

Record of Appeal
to the
City Council

Appeal of Acting City Manager Melissa Jacobsen Determination
of Frank Griswold's February 26, 2024
Public Records Request

Frank Griswold, Appellant

Record of Appeal
Index
Determination of Frank Griswold's February 26, 2024
Public Records Request

Volume I

Notice of Appeal Record Complete and Hearing from Renee Krause, Acting City Clerk
Page 3

Appeal of Melissa Jacobsen's Determination of Frank Griswold's February 26, 2024 Public
Records Request Email received March 20, 2024 at 3:53 p.m. Re: Response to Records Request
Pages 4-6

Email Exchange dated March 20, 2024 7:52 p.m. through March 21, 2024 4:27 p.m. from Frank
Griswold to Melissa Jacobsen cc: Renee Krause re: Notice of Appeal to Homer City Council re:
Frank Griswold's February 26, 2024 Public Records Request Pages 7-8

Email Exchange dated March 21, 2024 11:33 a.m. from Frank Griswold to Renee Krause cc:
Melissa Jacobsen re: Discovery Request re: Frank Griswold's Appeal to the Homer City Council
of Ms. Jacobsen's Belated Denial of February 26, 2024 Public Records Request Pages 9

Email Exchange dated March 21, 2024 11:53 a.m. from Frank Griswold to Renee Krause cc:
Melissa Jacobsen re: February 26, 2024 Public Records Request Page 10

Email Exchange dated March 21, 2024 4:49 p.m. from Frank Griswold to Renee Krause re: City
Council Appeal Hearing Page 11

Email Exchange dated March 26, 2024 11:54 a.m. from Frank Griswold to Renee Krause re:
Frank Griswold's Appeal to the Homer city Council of Ms. Jacobsen's Belated Denial of
February 26, 2024 Public Records Request Pages 12-14

Email Exchange dated March 28, 2024 5:12 p.m. from Frank Griswold to Renee Krause re:
Appeal Hearing – Denial of Records Request Pages 15

Email Exchange dated March 29, 2024 11:06 a.m. from Frank Griswold to Renee Krause re:
Appeal Hearing – Denial of Records Request Pages 16-18

Email Exchange dated March 29, 2024 12:18 p.m. from Renee Krause to Frank Griswold re:
Appeal Hearing – Denial of Records Request Response Pages 19-21

Email Exchange dated April 1, 2024 12:35 p.m. from Frank Griswold to Renee Krause cc:
Melissa Jacobsen re: Public Records Request/Discovery Pages 22-23

Email Exchange dated April 5, 2024 9:25 a.m. from Frank Griswold to Renee Krause cc: Melissa
Jacobsen re: Appeal to Homer City Council of Acting CM's (Deemed) denial of Frank
Griswold's March 21, 2024 Public Records Request Pages 24-25

Email Exchange dated April 5, 2024 10:38 a.m. from Frank Griswold to Melissa Jacobsen cc:
Renee Krause re: Motion for Stay Pages 26-27

Email Exchange dated April 9, 2024 12:31 p.m. from Frank Griswold to Renee Krause cc:
Melissa Jacobsen re: Motion for In Camera Review Pages 28-29

Email Exchange dated April 9, 2024 1:23 p.m. from Frank Griswold to Renee Krause re
Procedure of Homer City Council Page 30

Email Exchange dated April 10, 2024 4:28 p.m. from Renee Krause to Frank Griswold re:
Procedure of Homer City Council Response Pages 31

Email Exchange dated April 10, 2024 4:58 p.m. from Frank Griswold to Renee Krause re:
Response to re: Procedure of Homer City Council Response Pages 32-33

Email Exchange dated April 11, 2024 11:18 a.m. from Renee Krause to Frank Griswold re:
Response to Your Question: Who crafted the Procedure of Homer City Council document
Pages 34-35

Public Records Request from Frank Griswold dated February 26, 2024 with correspondence
from City Manager Dumouchel Pages 36-37



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

TO: Frank Griswold, Appellant

FROM: Renee Krause, MMC, Acting City Clerk

DATE: April 11, 2024

SUBJECT: Notice of Appeal Record Complete

Appeal Regarding: Melissa Jacobsen, Acting City Manager's Determination of Frank Griswold's February 26, 2024 Public Records Request

The appeal record is complete for Frank Griswold's appeal to the City Council. The hearing has been scheduled for **Thursday, April 25, 2024 at 6:00 p.m.** The meeting will be held at City Hall Cowles Council Chambers, 491 E. Pioneer Avenue, Homer, Alaska.

Attached is appeal record for the appeal

cc. Interim City Manager
City Attorney

From: [Frank Griswold](#)
To: [Melissa Jacobsen](#)
Cc: [Renee Krause](#)
Subject: Re: Response to 2.26.24 Records Request
Date: Wednesday, March 20, 2024 3:53:33 PM
Attachments: [ATT00001.htm](#)
[Griswold 2.26.24 Records Request Response.pdf](#)
[ATT00002.htm](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Ms. Jacobsen,

HCC 21.93.010 states: “This chapter governs administrative appeals to a hearing officer from actions or determinations taken under the Homer Zoning Code.” No specific procedure is prescribed in HCC 21.93 relating to litigation discovery or to the disclosure of public records following an appeal hearing. While the public records at issue might *pertain* to OAH-23-0320-MUN, briefing and oral argument have been completed in that matter so the subject public records are no longer relevant to it; I am not seeking to supplement the closed record. Former City Manager Dumouchel did not deny my February 26th public records request on litigation grounds, he stated: "Additional time is needed to respond to this request and is expected to be completed by Wednesday, March 20th." Please reconsider your denial of my February 26th public records request and disclose the public records to me or consider this my Notice of Appeal to the Homer City Council pursuant to HCC 2.84.070 and Regulation 5.04.

