As such, the post-award communications it has submitted also appear to fall within the scope of Section 7(1)(f). Accordingly, the Department 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]

8283 pa al 7(1)(f) prelim draft county