

February 19, 2026

Mayor Dave Waggoner
CAO Kurt Markegard
City Attorney Michele Braukmann
Clerk/Treasurer Kelly Strecker
Members of the Laurel City Council
City of Laurel, Montana

RE: Public Records Request: IT Communications Search Records and Fee Objection Under Montana Law

To the Mayor, City Attorney, Clerk/Treasurer, and Members of the Laurel City Council:

Pursuant to Article II, Section 9 of the Montana Constitution, and Montana Code Annotated sections 2-6-1001 through 2-6-1013, I hereby submit the following public records request and formal objection to fee estimates previously provided in connection with related requests.

CONSTITUTIONAL AND STATUTORY AUTHORITY

The right to access public records in Montana is not merely statutory; it is constitutionally guaranteed. **Article II, Section 9 of the Montana Constitution** states: "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

This constitutional mandate is implemented through **Mont. Code Ann. § 2-6-1001 et seq.**, which governs all public agencies, including local governments such as the City of Laurel. Specifically:

- **§ 2-6-1002:** Defines "public information" as information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form. This expressly includes electronic communications, text messages, emails, and communications made via private devices if they relate to official business (§ 2-6-1002(11)).
- **§ 2-6-1003:** Guarantees that "every person has a right to examine and obtain a copy of any public information of this state." The only authorized exemptions are narrowly defined and relate to individual or public safety and security of certain facilities. This section does not authorize withholding records merely because disclosure is inconvenient or costly to the agency.
- **§ 2-6-1006:** Governs the public information request process and fees. Fees may only reflect actual costs directly incident to fulfilling the request in the most cost-efficient manner possible. The statute does not authorize fees designed to discourage or deter legitimate public records requests.
- **§ 2-6-1009:** Requires written notice of any denial and provides that a person who prevails in a civil action to enforce their rights under Article II, Section 9, or Title 2, Chapter 6, may be awarded costs and reasonable attorney's fees.
- **§ 2-6-1012:** Governs management and disposal of public records. Records may not be destroyed, deleted, or altered in anticipation of or in response to a public records request.

- **§ 2-6-1013:** Addresses preservation of public records. Public agencies have an affirmative duty to preserve records. Any deletion, alteration, or destruction of records responsive to a pending or anticipated public records request constitutes spoliation.

RECORDS REQUESTS

1. IT Communications Search Records: Sam Mayes

I request copies of all communications that the City of Laurel sent to IT requesting a search and retrieval of communications previously requested by Laurel resident Sam Mayes. Specifically:

- A copy of the communication/request sent to IT on February 2, 2026 (or any other date) regarding the Sam Mayes records request.
- The list of search terms that CAO Kurt Markegard stated were provided by City Attorney Michele Braukmann to be used by IT to locate responsive documents.
- Any related correspondence, instructions, or documentation regarding the scope, methodology, or parameters of this IT search.
- The name and email address of the IT recipient(s) who receive and process these records requests.

2. IT Communications Search Records: Shawna Hopper

I request copies of all communications that the City of Laurel sent to IT requesting a search and retrieval of communications requested by Laurel resident and business owner Mrs. Shawna Hopper, who submitted a written public records request to the City Council on February 3, 2026, a matter of public record from that meeting.

Mrs. Hopper's February 3, 2026 public records request specifically requested:

- All communications, including emails, text messages, and phone logs between Dave Waggoner, Kurt Markegard, the BOI, Dan Villa, Charlie Brereton, MT DPHHS, and Miller Trois, LLC (aka Norman Miller) from 5/1/2025 to present.
- All text messages, emails, and social media posts between Mayor Waggoner and CAO Markegard regarding the Forensic Mental Health Facility from 6/1/2025 to present.
- All phone logs and text messages between Mayor Waggoner and CAO Markegard from 6/20/2025 to 2/1/2026.

Mrs. Hopper explicitly noted in her request that deletion or editing of responsive records would constitute spoliation protected under **§ 2-6-1003** and **§ 2-6-1013**. I affirm that position here.

Please provide:

- A copy of any communication/request sent to IT regarding Mrs. Hopper's records request.
- The list of search terms (if any) provided to IT to locate responsive documents for this request.
- Documentation showing whether the same search terms were used for both the Sam Mayes request and Mrs. Hopper's request, or whether any new, additional effort was made to determine whether different or expanded search terms were warranted.
- Any communications between City staff, the City Attorney, and/or IT personnel regarding evaluation, modification, or expansion of search terms between the two requests.

- Any related correspondence, instructions, or documentation regarding the scope, methodology, or parameters of this IT search.
- The name and email address of the IT recipient(s) who receive and process these records requests.

