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

Supplement to the Record

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Counsel

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**From:** [Frank Griswold](#)  
**To:** [Renee Krause](#)  
**Subject:** Re: Response to Your Question: Who crafted the Procedure of Homer City Council document  
**Date:** Thursday, April 11, 2024 11:58:00 AM

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

Renee,

Thank you for your prompt response. To the best of my knowledge, Attorney Joe Levesque does not represent the Homer City Council in the instant matter. Furthermore, I did not seek to call and/or question witnesses in that 2010 appeal. Either the City Council or its current legal counsel should prepare the procedures for the appeal now before the Council. HCC 2.84.070 is glaringly deficient in setting forth appeal procedures. Please bring these concerns to the immediate attention of the City Council.

Frank

On Apr 11, 2024, at 11:18 AM, Renee Krause <[RKrause@ci.homer.ak.us](mailto:RKrause@ci.homer.ak.us)> wrote:

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](mailto:fsgriz@alaska.net)>  
**Sent:** Wednesday, April 10, 2024 4:59 PM  
**To:** Renee Krause <[RKrause@ci.homer.ak.us](mailto:RKrause@ci.homer.ak.us)>  
**Subject:** Re: Procedure of Homer City Council

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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](mailto: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](mailto:fsgriz@alaska.net)>  
Sent: Tuesday, April 9, 2024 1:23 PM  
To: Renee Krause <[RKrause@ci.homer.ak.us](mailto:RKrause@ci.homer.ak.us)>  
Subject: Procedure of Homer City Council

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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

PROCEDURE FOR HOMER CITY COUNCIL

***Frank Griswold Appeal of Determination of Public Records Request***

***dated February 26, 2024***

April 25, 2024

6:00 P.M.

- I. Identification of the Appeal.
  - A. Frank Griswold Appeal from Denial of Public Requests Request.
  - B. Record on appeal and written correspondence have been submitted by the parties.
- II. Identification of the Parties
- III. Preliminary Issues.
  - A. Preliminary Issues
  - B. Conflicts of Interest
  - C. Ex Parte Communications
- IV. Oral Argument – 20 minutes for each Party.
  - A. Appellant – Frank Griswold (may reserve some time to respond to Appellee arguments)
  - B. Appellee – Melissa Jacobsen, Homer Acting/Interim City Manager
- V. Questions by Members of Council.
- VI. Deliberations.
- VII. Written Decision – Copies of the written decision will be disseminated to all parties.

**From:** [Frank Griswold](#)  
**To:** [Renee Krause](#)  
**Subject:** Appeal of the denial of March 21, 2024 public records request  
**Date:** Thursday, April 11, 2024 12:34:53 PM

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Renee,

While my appeal of the (deemed) denial of my March 21, 2024 public request is directly related to my appeal of the denial of my appeal February 26, 2024 public records request, these constitute distinct appeals subject to distinct appeal hearings before the Homer City Council. Absent the Council's timely granting of my notion for a stay of the proceedings regarding the February 26, 2024 public records request, it would be best to have the appeal of the March 21, 2024 (discovery) request decided before the appeal of the denial of the February 26, 2024 public records request is heard. When do you anticipate scheduling the hearing for my appeal of the denial of my March 21, 2024 public records request?

Frank

**From:** [Frank Griswold](#)  
**To:** [Renee Krause](#)  
**Subject:** Due Process (Not)  
**Date:** Thursday, April 11, 2024 2:58:32 PM

