



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

Lisa Madigan
ATTORNEY GENERAL

March 10, 2011

Ms. Jeanne Marquardt
Freedom of Information Act Officer
DuPage County Board Office
421 N. County Farm Road
Wheaton, Illinois 60187

RE: FOIA Pre-Authorization Request - 2011 PAC 12635

Dear Ms. Marquardt:

We have received and reviewed the written notice from the DuPage County Board 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 February 10, 2011, Mr. Jon Hoag, on behalf of SmithAmundsen LLC, submitted a FOIA request to the Board seeking certain information related to an ethics complaint filed by Lori Sennis against Highland Hills Sanitary District.

On February 28, 2011, the Board submitted a Notice of Intent to Deny with this Office explaining that certain documents sought by Mr. Hoag are exempt from disclosure pursuant to 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." On March 7, 2011, DuPage County Assistant State's Attorney Lisa Smith supplemented the Board's Notice of Intent to Deny with the documents that it seeks to withhold pursuant to Section 7(1)(f).

Determinations

The Board's request for approval of its decision to withhold the information pursuant to Section 7(1)(f) is approved in part and denied in part. 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). Grievances or complaints submitted by citizens against public officials or public bodies do not fall within the scope of Section 7(1)(f). Based on this analysis, the Board has failed to meet its initial burden in demonstrating that the complaint is exempt from disclosure pursuant to Section 7(1)(f). Therefore, the complaint filed by Ms. Sennis, together with a single correspondence to Ms. Sennis from the District regarding benefit information, are not exempt under Section 7(1)(f).¹

The Board *has* met its initial burden with regard to internal documents and drafts generated in response to the complaint. Accordingly, the Board may withhold the emails and memoranda generated in response to the complaint together with any preliminary drafts relating thereto.

The Board has indicated that it also seeks to withhold this information pursuant to Section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a)), which precludes the disclosure of information that is "specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." Specifically, the Board seeks to withhold this information pursuant to Section 20-95 of the State Officials and Employee Ethics Act. (5 ILCS 430/20-95). Please be advised that use of the 7(1)(a) exemption does not require prior approval from the Office of the Public Access Counselor. Accordingly, we will not in this context address the applicability of this exemption to the reports in question.

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

Sincerely,


Matthew C. Rogina
Assistant Public Access Counselor

cc: Mr. Jon Hoag
SmithAmundsen
3815 E. Main Street
Suite A-1
St. Charles, Illinois 60174

Ms. Lisa Smith
Assistant State's Attorney
DuPage County State's Attorney's Office
Lisa.Smith@dupageco.org

¹ We also note that contained in the documents supplied to the Office of the Public Access Counselor was an August 20, 2009 warranty deed and a track and confirm receipt. The Board has not demonstrated how either of these documents fall within the scope of Section 7(1)(f).

12635 pre-auth al 7(1)(f) prelim mun