

BRIAN J. ESSI

216 346 3434
15306 Edgewater Drive
Lakewood, Ohio 44107
bjessi@sbcglobal.net

February 2, 2017

VIA CERTIFIED MAIL

Kevin M. Butler, Director of Law
City of Lakewood Law Department
12650 Detroit Avenue
Lakewood, Ohio 44107

Re: Public Records Requests – PRR 324-346

Dear Law Director Butler:

This communication serves as both a public records request and documentation of the repeated failure of the City of Lakewood to comply with the Ohio Public Records Act.

Over the past 19 months, I have submitted over 225 public records requests to your public office. Under most circumstances, you and the City of Lakewood have failed to provide prompt copies within a reasonable period. Those requests that have been answered routinely fail to comply with R.C. Chapter 149. Thus, I am copying the Ohio Attorney General's Office and the Ohio Auditor of the State to ensure that you and your public office properly respond to each of these requests in accordance with R.C. Chapter 149.

Provide the records responsive to each request to bjessi@sbcglobal.net in an electronic medium (i.e., WORD, PDF, XLS, etc.) and at no cost. **Where the request seeks correspondence or communications you must provide the actual correspondence or communication in an electronic medium.** Upon information and belief, the City of Lakewood has the practice of copying and pasting portions of a correspondence or communication rather than providing the actual document. Each request seeks, and you must provide, the actual correspondence or communication.

Please note that each item listed below is a distinct request, which is why they have been assigned separate PRR numbers. Your office must respond to each request separately and identify which records are responsive to each request – i.e., do not provide the records in a single disorganized fashion or “document dump” – as they have been assigned separate PRR numbers.

Please note that your standard, “We do not organize all records, documents, writings, drafts and notes based on _____” is not a valid denial of a public records request as the statute requires your public office to give me the opportunity to revise the request by informing me how the City of Lakewood ordinarily maintains and accesses its records. R.C. 149.43(B)(2). You have not done so. Moreover, the City of Lakewood cannot simply refuse to

produce public records because the requested public record is not kept within the walls of City Hall. For example, I am aware that the city employees and officials (including you as a prior city council member) use their personal and business email addresses to hold and create records while performing a public function for their public office and, as a result, those records are under the public office's jurisdiction and must be produced.

Where you believe the City of Lakewood has already responded to a specific records request, please identify the date that you believe your office responded to that request and provide a copy of the response, attaching the documents responsive to that request.

It cannot be overstated that the City of Lakewood must interpret the Ohio Public Records Act broadly in favor of disclosure in responding to these requests. Where the City of Lakewood denies any part of a public records request, the statute requires the City of Lakewood to give me the opportunity to revise the denied request, by informing me how the office ordinarily maintains and accesses its records. Thus, the Public Records Act expressly promotes cooperation to clarify and narrow requests that are ambiguous or overly broad, in order to craft a successful, revised request.

Where the City of Lakewood believes that any information in a public records request is exempt from the duty to permit public inspection or copying, the public office must either notify me of any redaction or make the redaction plainly visible. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the City of Lakewood shall make available all of the information within the public record that is not exempt. Therefore, your office may redact only that part of a record subject to an exception or another valid basis for withholding. In addition, if the City of Lakewood denies a request, in part or in whole, your public office must provide me with an explanation, including legal authority, setting forth why the request was denied.

As a failure to properly respond to the below public records requests may result in litigation, the City of Lakewood is put on notice that it has an absolute duty under both the Federal and Ohio Rules of Civil Procedure to preserve information that may be relevant to a lawsuit – including electronic information or data. A violation of this duty can result in severe sanctions, including the entry of a default judgment. Electronic information systems may automatically remove or delete information as routine functions of their operating system. While the Federal and Ohio Rules of Civil Procedure may prohibit a court from imposing sanctions if the electronically stored information is lost as a result of the routine, good-faith operation of the City of Lakewood's electronic information system, such a "safe haven" does not mean that the City of Lakewood is permitted to exploit this routine function to thwart its discovery obligations. To the contrary, whenever a duty to preserve information is imposed, as has been done now, intervention in the routine operation of an information system is an essential element of that obligation. By allowing the City of Lakewood to continue to destroy stored information that it is required to preserve, the City of Lakewood exposes itself to potentially severe sanctions. Simply stated, now that the City of Lakewood reasonably anticipates litigation it must suspend its routine document retention/destruction policy and put in place a "litigation hold" to ensure the preservation of relevant documents.

