



June 1, 2021

SENT VIA EMAIL TO: bobteig@gmail.com

NO HARD COPY MAILED

Robert L. Teig
282 Lamplite Lane SE
Cedar Rapids, IA 52403

RE: Open Meeting and Public Record Issues

Dear Bob:

You have made a claim that the City violated the Iowa Open Meetings Law when it closed the April 29, 2021 special session for the purposes of conducting a job interview. You stated that you may file a lawsuit against the City and the individual council members. You have disputed the manner in which the City has responded to your requests for documents pursuant to the Iowa Open Records Law. Your questions appear to be more in the form of interrogatories and request for admissions. Under these circumstances, the City must view your questions and requests in this context.

I am not aware of any law that requires answers to your questions beyond those which have already been provided. You are entitled to examine and copy public records as provided for in Iowa Code Chapter 22 (2021). Answering questions is not required under that statute.

In my experience, explaining positions with opposing counsel has not been very productive. That said, I will attempt to set forth what some of my thinking is as to the issues about which you have complained. I will use your latest email as being the current status of the questions that you have.

Question: You will not provide the job application and have said it is not a public record. Twice I have asked you to cite the provision exempting it from disclosure. You have not done that. Please provide that information.

Answer: I don't think I said that. Regardless, Iowa law provides that the job application is a public record, but it is a confidential public record. I believe that you already know the Iowa Supreme Court held in *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895 (Iowa 1988), that confidentiality of job applications is provided for in Iowa Code Section 22.7(18). You have said that you think this applies only to external candidates.

The Iowa Supreme Court in that case did not make that distinction. For purposes of Iowa Code Section 22.7(18), a candidate who is a current city employee is nevertheless "outside" the government which in this context is the City Council as a hiring body. A current City employee applying for a different job with the City is entitled to the same protection as one who is not a current City employee. Even if this weren't the case, the job application from an internal candidate constitutes personal information in confidential personnel records as set forth in Iowa Code Section 22.7(11). The confidentiality of such a record also serves as justification for closing the interview pursuant to Iowa Code Section 21.5(1)(a) in order to review or discuss records which are authorized by state law to be kept confidential.

Question: Where are the other records relating to my public records requests? There have to be other emails, etc. that I have not been provided?

Answer: I believe the City has produced all the records that are responsive to your request except for the confidential job application and communications between attorney and client. Iowa Code Chapter 22 does not abrogate the privilege and confidentiality of these communications. *Horsfield Materials Inc. v. City of Dyersville*, 834 N.W.2d 444 (Iowa 2013). You have also asked for communications that are just other communications that have been forwarded. I don't believe there are any such communications other than those that have been produced, or are privileged. I will again ask whether there are any other records that have not been provided and if I become aware of any, I will provide those.

Question: Before the session was closed, did council members have any information related to unnecessary and irreparable injury to Alissa's reputation?

Answer: The City Council knew that it was going to conduct an interview of a candidate for appointment as City Clerk. Iowa Code Section 21.5(1)(i) allows a governmental body to hold a closed session to evaluate the professional competency of an individual whose appointment or hiring is being considered when necessary to prevent needless or irreparable injury to that individual's reputation and that individual requests a closed session. The statute contains no requirement that any sort of factual record be made in open session as to why closure is necessary. I am not aware of any case law or opinion from the Iowa Public Information Board to the effect that some particular fact or issue must exist in order to justify closure. Making a record in open session of any such facts or issues would certainly defeat the purpose behind the code section entirely. The City Council did not have to possess any particular piece of information or recite any particular findings in order to make a reasonable decision to close the interview.

In order to attract the best candidates for employment, a prospective employer must provide a certain degree of confidentiality during the hiring process. Often, the best candidates are already employed, and they would be less likely to apply for a position in the public sector if they knew their application and interview would be public. It is no less of a concern for candidates who are already City employees. We have provided you with a packet the City Council used as a guide for the interview, with the personal information removed. The candidates did not have this information, however, nor did they know what the questions were going to be. The City Council did not know how the candidates were going to respond. It is not uncommon for an applicant to respond to such questions by disclosing personal and confidential information that if released to the public would be embarrassing and/or damaging, both of which would have been needless. Even if there was no harmful particular issue or subject expected, or nothing needlessly embarrassing or harmful was actually said, the necessity to protect the applicant still existed at the time the Council was considering closure of the meeting. The City needs job applicants to provide candid, complete, and frank information about a number of topics relevant to the hiring decision. In order for that to happen, a reasonable city council could find that closing the interview was necessary.

In addition, as required by the statute, the candidate did request that the interview be closed. The request was made and speaks for itself. The City Council could not ignore that. A reasonable governmental body could easily conclude under these circumstances including the candidate's request for closure, that closure was necessary to prevent needless or irreparable injury to that individual's reputation.

Question: During the session, did anything come up that would have caused such?

Answer: The content of the closed session is not a matter of public record. The meeting was recorded and minutes were taken. Both are sealed in the City Clerk's office.

Question: Did the council discuss the merits of the hire and the salary increase during the session?

Answer: See prior answer. In addition, as you know, the City Council did consider this appointment in open session at its meeting on May 11, 2021. The agenda for that meeting was posted as required by Iowa Code Chapter 21. At that meeting the City Council took the action to appoint the individual to this position and set the salary.

Question: Alissa told me she did not have a concern about injury to her reputation when she asked that the session be closed? Is that true?

Answer: This is not a question as to a public record. A request to close the meeting was made. I don't believe that Alissa has agreed with your statement.

Question: She also said closing such sessions was a standard practice. Is that true?

Answer: See the answer above. I will also state that the former City Clerk was interviewed by the City Council in closed session, and performance evaluations conducted by the City Council for its three appointees have been conducted in closed session for as long as I can remember.

Question: Is it true that, before the session was closed, there was no information that there could have been unnecessary and irreparable injury to Alissa's reputation if the session was not closed?

Answer: I don't believe this is accurate. This issue has been addressed above.

Question: If this is not true, what was the nature of the information?

Answer: This has been answered above. In addition, any information of the type that you describe is confidential. It would entirely defeat the purpose of the statute to disclose this sort of information.

Question: Why was the salary increase not included on the meeting agenda where it was approved by consent?

Answer: This was a new appointment. The resolution established the salary. There is no requirement that the agenda had to specifically include the salary. The agenda language was reasonably sufficient to alert interested people as to the subject matter to be considered by the agenda item.

Question: Will you please answer my previous questions?

Answer: I believe all of your questions have been answered, except perhaps for your question regarding whether you have the right to contact members of the City Council. I believe you do have that right, within reason of course. However, you have stated that you may be filing some sort of lawsuit. Your inquiries seem to be directly related to gathering facts to support your case. Your right to contact your elected representatives does not mean that they have to engage with you or answer questions, or otherwise assist you in these circumstances. I don't think you should be surprised if the City Council prefers that our office be your point of contact, especially given your comments about litigation.

Sincerely,


James H. Flitz
Cedar Rapids City Attorney

cc:

Mayor Brad Hart

Cedar Rapids City Council Members

Jeff Pomeranz

Alissa Van Sloten

Sandi Fowler

Teresa Feldmann

Rachelle Stewart

Elizabeth D. Jacobi