Frank Griswold

On Mar 20, 2024, at 2:57 PM, Melissa Jacobsen <mjacobsen@ci.homer.ak.us> wrote:

Mr. Griswold,

Attached is the response to your February 26th records request.

-Melissa

Melissa Jacobsen, MMC
Acting City Manager
City Clerk/Deputy Director of Administration
City of Homer, Alaska
907-235-3130





City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

491 East Pioneer Avenue

Homer, Alaska 99603

citymanager@cityofhomer-ak.gov

(p) 907-235-8121 x2222

(f) 907-235-3148

March 20, 2024

Frank Griswold
519 Klondike Ave.
Homer, AK 99603
By email: fsgriz@alaska.net

Dear Mr. Griswold,

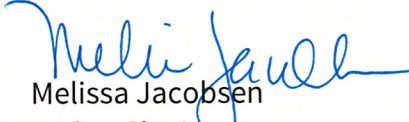
I am unable to release the records you requested on February 26, 2024 for all emails and other correspondence to/from Asia Freeman and/or Melody Livingston since 1/1/2020 pertaining to activities at 106 West Bunnell Avenue, Homer, Alaska.

This decision is based on Homer City Code 2.84.055 Litigation which reads follows:

If a person requesting inspection of City records is involved in litigation, a quasi-judicial proceeding, or an appeal involving the City or a City agency in any judicial or administrative forum, the disclosure of records used for, included in, or relevant to that litigation, proceeding or appeal is governed by the rules or orders of that forum, and not by this chapter. In this section, "involved in litigation" means being a party to litigation, a quasi-judicial proceeding or appeal, or representing a party, including any person obtaining records on behalf of the party.

You are the appellant of a matter on appeal before the Office of Administrative Hearings regarding Conditional Use Permit 23-04/01 for the property located at 106 W. Bunnell Avenue, and this is a closed appeal record, so the code referenced above applies.

Sincerely,


Melissa Jacobsen
Acting City Manager

From: [Frank Griswold](#)
To: [Melissa Jacobsen](#); [Renee Krause](#)
Subject: Notice of Appeal to Homer City Council re: Frank Griswold's February 26, 2024 Public Records Request
Date: Thursday, March 21, 2024 4:37:54 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Ms. Jacobsen,

My February 26, 2024 public records request was approved by City Manager Rob Dumouchel on March 11, 2024 at which time he informed me that it would be completed by Wednesday, March 20th. "Your" March 20, 2024 letter to me does not expressly state that you overturned Mr. Dumouchel's approval of my February 26, 2024 public records request, it merely states that you are now unable to release the public records I requested. Regulation 5.01 mandates: "If the City Manager makes an adverse determination, in whole or in part, [to] a written public records request, the City manager will provide a written response setting forth the adverse determination." HCC 2.84.060(a) provides that "The City Manager will provide a reasonably prompt response to each request." I did not *promptly* receive any written response setting forth an adverse determination; I was promptly informed by City Manager Dumouchel that my records request would be completed by March 20, 2024. Regulation 5.01 further mandates: "The City Manager's (adverse) written response will also include a notice that the requestor has a right to appeal to the city council." I received no such notice from Mr. Dumouchel or from you. It is you, not I, who apparently needs direction as to following public record request procedures. HCC 2.84 does not state what rules or orders apply to the disclosure of City of Homer public records in administrative appeal forums such as the OAH and the Homer City Council, nor does it identify any provision of law that authorizes an acting city manager to retroactively deny a citizen's access to public records after his public records request has been approved by a duly appointed city manager. **I filed my Notice of Appeal to the Homer City Council with you yesterday at 3:53 P.M. with cc to Deputy City Clerk Krause but hereby refile it with you and Ms. Krause.**

Frank Griswold

On Mar 21, 2024, at 3:24 PM, Melissa Jacobsen <MJacobsen@ci.homer.ak.us> wrote:

Mr. Griswold,

You may file your appeal with Deputy City Clerk Krause. HCC 2.84.070

Appeals provides direction.

-Melissa

-----Original Message-----

From: Frank Griswold <fsgriz@alaska.net>

Sent: Wednesday, March 20, 2024 7:52 PM

To: Melissa Jacobsen <MJacobsen@ci.homer.ak.us>

Subject: HCC 2.84.055

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Ms. Jacobsen,

Now that I may be involved in an administrative appeal to the Homer City Council regarding your belated denial of my February 26, 2024 public records request, what rules or orders of that forum i.e., the Homer City Council, govern the disclosure of records to be used for the upcoming appeal proceeding? Among other relevant records, I would like to introduce into evidence the myriad previous public records requests I made while involved in similar litigation, none of which were denied based on HCC 2.84.055 or other statutes. Aside from reconsidering your denial of my February 26th public records request, it would be inappropriate for you to participate further in this matter since you will be a party to it. To whom should I submit my public records requests for records related to the Council hearing and who, besides you otherwise, has the authority to approve or deny such public records requests? Under what authority can an Acting City Manager deny a pending public records request previously approved by a duly appointed City Manager?