Below please find my public records requests, which your public office must respond to within a reasonable period of time. It is well settled that a 72-hour timeframe to respond would

constitute “without delay” and “with reasonable speed.” To that end, I expect a complete response within 72 hours. If the public records requests are not responded to within a reasonable period of time, I will have no choice but to seek mediation through the Ohio Attorney General’s public records mediation program or file an action in mandamus against your public office and/or yourself. The defined terms used below shall have the same meaning as set forth in my March 15, 2015 requests.

- PRR324 On September 15, 2016, Jenn Pae, Lakewood’s Finance Director, wrote on Facebook: “The auditors looked at the numbers and looked at the public process. No findings. None.” Please produce all records, correspondence, emails and communications – electronic or otherwise that evidence the auditors “looked at the public process.”
- PRR325 On September 15, 2016, Jenn Pae, Lakewood’s Finance Director, wrote on Facebook: “The auditors looked at the numbers and looked at the public process. No findings. None.” Please produce all records, correspondence, emails and communications – electronic or otherwise that evidence the auditors made or had “no findings.”
- PRR326 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned the City paying \$29,000 (or approximately that amount) for a “market study.” Please produce all records, correspondence emails and communications – electronic or otherwise that evidence the name of the person or entity who conducted the “market study.”
- PRR327 At the December 19, 2016 Finance Committee Meeting, Mayor Summers the City paying \$29,000 (or approximately that amount) for a “market study.” Please produce all records of the “market study” Mayor Summers referred to during said meeting.
- PRR328 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned paying for a “market study” concerning the former Lakewood Hospital site. Please produce the “market study” Mayor Summers referred to during said meeting.
- PRR329 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned paying for a “market study.” Please produce all records, correspondence, emails and communications – electronic or otherwise that evidence the contract, agreement or purchase order to conduct or prepare the “market study.”
- PRR330 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned paying for a “market study.” Please produce all records, correspondence, emails and communications – electronic or otherwise that evidence the payment(s) for the “market study.”

- PRR331 Please produce all records, correspondence, emails and communications – electronic or otherwise that include the curriculum vitae or resume for each appointee to the Wellness Foundation Planning Task Force.
- PRR332 Please produce all records, correspondence, emails and communications – electronic or otherwise that evidence communications among City Council Members, or two or more Council Members which communications contain the name of any appointee to the Wellness Foundation Planning Task Force.
- PRR333 Please produce all records, correspondence, emails and communications – electronic or otherwise by and among City Council Members, or two or more Council Members from November 1, 2016 to December 19, 2016 containing the name or names of any ultimate appointee to the Wellness Foundation Planning Task Force.
- PRR334 Please produce all records, correspondence, emails and communications – electronic or otherwise by and among City Council members, or any of them, from December 19, 2016 to the date of this letter discussing the article written by Brian Essi published in the Lakewood Observer on December 20, 2016 entitled Bad Government 11: “New Foundation’ Objectively Worse in Every Measurable Way” and published on line at <http://lakewoodobserver.com/read/2016/12/20/bad-government-11-new-foundation-is-objectively-worse-in-every>
- PRR335 Please produce all records, correspondence, emails and communications – electronic or otherwise by and among City Council members, or any of them, from December 19, 2016 to the date of this letter containing the name “Essi.”
- PRR336 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned a draft of a document to be used to search for or otherwise attract a developer or partner related to development of the former Lakewood Hospital site property. Please produce all documents, records, correspondence, emails and communications – electronic or otherwise that contain any draft that Mayor Summers referred to at the December 19, 2016 meeting.
- PRR337 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned a draft of a document to be used to seek or attract a developer or partner related to development of the former Lakewood Hospital site property. Please produce all records, correspondence, emails and communications – electronic or otherwise that show any draft (that Mayor Summers referred to at the December 19, 2016 meeting) was communicated or provided to any member of City Council or any public official prior to December 19, 2016.
- PRR338 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned a draft of a document to be used to seek or attract a developer or partner related to development of the former Lakewood Hospital site property. Please produce all records, correspondence emails and communications – electronic or otherwise that show any draft or subsequent draft (that Mayor Summers referred to at the December 19, 2016 meeting) was communicated or

