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October 9, 2017

Gregg Mansager, City Administrator
Muscatine City Hall
215 Sycamore St.
Muscatine, IA 52761

VIA: EMAIL

Dear Mr. Mandsager:

I write to you in my capacity as the executive director of the Iowa Freedom of Information Council, a 40-year-old nonprofit education and advocacy organization that works for accessible and accountable government in Iowa.

I am deeply troubled by reports I have received about two aspects of the City of Muscatine's responses to public records requests involving the impeachment proceedings against Mayor Diana Broderson.

I will address my concerns separately.

COST FOR RECORDS

The first concern deals with the prices that have been quoted to two media entities for documents that are clearly public records under the definition in Chapter 22.1(3) of the Iowa Code.

I learned via the reporter involved in WHBF-TV's request for emails about Mayor Broderson that were exchanged by City Council members and yourself that it would cost \$25,000 just to make copies of the emails. That price quote did not include staff time to retrieve the documents.

The other public records request was from WQAD-TV and was for billing statements submitted to the city by Brick Gentry PC, the city's lawyers.

I am told the initial cost estimate for retrieving, copying and reviewing these records was \$412.50, which the station paid. Then, after making that payment and being informed the documents were ready to be picked up, the station was informed there would be an additional charge of \$848.25 would have to be paid before the station could receive the records.



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Iowa's public records and public meetings laws were written to provide citizens with information they need to judge how effective and efficient their government bodies are. The Iowa Supreme Court has stated that these laws are intended to assure that the basis and rationale for government decisions is readily available to the public.

The City Council's decision to bring impeachment charges against the mayor and then remove her from office are of intense public interest in your community. But few citizens of Muscatine have the financial resources to pay \$25,000 to obtain the emails that WHBF-TV sought or to pay \$1,260 for the attorney billing statements that WQAD-TV sought.

I worry that the charges the city levied against WQAD and quoted to WHBF were intended to put the price for these legitimate requests for public records out of reach. While Chapter 22 of the Iowa Code permits government bodies to recover their staffing and copying expenses when responding to public records requests, the law does not permit government to make a profit from filling these requests for copies.

Specifically, Chapter 22.3(2) states, in part: *"...The fee for the copying service as determined by the lawful custodian shall not exceed the actual cost of providing the service. ... Actual costs shall not include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity or insurance associated with the administration of the office of the lawful custodian."*

In my opinion, the charges for the Brick Gentry billing statements and for the emails are unrealistic.

- Iowa law allows the city to recover "a reasonable fee," but the \$25,000 estimate for the emails means, in effect, it would take a city IT employee making \$50,000 per year six months to retrieve and copy the emails WHBF sought.
- Concerning the Brick Gentry billing statements, it's my understanding that you provided 134 pages of bills to WQAD. You informed the station that you spent 12 hours reviewing the statements; that your secretary spent 8 hours retrieving the statements; and that the city legal staff spent 1 hour reviewing the materials.

By my calculations, that means you spent nearly 5½ minutes on each of the 134 pages of billing statements and that your secretary spent an entire work day retrieving the statements from the city's files.

The amount of time these tasks took is quite astonishing, frankly. I think the citizens of Muscatine would be very troubled to learn how much time your secretary and you supposedly took, first to gather and then to review and redact the materials WQAD sought.

That's especially true given that the description of the work the city was paying Brick Gentry



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PC for was redacted in all but one line-item on the 134 pages.

The Iowa Freedom of Information Council believes the City of Muscatine is disregarding both the spirit and the letter of Iowa's open records law with the fees it is charging for access to documents about the Broderson case — records that rightly belong to the people of Muscatine.

REDACTIONS FROM THE ATTORNEYS' BILLS

My second concern deals with the redactions that were made in the Brick Gentry billing statements provided to WQAD.

Removing the description of the work that was performed deprives the people of Muscatine of the ability to analyze and evaluate the work that was being done on their behalf by the city's attorneys. That is especially true because these redactions make it impossible for the people of Muscatine to determine how much has been spent by the City Council leading up to, during and following the mayor's impeachment.

I am aware that Chapter 22.7(4) allows a government body to treat as confidential "Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body."

But I don't believe the billing statements can reasonably be considered to be the "work product" of your attorneys. The billing detail would not get at the legal strategy the city and its attorneys are pursuing. The billing details would not provide any indication of the content of privileged communications between the city and its attorneys. Nor would the billing details give any indication of the privileged legal advice the attorneys provided to the city.

The billing statements are merely a summation of the facts of what the city paid for each task the Brick Gentry attorneys carried out on behalf of the City of Muscatine.

Further, there are several pages in the PDFs you provided to WQAD that are entirely blank. This suggests that you redacted all of the dates, the Brick Gentry employees' initials, their billing rates and the total line-item billing amounts charged to the city on those pages.

On other pages from the billing statements, only the dates and initials are shown on the PDFs, and it appears that the billing rates and line-item billing totals have been redacted. This means that it is impossible for anyone to determine from these redacted records the total amount of payments the city has made to Brick Gentry PC for representing the City of Muscatine for all of the various tasks it has carried out for the city during the time period in question.

In the opinion of the Iowa Freedom of Information Council and its attorneys, there is no legal justification whatsoever for redacting the amount the city's attorneys — or any other city



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vendor or contractor — charged the City of Muscatine for work they perform.

In emails you sent to WQAD, you stated you were unable to separate out the legal expenses directly attributable to the proceedings against Mayor Broderson from the expenses that were for other work Brick Gentry PC did on behalf of the City of Muscatine as the city attorneys.

Frankly, that explanation is hard to believe. If you wanted to, you could easily calculate how much the City of Muscatine has paid to Brick Gentry PC for its work in the proceedings involving Mayor Broderson or any other project the city is involved in.

The refusal of the City of Muscatine to make available to WQAD the details contained on the Brick Gentry billing statements makes it impossible for members of the public to reach any conclusions about the cost of the Broderson impeachment and litigation, other than you and the City Council want to keep that information from the community.

That deprives the citizens of the ability to know how much has been spent from their taxes to pursue the impeachment case against Mayor Broderson. Without this vital information, the people of Muscatine are unable to fully evaluate the actions of city officials.

OUR REQUESTS TO THE CITY

In summation, the Iowa Freedom of Information Council asks that you immediately:

- (1) Provide to WQAD and any other requestor unredacted copies of the Brick Gentry billing statements with the work descriptions and complete billing amounts intact. If you decline to do this, please provide justification, pointing to a specific exemption contained in Iowa law;
- (2) Recalculate your charges to WQAD to accurately reflect the amount of time you and your secretary actually spent retrieving and redacting the Brick Gentry bills;
- (3) Notify me of the actions the City of Muscatine will take regarding points (1) and (2).

If you have questions about these requests, please call me at 515-745-0041. Thank you for your attention to these requests.

Sincerely,

A handwritten signature in black ink that reads "Randy Evans". The signature is written in a cursive, flowing style.

Randy Evans
Executive Director