

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ANDREW GARRETT,
Plaintiff,

v.

ILLINOIS OFFICE OF THE
GOVERNOR,
Defendant.

No. 2017-CH-13888

Calendar 16

Judge David B. Atkins

JUDGE DAVID B. ATKINS

OCT 25 2018

Circuit Court-1879

ORDER

THIS CASE COMING TO BE HEARD on Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross-Motion for Summary Judgment, the Court having considered the briefs submitted and being fully advised in the premises,

THE COURT HEREBY FINDS AND ORDERS:

1. This is a Freedom of Information Act ("FOIA," 5 ILCS 140) case involving Plaintiff's request for policies related to "requesting the assistance of the Governor's office in responding to FOIA requests." At issue are two memoranda: January and February 2015 "Guidelines" for FOIA reports to the Governor's office that Defendant concedes are responsive but argues are exempt under Section 7(1)(f) of FOIA.
2. The relevant section exempts from production "[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated." 5 ILCS 140/7(1)(f). As that text indicates, the key word of this exception is "preliminary," and it plainly applies only to documents involved in constructing agency policy, not documents describing actual, current policies. See *People ex rel. Birkett v. City of Chicago*, 184 Ill. 2d 521 (1998).
3. Defendants' arguments make clear that the "Guidelines" fall into the latter category. By its own description, they "delineate[] with specificity the information that State agencies are to provide to the Office of the Governor regarding outstanding FOIA requests, discuss[] with whom those communications should occur, and set[] a timetable for how often State agencies are to do so." (Def's Mot. 5). This description indicates that the Guidelines were directive, not deliberative, sent from the Governor's office to subordinate agencies instructing them on what the actual policy was at the time they were sent. Defendant attempts to characterize the Guidelines as merely part of an ongoing process toward reaching a true final policy, but does not cite any such later policy that

was ever actually enacted, nor even one that was contemplated in February 2015. Under these circumstances, the court must find that the disputed documents do not fall within Section 7(l)(f).

4. However, the court also finds no evidence of bad faith sufficient to support a civil penalty under FOIA (also sought by the Plaintiff). Plaintiff provides none other than the initial denial of his request, which was apparently based on at least facially plausible objections to production, as the Defendant further argued in this matter.
5. For these reasons, both Motions are granted in part and denied in part in that the court finds the documents described in Defendant's FOIA Section 11(e) Index are not exempt under FOIA Section 7(l)(f), and Defendant shall produce the same to Plaintiff. This is a final and appealable order.

ENTERED:
JUDGE DAVID B. ATKINS

OCT 25 2018

Circuit Court-1879

Judge David B. Atkins

The Court.