SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PUBLIC RECORDS REVIEW REQUEST OF OGLALA SIOUX TRIBE OF THE CITY OF MARTIN	PRR 23-007 **PETITIONER OGLALA SIOUX TRIBE'S REQUEST FOR A HEARING AND STATEMENT OF GOOD CAUSE**

Petitioner, the Oglala Sioux Tribe ("Tribe"), hereby submits this Request for a Hearing and Statement of Good Cause pursuant to S.D.C.L.§ 1-27-40.[1]

STATEMENT OF FACTS

On August 25, 2023, the Tribe made a public records request to the Mayor of the City of Martin ("City") pursuant to the South Dakota Open Records Law ("S.D.C.L.§ 1-27"). ***Exhibit 1, Tribe's Open Records Request dated Aug. 25, 2023.*** The Tribe directed the request for information to records "that are in the custody of or maintained by the City of Martin and in the custody of or maintained by Black Hills Council of Local Governments, Central South Dakota Enhancement District and in the custody of or maintained by similar entities that have provided technical election and districting assistance to the City of Martin." ***Id.*** South Dakota's Open Records Laws permit the Tribe to request such information because "[e]xcept as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the

[1] The Office of Hearing Examiners Notice of Request for Disclosure of Public Records issued on December 13, 2023, states, "Additionally, pursuant to S.D.C.L. 1-27-40, the Office of Hearing Examiners may issue its written decision on the information provided **and will only hold a hearing if it deems a hearing necessary."** (emphasis added) However, the correct applicable standard is "good cause" and not if "deemed necessary" by the hearing examiner. S.D.C.L. § 1-27-40 provides that "[u]pon receipt and review of the submissions of the parties, the Office of Hearing Examiners shall make written findings of fact and conclusions of law, and a decision as to the issue presented. Before issuing a decision, the Office of Hearing Examiners may hold a hearing pursuant to chapter 1-26 if good cause is shown." Good cause is the applicable standard for whether to hold a hearing in this matter.

examination of the public records . . . are hereby fully empowered and authorized to examine such public record[.]" S.D.C.L.§ 1-27-1. And the records requested fall under the expansive definition of a "public record" set forth in S.D.C.L.§ 1-27-1.1. ("[P]ublic records include all records and documents, regardless of physical form, of or belonging to this state, any county, municipality, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing."). The Tribe's public records request fell squarely within the letter and spirit of South Dakota's Open Records Law.

On September 11, 2023, the law firm of Gunderson, Palmer, Nelson & Ashmore, LLP responded to the Tribe's open records request. ***Exhibit 2, Gunderson, Palmer's Response Letter dated Sept. 11, 2023.*** The letter stated that "[i]f full payment is not received upfront," the City requires the Tribe to "waive sovereign immunity to account for the possible non-payment of the requested materials," even though no invoice or payment amount was provided. But a simultaneous requirement that the Tribe provide "written confirmation that you will pay the fee outlined below . . . ," was made despite no dollar amount actually being provided. ***Id.*** The letter also noted that the "City charges $235 per hour for my services, $225 per hour for its deputy attorney's services, and $34.53 per hour for its city employee's time and effort to acquire the requested materials." ***Id.*** The letter did not provide a full estimate of the fee, but it did state that the "request may cost many, many hours of both attorney and city employee time." ***Id.*** This essentially leaves the possible amount to be billed to the Tribe limitless, open and uncertain.

The Tribe objected to the conditions that the Tribe waive sovereign immunity and that they pay for the attorney's fees that were going to be charged in a letter sent on November 29, 2023. ***Exhibit 3, Tribe's Objection Letter dated Nov. 29, 2023.*** The City responded on December 6,

2023, affirming its stance on the conditions. ***Exhibit 4, Gunderson, Palmer's Letter dated Dec. 6, 2023.***

On December 8, 2023, the Tribe submitted a Notice of Review to the Office of Hearing Examiners ("OHE") and relevant attachments requesting review of the City of Martin's attempt to charge attorneys' fees for the Tribe's public records request and the City's demand that the Tribe waive its sovereign immunity in order to receive a response to the records request.[2] On the same date, the Tribe submitted a supplemental Appendix to the OHE addressing these issues and provided its legal arguments regarding the unreasonableness and unlawfulness of the City's response. The Tribe now submits this Request for a Hearing and Statement of Good Cause according to S.D.C.L.§ 1-27-40 and asks that a hearing be held to adequately develop a factual and legal record in this matter because good cause exists.

LAW AND ARGUMENT

1. A Hearing Will Allow the Office of Hearing Examiners to Rule on this Appeal With a Fully Developed Record.

The City of Martin's open and limitless billing method, attempt to charge attorney's fees and conditioning of any records produced on a complete waiver of immunity by the Tribe, which goes to the core of its Tribal Sovereignty, is not only unreasonable, but was made in bad faith since such a response is neither couched in the open records laws, other state or federal law, nor supported by any theory of equity. In fact, the City of Martin's response appears to target and single out the Tribe for disparate treatment as a requester of public records. The Tribe has made

[2] The Tribe offered to voluntarily narrow their request in a good faith effort to settle.

this appeal under S.D.C.L. § 1-27-38 to seek review of the reasonableness of the methods employed by the City of Martin around the conditions and fees it is imposing upon the Tribe.

When a public record officer denies a written public record request or the requester objects to the estimate of fees or time needed to complete the request, the requester may appeal to the Office of Hearing Examiners. S.D.C.L.§ 1-27-38. After receiving submissions from both parties, the OHE "shall make written findings of fact and conclusions of law, and a decision as to the issue presented[,]" and "may hold a hearing pursuant to chapter 1-26 if good cause is shown." S.D.C.L.§ 1-27-40.[3] Here, good cause exists for the OHE to hold such a hearing.

A. *Demand to Waive Tribal Sovereign Immunity*

The purpose of the State's open record laws is to ensure transparency around government operations, including the City of Martin's redistricting. This purpose is undermined by the City of Martin's decision to not only charge the Tribe its attorney's fees but by also requiring the Tribe to waive sovereign immunity as a pre-condition of the City fulfilling its statutory obligation to produce materials in response to an open records request. Asking for a waiver of Tribal immunity is unsupported by the open records laws in South Dakota but it also is a blatant disregard of Tribal Sovereignty[4] and the Tribe's inherent right to assert immunity from suit as part of its sovereign status.

