

Melissa Henshaw

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Wednesday, March 08, 2017 11:47 AM
To: Melissa Henshaw
Attachments: PRR APPEAL.doc

Sarah,

Please find attached my document for appeal.

The deadline for submittal is noon today so you will have received this in time.

Please send me electronic copies of Mr. Hanson's submittals so I can see that he complied with the deadline as well.

I would assume the following would be included in the packet, but wanted to request it just in case:

1. Correspondence between Brian and myself on this subject.
2. My original email to Mayor Hunter with the draft attachment that Mr. Hanson shared with the rest of the assembly.
3. My communications with yourself, Mellissa, and Mr. Gorman on the subject.
4. This email.

In addition to the above, all the correspondence and documents that Mr. Hanson is claiming privilege on needs to be distributed to the Assembly. There should also be extra copies of that correspondence for the press and me in the unlikely event that the assembly agrees with my appeal. After all, how can the assembly possibly consider whether or not this correspondence should be released if they have never seen it?

Mr. Hanson was supposed to provide me with my "burden of proof" obligation. He never did.

At some point soon a process should be outlined by the Mayor on how this hearing will be conducted. I would assume the hearing would be conducted based on a review of the information submitted.

I would also like to add the following for consideration by the assembly:

I believe it would be in the best interest of the assembly to have outside counsel advise them during this appeal. Mr. Hanson appears to have a personal interest in keeping his involvement secret. That interest likely conflicts with the best interest of the city and the assembly. As I've referenced, he has not even disclosed his correspondence and involvement to the Assembly.

Most likely I will be involved in a project in Denver the day of the meeting. I want to reiterate my previous request to appear telephonically. A firm date for the Denver project has not been set yet so it is still possible I that will appear in person.

Thank you,

Marko Dapceвич
503-956-6240

COVER LETTER

On January 24th I called Mayor Hunter and explained to him how the process surrounding the GPIIP dock was illegal. I followed that call with an email containing a draft memo that I intended to send to the assembly if the Mayor did not take it before the assembly for action. The Mayor promised a follow up phone call. I never heard from him again. I learned that my draft memo was later circulated to the rest of the assembly. With the exception of Mr. Bean, I've heard nothing from any of the remaining assembly members.

It is astonishing to me that not one of you has taken any initiative to address this issue. .

Since the Mayor and the assembly have chosen to ignore this serious issue I feel compelled to see it through. It was never my intention to have to deal with anything further than a call and email to the Mayor. It's unfortunate that for this to see the light of day I have to invest my time and resources. It's my hope that the assembly will now address this.

Remember that your only obligation is to the people of Sitka. Somehow you have lost sight of that. Choosing to hide Mr. Hanson's and Mr. Gorman's indiscretions before the best interest of your community is wrong.

Your only appropriate action now is to:

1. Direct staff to revise procurement policies to reflect the legal requirements in the charter and code.
2. Declare the contract void as it is by the charter.
3. Determine to what degree your two employees have violated law and address them appropriately.

I hope you come to the realization that it's never too late to do the right thing.

PRR APPEAL

I requested the following for my public record request:

1. Correspondence between the municipal attorney and the assembly or any individual assembly members.
2. Correspondence between the city administrator and the assembly or any individual assembly members.
3. Correspondence between the municipal attorney and the city administrator.
4. Correspondence between the city administrator and the GPIIP board or individual board members.
5. Correspondence between the municipal attorney and the GPIIP board or individual board members.
6. Correspondence between the above mentioned parties and Turnigan marine construction.
7. Any documents signed between CBS and Turnigan Marine Construction.
8. Any documents circulated amongst the assembly and staff at the 12-13-2016 assembly meeting (including executive session) this does not include the assembly packet.

Some of the above has been complied with, most have not. Mr. Hanson's reasons for denying my request are based on attorney client privilege. I believe Mr. Hanson is incorrectly applying this rule.

Attorney client privilege is to protect the client, not the attorney. The assembly is the client and Mr. Hanson is the attorney. Mr. Hanson is using this rule of privilege to protect his actions (or lack thereof) and the actions of Mr. Gorman.

I have adequately shown that the city administrator has violated the charter by signing into an agreement with Turnigan Marine Construction.

I believe the requested documents that Mr. Hanson is withholding will show that Mr. Gorman knowingly and deliberately signed the contract illegally and that Mr. Hanson was a party to this. The only other plausible explanation is incompetence.

Regardless of the reason, it's now incumbent on the assembly to take appropriate action to deal with their only two employees. Clearly Mr. Hanson and Mr. Gorman's actions are not acceptable. Their actions need to be dealt with by their employer, the assembly.

Mr. Hanson's actions themselves are a violation.

Alaska Rules of Professional Conduct, Rule 1.13. Organization as client. (b) if a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in conduct or intends to engage in conduct (whether act or omission) related to the representation that violates a legal obligation to the organization, or that constitutes a violation of law that might reasonably be imputed to

the organization, and that this conduct is likely to result in substantial injury to the organization, then the lawyer shall take the steps reasonably necessary to protect the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to: (1) the seriousness of the violation and its consequences, (2) the cope and nature of the lawyers representation, (3) the person's responsibility within the organization and the person's apparent motivation, (4) the policies of the organization concerning such matters, and (5) any other relevant considerations. Any measures taken by the lawyer shall be designed to minimize disruption of the organization and the risk of revealing client confidences and secrets to persons outside the organization. Such measures may include among others:

- (1) Asking for reconsideration of the matter;
- (2) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
- (3) Referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law, unless the lawyer reasonably believes that this is not necessary or is not in the best interest of the organization.

In short this means Mr. Hanson had an obligation to notify the assembly prior to the signing of the contract that it was an illegal act.

I made the public records request with the clerk as required. It was then turned over to Mr. Hanson to comply. At that point Mr. Hanson had an obligation to go to his client, the assembly.

Evidence Rule 503 states: A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal service, to the client... between himself... and his lawyer.”

Alaska Rules of Professional Conduct 1.16 (a) A lawyer shall not reveal a confidence or secret relating to representation of a client unless the client consents after consultation....

As you can see it is incumbent upon your lawyer to approach you and ask if you wish to invoke privilege. You have the right to disclose the documents.

Rule 503 (c) Who May Claim the Privilege. The privilege may be claimed by the client, the client's guardian or conservator....The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client.

It's obvious that a consultation never occurred between Mr. Hanson and the Assembly on whether or not to release the requested documents.

Mr. Hanson has claimed privilege on communications between himself and the Assembly. This is the only instance of which the privilege applies. However, just because the communication was between the attorney and the client does not make it privileged. And even if there is privileged information in a correspondence it doesn't make the entire document privileged. I should have seen redacted documents, or at least documentation of documents. The Assembly (or members of) makes the decision as to attorney client privilege. Since Mr. Hanson presumably did not consult the assembly this appeal will be your opportunity to decide that.

Mr. Hanson is claiming privilege on correspondence between himself and Mr. Gorman. No such privilege exists. The Client is the Assembly, not the administrator. There is no relationship between the administrator and the attorney. The organization chart found on the city website shows that. The attorney's job description is one line in the charter, 2.13 (c) Municipal Attorney. There shall be a municipal attorney appointed who shall serve at the pleasure of the assembly. There is no mention of the administrator.

Mr. Hanson is claiming privilege on correspondence that the assembly has not even seen. Not only has he claimed privilege where none exists; he has claimed attorney client privilege on correspondence that his client has not even been party to. And again, he is claiming privilege on these documents without any consultation of his client.

It's clear the Mr. Gorman violated the charter. It's appears this was done intentionally. It appears these actions were taken outside of the assembly's knowledge. It has since been made clear to the assembly what has happened. It is now on the assembly to take appropriate action. That action would be an investigation into the actions of the attorney and the administration. A lack of action only makes you complicit in these illegal activities which appear to go beyond the signing of the contract. No more excuses. It's time for the Assembly to take action. The first step is to release these documents to the public, and as ridiculous as it sounds, to yourself. At that time the right thing to do will be inherently obvious.

If you choose not to release the requested documents that is your prerogative. I obviously have a further appeal. I would ask that you make this decision based on your own opinions as opposed to those of your staff. Clearly, if these documents have information that must be kept confidential to protect the financial interests of the city, their judgement is suspect already. They obviously have their own motivation to keep this information from the public. To this point, the Assembly has not done anything wrong other than doing nothing.

Regardless of what you decide as a group, it's time for you to scrutinize the actions of your two employees. I would recommend exercising provision 2.12 of the charter and conduct an investigation. That investigation should also include outside counsel. I have made some serious allegations that have merit. Surely this warrants some type of investigation on the part of the assembly. At the very least I should have raised enough doubt for you to be concerned enough to investigate the matter. Anything less makes you as guilty as them.

Brian Hanson

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Friday, January 27, 2017 8:39 AM
To: Brian Hanson
Cc: Melissa Henshaw; Sara Peterson
Subject: RE: Your Public Records Request

Thanks for the response.

I did state that I believe the records request is incomplete. To be clear, it is not just what was excluded for privilege and protected reasons. There is also other known correspondence that was not included as well as references to attachments and emails strings that appeared to be incomplete.

All of the "research, additional investigation, legal research, and analysis" should have been already completed with my initial request. If not, then it can only mean that the initial request was not completed in earnest. If the city will require additional fees to complete this request, I will not pay.

Obviously the city's ten day response time from the initial request has long expired. Regardless, I can certainly be patient until next week.

If my request is not completed to my satisfaction I will consider my 10 day time frame for assembly appeal to commence from the time that I receive a final response from you.

Thank you,

MARKO DAPCEVICH
Project Manager


INTERSTATE

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888-399-1802 **Fax**
800 622-6433 **24 Hour Emergency Service**

mdapceвич@interstaterestoration.com
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From: Brian Hanson [mailto:brian.hanson@cityofsitka.org]
Sent: Tuesday, January 24, 2017 4:50 PM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>

Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>; Sara Peterson <sara.peterson@cityofsitka.org>

Subject: Your Public Records Request

Marko,

This will respond to your emails to Deputy Clerk Melissa Henshaw, dated January 14, 2017, and January 16, 2017. In those emails you complain that CBS's response, dated January 4, 2017, to your Public Records Request (PRR), dated December 17, 2016, is incomplete and wrongly relies on the attorney-client privilege to exclude production of certain requested communications.

Please be advised that I will reconsider your PRR in full. This reconsideration will require additional investigation, legal research, and analysis. However, my busy schedule does not permit immediate attention to this matter.

I expect to complete the reconsideration of your PRR and respond to you by next Wednesday, February 1, 2017. I would appreciate your patience until then. In the meantime, please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian

Brian E. Hanson
Municipal Attorney
City and Borough of Sitka, Alaska
(907)747-1879

Brian Hanson

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Tuesday, February 14, 2017 11:15 AM
To: Brian Hanson; mdapceвич@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Re: Reconsideration of your public record request (PRR)

Thank you for your email.

I guess we still have a difference in opinion.

As far I know, an appeal of this nature has never gone to the assembly. It never happened in my eight years, and I don't remember anything prior or since.

How would such an appeal work before the assembly?

As their legal counsel, I'm sure the assembly will rely on you for how the proceeding would work, so I ask you. Some type of process and rules will obviously have to be worked out in advance.

Thanks,

Marko Dapceвич
503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Wednesday, February 8, 2017 6:04:23 PM
To: markodap@hotmail.com; mdapceвич@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Reconsideration of your public record request (PRR)

Mr. Dapceвич,

This will follow-up on my email to you, dated January 24, 2017, in which I promised to "reconsider your PRR in full." This will also respond to your various emails to Deputy Clerk Melissa Henshaw and myself in which you questioned the completeness and integrity of our responses to your PRR.

I have reconsidered your PRR in full and have come to the conclusion that the CBS was initially entirely responsive. I will address below each of your specific requests ("related to the GPIP Dock project") by corresponding number.

1. There exists email correspondence between the Municipal Attorney and the Assembly as a body and Assembly members individually which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.
2. There exists email correspondence between the Administrator and the Assembly as a body and Assembly members individually which are public records. Those emails have already been produced to you. I am reproducing those emails to you(see attached) with numbered pages 1 through 6.
3. There exists email correspondence between the Municipal Attorney and the City Administrator which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.

4. No such correspondence exists. In our original response, CBS produced emails between Garry White and the City Administrator. Mr. White is the Executive Director of SEDA. He is not a GPIP board member. Therefore, CBS was not required to produce that correspondence. Regardless, we did so. I am reproducing those emails to you (see attached) with numbered pages 7 through 13.
5. No such correspondence exists. If there were such correspondence, it would be protected by the attorney-client privilege and not produced.
6. No such correspondence exists.
7. There exists documents signed between CBS and Turnagain which are public records. Those documents have already been produced to you. I am reproducing those documents to you (see attached), except the contract, with numbered pages 14 through 16.
8. There exists one document circulated amongst the Assembly and Staff which is a public record. That document has already been produced to you. I am reproducing that document to you (see attached) with numbered page 17. There exists another document, a copy of relevant charter and code provisions, circulated amongst the Assembly and Staff in the Executive Session which is a public record. However, that document is protected by the attorney-client privilege; and, therefore, has not been produced to you. The applicability of the privilege is discussed below.

In your email dated January 27, 2017, you state there is "known correspondence that was not included as well as references to attachments and emails strings that appeared to be incomplete." If you are referring to any correspondence that has not been deemed by me to be protected by the attorney-client privilege, please enlighten me so I may investigate and respond. CBS had its IT Director, along with my Paralegal, search specifically for the requested correspondence. A diligent and good faith search was made which came up with what was produced. I also reviewed my saved emails to confirm CBS's response to your PRR. I found my saved emails to be consistent with CBS's initial response. Again, if you have information to the contrary, please share it with me so I may investigate and respond.

Now, I'll address the attorney-client privilege relied upon. Initially, when I first reviewed your PRR, I relied upon my private practice experience, the past experience of the CBS Legal Department as related to me by my Paralegal, and a CBS Legal Department memo, dated December 11, 2001 (coincidentally from a past Municipal Attorney, Clifford J. Groh II, to you – copy attached), all of which supported my decision to deem the correspondence you requested between me and others as privileged; and, therefore, protected from production to you. Once you objected, I determined it prudent to reconsider my decision. Accordingly, I have performed the additional investigation, legal research and analysis I promised to you which I summarize as follows.

SGC 1.25.040.A.3 states: "Every person has a right to inspect a public record except...[r]ecords required to be kept confidential ... by state law[.]" The state law applicable here is Evidence Rule 503 which states: "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal service, to the client... between himself... and his lawyer." Here, my "client" is the Assembly, as a body. My client has not instructed me to waive the privilege. In *Cool Homes, Inc. v. Fairbanks North Star Borough*, 860 P.2d 1248, 1262 (Alaska 1993), the Alaska Supreme Court held: "The privilege thus should be applied only when the revelation of the communication will injure the public interest or there is some other recognized purpose in keeping the communication confidential." The purpose in keeping my emails confidential is to protect the CBS from financial injury and prevent disclosure of legal discussion and advice on potential related legal liability. The initial allegations presented in an email from an Assembly member to me, which you've probably already seen, and your threat of court action have borne out my concerns and realized the purpose which supports my decision.

In my research, I discovered another privilege which may apply, i.e., the deliberative process privilege. If a communication is "pre-decisional" and "deliberative in nature", it is protected. See *Capital Information Group v. State of Alaska, Office of the Governor*, 923 P.2d 29, 36 (Alaska 1996). See also *Gwich'in Steering Committee v. State of Alaska, Office of the Governor*, 10 P.3d 512, 578 (Alaska 2000). Here, I believe the email communications and the discussion during the executive session were deliberative in nature and, of course, all pre-decisional.

Under SGC 1.25.080.A, you have the right to appeal my decision to the Assembly.

Thank you for your patience. Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian E. Hanson



Brian E. Hanson

Municipal Attorney

City and Borough of Sitka, Alaska

100 Lincoln Street, Sitka, Alaska, 99835

(907)747-1879

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Brian Hanson

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Saturday, February 18, 2017 1:06 PM
To: Brian Hanson; mdapcevich@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Re: Reconsideration of your public record request (PRR)

Thank you. I will send the clerk an e-mail shortly.

I have one question: Will you have the same deadline to submit written materials to the Assembly as I will?

Marko Dapcevich
503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Friday, February 17, 2017 5:01:25 PM
To: Marko Dapcevich; mdapcevich@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: RE: Reconsideration of your public record request (PRR)

Mr. Dapcevich,

Authority for an appeal is found under SGC 1.25.080. There is no direction in the code on how to conduct the appeal. I have spoken with the Clerk and we will follow the procedure outlined in this email.

1. You must make a written appeal to the Clerk. An email to the Clerk will be sufficient. In your appeal, propose a regular meeting date you'd like your appeal to be heard. Please contact the Clerk to obtain available dates.
2. The Clerk will set the appeal date and give notice as required by the code.
3. If you'd like to provide any written materials to be considered by the Assembly, provide them to the Clerk in accordance with the regular submission deadline. The Clerk will advise you of that deadline.
4. I will also have the opportunity to provide written materials, which will be shared with you.
5. Your appeal will be publicly noticed along with other agenda items.
6. At the meeting, the Assembly will convene as an appeal board to hear your appeal. You will be afforded the opportunity to provide evidence and argument to the Assembly – as will I. The Mayor may establish reasonable time limits.
7. I will research the burden of proof as it relates to you and the standard of review for the Assembly. I will advise you and the Assembly of the same before your appeal is heard.
8. The Assembly may deliberate and decide your appeal at the meeting or postpone their deliberations and decision, as they see fit.

Let me know if you have any questions or concerns. Thank you.

Brian



Brian E. Hanson

Municipal Attorney
City and Borough of Sitka, Alaska
100 Lincoln Street, Sitka, Alaska, 99835
(907)747-1879

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Homes, Inc. v. Fairbanks North Star Borough, 860 P.2d 1248, 1262 (Alaska 1993), the Alaska Supreme Court held: "The privilege thus should be applied only when the revelation of the communication will injure the public interest or there is some other recognized purpose in keeping the communication confidential." The purpose in keeping my emails confidential is to protect the CBS from financial injury and prevent disclosure of legal discussion and advice on potential related legal liability. The initial allegations presented in an email from an Assembly member to me, which you've probably already seen, and your threat of court action have borne out my concerns and realized the purpose which supports my decision.

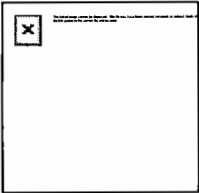
In my research, I discovered another privilege which may apply, i.e., the deliberative process privilege. If a communication is "pre-decisional" and "deliberative in nature", it is protected. See *Capital Information Group v. State of Alaska, Office of the Governor*, 923 P.2d 29, 36 (Alaska 1996). See also *Gwich'in Steering Committee v. State of Alaska, Office of the Governor*, 10 P.3d 512, 578 (Alaska 2000). Here, I believe the email communications and the discussion during the executive session were deliberative in nature and, of course, all pre-decisional.

Under SGC 1.25.080.A, you have the right to appeal my decision to the Assembly.