Frank Griswold

From: [Frank Griswold](#)
To: [Renee Krause](#)
Cc: [Melissa Jacobsen](#)
Subject: Discovery Request re: Frank Griswold's Appeal to the Homer City Council of Ms. Jacobsen's Belated Denial of February 26, 2024 Public Records Request
Date: Thursday, March 21, 2024 11:33:30 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

Please provide me with the following:

1. All ***approved*** public record request applications where applicant indicated that he/she was involved in litigation, a quasi-judicial proceeding, or in some judicial or administrative forum involving the City of Homer or an agency thereof. At this point I am not requesting the records that were disclosed, I am just requesting the (approved) applications for those public records.
2. All ***denied*** public record request applications where applicant indicated he/she was involved in litigation, a quasi-judicial proceeding, or any judicial or administrative forum involving the City of Homer or an agency thereof.
3. All rules and/or orders applicable to the disclosure of City of Homer public records in administrative appeal forums such as the OAH and the Homer City Council.
4. All provisions of HCC or other applicable law that authorizes an acting Homer city manager to retroactively deny a citizen's public records request after it has been approved by a duly appointed city manager.

Frank Griswold

From: [Frank Griswold](#)
To: [Renee Krause](#)
Cc: [Melissa Jacobsen](#)
Subject: February 26, 2024 Public Records Request
Date: Thursday, March 21, 2024 11:53:53 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

Have the public records that Ms. Jacobsen withheld from me on March 20, 2024 nonetheless been retrieved, copied, and assembled? Will they be submitted to the Homer City Council for *in camera* review at the appeal hearing?

Frank

From: [Frank Griswold](#)
To: [Renee Krause](#)
Subject: City Council Appeal Hearing
Date: Thursday, March 21, 2024 4:49:56 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

Will the Homer City Council be represented by legal counsel at the upcoming appeal hearing regarding my February 26, 2024 public records request? If so, by whom? Will Mr. Dumouchel be available to participate in the appeal hearing as a witness? If possible, please provide me with his contact information.

Frank

From: [Frank Griswold](#)
To: [Renee Krause](#)
Subject: Re: Discovery Request re: Frank Griswold's Appeal to the Homer City Council of Ms. Jacobsen's Belated Denial of February 26, 2024 Public Records Request
Date: Tuesday, March 26, 2024 11:54:47 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

The subject records are relevant to my pending administrative appeal to the Homer City Council of Acting City Manager Melissa Jacobsen's March 20, 2024 de facto denial of my February 26, 2024 public records request. The basis for her decision to withhold those public records was HCC 2.84.055 which provides that records relevant to an administrative appeal "are governed by the rules or orders of that forum, and not by this chapter." It would follow that the instant administrative appeal to the Homer City Council would also be governed by the rules or orders of *that* forum and not by HCC 2.84 i.e., the standard public records request procedures which you are presumably now asking me to follow. I am unaware of any rules or orders prescribed in HCC governing disclosure of public records relevant to OAH 23-0320-MUN or to my pending appeal to the Homer City Council. If there are such rules or orders, please elucidate me. If there are not, please elucidate Ms. Jacobsen. In the absence of such rules or orders, it stands to reason that the regular rules pertaining to written requests for public records under HCC 2.84 and related Regulations apply. Note that AS 40.25.122 (Litigation Disclosure) is prefaced by the following: "A public record that is subject to disclosure and copying under AS 40.25.110 - 40.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency." The facts that OAH 23-0320-MUN involved a closed record and that briefing and oral argument have long been completed precludes any possibility that the records I requested could now be entered into the record or otherwise affect the Administrative Law Judge's Decision. In any event, if public records regarding the pending appeal to the Homer City Council can be disclosed to me via my submittal of a standard public records request form, then so too can the public records I requested on February 26, 2024 regarding OAH 23-0320-MUN. If the records I requested on February 26, 2024 are disclosed to me, my appeal to the Homer City Council would be moot. I would appreciate your response to the following questions:

1. Other than those prescribed under HCC 2.84, what rules or orders apply to requests for public records relevant to City of Homer administrative appeals?
2. Why would my submittal of a completed records request form for records

relevant to the pending Homer City Council administrative appeal result in disclosure of those records when my February 26, 2024 public records request resulted in no disclosure of public records?

3. What provision of HCC 2.84 or the City of Homer Public Records Request Regulations requires a requester of public records to complete the city's public request form i.e., why isn't my current written discovery request sufficient?

Frank Griswold

On Mar 26, 2024, at 10:11 AM, Renee Krause <RKrause@ci.homer.ak.us> wrote:

Please submit a completed records request form if you desire these records.

Renee Krause, MMC
Deputy City Clerk II
ADA Coordinator

From: Frank Griswold <fsgriz@alaska.net>

Sent: Thursday, March 21, 2024 11:33 AM

To: Renee Krause <RKrause@ci.homer.ak.us>

Cc: Melissa Jacobsen <MJacobsen@ci.homer.ak.us>

Subject: Discovery Request re: Frank Griswold's Appeal to the Homer City Council of Ms. Jacobsen's Belated Denial of February 26, 2024 Public Records Request

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

Please provide me with the following:

1. All **approved** public record request applications where applicant indicated that he/she was involved in litigation, a quasi-judicial proceeding, or in some judicial or administrative forum involving the City of Homer or an agency thereof. At this point I am not requesting the records that were disclosed, I am just requesting the (approved) applications for those public records.

2. All **denied** public record request applications where applicant indicated he/she was involved in litigation, a quasi-judicial proceeding, or any judicial or

administrative forum involving the City of Homer or an agency thereof.

3. All rules and/or orders applicable to the disclosure of City of Homer public records in administrative appeal forums such as the OAH and the Homer City Council.