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Renee,

1. JDO represented the city regarding OAH 23-0329-MUN and therefore has a concurrent conflict of interest representing the City Council in the instant related matter(s). There is a reason the City Council was represented by an independent law firm in 2010 instead of being represented by a Homer City Attorney.
2. JDO did not formally enter its appearance regarding my current appeal(s) to the City Council.
3. JDO now appears to be surreptitiously representing both the Acting/Interim City Manager and the City Council.
4. I was not included in any discussions regarding procedures/process for the upcoming hearing and therefore consider the discussions that took place to be illegal ex-parte communications.
5. I never consented to the procedures endorsed by JDO and was never asked to do so.
6. The subject procedures are patently beneficial to the Acting/Interim City Manager and prejudicial to me.
7. The subject procedures are no more valid than procedures I may have submitted.
8. It is the duty of the Homer City Council to impartially set forth procedures that apply to the upcoming appeal hearing; in doing so, the City Council should take into consideration my request to call and question witnesses.
9. Please provide me with all input provided by JDO regarding the subject procedure document, all records showing how, when, and by what vote and/or signature(s) the City Council approved those procedures and process, and add all of this to the Record on Appeal.
10. Why was the City Council able to so quickly approve prejudicial appeal procedures while ignoring my pre-hearing motions? (Rhetorical).
11. Please bring this correspondence to the immediate attention of the City Council so that it can take appropriate action in a timely manner.

Frank



On Apr 11, 2024, at 1:15 PM, Renee Krause <[RKrause@ci.homer.ak.us](mailto:RKrause@ci.homer.ak.us)> wrote:

JDO Law (City Atty) has reviewed and provided input on the document that was provided to you regarding the procedure to use. They approved the process noting the same deficiency in city code as you mentioned.

I am aware the Joe Levesque does not represent the City Council but has been retained by the City and City Council on legal matters in past years.

Renee Krause, MMC  
Acting City Clerk/ADA Coordinator

**From:** Frank Griswold <[fsgriz@alaska.net](mailto:fsgriz@alaska.net)>

**Sent:** Thursday, April 11, 2024 11:58 AM

**To:** Renee Krause <[RKrause@ci.homer.ak.us](mailto:RKrause@ci.homer.ak.us)>

**Subject:** Re: Response to Your Question: Who crafted the Procedure of Homer City Council document

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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:** [Max D. Holmquist](#)  
**Cc:** [Renee Krause](#)  
**Subject:** Re: In the Matter of Appeal of Denial of February 26, 2024 Public Records Request - Proposed Stipulation for Hearing Procedure  
**Date:** Sunday, April 14, 2024 10:35:58 PM  
**Attachments:** [image001.png](#)

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Mr. Holmquist,

HCC 2.16.010 (Duties) provides that **“The City Attorney shall act as legal advisor to and be attorney and counsel for the Council and shall be solely responsible to the City Council.”** HCC 2.16.010(e) states: **“He shall at all times cooperate with the City Manager and shall provide such information and reports and perform such duties as are requested by the City Manager so long as they are not inconsistent with the duties of his office as provided in this section.”** (Emphasis added). I believe you are deliberately taking advantage of your longstanding professional relationship with the Homer City Council in order to inappropriately persuade it to adopt procedures for the upcoming hearing that favor your ubiquitous clients. At some point, you may wish to explain to the Homer City Council why your representation of "the City of Homer" excludes the Homer City Council. Acting City Clerk Renee Krause sent me a letter dated April 5, 2024 which states as follows: **“The City has received your appeal of the denial of your public records request dated February 26, 2024. The appeal is governed by Homer City Code 2.84.070. The City Council will hold a hearing to consider your appeal on April 25, 2024 at 6:00 p.m. in Cowles Council Chambers, 491 E. Pioneer Avenue, Homer, Alaska. Enclosed is the hearing procedure for the April 25, 2024 hearing.”** (Emphasis added). Because the City Clerk’s Office does not have the authority to prepare and/or prescribe quasi-judicial hearing procedures, one would assume that this Procedure had been adopted by the City Council prior to it being distributed by the City Clerk’s Office to the parties. However, you now assert that the City Council has not adopted this Procedure which suggests to me that you may have been participating in ex parte communications with the City Council. (On April 11, 2024, I asked the Acting City Clerk when this Procedure was adopted by the City Council but, to date, have received no response). You are undoubtedly aware that I seek to call and question witnesses at the appeal hearing but you made no provision for my doing so in your proposed procedures. In past appeals of this nature, the City Council has accommodated the calling and questioning of witnesses, depositions, and in camera review. See e.g., *Griswold v. Homer City Council*, 310 P3d 938 (2013). To the best of my knowledge, no previous City Council has authorized written briefing or deemed it necessary for this type of appeal. For what costs you would likely bill the city for preparing a 10-page brief, the City Council could hire unbiased, independent legal counsel capable of crafting fair and unbiased procedures for the City Council to then approve and formally adopt. HCC 2.84.070 does not authorize the parties or their legal representatives to propose or set appeal procedures. Proposing procedures on behalf of the City Council is neither my duty nor yours. Accordingly, I will not stipulate to the self-serving procedures you propose and I have no intention of submitting my own proposal. Because you do not represent the City Council, you have no authority to arrogantly tell me what I am free to do or dictate when I should submit anything to the City Council. In your alleged representation of “the City of Homer” you clearly wish to control every aspect of the April 25, 2024 hearing. I suggest that you re-familiarize yourself