Thank you for your patience. Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian E. Hanson



Brian E. Hanson
Municipal Attorney
City and Borough of Sitka, Alaska
100 Lincoln Street, Sitka, Alaska, 99835
(907)747-1879

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Brian Hanson

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Friday, January 20, 2017 7:26 PM
To: Matthew Hunter (Assembly)
Cc: Aaron Bean (Assembly); Mark Gorman; Brian Hanson
Subject: GPIIP
Attachments: gpip.doc

Matt,

Thanks for taking the time to speak with me today. Attached is a draft of the memo we discussed. As I said, I won't be sending this to the entire assembly yet. I want to give you the opportunity to address these concerns and to bring them to the assembly for corrective action. It is not my wish to pursue this any further than this email. However, know that I will. Sitka is my life long home and I will always do what I think is in the best interest of Sitka. You know that about me.

I have copied Assembly member Bean as I have already been in contact with him. I have also copied the city attorney and administrator as it is only appropriate to not go behind their backs.

As someone who oversees multi million dollar projects, I know that the cost is rising daily even though you don't see actual work being produced. That being said, I would expect to see action on this very soon. I expect to see it on the agenda for the first meeting in February. That should allow plenty of time for a strategy to be developed. If it's not there, I will send it to the rest of the assembly and the press in the hopes that it will inspire action. If that effort is ignored, I will pursue the matter in the courts.

Matt, you are my neighbor, my Mayor, and a friend. Please don't think I am giving you an ultimatum or threat. I hope you see this more as a request to address an issue that needs to be addressed with high priority. If it was any different, I would not have called you first.

If you have any questions you know you can call me anytime.

I respect you and have faith that you will do the right thing. Thanks you,

Marko Dapcevich
503-956-6240

Mr. Mayor and members of the Assembly,

I realize that by sending out this email I may be jeopardizing my recent application for City Administrator. However, the right thing to do is still the right thing to do. It's seldom easy. If it were, everyone would do it.

I have addressed you before about systemic problems within the city administration and the bottom up leadership approach. Now, as a result of that, Sitka is facing a serious issue. That issue is the process around the GPIIP dock.

On 10-19-2016 The city had a press release about "moving forward with a plan to construct a multipurpose dock...". It goes on to describe how the competitive bid process did not bring back any bids within the budget and how the board opted for a design build approach with the original bidders on the project. This is a violation of the Charter.

There is no point to discuss that it violates the General Code and city Policy as well since the Charter supersedes them both. However, it is mostly duplicated wording. If the policy or the code differs from the charter, they are moot, the charter is the highest authority in a Home Rule City.

Charter Section 11.14 (a) Purchases.

Contracts for public improvements and whenever practicable other purchase of supplies, materials, equipment and services, except professional services and services of officers and employees of the municipality, shall be by competitive bid and awarded to the lowest qualified bidder. All contracts and purchases exceeding an amount to be established by ordinance shall require prior assembly approval.

At the point the GPIIP board realized they could not award any bidder due to budget restraints they had limited options.

SGC 3.16.050 Processing of bids.

Notwithstanding other provisions of this chapter relating to the award after competitive bid for purchases and contracts, the city and borough may take one or more of the following steps during procurement:

- A. Reject defective or nonresponsive bids;*
- B. Waive any irregularities in any and all bids;*
- C. Reject all bids;*
- D. Readvertise for bids with or without making changes in the plans specifications, or scope of work*

Clearly there is no option for a design build approach. There is certainly no option for a design build approach without re-advertising. For a little history on the subject, this was an approach that Hugh Bevan wanted to take in regards to capital projects when he was the city administrator. It was ruled out due to the very clear provision of the charter

stated above. He had even scheduled someone to make a presentation before the Assembly. That, after this discussion, never happened.

After reading the published press release, I discussed my concern with Assembly member Bean. We discussed at length provisions of the code, charter, and policies. At that point he presumably corresponded with the Administrator and Attorney on the subject as he declared in public meetings. This correspondence presumably started in October or early November.

According to Assembly member bean, in subsequent meetings, his questions were never answered. On 11-22-2016 Administrator Gorman signed the contract.

This was a violation of the charter and thus an illegal act. The obligation, i.e. contract to build the dock, is void.

Charter section 11.13 (d) Illegal acts.

Every obligation incurred and every authorization of payment in violation of this charter shall be void. Every payment made in violation of the provisions of this charter shall be illegal. All officers or employees of the municipality who authorize or make such payments shall be jointly and severally liable to the municipality for the full amount so paid. The administrator shall proceed forthwith to collect the indebtedness unless otherwise directed by the Assembly.

At the December 13th regular assembly meeting there was an executive session on this subject. This executive session is suspect as well.

Gordon Tans, a respected expert on municipal law and past outside counsel to the City and Borough of Sitka wrote:

2. Adverse financial impact

The first category of eligible subjects, matters having an adverse financial impact, has several limiting qualifiers attached. The statute requires that it be clear that immediate public knowledge of the discussion will adversely affect government finances. A mere possibility of adverse effect on government finances does not suffice. One example that appears to qualify under this test is the consideration of offers to settle litigation. A government body cannot candidly discuss settlement offers and potential counter offers publicly without great risk of letting opposing litigants know how much the government is will to pay or accept in settlement. All opportunities to bargain for a more favorable settlement will be lost when everyone knows what the government's bargaining position and points of weakness are. The only way to discuss settlement offers without harming the public financial interest is in executive session.

However, it is not enough to qualify for an executive session to merely say the matter is one of "pending litigation" or a "financial matter," as is often heard. As a practical matter, for an adverse financial impact executive session to withstand a court challenge, there must be facts in the record to enable the court to conclude it was clear and

immediate public knowledge of the particular issue to be discussed would harm the government's financial interests. A court is directed to construe the law narrowly to avoid unnecessary executive sessions so an informative on-the-record statement of the facts justifying an executive session seems necessary.

You can find the above published on the State of Alaska web site.

I highly suspect the administrator and attorney were made aware of the situation prior to the signing of the contract; I have not been able to confirm this. On 12-17-2017 I submitted a public records request to try and do so.

I requested the following:

1. Any correspondence between the municipal attorney and the assembly or any individual assembly members.
2. Any correspondence between the city administrator and the assembly or any individual assembly members
3. Any correspondence between the municipal attorney and the city administrator
4. Any correspondence between the city administrator and the GPIIP board or individual board members.
5. Any correspondence between the municipal attorney and the GPIIP board or individual board members.
6. Any correspondence between the above mentioned parties and Turnigan Marine Construction.
7. Any documents signed between CBS and Turnigan Marine Construction. This is to include contracts, letters of intent.
8. Any documents circulated amongst the assembly and staff at the 12-13-2016 assembly meeting (including executive session). This does not include the assembly packet.

The response I received was lacking requested documents.

Items 1,3, and 5 were excluded because of "attorney client privilege"

Item 8 was excluded because they are "protected"

Item 6 was stated, "none provided because none exist"

Item 2,4, and 7 were stated as "on enclosed flash drive"

On January 16th I replied to this letter from the city clerk and copied the city attorney with that reply. As of this time I have not received any response.

The claim that any correspondence to and from the attorney is privileged is false. While some of it may be privileged it is highly unlikely that all of it is. In this matter, without even pending or potential litigation, it's possible that none of it is privileged.

Items in executive session may or may not be protected. Without knowledge of executive session it is hard to state. Only you guys know what was there unless this is

complied with. It's most likely that any documents taken into executive session are not protected. If the document is public knowledge it does not become protected because it is brought into executive session.

There are documents that exist that were not included in my records request that should have been, documents that don't fall under even this extremely inclusive privilege the clerk mentioned. I included this so you would know that staff either knowingly or unknowingly excluded documents that should have been included in my records request. The lack of any response to my query would suggest it was done knowingly. I would assume that this lack of disclosure came from the municipal attorney, as the request should have gone through him. As a side note, I paid over \$200.00 for this records request. I don't feel I got my money's worth.

I will wait to see if my records request will be fully complied with. In the mean time it is probably only relevant in whether or not the administrator, and or attorney, were negligent in the signing of the contract with Turnigan Marine Construction. It may however disclose that there were subsequent inappropriate actions. At some point I will request that correspondence from Mr. Bean. He has already agreed to share them with me.

Any of you can request the "privileged" correspondence and they must give it to you. The attorney client privilege is between the municipal attorney and the City and Borough of Sitka. The assembly (and individual members) is the city and borough as outlined in section 2.02 of the charter. The city attorney cannot keep that from you if you request it. I suggest you do.

At this point, the remaining documents, that should have been released, are probably moot to what I am trying to convey to you. What is more important now is how the assembly chooses to move forward with the illegal procurement. If the Assembly wishes to pursue an investigation into the actions of staff, that is their right under section 2.12 of the charter.

The contract is illegitimate, void, and illegal. Any legal opinion that tells you otherwise is ill advised. The law is quite clear on this. All one needs is a degree in common sense to accurately interpret the code and charter on this issue.

I presume that in your executive session on 12-13-16 this was explained to you. The situation is currently open to litigation. Any contractor, or individual for that matter, can sue the city for this violation of the charter. Without a doubt they would get injunctive relief at a minimum. Once that occurs you will be facing financial relief to Turnigan Marine Construction. The more time and money Turnigan invests in this project, the higher that number will be. In other words, delaying action on this is only going to cost the city more money.

All of this is a result of the sweeping changes made in May of last year to the procurement policy. Too much power and authority was taken from the Assembly and

given to the administrator. Up until that point, all bid awards were to be approved by the assembly allowing for a public process. At that time these issues can be vetted and mistakes are addressed. If that public process had happened, I for one would have addressed you on these issues.

I implore you to resolve this matter immediately and appropriately. Anything else would not be in the best interest of the city.

Remember, the seven of you are in charge.

Section 2.02 Powers.

The governing body of the municipality shall be the assembly. Except as otherwise provided by law or this charter, the assembly shall exercise all powers of the municipality and shall provide for the performance of all duties and obligations imposed upon the municipality.

Melissa Henshaw

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Wednesday, March 08, 2017 11:47 AM
To: Melissa Henshaw
Attachments: PRR APPEAL.doc

Sarah,

Please find attached my document for appeal.

The deadline for submittal is noon today so you will have received this in time.

Please send me electronic copies of Mr. Hanson's submittals so I can see that he complied with the deadline as well.

I would assume the following would be included in the packet, but wanted to request it just in case:

1. Correspondence between Brian and myself on this subject.
2. My original email to Mayor Hunter with the draft attachment that Mr. Hanson shared with the rest of the assembly.
3. My communications with yourself, Mellissa, and Mr. Gorman on the subject.
4. This email.

In addition to the above, all the correspondence and documents that Mr. Hanson is claiming privilege on needs to be distributed to the Assembly. There should also be extra copies of that correspondence for the press and me in the unlikely event that the assembly agrees with my appeal. After all, how can the assembly possibly consider whether or not this correspondence should be released if they have never seen it?

Mr. Hanson was supposed to provide me with my "burden of proof" obligation. He never did.

At some point soon a process should be outlined by the Mayor on how this hearing will be conducted. I would assume the hearing would be conducted based on a review of the information submitted.

I would also like to add the following for consideration by the assembly:

I believe it would be in the best interest of the assembly to have outside counsel advise them during this appeal. Mr. Hanson appears to have a personal interest in keeping his involvement secret. That interest likely conflicts with the best interest of the city and the assembly. As I've referenced, he has not even disclosed his correspondence and involvement to the Assembly.

Most likely I will be involved in a project in Denver the day of the meeting. I want to reiterate my previous request to appear telephonically. A firm date for the Denver project has not been set yet so it is still possible I will appear in person.

Thank you,

Marko Dapceвич
303-956-6240

Melissa Henshaw

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Wednesday, March 08, 2017 11:05 AM
To: Melissa Henshaw
Subject: Re: Assembly packet materials due today

just got off a plane in Reno and sent it to you. please confirm receipt.
thanks,

Marko Dapceвич
503-956-6240

From: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Sent: Wednesday, March 8, 2017 9:17:09 AM
To: Marko Dapceвич
Subject: Assembly packet materials due today

Hi Marko,

Just a reminder that your material are due today at noon for the Assembly packet for the appeal of your public records request. I'm pulling the packet together for Sara and wanted to make sure you know that I need them!

Thanks,

Melissa Henshaw, CMC
Deputy Clerk/Records Specialist
City and Borough of Sitka
100 Lincoln Street * Sitka, AK 99835
Phone 907-747-1826 * FAX 907-747-7403

Messages to and from this email address may be available to the public under Alaska Public Records Law.

Melissa Henshaw

From: Marko Dapcevic <markodap@hotmail.com>
Sent: Wednesday, March 08, 2017 11:04 AM
To: Melissa Henshaw
Subject: Fw: Automatic reply:

Marko Dapcevic
503-956-6240

From: Sara Peterson <sara.peterson@cityofsitka.org>
Sent: Wednesday, March 8, 2017 12:02 PM
To: Marko Dapcevic
Subject: Automatic reply:

Hello, I am out of the office until 8am Thursday, March 9th. For immediate assistance, please contact Acting Municipal Clerk Melissa Henshaw at melissa.henshaw@cityofsitka.org or 747-1826.

Melissa Henshaw

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Tuesday, March 07, 2017 4:45 PM
To: Mark Gorman; Brian Hanson
Cc: Assembly; shannon_haugland@yahoo.com
Subject: Questions

Mr. Gorman,

For six weeks I've been asking two simple questions. My most recent email of eight days ago has been ignored.

Please explain to me which provision in the contract indemnifies the city if the Army Corp. of Engineers permit is not approved.

Please confirm whether or not Turnigan Marine is paying the city for the staff time and consultant hired by the city to assist with the Army Corp. of Engineers permit process.

If there is a reason why you cannot provide me with the above information please explain why.

Thank you,

Marko Dapceвич
503-956-6240

Melissa Henshaw

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Thursday, February 23, 2017 9:18 PM
To: Sara Peterson
Cc: Brian Hanson; Melissa Henshaw
Subject: Re: March 14 - Appeal date

March 14th is still good.
Thanks

Sent from my iPhone

On Feb 23, 2017, at 9:44 AM, Sara Peterson <sara.peterson@cityofsitka.org> wrote:

Hi Marko,

I forgot to mention that only 5 Assembly members will be present for the March 14th meeting. Mr. Potrzuski and Mr. Eisenbeisz will be absent and most likely will not be calling in.

The March 28th meeting currently shows 6 members present. Mr. Potrzuski will be absent.

April 11th shows 6 members present. Mr. Guevin will be absent.

Please let me know if you'd still like to schedule your appeal for March 14th or choose a different date.

Sara

From: Sara Peterson
Sent: Thursday, February 23, 2017 8:04 AM
To: 'Marko Dapceвич' <markodap@hotmail.com>
Cc: Brian Hanson <brian.hanson@cityofsitka.org>; Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: RE: Appeal date

No worries. The deadline for submitting materials for the March 14th packet is noon on Wednesday, March 8th.

I will be out of the office beginning next Monday through March 8th. Please submit your materials to Melissa Henshaw.

Have a good day,

Sara

From: Marko Dapceвич [<mailto:markodap@hotmail.com>]
Sent: Wednesday, February 22, 2017 8:15 PM

To: Sara Peterson <sara.peterson@cityofsitka.org>

Cc: Brian Hanson <brian.hanson@cityofsitka.org>; Melissa Henshaw <melissa.henshaw@cityofsitka.org>

Subject: Re: Appeal date

Thanks Sarah. I'm good with the 14th. Sorry I didn't reply sooner.

Sent from my iPhone

On Feb 21, 2017, at 11:17 AM, Sara Peterson <sara.peterson@cityofsitka.org> wrote:

Hi Marko,

I'd like to offer another possible date of March 7th. The Assembly will be holding a special meeting at 6pm that evening to review writing samples from Municipal Administrator candidates. I was thinking we could place your appeal on this agenda – after their business is finished for the Municipal Administrator candidates. This will be a shorter meeting than the 14th and being that the appeal will be at the end of the agenda, it might be more convenient for you to have it on the 7th.

Let me know your preference – either date works for us.

Sara

From: Marko Dapceovich [<mailto:markodap@hotmail.com>]

Sent: Saturday, February 18, 2017 1:31 PM

To: Sara Peterson <sara.peterson@cityofsitka.org>

Cc: Aaron Bean (Assembly) <assemblybean@cityofsitka.org>

Subject:

Sarah,

This e-mail is to serve as notice that I wish to appeal Mr. Hanson's response to my Public Records Request to the Assembly.

It's my understanding that the Assembly will be short, and maybe not even have a quorum on the 2-28 meeting. For that reason I wish to have this appeal heard at the 3-14 meeting.

Please advise me of when the deadline for submission of materials will be for that meeting.

Please let this email serve as notice of my desire to appear telephonically. I do not know my work schedule that far in advance and do not know if I will be able to appear in person. If it is possible to appear in person I will let you know as soon as I know.

Thank you,

Marko Dapcevic
503-956-6240

Melissa Henshaw

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Wednesday, February 22, 2017 8:15 PM
To: Sara Peterson
Cc: Brian Hanson; Melissa Henshaw
Subject: Re: Appeal date

Thanks Sarah. I'm good with the 14th. Sorry I didn't reply sooner.

Sent from my iPhone

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Let me know your preference – either date works for us.

Sara

From: Marko Dapceвич [<mailto:markodap@hotmail.com>]
Sent: Saturday, February 18, 2017 1:31 PM
To: Sara Peterson <sara.peterson@cityofsitka.org>
Cc: Aaron Bean (Assembly) <assemblybean@cityofsitka.org>
Subject:

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Thank you,

Marko Dapcevic
503-956-6240

Melissa Henshaw

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Saturday, February 18, 2017 1:06 PM
To: Brian Hanson; mdapceвич@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Re: Reconsideration of your public record request (PRR)

Thank you. I will send the clerk an e-mail shortly.

I have one question: Will you have the same deadline to submit written materials to the Assembly as I will?

Marko Dapceвич
503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Friday, February 17, 2017 5:01:25 PM
To: Marko Dapceвич; mdapceвич@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: RE: Reconsideration of your public record request (PRR)

Mr. Dapceвич,

Authority for an appeal is found under SGC 1.25.080. There is no direction in the code on how to conduct the appeal. I have spoken with the Clerk and we will follow the procedure outlined in this email.

1. You must make a written appeal to the Clerk. An email to the Clerk will be sufficient. In your appeal, propose a regular meeting date you'd like your appeal to be heard. Please contact the Clerk to obtain available dates.
2. The Clerk will set the appeal date and give notice as required by the code.
3. If you'd like to provide any written materials to be considered by the Assembly, provide them to the Clerk in accordance with the regular submission deadline. The Clerk will advise you of that deadline.
4. I will also have the opportunity to provide written materials, which will be shared with you.
5. Your appeal will be publicly noticed along with other agenda items.
6. At the meeting, the Assembly will convene as an appeal board to hear your appeal. You will be afforded the opportunity to provide evidence and argument to the Assembly – as will I. The Mayor may establish reasonable time limits.
7. I will research the burden of proof as it relates to you and the standard of review for the Assembly. I will advise you and the Assembly of the same before your appeal is heard.
8. The Assembly may deliberate and decide your appeal at the meeting or postpone their deliberations and decision, as they see fit.

Let me know if you have any questions or concerns. Thank you.

