



CITY OF NEW ORLEANS
LAW DEPARTMENT
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C. RAY NAGIN
MAYOR

January 19, 2010

PENYA M. MOSES-FIELDS
CITY ATTORNEY

Mr. Steve Beatty
Via Electronic mail
smbeatty@hotmail.com

Dear Mr. Beatty:

Our office is in receipt of your public records request, dated January 13, 2010, in which you are seeking *daily* receipt of “[E]lectronic versions of all contracts that have been prepared by the City Law Office and sent to the contractor for review, consideration or signature” as a *standing* public records request. You further requested to receive each of these records on the same day it leaves the City Attorney’s office enroute to the contractor.

As the Louisiana Public Records Laws currently exist, there is no provision requiring fulfillment of a blanket, standing public records request for records that are not in existence. La. R.S. 44:1(2)(a) defines public records as follows:

All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, *having been used, being in use, or prepared, possessed, or retained for use* in the conduct, transaction, or performance of any business, transaction, work, duty, or function which *was conducted, transacted, or performed* by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are “public records”, except as otherwise provided in this Chapter or the Constitution of Louisiana. (Emphasis added.)

Based upon our reading of the above cited provision and more specifically the emphasized language of the statute, a record must already be in existence at the time a request is made. Our office asserts that a request for a record that is not currently in existence is premature.

As a secondary matter, La. R.S. 44:33 B.(1) provides, in pertinent part, that

If the public record applied for is immediately available, because of its not being in active use at the time of the application, the public record shall be immediately presented to the authorized person applying for it.

Mr. Steve Beatty
Public Records Request
Page 2 of 2

In reference to the above cited provision, your letter states that “[B]ecause the state public-records law says you must produce records immediately if not in active use, I request access to each record on the same day it leaves your office for the contractor.” As you have pointed out, the records must be produced immediately if not in active use; however, it appears that your letter has failed to acknowledge that a provision such as R.S. 44:33 would be unnecessary if the Public Records Laws were intended to be interpreted to apply to documents that have not yet come into existence, which thereby also negates an interpretation that a document that may be created sometime in the future may be requested prior to its creation. There is no way possible that a non-existent document could be “*immediately*” produced, pursuant to the Louisiana Public Records Act, if requested prior to creation, which is the case with your submission to our office.

In addition, your request is for “access to each record on the same day it leaves your office *for the contractor.*” Such a request presupposes that contracts prepared by the City Attorney’s Office are immediately forwarded to the contractor from whom the City is receiving services. A draft of a contract leaving the City Attorney’s Office may not be complete and may undergo additional revisions based upon the office’s review and findings. As a result, release of a contract draft prior to execution could result in the public’s receipt of misinformation as to the use of citizens’ tax dollars.

Additionally, such a blanket request for “all” of a certain type of record, in this case contracts, is not sufficiently descriptive to identify the subject of the request, and, as such, is unduly burdensome, especially considering that professional services contracts executed on behalf of the City of New Orleans are posted on the City’s website (www.cityofno.com) for public viewing. Honoring such a request would unreasonably impact the operations of our office, as supplying the documents requested on a daily basis would unjustly create an additional daily job duty for members of the staff.

Accordingly, our office is denying your standing request for daily, same-day production of “[E]lectronic versions of all contracts that have been prepared by the City Law Office and sent to the contractor for review, consideration or signature.” Should you have binding information that requires our office to honor such a request, please provide it to my attention, and we would be willing to review and consider any such information.

Sincerely,



Penya M. Moses-Fields
City Attorney

C: Brenda G. Hatfield, Ph.D., CAO
Ceeon Quiett, Director, Mayor’s Office of Communications