

Proposed 03-05-23

Approved _____

Marshall Township Special Board Meeting

February 27, 2023

The meeting was called to order at 4:02 p.m. by Supervisor David Bosserd.

Present: Clerk Albaugh, Supervisor Bosserd, Trustee Lyng, Treasurer Roberts and Trustee Walsh

Absent: None

The Pledge of Allegiance was led by Dan Walsh.

Supervisor Bosserd indicated the special meeting was called pursuant to Board rules and State Law by action of the Board at its regular meeting on 2-20-23 for the purpose of considering Glenn Kowalske's appeal of two Freedom of Information Act request denials by FOIA Coordinator Clerk Albaugh.

Motion by Lyng, supported by Walsh, approve the proposed agenda. VOICE VOTE. CARRIED.

AUDIENCE COMMENTS: Sixteen people spoke with seven indicating they were Marshall Township residents. Comments pertained to opposition to the land transfers recently approved by the Board, alleged lack of transparency concerning the mega-site development, need for better communications, possible tax increases, and need for a referendum.

PENDING BUSINESS:

Clerk Albaugh read an email from Glenn Kowalske and then presented the two appeals. Clerk Albaugh reviewed the state law provisions concerning appeals and disclosure exemptions.

1. Appeal made by Glenn Kowalske concerning FOIA Coordinator's denial of "...a copy of the letter from the Township Attorney that there is no conflict of interest as it pertains to Richard Lindsey (sp) serving on the Planning Commission and voting on the Master Plan." The FOIA Coordinator denied the request stating "...Communications between the Township and Township Attorney are exempt from disclosure under MCL 15.243(g)."

2. Appeal made by Glenn Kowalske concerning the FOIA Coordinator's denial of "...all legal correspondence and verbal communications (in required meeting minutes) from Marshall Township's legal council (sp) as it relates to the area deemed "Mega-Site" or more generally the land west and south of the Township Hall" and "...This would include the legal opinion of the Marshall Township Attorney that "the master agreement is not a public act 425 agreement. It is an intergovernmental agreement which did not require a public hearing...." The FOIA Coordinator denied the request stating "...The request for this document and any other document contained in your requests below, if they exist, is denied pursuant to section 13(g) of the Freedom of Information Act as they are attorney client privileged documents..."

Clerk Albaugh presented a proposed finding and determination concerning the appeals:

The Board finds as follows:

1. The FOIA Coordinator denied the request for documents based on the provisions of MCLA 15.243(g) which provides for exemption of information or records subject to the attorney-client privilege.
2. The requestor is required to file an appeal in writing, with the head of the public body (Township Board); with reasons that the denial was in error and should be reversed. The appeals were addressed to the Supervisor but did not set forth reasons that the denial was in error and should be reversed.
3. The Marshall Township Board and Planning Commission are public bodies as defined by the FOIA.
4. Public records are as defined by the FOIA.
5. Contrary to the assertion in the original request by the requestor, Section 13 of the Act, specifically subsection (1), applies to all public bodies, including the township.
6. The requests are for attorney-client privileged documents of the public body.
7. The reference to "Schools districts" in the section heading relates to Subsection (2).
8. The denial of the township's attorney-client privileged documents is an authorized action under the FOIA.
9. The denial made by the FOIA Coordinator was proper.

The Board determines as follows:

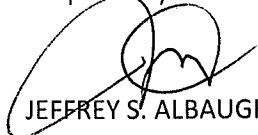
1. In keeping with past practice, the Board will not release the attorney-client privilege on the requested documents and will, therefore, maintain the confidentiality of attorney-client privileged communications, thus upholding the denials.

Motion by Lyng, supported by Walsh, approve the proposed findings and determination. YES: Walsh, Lyng, Bosserd, Albaugh, and Roberts. NO: None. MOTION CARRIED.

BOARD MEMBER COMMENTS: Clerk Albaugh clarified that Notice of this Special meeting complied fully with legal requirements and that because of add deadlines was not able to be in the Advisor and Shopper which is something the Board normally does beyond requirements of law. Trustee Lyng, in response to another inquiry, indicated that the Board regular meetings have been on the 3rd Monday night of the month for many years acknowledging that is the night Marshall City Council normally meets as well.