4. All provisions of HCC or other applicable law that authorizes an acting Homer city manager to retroactively deny a citizen's public records request after it has been approved by a duly appointed city manager.

Frank Griswold

From: [Frank Griswold](#)
To: [Renee Krause](#)
Subject: Re: Appeal Hearing - Denial of Records Request
Date: Thursday, March 28, 2024 5:12:24 PM
Importance: High

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Absent unforeseen circumstances, I would be available on April 25 or April 26 at 6 pm but that doesn't leave much time for City Council deliberation prior to making its decision. When can I expect to receive the public records I requested as part of discovery? I would like to review that evidence well in advance of the hearing.

On Mar 28, 2024, at 4:54 PM, Renee Krause <RKrause@ci.homer.ak.us> wrote:

I am working on the appeal of Records Request Decision by Acting City Manager Jacobsen and City code requires that City Council consider and decide the appeal within 30 days.

This will require a special meeting to be scheduled and noticed.

Can you please provide your availability for two dates with times during the week of April 22-26, 2024.

Thank you.

<image004.jpg>

Renee Krause, MMC
Deputy City Clerk II
ADA Coordinator
City of Homer – City Clerk's Office
491 E Pioneer Avenue
Homer, Alaska 99603
907-235-8121 ext. 2224 Main # City Hall & Extension
907-235-3143 Fax City Clerk's Office Fax
907-435-3109 Direct Line
rkrause@ci.homer.ak.us

"Don't allow your past or present condition to control you. It's just a process that you're going through to get you to the next level." ~ T.D. Jakes

PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

From: [Frank Griswold](#)
To: [Renee Krause](#)
Subject: Re: Appeal Hearing - Denial of Records Request
Date: Friday, March 29, 2024 11:06:28 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

1. The pending appeal does not involve a closed record and I have a fundamental right to submit relevant evidence in support of my case.
2. No provision of HCC 2.84.055 stipulates any rules or orders governing the disclosure of public records relevant to administrative appeals before the City Council.
3. No provision of HCC 2.84 or AS 40.25 exempts the disclosure of public records on the ground that doing so would render a pending administrative appeal moot.
4. “If we provide you with the records then your appeal would be moot” is not a valid reason to deny a discovery request or a public records request; if an appeal is moot, so be it.
5. You do not have the authority to determine whether a pending administrative appeal is moot.
6. You do not have the authority to deny a discovery request or a public records request. While Acting City Manager Melissa Jacobsen retroactively denied my February 26, 2024 public request, she did not deny my ensuing discovery request for public records.
7. The question currently before the City Council is whether to disclose the public records I requested on February 26, 2024. All questions regarding the introduction of evidence into the record on appeal should be decided by the City Council well in advance of the hearing. I would like to call former City Manager Rob Dumouchel and have asked for his contact information but received no response. I do not know what procedures apply to the calling of witnesses or taking their testimony. While not mandatory, it would be extremely helpful if a procedural notice were prepared by the City Council and distributed well in advance of the hearing.
8. I promptly responded to your inquiry regarding my availability. You did not state that 8-5 was a parameter. City Council meetings commence after 5 P.M so I assumed that some Council members have day jobs. Nonetheless, if this discovery request matter is resolved prior to April 15 I would do my best to be available during regular work hours soon thereafter. The availability of my witnesses is also a factor.

Frank

On Mar 29, 2024, at 9:11 AM, Renee Krause <RKrause@ci.homer.ak.us> wrote:

I appreciate that reminder, so In order to allow Council the option for deliberative

process on the issue, would you have availability during the week of April 15th during 8am- 5pm. Meetings are not typically held on Fridays after 5:00pm.

In response to the question regarding the records:

1. The records are not available to release. If we provide you the records then your appeal would be moot.
2. That will be the question before City Council – do we or do we not release the records you requested.

I look forward to receiving your new availability schedule. Have a Happy Easter.

Renee Krause, MMC
Deputy City Clerk II
ADA Coordinator

From: Frank Griswold <fsgriz@alaska.net>
Sent: Thursday, March 28, 2024 5:12 PM
To: Renee Krause <RKrause@ci.homer.ak.us>
Subject: Re: Appeal Hearing - Denial of Records Request
Importance: High

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Absent unforeseen circumstances, I would be available on April 25 or April 26 at 6 pm but that doesn't leave much time for City Council deliberation prior to making its decision. When can I expect to receive the public records I requested as part of discovery? I would like to review that evidence well in advance of the hearing.

On Mar 28, 2024, at 4:54 PM, Renee Krause
<RKrause@ci.homer.ak.us> wrote:

I am working on the appeal of Records Request Decision by Acting City Manager Jacobsen and City code requires that City Council consider and decide the appeal within 30 days.

This will require a special meeting to be scheduled and noticed.

Can you please provide your availability for two dates with times during the week of April 22-26, 2024.

Thank you.

<image004.jpg>

Renee Krause, MMC
Deputy City Clerk II
ADA Coordinator
City of Homer – City Clerk’s Office
491 E Pioneer Avenue
Homer, Alaska 99603
907-235-8121 ext. 2224 Main # City Hall & Extension
907-235-3143 Fax City Clerk’s Office Fax
907-435-3109 Direct Line
rkrause@ci.homer.ak.us

"Don't allow your past or present condition to control you. It's just a process that you're going through to get you to the next level." ~ T.D.

Jakes

PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

From: [Renee Krause](#)
To: ["Frank Griswold"](#)
Subject: RE: Appeal Hearing - Denial of Records Request
Date: Friday, March 29, 2024 12:18:00 PM

I only wanted to state that I do not have the ability to release the records you are seeking.

