

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

Lisa Madigan
ATTORNEY GENERAL

December 22, 2010

Ms. Pat Stejskal
FOIA Officer
McHenry County College
Via email to:
PSTEJSKA@mchenry.edu

RE: FOIA Pre-approval Request – 2010 PAC 11336

Dear Ms. Stejskal:

We have received from the McHenry County College 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] of the Northwest Herald. [REDACTED] FOIA request sought correspondence and other records generated between MCC and Campus Management regarding the ERP project since 2000, including copies of contracts, payment records and a settlement agreement. MCC claims that one particular responsive record is exempt under Section 7(1)(f) because it contains opinions or relates to the formulation of policies or actions by MCC.

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)).


The document at issue appears to fall within the scope of the Section 7(1)(f) exemption. It consists of a written communication between Campus Management and MCC which constitutes part of MCC's deliberative process concerning its relationship with Campus Management in connection with the ERP project. Further, there is no evidence to suggest that this record has been publicly cited and identified by the head of the public body. Accordingly, MCC has met its initial burden of demonstrating that this record is 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.

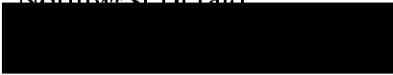
Sincerely,

Cara Smith
Public Access Counselor

By


Matthew M. Sebek
Assistant Public Access Counselor

cc: 
Northwest Herald


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