



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

January 7, 2019

Lisa Madigan
ATTORNEY GENERAL

VIA ELECTRONIC MAIL
Mr. Matthew Hardin
Energy Police Advocates
MatthewDHardin@gmail.com

RE: Freedom of Information Act Request
2018 FOIA 056206

Dear Mr. Hardin:

Thank you for writing to the Office of the Illinois Attorney General with your request for information pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)).

In a facsimile received on December 20, 2018, you requested the following:

[(1)] [A]ll electronic or hard-copy correspondence as described below and *its accompanying information, including also any attachments:*

- a) sent to or from (including also copying, whether as cc: or bcc:)
* * * **Matthew Dunn, and/or Jason James**, which *also*

- b) contain *any* of the following, anywhere in the correspondence of which it is a part, whether in the To or From, cc: and/or bcc: fields, the Subject field, and/or the email body or body of the thread or in any attachment thereto: i) SherEdling, ii) Sher Edling, iii) DAGA, iv) @democraticags.org, v) alama@naag.org, and/or vi) Mike.Firestone@state.ma.us.
(Bold and italics in original.)

RESPONSE: Pursuant to section 3(e)(v) of FOIA (5 ILCS 140/3(e)(v) (West 2016)), we extended the time to respond to this portion of your request by five business days on December 28, 2018, because the records required further examination to determine if they were exempt from disclosure or should be released with appropriate redactions. This office has now completed its review.

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This portion of your request is denied pursuant to sections 7(1)(a) and 7(1)(f) of FOIA. 5 ILCS 140/7(1)(a), (f) (West 2017 Supp.).

Section 7(1)(a)

Section 7(1)(a) of FOIA exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." The federal Copyright Act (17 U.S.C. §101 *et seq.* (2014)) provides that "the owner of [a] copyright * * * has the *exclusive* rights to do and to authorize any of the following:"

(1) to reproduce the copyrighted work in copies[;] [and]

* * *

(3) to distribute copies * * * of the copyrighted work to the public by sale or other transfer of ownership[.]" (Emphasis added.) 17 U.S.C. §§106(1), (3) (2014).

The Office of the Attorney General maintains a subscription to the publication, Capitol Fax. Mr. Dunn received a copy of a Capitol Fax responsive to your request. The Capitol Fax is a copyrighted work. Accordingly, this office is withholding a 2 page Capitol Fax publication sent on November 1, 2018, that contains a story entitled, "DAGA up with TV ad attacking Harold on abortion" and that constitutes a copyrighted work, exempt from copying and distribution pursuant to section 7(1)(a) of FOIA and the Copyright Act. Please note that the withheld record itself does not contain any notes, writings, or other annotations that were created by this office.

While this office is prohibited from copying and distributing the responsive copyrighted work, we may make the record available for public inspection. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 11145, issued January 12, 2011. If you would like to review a copy of the Capitol Fax received by this office, you may do so at the Attorney General's Chicago or Springfield offices during normal business hours. Please contact me at (312) 814-1493 if you wish to schedule a time to review the indicated records.

Section 7(1)(f)

Section 7(1)(f) of FOIA exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or policies or actions are formulated[.]" "Courts have extended section 7(1)(f) to communications *between government agencies* * * * whose analyses and recommendations 'played essentially the same

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part in an agency's process of deliberation as documents prepared by agency personnel might have done.'" (Emphasis added.) Ill. Att'y Gen. PAC Req. Rev. Ltr. 19002, issued May 23, 2012, citing *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (2003), quoting *Department of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 10, 121 S. Ct. 1060, 1067 (2001). The records that we have determined are exempt under this section consist of internal e-mail communications of this office, e-mail communications with other government agencies, and preliminary drafts written for the purpose of planning courses of action with regard to legal and legislative matters. These records are predecisional. They are exempt under the rationale that public bodies must be able to evaluate information internally, as well as with other government agencies that may be similarly affected by the information, to explore possible courses of action confidentially before making final determinations that should be shared with the public. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 19002, issued May 23, 2012; *Harwood v. McDonough*, 344 Ill. App. 3d 242, 247 (2003) ("as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process"). Accordingly, some of the records responsive to your request are exempt from disclosure under section 7(1)(f).

You have a right to have the denial of this portion of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a) (West 2016). You may file your request for review with the PAC by writing to:

Sarah Pratt
Public Access Counselor
Office of the Illinois Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: (217) 782-1396
publicaccess@atg.state.il.us

If you choose to file a request for review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a) (West 2016). Please note that you must include a copy of your original FOIA request and of this denial letter when filing a request for review with the PAC.

You also have the right to judicial review of your denial by filing suit in the appropriate Illinois court. 5 ILCS 140/11 (West 2016).

In your facsimile received on December 20, 2018, you also requested the following:

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[(2)] [A]ll electronic or hard-copy correspondence as described below and *its accompanying information, including also any attachments*:

- a) sent to or from (including also copying, whether as cc: or bcc:) **James Gignac, * * *** which *also*
- b) contain *any* of the following, anywhere in the correspondence of which it is a part, whether in the To or From, cc: and/or bcc: fields, the Subject field, and/or the email body or body of the thread or in any attachment thereto: i) SherEdling, ii) Sher Edling, iii) DAGA, iv) @democraticags.org, v) alama@naag.org, and/or vi) Mike.Firestone@state.ma.us. (Bold and italics in original.)

RESPONSE: On December 28, 2018, we advised you that this office had conducted a search of its records, and we located no records responsive to this portion of your request.

Very truly yours,



CAITLIN Q. KNUTTE
Assistant Attorney General
Senior FOIA Officer

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