I am referring strictly to the appeal of the request for records. I am not handling, addressing or referring to any other appeal or topic those records may be concerning.

I am trying to establish a date within the time addressed in city code 2.84 that applies to appeals of denials to requests for records for Council to consider and decide the matter.

I erred in not setting the time frame in my initial email regarding scheduling – you have my apologies for that oversight.

The question remains:

Are you available to attend a Special Meeting of City Council to Address the Appeal of a Records Request Decision by the Acting City Manager the week of April 15-19th

Regards

Renee Krause, MMC
Deputy City Clerk II
ADA Coordinator

From: Frank Griswold <fsgriz@alaska.net>
Sent: Friday, March 29, 2024 11:06 AM
To: Renee Krause <RKrause@ci.homer.ak.us>
Subject: Re: Appeal Hearing - Denial of Records Request

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

1. The pending appeal does not involve a closed record and I have a fundamental right to submit relevant evidence in support of my case.
2. No provision of HCC 2.84.055 stipulates any rules or orders governing the disclosure of public records relevant to administrative appeals before the City Council.
3. No provision of HCC 2.84 or AS 40.25 exempts the disclosure of public records on the ground that doing so would render a pending administrative appeal moot.

4. "If we provide you with the records then your appeal would be moot" is not a valid reason to deny a discovery request or a public records request; if an appeal is moot, so be it.
5. You do not have the authority to determine whether a pending administrative appeal is moot.
6. You do not have the authority to deny a discovery request or a public records request. While Acting City Manager Melissa Jacobsen retroactively denied my February 26, 2024 public request, she did not deny my ensuing discovery request for public records.
7. The question currently before the City Council is whether to disclose the public records I requested on February 26, 2024. All questions regarding the introduction of evidence into the record on appeal should be decided by the City Council well in advance of the hearing. I would like to call former City Manager Rob Dumouchel and have asked for his contact information but received no response. I do not know what procedures apply to the calling of witnesses or taking their testimony. While not mandatory, it would be extremely helpful if a procedural notice were prepared by the City Council and distributed well in advance of the hearing.
8. I promptly responded to your inquiry regarding my availability. You did not state that 8-5 was a parameter. City Council meetings commence after 5 P.M so I assumed that some Council members have day jobs. Nonetheless, if this discovery request matter is resolved prior to April 15 I would do my best to be available during regular work hours soon thereafter. The availability of my witnesses is also a factor.

Frank

On Mar 29, 2024, at 9:11 AM, Renee Krause <RKrause@ci.homer.ak.us> wrote:

I appreciate that reminder, so In order to allow Council the option for deliberative process on the issue, would you have availability during the week of April 15th during 8am- 5pm. Meetings are not typically held on Fridays after 5:00pm.

In response to the question regarding the records:

1. The records are not available to release. If we provide you the records then your appeal would be moot.
2. That will be the question before City Council – do we or do we not release the records you requested.

I look forward to receiving your new availability schedule. Have a Happy Easter.

Renee Krause, MMC
Deputy City Clerk II
ADA Coordinator

From: Frank Griswold <fsgriz@alaska.net>
Sent: Thursday, March 28, 2024 5:12 PM
To: Renee Krause <RKrause@ci.homer.ak.us>

Subject: Re: Appeal Hearing - Denial of Records Request

Importance: High

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Absent unforeseen circumstances, I would be available on April 25 or April 26 at 6 pm but that doesn't leave much time for City Council deliberation prior to making its decision. When can I expect to receive the public records I requested as part of discovery? I would like to review that evidence well in advance of the hearing.

On Mar 28, 2024, at 4:54 PM, Renee Krause
<RKrause@ci.homer.ak.us> wrote:

I am working on the appeal of Records Request Decision by Acting City Manager Jacobsen and City code requires that City Council consider and decide the appeal within 30 days.

This will require a special meeting to be scheduled and noticed.

Can you please provide your availability for two dates with times during the week of April 22-26, 2024.

Thank you.

<image004.jpg>

Renee Krause, MMC
Deputy City Clerk II
ADA Coordinator
City of Homer – City Clerk's Office
491 E Pioneer Avenue
Homer, Alaska 99603
907-235-8121 ext. 2224 Main # City Hall & Extension
907-235-3143 Fax City Clerk's Office Fax
907-435-3109 Direct Line
rkrause@ci.homer.ak.us

"Don't allow your past or present condition to control you. It's just a process that you're going through to get you to the next level." ~ T.D.

Jakes

PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

From: [Frank Griswold](#)
To: [Renee Krause](#)
Cc: [Melissa Jacobsen](#)
Subject: Public Records Request/Discovery
Date: Monday, April 1, 2024 12:35:47 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

On March 21, 2024, I emailed you a (written) request for the following public records:

1. All **approved** public record request applications where applicant indicated that he/she was involved in litigation, a quasi-judicial proceeding, or in some judicial or administrative forum involving the City of Homer or an agency thereof. At this point I am not requesting the records that were disclosed, I am just requesting the (approved) applications for those public records.
2. All **denied** public record request applications where applicant indicated he/she was involved in litigation, a quasi-judicial proceeding, or any judicial or administrative forum involving the City of Homer or an agency thereof.
3. All rules and/or orders applicable to the disclosure of City of Homer public records in administrative appeal forums such as the OAH and the Homer City Council.
4. All provisions of HCC or other applicable law that authorizes an acting Homer city manager to retroactively deny a citizen's public records request after it has been approved by a duly appointed city manager.

