OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 3, 2011

Ms. Linda Robbins
Earlville CUSD #9
FOIA Officer
415 W. Union St.Earlville, IL 60518

RE: FOIA Pre-approval Request – 2010 PAC 11485

Dear Ms. Robbins:

We have received from the Earlville CUSD #9 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 b[redacted]OIA request sought two categories of documents relating to possible bond issues, education rate tax increase referenda, or district responses to articles or editorials published by the Earlville Post, and related subjects. CUSD #9 claims that the entirety of one responsive record and portions of three additional responsive records are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by CUSD #9. The redacted documents redacted pursuant to Section 7(1)(f) were provided to [redacted]n December 21, 2010.

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, both the document withheld in its entirety and the redacted excerpts of the remaining responsive records appear to fall within the scope of the Section 7(1)(f) exemption. These records consist of internal correspondence between CUSD #9 and other entities which constitute part of CUSD #9's deliberative process concerning the matters at issue. As CUSD #9 notes in its cover letter enclosing its response to [redacted] the records redacted pursuant to Section 7(1)(f) also included a document generated for CUSD #9 by First Midstate Incorporated entitled "Preliminary Report VI." As CUSD #9 indicates in its cover letter to [redacted] and as our review of this record confirms, this report appears to have been "drafted for use by the [CUSD #9] Board of Education in making decisions regarding bonds." Further, CUSD #9 has indicated that the records redacted and withheld have not been publicly cited or identified by the head of the public body. Accordingly, CUSD #9 has met its initial burden of demonstrating that the records, and portions thereof, here at issue 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: [redacted]

Matthew M. Sebek
Assistant Public Access Counselor

cc:
[redacted]
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