

II. PARTIES

1. Petitioner Marty Nitschke is a citizen and taxpayer residing in Clinton Iowa, and is the Chairman of Citizens for Open Government.

2. Petitioner Ed O'Neill is a citizen and taxpayer residing in Clinton Iowa and is a Vice Chairman of Citizens for Open Government.

3. Petitioner Rick Hale is a citizen and taxpayer residing in Clinton Iowa, and is the Secretary of Citizens for Open Government.

4. Petitioner Larry Ketelsen is a citizen and taxpayer residing in Clinton Iowa, and is a Vice Chairman of Citizens for Open Government.

5. Citizens for Open Government is a local unincorporated association of Clinton, Iowa residents who have concerns and questions about the events that led to the \$4.5 million dollar settlement against the City including why no responsible individuals have been identified, how the city was managed during the period that the lawsuit was pending and whether the City of Clinton has any available recourse against other parties or entities.

6. The Respondent City of Clinton, Iowa [the "City"] is a municipal corporation organized and existing under the laws of the State of Iowa, and is controlled by the respondent City Council.

7. Jeffrey L. Farwell is the current City Attorney for the City and has responded to open records requests that are the subject of these proceedings on behalf of the City.

III. FACTS & SPECIFICATIONS

8. On or about September 6, 2011, Clinton citizens John Rowland and Edward O'Neill provided a letter to Clinton City Attorney Jeff Farwell formally requesting, among other items, "all records...that pertain to Clinton City Council Closed Meetings; regarding the Emergency Medical Service Lawsuit brought forth by Tim Schultheis and the U.S. Department of Justice."

9. A true copy of the September 6, 2011 request is marked "Petition, Exh. A" and is appended to this petition.

10. On the next day, September 7, 2011, City Attorney Farwell resisted in writing to the release of **any** of the requested information citing exceptions under Iowa law excusing disclosure of matters presently in litigation and attorney-client privilege.

11. No record of the City Council voting to invoke attorney-client privilege in response to the Rowland-O'Neill request was provided to Rowland or O'Neill in support of the City Attorney's assertion of attorney-client privilege.

12. Moreover, the "matters presently in litigation" referenced by the City Attorney in his records denial had been fully resolved by a litigation settlement agreement approved without public discussion by the Clinton City council one year earlier (on or about September 14, 2010).

13. A true copy of the September 7, 2011 Letter by Farwell denying the Rowland-O'Neill request is marked "Petition, Exh. B" and is appended to this petition.



14. On or about December 1, 2011 the Citizens for Open Government submitted a fresh Open Records request to City Attorney Farwell and the Clinton City Council adopting and re-submitting the prior request made by Rowland and O’Neill.

15. Additionally, the Citizens for Open Government requested specific documents relating to the dispute and litigation over billings for emergency services summarized as follows:

[*Item 1*] A copy of all correspondence between the U.S. Government and the City

[*Item 2*] Records from both open and closed council sessions

[*Item 3*] All records associated with the settlement agreement with Finance Director Deb Neels

[*Item 4*] All records associated with termination of the fire chief and the EMS director

[*Item 5*] Working notes from the City Administrator and City Clerk relating to the closed “EMS lawsuit meetings.”

[*Item 6*] Terms, conditions and payments related to Clinton’s hiring of attorney Michael Walker.

16. A true copy of the December 1, 2011 request is marked “Petition, Exh. C” and is appended to this petition.

17. In response to the Citizens for Open Government request, City Attorney Farwell did produce some items but resisted disclosure of records from the closed City Council sessions, citing Iowa Code § 21.5(4) and also invoking attorney-client privilege.

18. No record of the City Council voting to invoke attorney-client privilege in response to the Citizen’s for OG request was provided in support of the City Attorney’s assertion of privilege.

19. In response to the Petitioner’s records request the City has **not** continued to assert an objection that some of the requested records cannot not be released because they relate to “matters presently in litigation” as contemplated by Iowa Code§ 21.5(1)(c).