On March 29, 2024, you stated in separate emails as follows: 1. The records are not available to release, and 2. You do not have the ability to release them. However, you do not have the authority to deny a public records request. Regulation 5.01 states: "If the **City Manager** makes an adverse determination, in whole or in part, [to] a written public records request, the **City Manager** will provide a written response setting forth the adverse determination. It will include a description of the records requested, a description of the records that will not be provided, and the reasons for the adverse determination, including reference to provisions of law or

regulations, facts, and other information relied upon. The *City Manager's* written response will also include a notice that the requestor has a right to appeal to the city council." Pursuant to Regulation 5.03, I hereby demand a written response from the City Manager as to whether my March 21, 2024 public records request is approved or denied, in whole or in part. If I do not receive a response from the City Manager (or Acting City Manager) within 3 working days of this demand, I will consider my March 21, 2024 public records request to be deemed denied by the City Manager and I will appeal that deemed denial to the Homer City Council in accordance with Regulation 5.03, Regulation 5.04, and HCC 2.84.070.

Thank you for your prompt attention to this matter,

Frank Griswold

From: [Frank Griswold](#)
To: [Renee Krause](#)
Cc: [Melissa Jacobsen](#)
Subject: Appeal to Homer City Council of Acting CM's (Deemed) Denial of Frank Griswold's March 21, 2024 Public Records Request
Date: Friday, April 5, 2024 9:25:25 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

In accordance with Regulation 5.03, Regulation 5.04, HCC 2.84.070 and the reasons stated below, I hereby appeal the Acting City Manager's (deemed) denial of my March 21, 2024 public records request.

Frank Griswold

Begin forwarded message:

From: Frank Griswold <fsgriz@alaska.net>
Subject: **Public Records Request/Discovery**
Date: April 1, 2024 at 12:35:24 AM AKDT
To: Renee Krause <RKrause@ci.homer.ak.us>
Cc: Melissa Jacobsen <mjacobsen@ci.homer.ak.us>

Renee,

On March 21, 2024, I emailed you a (written) request for the following public records:

1. All ***approved*** public record request applications where applicant indicated that he/she was involved in litigation, a quasi-judicial proceeding, or in some judicial or administrative forum involving the City of Homer or an agency thereof. At this point I am not requesting the records that were disclosed, I am just requesting the (approved) applications for those public records.
2. All ***denied*** public record request applications where applicant indicated he/she was involved in litigation, a quasi-judicial proceeding, or any judicial or administrative forum involving the City of Homer or an agency thereof.

3. All rules and/or orders applicable to the disclosure of City of Homer public records in administrative appeal forums such as the OAH and the Homer City Council.

4. All provisions of HCC or other applicable law that authorizes an acting Homer city manager to retroactively deny a citizen's public records request after it has been approved by a duly appointed city manager.

On March 29, 2024, you stated in separate emails as follows: 1. The records are not available to release, and 2. You do not have the ability to release them. However, you do not have the authority to deny a public records request. Regulation 5.01 states: "If the **City Manager** makes an adverse determination, in whole or in part, [to] a written public records request, the **City Manager** will provide a written response setting forth the adverse determination. It will include a description of the records requested, a description of the records that will not be provided, and the reasons for the adverse determination, including reference to provisions of law or regulations, facts, and other information relied upon. The **City Manager's** written response will also include a notice that the requestor has a right to appeal to the city council." Pursuant to Regulation 5.03, I hereby demand a written response from the City Manager as to whether my March 21, 2024 public records request is approved or denied, in whole or in part. If I do not receive a response from the City Manager (or Acting City Manager) within 3 working days of this demand, I will consider my March 21, 2024 public records request to be deemed denied by the City Manager and I will appeal that deemed denial to the Homer City Council in accordance with Regulation 5.03, Regulation 5.04, and HCC 2.84.070.

Thank you for your prompt attention to this matter,

Frank Griswold

From: [Frank Griswold](#)
To: [Melissa Jacobsen](#)
Cc: [Renee Krause](#)
Subject: Motion for Stay
Date: Friday, April 5, 2024 10:38:55 AM
Attachments: [Motion for Stay PRR copy 5.pdf](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

BEFORE THE HOMER CITY COUNCIL

In re Denial of February 26, 2024
Public Records Request

**MOTION FOR STAY OF THESE APPEAL PROCEEDINGS PENDING THE CITY
COUNCIL'S FINAL DECISION RE: FRANK GRISWOLD'S APPEAL OF THE DENIAL
OF HIS MARCH 21, 2024 PUBLIC RECORDS REQUEST**

On April 5, 2024, I filed an appeal to the City Council of the denial my March 21, 2024 public records request. That March 21, 2024 discovery request was for records that I intend to present as evidence in my appeal of the denial of my February 26, 2024 public records request. It would be highly prejudicial to me if the records I requested on March 21, 2024 were not included in the record on appeal for the instant matter. Accordingly, I hereby request that the pending appeal proceedings pertaining to the denial of my February 26, 2024 public records request be stayed until the City Council has issued its final decision regarding the denial of my March 21, 2024 (discovery) request for public records.