[3] No statute sets forth time limitations as to when a Request for Hearing or good cause is required to be shown by the party requesting the hearing.

[4] The essence of tribal sovereignty is the ability to govern and to protect and enhance the health, safety, and welfare of tribal citizens within tribal territory. Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. The governments exercise these inherent rights through the development of their distinct forms of government, determining citizenship; establishing civil and criminal laws for their nations; taxing, licensing, regulating, and maintaining and exercising the power to exclude wrongdoers from tribal lands.

The City of Martin's demand for waiver of sovereign immunity is not only tone-deaf to the over-all significance of the request but it also targets the Tribe for heightened requirements not applicable to other requesters. In deference to the unique aspects of tribal sovereignty, "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978); see also Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 14 (1987). Only Congress has plenary authority to limit, modify, or eliminate a tribe's sovereign immunity. Santa Clara Pueblo, 436 U.S. at 558; see also Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 138 n. 5 (1982); White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143–44 (1980), see U.S. Const. art. 1, § 8, cl. 3. The exercise of such authority must be clearly expressed and should be strictly construed. See generally, United States v. Testan, 424 U.S. 392, 399 (1976).

Tribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation. Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc., 523 U.S. 751, 756 (1998). A tribe's immunity is not waived simply because it agrees to a binding contract. Sac and Fox Nation v. Hanson, 47 F.3d 1061, 1063 (10th Cir.1995) (waiver of tribal sovereign immunity cannot be implied from a tribe's engagement in commercial activity), cert. denied, 516 U.S. 810, 116 S.Ct. 57 (1995); Am. Indian Agr. Credit Consortium, Inc., v. Standing Rock Sioux Tribe, 780 F.2d 1374, 1378–79 (8th

---

In addition, tribal governments are responsible for a broad range of governmental activities on tribal lands, including education, law enforcement, judicial systems, health care, environmental protection, natural resource management, and the development and maintenance of basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal. National Congress of American Indians, Tribal Nations & the United States: An Introduction, Updated February 2020, https://archive.ncai.org/about-tribes#:~:text=The%20essence%20of%20tribal%20sovereignty,police%20departments%20and%20tribal%20courts.

Cir.1985) (tribe's sovereign immunity cannot be waived by implication in contract actions). See generally Ramey Constr. Co., Inc. v. Apache Tribe of Mescalero Reservation, 673 F.2d 315 (10th Cir.1982). The City of Martin is clearly trying to exert jurisdiction over the Tribe by holding the records back unless the waiver of their immunity is provided but this tactic defies the spirit and intent of the open records laws in South Dakota.

The Tribe is not required to waive sovereign immunity to obtain records readily available to any other requester. Forcing a waiver of Tribal immunity as a pre-condition to obtain records available to others is not only unsupported by the open records laws in South Dakota, it is contrary to clearly established law. The U.S. Supreme Court rejected a similar attempt to force a recognized tribe to waive its sovereign immunity in Three Affiliated Tribes of Fort Berthold Rerservation v. Wold Eng'g, 476 U.S. 877 (1986). There, a tribe brought suit against a corporation in North Dakota state court for negligence and breach of contract. Id. The North Dakota Supreme Court held that a North Dakota statute barred the tribe from maintaining its suit in state court unless it waived its sovereign immunity. Id. The U.S. Supreme Court overruled North Dakota's highest court because requiring such a waiver was "unduly burdensome" on tribal interests. Id. at 888. The "sovereign immunity possessed by the Tribe is a necessary corollary to Indian sovereignty and self-governance[,]" and, "in the absence of federal authorization, tribal immunity, like all aspects of tribal sovereignty, is privileged from diminution by the States." Id. at 890-91.

The Court rejected the state's argument that the tribe could access the courts "by 'merely' consenting to the statutory conditions" as those conditions "may be met only at an unacceptably high price to tribal sovereignty[.]" Id. at 899. Such a result in Three Affiliated Tribes "simply [could] not be reconciled with Congress' jealous regard for Indian self-governance[,]" and neither can the City's request for a waiver of sovereign immunity here. Id. at 890.

The Tribe seeks public information to ensure Indigenous voters rights in Bennett County, South Dakota are in alignment with the state and federal constitutions and the Voting Rights Act of 1965. This is an elemental function of Tribal government. Even if the City of Martin is attempting to create a private cause of action against the Tribe to pursue payment of attorney's fees, there is no statutory basis in the open records laws that would allow such strong-arm tactics to be utilized. Nor should Tribes, who operate as sovereign nations, be held to a stricter standard than any other public record requester. Fundamentally, there is absolutely no basis in the law to demand waiver of Tribal Sovereign immunity.

2. Good Cause Exists for a Hearing in This Matter.

The purpose of the public records law is to create transparency in the government's operations, and it should operate even-handedly to all requesters. Indeed, the statutes present no special exceptions for treatment, conditions to impose, or payment based on the requester. Yet the City of Martin's response not only targets the Tribe specifically, treating it differently than other requesters, but it also hinders transparency in the City of Martin's operations around districting maps. The larger question, which should be explored factually, is why the Tribe was targeted for this request and if any others are also required to make such concessions of sovereign immunity by the City of Martin.

S.D.C.L.§ 1-27-40 does not define "good cause" and the South Dakota Supreme Court has not interpreted "good cause" in a similar context of requesting a hearing in an open records request denial. However, when faced with another instance of being asked to determine whether "good cause" existed when it was not defined by statute, the South Dakota Supreme Court stated that "good cause"—when undefined—"is a flexible term and therefore not amenable to general rules or rigid formulas. Instead, its meaning must be deduced from the facts of each case in a manner

that is consistent with the Act's fundamental purpose." Matter of Appeal from Final Decision of S. Dakota Dep't of Lab., Unemployment Ins. Div., for Fickbohm, 323 N.W.2d 133, 135 (S.D. 1982) (quoting Trexler v. Com., Unemployment Comp. Bd., 365 A.2d 1341, 1344 (1976)). Thus, good cause must be determined by reviewing the specific facts of a case in light of the fundamental purpose of the laws at issue. The fundamental purpose of the open records law is transparency and a thorough review of the facts underlying the City of Martin's response is necessary.