The Supervisor indicated the next Board meeting is 7 p.m. on March 20th and declared the special meeting adjourned at approximately 5 p.m.

Respectfully submitted,



JEFFREY S. ALBAUGH, Marshall Township Clerk

Jeff Albaugh

From: Glenn Kowalske <glenn@kowalske.net>
Sent: Tuesday, February 14, 2023 5:38 PM
To: Jeff Albaugh; David Bosserd
Cc: Nikki Roberts; Dan Walsh; Robert Lyng
Subject: RE: Michigan Avenue Changes at Mega-Site

Again, Dave Bosserd,

I am appealing this decision to the head of the Marshall Township (supervisor). Please consider this a formal FOIA appeal.

Glenn

Glenn Kowalske, P.E.
269-282-4401

From: Jeff Albaugh <jeff@marshalltownship.org>
Sent: Tuesday, February 14, 2023 5:26 PM
To: Glenn Kowalske <glenn@kowalske.net>; David Bosserd <David@marshalltownship.org>
Cc: Nikki Roberts <Nikki@marshalltownship.org>; Dan Walsh <Dan@marshalltownship.org>; Robert Lyng <Robert@marshalltownship.org>
Subject: RE: Michigan Avenue Changes at Mega-Site

Mr. Kowalske: Communications between the Township and Township attorney are exempt from disclosure under MCL 15.243(g). Accordingly your request is denied. Jeff Albaugh, Marshall Township Clerk

From: Glenn Kowalske <glenn@kowalske.net>
Sent: Sunday, February 12, 2023 4:20 PM
To: Jeff Albaugh <jeff@marshalltownship.org>; David Bosserd <David@marshalltownship.org>
Cc: Nikki Roberts <Nikki@marshalltownship.org>; Dan Walsh <Dan@marshalltownship.org>; Robert Lyng <Robert@marshalltownship.org>
Subject: RE: Michigan Avenue Changes at Mega-Site

Hello Jeff,

I would like a copy of the letter from the Township Attorney that there was no conflict of interest as it pertains to Richard Lindsey serving on the Planning Commission and voting on the Master Plan.

Please consider this a FOIA request if necessary, but this document should be readily available, per the Planning Commission Meeting Minutes of October 4, 2022.

“Commissioner Lindsey stated that the Township had received a letter from the Township Attorney that there was no conflict of interest and that he would vote on the Master Plan.”

<https://static1.squarespace.com/static/61c3650074316a70f5fd2a1c/t/636432a67bef7d4e04e21972/1667510950333/Minutes+10-4-22.pdf>

Glenn

Glenn Kowalske, P.E.
269-282-4401

Jeff Albaugh

From: Glenn Kowalske <glenn@kowalske.net>
Sent: Tuesday, February 14, 2023 6:22 PM
To: Jeff Albaugh
Cc: David Bosserd
Subject: RE: PA 425

Jeff,

See:

15.243 Exemptions from disclosure; public body as school district, intermediate school district, or public school academy; withholding of information required by law or in possession of executive office.

In any case, I am appealing this to the head of the organization, as is my right.

Dave,

Please grant this FOIA request as the head of the Marshall Township board as supervisory.

Thanks,
Glenn

Glenn Kowalske, P.E.
269-282-4401

From: Jeff Albaugh <jeff@marshalltownship.org>
Sent: Tuesday, February 14, 2023 4:33 PM
To: Glenn Kowalske <glenn@kowalske.net>
Cc: David Bosserd <David@marshalltownship.org>
Subject: RE: PA 425

Mr. Kowalske. Section 13(g) of MCL 15.243 applies to all public bodies (as defined at MCL 15.232(h)). See the clear language of MCL 15.243(1). Jeff Albaugh, Marshall Township Clerk

From: Glenn Kowalske <glenn@kowalske.net>
Sent: Tuesday, February 14, 2023 1:57 PM
To: Jeff Albaugh <jeff@marshalltownship.org>
Cc: David Bosserd <David@marshalltownship.org>
Subject: RE: PA 425
Importance: High

Jeff,

This Sec 13 (g) applies only to schools systems.