DATED: April 5, 2024

By: /Frank Griswold/
Frank Griswold

From: [Frank Griswold](#)
To: [Renee Krause](#)
Cc: [Melissa Jacobsen](#)
Subject: Motion for In Camera Review
Date: Tuesday, April 9, 2024 12:31:45 PM
Attachments: [Motion for Stay PRR copy 6.pdf](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

BEFORE THE HOMER CITY COUNCIL

In re Denial of February 26, 2024
Public Records Request

**MOTION FOR IN CAMERA REVIEW BY CITY COUNCIL OF PUBLIC RECORDS
REQUESTED BY MR. GRISWOLD ON FEBRUARY 26, 2024 AND MARCH 21, 2024**

The “Procedure for Homer City Council” dated April 25, 2024 states “Record on appeal and written correspondence have been submitted by the parties.” To date, Mr. Griswold has not received a copy of the Record on Appeal. Mr. Griswold hereby requests that the public records he requested on February 26, 2024 and March 21, 2024 be provided to the Homer City Council for in camera review. The public records requested on March 21, 2024 directly relate to the denial of his February 26, 2024 request for public records. Mr. Griswold would appreciate an expedited ruling on his April 5, 2024 motion for stay of this appeal pending the Council’s ruling on his April 5, 2024 appeal of the denial of his March 21, 2024 public records request.

DATED: April 9, 2024

By: *Frank Griswold*
Frank Griswold

From: [Frank Griswold](#)
To: [Renee Krause](#)
Subject: Procedure of Homer City Council
Date: Tuesday, April 9, 2024 1:23:07 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

1. Who crafted/wrote/prepared the "Procedure For Homer City Council" dated April 25, 2024?
2. Why is there no provision within those procedures for the parties to call and/or question witnesses?
3. Will the parties be allowed to present evidence at the hearing? If not, why not?
4. Will the parties be sworn in?
5. Can I expect a ruling by the Council on my motions for stay and in camera review prior to the hearing currently scheduled for April 25?
6. Will I be provided with a copy of the Record on Appeal? If so, when?

Frank

From: [Renee Krause](#)
To: ["Frank Griswold"](#)
Subject: RE: Procedure of Homer City Council
Date: Wednesday, April 10, 2024 4:28:00 PM

Frank

In response to your questions below I have responded to the number:

1. The procedure was prepared accessing prior procedures used for a records appeals.
2. - 5. You can address City Council on the other questions under preliminary matters as I do not have the answers.
6. As soon as I have the Record of Appeal completed I will email you the Notice.

Renee Krause, MMC
Acting City Clerk/ADA Coordinator

-----Original Message-----

From: Frank Griswold <fsgriz@alaska.net>
Sent: Tuesday, April 9, 2024 1:23 PM
To: Renee Krause <RKrause@ci.homer.ak.us>
Subject: Procedure of Homer City Council

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

1. Who crafted/wrote/prepared the "Procedure For Homer City Council" dated April 25, 2024?
2. Why is there no provision within those procedures for the parties to call and/or question witnesses?
3. Will the parties be allowed to present evidence at the hearing? If not, why not?
4. Will the parties be sworn in?
5. Can I expect a ruling by the Council on my motions for stay and in camera review prior to the hearing currently scheduled for April 25?
6. Will I be provided with a copy of the Record on Appeal? If so, when?

Frank

From: [Frank Griswold](#)
To: [Renee Krause](#)
Subject: Re: Procedure of Homer City Council
Date: Wednesday, April 10, 2024 4:58:53 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

For which prior denials of records request appeal were these procedures applied and **who crafted them**? Were any different procedures applied in previous public record request appeals?

Please forward my motions to the Homer City Council ASAP so that it can rule on them in advance of the hearing. It would be prejudicial to me to have to wait until the hearing to find out whether I can call witnesses or whether the hearing will be stayed. Furthermore, my motion for in camera review needs to be ruled upon well in advance of the hearing so that, if granted, the (sealed) public records are available for review by the Council at the hearing. Please note that in administrative appeals before a hearing officer, motions by parties are routinely ruled upon in advance of the actual hearing. See OAH 23-0320 MUN.

Frank

On Apr 10, 2024, at 4:28 PM, Renee Krause <RKrause@ci.homer.ak.us> wrote:

Frank

In response to your questions below I have responded to the number:

1. The procedure was prepared accessing prior procedures used for a records appeals.
2. - 5. You can address City Council on the other questions under preliminary matters as I do not have the answers.
6. As soon as I have the Record of Appeal completed I will email you the Notice.

Renee Krause, MMC
Acting City Clerk/ADA Coordinator

-----Original Message-----

From: Frank Griswold <fsgriz@alaska.net>

Sent: Tuesday, April 9, 2024 1:23 PM
To: Renee Krause <RKrause@ci.homer.ak.us>
Subject: Procedure of Homer City Council

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

1. Who crafted/wrote/prepared the "Procedure For Homer City Council" dated April 25, 2024?
2. Why is there no provision within those procedures for the parties to call and/or question witnesses?
3. Will the parties be allowed to present evidence at the hearing? If not, why not?
4. Will the parties be sworn in?
5. Can I expect a ruling by the Council on my motions for stay and in camera review prior to the hearing currently scheduled for April 25?
6. Will I be provided with a copy of the Record on Appeal? If so, when?

Frank

From: [Renee Krause](#)
To: ["Frank Griswold"](#)
Subject: Response to Your Question: Who crafted the Procedure of Homer City Council document
Date: Thursday, April 11, 2024 11:18:00 AM

The document was found in a 2010 electronic folder identified as "Griswold Records Request Appeal". The Procedure of Homer City Council was the only document in the file. Review of the document properties show that the author (or crafted) was Joe Levesque and last printed on October 22, 2010. I have no knowledge of, or found different procedures related to previous public records request appeals.

Renee Krause, MMC
Acting City Clerk/ADA Coordinator

From: Frank Griswold <fsgriz@alaska.net>
Sent: Wednesday, April 10, 2024 4:59 PM
To: Renee Krause <RKrause@ci.homer.ak.us>
Subject: Re: Procedure of Homer City Council

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

For which prior denials of records request appeal were these procedures applied and **who crafted them**? Were any different procedures applied in previous public record request appeals?