20. A true copy of the December 15, 2011 Response of Attorney Farwell is marked “Petition, Exh. D” and is appended to this petition.

21. The current status of compliance with the requested document production from the Petitioners’ perspective is as follows:

REQUEST	COMPLIANCE	NOTES
“...any and all records (either written, electronic, or recorded) that pertain to Clinton City Council Closed Meetings; regarding the Emergency Medical Service Lawsuit brought forth by Tim Schultheis and the U.S. Department of Justice.”	Denied	Request originally made by Rowland-O'Neill Adopted by Citizens for OG
“...personal notes, or working notes, that were either written or recorded by Clinton city Administrator Jeffrey Horne or Patricia Van Loo, Clinton City Clerk that are related to the Closed EMS Meetings mentioned above.”	Denied	Request originally made by Rowland-O'Neill Adopted by Citizens for OG
[Item 1] A copy of all correspondence between the U.S. Government and the City	Produced* *completeness not verified	Request to left is a brief description (original language not quoted)

[Item 2] Records from both open and closed council sessions	Incomplete Only formal minutes from open sessions produced	Request to left is a brief description (original language not quoted)
[Item 3] All records associated with the settlement agreement with Finance Director Deb Neels	Incomplete Only the final agreement and adopting resolution were produced	Request to left is a brief description (original language not quoted)
[Item 4] All records associated with termination of the Fire Chief Mark Regenwhether and EMS director Andrew McGovern	Not Produced except for council minutes resolving not to appeal civil service decisions	Request to left is a brief description (original language not quoted)
[Item 5] Working notes from the City Administrator and City Clerk relating to the closed "EMS lawsuit meetings."	Denied	Request to left is a brief description (original language not quoted)
[Item 6] Terms, conditions and payments related to Clinton's hiring of attorney Michael Walker.	Incomplete No rate agreement or retainer agreement produced.	Request to left is a brief description (original language not quoted)

22. Iowa Code Chapter 21 provides a procedure whereby this court may issue an order for an *in camera* inspection of the sealed city council detailed minutes and audio recordings, and, after weighing the statutory criteria, issue an order which may permit similar inspection by the Petitioners to this action.

23. Other documents and records used or discussed at the closed Clinton City Council sessions are no longer exempt from mandatory public disclosure based on current or pending litigation.

WHEREFORE, Petitioners pray for:

- A. An interim procedural order requiring the Respondent to prepare a detailed *Vaughn* index of all records that are responsive to the Petitioners' requests specifying with respect to each whether the entire record has been produced, or is claimed exempt from disclosure in whole or in part and why. *See, Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).
- B. Orders requiring the City and Respondent to release the requested records, detailed minutes, and recordings.
- C. An award of reasonable costs and attorneys fees as permitted by law.

Respectfully Submitted:

Randall C. Wilson, Esq. PK 0007857
ACLU FOUNDATION OF IOWA
901 Insurance Exchange Bldg.
505 Fifth Avenue
Des Moines, IA 50309-2316
Telephone: 515.243.4032
email: randall.wilson@aclu-ia.org

Michael J. McCarthy, Esq. #AT0005154
McCARTHY, LAMMERS & HINES
326 West Third Street
701 Kahl Building
Davenport, Iowa 52801
Telephone: (563) 324-9117
email: mjmcCarthy701@gmail

Sept 6, 2011
City Attorney: Jeff Farwell
611 S. 3rd St.
Clinton, Iowa 52732

Dear Attorney Farwell:

This letter is a formal request for the release of any and all records (either written, electronic, or recorded) that pertain to Clinton City Council Closed Meetings; regarding the Emergency Medical Service Lawsuit brought forth by Tim Schultheis and the U.S. Department of Justice.

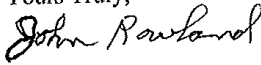
Since this matter has been resolved we would like to review, study, and copy all of these records as soon as possible. We are also willing to pay any of the related fees or charges.