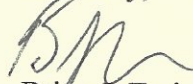
provided to any member of City Council or any public official on or after December 19, 2016.

- PRR339 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned a draft of a document to be used to seek or attract a developer or partner related to the development of former Lakewood Hospital site property. Please produce all records, correspondence, emails and communications – electronic or otherwise that contain the final document (that was the result of the draft(s) that Mayor Summers referred to as a draft at the December 19, 2016 meeting).
- PRR340 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned a draft of a document to be used to seek or attract a developer or partner related to the development of former Lakewood Hospital site property. Please produce the document that was finalized (the earlier version of which Mayor Summers referred to as a draft at the December 19, 2016 meeting).
- PRR341 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned a draft of a document to be used to seek or attract a developer or partner related to the development of former Lakewood Hospital site property. Please produce the draft that Mayor Summers referred at the December 19, 2016 meeting.
- PRR342 At the December 19, 2016 Finance Committee Meeting, Mayor Summers mentioned a draft of a document to be used to seek or attract a developer or partner related to development of the former Lakewood Hospital site property. Please produce all records, correspondence, emails and communications – electronic or otherwise that show the final document (that Mayor Summers had referred to as a draft at the December 19, 2016 meeting) was communicated or provided to any member of City Council or any public official on or after December 19, 2016.
- PRR343 Please produce all correspondence, and email communications (and attachments thereto) between Jennifer Pae and Sujata Sulzer regarding the 2015 audit of the City of Lakewood and preparation of the 2015 CAFR.
- PRR344 Please produce all correspondence, and email communications (and attachments thereto) between Jennifer Pae and Sarah Betzel regarding the 2016 audit of the City of Lakewood and preparation of the 2016 CAFR.
- PRR345 Please produce all correspondence, and email communications (and attachments thereto) between Keith Schuster and Sujata Sulzer regarding the 2015 audit of the City of Lakewood and preparation of the 2015 CAFR.
- PRR346 Please produce all correspondence, and email communications (and attachments thereto) between Keith Shuster and Sarah Betzel regarding the 2016 audit of the City of Lakewood and preparation of the 2016 CAFR.

As I am requesting these public records in an electronic medium, no charge can be levied for the instant public records requests as a matter of law. If the requested records cannot be transmitted in an electronic format, you must provide an explanation as to why they cannot be transmitted in the preferred format.

Thank you for your kind attention to this request. Your cooperation is greatly appreciated.

Sincerely,



Brian J. Essi

cc: Ohio Attorney General Mike DeWine, Public Records Unit
(mediation@ohioattorneygeneral.gov)
Ohio Auditor of State Dave Yost, Open Government Unit (ogu@auditor.state.oh.us)
Mike Summers, Mayor (mike.summers@lakewoodoh.net)
Dru Siley, Director of Planning and Development (dru.siley@lakewoodoh.net)
Sam O'Leary, President of Council (sam.oleary@lakewoodoh.net)
David W. Anderson, Vice-President of Council (david.anderson@lakewoodoh.net)
John Litten, Councilmember (john.litten@lakewoodoh.net)
Dan O'Malley, Councilmember (dan.omalley@lakewoodoh.net)
Thomas Bullock, Councilmember (tom.bullock@lakewoodoh.net)
Cindy Marx, Councilmember (ryan.nowlin@lakewoodoh.net)
Ryan Nowlin, Councilmember (ryan.nowlin@lakewoodoh.net)