

From: smbisio@gmail.com <smbisio@gmail.com>
Sent: Monday, February 20, 2023 1:59 PM
To: 'Karen DeLorge' <delorgek@villageofclarkston.org>
Cc: bisiolaw@gmail.com
Subject: RE: FOIA follow up

Dear Ms. DeLorge:

Thank you for getting back to me.

I'm going to assume the phrase "unduly burdening or interfering with the City of the Village of Clarkston's operations" originated with the city attorney – but it has no basis in the FOIA statute, something he should know. The FOIA statute does not authorize a public body to unilaterally extend a statutory response deadline; only a requester can agree to an extension. Unilateral extensions of time don't impair a requester's right to sue over a failure to timely respond and receive attorneys' fees and costs (something the city attorney also should know). That said, I can certainly empathize with being a new employee and trying to work alone in the office while others are on vacation.

I have two outstanding requests. The first request was sent a month ago on 1/19/23. Had I received an extension letter from the city, the final response would have been due no later than 2/10/23. While I understand that you may not necessarily know where to find the requested material, both Jonathan Smith and Tom Ryan were copied on many of your emails to me and therefore are well aware of what was being provided (and what was not). I also fully expect to see extensive billing entries for Mr. Ryan regarding this request, so my email explaining which documents were missing should not surprise him - and he should have been the one raising the issue, not me. I also have no doubt that Messrs. Smith and Ryan know what I'm looking for, they have some of the records, and they have not turned them over to you. As an example, they both have copies of the draft and finalized recent "notice of violation" for the Millpond Inn that were attached to internal emails, yet those attachments were not provided to me. They both also have the Millpond Inn's response to that "notice of violation," and both know that I requested that document originally and in our subsequent email exchanges. The fact that Mr. Smith was out of the office last week doesn't excuse Mr. Smith's (or Mr. Ryan's) refusal to provide you with copies of responsive records before Mr. Smith took time away from the office.

The second, most recent request was sent 2/4/23, and the response was due on 2/13/23. The city hasn't claimed a statutory extension of time or

responded to this request in any other way, so the city's response is late. This request was necessary because the city sent me a copy of a 1995 court of appeals opinion involving the Millpond Inn in response to my request for a copy of the "court-ordered variance" mentioned during the January 9, 2023, city council meeting. Though the 1995 case (and the subsequent 1997 case) eviscerated the ZBA's baseless arguments against the Millpond Inn owners, neither case ordered anything beyond sending the issue back to the ZBA with a direction for the ZBA to do its job in an unbiased way. Sending me a copy of a published 1995 case cannot be considered a "court-ordered variance" by any stretch of the imagination because it doesn't contain any terms of that variance. City officials have told the public on several occasions that there is some sort of operational agreement between the city and the Millpond Inn, and that's why I sent this second, more detailed request asking for records from the city attorney's court file, the ZBA, and the planning commission dated after the 1997 court of appeals opinion, since those would be the places where such an agreement and any related material would be found (outside of the city's general files). If there is no such agreement, then the city apparently has no basis to pursue the Millpond Inn other than the generic definition of a bed and breakfast and an ordinance section titled "Bed-and-Breakfast Inns in the VC Districts" (the only documents attached to the notice of violation) and city officials have been deliberately misleading the public about the existence of a separate agreement. I think that these are important facts for the public to know, since the city's continued pursuit of the Millpond Inn owners will undoubtedly result in litigation that the taxpayers will be forced to fund.

If you've forwarded my requests to all the involved city officials, employees, and contractors (as opposed to trying to find the records on your own by searching for city records on the city's server, for example, something that would be insufficient because it likely would not retrieve exchanges from personal email), then there is no reason why the city can't complete its response to my outstanding requests in short order. You may consider this email an authorization to extend the response time only until Friday, 2/24/23.

Kindest regards,
Susan Bisio

From: Karen Delorge <delorgek@villageofclarkston.org>
Sent: Friday, February 17, 2023 11:15 AM
To: smbisio@gmail.com; bisiolaw@gmail.com
Subject: Re: FOIA follow up

Hi Susan,

Please know that I am working on answering your questions below, but I will require more time to do so. I cannot comply with the request for records within the 5 business day time limit without unduly burdening or interfering with the City of the Village of Clarkston's operations. Jonathan Smith, City Manager is currently out of office which leaves me as the sole full-time employee.