Brian



Brian E. Hanson

Municipal Attorney
City and Borough of Sitka, Alaska
100 Lincoln Street, Sitka, Alaska, 99835
(907)747-1879

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From: Marko Dapceвич [mailto:markodap@hotmail.com]
Sent: Tuesday, February 14, 2017 11:15 AM
To: Brian Hanson <brian.hanson@cityofsitka.org>; mdapceвич@interstaterestoration.com
Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>; Sara Peterson <sara.peterson@cityofsitka.org>; Mark Gorman <mark.gorman@cityofsitka.org>; Reuben Yerkes <reuben.yerkes@cityofsitka.org>; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; Steven Eisenbeisz (Assembly) <assemblyeisenbeisz@cityofsitka.org>; Tristan Guevin (Assembly) <assemblyguevin@cityofsitka.org>; Aaron Swanson (Assembly) <assemblyswanson@cityofsitka.org>; Bob Potrzuski (Assembly) <assemblypotrzuski@cityofsitka.org>; Kevin Knox (Assembly) <assemblyknox@cityofsitka.org>; Aaron Bean (Assembly) <assemblybean@cityofsitka.org>
Subject: Re: Reconsideration of your public record request (PRR)

Thank you for your email.

I guess we still have a difference in opinion.

As far I know, an appeal of this nature has never gone to the assembly. It never happened in my eight years, and I don't remember anything prior or since.

How would such an appeal work before the assembly?

As their legal counsel, I'm sure the assembly will rely on you for how the proceeding would work, so I ask you. Some type of process and rules will obviously have to be worked out in advance.

Thanks,

Marko Dapceвич
907-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Wednesday, February 8, 2017 6:04:23 PM
To: markodap@hotmail.com; mdapceвич@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Reconsideration of your public record request (PRR)

Mr. Dapceвич,

This will follow-up on my email to you, dated January 24, 2017, in which I promised to "reconsider your PRR in full." This will also respond to your various emails to Deputy Clerk Melissa Henshaw and myself in which you questioned the completeness and integrity of our responses to your PRR.

have reconsidered your PRR in full and have come to the conclusion that the CBS was initially entirely responsive. I will address below each of your specific requests ("related to the GPIP Dock project") by corresponding number.

1. There exists email correspondence between the Municipal Attorney and the Assembly as a body and Assembly members individually which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.
2. There exists email correspondence between the Administrator and the Assembly as a body and Assembly members individually which are public records. Those emails have already been produced to you. I am reproducing those emails to you (see attached) with numbered pages 1 through 6.
3. There exists email correspondence between the Municipal Attorney and the City Administrator which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.
4. No such correspondence exists. In our original response, CBS produced emails between Garry White and the City Administrator. Mr. White is the Executive Director of SEDA. He is not a GPIP board member. Therefore, CBS was not required to produce that correspondence. Regardless, we did so. I am reproducing those emails to you (see attached) with numbered pages 7 through 13.
5. No such correspondence exists. If there were such correspondence, it would be protected by the attorney-client privilege and not produced.
6. No such correspondence exists.
7. There exists documents signed between CBS and Turnagain which are public records. Those documents have already been produced to you. I am reproducing those documents to you (see attached), except the contract, with numbered pages 14 through 16.
8. There exists one document circulated amongst the Assembly and Staff which is a public record. That document has already been produced to you. I am reproducing that document to you (see attached) with numbered page 17. There exists another document, a copy of relevant charter and code provisions, circulated amongst the Assembly and Staff in the Executive Session which is a public record. However, that document is protected by the attorney-client privilege; and, therefore, has not been produced to you. The applicability of the privilege is discussed below.

In your email dated January 27, 2017, you state there is "known correspondence that was not included as well as references to attachments and emails strings that appeared to be incomplete." If you are referring to any correspondence that has not been deemed by me to be protected by the attorney-client privilege, please enlighten me so I may investigate and respond. CBS had its IT Director, along with my Paralegal, search specifically for the requested correspondence. A diligent and good faith search was made which came up with what was produced. I also reviewed my saved emails to confirm CBS's response to your PRR. I found my saved emails to be consistent with CBS's initial response. Again, if you have information to the contrary, please share it with me so I may investigate and respond.

Now, I'll address the attorney-client privilege relied upon. Initially, when I first reviewed your PRR, I relied upon my private practice experience, the past experience of the CBS Legal Department as related to me by my Paralegal, and a CBS Legal Department memo, dated December 11, 2001 (coincidentally from a past Municipal Attorney, Clifford J. Groh I, to you – copy attached), all of which supported my decision to deem the correspondence you requested between me and others as privileged; and, therefore, protected from production to you. Once you objected, I determined it prudent to reconsider my decision. Accordingly, I have performed the additional investigation, legal research and analysis I promised to you which I summarize as follows.

GC 1.25.040.A.3 states: "Every person has a right to inspect a public record except...[r]ecords required to be kept confidential ... by state law[.]" The state law applicable here is Evidence Rule 503 which states: "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal service, to the client... between himself... and his lawyer." Here, my "client" is the Assembly, as a body. My client has not instructed me to waive the privilege. In *Cool*

Homes, Inc. v. Fairbanks North Star Borough, 860 P.2d 1248, 1262 (Alaska 1993), the Alaska Supreme Court held: "The privilege thus should be applied only when the revelation of the communication will injure the public interest or there is some other recognized purpose in keeping the communication confidential." The purpose in keeping my emails confidential is to protect the CBS from financial injury and prevent disclosure of legal discussion and advice on potential related legal liability. The initial allegations presented in an email from an Assembly member to me, which you've probably already seen, and your threat of court action have borne out my concerns and realized the purpose which supports my decision.

In my research, I discovered another privilege which may apply, i.e., the deliberative process privilege. If a communication is "pre-decisional" and "deliberative in nature", it is protected. See *Capital Information Group v. State of Alaska, Office of the Governor*, 923 P.2d 29, 36 (Alaska 1996). See also *Gwich'in Steering Committee v. State of Alaska, Office of the Governor*, 10 P.3d 512, 578 (Alaska 2000). Here, I believe the email communications and the discussion during the executive session were deliberative in nature and, of course, all pre-decisional.

Under SGC 1.25.080.A, you have the right to appeal my decision to the Assembly.

Thank you for your patience. Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian E. Hanson



Brian E. Hanson
Municipal Attorney
City and Borough of Sitka, Alaska
100 Lincoln Street, Sitka, Alaska, 99835
(907)747-1879

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Melissa Henshaw

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Tuesday, February 14, 2017 11:15 AM
To: Brian Hanson; mdapceвич@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Re: Reconsideration of your public record request (PRR)

Thank you for your email.

I guess we still have a difference in opinion.

As far I know, an appeal of this nature has never gone to the assembly. It never happened in my eight years, and I don't remember anything prior or since.

How would such an appeal work before the assembly?

As their legal counsel, I'm sure the assembly will rely on you for how the proceeding would work, so I ask you. Some type of process and rules will obviously have to be worked out in advance.

Thanks,

Marko Dapceвич
503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Wednesday, February 8, 2017 6:04:23 PM
To: markodap@hotmail.com; mdapceвич@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Reconsideration of your public record request (PRR)

Mr. Dapceвич,

This will follow-up on my email to you, dated January 24, 2017, in which I promised to "reconsider your PRR in full." This will also respond to your various emails to Deputy Clerk Melissa Henshaw and myself in which you questioned the completeness and integrity of our responses to your PRR.

I have reconsidered your PRR in full and have come to the conclusion that the CBS was initially entirely responsive. I will address below each of your specific requests ("related to the GPIP Dock project") by corresponding number.

1. There exists email correspondence between the Municipal Attorney and the Assembly as a body and Assembly members individually which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.
2. There exists email correspondence between the Administrator and the Assembly as a body and Assembly members individually which are public records. Those emails have already been produced to you. I am reproducing those emails to you (see attached) with numbered pages 1 through 6.
3. There exists email correspondence between the Municipal Attorney and the City Administrator which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.

4. No such correspondence exists. In our original response, CBS produced emails between Garry White and the City Administrator. Mr. White is the Executive Director of SEDA. He is not a GPIIP board member. Therefore, CBS was not required to produce that correspondence. Regardless, we did so. I am reproducing those emails to you (see attached) with numbered pages 7 through 13.
5. No such correspondence exists. If there were such correspondence, it would be protected by the attorney-client privilege and not produced.
6. No such correspondence exists.
7. There exists documents signed between CBS and Turnagain which are public records. Those documents have already been produced to you. I am reproducing those documents to you (see attached), except the contract, with numbered pages 14 through 16.
8. There exists one document circulated amongst the Assembly and Staff which is a public record. That document has already been produced to you. I am reproducing that document to you (see attached) with numbered page 17. There exists another document, a copy of relevant charter and code provisions, circulated amongst the Assembly and Staff in the Executive Session which is a public record. However, that document is protected by the attorney-client privilege; and, therefore, has not been produced to you. The applicability of the privilege is discussed below.

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Now, I'll address the attorney-client privilege relied upon. Initially, when I first reviewed your PRR, I relied upon my private practice experience, the past experience of the CBS Legal Department as related to me by my Paralegal, and a CBS Legal Department memo, dated December 11, 2001 (coincidentally from a past Municipal Attorney, Clifford J. Groh I, to you – copy attached), all of which supported my decision to deem the correspondence you requested between me and others as privileged; and, therefore, protected from production to you. Once you objected, I determined it prudent to reconsider my decision. Accordingly, I have performed the additional investigation, legal research and analysis I promised to you which I summarize as follows.

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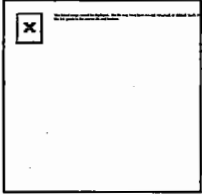
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Under SGC 1.25.080.A, you have the right to appeal my decision to the Assembly.

Thank you for your patience. Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian E. Hanson



Brian E. Hanson
Municipal Attorney
City and Borough of Sitka, Alaska
100 Lincoln Street, Sitka, Alaska, 99835
(907)747-1879

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Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Thursday, February 02, 2017 6:13 PM
To: Brian Hanson; Melissa Henshaw; Sara Peterson; Reuben Yerkes; Assembly; Mark Gorman; shannon_haugland@yahoo.com; news@kcaw.org
Subject: FW: permit questions

It occurred to me that the email string attached to the last email was incomplete. Below is my reply to Mr. Harmon. That is the end of the email string. As stated before, I have not heard anything since.

Thank you,

MARKO DAPCEVICH
Project Manager


INTERSTATE

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mdapceвич@interstaterestoration.com
www.interstaterestoration.com

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From: Marko Dapceвич
Sent: Friday, January 27, 2017 11:29 AM
To: 'Michael Harmon' <michael.harmon@cityofsitka.org>
Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: RE: permit questions

Mr. Harmon,

I'm sorry to hear you are in the hospital. I hope everything is ok.

I'm aware of the owners as well as the contractors, options. I deal with both on a regular basis.

My concerns are not about whether or not the contractor performs and I have not noted the contractor being on top of getting the required permits. Quite the contrary.

The city is the applicant and my concerns are that the city is not protected if the permit is not approved. It's all outlined in the previous correspondence.

will wait to hear from Mr. Hanson.

Thanks,

MARKO DAPCEVICH
Project Manager

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From: Michael Harmon [<mailto:michael.harmon@cityofsitka.org>]
Sent: Friday, January 27, 2017 11:10 AM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>
From: Mark Gorman <mark.gorman@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: Re: permit questions

Mr. Dapcevich:

Mark is on leave and I am in the hospital. Brian Hanson will be addressing your questions as appropriate. There are a number of options an owner can take if a contractor does not comply with the contract requirements. Thus far the contractor has been very good to work with and as you have noted are on top of getting the permits done as required.

Michael Harmon
=====
Public Works Director
100 Lincoln Street
Sitka, AK 99835
(907) 747-1823

On Jan 27, 2017, at 9:02 AM, Marko Dapcevich <mdapcevich@interstaterestoration.com> wrote:

Mr. Gorman,

Thank you for the reply. Can I get an eta on that response? I will need this information to complete my draft letter Mr. Hanson released to the Assembly. I'd like to work on it this weekend.

Thank you,

MARKO DAPCEVICH
Project Manager

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<image001.gif> <image002.gif> <image003.gif>

<image004.gif>

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From: Mark Gorman [<mailto:mark.gorman@cityofsitka.org>]
Sent: Thursday, January 26, 2017 11:55 AM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: RE: permit questions

I am about to leave town and will ask Michael Harmon to provide you a response to your question and the latter part of your email.

Sincerely,

Mark

From: Marko Dapcevich [<mailto:mdapcevich@interstaterestoration.com>]
Sent: Thursday, January 26, 2017 9:36 AM
To: Mark Gorman <mark.gorman@cityofsitka.org>
Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: Re: permit questions

Thanks for the quick response. That would explain why the application was submitted so late if the applicant was the contractor. However, that is not the case. The applicant is the city. Typically the applicant for this type of permit would be the owner. According to the corp. they probably would not even accept an application from the contractor.

This is not the first time the city has gone through this process with the corp.

I appreciate that the contractor is to secure the permits and costs. That is also typical. I hope that he will be paying for staff time (like I did for my records request) and the cost of the consultant that is the agent for the city on this application. Is he?

So, going Back to my original question, is there anything in the contract that makes it contingent on securing this corp. permit?

It's a long document and I am not as familiar with it as staff. I may very well have overlooked such a provision.

Or, more succinctly, is the city protected if this application is denied?

Thank you again,

Sent from my iPhone

On Jan 26, 2017, at 9:48 AM, Mark Gorman <mark.gorman@cityofsitka.org> wrote:

Good morning Mr. Dapceovich,

It is the design-builder's responsibility to secure the permits for the GPIIP dock project, as highlighted in the attached relevant pages of the contract agreement and the general provisions.

Please let me know if you have additional questions,

Sincerely,

Mark Gorman

Dave Longtin, P.E.
Senior Engineer
City and Borough of Sitka
Department of Public Works
100 Lincoln Street
Sitka, AK 99835
P (907) 747-1883
F (907) 747-3158

Mr. Gorman,

The Army Corp of Engineers, Alaska District, is now taking public comment on the GPIIP multi-purpose dock. It appears this application was recently initiated.

Along with the other issues that I have addressed it appears that we have entered into a contract with a private contractor to build a dock that we don't even have the required permits to build. Is this correct?

I did not see anything in the contract that makes it contingent on Army Corp. approval. Please inform me if I missed it and my concern is invalid.

Thank you in advance for your prompt reply.

MARKO DAPCEVICH
Project Manager

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mdapcevich@interstaterestoration.com
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<image004.gif>

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<GPIP dock agreement.pdf>

<GPIP dock general conditions.pdf>

Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Thursday, February 02, 2017 3:56 PM
To: Brian Hanson
Cc: Melissa Henshaw; Sara Peterson; Reuben Yerkes; Assembly; shannon_haugland@yahoo.com; news@kcaw.org; Mark Gorman
Subject: RE: Your Public Records Request
Attachments: Re: permit questions

Mr. Hanson,

Thank you for letting me know that you are unable to comply with my request at this time. I was going to email you since it was promised yesterday.

I'm not sure what priority commitments you have, or how many. But you did mention it twice. The second mention is almost foreshadowing notice of another delay in a week.

The original records request is now roughly six weeks old and a month past due. While it may have been encompassing, it was a simple enough request. I would think at some point soon this may achieve "priority commitment status".

Maybe in the mean time you can address the can that was kicked down to you. The correspondence is attached on this email. The last response I received was on 1-27-17 from Michael Harmon saying that you would address it. This is a simple question that the administrator and the public works director don't seem able to answer. Is the city protected if the Corp. denies the permit request that was only submitted last month and a month after the contract was signed? I did not see any clause in the contract that would do so. It's all outlined in the attached correspondence.

As you are aware, on 1-20-17 I sent Mayor Hunter a five page memo outlining the various violations of the code and charter in regards to the GPIP dock. On the phone I asked the Mayor to "do the right thing" and bring this before the Assembly at the first meeting in February. I copied you, Assembly Member Bean, and the Administrator on this email. Subsequently you copied at least the rest of the Assembly on this. I have not heard a word back from anyone.

Coincidentally, the closing of the agenda for that meeting and the time frame you give me for the possibility of addressing my records request are about the same.

If my records request is not completely and legally complied with, and the GPIP dock is not on the agenda then I will be appealing your denial of this records request to the Assembly as outlined on the public records request form.

One of the things I worked hard at, for so many years, was to make the City government servants to the citizens of Sitka. It saddens me to see what I am seeing now.

Regards,

MARKO DAPCEVICH
Project Manager

INTERSTATE

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From: Brian Hanson [mailto:brian.hanson@cityofsitka.org]
Sent: Thursday, February 2, 2017 1:34 PM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>; Sara Peterson <sara.peterson@cityofsitka.org>; Reuben Yerkes <reuben.yerkes@cityofsitka.org>
Subject: Your Public Records Request

Marko,

I didn't get to your request as expected. I have had many other priority commitments. I don't expect to get to your matter until next week. I'll do so as soon as possible next week, but I continue to have many other priority commitments.

I, again, would appreciate your patience. In the meantime, please don't hesitate to contact me if you have any questions or concerns.

Brian

Brian E. Hanson
Municipal Attorney
City
100
and Borough of Sitka, Alaska
Lincoln Street, Sitka, Alaska 99835
(907)747-1879



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Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Friday, January 27, 2017 9:29 AM
To: Michael Harmon
Cc: Mark Gorman; Brian Hanson; garrywhite@gci.net; Matthew Hunter (Assembly); David Longtin; Maegan Bosak; Assembly
Subject: RE: permit questions

Mr. Harmon,

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I'm aware of the owners as well as the contractors, options. I deal with both on a regular basis.

My concerns are not about whether or not the contractor performs and I have not noted the contractor being on top of getting the required permits. Quite the contrary.

The city is the applicant and my concerns are that the city is not protected if the permit is not approved. It's all outlined in the previous correspondence.

I will wait to hear from Mr. Hanson.

Thanks,

MARKO DAPCEVICH
Project Manager

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From: Michael Harmon [mailto:michael.harmon@cityofsitka.org]
Sent: Friday, January 27, 2017 11:10 AM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net;

Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>

Subject: Re: permit questions

Mr. Dapcevich:

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Michael Harmon
=====
Public Works Director
100 Lincoln Street
Sitka, AK 99835
(907) 747-1823

On Jan 27, 2017, at 9:02 AM, Marko Dapcevich <mdapcevich@interstaterestoration.com> wrote:

Mr. Gorman,

Thank you for the reply. Can I get an eta on that response? I will need this information to complete my draft letter Mr. Hanson released to the Assembly. I'd like to work on it this weekend.

Thank you,

MARKO DAPCEVICH
Project Manager

INTERSTATE

503-956-6240 **Cell Phone**
888-399-1802 **Fax**
800 622-6433 **24 Hour Emergency Service**

mdapcevich@interstaterestoration.com
www.interstaterestoration.com

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<image004.gif>

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From: Mark Gorman [<mailto:mark.gorman@cityofsitka.org>]
Sent: Thursday, January 26, 2017 11:55 AM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly

<assembly@cityofsitka.org>

Subject: RE: permit questions

I am about to leave town and will ask Michael Harmon to provide you a response to your question and the latter part of your email.

Sincerely,

Mark

From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]

Sent: Thursday, January 26, 2017 9:36 AM

To: Mark Gorman <mark.gorman@cityofsitka.org>

Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>

Subject: Re: permit questions

Thanks for the quick response. That would explain why the application was submitted so late if the applicant was the contractor. However, that is not the case. The applicant is the city. Typically the applicant for this type of permit would be the owner. According to the corp. they probably would not even accept an application from the contractor.