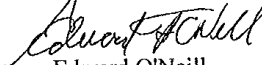
This request is being sought under the Iowa Open Records Statute and Iowa Code of Law section 22.7.61. A copy of the code is attached. We also believe other sections of the Iowa Code will apply to releasing these records.

We believe some of the Clinton City Council Closed Meetings occurred on September 29, 2009; April 13, 2010; and August 4, 2010. This is when Attorney Michael C. Walker probably appeared before the Clinton City Council. There was also a Closed Meeting in February of 2010 when Attorney Dave Pillers made a report to the City Council. We also would like any written or electronic notes or information, or recorded information, from any other related (EMS) Closed Meetings that we have not mentioned or are unaware of.

In addition we would like to view and copy any personal notes, or working notes, that were either written or recorded by Clinton City Administrator Jeffrey Horne or Patricia Van Loo, Clinton City Clerk that are related to the Closed EMS Meetings mentioned above. This would include any written, electronic, or recorded notes about the (EMS) Closed Meetings.

Furthermore, we request that any and all records relating to this matter of Closed EMS Lawsuit Meetings be preserved. That no attempt will be made to destroy, alter, or change any of these written, electronic, or recorded records that exist. Thanks for your time and assistance with this request.

Yours Truly,

John Rowland
1113 Willany Dr.
Clinton, Iowa 52732

Yours Truly,

Edward O'Neill
924 Alanah Lane
Clinton, Iowa 52732

cc: C.A. Jeff Horne
jpr.



Office of the City Attorney

Phone: 563-244-3420 Fax: 563-244-3426
611 South Third Street
P. O. Box 2958
Clinton, IA 52733-2958
www.ci.clinton.ia.us

September 7, 2011

John Rowland
1113 Willany Drive
Clinton, IA 52732

Edward O'Neill
924 Alanah Lane
Clinton, IA 52732

RE: Request for Release of Records

Dear Sirs:

I have received your request for records pertaining to the Clinton City Council closed meetings regarding the Emergency Medical Service lawsuit. I have to inform you that I will not be able to release those records.

Iowa Code §21.5(1)(c) states that closed sessions may be held to discuss strategy with Council on matters that are presently in litigation or where litigation is eminent and where its disclosure would likely prejudice or disadvantage the position of the governmental body in that litigation. Further, under subsection 4 of this same statute it states that the detailed minutes and tape recordings of a closed session shall be sealed and shall not be public records open to public inspection. Further, the contents of those closed sessions would be subject to attorney-client privilege and also, therefore, not subject to disclosure. See Tausz v Clarion-Goldfield Community School District, 569 NW 2d 125 (Iowa 1997).

Therefore, for the reasons stated above I will have to decline your request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeffrey L. Farwell".

Jeffrey L. Farwell
City Attorney
City of Clinton

JLF:kj

December 1, 2011
Attorney Jeff Farwell
Records Custodian:
Clinton City Council
611 S. 3rd St.
Clinton, Iowa

RE: Request for Records Pertaining to Closed Clinton City Council Sessions

Dear Custodian:

We are seeking disclosure of council records related to the 2008 Emergency Medical Service billing lawsuit. This request is supplemental to and inclusive of the items originally requested by Mr. John Rowland and Mr. Ed O'Neill from City Attorney Jeff Farwell on September 6, 2011, which is attached hereto for reference.

Accordingly, we request that you provide us with the following records:

1. A copy of all correspondence between the City of Clinton (including its officials) and the U.S. Attorney's office and other federal agencies regarding claimed over billing of charges for city operated EMS ambulance services from the year 2007 to present.
2. All records from both open and closed Clinton City Council sessions pertaining to the Emergency Medical Service [EMS] lawsuit including but not limited to meeting minutes, transcripts and working documents. With respect to the closed city council sessions provide records (minutes, transcripts and recordings) of the entire sessions.
3. Disclosure of all city council resolutions, minutes and records associated with the settlement agreement and termination of Finance Director, Deb Neels.
4. Disclosure of all city council resolutions, minutes and records associated with the termination of Fire Chief, Mark Regenwether and EMS Director Andrew McGovern.
5. Disclosure of personal and working notes recorded by Clinton City Administrator, Jeffrey Horne and the Clinton City Clerk, Patricia Van Loo that are related to closed EMS lawsuit meetings.
6. Disclosure of terms, conditions, and payments related to Clinton's hiring of Attorney Michael Walker including all city council resolution records approving Mr. Walker's representation.