Please forward my motions to the Homer City Council ASAP so that it can rule on them in advance of the hearing. It would be prejudicial to me to have to wait until the hearing to find out whether I can call witnesses or whether the hearing will be stayed. Furthermore, my motion for in camera review needs to be ruled upon well in advance of the hearing so that, if granted, the (sealed) public records are available for review by the Council at the hearing. Please note that in administrative appeals before a hearing officer, motions by parties are routinely ruled upon in advance of the actual hearing. See OAH 23-0320 MUN.

Frank

On Apr 10, 2024, at 4:28 PM, Renee Krause <RKrause@ci.homer.ak.us> wrote:

Frank

In response to your questions below I have responded to the number:

1. The procedure was prepared accessing prior procedures used for a records appeals.
2. - 5. You can address City Council on the other questions under preliminary matters as I do not have the answers.
6. As soon as I have the Record of Appeal completed I will email you the Notice.

Renee Krause, MMC
Acting City Clerk/ADA Coordinator

-----Original Message-----

From: Frank Griswold <fsgriz@alaska.net>
Sent: Tuesday, April 9, 2024 1:23 PM
To: Renee Krause <RKrause@ci.homer.ak.us>
Subject: Procedure of Homer City Council

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Renee,

1. Who crafted/wrote/prepared the "Procedure For Homer City Council" dated April 25, 2024?
2. Why is there no provision within those procedures for the parties to call and/or question witnesses?
3. Will the parties be allowed to present evidence at the hearing? If not, why not?
4. Will the parties be sworn in?
5. Can I expect a ruling by the Council on my motions for stay and in camera review prior to the hearing currently scheduled for April 25?
6. Will I be provided with a copy of the Record on Appeal? If so, when?

Frank

FEB 26 2024



City of Homer PUBLIC RECORDS REQUEST FORM

Office of the City Clerk
491 East Pioneer Avenue
Homer, Alaska 99603
Phone: (907) 235-3130
Fax: (907) 235-3143

The City Clerk's Office staff shall respond within ten (10) working days of the request. This timeframe may be extended by written notification of the need for additional time before expiration of the response period. If the request is denied in whole or in part, you will be notified in writing.

Requestor's Name: Frank Griswold Phone: 235-7627

Name of Business, Law Firm, and/or Company: _____

Mailing Address: 519 Klondike Ave.

City: Homer State: AK Zip: 99603

Email: _____ Fax: _____

Are you involved in litigation or appeal with the City of Homer? Yes No

If yes, which case(s)? OAH 23-0320-MUN

Does this request pertain to the above litigation(s) or any future potential litigation(s)? Yes No

I would like to receive the documents by: Mail Fax Email Will Pick Up For Review Only

Title, Date, & Description of Record:

All emails and other correspondence to/from Asia Freeman and/or Melody Livingston since 1/1/2020 pertaining to activities at 106 West Bunnell Avenue, Homer, Alaska.

I certify the information I provided on and in connection with this form is true and correct to the best of my knowledge. I also understand that any false statements or deliberate omissions on this form may subject me to legal actions for fraudulent misrepresentation.

Requestor's Signature: Frank Griswold Date: February 26, 2024

FOR OFFICE USE ONLY			
Date Request Received: _____		Departments that are check marked below are assisting in filling this records request:	
<input type="checkbox"/> Administration	<input type="checkbox"/> Finance	<input type="checkbox"/> IT - Email	<input type="checkbox"/> Planning Department
<input type="checkbox"/> Fire Department	<input type="checkbox"/> Library	<input type="checkbox"/> Police Department	<input type="checkbox"/> Harbor Department
<input type="checkbox"/> Public Works	<input type="checkbox"/> Human Resources	<input type="checkbox"/> City Clerk	<input type="checkbox"/> Other: _____
Photocopies (print or electronic)	\$0.25 per page	\$ _____	
Audio Copy	\$25.00 per CD/Zip Drive	\$ _____	
Police Report Photos (CD)	\$25.00 per CD	\$ _____	
Other	\$25.00 each	\$ _____	
Salary of staff (hourly rate plus benefits) filling a request when retrieval and duplication of documents requested generated in excess of 5 hours.	\$ _____ labor x _____ hours	\$ _____	
			Total Charges \$ _____
<input type="checkbox"/> Request for Record(s) Copy(ies) total \$ _____ was received on _____ and provided or mailed/emailed on _____			
<input type="checkbox"/> Not a City record - Contact the following agency/entity: _____			
<input type="checkbox"/> Record(s) or information is unavailable due to the following: _____			
<input type="checkbox"/> Record(s) or Information is exempt from disclosure and public access is denied. Requestor was notified on _____			



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

491 East Pioneer Avenue
Homer, Alaska 99603

citymanager@cityofhomer-ak.gov

(p) 907-235-8121 x2222

(f) 907-235-3148

March 11, 2024

Frank Griswold
519 Klondike Ave.
Homer, AK 99603
by email to: fsgriz@alaska.net

Mr. Griswold,

The City is working to respond to your request for public records dated February 26, 2024 for all emails and other correspondence to/from Asia Freeman and/or Melody Livingston since 1/1/2020 pertaining to activities at 106 W. Bunnell Avenue.

Additional time is needed to respond to this request and is expected to be completed by Wednesday, March 20th.

Thank you,

Rob Dumouchel, City Manager