APPLICABLE FEDERAL LAW AND CONSTITUTIONAL AUTHORITY

While the federal Freedom of Information Act (**5 U.S.C. § 552**) applies specifically to federal executive branch agencies and does not directly govern the City of Laurel, the principles it embodies are foundational to all American open government law. Several federal statutes and constitutional provisions **do** apply directly to the conduct of state and local government officials and are relevant here.

A. The First Amendment: U.S. Constitution, Amendment I

The First Amendment guarantees every citizen the right to petition their government for a redress of grievances. As Founder James Madison wrote at the Constitutional Convention: "A popular government without popular information or the means of acquiring it is but a Prologue to a Farce or a Tragedy; or perhaps both." The right to petition encompasses the right to seek government information necessary to understand and challenge official conduct. When government officials conduct public business in secret and erect financial barriers to accessing records of that conduct, they impede the First Amendment right of citizens to meaningfully participate in and hold their own government accountable.

B. The Fourteenth Amendment: Due Process and Equal Protection

The **Fourteenth Amendment** guarantees that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." When city officials make consequential decisions about public infrastructure affecting property values, public safety, and the character of a community, without adequate public notice, transparency, or opportunity for meaningful participation, those decisions may implicate procedural due process rights. The community of Laurel has a protectable interest in the decisions its government makes on its behalf, and those interests cannot be subordinated to the preferences of individual officials who choose to conduct public business privately.

C. 42 U.S.C. § 1983: The Federal Accountability Statute for State and Local Officials

42 U.S.C. § 1983 is the primary federal mechanism for holding state and local government officials personally accountable for violations of constitutionally protected rights. It provides that every person who, acting under color of state law, deprives a citizen of rights secured by the Constitution or federal law "shall be liable to the party injured in an action at law." Under **Monell v. Department of Social Services, 436 U.S. 658 (1978)**, municipalities themselves, not just individual officials, can be held liable under Section 1983 when a constitutional violation results from an official policy, practice, or custom. Fee structures or access barriers applied as a matter of City policy rather than good-faith actual-cost accounting could constitute exactly this kind of actionable municipal policy or custom.

I raise this statute not as an immediate threat, but as a factual reminder: the City's obligations here are not merely a matter of local convenience or discretion. They are grounded in constitutional rights that are enforceable in federal court, by individual citizens, against individual officials and the City itself. The constitutional right to petition, the right to due process, and the right to equal protection are all cognizable under Section 1983, and the conduct of city officials in this matter has raised legitimate concerns about each of them.

D. The OPEN Government Act and the "Frequently Requested Records" Standard

While the OPEN Government Act of 2007 (**Pub. L. 110-175**) directly governs federal agencies, its principles represent the national standard for transparent government and directly inform how courts, advocates, and communities evaluate the conduct of state and local governments. The Act requires agencies to proactively post online all records that have been requested three or more times, without requiring additional individual requests, and prohibits withholding records based on "speculative or abstract fears." This reflects a foundational principle: **when the public repeatedly asks for the same information, the presumption shifts from reactive disclosure to proactive publication.** The City of Laurel has now received multiple overlapping records requests from multiple residents, all seeking the same category of information: communications between city officials and state entities about the forensic mental health facility. That threshold has been met. While Montana has not yet codified this specific standard for local governments, it is the measure against which the City's conduct will be evaluated in any legal or public accountability proceeding.

REQUEST FOR PROACTIVE PUBLIC DISCLOSURE AND ONGOING TRANSPARENCY

In addition to the specific records requests outlined above, I am requesting that the City of Laurel take immediate and proactive steps to make all public records related to the proposed forensic mental health facility available to the entire community, not merely to individual requesters, through a centralized, publicly accessible, and **organized** repository on the City's official website. This request is grounded in the City's constitutional obligations under **Article II, Section 9** of the Montana Constitution, the First Amendment right to petition, the Fourteenth Amendment right to due process, and the principle that the public's right to know belongs to all residents of Laurel, not only those who have the time, knowledge, and resources to submit individual records requests.

I also note that I am aware the City currently maintains a public records repository on its website. I commend the existence of that repository. However, its current state falls significantly short of what transparency and meaningful public access require. Documents have been released without organization, context, or chronological sequence, placing the burden of comprehension on community members rather than the City. I am personally aware that at least one Laurel resident has taken it upon herself to sort through these released documents, organize them chronologically, and present them to the community in a coherent format. That is work the City itself should have done before releasing the records. **The City, not individual community volunteers, bears the responsibility** for presenting public records in an organized, accessible, and comprehensible manner.