15.243 Exemptions from disclosure; public body as school district, intermediate school district, or public school academy; withholding of information required by law or in possession of executive office.

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act any of the following:

(g) Information or records subject to the attorney-client privilege.

[http://www.legislature.mi.gov/\(S\(zqswgittvpp5zwrhewrbd2bv\)\)/documents/mcl/pdf/mcl-act-442-of-1976.pdf](http://www.legislature.mi.gov/(S(zqswgittvpp5zwrhewrbd2bv))/documents/mcl/pdf/mcl-act-442-of-1976.pdf)

It does not apply to townships such as Marshall Township. Please provide access to this documents, unless you were in closed session, which you have indicated you were not. The original date of my request still applies.

Glenn

Glenn Kowalske, P.E.
269-282-4401

From: Jeff Albaugh <jeff@marshalltownship.org>
Sent: Tuesday, February 14, 2023 1:44 PM
To: Glenn Kowalske <glenn@kowalske.net>
Cc: David Bosserd <David@marshalltownship.org>
Subject: RE: PA 425

Glenn: The request for this document and any other document contained in your requests below, if they exist, is denied pursuant to section 13(g) of the Freedom of Information Act as they are attorney client privileged documents. Jeff Albaugh, Marshall Township Clerk

From: Glenn Kowalske <glenn@kowalske.net>
Sent: Monday, February 13, 2023 10:11 AM
To: Jeff Albaugh <jeff@marshalltownship.org>
Cc: David Bosserd <David@marshalltownship.org>
Subject: RE: PA 425

Jeff,

This would include the legal opinion of the Marshall Township attorney that "the master agreement is not a public act 425 agreement. It is an intergovernmental agreement which did not require a public hearing". This of course refers to the Master 425 Development Agreement.

Again, consider this a FOIA request as necessary.

Glenn

Glenn Kowalske, P.E.
269-282-4401

From: Glenn Kowalske
Sent: Monday, February 13, 2023 10:01 AM
To: 'Jeff Albaugh' <jeff@marshalltownship.org>
Cc: Dave Bosserd (david@marshalltownship.org) <david@marshalltownship.org>
Subject: RE: PA 425

Jeff, I have previously requested all legal correspondence and verbal communications (in required meeting minutes) from Marshall Township's legal council as it relates to the area deemed "Mega-Site" or more generally the land west and south of the Township Hall.

Please consider this an FOIA request as necessary, but the request is not somewhat old.

Glenn

Glenn Kowalske, P.E.
269-282-4401

From: Glenn Kowalske <glenn@kowalske.net>
Sent: Monday, February 6, 2023 2:01 PM
To: Jeff Albaugh <jeff@marshalltownship.org>
Cc: Dave Bosserd (david@marshalltownship.org) <david@marshalltownship.org>; seeber@michigantownshiplaw.com
Subject: FW: PA 425
Importance: High

Jeff,

I received a copy of this letter dated Feb 1, 2023 from the Township Attorney. Please remember, I have asked for all legal correspondence such as this per a previous request.

The attached letter has a few mistakes, one very large.

Statute Actual Wording:

INTERGOVERNMENTAL CONDITIONAL TRANSFER OF PROPERTY BY CONTRACT (EXCERPT)

Act 425 of 1984

124.25 Compliance as condition to entering into contract; resolution; referendum; approval by majority of electors; petition; effect of not filing petition or adopting resolution.

Sec. 5.

(1) A contract shall not be entered into under this act except in compliance with this section.

(2) If the governing body of a local unit involved in a transfer of property under this act adopts a resolution calling for a referendum on the transfer, the local unit may enter into the contract only if the transfer is approved by a majority of the electors voting on the transfer.

(3) If, within 30 days after a public hearing is held under section 4, a petition signed by 20% or more of the registered electors residing within the property to be transferred is filed with the clerk of the local unit in which the property is located, a referendum on the transfer shall be held in that local unit. If a majority of the electors voting on the transfer approve the transfer, the local unit may enter into the contract.

