



March 20, 2015

Mayor J. Michael Coyne

c/o Mr. David Bleau, Marquette City Clerk & FOIA Coordinator
300 W. Baraga Avenue
Marquette, Michigan 49855

Delivered via e-mail to clerk@mqctcy.org

Re: Appeal of March 19, 2015 FOIA Request Denial

Dear Mayor Coyne:

Pursuant to Section 5 (4)(d)(i) of the Michigan Freedom of Information Act (FOIA), Act 442 of 1976 (MCL 15.231 *et seq.*), this letter is an official *head-of-public-body* written appeal of a FOIA request denial by the City of Marquette.

FOIA request

On March 13, 2015, the undersigned, a representative of SaveFoundersLandingBeach.com and MarquetteWikiLeaks.com, submitted a one-page written FOIA request via e-mail to Mr. David Bleau, Marquette City Clerk & FOIA Coordinator, requesting:

A copy of all of City Manager Bill Vajda's e-mails (without attachments) between December 1 and December 31, 2013, irrespective of subject matter. [See attached one-page Exhibit A]

FOIA request denial

On March 19, 2015, the undersigned received a 2-page "Notice of Freedom of Information Act Response" denying the aforementioned FOIA request from the City Clerk:

The request is DENIED: The request does not meet the Attorney General's Opinion No. 5500(k), p. 255, July 23, 1979—Request only refers to a time period does not meet Section 3 of the Act [sic]. [See attached two-page Exhibit B]

SUBJECTAppeal of March 19, 2015 FOIA Request Denial
FROM:Michael Neiger, SaveFoundersLandingBeach.com, MarquetteWikiLeaks.com
TO:.....Mayor J. Michael Coyne, Marquette City Commission
DATE:March 20, 2015
PAGE NO.:.....Page 2 of 3

Request for clarification of FOIA request denial

On March 19, 2015, I asked the City Clerk for clarification of the denial, which was based on "Attorney General's Opinion No. 5500(k), p. 255, July 23, 1979." He provided me with a three-page copy of a title page, page 35, and page 36 from a document entitled "Michigan's Freedom of Information Act," by the Attorney General, which was "Prepared by the Office of the Attorney General" and "Current Through July 2007."

On page 35, the top-of-page heading "Attorney General Opinion No. 5500, p. 255, July 23, 1979," was highlighted in yellow. The paragraph immediately below this heading read: "The following responses to specific inquiries are found in the above opinion..." On page 36, response "k." was highlighted in yellow:

A request for data which refers only to an extensive period of time and contains no other reference by which the public record may be found does not comply with the requirement of section 3 that the request describe the public record sufficiently to enable the public body to find it. p. 268. [See attached three-page Exhibit C]

Reasons FOIA request denial should be reversed

The City of Marquette's denial of the FOIA request for "a copy of all of City Manager Bill Vajda's e-mails (without attachments) between December 1 and December 31, 2013, irrespective of subject matter," should be reversed as the City has misinterpreted and misapplied Part 2, Section 13 of Attorney General Opinion No. 5500, which reads, in part, as follows:

It is therefore my opinion that a request for data which refers only to an extensive period of time and contains no other reference by which the public records may be found does not comply with the requirement of section 3 that the request describe the public record sufficiently to enable the public body to find it. [See two-page Exhibit D]

1. The FOIA request in question covers a one-month period, NOT the 15-month "extensive period" that formed the basis of the question that Attorney General Frank J. Kelley was addressing in Section 13 of Part II of his 1979 opinion, and that the City based its denial on:

*13. Is a public official required to furnish all of the correspondence typed by his secretary during **fifteen-month period** preceding the request? [Emphasis added; See two-page Exhibit D]*

2. The FOIA request in question covers e-mails, NOT typed correspondence that formed the basis of the question that Attorney General Frank J. Kelley was addressing in Section 13 of Part II of his 1979 opinion, and that the City of Marquette used as the basis of its denial:

*13. Is a public official required to furnish all of the **correspondence typed** by his secretary during fifteen-month period preceding the request? [Emphasis added; See two-page Exhibit D]*

SUBJECTAppeal of March 19, 2015 FOIA Request Denial
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Unlike physical, typed correspondence, which could end up filed, misplaced, or discarded in any number of locations, modern-day digital e-mail—which did not exist in 1979, when this opinion was written—is stored and organized in one physical location where it can be easily retrieved without any significant amount of searching.

3. Unlike the question Attorney General Frank J. Kelley was addressing in Section 13 of Part II of his 1979 opinion—which contained "no other reference by which the public record may be found [and did] not comply with the requirement of section 3 that the request describe the public record sufficiently to enable a public body to find it"—and that the City of Marquette based its denial on, the documents requested in the FOIA in question were described sufficiently enough for the City to easily locate them.

Granting this FOIA request would involve only a fraction of the time and effort that was involved in granting a December 4, 2014 FOIA by the undersigned that requested e-mails regarding a specific topic—those pertaining to the Rowing Clubhouse Lease—one's that could have been authored by ANY Marquette City Employee over an 11-month period. This request, which resulted in the release of over 1,200 pages of e-mails at a cost over \$1,000, took several weeks for multiple City Departments to complete.