1. Production and Public Disclosure of Records Requested by Laurel Resident Sam Mayes

The City has received a public records request from Laurel resident Sam Mayes. The City is fully capable of reviewing its own records of that request, including the original request letter and any relevant meeting minutes, to identify the scope of what was asked. I am not here to restate what Ms. Mayes already submitted. I am requesting that the City fulfill that request and, rather than producing those records solely to Ms. Mayes as an individual, make the responsive records publicly available to the entire community of Laurel at **zero cost to individual community members.** These are records of public officials conducting public business. Every resident of Laurel has an equal right to access them, and no resident should bear a personal financial burden to obtain information about their own government.

2. Production and Public Disclosure of Records Requested by Laurel Resident Shawna Hopper

The City has similarly received a public records request from Laurel resident and business owner Mrs. Shawna Hopper, submitted in writing on February 3, 2026, and made part of the public record at that City Council meeting. The City has that request on file and is fully capable of reviewing it without this letter restating its contents. I am requesting that the City fulfill Mrs. Hopper's request and make all responsive records publicly available to the entire community of Laurel at **zero cost to individual community members**. The communications Mrs. Hopper requested involve city officials, state agency directors, the Montana Board of Investments, and a private developer, all acting in official capacities regarding a project that will permanently and significantly affect this community. No individual should have to pay to access records of their government's conduct, and no individual should be the sole recipient of information that belongs to the whole public.

3. Deduplication of Overlapping Requests

The City should be aware that multiple residents have submitted records requests that overlap in scope, requesting the same or substantially similar communications regarding the forensic mental health facility. I request that the City conduct a single, thorough, comprehensive search and production effort to fulfill all outstanding requests, rather than conducting redundant searches for each individual requester. Where multiple requesters have asked for the same records, those records need only be pulled once, but they must then be made available to all requesters and to the general public through the centralized repository described below. This approach is both more cost-efficient, as required by **§ 2-6-1006(3), MCA**, and more consistent with the principle that public records belong to the entire public, not only to the individuals who happen to submit requests first.

4. Centralized, Organized, and Chronological Public Repository

I request that the City substantially improve its existing public records repository to include a dedicated, organized section covering all past, present, and future records related to the forensic mental health facility. This must be more than a file dump. It should be organized so that an average community member can understand what they are reading without specialized knowledge or hours of personal sorting effort. Specifically:

- All records produced in response to any resident's public records request regarding this facility, organized in clear **chronological order**, with a brief description of each document, the parties involved, and the date of the communication.
- All future responsive records published promptly upon release to any requester, in the same organized chronological format, not dropped in bulk without context.
- **A running public log** of all records requests received relating to this matter: date submitted, requester's name (with consent), scope summary, City response date, fees assessed, and current status.
- **A plain-language timeline or summary document** prepared by City staff explaining the sequence of events related to the facility, from the first known communication between City officials and any state entity to the present, so residents can understand the context of individual records without having to reconstruct a timeline themselves.
- All documents shared between City officials and the Montana BOI, MT DPHHS, the Governor's Office, state legislators, and any private developers or contractors in connection with this facility.

The practice of releasing records only to individual requesters, or releasing records in disorganized bulk without context, while technically meeting the minimum statutory obligation, is inconsistent with the spirit and intent of Montana's open government framework. The **Montana Constitution's right to know is a communal right**, belonging to all Montanans. A government that releases documents in disarray to individual requesters while the broader public remains uninformed and confused is not meeting the standard that Article II, Section 9 was designed to guarantee.

5. Request for Proactive and Independent Disclosure by City Leadership

I strongly urge the City Attorney, the Mayor's Office, and the City Council to take independent, proactive action to identify and produce additional communications relevant to the forensic mental health facility, without waiting for community members to discover and request each document individually. Specifically, I implore:

- **The City Council** to formally direct the City Attorney and CAO to compile and produce all internal and external communications related to the facility, including any on personal devices, personal email accounts, or personal social media platforms relating to City business, which are expressly covered by **§ 2-6-1002(11), MCA**.
- **The City Attorney** to conduct an independent legal review of what communications exist, what must be disclosed, and whether any lawful basis exists to withhold any category, and to report those findings publicly to the City Council at an open meeting.
- **The Mayor's Office and CAO** to voluntarily produce all communications in their possession relating to the facility, including emails, texts, and all other digital communications, without requiring community members to submit additional requests, pay additional fees, or pursue legal action to obtain information about their own community's future.
- **The City Council** to formally request from the Montana BOI, MT DPHHS, the Governor's Office, and any private developers all communications involving City officials regarding this facility, and to publish those records on the City website upon receipt, organized chronologically and with descriptive context.

