



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Alderman Rhonda Adams
Alderman Mark Kinion
Alderman Justin Tennant

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

DATE: December 15, 2010

RE: Freedom of Information Act (FOI)

As decision makers for the City of Fayetteville, aldermen are subject to the Arkansas Freedom of Information Act. This act requires that all meetings of the City Council and committees on which aldermen serve (Sewer and Water, Streets, Ordinance Review, Nominating, etc.) must be conducted in public after proper notification of the press. These meetings are all scheduled through and by the City Clerk's Office which also notifies the press.

The City Council can only retire into an executive session (private) to discuss **personnel** matters. No vote may be taken in the executive session. **After the executive session, the City Council must reconvene in a public meeting and conduct all official business (motions and votes) in public.**

A more complicated issue is whether two aldermen can legally discuss a city issue privately. The drafter of the FOI and author of a book on the FOI, Professor John Watkins spoke to the Fayetteville City Council on January 16, 2001, about this issue. The minutes reflect his opinion.

“They could talk among themselves about City business, but they could not do so in a way where they would decide the issue before they got to the City Council chambers. Those decisions had to be made in public where the public could listen and see what they had to say about those issues.”
(page 8, City Council Minutes 01/16/01)

Please be very careful not to allow any discussions you have with another alderman or the Mayor to approach the point in which you indicate your final decision or position on an issue. Those discussions are best done publicly at committee level or at the City Council meeting.

E-mails to or among aldermen may be dangerous according to the Arkansas Attorney General Opinion No. 2005-166 (November 8, 2005): "the sender of the e-mail and the council risk being found in violation of the FOIA if there is any indication that the public was prevented from monitoring and observing the council's discussion of public business."

"(T)here will likely be risks whenever e-mail is used to disseminate information to the members of a governing body concerning the body's official business."

Former Arkansas Attorney General Mike Beebe concludes his opinion: "Accordingly, I must reiterate my immediate predecessor's caution against any discussion of pending business outside a public meeting context."

My recommendation is that aldermen should discuss public business among themselves or with the Mayor during any of the numerous committee meetings, ward meetings, Agenda sessions or City Council meetings and **not with e-mails**. One on one informational discussions with me are okay since I am not a member of the governing body. Conversations with staff about public business would also be okay as long as this is informational and not "vote counting."

It is clear that a series of one on one meetings, e-mails or telephone calls to line up votes for or against a measure violates the Freedom of Information Act. Please ensure you follow the spirit of the Freedom of Information Act and its requirement of public meetings.