with ABA Ethics Opinion No. 99-2 subtitled “May A Municipal Attorney Represent A Quasi-Judicial Municipal Board That Is Hearing A Disputed Matter In Which The Municipality Is A Party To The Dispute”? In light of the myriad legal issues that have already surfaced, it would be prudent for the City Council to immediately hire unbiased, independent legal counsel. This “independent” legal counsel should not be a shill attorney recommended by JDO or selected by a biased City Manager as has all-too-often been city policy in the past.

Frank Griswold

cc: Homer City Council

On Apr 12, 2024, at 2:57 PM, Max D. Holmquist <mholmquist@jdolaw.com> wrote:

Mr. Griswold,

Our office is representing the City of Homer with respect to your appeal of the City’s denial of your public records request dated February 26, 2024. Our office is not representing or advising the City Council in this appeal.

I understand that after you filed the appeal, you requested that the City Council prepare and distribute a procedural notice for the appeal hearing. HCC 2.84.070 contains no requirements or guidance with respect to a City Council appeal hearing. In response to your request and to assist the City Council, the City Clerk’s office prepared a hearing procedure using a template of a procedure from a prior public records appeal. The City Council has not adopted this procedure.

The City’s position is that written briefing submitted prior to the appeal hearing would be helpful to the City Council. Accordingly, our office has prepared the attached proposed stipulated hearing procedure that includes written briefing and outlines the procedure for the appeal hearing itself. Please review and let me know whether you will stipulate to this procedure by April 15, 2024. If you will not stipulate to this procedure, you are free to submit your own proposed hearing procedure for the Council’s consideration. If you intend to submit your own proposal, please submit it by early next week to allow the Council to decide the applicable procedure in advance of the hearing.



**Max D. Holmquist**  
Attorney

Jermain, Dunnagan & Owens, PC  
111 West 16<sup>th</sup> Avenue, Suite 203  
Anchorage, AK 99501  
Tel: 907.563.8844  
Direct: 907.261.6648  
Fax: 907.563.7322

Max D. Holmquist  
JERMAIN DUNNAGAN & OWENS, P.C.  
111 W. 16<sup>th</sup> Avenue, Suite 203  
Anchorage, AK 99501  
Phone: (907) 563-8844  
Fax: (907) 563-7322  
[mholmquist@jdoLaw.com](mailto:mholmquist@jdoLaw.com)

Attorneys for the City of Homer

BEFORE THE HOMER CITY COUNCIL

In the Matter of

)  
)  
APPEAL OF DENIAL OF FEBRUARY 26, )  
2024 PUBLIC RECORDS REQUEST )  
\_\_\_\_\_ )

**[PROPOSED] PROCEDURE FOR APPEAL OF DENIAL OF  
FEBRUARY 26, 2024 PUBLIC RECORDS REQUEST**

Appellee, the City of Homer hereby proposes the following procedure for the Homer City Council’s consideration of the above-referenced appeal pursuant to HCC 2.84.070.

