



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 3, 2011

Ms. Brigett Bevan
Chicago Transit Authority
FOIA Officer
FOIA@transitchicago.com

RE: FOIA Pre-approval Request – 2010 PAC 11406

Dear Ms. Bevan:

We have received from the Chicago Transit Authority 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] DIA request sought consultant evaluations created in connection with the CTA's solicitation culminating in the award of CTA Contract No. [REDACTED]. CTA claims that several responsive records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by CTA.

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 excerpts consist of evaluative documents generated for use by CTA in making decisions regarding this procurement, which appear to fall within the scope of the Section 7(1)(f) exemption. Further, CTA has indicated that the withheld records have not been publicly cited or identified by the head of the public body. Accordingly, CTA has met its initial burden of demonstrating that these records are exempt from disclosure under Section 7(1)(f).

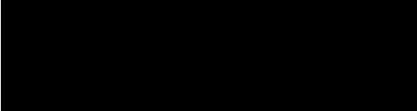
If you have any questions, please feel free to contact me at (217) 782-9078. This letter shall serve to close this file.

Sincerely,

Cara Smith
Public Access Counselor

By:


Matthew M. Sebek
Assistant Public Access Counselor


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