When possible we prefer that you produce these documents in their original electronic form, such as PDF files, emails and computer spreadsheets. In the case of recordings please provide a computerized version of the recording as well as a copy of any transcripts that have been prepared.

This request is made pursuant to Iowa Code Chapter 22, "Examination of Public Records (Open Records)." Any relevant information that meets the definition of a "record" as defined in that chapter

should be included in your response. Please note that Iowa Code Section 22.7(61) provides that information from closed meetings shall be disclosed once a final action has been taken on the subject matter of the meeting. The attorney-client privilege has only limited scope in this context. (*C.f.*, Tausz v. Clarion-Goldfield Comm. Sch. Dist., 569 N.W.2d 125,*128 (Iowa 1997). Moreover, the public interest in open government weighs strongly in favor of the Board's waiver of this privilege to restore confidence in the council and permit the community to lay to rest all speculations and misgivings about what has or has not occurred in closed sessions.

Iowa Code Section 22.8 sets an ordinary time for response of ten business days (not to exceed twenty calendar days). If you intend to assert any privilege against disclosures sought by this request, You should do so in writing prior to that deadline. Please be as specific as possible as so that we can quickly focus any disputes that may arise. Entire documents should not be withheld under the claim that some part or parts of them are protected and inappropriate for public disclosure.

We are happy to work out any issues in connection with this request prior to your compliance including issues over the costs of production. If the estimated cost of providing the requested information is more than \$50 dollars, please contact us so that we can discuss ways in which the process may be rendered more cost efficient.

Sincerely,

Marty Nitschke
Chairman
Citizens for Open Government
1147 N. 10th St.
Clinton, IA. 52732
Ph. 563-321-4561

Rick Hale
Vice-chairman
CfOG
1213 9th Ave. S
Clinton, IA. 52732
Ph. 563-242-7402

Larry Ketelsen
Vice-chairman
CfOG
3012 Tower Rd.
Clinton, IA. 52732
Ph. 563-242-0201

CC:
Attorney Randall Wilson
Executive Director
Iowa ACLU
505 5th Ave.
Suite 901
Des Moines, IA. 50309-2316



Office of the City Attorney

Phone: 563-244-3420 Fax: 563-244-3426
611 South Third Street
P. O. Box 2958
Clinton, IA 52733-2958
www.ci.clinton.ia.us

December 15 2011

Marty Nitschke, Chairman
Citizens for Open Government
1147 North Tenth Street
Clinton, IA 52732

Rick Hale, Vice Chairman
Citizens for Open Government
1213 Ninth Avenue South
Clinton, IA 52732

Larry Ketelsen, Vice Chairman
Citizens for Open Government
3012 Tower Road
Clinton, IA 52732

RE: Request for Records

Gentlemen:

In response to your letter of December 1, 2011, please be advised as follows:

1. In answer to paragraph #1 requesting correspondence with the U.S. Attorney's Office are attached.
2. In response to paragraph #2 requesting all records from both open and closed Clinton City Council sessions pertaining to the EMS lawsuit are attached the records of the open meetings.
3. In response to paragraph #3 requesting all City Council resolutions, minutes and records associated with the termination of Finance Director, Deborah Neels, are attached.
4. In response to paragraph #4 requesting all City Council resolutions, minutes and records associated with the termination of Fire Chief, Mark Regenwether, and EMS Director, Andrew McGovern, are attached.