(4) If no registered electors reside within the property to be transferred and if, within 30 days after a public hearing is held under section 4, a petition signed by persons owning 50% or more of the property to be transferred is filed with the clerk of the local unit in which the property is located, a referendum on the transfer shall be held in that local unit. If a majority of the electors in the local unit voting on the transfer approve the transfer, the local unit may enter into the contract.

(5) If a petition is not filed or resolution is not adopted as provided in this section, the local unit may enter into the contract to transfer the property.

[http://www.legislature.mi.gov/\(S\(bdnknygwv0v4q42kxhz3lyxf\)\)/mileg.aspx?page=getObject&objectName=mcl-124-25](http://www.legislature.mi.gov/(S(bdnknygwv0v4q42kxhz3lyxf))/mileg.aspx?page=getObject&objectName=mcl-124-25)

The wording of the elements of Sec 5 in the attached letter is not accurate to the actual statute (see several misstatements).

The big mistake is in the statement that "As a practical matter, it is apparent to us that there is no resolution of either municipal entity forthcoming, nor will there be any effort **by occupants and/or owners with the property to be transferred** to put forth a referendum, as they are the ones applying for the transfers. When it is apparent that no "petition" is filed and no "resolution" to be made, the " the local unit(s) may into in the contract to transfer the property".

First, because there are so many typos and grammatical errors, it is difficult to read 🤔. Second, we are in negotiation with Betty Ford and Diana Vanderweg, registered electors residing within the property to be transferred. As such, we have until Feb 15 to present a petition from one of these property owners. Any transfer of jurisdiction under the PA 425's presented would be illegal before February 15, 2023.

You might consider new legal counsel in case this comes to litigation.....

Glenn Kowalske, P.E.

BAUCKHAM, THALL, SEEBER, KAUFMAN
ATTORNEYS AT LAW
470 W. CENTRE AVE., SUITE A
PORTAGE, MI 49024-5362

TELEPHONE (269) 382-4500
FAX (269) 382-2040
www.michigantownshiplaw.com

ROBERT E. THALL
ROXANNE C. SEEBER
CATHERINE P. KAUFMAN
T. SETH KOCHES
LORI COATES HAY
JOSHUA E. THALL
MICHAEL W. BILA

February 1, 2023

Marshall Township
C/O Jeff Albaugh, Clerk
Email only to jeff@marshalltownship.org

Effective date of 425 Transfers

Dear Marshall Township Board:

At the request of a citizen you have inquired as to 1 referendum clause contained in Section 5 of Act 425.

Section 5 of Act 425 provides three potential methods

- Either the Township or the City can pass referendum.
- Within 30 days after the public hearing, 20 residing within the property to be transferred re
- If there are no persons residing within the area of the property in the area to be transferred c

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.232 Definitions.

Sec. 2. As used in this act:

(a) "Cybersecurity assessment" means an investigation undertaken by a person, governmental body, or other entity to identify vulnerabilities in cybersecurity plans.

(b) "Cybersecurity incident" includes, but is not limited to, a computer network intrusion or attempted intrusion; a breach of primary computer network controls; unauthorized access to programs, data, or information contained in a computer system; or actions by a third party that materially affect component performance or, because of impact to component systems, prevent normal computer system activities.

(c) "Cybersecurity plan" includes, but is not limited to, information about a person's information systems, network security, encryption, network mapping, access control, passwords, authentication practices, computer hardware or software, or response to cybersecurity incidents.

(d) "Cybersecurity vulnerability" means a deficiency within computer hardware or software, or within a computer network or information system, that could be exploited by unauthorized parties for use against an individual computer user or a computer network or information system.

(e) "Field name" means the label or identification of an element of a computer database that contains a specific item of information, and includes but is not limited to a subject heading such as a column header, data dictionary, or record layout.

(f) "FOIA coordinator" means either of the following:

(i) An individual who is a public body.

(ii) An individual designated by a public body in accordance with section 6 to accept and process requests for public records under this act.

(g) "Person" means an individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity. Person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

(h) "Public body" means any of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body that is created by state or local authority or is primarily funded by or through state or local authority, except that the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(i) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. Public record does not include computer software. This act separates public records into the following 2 classes:

(i) Those that are exempt from disclosure under section 13.

(ii) All public records that are not exempt from disclosure under section 13 and that are subject to disclosure under this act.