The parties may file written briefs in support of their positions. Briefs may not exceed 10 pages exclusive of exhibits. Briefs must be filed with the City Clerk on or before April 23, 2024.

An appeal hearing will be held on April 25, 2024 at 6:00 PM in the Cowles City Council Chambers, 491 E. Pioneer Avenue in Homer. Parties may participate in person or via video conference or teleconference. The hearing shall be subject to the following order and time limitations:

1. Identification of the Appeal
2. Identification of the Parties and their counsel
3. Preliminary Issues
  - a. Pending motions, requests, or other pre-hearing issues
  - b. Councilmembers' declarations of any conflicts of interest or ex-parte communications
4. Oral Argument
  - a. Appellant Frank Griswold: 20 minutes (a portion of which may be reserved for rebuttal)
  - b. Appellee the City of Homer: 20 minutes
5. Councilmembers' questions for the parties
6. Deliberations
  - a. City Council to issue a written decision to all parties following the hearing.

DATED this 16<sup>th</sup> day of April, 2024.

JERMAIN DUNNAGAN & OWENS, P.C.  
Attorneys for City of Homer

By: /s/ Max D. Holmquist/  
Max D. Holmquist  
Alaska Bar No. 0911057



**CERTIFICATE OF SERVICE:**

This is to certify that a true and correct copy of the foregoing was served by (X) email ( ) mail ( ) hand ( ) fax on April 16, 2024, to:

Frank Griswold  
519 Klondike Avenue  
Homer, AK 99603  
[fgriz@alaska.net](mailto:fgriz@alaska.net)

Renee Krause  
Acting City Clerk  
[rkrause@ci.homer.ak.us](mailto:rkrause@ci.homer.ak.us)

/s/ Rita R. Bennett  
Rita R. Bennett

**From:** [Frank Griswold](#)  
**To:** [Max D. Holmquist](#)  
**Cc:** [Renee Krause](#)  
**Subject:** Re: In the Matter of Appeal of Denial of February 26, 2024 Public Records Request - Proposed Stipulation for Hearing Procedure  
**Date:** Monday, April 15, 2024 4:22:57 PM  
**Attachments:** [image001.png](#)

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Mr.Holmquist,

HCC 2.84.055 provides that records relevant to an administrative appeal “**are governed by the rules or orders of that forum**, and not by this chapter.” So one factual issue before the City Council is whether HCC 2.84.055 applies in administrative forums where there are no prescribed orders or rules governing the disclosure of public records. AS 40.25.122 provides that “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.” Just because a previous City Council tactically deleted this provision from HCC 2.84.055 (which otherwise mirrors AS 40.25.122) does not mean that the City of Homer is not bound by it. Another factual issue before the City Council is whether HCC 2.84.055 applies when, as in OAH 23-0320-MUN, the record on appeal is closed thus precluding the introduction of those public records even if they were disclosed. Factual questions before the City Council include the following: Why did former City Manager Rob Dumouchel approve the disclosure of the subject public records while Acting City Manager Melissa Jacobsen, on her second day in that position, determined that those public records should not be disclosed? Who authored the public records denial letter dated March 20, 2024 that was signed and sent to me by Ms. Jacobsen? When did you and/or JDO first become involved in this matter and specifically which individuals associated with the City of Homer are you now representing? The sworn testimonies of Mr. Dumouchel, Ms. Jacobsen, and possibly others would be helpful to the City Council in figuring out what led to the denial of my February 26, 2024 public records request after it had previously been approved by City Manager Dumouchel. In camera review of the public records I requested on February 26, 2024 would reveal whether there was some improper motive behind their being withheld. In camera review of the public records I requested on March 21, 2024 is necessary to timely demonstrate that in all previous cases in which public records were requested by individuals involved in quasi-judicial administrative appeals, HCC 2.84.055 was not cited as justification for their denial. It is not clear to me why you believe briefing is necessary. Can you elaborate on why you cannot adequately present your case in a 20-minute oral argument? Can you explain how opening briefs and reply briefs could reasonably be filed within the prescribed time limits? Did you author or substantially influence the recent correspondence(s) of Ms. Jacobsen or Ms. Krause regarding this matter? Why were you aware that the City Council had not approved the Procedure submitted to me on April 5, 2024 by Acting City Clerk Renee Krause when I was not aware of that? Did you advise former City Manager Dumouchel to withhold the public records I requested on February 26, 2024? If not, why not?

