

City won't honor FOIA

City Manager
Vajda's emails
requested

By **RYAN JARVI**
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MARQUETTE — The Marquette City Commission on Monday unanimously upheld city officials' decision to deny a Freedom of Information Act request made for the disclosure of City Manager Bill Vajda's emails.

Michael Neiger, a representative of Save Founders Landing Beach, made the request for a copy of all Vajda's emails between Dec. 1 and Dec. 31, 2013, irrespective of subject matter.

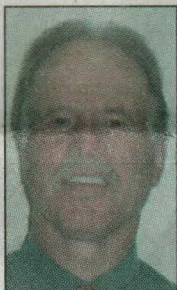
Neiger's request was first reviewed by the city clerk and attorney, who denied the request saying it didn't comply with Section 3 of the act, which requires a written request describe a public record sufficiently to enable the public body to find the record.

"This really was not a difficult decision to make," City Attorney Ron Keefe said. "The law is quite clear. This is about following the law, it's not about some individual or some secrecy, this is what the statute says."

The city also cited the 1979 Michigan Attorney General Opinion No. 5500(k), which states a request that refers only to an extensive period of time and contains no other reference by which the record can be found doesn't comply with the act's Section 3 requirement.

"They're hanging a hat on an attorney general opinion, an archaic one that almost predates the Internet and email, so it's a misapplication of it," Neiger said.

Neiger said the opinion is not about



CAMPANA



KEEFE



REYNOLDS

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FOIA from 1A

detailing a specific topic, it's about being specific enough so city officials can find the public record requested.

Neiger appealed the denial to the city commission, which voted 6-0 to uphold the decision. Commissioner Mike Conley was absent.

Vajda did not speak at the meeting and could not be reached for comment this morning.

Commissioner Sarah Reynolds, who said she deals with FOIA requests daily as a paralegal, called Neiger's request "overly burdensome and vague."

Reynolds said she also looked at her own email correspondence with Vajda from December 2013, and said she received 70 emails from him and sent 60 back.

"I can't imagine every commissioner, employee, citizen — how many thousands of pages of documentation that would be, and based upon reading the attorney general's ruling and knowing as much as I do about FOIA, I will deny this for that reason," she said. "This being said, I'm not doing it because it's Mr. Neiger. That's upsetting to me to think that would be why."

Neiger led a failed 2014 attempt to recall then city commissioners Mike Coyne and Dave Campana, who now serve as mayor and mayor pro tem, respectively, and Reynolds.

Neiger also opposed the construction of a boathouse facility on Founders Landing by the Upper Peninsula Community Rowing Club, of which the wives of Vajda, Keefe and Campana are members.

The commission approved a 25-year lease with the club in October 2014.

Campana said he voted to deny the request based on the city clerk and attorney's opinions.

"They know exactly what they're stating and I tend to believe what they have to say," he said. "It's an unreasonable request."

Neiger said the denial should be reversed because his request covers a one-month period rather than the 15-month "extensive time period" referred to in the attorney general's opinion, and applies to emails

not typed correspondence that formed the basis of the question being addressed in that opinion.

"Unlike physical, typed correspondence, which could end up filed, misplaced, or discarded in any number of locations, modern-day digital (email) — 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," Neiger wrote.

He also said granting the request would involve significantly less time and effort than that of a previous FOIA request Neiger made for city officials' emails over an 11-month period regarding the rowing club's boat-house lease with the city.

Neiger said that request

resulted in the release of more than 1,200 pages of emails, cost more than \$1,000 and took the city several weeks to complete.

Commissioner Sara Cambensy said she agreed Neiger's request seemed vague, but also stated concerns of how the city handles FOIA requests.

"When the FOIA request that was done before ... all of my emails were in there, all of my drafts were in there except for one email chain, and that had to do with emails between state Representative (John) Kivela and I, and that was disconcerting to me," Cambensy said. "It was also disconcerting to find that our process and our policy doesn't lay out exactly who does the FOIA exclusively. We had city staff doing

their own FOIAs and then turning them in, whereas all the commissioners got our FOIAs done by the IT department."

Cambensy said denying FOIA requests like Neiger's and "shooing it away" doesn't invite the public to trust the city.

"The city gets FOIAs everyday, almost, and they're processed all the time," Keefe said. "It's the rarest of occasions when someone is denied and then takes an appeal. ... This is extremely rare, I've never seen it before in 10 years."

Marquette resident Frank Verito, an outspoken critic of the rowing club's boat-house project, criticized the city's argument that Neiger's request was denied because it didn't sufficiently describe the public

record sought.

"That excuse is evasive if not insane," he said. "We paid for the time Vajda spent writing those emails, thus we're entitled to view them."

Brice Burge, owner and editor of the news blog Marquette Social Scene, said FOIA requests are less about the information received and more about the process.

"It's a process that restores faith in the ability of self governance, it restores faith in the issue to go through and hold your elected and appointed officials ... to proper techniques and proper information and that they're doing their due diligence on everything," he said. "This would do a lot to restore a lot of faith in everything in the system."

Though the city denied Neiger's request, he could still make a case in Marquette County Circuit Court.

"It's unfortunate but that's where we are," Neiger said. "I'm going to pursue this to get the public records."

Neiger said he would consult an attorney and the city's official denial opinion before taking the case to court. He also plans to refine his FOIA request to the city with shortened time periods and other changes.

"And I may lose that, but I'm going to do what I can to get to the bottom of this," he said.

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