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November 3, 2016

Ms. Margaret E. Johnson, JD
Deputy Director
IOWA PUBLIC INFORMATION BOARD
Wallace Building, 3rd Floor
Des Moines, Iowa 50319
(via email only - margaret.johnson@iowa.gov)

**Re: City of University Heights, Iowa -
Public Records Request;
Iowa Public Information Board Complaint**

Dear Ms. Johnson:

I am writing as City Attorney for University Heights, Iowa. By letter from me dated September 23, 2016, the City provided its initial formal response to the complaint filed with the Iowa Public Information Board by Silvia Quezada. Since then, you and I have communicated about the complaint and the City's response by telephone and email. This letter supplements the City's prior formal response.

The records were provided promptly. Iowa law requires governmental bodies to provide public records within a reasonably prompt time. See, e.g., Horsfield Materials, Inc. v. City of Dyersville, 834 N.W.2d 444, 461 (Iowa 2013). The public records request forming the basis for the present complaint was made Tuesday, September 20, 2016. The City transmitted documents responsive to the request three days later - September 23. The documents produced by the City also respond to a prior request made a few weeks earlier. Clearly, the City met its obligation to provide public records reasonably promptly under any reasonable definition or construction of that standard. See id. Because the requested public records were promptly provided, the City of University Heights respectfully requests that IPIB determine that, on its face, the complaint lacks merit and decline to accept the complaint. Iowa Code § 23.8.

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The request was not made to the designated custodian. More than 10 years ago, the City adopted an Administrative Policy Manual, which is available on the City's website.¹ The Manual addresses various City administrative functions, duties, and procedures. With respect to the custodian of City records, particularly those concerning the University Heights Board of Adjustment, the Manual says this (highlighting and emphasis supplied):

- City Clerk (p. 12)
 - o Overview (p. 12)
 - **The mission of the City Clerk's Office is to provide quality administrative support to the Mayor and the City Council; provide professional customer service to the citizens of University Heights through accurate, timely and courteous service; and effectively manage all official records of the City.**
 - o Job Description (p. 12)
 - **Appointed by the City Council, the City Clerk attends all meetings of the council and records official actions; acts as custodian of legal documents** pertaining to the City; prepares and publishes City ordinances, legal publications, and notices of public hearings, as required by law; prepares the council agenda; prepares, posts, and distributes meeting agendas; administers oaths of office; and serves as notary public for the City.
 - o City mail (both hardcopy and e-mail) (p. 14)
 - **Mail received is distributed into the mailboxes located at the City office;** council member mail is added to their meeting packet if not picked up previously. **E-mail is forwarded for those**

¹ You may link to the manual here: http://www.university-heights.org/council/City_of_University_Heights_Administrative_Policy_Manual.pdf

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intended who have e-mail, and printed and placed in the office mailboxes for those without e-mail. The clerk provides the webmaster with an up-to-date list of e-mail addresses.

- o Handling for correspondence (mail, phone, internet, etc.) (p. 14)
 - Phone calls regarding inquiries about ordinances, services, permits, policies, zoning regulations, etc. are answered. Callers who require more extensive answers than the clerk is prepared to give are directed to the appropriate City official or employee. Some written correspondence is also handled informally, often with a return phone call. Internet inquiries are replied to via e-mail when appropriate; "informal" inquiries are not saved. Mail and correspondence that could have future value is saved and filed either as hard copy or on the computer.
- Appendix A - Record Retention Schedule (p. 30)
 - o Schedule 1: Administrative and Legal Records (p. 31-33)
 - Shows that City Clerk is "custodian" of most administrative records
 - Specifically, Clerk is "custodian" of these records:
 - O - Minutes of any board or commission
 - o Schedule 4: Public Works Records (p. 37)
 - IV. Building Inspection Records
 - E - Minutes of the Board of Adjustment
 - Clerk is "custodian"

In response to the present complaint, the City contends the public records request was legally insufficient, at least for purposes of forming the basis of a later IPIB complaint, because it was not directed to the City Clerk, the publicly identified custodian of records. If it had been, the Clerk would have gathered and provided the records or contacted me as City Attorney for guidance, and I would have directed the Clerk to do so or done it myself.

