



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

Lisa Madigan
ATTORNEY GENERAL

November 16, 2010

Tpr. Kerry Sutton
Illinois State Police
801 S. 7th Ave.
P.O. Box 19461
Springfield, IL 62794

RE: FOIA Pre-approval Request – 2010 PAC 9132

Dear Tpr. Sutton:

We have received from the Illinois State Police (ISP) 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]. The FOIA request sought five categories of documents he seeks to substantiate grievances he has filed with ISP. The ISP claims that five pages of responsive records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by the ISP.

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 ISP's Section 7(1)(f) assertion, the five pages 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 ISP's deliberative process concerning matters to which the FOIA request relates. Further, there is no evidence to suggest that these records have been publicly cited and identified by the head of the public body. Accordingly, the ISP has met its initial burden of demonstrating that these records are exempt from disclosure under Section 7(1)(f).

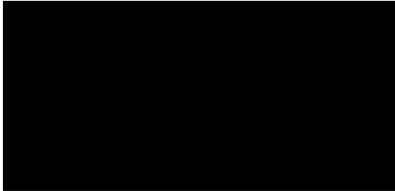
If you have any questions, please feel free to contact me at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By


Matthew M. Sebek
Assistant Public Access Counselor


9132 pa al 7(1)(f) prelim draft sa