

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

Lisa Madigan
ATTORNEY GENERAL

December 27, 2010

Ms. Jaclyn Banister
University of Illinois at Urbana-Champaign
FOIA Officer/Associate Chancellor for Public Affairs
507 E. Green St., Suite 313
Champaign, IL 61820

RE: FOIA Pre-approval Request – 2010 PAC 10467

Dear Ms. Banister:

We have received from the University of Illinois at Urbana-Champaign 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] OIA request sought correspondence regarding Chief Illiniwek, Honor the Chief Society and Students for Chief Illiniwek issued by UIUC or its legal representatives during the past six months. UIUC claims that portions of five records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by UIUC.

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)).

Based on our review of the documents at issue, the document excerpts over which UIUC seeks to assert the Section 7(1)(f) exemption appear to fall within the scope of the Section 7(1)(f) exemption. These excerpts consist of written communications between UIUC employees which constitute part of UIUC's deliberative process concerning its disposition of the Chief Illiniwek controversy. Further, there is no evidence to suggest that this record has been publicly cited and identified by the head of the public body. Accordingly, UIUC has met its initial burden of demonstrating that this record is exempt from disclosure under Section 7(1)(f).

UIUC also indicates that it intends to redact certain information from records responsive to this request pursuant to Section 7(1)(a) and Section 7(1)(m) of FOIA. As you know, FOIA only requires public bodies to submit a Notice of Intent to Deny and request for pre-authorization with regard to assertion of the exemptions in Sections 7(1)(c) (allowing withholding of information the release of which would constitute a clearly unwarranted invasion of personal privacy) and 7(1)(f) (allowing withholding of pre-decisional, deliberative process materials). Where information is specifically exempt under other sections of the Act, public bodies may issue denials relying upon such exemptions directly to the requester, without the need to submit the matter to the Public Access Counselor for pre-authorization. As such, this letter takes no position with regard to the University's intended use of Section 7(1)(a) and Section 7(1)(m) in this instance.


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


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