(j) "Software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license.

(k) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(l) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche,

magnetic or punched cards, discs, drums, hard drives, solid state storage components, or other means of recording or retaining meaningful content.

(m) "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1994, Act 131, Imd. Eff. May 19, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2018, Act 68, Eff. June 17, 2018.

Popular name: Act 442

Popular name: FOIA

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.240 Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2014, Act 563, Eff. July 1, 2015.

Popular name: Act 442

Popular name: FOIA

FREEDOM OF INFORMATION ACT (EXCERPT)

Act 442 of 1976

15.243 Exemptions from disclosure; public body as school district, intermediate school district, or public school academy; withholding of information required by law or in possession of executive office.

Sec. 13 (1) A public body may exempt from disclosure as a public record under this act any of the following:

- (a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
 - (i) Interfere with law enforcement proceedings.
 - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
 - (iii) Constitute an unwarranted invasion of personal privacy.
 - (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - (v) Disclose law enforcement investigative techniques or procedures.
 - (vi) Endanger the life or physical safety of law enforcement personnel.
- (c) A public record that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- (d) Records or information specifically described and exempted from disclosure by statute.
- (e) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.
- (f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:
 - (i) The information is submitted upon a promise of confidentiality by the public body.
 - (ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.
 - (iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.
- (g) Information or records subject to the attorney-client privilege.
- (h) Information or records subject to the physician-patient privilege, the psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.
- (i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.
- (j) Appraisals of real property to be acquired by the public body until either of the following occurs:
 - (i) An agreement is entered into.
 - (ii) Three years have elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- (k) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- (l) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including protected health information, as defined in 45 CFR 160.103.
- (m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance

the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

(n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(o) Information that would reveal the exact location of archaeological sites. The department of natural resources may promulgate rules in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the disclosure of the location of archaeological sites for purposes relating to the preservation or scientific examination of sites.

(p) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes the testing.

(q) Academic transcripts of an institution of higher education established under section 5, 6, or 7 of article VIII of the state constitution of 1963, if the transcript pertains to a student who is delinquent in the payment of financial obligations to the institution.

(r) Records of a campaign committee including a committee that receives money from a state campaign fund.

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informant.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(iii) Disclose the personal address or telephone number of active or retired law enforcement officers or agents or a special skill that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.

(t) Except as otherwise provided in this subdivision, records and information pertaining to an investigation or a compliance conference conducted by the department under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before a complaint is issued. This subdivision does not apply to records or information pertaining to 1 or more of the following:

(i) The fact that an allegation has been received and an investigation is being conducted, and the date the allegation was received.

(ii) The fact that an allegation was received by the department; the fact that the department did not issue a complaint for the allegation; and the fact that the allegation was dismissed.

(u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

(w) Information or records that would disclose the Social Security number of an individual.

(x) Except as otherwise provided in this subdivision, an application for the position of president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, materials submitted with such an application, letters of recommendation or references concerning an applicant, and records or information relating to the process of searching for and selecting an individual for a

position described in this subdivision, if the records or information could be used to identify a candidate for the position. However, after 1 or more individuals have been identified as finalists for a position described in this subdivision, this subdivision does not apply to a public record described in this subdivision, except a letter of recommendation or reference, to the extent that the public record relates to an individual identified as a finalist for the position.

(y) Records or information of measures designed to protect the security or safety of persons or property, or the confidentiality, integrity, or availability of information systems, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a public body, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, domestic preparedness strategies, and cybersecurity plans, assessments, or vulnerabilities, unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.

(z) Information that would identify or provide a means of identifying a person that may, as a result of disclosure of the information, become a victim of a cybersecurity incident or that would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software.

(aa) Research data on road and attendant infrastructure collected, measured, recorded, processed, or disseminated by a public agency or private entity, or information about software or hardware created or used by the private entity for such purposes.

(bb) Records or information that would reveal the specific location or GPS coordinates of game, including, but not limited to, records or information of the specific location or GPS coordinates of game obtained by the department of natural resources during any restoration, management, or research project conducted under section 40501 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40501, or in connection with the expenditure of money under section 43553 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.43553. As used in this subdivision, "game" means that term as defined in section 40103 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40103.