This is not the first time the city has gone through this process with the corp.

I appreciate that the contractor is to secure the permits and costs. That is also typical. I hope that he will be paying for staff time (like I did for my records request) and the cost of the consultant that is the agent for the city on this application. Is he?

So, going Back to my original question, is there anything in the contract that makes it contingent on securing this corp. permit?

It's a long document and I am not as familiar with it as staff. I may very well have overlooked such a provision.

Or, more succinctly, is the city protected if this application is denied?

Thank you again,

Sent from my iPhone

On Jan 26, 2017, at 9:48 AM, Mark Gorman <mark.gorman@cityofsitka.org> wrote:

Good morning Mr. Dapceвич,

It is the design-builder's responsibility to secure the permits for the GPIIP dock project, as highlighted in the attached relevant pages of the contract agreement and the general provisions.

Please let me know if you have additional questions,

Sincerely,

Mark Gorman

Dave Longtin, P.E.
Senior Engineer
City and Borough of Sitka
Department of Public Works
100 Lincoln Street
Sitka, AK 99835
P (907) 747-1883
F (907) 747-3158

Mr. Gorman,

The Army Corp of Engineers, Alaska District, is now taking public comment on the GPIIP multi-purpose dock. It appears this application was recently initiated.

Along with the other issues that I have addressed it appears that we have entered into a contract with a private contractor to build a dock that we don't even have the required permits to build. Is this correct?

I did not see anything in the contract that makes it contingent on Army Corp. approval. Please inform me if I missed it and my concern is invalid.

Thank you in advance for your prompt reply.

MARKO DAPCEVICH
Project Manager

INTERSTATE

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<GPIIP dock agreement.pdf>

<GPIIP dock general conditions.pdf>

Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Friday, January 27, 2017 9:02 AM
To: Mark Gorman
Cc: Michael Harmon; Brian Hanson; garrywhite@gci.net; Matthew Hunter (Assembly); David Longtin; Maegan Bosak; Assembly
Subject: RE: permit questions

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Thank you,

MARKO DAPCEVICH
Project Manager

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Mark

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Sent: Thursday, January 26, 2017 9:36 AM
To: Mark Gorman <mark.gorman@cityofsitka.org>
Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>;
jarrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin
<david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly
<assembly@cityofsitka.org>
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Sent from my iPhone

On Jan 26, 2017, at 9:48 AM, Mark Gorman <mark.gorman@cityofsitka.org> wrote:

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Please let me know if you have additional questions,

Sincerely,

Mark Gorman

Dave Longtin, P.E.
Senior Engineer
City and Borough of Sitka
Department of Public Works
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P (907) 747-1883
F (907) 747-3158

Mr. Gorman,

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Along with the other issues that I have addressed it appears that we have entered into a contract with a private contractor to build a dock that we don't even have the required permits to build. Is this correct?

I did not see anything in the contract that makes it contingent on Army Corp. approval. Please inform me if I missed it and my concern is invalid.

Thank you in advance for your prompt reply.

MARKO DAPCEVICH
Project Manager

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<GPIP dock agreement.pdf>

<GPIP dock general conditions.pdf>

Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Friday, January 27, 2017 8:39 AM
To: Brian Hanson
Cc: Melissa Henshaw; Sara Peterson
Subject: RE: Your Public Records Request

Thanks for the response.

As I did state that I believe the records request is incomplete. To be clear, it is not just what was excluded for privilege and protected reasons. There is also other known correspondence that was not included as well as references to attachments and emails strings that appeared to be incomplete.

All of the "research, additional investigation, legal research, and analysis" should have been already completed with my initial request. If not, then it can only mean that the initial request was not completed in earnest. If the city will require additional fees to complete this request, I will not pay.

Obviously the city's ten day response time from the initial request has long expired. Regardless, I can certainly be patient until next week.

If my request is not completed to my satisfaction I will consider my 10 day time frame for assembly appeal to commence from the time that I receive a final response from you.

Thank you,

MARKO DAPCEVICH
Project Manager

INTERSTATE

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From: Brian Hanson [mailto:brian.hanson@cityofsitka.org]
Sent: Tuesday, January 24, 2017 4:50 PM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>

Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>; Sara Peterson <sara.peterson@cityofsitka.org>

Subject: Your Public Records Request

Marko,

This will respond to your emails to Deputy Clerk Melissa Henshaw, dated January 14, 2017, and January 16, 2017. In those emails you complain that CBS's response, dated January 4, 2017, to your Public Records Request (PRR), dated December 17, 2016, is incomplete and wrongly relies on the attorney-client privilege to exclude production of certain requested communications.

Please be advised that I will reconsider your PRR in full. This reconsideration will require additional investigation, legal research, and analysis. However, my busy schedule does not permit immediate attention to this matter.

I expect to complete the reconsideration of your PRR and respond to you by next Wednesday, February 1, 2017. I would appreciate your patience until then. In the meantime, please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian

Brian E. Hanson
Municipal Attorney
City and Borough of Sitka, Alaska
907)747-1879

Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Thursday, January 26, 2017 9:36 AM
To: Mark Gorman
Cc: Michael Harmon; Brian Hanson; garrywhite@gci.net; Matthew Hunter (Assembly); David Longtin; Maegan Bosak; Assembly
Subject: Re: permit questions

Thanks for the quick response. That would explain why the application was submitted so late if the applicant was the contractor. However, that is not the case. The applicant is the city. Typically the applicant for this type of permit would be the owner. According to the corp. they probably would not even accept an application from the contractor. This is not the first time the city has gone through this process with the corp. I appreciate that the contractor is to secure the permits and costs. That is also typical. I hope that he will be paying for staff time (like I did for my records request) and the cost of the consultant that is the agent for the city on this application. Is he? So, going back to my original question, is there anything in the contract that makes it contingent on securing this corp permit? It's a long document and I am not as familiar with it as staff. I may very well have overlooked such a provision. Or, more succinctly, is the city protected if this application is denied?

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Sent from my iPhone

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Sincerely,

Mark Gorman

Dave Longtin, P.E.
Senior Engineer
City and Borough of Sitka
Department of Public Works
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F (907) 747-3158

Mr. Gorman,

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Along with the other issues that I have addressed it appears that we have entered into a contract with a private contractor to build a dock that we don't even have the required permits to build. Is this correct?

I did not see anything in the contract that makes it contingent on Army Corp. approval. Please inform me if I missed it and my concern is invalid.

Thank you in advance for your prompt reply.

MARKO DAPCEVICH
Project Manager

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<GPIIP dock agreement.pdf>

<GPIIP dock general conditions.pdf>

Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Wednesday, January 25, 2017 10:35 PM
To: Mark Gorman
CC: Assembly; jamie.r.hyslop@usace.army.mil
Subject: POA-2016-576

Mr. Gorman,

The Army Corp of Engineers, Alaska District, is now taking public comment on the GPIP multi-purpose dock. It appears his application was recently initiated.

Along with the other issues that I have addressed it appears that we have entered into a contract with a private contractor to build a dock that we don't even have the required permits to build. Is this correct?

I did not see anything in the contract that makes it contingent on Army Corp. approval. Please inform me if I missed it and my concern is invalid.

Thank you in advance for your prompt reply.

MARKO DAPCEVICH
Project Manager

INTERSTATE

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Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Tuesday, January 17, 2017 9:53 AM
To: Melissa Henshaw
Cc: Brian Hanson; Aaron Bean (Assembly)
Subject: RE: Receipt

Thanks Melissa. I can understand why you would have thought that it came from the Attorney. I would assume that the letter, or at least the subject matter, was written by Brian and sent out by the Clerk. I would like to have her letter confirmed by the Brian before I proceed.

The city is withholding documents that I know exist, and are not privileged.

MARKO DAPCEVICH
Project Manager

INTERSTATE

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From: Melissa Henshaw [mailto:melissa.henshaw@cityofsitka.org]
Sent: Tuesday, January 17, 2017 10:04 AM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Cc: Brian Hanson <brian.hanson@cityofsitka.org>; Aaron Bean (Assembly) <assemblybean@cityofsitka.org>
Subject: RE: Receipt

The letter is attached. It is from the Clerk actually, sorry I miss-wrote.

Melissa Henshaw, CMC
Deputy Clerk/Records Specialist
City and Borough of Sitka
100 Lincoln Street * Sitka, AK 99835
Phone 907-747-1826 * FAX 907-747-7403

Messages to and from this email address may be available to the public under Alaska Public Records Law.

From: Marko Dapceвич [mailto:mdapceвич@interstaterestoration.com]
Sent: Monday, January 16, 2017 4:38 PM
To: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Cc: Brian Hanson <brian.hanson@cityofsitka.org>; Aaron Bean (Assembly) <assemblybean@cityofsitka.org>
Subject: RE: Receipt

Melissa,

Was this a letter to me? I never saw such a letter.

It seems that the rest of this will be in the hands of Brian. That being said, the remainder of this email is for him. He is copied on this email. I have also copied Assembly member Bean as he has publicly spoke of correspondence about this issue. It's only fair that he should be made aware of my request.

In some instances the communication between an Assembly Member and the Attorney may be privileged. However to use that as an excuse to exclude all correspondence is obstructionist. If there is any privileged information it can simply be redacted. You cannot make correspondence from an Assembly member privileged if that person does not wish it to be so. Did you Consult the Assembly members on this request? If you are going to exempt any of the documents of my request I ask that you cite the statute that allows you to exclude it.

Be that as it may, the rest of the information should immediately be made available to me. There is certainly no expectation of privilege between an Assembly member and the Administrator, or any of the other information listed in my prior email.

That being said, I expect a thorough response to my records request.

You know me well enough to know that I'm not going to roll over on this.

MARKO DAPCEVICH
Project Manager

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From: Melissa Henshaw [<mailto:melissa.henshaw@cityofsitka.org>]
Sent: Monday, January 16, 2017 3:59 PM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Subject: RE: Receipt

would assume so. In the letter he wrote he mentioned that correspondence between the Attorney and Assembly members is *Privileged Attorney/Client Communications*.

Melissa Henshaw, CMC
Deputy Clerk/Records Specialist
City and Borough of Sitka
100 Lincoln Street * Sitka, AK 99835
Phone 907-747-1826 * FAX 907-747-7403

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From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]
Sent: Monday, January 16, 2017 1:53 PM
To: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: RE: Receipt

So is it safe to assume that it was his decision to exclude all the documents?

MARKO DAPCEVICH
Project Manager

INTERSTATE

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From: Melissa Henshaw [mailto:melissa.henshaw@cityofsitka.org]
Sent: Monday, January 16, 2017 3:08 PM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Subject: RE: Receipt

Marko,

I've forwarded your questions on to the Legal Department for explanation. However, Brian Hanson, Municipal Attorney, tried to fly in yesterday and couldn't make it so he is out of the office until at least tomorrow.

Let me know if you don't hear from them by the end of the week!

Melissa Henshaw, CMC
Deputy Clerk/Records Specialist
City and Borough of Sitka
100 Lincoln Street * Sitka, AK 99835
Phone 907-747-1826 * FAX 907-747-7403

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From: Marko Dapceвич [mailto:mdapceвич@interstaterestoration.com]
Sent: Saturday, January 14, 2017 4:28 PM
To: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: RE: Receipt

Melissa,

I received the information today. I took a cursory look at it this morning and it is incomplete.

Here are emails that refer to attachments with no attachments.
Here are email chains that seem to be incomplete.
Here is no correspondence to or from the attorney.
Here is no correspondence to or from Assembly member Bean.
Here is nothing from the executive session.

Please refer to the original request.

If you have time, I would appreciate a call to discuss further.

Thank you,

MARKO DAPCEVICH
Project Manager

INTERSTATE


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From: Melissa Henshaw [<mailto:melissa.henshaw@cityofsitka.org>]
Sent: Thursday, January 5, 2017 1:47 PM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Subject: Receipt

The public records request is on its way to you. Attached is your receipt.

Have a great rest of your day,

Melissa Henshaw, CMC
Deputy Clerk/Records Specialist
City and Borough of Sitka
100 Lincoln Street * Sitka, AK 99835
Ph 907-747-1826 * FAX 907-747-7403

Messages to and from this email address may be available to the public under Alaska Public Records Law.

From: noreply
Sent: Thursday, January 05, 2017 7:20 AM
To: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: Scanned Images from Admin Savin 9080

Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Monday, January 16, 2017 4:38 PM
To: Melissa Henshaw
CC: Brian Hanson; Aaron Bean (Assembly)
Subject: RE: Receipt

Melissa,

Was this a letter to me? I never saw such a letter.

It seems that the rest of this will be in the hands of Brian. That being said, the remainder of this email is for him. He is copied on this email. I have also copied Assembly member Bean as he has publicly spoke of correspondence about this issue. It's only fair that he should be made aware of my request.

In some instances the communication between an Assembly Member and the Attorney may be privileged. However to use that as an excuse to exclude all correspondence is obstructionist. If there is any privileged information it can simply be redacted. You cannot make correspondence from an Assembly member privileged if that person does not wish it to be so. Did you Consult the Assembly members on this request? If you are going to exempt any of the documents of my request I ask that you cite the statute that allows you to exclude it.

Hope that as it may, the rest of the information should immediately be made available to me. There is certainly no expectation of privilege between an Assembly member and the Administrator, or any of the other information listed in my prior email.

That being said, I expect a thorough response to my records request.

You know me well enough to know that I'm not going to roll over on this.

MARKO DAPCEVICH
Project Manager


INTERSTATE

03-956-6240 **Cell Phone**
88-399-1802 **Fax**
00 622-6433 **24 Hour Emergency Service**

mdapceвич@interstaterestoration.com
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From: Melissa Henshaw [mailto:melissa.henshaw@cityofsitka.org]
Sent: Monday, January 16, 2017 3:59 PM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Subject: RE: Receipt

I would assume so. In the letter he wrote he mentioned that correspondence between the Attorney and Assembly members is *Privileged Attorney/Client Communications*.

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From: Marko Dapceвич [mailto:mdapceвич@interstaterestoration.com]
Sent: Monday, January 16, 2017 1:53 PM
To: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: RE: Receipt

So is it safe to assume that it was his decision to exclude all the documents?

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Project Manager

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From: Melissa Henshaw [mailto:melissa.henshaw@cityofsitka.org]
Sent: Monday, January 16, 2017 3:08 PM

o: Marko Dapceвич <mdapceвич@interstaterestoration.com>

subject: RE: Receipt

Marko,

I've forwarded your questions on to the Legal Department for explanation. However, Brian Hanson, Municipal Attorney, tried to fly in yesterday and couldn't make it so he is out of the office until at least tomorrow.

Let me know if you don't hear from them by the end of the week!

Melissa Henshaw, CMC

Deputy Clerk/Records Specialist

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From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]

Sent: Saturday, January 14, 2017 4:28 PM

To: Melissa Henshaw <melissa.henshaw@cityofsitka.org>

Subject: RE: Receipt

Melissa,

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Here are emails that refer to attachments with no attachments.

Here are email chains that seem to be incomplete.

There is no correspondence to or from the attorney.

There is no correspondence to or from Assembly member Bean.

There is nothing from the executive session.

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If you have time, I would appreciate a call to discuss further.

Thank you,

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Project Manager

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Melissa Henshaw

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Wednesday, January 04, 2017 4:28 PM
To: Melissa Henshaw
Subject: RE: Public Records Request

have a credit card on file with the city for my utilities. Will that work? If not I'll have to call in. can't mail in payment because I'm working in Portland and didn't bring my checkbook.

Please mail it to:
5417 West Shaw Butte Drive
Glendale, AZ 85304

I'll be there in a week and won't be back to Sitka until early February.

MARKO DAPCEVICH
Project Manager

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From: Melissa Henshaw [mailto:melissa.henshaw@cityofsitka.org]
Sent: Wednesday, January 4, 2017 6:14 PM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Subject: RE: Public Records Request

Your request is ready. The total due is \$216.81. The customer service counter is open from 10 am to 4 pm Monday through Friday. We can set up a time for you to call if that works for you to make payment, I just need to give customer service the paperwork. If that doesn't work, you can mail in a payment also.

Let me know how you would like to proceed. Also let me know where you would like this information to be mailed to. I have 104 Remington Way.

Thanks,

Melissa Henshaw, CMC
Deputy Clerk/Records Specialist
City and Borough of Sitka
100 Lincoln Street * Sitka, AK 99835
Ph 907-747-1826 * FAX 907-747-7403

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From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]
Sent: Tuesday, January 03, 2017 5:20 PM
To: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: Re: Public Records Request

The thumb drive will be fine. Is it done?

Sent from my iPhone

On Jan 3, 2017, at 5:29 PM, Melissa Henshaw <melissa.henshaw@cityofsitka.org> wrote:

I Marko,

I'm working on compiling all of your information for your request. I have two different ways I can get you the information 1) all paper "hard" copies with an estimated cost of \$50 or 2) on a thumb drive. The thumb drive cost is \$5.95.

Just let me know which of the above you prefer.

Happy New Year,

Melissa Henshaw, CMC
Deputy Clerk/Records Specialist
City and Borough of Sitka
100 Lincoln Street * Sitka, AK 99835
Ph 907-747-1826 * FAX 907-747-7403

Messages to and from this email address may be available to the public under Alaska Public Records Law.

From: Sara Peterson
Sent: Friday, December 23, 2016 10:38 AM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: RE: Public Records Request

Of course, Marko. Merry Christmas!

Melissa is our Records Specialist and will be working with staff to compile the information and contact you when the request is complete. I will be out of the office next week. If you have any questions regarding your request you can contact her at melissa.henshaw@cityofsitka.org or 747-1826.

Best,

Sara

From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]
Sent: Friday, December 23, 2016 9:29 AM
To: Sara Peterson <sara.peterson@cityofsitka.org>
Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: Re: Public Records Request

Proceed. However, I expect it to be complete. If a document needs to be redacted, then so be it. But I expect it to be included.

Thank you,

Sent from my iPhone

On Dec 23, 2016, at 10:10 AM, Sara Peterson <sara.peterson@cityofsitka.org> wrote:

Hi Marko,

After speaking with respective staff this week, I'm estimating the cost of this records request to be around \$250. It could be more or less once we get into the details. Would you like us to proceed with gathering the information?

Sara

From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]
Sent: Wednesday, December 21, 2016 12:14 PM
To: Sara Peterson <sara.peterson@cityofsitka.org>
Subject: Re: Public Records Request

That's fine. Do you have an eta? We are three days into the ten.
Thank you.

Sent from my iPhone

On Dec 17, 2016, at 1:21 PM, Marko Dapceвич
<mdapceвич@interstaterestoration.com> wrote:

Sarah,
Please see attached.

Thank you,

MARKO DAPCEVICH
Project Manager

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<image004.gif>

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Sarah,
Please see attached.
Thank you,

MARKO DAPCEVICH
Project Manager

INTERSTATE

503-956-6240 **Cell Phone**
888-399-1802 **Fax**
800 622-6433 **24 Hour Emergency Service**

mdapceвич@interstaterestoration.com
www.interstaterestoration.com

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<image001.gif> <image002.gif> <image003.gif>

<image004.gif>

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Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Friday, December 23, 2016 9:29 AM
To: Sara Peterson
Cc: Melissa Henshaw
Subject: Re: Public Records Request

Proceed. However, I expect it to be complete. If a document needs to be redacted, then so be it. But I expect it to be included.