The fundamental purpose of the relevant laws—the open records request laws—is consistent with finding that good cause exists for a hearing. S.D.C.L.§ 1-27-40 is part of the South Dakota Public Records Act that was passed in 2009 to update the state's existing public record laws. In doing so, the Legislature created a "presumption of openness" around the state's public records and the public's access to them. Argus Leader Media v. Hogstad, 902 N.W.2d 778, 780 (S.D. 2017). This "presumption of openness" clearly supports the need for a hearing since the City of Martin's response not only directly impedes the request for records but creates and imposes unnecessary and unauthorized conditions on the Tribe to waive tribal sovereignty when the statutes make no such allowance or exceptions for certain requesters.

3. The Good Cause Standard Should be Construed Liberally to Further the Intent of the Open Records Laws in South Dakota.

The good cause standard should be construed liberally because the proper development of a factual record is a favored procedure contemplated by the South Dakota Administrative Rules. Chapter 1-26 of South Dakota's code governs South Dakota's Administrative Rules and Procedure which generally favors granting a hearing before a final decision is issued. See, S.D.C.L. § 1-26-16 ("In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice."). This chapter also favors a process that allows all relevant facts to be developed before a final decision is issued. See, S.D.C.L. § 1-26-19.1 (clarifying that hearings can include a subpoena

of “witnesses to appear and give testimony and to produce records, books, papers, and documents relating to any matter in contested cases”); S.D.C.L. § 1-26-19.2 (allowing for the deposing of witnesses relevant to a hearing before a final decision is issued).

Here, in light of the fundamental purpose of these laws, the facts favor granting a hearing to fully develop the record prior to the OHE making findings of fact and conclusions of law and rendering an ultimate determination of the issues here, which are significant. In the September 11, 2023 letter responding to the original public records request that was sent to the City’s mayor, the law firm of Gunderson, Palmer, Nelson & Ashmore, LLP explained that fulfilling the request would cost “many, many hours of both attorney and city employee time,” and would require a waiver of sovereign immunity by the Tribe, which is not a slight request. In fact, it carries weighty and significant legal ramifications to the Tribe as for jurisdiction, forum of any future litigation around the billing invoice, and sets a poor precedent for others seeking public information. The presumption of openness in South Dakota’s Public Records Act is severely undermined if a municipality can choose to charge hundreds of dollars an hour in attorneys’ fees. The Act’s presumption of openness is further impeded by imposing harsh legally significant penalties like a waiver of sovereign immunity in order to deter inquiry into government affairs.

A hearing is necessary here because without such a hearing, the OHE will be unable to determine whether any fees are proper in this instance and if so, how much is reasonable, or whether the City of Martin’s conditions were imposed in bad faith. A hearing is necessary here to ascertain all relevant facts to gain understanding of the City of Martin’s decision to charge attorneys’ fees in responding to routine, open records requests. A hearing would also include factual exploration of: 1) which City employees determined that members of the public must pay for its attorneys’ assistance in responding to routine open records requests from the Tribe for

records which are kept in the ordinary course of business for a municipality; 2) how the records are maintained and stored; 3) hourly rates paid to employees; 4) establishment of hourly rates to charge for these employees; 5) the location of requested information; 6) the volume of records and where those records are held; 7) the purpose of requesting a waiver of Tribal Sovereign Immunity; 8) the factual basis for waiving Tribal Sovereign Immunity; and other relevant facts around each specific request such as those related to attorney work-product. This will enable the Office of Hearing Examiners to render a decision based on an adequate record, gauge the credibility of witnesses, and rule on the admissibility of certain evidentiary documents. Ultimately, the factual basis to support that attorneys' fees must be paid by the public to fulfill this request which would also require waiver of sovereign immunity, could be determined. Without such a hearing, the procedure will lack the presumption of openness at the core of the South Dakota Public Records Act and will contain a flat record without adequate factual development and will not allow a court to later determine whether "the public entity acted unreasonably and in bad faith" under S.D.C.L. § 1-27-40.2. Therefore, a review of "the facts of [this] case in a manner that is consistent with the Act's fundamental purpose" shows that the Tribe has demonstrated good cause for a hearing to be held in relation to this matter.

CONCLUSION

The South Dakota Public Records Act was intended to create a system with a presumption of openness. This goal of openness will be served by conducting a hearing on this matter given that the City of Martin is demanding a waiver of sovereign immunity from and imposing attorneys' fees on the Oglala Sioux Tribe before it will consider complying with their open records requests. Various other defenses and reasons to withhold records were advanced by the City of Martin as

well but both these pre-requisites leave many questions unanswered and require further factual inquiry. There is good cause to hold such a hearing and the Tribe respectfully requests that this Office grant its request.

Dated this 21st day of December 2023.

American Civil Liberties Union of South Dakota

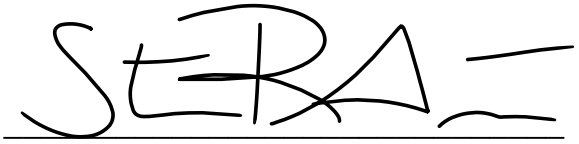
Stephanie R. Amiotte
South Dakota Bar No. 3116
P.O. Box 91952
Sioux Falls, South Dakota 57109
(605) 370-4313
samiotte@aclu.org

CERTIFICATE OF SERVICE

I hereby certify that on December 21st, 2023, the foregoing was served upon the following counsel for the City of Martin, South Dakota via email and U.S. Mail at:

Sara Frankenstein
Gunderson, Palmer, Nelson, Ashmore, LLP
506 Sixth Street
Post Office Box 8045
Rapid City, SD 57709
sfrankenstein@gpna.com

American Civil Liberties Union of South Dakota



Stephanie R. Amiotte
South Dakota Bar No. 3116
P.O. Box 91952
Sioux Falls, South Dakota 57109
(605) 370-4313
samiotte@aclu.org

1-27-43. Form of notice of review--Office of Hearing Examiners' notice.

The following forms are prescribed for use in the procedures provided for in §§ 1-27-35 to 1-27-42, inclusive, but failure to use or fill out completely or accurately any of the forms does not void acts done pursuant to those sections provided compliance with the information required by those sections is provided in writing.

