

**From:** smbisio@gmail.com <smbisio@gmail.com>  
**Sent:** Thursday, October 17, 2024 3:17 PM  
**To:** 'Jonathan Smith' <smithj@villageofclarkston.org>  
**Cc:** sylvanlawtr@gmail.com; bisiolaw@gmail.com  
**Subject:** RE: Two FOIA Requests

Dear Jonathan:

I'm following up on my FOIA requests of September 14 and 16 that were due on October 7 and 8, respectively. You provided a partial response on October 3 and asked for more time because Nancy Moon was traveling. I granted the extension of time and raised questions about the records I was provided. Ms. Moon had returned from her travels at least as of Sunday, October 13 because she gave a presentation at the Clarkston Independence District Library that I attended. As of today, I'm still awaiting the balance of the records for these two requests and have outlined my concerns below.

#### September 14 FOIA request

This request sought records pertaining to a ballot advocacy quote in the August 13, 2024, Historic District Commission (HDC) minutes that falsely represented the contents of the charter proposal. I asked for the entire email string that formed the basis for the purported State Historic Preservation Office (SHPO) quotation, as well as any other communication between Nancy Moon (the city-appointed chair of the historic district study committee), or between any HDC commissioner and SHPO, regarding the ballot proposal. I received incomplete records that contained what appear to be improper redactions that had no legal basis cited for them.

Other than the email from HDC chair Rob Hauxwell forwarding the FOIA request to Moon that wasn't relevant to the original request (but also contained improper redactions), the material I received was limited to September 6 email communications between Moon and SHPO officials Haley Schriber and Katie Kolokithas. This material is incomplete on its face because Moon references an email from an Amy Arnold containing the purported quote that she presented to the HDC at the August 13 HDC meeting that her husband, as HDC secretary, later inserted into the draft minutes. That email was not provided. If there were other SHPO exchanges regarding the charter proposal, they weren't provided either. A copy of the charter proposal was included, but the email communication that referred to it was not provided.

No emails between any HDC commissioner and SHPO were provided, and it wasn't clear if your request to the HDC commissioners was ignored or if they don't possess responsive records.

The redactions in the Moon emails include the names and email addresses of the government officials involved in the email string in the to/from section of the emails as well

as information contained within and under signature blocks. These were official email communications between Moon in her capacity as historic district study committee chair and state SHPO employees, and a nonresponsive communication from HDC chair Robert Hauxwell forwarding the September 14 FOIA request to Moon.

When government officials choose to communicate using a non-government email address, those communications aren't personal. Communication using personal email addresses is a risky thing to do, given that courts have a variety of extraordinary equitable tools available to ensure that all responsive records are provided, including issuing orders that hard drives and cell phones be turned over for imaging and searching (though no one ever hopes that will be necessary). Moon could have asked for a city email address, or she could have set up a separate email account to use for official city business in her appointed role as the chair of the historic district study committee. Doing neither doesn't allow Moon or the city to conceal information that was freely provided in correspondence between government officials pertaining to Clarkton business. There is no exemption I can think of that would allow the redactions, nor did the city cite any redaction in its response.

Regarding this FOIA request, please provide:

1. A no records certification if there were no email exchanges between the HDC commissioners and SHPO regarding the charter proposal (though I would accept a copy of their emails to you confirming they have no responsive records if that's easier for you);
2. The missing correspondence between Moon and Arnold as well as any other correspondence Moon had with anyone else at SHPO regarding the ballot proposal;
3. Any correspondence associated with the copy of the charter proposal that was provided with no indication as to what correspondence it was attached to; and
4. Unredacted records or the legal basis on which the city plans to rely to support any redactions.

#### September 16 FOIA request

This request asked for all communications between Moon or any HDC commissioner and Julie Meredith (Clarkston Independence District Library director), Ron Campbell or any other Oakland County employee identified with historic preservation, Janet Kreger (Michigan Historic Preservation Network), and any other person or organization involved in historic preservation regarding the charter proposal.

It's not clear if the copy of the proposed charter amendment relates to this FOIA request or the September 14 FOIA request since there was no correspondence associated with it. I also received a copy of a letter from Janet Kreger that I assume relates to this request. No communications associated with these documents were provided.

Regarding this request, please provide:

1. A no records certification if there were no responsive email exchanges involving HDC commissioners (though I would accept a copy of their emails to you confirming they have no responsive records if that's easier for you);
2. The missing correspondence associated with the copy of the charter proposal and/or the Kreger letter;
3. All responsive Moon correspondence;
4. Unredacted records or the legal basis on which the city plans to rely to support the redactions.

Jonathan, I realize you're short-staffed and the HDC commissioners and Moon apparently use private email addresses to conduct city business, making it difficult for the city to search for records. I freely extended the time to respond to the requests, but given the lengths the city, Moon, and the HDC have gone to use the mechanisms of government to oppose the ballot measure, I think at some point it's reasonable to assume the issue is less about Moon and the HDC commissioners needing more time to respond than it is about concealing information that would reveal the breadth of city officials' opposition to the ballot proposal.

Please provide your complete response to these FOIA requests no later than Wednesday, October 23. That should allow everyone ample time to search for records, for the city to provide a complete response to the requests, and for these two requests to be amicably resolved and closed.

Your kind attention to this matter is appreciated.

Sincerely,  
Susan Bisio