Frank Griswold

cc: Homer City Council

On Apr 15, 2024, at 12:43 PM, Max D. Holmquist <mholmquist@jdolaw.com> wrote:

Mr. Griswold,

Thank you for your email. The City merely offered to stipulate to a proposed set of hearing procedures. The City Council will determine the procedures that will apply in this case. Your email states that you would like to call witnesses at the hearing. Can you elaborate on the reasons for this request? Your appeal focuses on the application of HCC 2.84.055 to your public records request. This is a legal issue rather than a factual issue, and it does not appear that there is a factual dispute for the City Council to decide in connection with your appeal. Likewise, it is not clear to the City why you have requested *in camera* review of the responsive records. Can you elaborate on the reasons you believe *in camera* review is necessary in this appeal?

Thanks,



**Max D. Holmquist**

Attorney

Jermain, Dunnagan & Owens, PC

111 West 16<sup>th</sup> Avenue, Suite 203

Anchorage, AK 99501

Tel: 907.563.8844

Direct: 907.261.6648

Fax: 907.563.7322

---

**From:** Frank Griswold <[fsgriz@alaska.net](mailto:fsgriz@alaska.net)>

**Sent:** Sunday, April 14, 2024 10:36 PM

**To:** Max D. Holmquist <[mholmquist@jdolaw.com](mailto:mholmquist@jdolaw.com)>

**Cc:** Renee Krause <[RKrause@ci.homer.ak.us](mailto:RKrause@ci.homer.ak.us)>

**Subject:** Re: In the Matter of Appeal of Denial of February 26, 2024 Public Records Request - Proposed Stipulation for Hearing Procedure

Mr. Holmquist,

HCC 2.16.010 (Duties) provides that “**The City Attorney shall act as legal advisor to and be attorney and counsel for the Council and shall be solely responsible to the City Council.**” HCC 2.16.010(e) states: “He shall at all times cooperate with the City Manager and shall provide such information and reports

and perform such duties as are requested by the City Manager **so long as they are not inconsistent with the duties of his office as provided in this section.**"