For these reasons, as well as others, I respectfully request that you reverse the City of Marquette's denial of this FOIA request, and that you release these public documents.

Thank you.

All the Best,

Michael Neiger
www.SaveFoundersLandingBeach.com
www.MarquetteWikiLeaks.com
313 Jonathan Carver Road
Marquette, Michigan 49855
906-226-9620 • mneiger@hotmail.com

Attachments: Exhibits A through D



March 13, 2015

Mr. David Bleau
Marquette City Clerk & FOIA Coordinator
300 W. Baraga Avenue
Marquette, Michigan 49855
Delivered via e-mail to clerk@mqcty.org

Re: FOIA Request

Dear Mr. Bleau:

This letter is a request pursuant to the Michigan Freedom of Information Act, Act 442 of 1976 (MCL 15.231 *et seq.*), for a copy of all of City Manager Bill Vajda's e-mails (without attachments) between December 1 and December 31, 2013, irrespective of subject matter.

I would respectfully request that my copies be printed in a single-sided format, not double-sided (the back side of each copy should remain blank).

Thank you in advance for any assistance with this FOIA request.

All the Best,

Michael Neiger
www.SaveFoundersLandingBeach.com
www.MarquetteWikiLeaks.com
313 Jonathan Carver Road
Marquette, Michigan 49855
906-226-9620 • mneiger@hotmail.com

CITY OF MARQUETTE, MICHIGAN
NOTICE OF FREEDOM OF INFORMATION ACT RESPONSE

1. Name and address of requester:
Michael Neiger

**313 Johnathan Carver Road
Marquette MI 49855**

2. Manner in which request submitted:
 U.S. Mail Personal delivery
 FAX Email other electronic means

3. Date written request received by City (The next business day if received by FAX, Email or, electronic means): 03.15.15

4. Public records held by City that are requested: Per the attached FOIA request.

5. The request is:
 GRANTED: Documents requested in your FOIA request are attached.

DENIED: The request does not meet the Attorney General's Opinion No. 5500(k), p. 255, July 23, 1979-Request only refers to a time period does not meet Section 3 of the Act.

GRANTED in part and DENIED in part because — — — — —

RESPONSE PERIOD EXTENDED:

6. Fee incurred in responding to request:

Staff & Labor cost	=	\$0.00
Copy Charges		0.00
Total Costs		\$0.00

Payable to: City Treasurer, City of Marquette, 300 W. Baraga Avenue, Marquette, MI 49855

Fee waived. (nominal)

No fee charged (Affidavit of Public Assistance or Indigence submitted and accepted).

Because estimated fee exceeds \$50 deposit of one-half the total amount due must be received by the City prior to City's response. The deposit of \$ shall be payable by check or money order to "City of Marquette". Remit to City of Marquette, FOIA Coordinator, 300 W. Baraga Ave., Marquette, MI 49855 with a copy of this notice.

7. Requested Information:
 To be picked up.

emailed

Faxed at requester's direction to

Responded to and mailed upon receipt of payment deposit required in Line 6, balance of
\$31.50, due upon receipt

To be reviewed in the Clerks Office, copies will be made as needed.

8. Date of Response: 03.19.15

emailed

9. Description of appeal rights due to denial of requested records.

(A) Per Section 5 (4)(d)(i) of FOIA, you may submit to the Mayor of the City of Marquette a written appeal that specifically states the word "appeal" and that identifies the reason(s) for the requested reversal of the denial. The appeal should be mailed to the Mayor, care of the FOIA Coordinator, at the 300 W. Baraga Ave., Marquette 49855. The City Commission will address the appeal at the next regularly scheduled meeting after the appeal is received and will respond to the appeal within ten (10) days after the Board meeting.

(B) Alternately, you may seek judicial review of the denial under Section 10 of FOIA. Such review will be in the circuit court in which you reside or have your principal place of business, or Marquette City. If you prevail in your court action, then under FOIA, Section 10(6), "The court shall award reasonable attorneys' fees, costs, and disbursements." If the City prevails, "...the court may, in its discretion, award all or any appropriate portion of reasonable attorneys' fees, costs, and disbursements."


David J. Breaux, City Clerk
Designated FOIA Coordinator
City of Marquette
300 W. Baraga Avenue
Marquette, MI 49855
Phone: (906)228-0430
Email address: dbleau@mqcty.org

PREPARED BY THE OFFICE OF
THE ATTORNEY GENERAL
CURRENT THROUGH JULY 2007

**MICHIGAN'S
FREEDOM
OF
INFORMATION
ACT**

ATTORNEY GENERAL

Attorney General Opinion No. 5500, p. 255, July 23, 1979.