Thank you,

Sent from my iPhone

On Dec 23, 2016, at 10:10 AM, Sara Peterson <sara.peterson@cityofsitka.org> wrote:

Hi Marko,

After speaking with respective staff this week, I'm estimating the cost of this records request to be around \$250. It could be more or less once we get into the details. Would you like us to proceed with gathering the information?

Sara

From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]
Sent: Wednesday, December 21, 2016 12:14 PM
To: Sara Peterson <sara.peterson@cityofsitka.org>
Subject: Re: Public Records Request

That's fine. Do you have an eta? We are three days into the ten.
Thank you.

Sent from my iPhone

On Dec 17, 2016, at 1:21 PM, Marko Dapceвич <mdapceвич@interstaterestoration.com> wrote:

Sarah,
Please see attached.
Thank you,

MARKO DAPCEVICH
Project Manager

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<Scan0005.pdf>

Melissa Henshaw

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Saturday, December 17, 2016 10:07 AM
To: Brian Hanson
Cc: Mark Gorman; Assembly; Reuben Yerkes
Subject: Re: Your email to Mark Gorman of 12/13/16

Brian,

Thank you for your prompt and thorough response.

I appreciate the time and consideration you put into your email. I received nothing from Mr. Gorman. I will assume at this point, you are responding on his behalf as well.

While I do not wish to get into a debate with you, I would like to expand my thoughts on the subject.

I would disagree with you on your interpretation. Maybe we can agree to disagree. Or, maybe we can agree that the ordinance could be worded a little more clearly. I still contend that to not be included is being excluded. Any other person would need their presence requested in the affirmative in the motion, or they are excluded. Since Roberts rules of order require motions be made in the affirmative it seems counter intuitive in both senses. That being said, your interpretation makes sense as well.

You are correct that the clerk is the parliamentarian. That was a miscue on my part. That ordinance was passed after my time. However, the code still does state that "the attorney or clerk may comment on parliamentary, procedural and/or legal issues". (2.04.130c)

That traditionally has been the case. And, in my opinion, it would be good for corrections like that to be made. A statement that something is required in the charter can stick with both the Assembly and the public unless it is immediately corrected.

Since I was not privy to a motion that you distributed at the meeting, that was not in the packet, I stand by my statement that the motion prepared by staff (in the assembly packet) was not compliant to AS 44.62.310(b).

I will also stand by my statement that there is nothing in the Charter that requires the clerk, administrator, or attorney into executive session.

Since you have copied the rest of the Assembly on this, for their future reference, please clarify that to them.

I will make that public records request with the clerk as you requested.

Thank you again for your time in responding. You are the city attorney and I respect your opinions. I, after all, am just a spectator.

Regards.

Marko Dapceвич

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Wednesday, December 14, 2016 1:22:57 PM
To: markodap@hotmail.com
Cc: Mark Gorman; Assembly; Reuben Yerkes
Subject: Your email to Mark Gorman of 12/13/16

Marko,

This will respond to your above referenced email.

SGC 2.04.020.F. provides that the administrator, attorney and clerk **“will attend executive sessions of the assembly, unless otherwise excluded in the motion to enter into executive session.”** (emphasis added) The language of the code is mandatory, i.e., they will attend unless excluded. Since neither the administrator, attorney, nor clerk were excluded in last night’s motion to go into executive session, they were obligated by code to attend the executive session.

As for the attendance of the administrator, attorney, and/or clerk in executive sessions during your tenure on the Assembly, the code may have been different or the motions may have excluded certain participants. Regardless, under these circumstances, I don’t believe it would be helpful for me to opine on past actions of past assemblies.

Please note, the municipal attorney is not parliamentarian. SGC 2.04.110, **adopted in 2013**, provides: **“The municipal clerk shall act as parliamentarian.”** (emphasis added) Regardless, there was no reason for the parliamentarian to make a correction.

Also note, it’s my opinion that the proposed motion to enter into executive session prepared by staff was compliant with AS 44.62.310(b). I’m not sure you’re referring to the same proposed motion as me. There was a revised proposed motion that was presented to the Assembly at the meeting which wasn’t in the Assembly packet. I assisted in its preparation and advised the clerk that it was legally compliant.

Finally, with respect to your document request, please make a formal Public Records Request with the clerk.

Thank you for your interest in the City and Borough of Sitka. Please don’t hesitate to contact me if you have any questions or concerns.

Regards,

Brian

Brian E. Hanson
Municipal Attorney
City and Borough of Sitka
907)747-1879

Melissa Henshaw

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Sunday, April 24, 2016 10:17 AM
To: Assembly
Attachments: Madam Mayor and members of the Assembly.docx

Please read the attached document.

Thank you,

MARKO DAPCEVICH
Project Manager

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Sara Peterson

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Wednesday, March 08, 2017 11:03 AM
To: Sara Peterson
Attachments: PRR APPEAL.doc

Sarah,

Please find attached my document for appeal.

The deadline for submittal is noon today so you will have received this in time.

Please send me electronic copies of Mr. Hanson's submittals so I can see that he complied with the deadline as well.

I would assume the following would be included in the packet, but wanted to request it just in case:

1. Correspondence between Brian and myself on this subject.
2. My original email to Mayor Hunter with the draft attachment that Mr. Hanson shared with the rest of the assembly.
3. My communications with yourself, Mellissa, and Mr. Gorman on the subject.
4. This email.

In addition to the above, all the correspondence and documents that Mr. Hanson is claiming privilege on needs to be distributed to the Assembly. There should also be extra copies of that correspondence for the press and me in the unlikely event that the assembly agrees with my appeal. After all, how can the assembly possibly consider whether or not this correspondence should be released if they have never seen it?

Mr. Hanson was supposed to provide me with my "burden of proof" obligation. He never did.

At some point soon a process should be outlined by the Mayor on how this hearing will be conducted. I would assume the hearing would be conducted based on a review of the information submitted.

I would also like to add the following for consideration by the assembly:

I believe it would be in the best interest of the assembly to have outside counsel advise them during this appeal. Mr. Hanson appears to have a personal interest in keeping his involvement secret. That interest likely conflicts with the best interest of the city and the assembly. As I've referenced, he has not even disclosed his correspondence and involvement to the Assembly.

Most likely I will be involved in a project in Denver the day of the meeting. I want to reiterate my previous request to appear telephonically. A firm date for the Denver project has not been set yet so it is still possible I that will appear in person.

Thank you,

Marko Dapcevich
503-956-6240

Sara Peterson

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Thursday, February 23, 2017 9:18 PM
To: Sara Peterson
Cc: Brian Hanson; Melissa Henshaw
Subject: Re: March 14 - Appeal date

March 14th is still good.
Thanks

Sent from my iPhone

On Feb 23, 2017, at 9:44 AM, Sara Peterson <sara.peterson@cityofsitka.org> wrote:

Hi Marko,

I forgot to mention that only 5 Assembly members will be present for the March 14th meeting. Mr. Potrzuski and Mr. Eisenbeisz will be absent and most likely will not be calling in.

The March 28th meeting currently shows 6 members present. Mr. Potrzuski will be absent.

April 11th shows 6 members present. Mr. Guevin will be absent.

Please let me know if you'd still like to schedule your appeal for March 14th or choose a different date.

Sara

From: Sara Peterson
Sent: Thursday, February 23, 2017 8:04 AM
To: 'Marko Dapcevich' <markodap@hotmail.com>
Cc: Brian Hanson <brian.hanson@cityofsitka.org>; Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: RE: Appeal date

No worries. The deadline for submitting materials for the March 14th packet is noon on Wednesday, March 8th.

I will be out of the office beginning next Monday through March 8th. Please submit your materials to Melissa Henshaw.

Have a good day,

Sara

From: Marko Dapcevich [<mailto:markodap@hotmail.com>]
Sent: Wednesday, February 22, 2017 8:15 PM

To: Sara Peterson <sara.peterson@cityofsitka.org>
Cc: Brian Hanson <brian.hanson@cityofsitka.org>; Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: Re: Appeal date

Thanks Sarah. I'm good with the 14th. Sorry I didn't reply sooner.

Sent from my iPhone

On Feb 21, 2017, at 11:17 AM, Sara Peterson <sara.peterson@cityofsitka.org> wrote:

Hi Marko,

I'd like to offer another possible date of March 7th. The Assembly will be holding a special meeting at 6pm that evening to review writing samples from Municipal Administrator candidates. I was thinking we could place your appeal on this agenda – after their business is finished for the Municipal Administrator candidates. This will be a shorter meeting than the 14th and being that the appeal will be at the end of the agenda, it might be more convenient for you to have it on the 7th.

Let me know your preference – either date works for us.

Sara

From: Marko Dapceovich [<mailto:markodap@hotmail.com>]
Sent: Saturday, February 18, 2017 1:31 PM
To: Sara Peterson <sara.peterson@cityofsitka.org>
Cc: Aaron Bean (Assembly) <assemblybean@cityofsitka.org>
Subject:

Sarah,

This e-mail is to serve as notice that I wish to appeal Mr. Hanson's response to my Public Records Request to the Assembly.

It's my understanding that the Assembly will be short, and maybe not even have a quorum on the 2-28 meeting. For that reason I wish to have this appeal heard at the 3-14 meeting.

Please advise me of when the deadline for submission of materials will be for that meeting.

Please let this email serve as notice of my desire to appear telephonically. I do not know my work schedule that far in advance and do not know if I will be able to appear in person. If it is possible to appear in person I will let you know as soon as I know.

Thank you,

Marko Dapcevic
503-956-6240

Sara Peterson

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Wednesday, February 22, 2017 8:15 PM
To: Sara Peterson
Cc: Brian Hanson; Melissa Henshaw
Subject: Re: Appeal date

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Let me know your preference – either date works for us.

Sara

From: Marko Dapcevich [<mailto:markodap@hotmail.com>]
Sent: Saturday, February 18, 2017 1:31 PM
To: Sara Peterson <sara.peterson@cityofsitka.org>
Cc: Aaron Bean (Assembly) <assemblybean@cityofsitka.org>
Subject:

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It's my understanding that the Assembly will be short, and maybe not even have a quorum on the 2-28 meeting. For that reason I wish to have this appeal heard at the 3-14 meeting.

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Please let this email serve as notice of my desire to appear telephonically. I do not know my work schedule that far in advance and do not know if I will be able to appear in person. If it is possible to appear in person I will let you know as soon as I know.

Thank you,

Marko Dapcevic
503-956-6240

Sara Peterson

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Saturday, February 18, 2017 1:06 PM
To: Brian Hanson; mdapcevich@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Re: Reconsideration of your public record request (PRR)

Thank you. I will send the clerk an e-mail shortly.

I have one question: Will you have the same deadline to submit written materials to the Assembly as I will?

Marko Dapcevich
503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Friday, February 17, 2017 5:01:25 PM
To: Marko Dapcevich; mdapcevich@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: RE: Reconsideration of your public record request (PRR)

Mr. Dapcevich,

Authority for an appeal is found under SGC 1.25.080. There is no direction in the code on how to conduct the appeal. I have spoken with the Clerk and we will follow the procedure outlined in this email.

1. You must make a written appeal to the Clerk. An email to the Clerk will be sufficient. In your appeal, propose a regular meeting date you'd like your appeal to be heard. Please contact the Clerk to obtain available dates.
2. The Clerk will set the appeal date and give notice as required by the code.
3. If you'd like to provide any written materials to be considered by the Assembly, provide them to the Clerk in accordance with the regular submission deadline. The Clerk will advise you of that deadline.
4. I will also have the opportunity to provide written materials, which will be shared with you.
5. Your appeal will be publicly noticed along with other agenda items.
6. At the meeting, the Assembly will convene as an appeal board to hear your appeal. You will be afforded the opportunity to provide evidence and argument to the Assembly – as will I. The Mayor may establish reasonable time limits.
7. I will research the burden of proof as it relates to you and the standard of review for the Assembly. I will advise you and the Assembly of the same before your appeal is heard.
8. The Assembly may deliberate and decide your appeal at the meeting or postpone their deliberations and decision, as they see fit.

Let me know if you have any questions or concerns. Thank you.

Brian



Brian E. Hanson

Municipal Attorney
City and Borough of Sitka, Alaska
100 Lincoln Street, Sitka, Alaska, 99835
(907)747-1879

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From: Marko Dapceвич [mailto:markodap@hotmail.com]

Sent: Tuesday, February 14, 2017 11:15 AM

To: Brian Hanson <brian.hanson@cityofsitka.org>; mdapceвич@interstaterestoration.com

Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>; Sara Peterson <sara.peterson@cityofsitka.org>; Mark Gorman <mark.gorman@cityofsitka.org>; Reuben Yerkes <reuben.yerkes@cityofsitka.org>; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; Steven Eisenbeisz (Assembly) <assemblyeisenbeisz@cityofsitka.org>; Tristan Guevin (Assembly) <assemblyguevin@cityofsitka.org>; Aaron Swanson (Assembly) <assemblyswanson@cityofsitka.org>; Bob Potrzuski (Assembly) <assemblypotrzuski@cityofsitka.org>; Kevin Knox (Assembly) <assemblyknox@cityofsitka.org>; Aaron Bean (Assembly) <assemblybean@cityofsitka.org>

Subject: Re: Reconsideration of your public record request (PRR)

Thank you for your email.

I guess we still have a difference in opinion.

As far I know, an appeal of this nature has never gone to the assembly. It never happened in my eight years, and I don't remember anything prior or since.

How would such an appeal work before the assembly?

As their legal counsel, I'm sure the assembly will rely on you for how the proceeding would work, so I ask you. Some type of process and rules will obviously have to be worked out in advance.

Thanks,

Marko Dapceвич
503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>

Sent: Wednesday, February 8, 2017 6:04:23 PM

To: markodap@hotmail.com; mdapceвич@interstaterestoration.com

Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)

Subject: Reconsideration of your public record request (PRR)

Mr. Dapceвич,

This will follow-up on my email to you, dated January 24, 2017, in which I promised to "reconsider your PRR in full." This will also respond to your various emails to Deputy Clerk Melissa Henshaw and myself in which you questioned the completeness and integrity of our responses to your PRR.

I have reconsidered your PRR in full and have come to the conclusion that the CBS was initially entirely responsive. I will address below each of your specific requests ("related to the GPIIP Dock project") by corresponding number.

1. There exists email correspondence between the Municipal Attorney and the Assembly as a body and Assembly members individually which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.
2. There exists email correspondence between the Administrator and the Assembly as a body and Assembly members individually which are public records. Those emails have already been produced to you. I am reproducing those emails to you (see attached) with numbered pages 1 through 6.
3. There exists email correspondence between the Municipal Attorney and the City Administrator which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.
4. No such correspondence exists. In our original response, CBS produced emails between Garry White and the City Administrator. Mr. White is the Executive Director of SEDA. He is not a GPIIP board member. Therefore, CBS was not required to produce that correspondence. Regardless, we did so. I am reproducing those emails to you (see attached) with numbered pages 7 through 13.
5. No such correspondence exists. If there were such correspondence, it would be protected by the attorney-client privilege and not produced.
6. No such correspondence exists.
7. There exists documents signed between CBS and Turnagain which are public records. Those documents have already been produced to you. I am reproducing those documents to you (see attached), except the contract; with numbered pages 14 through 16.
8. There exists one document circulated amongst the Assembly and Staff which is a public record. That document has already been produced to you. I am reproducing that document to you (see attached) with numbered page 17. There exists another document, a copy of relevant charter and code provisions, circulated amongst the Assembly and Staff in the Executive Session which is a public record. However, that document is protected by the attorney-client privilege; and, therefore, has not been produced to you. The applicability of the privilege is discussed below.

In your email dated January 27, 2017, you state there is "known correspondence that was not included as well as references to attachments and emails strings that appeared to be incomplete." If you are referring to any correspondence that has not been deemed by me to be protected by the attorney-client privilege, please enlighten me so I may investigate and respond. CBS had its IT Director, along with my Paralegal, search specifically for the requested correspondence. A diligent and good faith search was made which came up with what was produced. I also reviewed my saved emails to confirm CBS's response to your PRR. I found my saved emails to be consistent with CBS's initial response. Again, if you have information to the contrary, please share it with me so I may investigate and respond.

Now, I'll address the attorney-client privilege relied upon. Initially, when I first reviewed your PRR, I relied upon my private practice experience, the past experience of the CBS Legal Department as related to me by my Paralegal, and a CBS Legal Department memo, dated December 11, 2001 (coincidentally from a past Municipal Attorney, Clifford J. Groh II, to you – copy attached), all of which supported my decision to deem the correspondence you requested between me and others as privileged; and, therefore, protected from production to you. Once you objected, I determined it prudent to reconsider my decision. Accordingly, I have performed the additional investigation, legal research and analysis I promised to you which I summarize as follows.

SGC 1.25.040.A.3 states: "Every person has a right to inspect a public record except...[r]ecords required to be kept confidential ... by state law[.]" The state law applicable here is Evidence Rule 503 which states: "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal service, to the client... between himself... and his lawyer." Here, my "client" is the Assembly, as a body. My client has not instructed me to waive the privilege. In *Cool*

Homes, Inc. v. Fairbanks North Star Borough, 860 P.2d 1248, 1262 (Alaska 1993), the Alaska Supreme Court held: “The privilege thus should be applied only when the revelation of the communication will injure the public interest or there is some other recognized purpose in keeping the communication confidential.” The purpose in keeping my emails confidential is to protect the CBS from financial injury and prevent disclosure of legal discussion and advice on potential related legal liability. The initial allegations presented in an email from an Assembly member to me, which you’ve probably already seen, and your threat of court action have borne out my concerns and realized the purpose which supports my decision.

In my research, I discovered another privilege which may apply, i.e., the deliberative process privilege. If a communication is “pre-decisional” and “deliberative in nature”, it is protected. See *Capital Information Group v. State of Alaska, Office of the Governor*, 923 P.2d 29, 36 (Alaska 1996). See also *Gwich’in Steering Committee v. State of Alaska, Office of the Governor*, 10 P.3d 512, 578 (Alaska 2000). Here, I believe the email communications and the discussion during the executive session were deliberative in nature and, of course, all pre-decisional.

Under SGC 1.25.080.A, you have the right to appeal my decision to the Assembly.

Thank you for your patience. Please don’t hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian E. Hanson



Brian E. Hanson

Municipal Attorney
City and Borough of Sitka, Alaska
100 Lincoln Street, Sitka, Alaska, 99835
(907)747-1879

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Sara Peterson

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Tuesday, February 14, 2017 11:15 AM
To: Brian Hanson; mdapcevich@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Re: Reconsideration of your public record request (PRR)

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Thanks,

Marko Dapcevich
503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Wednesday, February 8, 2017 6:04:23 PM
To: markodap@hotmail.com; mdapcevich@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
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2. There exists email correspondence between the Administrator and the Assembly as a body and Assembly members individually which are public records. Those emails have already been produced to you. I am reproducing those emails to you(see attached) with numbered pages 1 through 6.
3. There exists email correspondence between the Municipal Attorney and the City Administrator which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.

