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IPIB AO 2016-11

July 21, 2016

SUBJECT: Unsealed Bids in Possession of Government Body as Public Records

David S. Bruner
Bruner, Bruner & Reinhart, LLP
225 E. 7th Street
Carroll, Iowa 51401-0863

Dear Mr. Bruner:

This opinion is in response to your letter of July 7, 2016, requesting an opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code section 23.6 and rule 497—1.2. We note at the outset that IPIB's jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, and rules in Iowa Administrative Code chapter 497. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You request this opinion in your capacity as the attorney for the City of Carroll (City). You advise us that the City desired to hire an architectural firm to perform professional services for two renovation projects. As part of the selection process, a detail of "time and costs that will be required to complete" the first phase of the projects was submitted in separate and sealed envelopes. Four firms submitted proposals. Based on the information that was contained in the portions of the bid proposals that were not sealed, one firm was preliminarily selected. After the sealed portion was opened, a final contract was negotiated with the firm. The sealed envelopes of the other three firms were never opened, but remained in possession of the City. A public record request has now been made for disclosure of the three sealed and unopened envelopes.

QUESTION:

Are the sealed and unopened envelopes considered to be public records even though the contents have not been viewed by the City?

OPINION:

We first note that IPIB's jurisdiction is limited to the applications of Iowa Code chapters 21-23 and administrative rules in Iowa Administrative Code chapter 497. If there is some other section of law or administrative rule that impacts your question, IPIB does not have authority to interpret it.

Board Members

Anthony Gaughan • Keith Luchtel • Jo Martin • Andrew McKean
Gary Mohr • William Peard • Suzan Stewart

Iowa Code section 22.1(2) defines the term “lawful custodian” to include the “government body currently in physical possession of the public record.” Iowa Code section 22.1(3)(a) defines “public records” in pertinent part to include “all records, documents, tape or other information, stored or preserved in any medium, of or belonging to this state or any county, city....”

In applying this language, the City is in “physical possession” of the sealed and unopened envelopes. Also, the sealed and unopened envelopes are being “stored or preserved in any medium, of or belonging to” the City. Therefore, we believe the sealed and unopened envelopes are “public records” in possession of the City that are subject to a records request under Iowa Code chapter 22.

In closing, we do note that we are not speaking to whether or not the contents of the envelopes are a “confidential public record” under Iowa Code section 22.7 or if the contents could be subject to an injunction to restrain examination under Iowa Code section 22.8. Rather, this opinion is limited to interpreting Iowa Code section 22.1 as including in the definition of “public records” a sealed and unopened envelope that is in the physical possession of the governmental body.

BY DIRECTION AND VOTE OF THE BOARD

Suzan Stewart, Chair
Anthony Gaughan
Keith Luchtel
Jo Martin
Andrew McKean
Gary Mohr
William Peard

Submitted by: W. Charles Smithson, IPIB Director