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More to the point, the request sought "communications" - here, "emails". The City of University Heights is fortunate to have a resident IT expert as a Council Member, Mike Haverkamp. Mike serves as the City's de facto IT consultant. Mike manages the City's website, coordinates storage of certain electronic data, and is the administrator of the City's email accounts, among other similar duties. He is officially designated as Chair of the Council's "eGovernment Committee". If the present public records request had been made to Mike, he would have gathered and provided the records or contacted me as City Attorney for guidance, and I would have directed him to do so. A claim of ignorance by someone - anyone - with even the most casual knowledge of the City's about whom to ask for access to City email lacks credibility.

Finally, the purpose of the requirement that requests be directed to the appropriate people - including records custodians - is well demonstrated by the circumstances giving rise to the present complaint. Iowa's Sunshine Laws were enacted and are applied to help people obtain ready access to public records. They are not designed and should not be used as a means of advancing collateral goals. They are not intended to punish or subject to wrongful accusation the many well-intended and civic-minded citizens across Iowa who give generously of their time to their communities but who may not be fully educated on the law. Mayor Wally Heitman was elected in November 2015; he is less than a year on the job. Aside from being a member (not Chair) of the City's Zoning Commission several years ago, Wally has had no experience as a public official. Ann Dudler was elected Chair of the City's Board of Adjustment just a few months before the records request was made. These individuals may not have understood fully the parameters of Iowa's Sunshine Laws. But other City Officials did. If the party seeking records had addressed the request to the designated custodian of records (City Clerk) or to other, more logical City representatives (Mike Haverkamp as eGovernment Chair and all-purpose IT expert or me as City Attorney), the request would have been promptly fulfilled - just as it was, within three days.

Because the public records request was not directed to the person designated by the City to be the custodian of the records sought, the City of University Heights respectfully requests that IPIB

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dismiss or administratively close the present complaint as being legally insufficient and lacking merit. Iowa Code § 23.8.

The City recently adopted a formal [Public Records Requests Policy](#).

To clarify its policies and commitment to providing ready access to public records, the City recently adopted a Public Records Requests Policy. A copy of the policy is attached as are forms designed to implement the policy.² The policy and the forms implementing it will be placed on the City's website under a tab or other feature denominated "[Public Records Requests](#)" (or something similar). The City's policy comports with Iowa law by publicly and clearly identifying the custodian of public records. The policy goes well beyond the minimum requirements of Iowa law by providing a user-friendly and easily understood process for requesting and receiving public records. Because the City has adopted a public records requests policy that goes well beyond the minimum requirements of Iowa law, the City of University Heights respectfully requests that IPIB dismiss or administratively close the present complaint. Iowa Code § 23.8.

The Mayor and Council recently reviewed [Iowa's Sunshine Laws](#). The Mayor and all Council Members of the City recently received a refresher course of sorts concerning Iowa's Sunshine Laws - Iowa Code ch. 21 (Open Meetings), ch. 22 (Public Records), and ch. 23 (IPIB). I presented these materials at the Council's Special Meeting October 17, 2016. The materials themselves, in the form of a PowerPoint presentation that borrows heavily from IPIB's own training materials, are attached for your review. Because City Officials have recently completed a review of Iowa's Sunshine Laws, the City of University Heights respectfully requests that IPIB dismiss or administratively close the present complaint. Iowa Code § 23.8.

² The forms attached differ slightly from those considered by the Council because changes were made to the policy at the meeting when the policy was adopted, and the forms were later amended to conform to the policy as adopted. The Resolution approving the policy provides that the Mayor or the Council could approve changes to the forms, and I expect that to be accomplished in the coming days.

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Thank you for your consideration to this matter. If you would like further information from me or the City of University Heights regarding the complaint filed by Silvia Quezada, please inform me. Otherwise, the City will consider its response to the complaint complete and will await IPIB's decision or direction.

Very truly yours,

LEFF LAW FIRM, L.L.P.



Steven E. Ballard

cc via email only:

Mayor, Council, and Staff
CITY OF UNIVERSITY HEIGHTS, IOWA

Ms. Ann Dudler, Chairperso
UNIVERSITY HEIGHTS BOARD OF ADJUSTMENT

Ms. Silvia Quezada

SEB/jmd