NOTICE OF REVIEW
REQUEST FOR DISCLOSURE OF PUBLIC RECORDS

Date of Request: August 25, 2023
Name of Requestor: Oglala Sioux Tribe
Address of Requestor: P.O. Box 1204 Pine Ridge, South Dakota 57770
Telephone Number of Requestor: (605) 867-2138

Type of Review Being Sought:
_____ Request for Specific Record
X Estimate of Fees
_____ Estimate of Time to Respond
Short Explanation of Review Being Sought Including Specific Records Requested:
The Oglala Sioux Tribe appeals (1) the City of Martin's attempt to charge attorney fees for the Tribe's public records request, and (2) the City of Martin's demand that the Tribe waive its sovereign immunity in order to receive a response to its public records request.
Please find additional details in the attached appendix.

Name of Public Record Officer: Mayor Gary Rayhill
Address of Public Record Officer: 101 Main Street, Martin, SD 57551
Name of Governmental Entity: City of Martin
Address of Governmental Entity: 101 Main Street, Martin, SD 57551

You must include with the submission of this Notice of Review--Request for Disclosure of Public Records form the following information: (1) A copy of your written request to the public record officer; (2) A copy of the public record officer's denial or response to your written request, if any; and (3) Any other information relevant to the request that you desire to be considered.
I hereby certify that the above information is true and correct to the best of my knowledge.
Signature of Requestor: _____
The Notice of Review--Request for Disclosure of Public Records form shall be completed and submitted, via registered or certified mail, return receipt, to the following address:

Office of Hearing Examiners
500 E. Capitol Avenue
Pierre, South Dakota 57501
605-773-6811

SOUTH DAKOTA OFFICE OF HEARING EXAMINERS
NOTICE OF REQUEST FOR DISCLOSURE
OF PUBLIC RECORDS

TO: (Public Record Officer & Governmental Entity) The Oglala Sioux Tribe has filed a Notice of Review--Request for Disclosure of Public Records. A copy of the Notice of Review--Request for Disclosure of Public Records is attached for your review.

You may file a written response to the Notice of Review--Request for Disclosure of Public Records within ten (10) business days of receiving this notice, exclusive of the day of service, at the following

address:

Office of Hearing Examiners

500 E. Capitol Avenue
Pierre, South Dakota 57501
605-773-6811

The Office of Hearing Examiners may issue its written decision on the information provided and will only hold a hearing if it deems a hearing necessary.

If you have any questions, please contact the Office of Hearing Examiners.

Dated this ____ day of _____, 20____.

_____

Office of Hearing Examiners

Source: SL 2008, ch 14, § 11.

Oglala Sioux Tribe
Legal Department

P.O. Box 1204 Pine Ridge, South Dakota 57770
Phone: (605)867-2138 Fax: (605) 867 – 2140

Russel Zephier, In-House Counsel
Raeann Red Owl, In-House Counsel

Lisa Steele-Cummings, Manager / Paralegal
Matthew Amiotte-Hedley, Legal Secretary
Tuki Lone Elk / File Clerk

August 25, 2023

VIA U.S. MAIL AND EMAIL

Mayor Gary Rayhill
City of Martin
101 Main Street
Martin, SD 57551
martinsd@gwtc.net

Re: Request for public records

Dear Mayor Rayhill:

Pursuant to the South Dakota Open Records Law (SDCL § 1-27), on behalf of the Oglala Sioux Tribe, I respectfully request copies of the following public records that are in the custody of or maintained by the City of Martin and in the custody of or maintained by Black Hills Council of Local Governments, Central South Dakota Enhancement District and in the custody of or maintained by similar entities that have provided technical election and districting assistance to the City of Martin:

1. All documents pertaining to city ward and mayoral elections for the past 20 years, including election results, election return records documenting the official election results, all candidates on the ballots, and a list of all candidates who won each election.

2. All documents related to any city ward maps, boundary changes, or reorganization plans approved or considered by the city council for the past 20 years, including maps proposed but not adopted and contracts with consultants for the creation of new maps.

3. All city draft and final agendas, handouts, minutes, and recordings for all meetings at which maps or ward boundaries were discussed or considered for the past 20 years.

4. Any and all analysis, including letters or memorandums, regarding draft or final maps, redistricting, Section 2 of the Voting Rights Act of 1965, or any of the *Gingles* factors for the past 20 years.

5. All documents and correspondence related to complaints, allegations, concerns, investigations, and reports (draft and final versions) concerning racial or ethnic discrimination, vote dilution, vote denial, or other voting-related discrimination in local general and special elections prepared by or submitted to the City of Martin for the past 20 years.

6. All documents, including any writings, memoranda, and correspondence, related to complaints, allegations or concerns of and investigations into and reports of racial or ethnic discrimination involving a local government agency or employee in any context, including, but not limited to, healthcare, criminal justice, housing, employment, and education prepared by or submitted to City of Martin for the past 20 years.

7. All policies, procedures, guidelines, and related training materials regarding the prohibition of racial or ethnic discrimination by local government agencies and employees prepared by or submitted to City of Martin.

Please note that the term "public record" shall be defined as stated in SDCL § 1-27-1.1, which includes all records and documents, regardless of physical form that are kept by public bodies in South Dakota. Further, in accordance with SDCL § 1-27-1.3, public access to public records that include information regarding expenditures involving public funds shall be liberally construed "in order that the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them."

Please respond, preferably via e-mail, within ten business days after receipt of this letter with a response to these requests pursuant to the requirements set forth in SDCL § 1-27-37(1).

If your office claims the right to withhold any record, or any portion of any record based on claims of privilege or exemption from disclosure under the South Dakota Open Records Law, please provide a written statement of the reasons for the denial as required by SDCL § 1-27-37(4).

To the extent reasonably practicable, we request that all records that are available in an electronic format be made available in an electronic format, pursuant to SDCL 1-27-48. As to records which are not available in an electronic format, we request that paper copies be made. Copies should be the same size as originals, and whether originals are partially or fully in color, copies should be made in color to reflect the same color as the originals. We will pay the fees required by SDCL § 1-27-1.2 upon receipt of your invoice.

We appreciate your assistance with this matter.

