



City of Lansing

OFFICE OF THE CITY ATTORNEY

James D. Smiertka, City Attorney

July 24, 2018

Steven Harry
stevenrharry@gmail.com

Sent Via Email

RE: Freedom of Information Act ("FOIA") Request
19-012 – McIntyre Memo

Dear Mr. Harry,

Pursuant to the above-referenced FOIA request, which this office received on July 17, 2018, please be advised that your request for an internal memoranda created by the Office of the City Attorney is denied because the records requested are attorney work-product, are subject to attorney-client privilege because the records contain confidential communication between a client and an attorney for the purpose of obtaining legal advice, and the memoranda contains frank communications that are preliminary to a final agency determination. As such, the records that you requested are exempt from disclosure under MCL 15.243(1)(g), (h), and (m).

Attorney work product includes "notes, working papers, memoranda or similar materials, prepared by an attorney in anticipation of litigation, are protected from discovery." *Messenger v. Ingham County Prosecutor*, 232 Mich.App. 633, 638 (1998) (holding that prosecutor's entire work product is privileged from disclosure under FOIA). Similarly, the Court of Appeals has held that communications subject to attorney-client privilege are exempt from disclosure under FOIA. *Estate of Nash v. City of Grand Haven*, 321 Mich.App. 587 (2017). The specific communication requested, a memoranda between the City Attorney and the Mayor regarding retiree healthcare includes frank communications that are preliminary to a final agency determination; the interest in promoting frank communications on retirement benefits between an attorney and client outweighs the public interest in disclosure. *Herald Co. v. Eastern Michigan University Board of Regents*, 475 Mich.App. 463 (2006).

Please be advised that the City has adopted Procedures and Guidelines and a Written Public Summary, both of which are available on the City's website at:

<https://www.lansingmi.gov/DocumentCenter/Home/View/618>

<https://www.lansingmi.gov/DocumentCenter/Home/View/415>

Appeal of denial of records. You are entitled under the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the President of City Council or to commence an action in the Circuit Court within 180 days after the City's final determination to deny a request, to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure. If, after judicial review, the court determines that the City has not complied with MCL 15.235 in making this denial and orders disclosure of all or a portion of a public record, you have the right to receive attorneys' fees and damages as provided in MCL 15.240. If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record.

Appeal of excessive fee. You are entitled under the Michigan Freedom of Information Act, MCL 15.240a, to appeal a FOIA fee that you believe exceeds the amount permitted under the City's written Procedures and Guidelines to the President of City Council or to commence an action in the Circuit Court for a fee reduction within 45 days after receiving the notice of the required fee or a determination of an appeal to the President of City Council. If a civil action is commenced in court, the City is not obligated to compete processing the request until the court resolves the fee dispute. If the court determines that the City required a fee that exceeded the permitted amount, the court shall reduce the fee to a permissible amount.

If you have any further questions, please contact me at my office.

Sincerely,



Amanda O'Boyle
Office of the City Attorney

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