Applies to schools

(2) A public body shall exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974. A public body that is a local or intermediate school district or a public school academy shall exempt from disclosure directory information, as defined by 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974, requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. A public body that is a local or intermediate school district or a public school academy may take steps to ensure that directory information disclosed under this subsection is not used, rented, or sold for the purpose of surveys, marketing, or solicitation. Before disclosing the directory information, a public body that is a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection will not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

(3) This act does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) Except as otherwise exempt under subsection (1), this act does not authorize the withholding of a public record in the possession of the executive office of the governor or lieutenant governor, or an employee of either executive office, if the public record is transferred to the executive office of the governor or lieutenant governor, or an employee of either executive office, after a request for the public record has been received by a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of government that is subject to this act.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1993, Act 82, Eff. Apr. 1, 1994;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2000, Act 88, Imd. Eff. May 1, 2000;—Am. 2001, Act 74, Imd. Eff. July 24, 2001;—Am. 2002, Act 130, Eff. May 1, 2002;—Am. 2002, Act 437, Eff. Aug. 1, 2002;—Am. 2006, Act 482, Imd. Eff. Dec. 22, 2006;—Am. 2018, Act 68, Eff. June 17, 2018;—Am. 2021, Act 33, Imd. Eff. June 24, 2021.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of powers and duties of the state historic preservation office relating to the identification, certification, and preservation of historical sites from the Michigan state housing development authority to the Michigan strategic fund, see E.R.O. No. 2019-3,

compiled at MCL 125.1998.

Popular name: Act 442

Popular name: FOIA

Jeff Albaugh

From: Glenn Kowalske <glenn@kowalske.net>
Sent: Monday, February 27, 2023 1:31 PM
To: Jeff Albaugh
Cc: David Bosserd
Subject: FW: Appeal of FOIA Denials meeting agenda
Attachments: 2-27-23 Special Board Meeting Agenda.pdf; 2-27-23 Special Meeting Notice.pdf

Importance: High

Jeff,

As I will be unable to attend this meeting tonight due to a previous commitment that I cannot change, I would ask that this email be attached to the public comment record for the meeting.

PENDING BUSINESS:

1. Appeal made by Glenn Kowalske concerning FOIA Coordinator's denial of the letter from the Township Attorney that there is no conflict of interest for Richard Lindsey (sp) serving on the Planning Commission and voting on the Plan." The FOIA Coordinator denied the request stating "...Community records of the Township and Township Attorney are exempt from disclosure under FOIA 15.243(g)."

I continue to argue that this type of information is important for the public to have as a means of evaluating any Conflict of Interest ourselves. There may be a legal definition and an ethical definition and it is important we are able to view the legal for comparison. Since Marshall Township residents paid for this legal opinion, it seems only right that it be shared with them.

- 2 Appeal made by Glenn Kowalske concerning the FOIA Coordinator's correspondence and verbal communications (in required meeting with Marshall Township's legal council (sp) as it relates to the area described more generally as the land west and south of the Township Hall" and the legal opinion of the Marshall Township Attorney that "the request is not a public act 425 agreement. It is an intergovernmental agreement and requires a public hearing...." The FOIA Coordinator denied the request for this document and any other document contained in your request. The request is denied pursuant to section 13(g) of the Freedom of Information Act regarding attorney client privileged documents..."

In light of strong support against the Mega-Site development as well as its enormous increase in the recently updated Master Plan and MAEDA / MEDC expanded land purchases, it seems only correct that the legal opinions on this matter be shared with Marshall Township residents who paid for this work. Further, the denial of such public records continues to erode the confidence in our local government, in addition to the county and state governments.

Please make these documents available to me as requested.

Regards,
Glenn Kowalske
Marshall Township

From: Jeff Albaugh <jeff@marshalltownship.org>
Sent: Thursday, February 23, 2023 12:03 PM
To: Glenn Kowalske <glenn@kowalske.net>
Cc: seeber@michigantownshiplaw.com
Subject: Appeal of FOIA Denials meeting agenda

Attached.