Sincerely,

Rae Ann Red Owl
In-house Counsel
OST Legal Department

GUNDERSON | PALMER | NELSON | ASHMORE LLP

506 Sixth Street
Post Office Box 8045
Rapid City, South Dakota 57709
Main: (605) 342-1078
Fax: (605) 342-9503

www.gpna.com

September 11, 2023

Sara Frankenstein
Email: sfrankenstein@gpna.com
Direct Dial: (605) 719-3481

Via Email: *RaeAnnR@ostlegal.org*

Rae Ann Red Owl
Oglala Sioux Tribe
P.O. Box 1204
Pine Ridge, SD 57770

Re: City of Martin re: Oglala Sioux Tribe Request for Public Records

Dear Rae Ann Red Owl:

The purpose of this letter is to respond to your public records request dated August 25, 2023, to the City of Martin. Your letter requested the following documents:

1. All documents pertaining to city ward and mayoral elections for the past 20 years, including election results, election return records documenting the official elections results, all candidates on the ballots, and a list of all candidates who won each election.
2. All documents related to any city ward maps, boundary changes, or reorganization plans approved or considered by the city council for the past 20 years, including maps proposed but not adopted and contracts with consultants for the creation of new maps.
3. All city draft and final agendas, handouts minutes, and recordings for all meetings at which maps or ward boundaries were discussed or considered for the past 20 years.
4. Any and all analysis, including letters or memorandums, regarding draft or final maps, redistricting, Section 2 of the Voting Rights Act of 1965, or any of the *Gingles* factors for the past 20 years.
5. All documents and correspondence related to complaints, allegations, concerns, investigations, and reports (draft and final versions) concerning racial or ethnic discrimination, vote dilution, vote denial, or other voting-related discrimination in local general and special elections prepared by or submitted to the City of Martin for the past 20 years.
6. All documents, including any writings, memoranda, and correspondence, related to complaints, allegations or concerns of and investigations into and reports of racial or ethnic discrimination involving a local government agency or employee in any context, including, but not limited to, healthcare, criminal

justice, housing, employment, and education prepared by or submitted to City of Martin.

7. All policies, procedures, guidelines, and related training materials regarding the prohibition of racial or ethnic discrimination by local government agencies and employees prepared by or submitted to City of Martin.

Requests

This letter is intended to be an acknowledgement and partial denial of your requests. Each request will be addressed below. If full payment is not received upfront, the City of Martin requires that the Oglala Sioux Tribe waive sovereign immunity to account for the possible non-payment of the requested materials. The Oglala Sioux Tribe must include the waiver in its written confirmation that it will pay the associated fee for gathering the twenty years of records.

1. All documents pertaining to city ward and mayoral elections for the past 20 years, including election results, election return records documenting the official elections results, all candidates on the ballots, and a list of all candidates who won each election.

Subject to the applicable fee, the City of Martin can provide this information within 60 days of your written confirmation that you will pay the fee outlined below.

2. All documents related to any city ward maps, boundary changes, or reorganization plans approved or considered by the city council for the past 20 years, including maps proposed but not adopted and contracts with consultants for the creation of new maps.

Subject to the applicable fee outlined below, the City can provide this information within 60 days of your written confirmation that you will pay the fee. To the extent this request seeks information expressly exempt from being publicly disclosed under SDCL § 1-27[1] the request is denied.

3. All city draft and final agendas, handouts minutes, and recordings for all meetings at which maps or ward boundaries were discussed or considered for the past 20 years.

Final agendas, handouts, and minutes are all subject to public disclosure. *See* SDCL § 1-27-1.16. The City of Martin will provide the requested information within 60 days of your written confirmation that you will pay the applicable fee. However, no fee will be assessed for the electronic transfer of open meeting minutes. Any draft minutes or agendas, to the extent they still exist, are protected by attorney-client privilege (SDCL § 1-27-1.5(4)) and correspondence, memoranda, calendars or logs of appointments, working papers, and records of telephone calls of public officials or employees are exempt under SDCL § 1-27-1.5(12).

---

[1] SDCL § 1-27-1.7: "Drafts, notes, recommendations, and memoranda in which opinions are expressed or policies formulated or recommended are exempt from disclosure pursuant to §§ 1-27-1 to 1-27-1.15, inclusive."

SDCL § 1-27-1.5(4): "Records which consist of attorney work product or which are subject to any privilege recognized in article V of chapter 19-19."

4. Any and all analysis, including letters or memorandums, regarding draft or final maps, redistricting, Section 2 of the Voting Rights Act of 1965, or any of the Gingles factors for the past 20 years.

Most documents that include analysis regarding the draft or final redistricting maps are protected from public disclosure. The City of Martin objects to this request to the extent that it seeks internal documents that are subject to attorney-client privilege or are attorney work product (exempt under SDCL §§ 1-27-1.5(4) and 1-27-1.8); correspondence, memoranda, calendars or logs of appointments, working papers, and records of telephone calls of public officials or employees (exempt under SDCL § 1-27-1.5(12)); drafts, notes, recommendations, and memoranda in which opinions are expressed or policies formulated or recommended (exempt under SDCL § 1-27-1.7); and any documents, records, or communications used for the purpose of the decisional or deliberative process relating to any decision arising from that person's official duties (exempt under SDCL § 1-27-1.9). Additionally, a Westlaw or LexisNexis search can provide information about extensive litigation involving the City of Martin and Section 2 of the Voting Rights Act. *Cottier v. City of Martin*, 2005 WL 6949764, 2005 D.S.D. 8 (D.S.D. 2005); *Cottier v. City of Martin*, 604 F.3d 553 (8th Cir. 2010); *Cottier v. City of Martin*, 562 U.S. 1044 (2010) (*denying writ of certiorari*).

5. All documents and correspondence related to complaints, allegations, concerns, investigations, and reports (draft and final versions) concerning racial or ethnic discrimination, vote dilution, vote denial, or other voting-related discrimination in local general and special elections prepared by or submitted to the City of Martin for the past 20 years.

The City of Martin objects to this request to the extent that it seeks internal documents that are subject to attorney-client privilege[2] (exempt under SDCL § 1-27-1.5(4)); correspondence, memoranda, calendars or logs of appointments, working papers, and records of telephone calls of public officials or employees (exempt under § 1-27-1.5(12)); drafts, notes, recommendations, and memoranda in which opinions are expressed or policies formulated or recommended (exempt under § 1-27-1.7); and any documents, records, or communications used for the purpose of the decisional or deliberative process relating to any decision arising from that person's official duties (exempt under § 1-27-1.9).

