

From: [Wiedert](#)
To: [Lazarus, Howard](#)
Cc: [Postema, Stephen](#); [Eaton, Jack](#); pdlesko@outlook.com
Subject: FOIA Nos. 1848 and 1852
Date: Sunday, March 24, 2019 9:06:22 PM
Attachments: [Resp to HL Appeal letters.pdf](#)

See attached.

THOMAS F. WIEDER

ATTORNEY AT LAW

ANN ARBOR, MICHIGAN 48103

TELEPHONE: (

FAX:

March 24, 2019

Mr. Howard Lazarus
City Administrator
100 N. Fifth Avenue
Ann Arbor, MI 48104

Re: FOIA Request Number 1848 - Appeal

Dear Mr. Lazarus,

I am writing to you in response to your March 18, 2019 letter communicating your "denial" of Ms. Lesko's appeal regarding FOIA request No. 1848. There is no further action required, but I feel compelled to comment upon the letter.

You "deny" the appeal, but proceed to provide precisely the documents that the City withheld, which Ms. Lesko sought to obtain by way of the appeal.

You state that the records that the City provided initially "were responsive to that request." In the context of the FOIA, "responsive" means to provide all documents reasonably covered by the terms of the request, unless one of the statutory exemptions applies. Do you seriously suggest that the documents accompanying your denial letter are not "City Attorney Office staff time records" as described in the request? Clearly, they are, and they should have been provided initially.

You state that this form of record was provided pursuant to FOIA 1816, but not to Ms. Lesko, as the result of "a different query being used to pull the records from the database." Clearly, someone in the City chose the wrong query to use, requiring Ms. Lesko to file an appeal to obtain what she was entitled to receive initially.

And you have the chutzpah to say that you are providing those documents for her "convenience?" You should, instead, have apologized to Ms. Lesko for causing her the inconvenience of undertaking an appeal to obtain what she was entitled to receive.

Finally, you state that you were providing "the records already provided you in the form they were provided in the City's response to FOIA 1816." The records accompanying your March 18th letter were not the same records initially provided to Ms. Lesko, and you know it. The latter contain detailed listings of every period of time, by task, that each attorney spent on the matter. The former consisted only of total time spent by each attorney for the entire matter. These are not different "forms" of the same records; they are different records.

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It is truly amazing to what lengths of twisted language and dishonest statements the City will go to avoid admitting a mistake.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas F. Wieder". The signature is written in dark ink and is positioned above the printed name.

Thomas F. Wieder

TFW/ns

c. Stephen Postema

Patricia Lesko

Councilmember Jack Eaton

THOMAS F. WIEDER

ATTORNEY AT LAW

ANN ARBOR, MICHIGAN 48103

TELEPHONE:

FAX:

March 24, 2019

Mr. Howard Lazarus
City Administrator
100 N. Fifth Avenue
Ann Arbor, MI 48104

Re: FOIA Request Number 1852 - Appeal

Dear Mr. Lazarus,

I am writing to you in response to your March 18, 2019 letter communicating your denial of major portions of Ms. Lesko's appeal regarding FOIA request No. 1852. The letter is problematic in several respects. Unless these issues can be resolved satisfactorily and promptly, Ms. Lesko has authorized me to file an action on her behalf against the City in Washtenaw County Circuit Court.

You mischaracterize our request for records, as contained in the request and in our appeal. Ms. Lesko requested all records regarding the subject of the request. This would include, without limitation, all correspondence, notes, memoranda, etc. created, sent or received by you or your office, as well by Mr. Postema or his office.

In our appeal, we noted the total absence, in the City's response, of communications between you or your office and any party. We also noted the total absence of records of communications between Mr. Postema or his office with members of the City Council.

As to Mr. Postema's communications with Council, we know for certain that such communications exist, as several have come into our possession. While we would expect any such documents to be heavily redacted, the City is still required to produce them in such form.

Upon further review of your original response to the request, we would note another possible problem. There are no documents reflecting any communication between the City and Ms. Rosati regarding retention of her services under the eventual contract regarding the Bannister litigation, including scope of work, financial terms, etc., prior to the draft contract becoming available for execution. There are no records reflecting any instruction to City staff regarding the preparation of the contract. Similarly, there is an absence of such documents regarding amendment of the original contract.

It seems unlikely that all of those actions were conducted entirely orally. In the absence of an explicit representation that that is the case, we should be provided with any documents reflecting those actions, even if the City claims an exemption with regard to them and provides them with redactions.

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In your March 18, 2019 letter, you state that two "documents reflecting communication with my office or with any members of the City Council...were found and are provided with this letter." No such documents were included with your letter. This must be corrected.

Additionally, the quoted language is confusing and unclear. We are seeking all documents reflecting communications between you and your office with any party – Council, other staff (including the Attorney), outside contractors, etc. The request applies, as well, to all other persons subject to a FOIA request submitted to the City.

Your March 18, 2019 letter references redactions of "personal phone numbers." From what documents were such redactions made? It is not clear that we have any documents which seem to be covered by this explanation.

Redactions were made from five emails dated August 28, 2018 which were included in the City's original response. No explanation of these has been provided.

I would like to clarify our position as it relates to the City's claim of an exemption, on the basis of attorney work product, for the work-performed descriptions in Ms. Rosati's billing statements. Even assuming, arguendo, that that the FOIA would protect attorney work product in these circumstances, it is our position that the redacted material does not constitute attorney work product.

Unless all of these issues can be resolved, we will commence litigation.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas F. Wieder".

Thomas F. Wieder

TFW/ns

c. Stephen Postema

Patricia Lesko

Councilmember Jack Eaton

From: P. L. pdlesko@outlook.com
Subject: My recent FOIA
Date: March 13, 2019 at 1:53 PM
To: Jack Eaton [REDACTED]

PL

Hi Jack,

I recently submitted the following FOIA:

1. All emails to/from city employee Howard Lazarus to/from any City Council member sent between November 1, 2018 and March 1, 2019 which contain any of the following words: "behavior," "attitude," and/or "tone." Please do a keyword search of Council member and Lazarus email accounts directly from the city's email server. Please do not include duplicates of any one record.

In response, I received duplicates of non-responsive records and emails from you complaining about the behavior, attitude and/or tone of others, including city staff. I received no copies of emails from any member of city staff to any council member which included any of those keywords. I believe there were deliberate omissions.

I would appreciate it if you have emails from any city staff member complaining to you about your behavior, attitude or tone that would share them with me directly. I intend to gather those emails, appeal this records request and, if the appeal is denied, or the answer is that there are no more responsive records, I'll be glad to sue the City for violating the FOIA statute (Tom Wieder will lend me a helping hand).

Thanks,

Pat

From: Jack Eaton [REDACTED]
Subject: Re: My recent FOIA
Date: March 13, 2019 at 5:15 PM
To: P. L. pdlesko@outlook.com



Hi,

I'll look and let you know.

Jack

Sent from my iPhone

On Mar 13, 2019, at 1:53 PM, P. L. <pdlesko@outlook.com> wrote:

Hi Jack,

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Thanks,

Pat

From: Jack Eaton [REDACTED] 
Subject: tone
Date: March 21, 2019 at 11:39 AM
To: Patricia Lesko pdlesko@yahoo.com



Hi,

You asked me to search my email for messages including the word "behavior," "attitude," and/or "tone." Only the search for the word "tone" found anything of significance. I have attached those emails.

Jack

Jack Eaton
[REDACTED]
Ann Arbor 48103
[REDACTED]
[REDACTED]



11-16-18 solid
waste...ing.pdf



11-28-18 Fuller
Road P...ion.pdf