4. No such correspondence exists. In our original response, CBS produced emails between Garry White and the City Administrator. Mr. White is the Executive Director of SEDA. He is not a GPIIP board member. Therefore, CBS was not required to produce that correspondence. Regardless, we did so. I am reproducing those emails to you (see attached) with numbered pages 7 through 13.
5. No such correspondence exists. If there were such correspondence, it would be protected by the attorney-client privilege and not produced.
6. No such correspondence exists.
7. There exists documents signed between CBS and Turnagain which are public records. Those documents have already been produced to you. I am reproducing those documents to you (see attached), except the contract, with numbered pages 14 through 16.
8. There exists one document circulated amongst the Assembly and Staff which is a public record. That document has already been produced to you. I am reproducing that document to you (see attached) with numbered page 17. There exists another document, a copy of relevant charter and code provisions, circulated amongst the Assembly and Staff in the Executive Session which is a public record. However, that document is protected by the attorney-client privilege; and, therefore, has not been produced to you. The applicability of the privilege is discussed below.

In your email dated January 27, 2017, you state there is "known correspondence that was not included as well as references to attachments and emails strings that appeared to be incomplete." If you are referring to any correspondence that has not been deemed by me to be protected by the attorney-client privilege, please enlighten me so I may investigate and respond. CBS had its IT Director, along with my Paralegal, search specifically for the requested correspondence. A diligent and good faith search was made which came up with what was produced. I also reviewed my saved emails to confirm CBS's response to your PRR. I found my saved emails to be consistent with CBS's initial response. Again, if you have information to the contrary, please share it with me so I may investigate and respond.

Now, I'll address the attorney-client privilege relied upon. Initially, when I first reviewed your PRR, I relied upon my private practice experience, the past experience of the CBS Legal Department as related to me by my Paralegal, and a CBS Legal Department memo, dated December 11, 2001 (coincidentally from a past Municipal Attorney, Clifford J. Groh II, to you – copy attached), all of which supported my decision to deem the correspondence you requested between me and others as privileged; and, therefore, protected from production to you. Once you objected, I determined it prudent to reconsider my decision. Accordingly, I have performed the additional investigation, legal research and analysis I promised to you which I summarize as follows.

SGC 1.25.040.A.3 states: "Every person has a right to inspect a public record except...[r]ecords required to be kept confidential ... by state law[.]" The state law applicable here is Evidence Rule 503 which states: "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal service, to the client... between himself... and his lawyer." Here, my "client" is the Assembly, as a body. My client has not instructed me to waive the privilege. In *Cool Homes, Inc. v. Fairbanks North Star Borough*, 860 P.2d 1248, 1262 (Alaska 1993), the Alaska Supreme Court held: "The privilege thus should be applied only when the revelation of the communication will injure the public interest or there is some other recognized purpose in keeping the communication confidential." The purpose in keeping my emails confidential is to protect the CBS from financial injury and prevent disclosure of legal discussion and advice on potential related legal liability. The initial allegations presented in an email from an Assembly member to me, which you've probably already seen, and your threat of court action have borne out my concerns and realized the purpose which supports my decision.

In my research, I discovered another privilege which may apply, i.e., the deliberative process privilege. If a communication is "pre-decisional" and "deliberative in nature", it is protected. See *Capital Information Group v. State of Alaska, Office of the Governor*, 923 P.2d 29, 36 (Alaska 1996). See also *Gwich'in Steering Committee v. State of Alaska, Office of the Governor*, 10 P.3d 512, 578 (Alaska 2000). Here, I believe the email communications and the discussion during the executive session were deliberative in nature and, of course, all pre-decisional.

Under SGC 1.25.080.A, you have the right to appeal my decision to the Assembly.

Thank you for your patience. Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian E. Hanson



Brian E. Hanson

Municipal Attorney

City and Borough of Sitka, Alaska

100 Lincoln Street, Sitka, Alaska, 99835

(907)747-1879

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Sara Peterson

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Friday, February 10, 2017 5:56 PM
To: Brian Hanson; markodap@hotmail.com
Cc: Mark Gorman; Michael Harmon; Garry White; Sara Peterson; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Bob Potrzuski (Assembly); Aaron Swanson (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly); shannon_haugland@yahoo.com; news@kcaw.org
Subject: RE: Response to "permit questions" emails related to the GPIIP dock contract

Mr. Hanson,

Thank you for the reply. I appreciate your response, but continue to feel as if my questions are being skirted.

Since your email this morning I have had a chance to review the contract in its entirety. I still have not seen any provision that protects the city if the permit is denied. Could you please be more specific on what provisions of the contract protects the interests of the city? As I have stated previously, I don't understand how the "performance of the contractor" applies when the City and Borough of Sitka is the applicant and the contractor **cannot** be the applicant. I also don't see how any future negotiations between the owner and the contractor can be relied on to alleviate a dispute in the favor of the city.

I find a certain irony in your statement, "it serves no purpose to speculate on what should or should not have been included in the contract." Considering that your justification for executive session and exclusion of certain documents in my public records request seems to be based on exactly such a preemptive concern.

In the previous emails I also asked if the contractor was paying for staff time and the consultant the city hired to assist in applying for the Army Corp. of Engineers permit. It is very clear that is their responsibility. I understand that this is probably a better question for the administrator, but it has been kicked to you. I understand if you would defer this back to him, or the public works director. That would only be appropriate as there is no one in city staff, including the administrator, that can direct you to answer questions directed to them. We will get into that subject a little more in regards to your claiming attorney client privilege between you and the administrator.

I understand that you are the city attorney and really only involved in these contracts to the extent of the contract. However, since this issue has come up you should clearly be able to show a provision in the contract that clearly indemnifies the city from any liability if the permit application is denied. A general we are protected and don't worry about it statement does not appease my very legitimate concerns. Concerns that should be shared by you, the administrator, and the Assembly.

While we are clearly in staunch disagreement on this, as well as other issues, I really do appreciate your responsiveness to my questions and concerns.

I am not trying to make a big public issue out of this entire thing. I did my very best to try and keep my concerns at the Mayor and staff level to address the problems surrounding the entire process around this dock. That is why I have specifically excluded the press and entire assembly until just recently. I tried to work with the Mayor, you, and the administrator to have these issues addressed appropriately to protect the city. It is obvious that mistakes have been made. It was never my goal to focus on that, only to have them addressed at the Assembly level and corrected. As I've said before, the right thing to do is still the right thing to do.

Regards,

P.S. I'll get to your other email as time allows.

MARKO DAPCEVICH
Project Manager

INTERSTATE

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mdapcevich@interstaterestoration.com
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From: Brian Hanson [mailto:brian.hanson@cityofsitka.org]

Sent: Friday, February 10, 2017 10:08 AM

To: markodap@hotmail.com; Marko Dapcevich <mdapcevich@interstaterestoration.com>

Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Michael Harmon <michael.harmon@cityofsitka.org>; Garry White <garrywhite@gci.net>; Sara Peterson <sara.peterson@cityofsitka.org>; Reuben Yerkes <reuben.yerkes@cityofsitka.org>; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; Steven Eisenbeisz (Assembly) <assemblyeisenbeisz@cityofsitka.org>; Tristan Guevin (Assembly) <assemblyguevin@cityofsitka.org>; Bob Potrzuski (Assembly) <assemblypotrzuski@cityofsitka.org>; Aaron Swanson (Assembly) <assemblyswanson@cityofsitka.org>; Kevin Knox (Assembly) <assemblyknox@cityofsitka.org>; Aaron Bean (Assembly) <assemblybean@cityofsitka.org>

Subject: Response to "permit questions" emails related to the GPIP dock contract

Mr. Dapcevich,

This will respond to your emails of January 26 and 27, 2017, regarding the "permit questions" related to the GPIP dock contract.

CBS is adequately protected, considering the attendant risk, if the permit were to be denied. As always, when CBS contracts are being performed, CBS Staff, including the Legal Department, monitor and/or enforce performance by the Contractor as necessary. In this case, in the unlikely event that the permit were denied, appropriate action would be undertaken under the default provisions of the contract and/or as negotiated between the parties.

At this point, with respect to the contract in question, it serves no purpose to speculate on what should or should not have been included in the contract. The contract has been executed and must be performed and enforced according to its terms.

We thank you for your inquiry. We encourage citizens to express their concerns regarding the business of CBS. We strive to be responsive to the concerns expressed by the citizenry. To that end, rest assured I will consider your concerns expressed as to the GPIP dock contract when I review contracts for future improvements that require permits.

Sincerely,

Brian E. Hanson



Brian E. Hanson

Municipal Attorney
City and Borough of Sitka, Alaska
100 Lincoln Street, Sitka, Alaska, 99835
(907)747-1879

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Sara Peterson

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Thursday, February 02, 2017 6:13 PM
To: Brian Hanson; Melissa Henshaw; Sara Peterson; Reuben Yerkes; Assembly; Mark Gorman; shannon_haugland@yahoo.com; news@kcaw.org
Subject: FW: permit questions

It occurred to me that the email string attached to the last email was incomplete. Below is my reply to Mr. Harmon. That is the end of the email string. As stated before, I have not heard anything since.
Thank you,

MARKO DAPCEVICH
Project Manager

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From: Marko Dapcevich
Sent: Friday, January 27, 2017 11:29 AM
To: 'Michael Harmon' <michael.harmon@cityofsitka.org>
Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: RE: permit questions

Mr. Harmon,

I'm sorry to hear you are in the hospital. I hope everything is ok.

I'm aware of the owners as well as the contractors, options. I deal with both on a regular basis.

My concerns are not about whether or not the contractor performs and I have not noted the contractor being on top of getting the required permits. Quite the contrary.

The city is the applicant and my concerns are that the city is not protected if the permit is not approved. It's all outlined in the previous correspondence.

I will wait to hear from Mr. Hanson.

Thanks,

MARKO DAPCEVICH
Project Manager

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From: Michael Harmon [<mailto:michael.harmon@cityofsitka.org>]
Sent: Friday, January 27, 2017 11:10 AM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net;
Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: Re: permit questions

Mr. Dapceвич:

Mark is on leave and I am in the hospital. Brian Hanson will be addressing your questions as appropriate. There are a number of options an owner can take if a contractor does not comply with the contract requirements. Thus far the contractor has been very good to work with and as you have noted are on top of getting the permits done as required.

Michael Harmon
=====
Public Works Director
100 Lincoln Street
Sitka, AK 99835
(907) 747-1823

On Jan 27, 2017, at 9:02 AM, Marko Dapceвич <mdapceвич@interstaterestoration.com> wrote:

Mr. Gorman,

Thank you for the reply. Can I get an eta on that response? I will need this information to complete my draft letter Mr. Hanson released to the Assembly. I'd like to work on it this weekend.

Thank you,

MARKO DAPCEVICH
Project Manager

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<image004.gif>

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From: Mark Gorman [<mailto:mark.gorman@cityofsitka.org>]
Sent: Thursday, January 26, 2017 11:55 AM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: RE: permit questions

I am about to leave town and will ask Michael Harmon to provide you a response to your question and the latter part of your email.

Sincerely,

Mark

From: Marko Dapcevich [<mailto:mdapcevich@interstaterestoration.com>]
Sent: Thursday, January 26, 2017 9:36 AM
To: Mark Gorman <mark.gorman@cityofsitka.org>
Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: Re: permit questions

Thanks for the quick response. That would explain why the application was submitted so late if the applicant was the contractor. However, that is not the case. The applicant is the city. Typically the applicant for this type of permit would be the owner. According to the corp. they probably would not even accept an application from the contractor. This is not the first time the city has gone through this process with the corp. I appreciate that the contractor is to secure the permits and costs. That is also typical. I hope that he will be paying for staff time (like I did for my records request) and the cost of the consultant that is the agent for the city on this application. Is he? So, going Back to my original question, is there anything in the contract that makes it contingent on securing this corp. permit? It's a long document and I am not as familiar with it as staff. I may very well have overlooked such a provision. Or, more succinctly, is the city protected if this application is denied?

Thank you again,

Sent from my iPhone

On Jan 26, 2017, at 9:48 AM, Mark Gorman <mark.gorman@cityofsitka.org> wrote:

Good morning Mr. Dapceвич,

It is the design-builder's responsibility to secure the permits for the GPIIP dock project, as highlighted in the attached relevant pages of the contract agreement and the general provisions.

Please let me know if you have additional questions,

Sincerely,

Mark Gorman

Dave Longtin, P.E.
Senior Engineer
City and Borough of Sitka
Department of Public Works
100 Lincoln Street
Sitka, AK 99835
P (907) 747-1883
F (907) 747-3158

Mr. Gorman,

The Army Corp of Engineers, Alaska District, is now taking public comment on the GPIIP multi-purpose dock. It appears this application was recently initiated.

Along with the other issues that I have addressed it appears that we have entered into a contract with a private contractor to build a dock that we don't even have the required permits to build. Is this correct?

I did not see anything in the contract that makes it contingent on Army Corp. approval. Please inform me if I missed it and my concern is invalid.

Thank you in advance for your prompt reply.

MARKO DAPCEVICH
Project Manager

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<image004.gif>

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<GPIP dock agreement.pdf>

<GPIP dock general conditions.pdf>

Sara Peterson

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Thursday, February 02, 2017 3:56 PM
To: Brian Hanson
Cc: Melissa Henshaw; Sara Peterson; Reuben Yerkes; Assembly;
shannon_haugland@yahoo.com; news@kcaw.org; Mark Gorman
Subject: RE: Your Public Records Request
Attachments: Re: permit questions

Mr. Hanson,

Thank you for letting me know that you are unable to comply with my request at this time. I was going to email you since it was promised yesterday.

I'm not sure what priority commitments you have, or how many. But you did mention it twice. The second mention is almost foreshadowing notice of another delay in a week.

The original records request is now roughly six weeks old and a month past due. While it may have been encompassing, it was a simple enough request. I would think at some point soon this may achieve "priority commitment status".

Maybe in the mean time you can address the can that was kicked down to you. The correspondence is attached on this email. The last response I received was on 1-27-17 from Michael Harmon saying that you would address it. This is a simple question that the administrator and the public works director don't seem able to answer. Is the city protected if the Corp. denies the permit request that was only submitted last month and a month after the contract was signed? I did not see any clause in the contract that would do so. It's all outlined in the attached correspondence.

As you are aware, on 1-20-17 I sent Mayor Hunter a five page memo outlining the various violations of the code and charter in regards to the GPIP dock. On the phone I asked the Mayor to "do the right thing" and bring this before the Assembly at the first meeting in February. I copied you, Assembly Member Bean, and the Administrator on this email. Subsequently you copied at least the rest of the Assembly on this. I have not heard a word back from anyone.

Coincidentally, the closing of the agenda for that meeting and the time frame you give me for the possibility of addressing my records request are about the same.

If my records request is not completely and legally complied with, and the GPIP dock is not on the agenda then I will be appealing your denial of this records request to the Assembly as outlined on the public records request form.

One of the things I worked hard at, for so many years, was to make the City government servants to the citizens of Sitka. It saddens me to see what I am seeing now.

Regards,

MARKO DAPCEVICH
Project Manager

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From: Brian Hanson [mailto:brian.hanson@cityofsitka.org]
Sent: Thursday, February 2, 2017 1:34 PM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>; Sara Peterson <sara.peterson@cityofsitka.org>; Reuben Yerkes <reuben.yerkes@cityofsitka.org>
Subject: Your Public Records Request

Marko,

I didn't get to your request as expected. I have had many other priority commitments. I don't expect to get to your matter until next week. I'll do so as soon as possible next week, but I continue to have many other priority commitments.

I, again, would appreciate your patience. In the meantime, please don't hesitate to contact me if you have any questions or concerns.

Brian

Brian E. Hanson

Municipal Attorney

City
100



and Borough of Sitka, Alaska
Lincoln Street, Sitka, Alaska 99835
(907)747-1879

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Sara Peterson

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Friday, January 27, 2017 9:29 AM
To: Michael Harmon
Cc: Mark Gorman; Brian Hanson; garrywhite@gci.net; Matthew Hunter (Assembly); David Longtin; Maegan Bosak; Assembly
Subject: RE: permit questions

Mr. Harmon,

I'm sorry to hear you are in the hospital. I hope everything is ok.

I'm aware of the owners as well as the contractors, options. I deal with both on a regular basis.

My concerns are not about whether or not the contractor performs and I have not noted the contractor being on top of getting the required permits. Quite the contrary.

The city is the applicant and my concerns are that the city is not protected if the permit is not approved. It's all outlined in the previous correspondence.

I will wait to hear from Mr. Hanson.

Thanks,

MARKO DAPCEVICH
Project Manager

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From: Michael Harmon [mailto:michael.harmon@cityofsitka.org]
Sent: Friday, January 27, 2017 11:10 AM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net;

Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>

Subject: Re: permit questions

Mr. Dapceвич:

Mark is on leave and I am in the hospital. Brian Hanson will be addressing your questions as appropriate. There are a number of options an owner can take if a contractor does not comply with the contract requirements. Thus far the contractor has been very good to work with and as you have noted are on top of getting the permits done as required.

Michael Harmon

=====
Public Works Director
100 Lincoln Street
Sitka, AK 99835
(907) 747-1823

On Jan 27, 2017, at 9:02 AM, Marko Dapceвич <mdapceвич@interstaterestoration.com> wrote:

Mr. Gorman,

Thank you for the reply. Can I get an eta on that response? I will need this information to complete my draft letter Mr. Hanson released to the Assembly. I'd like to work on it this weekend.

Thank you,

MARKO DAPCEVICH
Project Manager

INTERSTATE

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mdapceвич@interstaterestoration.com
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From: Mark Gorman [<mailto:mark.gorman@cityofsitka.org>]

Sent: Thursday, January 26, 2017 11:55 AM

To: Marko Dapceвич <mdapceвич@interstaterestoration.com>

Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly

<assembly@cityofsitka.org>

Subject: RE: permit questions

I am about to leave town and will ask Michael Harmon to provide you a response to your question and the latter part of your email.

Sincerely,

Mark

From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]

Sent: Thursday, January 26, 2017 9:36 AM

To: Mark Gorman <mark.gorman@cityofsitka.org>

Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>

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Or, more succinctly, is the city protected if this application is denied?

Thank you again,

Sent from my iPhone

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Good morning Mr. Dapceвич,

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Mark Gorman

Dave Longtin, P.E.
Senior Engineer
City and Borough of Sitka
Department of Public Works
100 Lincoln Street
Sitka, AK 99835
P (907) 747-1883
F (907) 747-3158

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<GPIP dock agreement.pdf>

<GPIP dock general conditions.pdf>

Sara Peterson

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Dave Longtin, P.E.
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<GPIP dock agreement.pdf>

<GPIP dock general conditions.pdf>

Sara Peterson

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Friday, January 27, 2017 8:39 AM
To: Brian Hanson
Cc: Melissa Henshaw; Sara Peterson
Subject: RE: Your Public Records Request

Thanks for the response.

I did state that I believe the records request is incomplete. To be clear, it is not just what was excluded for privilege and protected reasons. There is also other known correspondence that was not included as well as references to attachments and emails strings that appeared to be incomplete.

All of the "research, additional investigation, legal research, and analysis" should have been already completed with my initial request. If not, then it can only mean that the initial request was not completed in earnest. If the city will require additional fees to complete this request, I will not pay.

Obviously the city's ten day response time from the initial request has long expired. Regardless, I can certainly be patient until next week.

If my request is not completed to my satisfaction I will consider my 10 day time frame for assembly appeal to commence from the time that I receive a final response from you.