Any information not falling into an exempted category the City of Martin can provide the information within 60 days of your confirmation that you will pay the applicable fee.

6. All documents, including any writings, memoranda, and correspondence, related to complaints, allegations or concerns of and investigations into and reports of racial or ethnic discrimination involving a local government agency or employee in any context,

[2] *See also* 1979 S.D. Op. Atty. Gen. 119, 1979 WL 41933.

including, but not limited to, healthcare, criminal justice, housing, employment, and education prepared by or submitted to City of Martin.

The City of Martin objects to this request to the extent that it seeks internal documents that are subject to attorney-client privilege[3] (exempt under § 1-27-1.5(4)); correspondence, memoranda, calendars or logs of appointments, working papers, and records of telephone calls of public officials or employees (exempt under § 1-27-1.5(12)); drafts, notes, recommendations, and memoranda in which opinions are expressed or policies formulated or recommended (exempt under § 1-27-1.7); and any documents, records, or communications used for the purpose of the decisional or deliberative process relating to any decision arising from that person's official duties (exempt under § 1-27-1.9).

Any information not falling into an exempted category the City of Martin can provide the information within 60 days of your confirmation that you will pay the applicable fee.

7. All policies, procedures, guidelines, and related training materials regarding the prohibition of racial or ethnic discrimination by local government agencies and employees prepared by or submitted to City of Martin.

Subject to the applicable fee outlined below, the City of Martin can provide this information within 60 days of your written confirmation that you will pay the fee. To the extent this request seeks information expressly exempt from being publicly disclosed under SDCL § 1-27 the request is denied.

Fee

Pursuant to SDCL § 1-27-1.2, the City of Martin will charge for public records requests. The City charges $235 per hour for my services, $225 per hour for its deputy attorney's services, and $34.53 per hour for its city employee's time and effort to acquire the requested materials. The City of Martin does not charge for the electronic transfer of open meeting minutes.

Along with the associated fee, the City of Martin requires the Oglala Sioux Tribe to waive sovereign immunity to enforce the fee if the fee is not paid in full upfront. The waiver must be incorporated in the Oglala Sioux Tribe's written confirmation that they will pay the associated fee. The waiver must be provided by a Tribal representative who has the authority to waive immunity. The City of Martin estimates that gathering the twenty years of information found in this request may cost many, many hours of both attorney and city employee time. The Tribe may, and the City of Martin encourages, pay for the estimated cost to complete the task upfront.

[3] *See also* 1979 S.D. Op. Atty. Gen. 119, 1979 WL 41933.

Appeal process

You may appeal this acknowledgement and partial denial to circuit court or seek review from the Office of Hearing Examiners, as outlined in SDCL § 1-27-38 et seq. Pursuant to SDCL § 1-27-1.4, a copy of this letter will be kept on file at the Bennett County Auditor's Office.

Sincerely yours,

Sara Frankenstein

Sara Frankenstein

Cc: Mayor Gary Rayhill

November 29, 2023

Via Email: sfrankenstein@gpna.com
Sara Frankenstein
Gunderson, Palmer, Nelson, Ashmore, LLP
506 Sixth Street
Post Office Box 8045
Rapid City, SD 57709

Re: Oglala Sioux Tribe Request for Public Records

ACLU South Dakota

P.O. Box 91952
Sioux Falls, SD 57109
605-332-2508
southdakota@aclu.org
aclusd.org

Dear Sara:

The City of Martin's attempt to charge attorney's fees for Oglala Sioux Tribe's public records request is improper. South Dakota's public records statute confers no explicit right to charge an attorney's fee, and doing so would contravene basic principles of statutory interpretation as well as the statute's purpose of increasing government transparency. Even if there were authority supporting charging an attorney's fee, public policy supports waiving such a fee. On behalf of the Tribe, I respectfully request that the City waive the fee.

The ability to collect an attorney's fee for fulfilling a public records request is not enumerated anywhere in the text of South Dakota's public records statute. S.D. Codified Laws § 1-27. A requestor may, under the statute, "be required to pay the cost of the staff time necessary for the location, assembly, or reproduction of [a] public record" after making an informal or formal request that requires a staff member to dedicate more than one hour to performing such tasks. S.D.C.L. §§ 1-27-35, 1-27-37. The language of these provisions is limited to "staff time" for "locat[ing], assembl[ing], or reproduc[ing]" records. S.D.C.L. § 1-27-35. There is no mention of attorney's fees, nor is there mention of fees chargeable for tasks that are legal in nature or otherwise for which the City believes require attorney.

Section 1-27-1.2 of South Dakota's Codified Laws does allow a public agency to charge a fee for "any specialized service" provided in fulfillment of a public records request. However, the "specialized service" fee allowed by this provision cannot reasonably be interpreted as including fees for an attorney's services. South Dakota courts have applied the doctrine of "noscitur a sociis," by which "the meaning of a particular term in a statute may be ascertained by reference to words associated with them in the statute[.]" *South Dakota Auto Club, Inc. v. Volk*, 305 N.W.2d 693, 699 (S.D. 1981); *see also Opperman v. Heritage Mut. Ins. Co.*, 566 N.W.2d 487, 490-91 (S.D. 1997); *Brookings Mall, Inc. v. Captain Ahab's, Ltd.*, 300 N.W.2d 259, 262 (S.D. 1980). The meaning of the allowable "specialized service" fee is thus limited by the following sentence in § 1-27-1.2, which refers to such a fee in relation to "the amortization of the cost of computer equipment" needed for said specialized service. The final two sentences of § 1-27-1.2 also refer to computer equipment or software required to generate public records and the electronic transfer of certain materials. Each sentence that follows the more general

sentence allowing a fee for "any specialized service" is specifically focused on computer processes for generating and transferring records. This language—and the absence of any language in the provision suggesting a broader scope—suggests that a "specialized service" relates to labor and equipment or software costs associated with the electronic production or transfer of records.