The volume of overlapping individual public records requests this matter has generated is itself evidence of a transparency failure. When members of the public must submit multiple requests, pay fees, and then personally organize the results to understand what their government has done, it signals that proactive, organized disclosure, not reactive minimal compliance, is what this situation demands and what the law ultimately requires.

The City Council should formally vote on and adopt a resolution committing to proactive, ongoing, complete, and **organized** public disclosure of all records related to this matter, and directing City staff to maintain and continuously update the improved public repository described above for the entire duration of the forensic mental health facility planning and development process.

FORMAL OBJECTION TO FEE ESTIMATES AND RATES

I have reviewed the fee estimate provided by Clerk/Treasurer Kelly Strecker in response to a related records request submitted by Mrs. Shawna Hopper. The estimated cost spreadsheet attached to that correspondence reflects the following rates:

- **Staff: \$50.00/hour**
- **IT: \$150.00/hour**

- **Attorney: \$250.00/hour**

Each of these rates is not merely excessive. Each one is unlawful on its face under the plain language of Montana Code Annotated § 2-6-1006. The fee estimate as a whole functions as a financial deterrent to public records access, not a good-faith accounting of actual costs. Each component is addressed below.

A. The Statutory Fee Cap: \$25.00 Per Hour, All-Inclusive

Montana Code Annotated **§ 2-6-1006(5)** establishes the maximum permissible fee for public information requests. It states, in three separate subsections covering all categories of requests, that fees are capped at "**not exceeding \$25 an hour for searching for, gathering, reviewing, processing, and providing information in the most cost-efficient and timely manner possible.**" (§ 2-6-1006(5)(a)(i), (5)(b)(i), and (5)(c)(ii).)

This \$25.00 per hour cap is not a guideline. It is a statutory maximum. It applies to **all** functions covered by the fee: searching, gathering, reviewing, processing, and providing. The statute does not authorize separate, higher rates for different personnel categories such as IT staff or attorneys. The cap is universal and applies to every person performing any function in fulfilling the request, regardless of their title, role, or professional credentials.

Additionally, **§ 2-6-1006(5)(c)** provides that for broad records requests such as those submitted here, which are not requests for a single, specific, clearly identifiable record, **the first hour of service is free** after a filing fee of no more than \$5.00. The legally correct fee structure for requests of this scope is therefore: a filing fee of up to \$5.00, the first hour at no charge, and all subsequent time at a maximum of \$25.00 per hour for all personnel combined. The statute also expressly states that a public agency "**may only charge for a cost once,**" making it impermissible to bill separately for staff time, IT time, and attorney time for work performed on the same request.

B. The City's Rates Are Unlawful: A Direct Comparison

Measured against the statutory cap, every rate in the City's fee estimate is unlawful:

- **Staff at \$50.00/hour:** Double the statutory maximum of \$25.00/hour.
- **IT at \$150.00/hour:** Six times the statutory maximum of \$25.00/hour.
- **Attorney at \$250.00/hour:** Ten times the statutory maximum of \$25.00/hour.

For further context, comparable Montana jurisdictions operate well within the statutory cap. The City of Billings, a significantly larger municipality with substantially greater administrative resources than Laurel, charges between **\$8.50 and \$22.50 per hour** for public records fulfillment. Every rate the City of Billings charges falls within the legal cap and reflects an effort to recover actual costs at rates proportionate to the work performed. The City of Laurel's proposed rates bear no reasonable relationship to actual costs and no legal basis whatsoever.

There is no provision in Montana law, no administrative rule, no executive order, and no judicial decision that authorizes a local government to charge \$50.00, \$150.00, or \$250.00 per hour for any component of a public records request.

C. The Attorney Rate Is Separately Impermissible

Even setting aside the statutory cap, the inclusion of attorney fees at \$250.00/hour as a cost passed on to the requester is independently impermissible. Attorney review of records prior to production is an internal administrative function of the agency, a cost of operating a government and deciding what to disclose, not a cost directly incurred in fulfilling the request. If the City

Attorney must review records before release, that cost belongs to the City, not to the citizen exercising a constitutional right. The Montana Freedom of Information Hotline and open government legal experts have specifically identified this practice as one that makes fees "prohibitive" and inconsistent with the public's constitutional right of access.

D. There Is No Legitimate Basis for Redaction of These Records

Under Montana law, redaction is only authorized when there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets under § 30-14-402(4), MCA, information subject to legal privilege, or matters relating to individual or public safety. None of these criteria apply to the communications being requested.