Thank you,

MARKO DAPCEVICH
Project Manager

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From: Brian Hanson [mailto:brian.hanson@cityofsitka.org]
Sent: Tuesday, January 24, 2017 4:50 PM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>

Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>; Sara Peterson <sara.peterson@cityofsitka.org>

Subject: Your Public Records Request

Marko,

This will respond to your emails to Deputy Clerk Melissa Henshaw, dated January 14, 2017, and January 16, 2017. In those emails you complain that CBS's response, dated January 4, 2017, to your Public Records Request (PRR), dated December 17, 2016, is incomplete and wrongly relies on the attorney-client privilege to exclude production of certain requested communications.

Please be advised that I will reconsider your PRR in full. This reconsideration will require additional investigation, legal research, and analysis. However, my busy schedule does not permit immediate attention to this matter.

I expect to complete the reconsideration of your PRR and respond to you by next Wednesday, February 1, 2017. I would appreciate your patience until then. In the meantime, please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian

Brian E. Hanson
Municipal Attorney
City and Borough of Sitka, Alaska
(907)747-1879

Sara Peterson

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Thursday, January 26, 2017 9:36 AM
To: Mark Gorman
Cc: Michael Harmon; Brian Hanson; garrywhite@gci.net; Matthew Hunter (Assembly); David Longtin; Maegan Bosak; Assembly
Subject: Re: permit questions

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<GPIIP dock agreement.pdf>

<GPIIP dock general conditions.pdf>

Sara Peterson

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Wednesday, January 25, 2017 10:35 PM
To: Mark Gorman
Cc: Assembly; jamie.r.hyslop@usace.army.mil
Subject: POA-2016-576

Mr. Gorman,

The Army Corp of Engineers, Alaska District, is now taking public comment on the GPIP multi-purpose dock. It appears this application was recently initiated.

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Sara Peterson

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Friday, December 23, 2016 10:51 AM
To: Sara Peterson
Cc: Melissa Henshaw
Subject: Re: Public Records Request

Merry Christmas to you too.
Thanks,

Sent from my iPhone

On Dec 23, 2016, at 11:38 AM, Sara Peterson <sara.peterson@cityofsitka.org> wrote:

Of course, Marko. Merry Christmas!

Melissa is our Records Specialist and will be working with staff to compile the information and contact you when the request is complete. I will be out of the office next week. If you have any questions regarding your request you can contact her at melissa.henshaw@cityofsitka.org or 747-1826.

Best,

Sara

From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]
Sent: Friday, December 23, 2016 9:29 AM
To: Sara Peterson <sara.peterson@cityofsitka.org>
Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>
Subject: Re: Public Records Request

Proceed. However, I expect it to be complete. If a document needs to be redacted, then so be it. But I expect it to be included.

Thank you,

Sent from my iPhone

On Dec 23, 2016, at 10:10 AM, Sara Peterson <sara.peterson@cityofsitka.org> wrote:

Hi Marko,

After speaking with respective staff this week, I'm estimating the cost of this records request to be around \$250. It could be more or less once we get into the details. Would you like us to proceed with gathering the information?

Sara

From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]
Sent: Wednesday, December 21, 2016 12:14 PM
To: Sara Peterson <sara.peterson@cityofsitka.org>
Subject: Re: Public Records Request

That's fine. Do you have an eta? We are three days into the ten.
Thank you.

Sent from my iPhone

On Dec 17, 2016, at 1:21 PM, Marko Dapceвич
<mdapceвич@interstaterestoration.com> wrote:

Sarah,
Please see attached.
Thank you,

MARKO DAPCEVICH
Project Manager

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Attachments: Scan0004.pdf; Scan0005.pdf

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Sara Peterson

From: Marko Dapcevich <markodap@hotmail.com>
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To: Brian Hanson
Cc: Mark Gorman; Assembly; Reuben Yerkes
Subject: Re: Your email to Mark Gorman of 12/13/16

Brian,

Thank you for your prompt and thorough response.

I appreciate the time and consideration you put into your email. I received nothing from Mr. Gorman. I will assume at this point, you are responding on his behalf as well.

While I do not wish to get into a debate with you, I would like to expand my thoughts on the subject.

I would disagree with you on your interpretation. Maybe we can agree to disagree. Or, maybe we can agree that the ordinance could be worded a little more clearly. I still contend that to not be included is being excluded. Any other person would need their presence requested in the affirmative in the motion, or they are excluded. Since Roberts rules of order require motions be made in the affirmative it seems counter intuitive in both senses. That being said, your interpretation makes sense as well.

You are correct that the clerk is the parliamentarian. That was a miscue on my part. That ordinance was passed after my time. However, the code still does state that "the attorney or clerk may comment on parliamentary, procedural and/or legal issues". (2.04.130c)

That traditionally has been the case. And, in my opinion, it would be good for corrections like that to be made. A statement that something is required in the charter can stick with both the Assembly and the public unless it is immediately corrected.

Since I was not privy to a motion that you distributed at the meeting, that was not in the packet, I stand by my statement that the motion prepared by staff (in the assembly packet) was not compliant to AS 44.62.310(b).

I will also stand by my statement that there is nothing in the Charter that requires the clerk, administrator, or attorney into executive session.

Since you have copied the rest of the Assembly on this, for their future reference, please clarify that to them.

I will make that public records request with the clerk as you requested.

Thank you again for your time in responding. You are the city attorney and I respect your opinions. I, after all, am just a spectator.

Regards.

Marko Dapcevich

503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Wednesday, December 14, 2016 1:22:57 PM
To: markodap@hotmail.com
Cc: Mark Gorman; Assembly; Reuben Yerkes
Subject: Your email to Mark Gorman of 12/13/16

Marko,

This will respond to your above referenced email.

SGC 2.04.020.F. provides that the administrator, attorney and clerk **“will attend executive sessions of the assembly, unless otherwise excluded in the motion to enter into executive session.”** (emphasis added) The language of the code is mandatory, i.e., they will attend unless excluded. Since neither the administrator, attorney, nor clerk were excluded in last night’s motion to go into executive session, they were obligated by code to attend the executive session.

As for the attendance of the administrator, attorney, and/or clerk in executive sessions during your tenure on the Assembly, the code may have been different or the motions may have excluded certain participants. Regardless, under these circumstances, I don’t believe it would be helpful for me to opine on past actions of past assemblies

Please note, the municipal attorney is not parliamentarian. SGC 2.04.110, **adopted in 2013**, provides: **“The municipal clerk shall act as parliamentarian.”** (emphasis added) Regardless, there was no reason for the parliamentarian to make a correction.

Also note, it’s my opinion that the proposed motion to enter into executive session prepared by staff was compliant with AS 44.62.310(b). I’m not sure you’re referring to the same proposed motion as me. There was a revised proposed motion that was presented to the Assembly at the meeting which wasn’t in the Assembly packet. I assisted in its preparation and advised the clerk that it was legally compliant.

Finally, with respect to your document request, please make a formal Public Records Request with the clerk.

Thank you for your interest in the City and Borough of Sitka. Please don’t hesitate to contact me if you have any questions or concerns.

Regards,

Brian

Brian E. Hanson
Municipal Attorney
City and Borough of Sitka
(907)747-1879

Mark Gorman

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Tuesday, March 07, 2017 4:45 PM
To: Mark Gorman; Brian Hanson
Cc: Assembly; shannon_haugland@yahoo.com
Subject: Questions

Mr. Gorman,

For six weeks I've been asking two simple questions. My most recent email of eight days ago has been ignored.

Please explain to me which provision in the contract indemnifies the city if the Army Corp. of Engineers permit is not approved.

Please confirm whether or not Turnigan Marine is paying the city for the staff time and consultant hired by the city to assist with the Army Corp. of Engineers permit process.

If there is a reason why you cannot provide me with the above information please explain why.

Thank you,

Marko Dapceвич
503-956-6240

Mark Gorman

From: Marko Dapceвич <markodap@hotmail.com>
Sent: Monday, February 27, 2017 5:52 PM
To: Mark Gorman
Cc: Brian Hanson; Matthew Hunter (Assembly); Marko Dapceвич
Subject: Re: GPIIP

Mr. Gorman,

To be very clear, I am not representing interstate restoration. We are not in the dock building business. You will have noticed some correspondence coming from my personal email as well. It is simply a matter of which computer is handy. I will make an effort to limit future correspondence to my personal email.

This email was sent to Mr. Hanson as well.

These questions clearly do not relate to any court action I may take in the future. That action would be for injunctive relief against the contract you signed in violation of the code and charter.

Remember, this started as a simple request to the mayor to do the right thing. This is the course you all have chosen. I had hoped my call and email to the mayor would have been the end of my involvement. I just wanted the mayor to bring this to the assembly for corrective action.

You all have repeatedly taken the position that nothing wrong has occurred here. If that is the case, why so much resistance?

I would appreciate a response to my simple and legitimate questions.

Thank you,

Sent from my iPhone

On Feb 27, 2017, at 6:11 PM, Mark Gorman <mark.gorman@cityofsitka.org> wrote:

Mr. Dapceвич,

Brian Hanson is out of the office. As you have threatened to take legal action against the City and Borough of Sitka, Mr. Hanson has requested that all correspondence regarding your questions go through his office.

As with several emails from you, I see that they are coming from Interstate. I assume that in these actions you are representing Interstate in these requests. If so, it would probably be helpful for us to have the contact information of the Interstate corporate attorney.

Sincerely,

Mark Gorman

From: Marko Dapceвич [<mailto:mdapceвич@interstaterestoration.com>]
Sent: Monday, February 27, 2017 3:41 PM

To: Brian Hanson <brian.hanson@cityofsitka.org>; Mark Gorman <mark.gorman@cityofsitka.org>

Subject: GPIP

I've asked several times and still have not received an answer to the following questions.
Is Turnigan Marine paying for city staff time and the consultant the city hired for the Corp. permit process?

What provision in the contract with Turnigan Marine protects the city if the permit is not issued?

These are simply answered questions.

Thank you,

MARKO DAPCEVICH
Project Manager

INTERSTATE

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888-399-1802 **Fax**
800 622-6433 **24 Hour Emergency Service**

mdapcevich@interstaterestoration.com
www.interstaterestoration.com

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<image004.gif>

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Mark Gorman

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Monday, February 27, 2017 3:41 PM
To: Brian Hanson; Mark Gorman
Subject: GPIP

I've asked several times and still have not received an answer to the following questions.
Is Turnigan Marine paying for city staff time and the consultant the city hired for the Corp. permit process?
What provision in the contract with Turnigan Marine protects the city if the permit is not issued?
These are simply answered questions.
Thank you,

MARKO DAPCEVICH
Project Manager

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Mark Gorman

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Tuesday, February 14, 2017 11:15 AM
To: Brian Hanson; mdapcevich@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Re: Reconsideration of your public record request (PRR)

Thank you for your email.

I guess we still have a difference in opinion.

As far I know, an appeal of this nature has never gone to the assembly. It never happened in my eight years, and I don't remember anything prior or since.

How would such an appeal work before the assembly?

As their legal counsel, I'm sure the assembly will rely on you for how the proceeding would work, so I ask you. Some type of process and rules will obviously have to be worked out in advance.

Thanks,

Marko Dapcevich
503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Wednesday, February 8, 2017 6:04:23 PM
To: markodap@hotmail.com; mdapcevich@interstaterestoration.com
Cc: Melissa Henshaw; Sara Peterson; Mark Gorman; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Aaron Swanson (Assembly); Bob Potrzuski (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly)
Subject: Reconsideration of your public record request (PRR)

Mr. Dapcevich,

This will follow-up on my email to you, dated January 24, 2017, in which I promised to "reconsider your PRR in full." This will also respond to your various emails to Deputy Clerk Melissa Henshaw and myself in which you questioned the completeness and integrity of our responses to your PRR.

I have reconsidered your PRR in full and have come to the conclusion that the CBS was initially entirely responsive. I will address below each of your specific requests ("related to the GPIIP Dock project") by corresponding number.

1. There exists email correspondence between the Municipal Attorney and the Assembly as a body and Assembly members individually which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.
2. There exists email correspondence between the Administrator and the Assembly as a body and Assembly members individually which are public records. Those emails have already been produced to you. I am reproducing those emails to you(see attached) with numbered pages 1 through 6.
3. There exists email correspondence between the Municipal Attorney and the City Administrator which are public records. However, those emails are protected by the "attorney-client privilege"; and, therefore, have not been produced to you. The applicability of the privilege is discussed below.

4. No such correspondence exists. In our original response, CBS produced emails between Garry White and the City Administrator. Mr. White is the Executive Director of SEDA. He is not a GPIIP board member. Therefore, CBS was not required to produce that correspondence. Regardless, we did so. I am reproducing those emails to you (see attached) with numbered pages 7 through 13.
5. No such correspondence exists. If there were such correspondence, it would be protected by the attorney-client privilege and not produced.
6. No such correspondence exists.
7. There exists documents signed between CBS and Turnagain which are public records. Those documents have already been produced to you. I am reproducing those documents to you (see attached), except the contract, with numbered pages 14 through 16.
8. There exists one document circulated amongst the Assembly and Staff which is a public record. That document has already been produced to you. I am reproducing that document to you (see attached) with numbered page 17. There exists another document, a copy of relevant charter and code provisions, circulated amongst the Assembly and Staff in the Executive Session which is a public record. However, that document is protected by the attorney-client privilege; and, therefore, has not been produced to you. The applicability of the privilege is discussed below.

In your email dated January 27, 2017, you state there is “known correspondence that was not included as well as references to attachments and emails strings that appeared to be incomplete.” If you are referring to any correspondence that has not been deemed by me to be protected by the attorney-client privilege, please enlighten me so I may investigate and respond. CBS had its IT Director, along with my Paralegal, search specifically for the requested correspondence. A diligent and good faith search was made which came up with what was produced. I also reviewed my saved emails to confirm CBS’s response to your PRR. I found my saved emails to be consistent with CBS’s initial response. Again, if you have information to the contrary, please share it with me so I may investigate and respond.

Now, I’ll address the attorney-client privilege relied upon. Initially, when I first reviewed your PRR, I relied upon my private practice experience, the past experience of the CBS Legal Department as related to me by my Paralegal, and a CBS Legal Department memo, dated December 11, 2001 (coincidentally from a past Municipal Attorney, Clifford J. Groh II, to you – copy attached), all of which supported my decision to deem the correspondence you requested between me and others as privileged; and, therefore, protected from production to you. Once you objected, I determined it prudent to reconsider my decision. Accordingly, I have performed the additional investigation, legal research and analysis I promised to you which I summarize as follows.

SGC 1.25.040.A.3 states: “Every person has a right to inspect a public record except...[r]ecords required to be kept confidential ... by state law[.]” The state law applicable here is Evidence Rule 503 which states: “A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal service, to the client... between himself... and his lawyer.” Here, my “client” is the Assembly, as a body. My client has not instructed me to waive the privilege. In *Cool Homes, Inc. v. Fairbanks North Star Borough*, 860 P.2d 1248, 1262 (Alaska 1993), the Alaska Supreme Court held: “The privilege thus should be applied only when the revelation of the communication will injure the public interest or there is some other recognized purpose in keeping the communication confidential.” The purpose in keeping my emails confidential is to protect the CBS from financial injury and prevent disclosure of legal discussion and advice on potential related legal liability. The initial allegations presented in an email from an Assembly member to me, which you’ve probably already seen, and your threat of court action have borne out my concerns and realized the purpose which supports my decision.

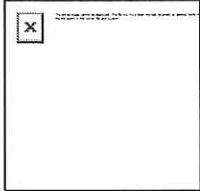
In my research, I discovered another privilege which may apply, i.e., the deliberative process privilege. If a communication is “pre-decisional” and “deliberative in nature”, it is protected. See *Capital Information Group v. State of Alaska, Office of the Governor*, 923 P.2d 29, 36 (Alaska 1996). See also *Gwich’in Steering Committee v. State of Alaska, Office of the Governor*, 10 P.3d 512, 578 (Alaska 2000). Here, I believe the email communications and the discussion during the executive session were deliberative in nature and, of course, all pre-decisional.

Under SGC 1.25.080.A, you have the right to appeal my decision to the Assembly.

Thank you for your patience. Please don't hesitate to contact me if you have any questions or concerns.

Sincerely,

Brian E. Hanson



Brian E. Hanson

Municipal Attorney

City and Borough of Sitka, Alaska

100 Lincoln Street, Sitka, Alaska, 99835

(907)747-1879

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Mark Gorman

From: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Sent: Friday, February 10, 2017 5:56 PM
To: Brian Hanson; markodap@hotmail.com
Cc: Mark Gorman; Michael Harmon; Garry White; Sara Peterson; Reuben Yerkes; Matthew Hunter (Assembly); Steven Eisenbeisz (Assembly); Tristan Guevin (Assembly); Bob Potrzuski (Assembly); Aaron Swanson (Assembly); Kevin Knox (Assembly); Aaron Bean (Assembly); shannon_haugland@yahoo.com; news@kcaw.org
Subject: RE: Response to "permit questions" emails related to the GPIP dock contract

Mr. Hanson,

Thank you for the reply. I appreciate your response, but continue to feel as if my questions are being skirted.

Since your email this morning I have had a chance to review the contract in its entirety. I still have not seen any provision that protects the city if the permit is denied. Could you please be more specific on what provisions of the contract protects the interests of the city? As I have stated previously, I don't understand how the "performance of the contractor" applies when the City and Borough of Sitka is the applicant and the contractor **cannot** be the applicant. I also don't see how any future negotiations between the owner and the contractor can be relied on to alleviate a dispute in the favor of the city.

I find a certain irony in your statement, "it serves no purpose to speculate on what should or should not have been included in the contract." Considering that your justification for executive session and exclusion of certain documents in my public records request seems to be based on exactly such a preemptive concern.

In the previous emails I also asked if the contractor was paying for staff time and the consultant the city hired to assist in applying for the Army Corp. of Engineers permit. It is very clear that is their responsibility. I understand that this is probably a better question for the administrator, but it has been kicked to you. I understand if you would defer this back to him, or the public works director. That would only be appropriate as there is no one in city staff, including the administrator, that can direct you to answer questions directed to them. We will get into that subject a little more in regards to your claiming attorney client privilege between you and the administrator.

I understand that you are the city attorney and really only involved in these contracts to the extent of the contract. However, since this issue has come up you should clearly be able to show a provision in the contract that clearly indemnifies the city from any liability if the permit application is denied. A general we are protected and don't worry about it statement does not appease my very legitimate concerns. Concerns that should be shared by you, the administrator, and the Assembly.

While we are clearly in staunch disagreement on this, as well as other issues, I really do appreciate your responsiveness to my questions and concerns.

I am not trying to make a big public issue out of this entire thing. I did my very best to try and keep my concerns at the Mayor and staff level to address the problems surrounding the entire process around this dock. That is why I have specifically excluded the press and entire assembly until just recently. I tried to work with the Mayor, you, and the administrator to have these issues addressed appropriately to protect the city. It is obvious that mistakes have been made. It was never my goal to focus on that, only to have them addressed at the Assembly level and corrected. As I've said before, the right thing to do is still the right thing to do.

Regards,

P.S. I'll get to your other email as time allows.