The drafting history of § 1-27-1.2 further supports a reading that limits the allowable "specialized service" to that associated with electronic processes for fulfilling records requests. An earlier version of § 1-27-1.2 allowed a fee for "specialized service[s]" specifically when an agency provides a public record "by transmitting it from a modem to an outside modem." The version that passed removed that language. While removing that language likely did broaden the scope of "specialized service," the surrounding sentences suggest that the scope remains limited to a broader set of computer processes. Taken together, the drafting history and surrounding sentences support a reading of "specialized service" that is technological in nature, not legal.

ACLU South Dakota

P.O. Box 91952
Sioux Falls, SD 57109
605-332-2508
southdakota@aclu.org
aclusd.org

Charging an attorney's fee here would also contravene the statute's purpose of expanding government transparency. In line with this purpose, courts generally construe public records statutes in a way that favors disclosure. *See* Roger A. Nowadzky, *A Comparative Analysis of Public Records Statutes*, 28 Urb. Law. 65, 66 (1996). This led the Supreme Court of Alaska, for example, to disallow a city from charging a fee for an attorney's privilege review of public records when the statute only authorized a "search" fee for a given request. *Fuller v. City of Homer*, 113 P.3d 659, 666 (Alaska 2005). Similarly, the Wisconsin Supreme Court held that Wisconsin's public records statute does not authorize an agency to assess fees for the cost of redacting information, when fees for redaction were not specifically enumerated in the text of the fee provision. *Milwaukee Journal Sentinel v. City of Milwaukee*, 815 N.W.2d 367, 379-80 (Wisconsin 2012).

This situation is analogous to both *Fuller* and *Milwaukee Journal Sentinel*, in that the City of Martin seeks to impose a fee not specifically enumerated in the statute. Neither provision addressing allowable staff or service fees in South Dakota's public records statute enumerates an allowable fee for attorney services. As discussed above, § 1-27-1.2 does not specify whether "specialized service[s]" includes legal services, and principles of statutory interpretation suggest it does not. Additionally, the text of § 1-27-35 enumerates allowable staff time fees for "the location, assembly, or reproduction of the public record"—tasks that do not need to be performed by an attorney. The text of the statute contains no reference to fees for an attorney's services. Reading South Dakota's public records statute in light of its purpose of increasing public access to government affairs, a court is likely to apply a stricter view of the statute's scope and refuse to allow a fee not specifically enumerated in the statute's text.

To the extent charging a fee for staff time in completing this request is allowable, charging an attorney's fee is unreasonable under § 1-27-1.2 and § 1-27-35. Beyond limiting the allowable "specialized service" fee to that which is "reasonable" in § 1-27-1.2, South Dakota's public records statute says little

about the *amount* of fees allowable for staff time in completing a records request. Further, the administrative rules enumerate maximum rates only for the transmittal and reproduction of records, not staff time. *See* S.D. Admin. R. 10:10:01:01-03. What is clear from the language of South Dakota's records statute, though, is that it anticipates and allows fees for public costs, not private attorney's fees. Section 1-27-1.2 allows a fee "if a custodian of a public record of a county, municipality, political subdivision, or tax-supported district"—in other words, an employee of a public agency—performs a specialized service while fulfilling a records request. Section 1-27-35 similarly allows the custodian of a public record to charge a fee, and within that context also allows a fee for "staff time necessary for the location, assembly, or reproduction of a public record." A private attorney is not needed to fulfill these duties typically performed by public agency employees. It is unreasonable to charge members of the public the fee of a private attorney for a request aimed at a public agency and tasks easily performed by public employees of that agency.

ACLU South Dakota

P.O. Box 91952
Sioux Falls, SD 57109
605-332-2508
southdakota@aclu.org
aclusd.org

Lastly, while I firmly believe attorney's fees may not legally be charged, should you disagree, public policy supports waiving the fee charged here. As in many other state public records laws, South Dakota's statute allows an agency to waive or reduce a fee when the disclosure of records is in the public interest. Waivers are at the discretion of the custodian of records, who *may* waive the fee—but is not required to. S.D.C.L. § 1-27-36. The documents the Tribe requested are in regard to the City's redistricting process and decisions and related voting matters. Redistricting cannot be shrouded in secrecy, but rather must be open and accessible to the people in order to achieve a fair and representative democracy. Accountability in redistricting requires public access to information about any and all discussions and records of redistricting.

For the foregoing reasons, I respectfully ask that the City of Martin retract—or alternatively, waive—their request for attorney's fees in this matter. I ask that you **please respond to this request no later than Monday, December 4, 2023** in order to allow time to file a notice of review with the Office of Hearing Examiners or commence a civil action. I hope to resolve this matter without the need for litigation.

Sincerely,

Stephanie R. Amiotte
Legal Director | ACLU of South Dakota
Direct Dial: 605-370-4313 | Email: samiotte@aclu.org

cc: Samantha Kelty, Native American Rights Fund
Tara Ford, Public Counsel
Bryan Sells, The Law Office of Bryan Sells

GUNDERSON | PALMER | NELSON | ASHMORE LLP

506 Sixth Street
Post Office Box 8045
Rapid City, South Dakota 57709
Main: (605) 342-1078
Fax: (605) 342-9503

www.gpna.com

December 6, 2023

Sara Frankenstein
Email: sfrankenstein@gpna.com
Direct Dial: (605) 719-3481

Via Email
samiotte@aclu.org

Stephanie R. Amiotte
ACLU of South Dakota
PO Box 91952
Sioux Falls, SD 57109

Re: City of Martin re: Open Records Request from Oglala Sioux Tribe

Dear Stephanie:

I am in receipt of your letter dated November 29, 2023. The City of Martin's fees for public records requests are permissible. South Dakota law permits both a reasonable fee for specialized services and for the requesting party to pay the cost of the staff time necessary for location, assembly, and reproduction of the request. SDCL §§ 1-27-1.2, 1-27-35. First, the statute permits "a reasonable fee for any specialized service" and provides for a detailed list of items that are not open to public disclosure. SDCL §§ 1-27-1.2, 1.5; *see also* § 1-27-35. Among documents that are not open to public disclosure are those protected under the work product doctrine. SDCL § 1-27-1.5(4); SDCL § 1-27-1.7 (indicating communications with city attorneys are not open to public inspection. S.D. Atty.Gen. Opinion 79-48); SDCL § 1-27-3 ("Section 1-27-1 shall not apply to such records as are specifically enjoined to be held confidential or secret by the laws requiring them to be so kept."). Second, a municipality may require the requesting party "pay the cost of the staff time necessary for the location, assembly, or reproduction of the public record" for requests that will exceed one hour.

