



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

Lisa Madigan
ATTORNEY GENERAL

March 4, 2011

Ms. Sunny Clark
Illinois Department of Central Management Services
FOIA Officer
Sunny.clark@illinois.gov

RE: FOIA Pre-approval Request – 2010 PAC 11144

Dear Ms. Clark:

We have received from the Illinois Department of Central Management Services (CMS) a written notice of its intention to assert the Section 7(1)(f) exemption in response to two Freedom of Information Act (FOIA) requests submitted by Ms. Bridget Carlson. Ms. Carlson's first FOIA request sought copies of any and all records (from January 1, 2009 to the present) which relate to the job title Senior Public Service Administrator, Option 8E (SPSA 8E) in conjunction with that title's certification as a bargaining unit, that title's subsequent decertification as a bargaining unit, and that title's return to Merit Compensation status. Her second FOIA request sought any increase or decrease in pay for any person or position in the job title Senior Public Service Administrator, Option 8E (SPSA 8E) subsequent to January 1, 2009, including, but not limited to, internal discussions, state agency discussions, memoranda, analyses and opinions and specifically communications from employing agencies requesting pay changes. CMS claims that 189 e-mails and memoranda are exempt under Section 7(1)(f) because they contain opinions or relate to the formulation of policies or actions by CMS.

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 documents proposed to be withheld under Section 7(1)(f) fall within the scope of the Section 7(1)(f) exemption, because they consist of internal discussions pertaining to the formulation of CMS policy and compliance concerning this issue. Further, there is no evidence to suggest that these records have been publicly cited and identified by the head of the public body. Accordingly, CMS 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,



Matthew M. Sebek
Assistant Public Access Counselor

cc:

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