



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 20, 2010

Sgt. Kelly Walter
Illinois State Police
Kelly_Walter@isp.state.il.us

RE: FOIA Request for Review – 2010 PAC 11146

Dear Sgt. Walter:

We have received and reviewed the written notice from the Illinois State Police of its intention to withhold certain information as exempt from disclosure under Section 7(1)(f) of the Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.*, as amended.

Specifically, on November 16, 2010, [REDACTED] submitted an eight-part FOIA request to ISP seeking documents related to the Illinois State Police Forensic Sciences Command. On December 2, 2010, ISP sought our Office's approval to withhold a portion of [REDACTED] request pursuant Section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f)), which exempts from inspection and copying "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies 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."

Specifically, ISP seeks to withhold copies of any and all e-mails, phone messages, memoranda, faxes, telephone conversation sheets and any documents pertaining to grievances submitted to the Illinois State Police Forensic Science Command. On December 14, 2010, ISP provided this Office with a representative sample of the grievance files that it seeks to withhold pursuant to Section 7(1)(f).

Determinations

ISP's request for approval of its decision to withhold the draft pursuant to Section 7(1)(f) is approved in part and denied in part.

Upon review of the documents supplied to us by ISP, we have determined that the contract grievance, grievance fact sheet and any other documents generated by the American Federation of State, County and Municipal Employees 31 do not fall within the scope of Section 7(1)(f).

The Section 7(1)(f) exemption is intended to encourage government officials to openly and frankly discuss matters of governmental concern in order to make informed policy decisions. See *N.L.R.B. v. Sears*, 421 U.S. 132 (1975), *Hoffman v. Ill. Dept. of Corrections*, 158 Ill.App.3d 473, 511 N.E.2d 759 (1st Dist. 1987).

In some instances, Section 7(1)(f) exempts from disclosure documents produced by outside entities submitted to the public body. *Harwood v. McDonough*, 344 Ill.App.3d 242, 248 (1st Dist. 2003). However, a union grievance and related documents generated by a union that addresses union concerns does not fall within the scope of Section 7(1)(f).¹

Union grievances place the union in a position that is adverse to the public body. In the examples provided to us by ISP, the allegations contained in the grievance fact sheet are expressed by ISP employees in their capacity as union members, not as ISP employees. Moreover, *allegations* are not opinions or recommendations within the meaning of Section 7(1)(f). Therefore, ISP cannot properly claim these documents as exempt under Section 7(1)(f).

ISP may, however, withhold all internal memoranda and e-mails that ISP generated in response to the grievances. Upon review of these documents, we have determined that they express opinions and recommendations by ISP about the grievances and that ISP may withhold these documents.

Based on this analysis, ISP has not met its burden under Section 7(1)(f) with regard to the grievances generated by AFSCME and must disclose these documents to [REDACTED] ISP has met its initial burden with the subsequent internal memoranda regarding the grievances.

Should you have any questions or concerns, please contact me at (312) 814-5383. This correspondence shall serve to close this matter.

Sincerely,

Cara Smith
Public Access Counselor

By:

[REDACTED]
Matthew C. Rogina
Assistant Public Access Counselor

¹ Pursuant to a December 16, 2010 with a representative of this Office, Sgt. Walter informed us that the file submitted to this Office was one of 12 grievance files against the Illinois State Police Forensic Science Command. ISP is directed to release all AFSMCE generated documents to [REDACTED]

Cc: [REDACTED]
[REDACTED]

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