The records requested involve communications between and among elected officials, appointed city administrators, state agency directors, state legislators, state investment officials, and a private developer regarding a major public infrastructure project: the proposed forensic mental health facility. These are not private individuals. These are public officials conducting government business on behalf of the citizens of Laurel and the State of Montana.

As the Montana Supreme Court has repeatedly held, **public officials and employees who hold positions of public trust have a significantly diminished, and in many cases nonexistent, expectation of privacy** with respect to their official conduct and communications. The Court stated this plainly in **Great Falls Tribune v. Cascade County Sheriff, 238 Mont. 103 (1989)**: when balancing the right to know against the right to privacy of governmental employees in positions of public trust, "the right to know must always prevail." This doctrine has been consistently affirmed through:

- **Citizens to Recall v. Whitlock, 255 Mont. 517 (1992)**: A mayor had no reasonable expectation of privacy regarding an investigation into alleged misconduct in the performance of his official duties. The Court held that "society will not permit complete privacy and unaccountability when an elected official is accused of official misconduct related to the performance of his official duties."
- **Bozeman Daily Chronicle v. City of Bozeman Police Dept., 260 Mont. 218 (1993)**: Investigative records concerning alleged misconduct by a law enforcement officer were fully disclosable; the officer had no reasonable expectation of privacy.
- **Jefferson County v. Montana Standard, 318 Mont. 173 (2003)**: A county commissioner had no reasonable expectation of privacy in records relating to her arrest, because the right to privacy does not protect elected officials from disclosure of information bearing on their official roles.
- **Yellowstone County (2006)**: The Court affirmed that "society is not willing to recognize as reasonable the privacy interest of individuals who hold positions of public trust when the information sought bears on that individual's ability to perform public duties."

The contact information for Mayor Waggoner, CAO Markegard, City Attorney Braukmann, members of the BOI, state legislators, and state agency officials is already publicly available. Their email addresses, phone numbers, and official correspondence are not private. There is no category of lawful redaction that applies to the substance of communications between public officials about a public project conducted in their official capacity. The City Attorney's inclusion in the fee estimate as a line item for legal review of these records, at \$250/hour, strongly implies the City anticipates redacting content from communications between public officials that have no legitimate basis for redaction under Montana law.

If the City intends to claim attorney-client privilege over any of these communications, it must provide a specific, written privilege log identifying each document withheld, the parties to the communication, the date, and the specific legal basis for the privilege claim, as required under **§ 2-6-1009, MCA**. A blanket invocation of privilege to avoid producing public records is not a legitimate use of that doctrine.

E. The Fee Estimate Must Be Recalculated and Reissued

The fee estimate provided by the City is unlawful and must be withdrawn and recalculated in strict compliance with **§ 2-6-1006(5), MCA**. Any corrected estimate must reflect the following legal constraints:

- A filing fee of no more than \$5.00.
- The first hour of service at no charge.
- All subsequent time at a maximum of \$25.00 per hour for all personnel and all functions combined, including searching, gathering, reviewing, processing, and providing.
- No separate or stacked billing for different personnel categories. The \$25.00/hour cap applies to the total hourly charge, not to each individual performing work.
- Actual reproduction costs only for copying, scanning, or media, not inflated or estimated figures.

The constitutional right under **Article II, Section 9** of the Montana Constitution is the right to **examine** documents, not merely to purchase them. Fees that function as a practical barrier to this examination may impermissibly burden a constitutional right. A fee estimate that charges \$50.00, \$150.00, and \$250.00 per hour when the law caps all fees at \$25.00 per hour is not a compliance effort. It is a deterrent. No payment will be made against the current unlawful estimate, and no records should be withheld pending payment of a fee estimate that does not comply with Montana law.

LEGAL REQUIREMENTS AND RESPONSE DEADLINE

Pursuant to **Mont. Code Ann. § 2-6-1006**, I request that you acknowledge receipt of this request within **five (5) business days** and provide the responsive records within **ten (10) business days**. If you believe any records are exempt from disclosure, you must provide a written explanation citing the specific legal basis for each exemption claimed, as required by **§ 2-6-1009**.

CLOSING

As Mrs. Hopper stated before the Council on February 3, 2026: "The lack of transparency and communication is frustrating and unacceptable. It continues to raise questions and distrust between our city government and the citizens of Laurel." I echo that sentiment. The community of Laurel deserves and is legally entitled to the records and transparency sought herein.

I expect the City to fulfill its legal obligations promptly and completely.

Respectfully,

Elizabeth Gilg