The following responses to specific inquiries are found in the above opinion:

- a. A summary of the FOIA. p. 255
- b. A government agency does not fall within the meaning of "person" for purposes of obtaining information under the FOIA. p. 261
- c. The Civil Service Commission is subject to the provisions of the FOIA. p. 261
- d. Since the President's Council of State Colleges and Universities is wholly funded by state universities and colleges, it is a public body as defined by the FOIA. p. 262
- e. A board of trustees of a county hospital may refuse to make available records of its proceedings or reports received and records compiled, which would constitute a clearly unwarranted invasion of an individual's privacy under section 13(1)(a), involve disclosure of medical, counseling or psychological facts or evaluations concerning a named individual under section 13(m); or involve disclosure that would violate physician-patient or psychologist-patient privilege under section 13(1)(i). p. 263
- f. Transcripts of depositions taken in the course of an administrative hearing are subject to disclosure to a person who was not a party to the proceeding, as there is no specific exemption in section 13(1) or any other statute which exempts a deposition or a document referring to the deposition from disclosure. These documents may, however, contain statements, which are exempt from disclosure and therefore, pursuant to section 14, where a person who is not a party to the proceeding requests a copy, it will be necessary to separate the exempt material and make only the nonexempt records available. p. 263
- g. Stenographer's notes or the tape recordings or dictaphone records of a municipal meeting used to prepare minutes are public records under the ACT and must be made available to the public. p. 264

- h. Computer software developed by and in the possession of a public body is not a public record. p. 264
- i. Although a state university must release a report of the performance of its official functions in its files, regardless of who prepared it, if a report prepared by an outside agency is retained only by the private agency, it is not subject to public disclosure. p. 265
- j. Copyrighted materials are not subject to the ACT. p. 266 [But see *Blue Cross/Blue Shield v Insurance Bureau*, 104 Mich App 113 (1981).]
- k. A request for data which refers only to an extensive period of time and contains no other reference by which the public record may be found does not comply with the requirement of section 3 that the request describe the public record sufficiently to enable the public body to find it. p. 268
- l. If a public body maintains a file of the names of employees which it has fired or suspended over a certain designated period of time, it must disclose the list if requested. p. 268
- m. A public body may charge a fee for providing a copy of a public record. p. 268
- n. The five-day response provision begins the day after the public body has received the request sufficiently describing the public record. If the request does not contain sufficient information describing the public record, it may be denied on that ground. Subsequently, if additional information is provided that sufficiently describes the public record, the period within which the response must be made dates from the time that the additional information is received. p. 269
- o. A school board may meet in closed session pursuant to the Open Meetings Act to consider matters which are exempt from disclosure under the FOIA. p. 270
- p. The names and addresses of students may be released unless the parent of the student or the student has informed the institution in writing that such information should not be released. p. 282

Neiger Exhibit D

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5500

July 23, 1979

FREEDOM OF INFORMATION ACT:

1976 PA 442, MCLA 15.231 et seq; MSA 4.1801(1) et seq

The Freedom of Information Act, 1976 PA 442; MCLA 15.231 et seq; MSA 4.1801(1) et seq, hereinafter referred to as 'the Act', took effect April 13, 1977. Basically, the Act provides that members of the public have a right to inspect and copy certain records of governmental agencies. The purpose of the Act, as stated in section 1(2), is:

'It is the public policy of this state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with the act. The people shall be informed so that they may fully participate in the democratic process.'

As the Act requires some explanation and clarification, I have prepared this document which is divided into two parts. The first part contains a summary of the provisions of the Act and the second part contains my response to questions from public officials asking for interpretation of the Act.

Is a public official required to furnish all of the correspondence typed by his secretary during fifteen-month period preceding the request?

A public official's correspondence which relates to the performance of his or her official functions is subject to disclosure pursuant to the Act. Section 2(b) and (c). However, the Act requires the person requesting the material to describe the public record 'sufficiently to enable the public body to find the public record'. Section 3(1). The fact that the records being sought are voluminous does not excuse the public body from permitting inspection of the public record or from providing copies thereof upon payment of a reasonable charge as provided by section 4. It has been held, however, that the term 'all records' is too broad to constitute identification of the records being sought. *Sears v Gottschalk*, 502 F2d 122 (CA 4, 1974), cert den 422 US 1056; 95 S Ct 2680; 45 L Ed 2d 709, reh den 423 US 885; 96 S Ct 160; 46 L Ed 2d 116 (1975), cert den 425 US 904; 96 S Ct 1494; 47 L Ed 2d 753 (1976). More recently, the Fourth Circuit denied a similar request as too broad. *Mason v Calloway*, 554 F2d 129 (CA 4, 1977); accord, *Irons v Schuyler*, 151 US App DC 23; 465 F2d 608 (1972), cert den 409 US 1076; 93 S Ct 682; 34 L Ed 2d 664 (1972).

Since the language of the Federal and Michigan Acts are similar, constructions of the Federal Act are persuasive in interpreting the Michigan Act. *Citizens for Better Care v Department of Public Health*, 51 Mich App 454; 215 NW2d 576 (1974), lev den, 392 Mich 758 (1974).

It is therefore my opinion that a request for data which refers only to an extensive period of time and contains no other reference by which the public records may be found does not comply with the requirement of section 3 that the request describe the public record sufficiently to enable the public body to find it.