MARSHALL TOWNSHIP BOARD OF TRUSTEES

FOIA APPEAL DETERMINATION

FEBRUARY 27, 2023

PRESENT: Supervisor Bosserd, Clerk Albaugh, Treasurer Roberts, Trustees Lyng and Walsh.

ABSENT: None

In the Matter of the Appeals of Glenn Kowalske as to the FOIA Coordinator's denial of two (2) FOIA requests as set forth in the attached documents.

The Board finds as follows:

1. The FOIA Coordinator denied the request for documents based on the provisions of MCLA 15.243(g) which provides for exemption of information or records subject to the attorney-client privilege.
2. The requestor is required to file an appeal in writing, with the head of the public body (Township Board); with reasons that the denial was in error and should be reversed. The appeals were addressed to the Supervisor but did not set forth reasons that the denial was in error and should be reversed.
3. The Marshall Township Board and Planning Commission are public bodies as defined by the FOIA.
4. Public records are as defined by the FOIA.
5. Contrary to the assertion in the original request by the requestor, Section 13 of the Act, specifically subsection (1), applies to all public bodies, including the township.
6. The requests are for attorney-client privileged documents of the public body.
7. The reference to "Schools districts" in the section heading relates to Subsection (2).
8. The denial of the township's attorney-client privileged documents is an authorized action under the FOIA.
9. The denial made by the FOIA Coordinator was proper.

The Board determines as follows:

1. In keeping with past practice, the Board will not release the attorney-client privilege on the requested documents and will, therefore, maintain the confidentiality of attorney-client privileged communications, thus upholding the denials.

By order of the Township Board.

David Bosserd, Marshall Township Supervisor

Jeffrey S. Albaugh, Marshall Township Clerk

Nikki Roberts

From: Robert Weiss <weiss.robert845@gmail.com>
Sent: Monday, February 27, 2023 2:14 PM
To: David Bosserd; Jeff Albaugh; Nikki Roberts; Robert Lyng; Dan Walsh
Subject: FOIA - To Be Considered TODAY (2/27/2023) - Special Township Board Meeting

Board members,

I would like for this correspondence to be considered for taking into the public record at today's special meeting of the township board, with respect to the FOIA appeal requests to be discussed.

Regardless of the legal viability of these FOIA requests, their subsequent appeals, and additional FOIA requests around the decisions made by public entities on the proposed Megasite, I believe it is important to recognize the motive and reasoning behind these FOIA requests.

The public - namely those in opposition to the Megasite as currently proposed - does not feel they have been provided the clarity, honesty, and transparency they deserve as residents of Marshall Township.

The seeming speed with which the adoption of the currently proposed megasite seemed to make it to the public eye, with a seeming lack of transparency by the township board, city of Marshall, and state of Michigan, along with MAEDA has led those in opposition to feel the wool has been pulled over their eyes and that backroom deals were the driver of this development. The NDAs that have been put in place and signed by residents optioned by MAEDA, MAEDA and its employees, and city and township employees has led to a public mistrust of local government, and a desperation to cling to any possible explanation for this Megasite taking place without their say-so.

As public servants, the board is expected to represent the people in their community. When those public servants are entered into an NDA and restricted from providing information to the residents it serves, it appears and seems to the public that a breach of that trust is taking place, no matter how well or ill-founded that accusation may be.

What really matters, regardless of legal stipulation, is the appearance and seeming of a lack of representation by local government. By entering into the NDAs that were signed, and refusing to provide adequate explanation for how a development of this size made it into their backyards residents have no choice but to feel blindsided. And in feeling blindsided, and subsequently not having their questions answered adequately, and not feeling heard, there is no wonder why these same residents cling to whatever ill-conceived notion of the "backroom dealings", "political posturing", and "scare tactics" to get this development in place.

In not adequately providing transparency to the residents of this community, the board, and any other parties involved in the NDAs in place have set the stage for distrust, distaste, anger, and hatred of any parties involved, including our "new neighbor Ford".

Unless true transparency can be achieved, this community will continue its spiral into imbalance and volatility - and those descriptors are NOT what I want to use to describe the community in which I live.

Please enter this into the public record however necessary, such that the contents of this message are received by the public at your meeting this afternoon.

Thank you,
Robert Weiss
Marshall Township Resident.