1. ***Special Service***

Under the statute, "special services" include an attorney's hourly rate for inspecting certain documents for work product. An interpretation to the contrary would obliterate the work product doctrine as it pertains to municipalities because non-legally trained staff are ill-equipped to make the legal determination of whether a document is protected. If an attorney is not making the determination, a logical consequence is inadvertent disclosure of privileged or protected information or retention of documents that require disclosure.

Additionally, the statute's plain language makes clear that the specialized services are not restricted.

> In conducting statutory interpretation, we give words their plain meaning and effect, and read statutes as a whole. [I]f the words and phrases in the statute have plain meaning and effect, we should simply declare their meaning and not resort to statutory construction. The intent of a statute is determined from what the Legislature said, rather than what we think it should have said. Therefore, the starting point when interpreting a statute must always be the language itself.

Reck v. South Dakota Board of Pardons and Paroles, 2019 SD 42, ¶ 11, 932 N.W.2d 135, 139 (citing *State v. Bowers*, 2018 S.D. 50, ¶ 16, 915 N.W.2d 161, 166 (quoting *Expungement of Oliver*, 2012 S.D. 9, ¶ 6, 810 N.W.2d 350, 352); *State v. Bariteau*, 2016 S.D. 57, ¶ 15, 884 N.W.2d 169, 175 (quoting *Dale v. Young*, 2015 S.D. 96, ¶ 6, 873 N.W.2d 72, 74); *Engesser v. Young*, 2014 S.D. 81, ¶ 22 n.1, 856 N.W.2d 471, 478 n.1 (quoting *Esling v. Krambeck*, 2003 S.D. 59, ¶ 6, 663 N.W.2d 671, 676); *State v. Livingood*, 2018 S.D. 83, ¶ 31, 921 N.W.2d 492, 499) (cleaned up). Therefore, the City relies on the statute itself.

The statute states that if a record is supplied, "a reasonable fee may be charged for ***any specialized service***. Such fee ***may include*** a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service." SDCL § 1-27-1.2 (emphasis added). The statute does not limit specialized services to only those costs listed. The statute unambiguously permits municipalities to shift the cost of any specialized service onto the requesting party. Thus, the statute relieves the municipality from forcing the entire cost of the public records request onto its tax paying citizenry.

Other jurisdictions have also favored this interpretation. In *City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So.3d 799 (Fl. Ct. App. 2021), the Florida Court of Appeals determined custodians of public records are required to "determine whether the record exists, locate the records, and review each record to determine if it is exempt from production." *Id.* at 805. Further, much like South Dakota's Public Records Act, Florida's "Act clearly exempts attorney work product as well as work done at the direction of an attorney in preparation or anticipation of litigation." *Id.* ("It is also well established that work product prepared in anticipation of litigation can precede the filing of a complaint and can include preliminary investigative materials." *Id.* (citing *Anchor National Fin. Servs., Inc. v. Smeltz*, 546 So.2d 760, 761 (Fla. Ct. App. 1989)). For these special services, the court determined that Florida's Legislature intended "that taxpayers should not shoulder the entire expense of responding to an extensive request for public records." *Id.* at 805–06 (additional citations omitted).

2. Required to Pay Cost of the Staff for Retrieving the Requested Documents

South Dakota law also permits the custodian of the records to charge for the "cost of the staff time necessary for the location, assembly, or reproduction of public records" that require more than one hour to perform. SDCL § 1-27-35. Based on the breadth of your request, more than one hour will be required to gather the information requested. As such, it would be inequitable to the taxpayers of Martin to bear the totality of that burden. Therefore, the City will not waive

the cost it will take for its staff members to locate and assemble the 20 years' worth of documents requested.

3. The Oglala Sioux Tribe's request

The Oglala Sioux Tribe's request was overly broad and burdensome. The request asked for 20 years' worth of municipal records that pertained to potential violations of § 2 of the Voting Rights Act.[1] The request was not targeted, nor did it identify specific documents. For those documents that are subject to disclosure, the City will produce the documentation provided the Tribe pays up front or waives its sovereign immunity to seek recourse if it fails to pay the applicable fee.

A substantial portion of the requested documents will fall under an exception to South Dakota's Public Records Act as indicated in our response letter. Before that determination can be made, an attorney will need to review many of the documents to ensure no inadvertent disclosure of privileged or protected information. Reviewing these documents is the type of specialized service envisioned where the law authorizes the municipality to charge a reasonable fee for specialized services. The fees permitted in statute alleviates the burden on the municipality's taxpayers so that they are not stuck paying for a requesting party's fishing expedition looking through thousands of documents generated over the past 20 years.

Specifically, letters or memoranda containing analysis of the *Gingles* factors that were produced over the past 20 years fall under the work product exception. The same is true for some correspondence concerning complaints, allegations, concerns, investigations, and reports concerning racial or ethnic discrimination, vote dilution, vote denial, or other voting-related discrimination, and any writings, memorandum, and correspondence relating to complaints, allegations or concerns of and investigations into and reports of racial or ethnic discrimination involving the local government, its agencies, or its employees for the past 20 years. We will withhold all correspondence with legal counsel where the work product protection or attorney-client privilege applies. As such, SDCL § 1-27-1.5(4) and other exclusionary provisions may be implicated. Thus, your request requires a city attorney to review the documents to determine whether they should be disclosed pursuant to the South Dakota's Public Records Acts.

Due to the broad nature of the request, it is uncertain the amount of time that the City's attorneys would need to dedicate to reviewing potentially protected information. However, be assured that for the portions of the request to which a non-legally trained staff member can respond will be done at a non-attorney rate.

If you wish to provide a narrower, more specific public records request, the City's fees will reflect accordingly. The City could then more appropriately assess the potential corresponding fees, reduce its costs in gathering and examining the documents, and determine whether a city

[1] Notably, *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, decided in the Eighth Circuit, determined there is no private cause of action to enforce § 2 of the Voting Rights Act.

attorney must review the documents before fulfilling its request. However, at this time, the City is unable and unwilling to waive its statutory protections, nor is the City comfortable with passing the cost of this extensive request onto its taxpayers.

Sincerely yours,

Sara Frankenstein

SF:js