

LAW OFFICES  
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October 19, 2015

Mr. Richard Bisio  
201 West Big Beaver  
Suite 600  
Troy, MI 48084

Re: FOIA Request

Dear Mr. Bisio:

In response to your letter dated August 24, 2015 regarding FOIA request of June 7, 2015, by Susan Bisio, I offer the following:


1. As to the eighteen items listed as denied under MCL 15.232(e), you are correct in that the information denied as received by myself as City Attorney was between myself and either other attorneys or city engineering staff without receipt by the City itself. A public body is defined in MCL 15.232(d): "Public body" "means any of the following: (iii) "a county, city, township, village, inter county, inter city, or regional governing body, council, school district, special district or municipal corporation, or a board, department, commission, council or agency thereof."

As stated in our initial response, Subsection (e) states: "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. The basis for the denial was, in my opinion as city attorney, I am not a "public body". Thus, the information sought was neither created nor obtained by a public body, i.e. The City of the Village of Clarkston and thus was not a public record. *Hoffman v. Bay City School District*, 137 Mich App 333, NW 2d 686 (1984). Appeal denied. Thus, the very touchstone of a request for a "public record" by a "public body", your information requested was never received or in the possession of the public body, i.e. The City of the Village of Clarkston and therefore, in my opinion, this stated exemption has been properly offered.

2. a. see attached.  
b. see attached.  
c. see attachment to 2b.  
d. see attached.  
e. see attached. The referenced two attachments are "images" only.  
f. see attached.  
g. see attached.

3. See attached copies regarding 3(1); 3(2) and 3(4). There is no attachment for 3(3) as the City Manager did not send an email on 3/9/15 to city council forwarding two preceding items as the City Manager hand delivered a copy for the council members with the exception of Sharon Catallo. Please find attached emails provided from the City of Clarkston relative to 148 N. Main.
4. Any emails generated by HRC between them and the Developer are not in the possession of the City if the city was not copied on those emails then they are not on the city's system.
5. Mr. Avery was not on City Council when this matter transpired. See emails with Mr. Luginski's email address in Paragraph 3.
6. The records of HRC are not public records. As stated in our initial response, Subsection (e) states: "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. The basis for the denial was, in my opinion as city attorney, I am not a "public body". Thus, the information sought was neither created nor obtained by a public body, i.e. The City of the Village of Clarkston and thus was not a public record. *Hoffman v. Bay City School District*, 137 Mich App 333, NW 2d 686 (1984). Appeal denied. Thus, the very touchstone of a request for a "public record" by a "public body", your information requested was never received or in the possession of the public body, i.e. HRC and therefore, in my opinion, this stated exemption has been properly offered. We have provided all the responses held by the City, which are public records and have been provided. The city has searched its information based and provided the information that they possess.

Respectfully submitted,

  
Thomas J. Ryan  
City Attorney

TJR/lp  
Enclosures  
Cc (w/encls.) Sandy Miller, FOIA Coordinator