(Emphasis added). I believe you are deliberately taking advantage of your longstanding professional relationship with the Homer City Council in order to inappropriately persuade it to adopt procedures for the upcoming hearing that favor your ubiquitous clients. At some point, you may wish to explain to the Homer City Council why your representation of "the City of Homer" excludes the Homer City Council. Acting City Clerk Renee Krause sent me a letter dated April 5, 2024 which states as follows: "The City has received your appeal of the denial of your public records request dated February 26, 2024. The appeal is governed by Homer City Code 2.84.070. The City Council will hold a hearing to consider your appeal on April 25, 2024 at 6:00 p.m. in Cowles Council Chambers, 491 E. Pioneer Avenue, Homer, Alaska. **Enclosed is the hearing procedure for the April 25, 2024 hearing.**" (Emphasis added). Because the City Clerk's Office does not have the authority to prepare and/or prescribe quasi-judicial hearing procedures, one would assume that this Procedure had been adopted by the City Council prior to it being distributed by the City Clerk's Office to the parties. However, you now assert that the City Council has not adopted this Procedure which suggests to me that you may have been participating in ex parte communications with the City Council. (On April 11, 2024, I asked the Acting City Clerk when this Procedure was adopted by the City Council but, to date, have received no response). You are undoubtedly aware that I seek to call and question witnesses at the appeal hearing but you made no provision for my doing so in your proposed procedures. In past appeals of this nature, the City Council has accommodated the calling and questioning of witnesses, depositions, and in camera review. See e.g., Griswold v. Homer City Council, 310 P3d 938 (2013). To the best of my knowledge, no previous City Council has authorized written briefing or deemed it necessary for this type of appeal. For what costs you would likely bill the city for preparing a 10-page brief, the City Council could hire unbiased, independent legal counsel capable of crafting fair and unbiased procedures for the City Council to then approve and formally adopt. HCC 2.84.070 does not authorize the parties or their legal representatives to propose or set appeal procedures. Proposing procedures on behalf of the City Council is neither my duty nor yours. Accordingly, I will not stipulate to the self-serving procedures you propose and I have no intention of submitting my own proposal. Because you do not represent the City Council, you have no authority to arrogantly tell me what I am free to do or dictate when I should submit anything to the City Council. In your alleged representation of "the City of Homer" you clearly wish to control every aspect of the April 25, 2024 hearing. I suggest that you re-familiarize yourself with ABA Ethics Opinion No. 99-2 subtitled "May A Municipal Attorney Represent A Quasi-Judicial Municipal Board That Is Hearing A Disputed Matter In Which The Municipality Is A Party To The Dispute"? In light of the myriad legal issues that have already surfaced, it would be prudent for the City Council to immediately hire unbiased, independent legal counsel. This "independent" legal counsel should not be a shill attorney recommended by JDO or selected by a biased City Manager as has all-too-often been city policy in the past.

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Mr. Griswold,

Our office is representing the City of Homer with respect to your appeal of the City's denial of your public records request dated February 26, 2024. Our office is not representing or advising the City Council in this appeal.

I understand that after you filed the appeal, you requested that the City Council prepare and distribute a procedural notice for the appeal hearing. HCC 2.84.070 contains no requirements or guidance with respect to a City Council appeal hearing. In response to your request and to assist the City Council, the City Clerk's office prepared a hearing procedure using a template of a procedure from a prior public records appeal. The City Council has not adopted this procedure.

The City's position is that written briefing submitted prior to the appeal hearing would be helpful to the City Council. Accordingly, our office has prepared the attached proposed stipulated hearing procedure that includes written briefing and outlines the procedure for the appeal hearing itself. Please review and let me know whether you will stipulate to this procedure by April 15, 2024. If you will not stipulate to this procedure, you are free to submit your own proposed hearing procedure for the Council's consideration. If you intend to submit your own proposal, please submit it by early next week to allow the Council to decide the applicable procedure in advance of the hearing.



**Max D. Holmquist**  
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**Jermain Dunnagan & Owens, P.C. has moved to our new address. Please send all deliveries and correspondence to our new business address – 111 West 16th Avenue, Suite 203, Anchorage, AK 99501. Our phone numbers and email addresses will remain the same, as will our website address and social media accounts.**

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**From:** [Frank Griswold](#)  
**To:** [Renee Krause](#)  
**Cc:** [Max D. Holmquist](#)  
**Subject:** Appeal of Denial of February 26, 2024 Public Records Request  
**Date:** Tuesday, April 16, 2024 4:33:34 PM  
**Attachments:** [Objection to proposed procedurescopy 7.pdf](#)

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**BEFORE THE HOMER CITY COUNCIL**

In re Denial of February 26, 2024  
Public Records Request

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**OBJECTION TO APPELLEE’S PROPOSED APPEAL PROCEDURE, MOTION TO  
ALLOW PARTIES TO CALL AND QUESTION WITNESSES, AND MOTION FOR  
HOMER CITY COUNCIL TO HIRE INDEPENDENT LEGAL COUNSEL**

