



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

Lisa Madigan
ATTORNEY GENERAL

November 15, 2010

Roman Gold
FOIA Officer
Metra
Via e-mail to:
rgold@metrarr.com

RE: FOIA Pre-approval Request – 2010 PAC 9682

Dear Mr. Gold:

We have received from Metra 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 ██████████ ██████████ of AssetWorks, Inc. ██████████ FOIA request sought, among other things, what she refers to as “bid tabulations sheets for all respondents” to Metra Request for Proposal (“RFP”) No. 93444. Metra the proposal evaluations it generated in connection with this RFP records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by the OAG. It cites 2010 PAC 9475 in support of this position.

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)).

Consistent with the determination our office made in 2010 PAC 9475, the proposal evaluations at issue appear to fall within the scope of the Section 7(1)(f) exemption. These documents consist of evaluative documents which constitute part of Metra's deliberative process concerning its handling of this RFP. Further, Metra has indicated that these records have not been publicly cited and identified by the head of the public body. Accordingly, Metra 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:


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