MARKO DAPCEVICH
Project Manager

INTERSTATE

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mdapcevich@interstaterestoration.com
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From: Brian Hanson [mailto:brian.hanson@cityofsitka.org]

Sent: Friday, February 10, 2017 10:08 AM

To: markodap@hotmail.com; Marko Dapcevich <mdapcevich@interstaterestoration.com>

Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Michael Harmon <michael.harmon@cityofsitka.org>; Garry White <garrywhite@gci.net>; Sara Peterson <sara.peterson@cityofsitka.org>; Reuben Yerkes <reuben.yerkes@cityofsitka.org>; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; Steven Eisenbeisz (Assembly) <assemblyeisenbeisz@cityofsitka.org>; Tristan Guevin (Assembly) <assemblyguevin@cityofsitka.org>; Bob Potrzuski (Assembly) <assemblypotrzuski@cityofsitka.org>; Aaron Swanson (Assembly) <assemblyswanson@cityofsitka.org>; Kevin Knox (Assembly) <assemblyknox@cityofsitka.org>; Aaron Bean (Assembly) <assemblybean@cityofsitka.org>

Subject: Response to "permit questions" emails related to the GPIP dock contract

Mr. Dapcevich,

This will respond to your emails of January 26 and 27, 2017, regarding the "permit questions" related to the GPIP dock contract.

CBS is adequately protected, considering the attendant risk, if the permit were to be denied. As always, when CBS contracts are being performed, CBS Staff, including the Legal Department, monitor and/or enforce performance by the Contractor as necessary. In this case, in the unlikely event that the permit were denied, appropriate action would be undertaken under the default provisions of the contract and/or as negotiated between the parties.

At this point, with respect to the contract in question, it serves no purpose to speculate on what should or should not have been included in the contract. The contract has been executed and must be performed and enforced according to its terms.

We thank you for your inquiry. We encourage citizens to express their concerns regarding the business of CBS. We strive to be responsive to the concerns expressed by the citizenry. To that end, rest assured I will consider your concerns expressed as to the GPIP dock contract when I review contracts for future improvements that require permits.

Sincerely,

Brian E. Hanson



Brian E. Hanson

Municipal Attorney
City and Borough of Sitka, Alaska
100 Lincoln Street, Sitka, Alaska, 99835
(907)747-1879

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Mark Gorman

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Thursday, February 02, 2017 6:13 PM
To: Brian Hanson; Melissa Henshaw; Sara Peterson; Reuben Yerkes; Assembly; Mark Gorman; shannon_haugland@yahoo.com; news@kcaaw.org
Subject: FW: permit questions

It occurred to me that the email string attached to the last email was incomplete. Below is my reply to Mr. Harmon. That is the end of the email string. As stated before, I have not heard anything since.

Thank you,

MARKO DAPCEVICH
Project Manager

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mdapcevich@interstaterestoration.com
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From: Marko Dapcevich
Sent: Friday, January 27, 2017 11:29 AM
To: 'Michael Harmon' <michael.harmon@cityofsitka.org>
Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: RE: permit questions

Mr. Harmon,

I'm sorry to hear you are in the hospital. I hope everything is ok.

I'm aware of the owners as well as the contractors, options. I deal with both on a regular basis.

My concerns are not about whether or not the contractor performs and I have not noted the contractor being on top of getting the required permits. Quite the contrary.

The city is the applicant and my concerns are that the city is not protected if the permit is not approved. It's all outlined in the previous correspondence.

I will wait to hear from Mr. Hanson.

Thanks,

MARKO DAPCEVICH
Project Manager

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From: Michael Harmon [<mailto:michael.harmon@cityofsitka.org>]
Sent: Friday, January 27, 2017 11:10 AM
To: Marko Dapceвич <mdapceвич@interstaterestoration.com>
Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>
Subject: Re: permit questions

Mr. Dapceвич:

Mark is on leave and I am in the hospital. Brian Hanson will be addressing your questions as appropriate. There are a number of options an owner can take if a contractor does not comply with the contract requirements. Thus far the contractor has been very good to work with and as you have noted are on top of getting the permits done as required.

Michael Harmon
=====
Public Works Director
100 Lincoln Street
Sitka, AK 99835
(907) 747-1823

On Jan 27, 2017, at 9:02 AM, Marko Dapceвич <mdapceвич@interstaterestoration.com> wrote:

Mr. Gorman,

Thank you for the reply. Can I get an eta on that response? I will need this information to complete my draft letter Mr. Hanson released to the Assembly. I'd like to work on it this weekend.

Thank you,

MARKO DAPCEVICH
Project Manager

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From: Mark Gorman [<mailto:mark.gorman@cityofsitka.org>]

Sent: Thursday, January 26, 2017 11:55 AM

To: Marko Dapcevich <mdapcevich@interstaterestoration.com>

Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>

Subject: RE: permit questions

I am about to leave town and will ask Michael Harmon to provide you a response to your question and the latter part of your email.

Sincerely,

Mark

From: Marko Dapcevich [<mailto:mdapcevich@interstaterestoration.com>]

Sent: Thursday, January 26, 2017 9:36 AM

To: Mark Gorman <mark.gorman@cityofsitka.org>

Cc: Michael Harmon <michael.harmon@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net; Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>

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Thank you again,

Sent from my iPhone

On Jan 26, 2017, at 9:48 AM, Mark Gorman <mark.gorman@cityofsitka.org> wrote:

Good morning Mr. Dapcevich,

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Please let me know if you have additional questions,

Sincerely,

Mark Gorman

Dave Longtin, P.E.
Senior Engineer
City and Borough of Sitka
Department of Public Works
100 Lincoln Street
Sitka, AK 99835
P (907) 747-1883
F (907) 747-3158

Mr. Gorman,

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Along with the other issues that I have addressed it appears that we have entered into a contract with a private contractor to build a dock that we don't even have the required permits to build. Is this correct?

I did not see anything in the contract that makes it contingent on Army Corp. approval. Please inform me if I missed it and my concern is invalid.

Thank you in advance for your prompt reply.

MARKO DAPCEVICH
Project Manager

INTERSTATE

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mdapceвич@interstaterestoration.com
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<GPIP dock agreement.pdf>

<GPIP dock general conditions.pdf>

Mark Gorman

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Thursday, February 02, 2017 3:56 PM
To: Brian Hanson
Cc: Melissa Henshaw; Sara Peterson; Reuben Yerkes; Assembly; shannon_haugland@yahoo.com; news@kcaw.org; Mark Gorman
Subject: RE: Your Public Records Request
Attachments: Re: permit questions

Mr. Hanson,

Thank you for letting me know that you are unable to comply with my request at this time. I was going to email you since it was promised yesterday.

I'm not sure what priority commitments you have, or how many. But you did mention it twice. The second mention is almost foreshadowing notice of another delay in a week.

The original records request is now roughly six weeks old and a month past due. While it may have been encompassing, it was a simple enough request. I would think at some point soon this may achieve "priority commitment status".

Maybe in the mean time you can address the can that was kicked down to you. The correspondence is attached on this email. The last response I received was on 1-27-17 from Michael Harmon saying that you would address it. This is a simple question that the administrator and the public works director don't seem able to answer. Is the city protected if the Corp. denies the permit request that was only submitted last month and a month after the contract was signed? I did not see any clause in the contract that would do so. It's all outlined in the attached correspondence.

As you are aware, on 1-20-17 I sent Mayor Hunter a five page memo outlining the various violations of the code and charter in regards to the GPIIP dock. On the phone I asked the Mayor to "do the right thing" and bring this before the Assembly at the first meeting in February. I copied you, Assembly Member Bean, and the Administrator on this email. Subsequently you copied at least the rest of the Assembly on this. I have not heard a word back from anyone.

Coincidentally, the closing of the agenda for that meeting and the time frame you give me for the possibility of addressing my records request are about the same.

If my records request is not completely and legally complied with, and the GPIIP dock is not on the agenda then I will be appealing your denial of this records request to the Assembly as outlined on the public records request form.

One of the things I worked hard at, for so many years, was to make the City government servants to the citizens of Sitka. It saddens me to see what I am seeing now.

Regards,

MARKO DAPCEVICH
Project Manager


INTERSTATE

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From: Brian Hanson [mailto:brian.hanson@cityofsitka.org]
Sent: Thursday, February 2, 2017 1:34 PM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Cc: Melissa Henshaw <melissa.henshaw@cityofsitka.org>; Sara Peterson <sara.peterson@cityofsitka.org>; Reuben Yerkes <reuben.yerkes@cityofsitka.org>
Subject: Your Public Records Request

Marko,

I didn't get to your request as expected. I have had many other priority commitments. I don't expect to get to your matter until next week. I'll do so as soon as possible next week, but I continue to have many other priority commitments.

I, again, would appreciate your patience. In the meantime, please don't hesitate to contact me if you have any questions or concerns.

Brian

Brian E. Hanson

Municipal Attorney

City
100



and Borough of Sitka, Alaska
Lincoln Street, Sitka, Alaska 99835
(907)747-1879

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Mark Gorman

From: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Sent: Friday, January 27, 2017 9:29 AM
To: Michael Harmon
Cc: Mark Gorman; Brian Hanson; garrywhite@gci.net; Matthew Hunter (Assembly); David Longtin; Maegan Bosak; Assembly
Subject: RE: permit questions

Mr. Harmon,

I'm sorry to hear you are in the hospital. I hope everything is ok.

I'm aware of the owners as well as the contractors, options. I deal with both on a regular basis.

My concerns are not about whether or not the contractor performs and I have not noted the contractor being on top of getting the required permits. Quite the contrary.

The city is the applicant and my concerns are that the city is not protected if the permit is not approved. It's all outlined in the previous correspondence.

I will wait to hear from Mr. Hanson.

Thanks,

MARKO DAPCEVICH
Project Manager


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From: Michael Harmon [mailto:michael.harmon@cityofsitka.org]
Sent: Friday, January 27, 2017 11:10 AM
To: Marko Dapcevich <mdapcevich@interstaterestoration.com>
Cc: Mark Gorman <mark.gorman@cityofsitka.org>; Brian Hanson <brian.hanson@cityofsitka.org>; garrywhite@gci.net;

Matthew Hunter (Assembly) <assemblyhunter@cityofsitka.org>; David Longtin <david.longtin@cityofsitka.org>; Maegan Bosak <maegan.bosak@cityofsitka.org>; Assembly <assembly@cityofsitka.org>

Subject: Re: permit questions

Mr. Dapceвич:

Mark is on leave and I am in the hospital. Brian Hanson will be addressing your questions as appropriate. There are a number of options an owner can take if a contractor does not comply with the contract requirements. Thus far the contractor has been very good to work with and as you have noted are on top of getting the permits done as required.

Michael Harmon

=====
Public Works Director
100 Lincoln Street
Sitka, AK 99835
(907) 747-1823

On Jan 27, 2017, at 9:02 AM, Marko Dapceвич <mdapceвич@interstaterestoration.com> wrote:

Mr. Gorman,

Thank you for the reply. Can I get an eta on that response? I will need this information to complete my draft letter Mr. Hanson released to the Assembly. I'd like to work on it this weekend.

Thank you,

MARKO DAPCEVICH
Project Manager

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Sincerely,

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I appreciate that the contractor is to secure the permits and costs. That is also typical. I hope that he will be paying for staff time (like I did for my records request) and the cost of the consultant that is the agent for the city on this application. Is he?

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It's a long document and I am not as familiar with it as staff. I may very well have overlooked such a provision.

Or, more succinctly, is the city protected if this application is denied?

Thank you again,

Sent from my iPhone

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City and Borough of Sitka
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<GPIP dock agreement.pdf>

<GPIP dock general conditions.pdf>

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Sent: Friday, January 27, 2017 9:02 AM
To: Mark Gorman
Cc: Michael Harmon; Brian Hanson; garrywhite@gci.net; Matthew Hunter (Assembly); David Longtin; Maegan Bosak; Assembly
Subject: RE: permit questions

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<GPIIP dock agreement.pdf>

<GPIIP dock general conditions.pdf>

Mark Gorman

From: Mark Gorman
Sent: Friday, January 20, 2017 7:50 PM
To: Matthew Hunter (Assembly); Brian Hanson
Subject: Marko letter

Matt and Brian,

Just read Marko's letter. Wow, what a way to start the weekend. I see it both as a threat and ultimatum.

We need to huddle on this on Monday.

Mark

Mark Gorman

From: Marko Dapceovich <markodap@hotmail.com>
Sent: Friday, January 20, 2017 7:26 PM
To: Matthew Hunter (Assembly)
Cc: Aaron Bean (Assembly); Mark Gorman; Brian Hanson
Subject: GPIIP
Attachments: gpip.doc

Matt,

Thanks for taking the time to speak with me today. Attached is a draft of the memo we discussed. As I said, I won't be sending this to the entire assembly yet. I want to give you the opportunity to address these concerns and to bring them to the assembly for corrective action. It is not my wish to pursue this any further than this email. However, know that I will. Sitka is my life long home and I will always do what I think is in the best interest of Sitka. You know that about me.

I have copied Assembly member Bean as I have already been in contact with him. I have also copied the city attorney and administrator as it is only appropriate to not go behind their backs.

As someone who oversees multi million dollar projects, I know that the cost is rising daily even though you don't see actual work being produced. That being said, I would expect to see action on this very soon. I expect to see it on the agenda for the first meeting in February. That should allow plenty of time for a strategy to be developed. If it's not there, I will send it to the rest of the assembly and the press in the hopes that it will inspire action. If that effort is ignored, I will pursue the matter in the courts.

Matt, you are my neighbor, my Mayor, and a friend. Please don't think I am giving you an ultimatum or threat. I hope you see this more as a request to address an issue that needs to be addressed with high priority. If it was any different, I would not have called you first.

If you have any questions you know you can call me anytime.

I respect you and have faith that you will do the right thing. Thanks you,

Marko Dapceovich
503-956-6240

Mark Gorman

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Saturday, December 17, 2016 10:07 AM
To: Brian Hanson
Cc: Mark Gorman; Assembly; Reuben Yerkes
Subject: Re: Your email to Mark Gorman of 12/13/16

Brian,

Thank you for your prompt and thorough response.

I appreciate the time and consideration you put into your email. I received nothing from Mr. Gorman. I will assume at this point, you are responding on his behalf as well.

While I do not wish to get into a debate with you, I would like to expand my thoughts on the subject.

I would disagree with you on your interpretation. Maybe we can agree to disagree. Or, maybe we can agree that the ordinance could be worded a little more clearly. I still contend that to not be included is being excluded. Any other person would need their presence requested in the affirmative in the motion, or they are excluded. Since Roberts rules of order require motions be made in the affirmative it seems counter intuitive in both senses. That being said, your interpretation makes sense as well.

You are correct that the clerk is the parliamentarian. That was a miscue on my part. That ordinance was passed after my time. However, the code still does state that "the attorney or clerk may comment on parliamentary, procedural and/or legal issues". (2.04.130c)

That traditionally has been the case. And, in my opinion, it would be good for corrections like that to be made. A statement that something is required in the charter can stick with both the Assembly and the public unless it is immediately corrected.

Since I was not privy to a motion that you distributed at the meeting, that was not in the packet, I stand by my statement that the motion prepared by staff (in the assembly packet) was not compliant to AS 44.62.310(b).

I will also stand by my statement that there is nothing in the Charter that requires the clerk, administrator, or attorney into executive session.

Since you have copied the rest of the Assembly on this, for their future reference, please clarify that to them.

I will make that public records request with the clerk as you requested.

Thank you again for your time in responding. You are the city attorney and I respect your opinions. I, after all, am just a spectator.

Regards.

Marko Dapcevich

503-956-6240

From: Brian Hanson <brian.hanson@cityofsitka.org>
Sent: Wednesday, December 14, 2016 1:22:57 PM
To: markodap@hotmail.com
Cc: Mark Gorman; Assembly; Reuben Yerkes
Subject: Your email to Mark Gorman of 12/13/16

Marko,

This will respond to your above referenced email.

SGC 2.04.020.F. provides that the administrator, attorney and clerk **“will attend executive sessions of the assembly, unless otherwise excluded in the motion to enter into executive session.”** (emphasis added) The language of the code is mandatory, i.e., they will attend unless excluded. Since neither the administrator, attorney, nor clerk were excluded in last night’s motion to go into executive session, they were obligated by code to attend the executive session.

As for the attendance of the administrator, attorney, and/or clerk in executive sessions during your tenure on the Assembly, the code may have been different or the motions may have excluded certain participants. Regardless, under these circumstances, I don’t believe it would be helpful for me to opine on past actions of past assemblies

Please note, the municipal attorney is not parliamentarian. SGC 2.04.110, **adopted in 2013**, provides: **“The municipal clerk shall act as parliamentarian.”** (emphasis added) Regardless, there was no reason for the parliamentarian to make a correction.

Also note, it’s my opinion that the proposed motion to enter into executive session prepared by staff was compliant with AS 44.62.310(b). I’m not sure you’re referring to the same proposed motion as me. There was a revised proposed motion that was presented to the Assembly at the meeting which wasn’t in the Assembly packet. I assisted in its preparation and advised the clerk that it was legally compliant.

Finally, with respect to your document request, please make a formal Public Records Request with the clerk.

Thank you for your interest in the City and Borough of Sitka. Please don’t hesitate to contact me if you have any questions or concerns.

Regards,

Brian

Brian E. Hanson
Municipal Attorney
City and Borough of Sitka
(907)747-1879

Mark Gorman

From: Marko Dapcevich <markodap@hotmail.com>
Sent: Tuesday, December 13, 2016 11:43 PM
To: Mark Gorman
Cc: brian.hanson@cithyofsitka.org; assembly.bean@cityofsitka.org; shannon_haugland@yahoo.com

Mr. Gorman,

As usual, I watched the Assembly meeting tonight. While there were a few things that bothered me tonight about process. I feel compelled to write about what happened near the end of the meeting.

You stated that the Clerk, Attorney, and yourself (Administrator) are automatically included in executive session per the Charter.

Could you please clarify what section of the charter states, or even infers that? I've copied Mr. Hanson as well so maybe he can help. As parliamentarian to the Assembly I expected his correction during the meeting. Maybe I'm mistaken and it was not warranted.

As someone who studied the code, charter, and Roberts rules of order for years, I would like to consider myself somewhat knowledgeable on all three.

In my eight years on the Assembly I cannot remember one instance where the municipal clerk attended an executive session. I can also remember several executive sessions where the Attorney and/or the Administrator did not attend. Please correct me if my exclusion of these positions was in violation of the charter.

The general code does address these three positions in executive session:

2.04.020 F. The municipal administrator (or his/her designee) serving as chief administrative officer for the assembly; the municipal attorney to assure compliance with Alaska's Open Meetings Act and to advise on legal issues; and the municipal clerk as parliamentary advisor will attend executive sessions of the assembly, unless otherwise excluded in the motion to enter into executive session. Other persons may be invited into the executive session by an approved motion of the assembly and must be named in said motion.

Since they were not included, it seems that all three were excluded in Assembly Member Beans motion that was seconded and approved unanimously.

As long as I'm taking the time to write this letter, I would like to commend Assembly Member Bean on his motion for executive session. The suggested motion by staff was not compliant with AS 44.62.310 (b) which states, "*The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private.*" Clearly there is nothing in the procurement policy that requires an executive session. It could only be action taken in regards to that policy that could qualify for an executive session.

At this time I would like to ask for copies of any documents regarding the GPIIP dock dating from the time of the city press release. This would include any emails, letters, contracts, letters of intent, or any other relevant documents from the City and Borough of Sitka. If a formal FOIA request is required, please let me know and I will file one with the Municipal Clerk.

Thank you in advance for your prompt response and consideration of my email.

Regards,

Marko Dapceвич
Project Manager,
Interstate Restoration
503-956-6240