Appellee’s proposal commences as follows: “Appellee, the City of Homer hereby proposes the following procedure for the Homer City Council’s consideration of the above-referenced appeal pursuant to HCC 2.84.070.” HCC 2.84.070 does not provide for any party to an appeal or her legal representative(s) to propose and/or otherwise dictate procedures for that appeal; setting appeal procedures is solely the responsibility of the Homer City Council. In a letter to me dated April 5, 2024, Deputy City Clerk Renee Krause stated: “The City has received your appeal of the denial of your public records request dated February 26, 2024. The appeal is governed by Homer City Code 2.84.070. The City Council will hold a hearing to consider your appeal on April 25, 2024 at 6:00 p.m. in Cowles Council Chambers, 491 E. Pioneer Avenue, Homer, Alaska. **Enclosed is the hearing procedure for the April 25, 2024 hearing.**” That hearing procedure did not provide for the filing of written briefs and there is not enough time before the hearing for me to adequately prepare such a brief. Furthermore, the submittal of an appellee brief on April 23, 2024 would not provide sufficient time for me to timely submit a reply brief. The Homer City Attorneys make their living writing briefs and they have a large team to assist them; I do not. HCC 2.84.070 is designed to accommodate appeals by lay citizens and does not contemplate that an appellant should have to hire an attorney to fairly compete against trained professionals. To the best of my knowledge, no previous City Council has authorized written briefing or deemed it necessary for this type of appeal. 20 minutes of oral argument is clearly ample time for each side to present its position(s).

HCC 2.16.010 (Duties of Homer City Attorney) provides in relevant part as follows: “The City Attorney shall act as legal advisor to and be attorney and counsel for the Council and shall be solely responsible to the City Council.” HCC 2.16.010(e) states: “He shall at all times cooperate with the City Manager and shall provide such information and reports and perform such duties as are requested by the City Manager so long as they are not inconsistent with the duties of his office as provided in this section.” In light of these provisions, it is unclear to me how or why Mr. Holmquist is representing “the City of Homer” but not representing the Homer City Council. I believe Mr. Holmquist is deliberately taking advantage of his longstanding professional relationship with the Homer City Council in order to inappropriately persuade it to adopt procedures for the upcoming hearing that favor his ubiquitous unnamed client(s). If the Homer City Council is unable to establish appeal procedures on its own, it should immediately select and hire an independent, unbiased attorney to advise it. In doing so, the City Council



should not rely on the hiring recommendations of the appellee, her legal representative, or any member of her legal representative's law firm. In past Homer administrative appeals where the adjudicating body was unrepresented by legal counsel, the lay adjudicative body frequently sought and was forced to rely on biased legal advice of a Homer City Attorney despite his perfunctory disclosure that he did not represent that adjudicating body.

In past appeals of this nature, the City Council has accommodated the calling and questioning of witnesses, depositions, and in camera review. See e.g., *Griswold v. Homer City Council*, 310 P3d 938 (2013). In the instant case, it has not been established that any public records responsive to my February 26, 2024 public records request were actually produced; if none were produced then my appeal may be moot. If any correspondence involving Ms. Jacobsen is included in the subject public records, that should be of interest to the City Council. The City Council might also want to know why City Manager Dumouchel approved my public records request while, on her second day as Acting City Manager, Ms. Jacobsen denied it. To fairly address these factual questions and myriad others, it would be helpful to the Council to hear sworn testimony from witnesses during the appeal hearing. Accordingly, I hereby request that I be allowed to call and question witnesses. I leave it to the City Council and (hopefully) its independent legal counsel to set fair time limits for (sworn) witness questioning and cross-examination.

DATED: April 16, 2024

By: /Frank Griswold/  
Frank Griswold