Karen A. DeLorge, City Clerk

City of the Village of Clarkston

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From: smbisio@gmail.com <smbisio@gmail.com>

Sent: Sunday, February 12, 2023 3:09 PM

To: Karen DeLorge <delorgek@villageofclarkston.org>

Subject: FOIA follow up

Dear Ms. DeLorge:

I appreciate the additional information, but after reviewing what the city provided on Thursday, I still think that there are missing records. For ease of reference I have attached the emails that I have questions about, as well as a cut and paste of my FOIA request #2 and #3 below for ease of reference.

FOIA request #2:

"All correspondence between Clarkston or its agents or representatives and the owners of the Millpond Inn Bed and Breakfast within the last two years [to include] all records in the possession of any Clarkston charter officer, elected official, appointed official, contracted official, employee, or the Office of the City Attorney."

FOIA request #3:

"A copy of all non-privileged correspondence within OR between the city and any other person or business concerning the Millpond Inn Bed and Breakfast within the last two years. By way of example, but not limitation, this would include records of code officer or building inspection reports, any violations issued, or resident/business/council member complaints [to include] all

records in the possession of any Clarkston charter officer, elected official, appointed official, contracted official, employee, or the Office of the City Attorney.”

The following questions refer to documents that I extracted from the city’s response to my request titled “Scan of Millpond Inn Correspondence.” I’ve attached these emails and highlighted them to make it easier to see what I’m referring to.

Email #1:

This email includes an 11/10/21 Notice of Violation from Code Enforcement Services. The attached letter begins: “It has come to our attention, through a concerned 3rd party . . . ” Is there any subsequent correspondence relating to the Notice of Violation, including include any written response to the Notice of Violation? If so, those records would be responsive to FOIA request #2.

Are there any records of the “concerned 3rd party” complaint? If so, those records would be responsive to FOIA request #3.

Email #2:

This 10/11/22 email from Jennifer Speagle references an intended follow up with Susan Weaver and appears to refer to the code enforcement violation in Email #1. Was there any subsequent written communication exchanged between Speagle and Weaver in response to this email, or any further communication from Speagle regarding the promised update? If so, these records would be responsive to FOIA requests #2 and #3.

Email #3:

The 10/26/22 email from Johnathan Smith to Stacy Kingsbury indicates there was an attachment, but it wasn’t included. The 10/26/22 email from Kingsbury to Smith, Speagle, Weaver, and Jeff Shafer references a draft of a letter that was also not included. Any attachments are part of the email communication and these attachments would be responsive to FOIA request #3. (Even if not attached to the email, the notice and letters would be responsive to FOIA request #2 or #3.)

Email #4:

The 11/16/22 email (12:16 p.m.) from Tom Ryan to Kingsbury advises that a civil infraction should be issued. Has one been issued? If so, this record would be responsive to FOIA request #2.

The 11/16/22 email (8:28 a.m.) from Smith to Kingsbury references an attached response from the Millpond Inn. This attachment was not included and would also be responsive to FOIA request #2. (Please note that there is also a reference to the existence of the response to this Notice of Violation in Ryan's December 1, 2022 legal services bill that I previously forwarded that he described as "BB response to Notice of Violation" in the billing entry.)

Email 5:

Eric Haven's 10/10/22 email asked for information regarding any previous complaints from Mary Kuhn about the Millpond Inn, and his 10/11/22 email asked Speagle to forward any other written complaints from Kuhn. I didn't see any response to that email. If there were written complaints from Kuhn (or anyone else) about the Millpond Inn, those records would be responsive to FOIA request #3.

This email string also contains a 10/11/22 email from Speagle to Haven and Ryan, stating that she has been "emailing back and forth" with Kingsbury. Emails between Speagle and Kingsbury from 10/11/22 and before were not provided but would be responsive to FOIA request #3.

I would appreciate it if you would provide the records as soon as possible. If the referenced records don't exist, then the city's response should certify their nonexistence. If the city is withholding something under an exemption claim, it needs to describe what's being withheld and note which exemption applies.

The response doesn't evidence an effort by city officials to search off-site and personal email files. Please be advised that such records of the conduct of city business are public records regardless of whether they may have been copied to someone with a city email address. I once again ask that the city make a full review of all sources of responsive records, including email files of those persons acting on behalf of the city who used other emails systems and addresses besides the city's email system.

Thank you,
Susan Bisio