The City Council and the City Manager can withhold privileged attorney-client communications relating to legal action against a council member from the Council member.

September 2, 2025

Kristen E. Smith
City Attorney
City of Watertown
Bond Schoeneck & King
One Lincoln Center
Syracuse, New York 13202-1355

Informal Opinion
No. 2025-01

Dear Ms. Smith:

You have requested an opinion regarding whether the attorney-client privilege permits the City Council, acting through a majority of its members, and the City Manager to withhold confidential city records from a sitting city council member. The confidential records relate to legal action the City is taking against the member. The member explained that he requested the confidential records in his capacity as a member of the City's governing body so that he can perform his oversight duties as a member of the City Council. We conclude that the City Council and the City Manager can withhold information relating to legal action against one of the Council's members when that information constitutes privileged attorney-client communications.

In general, all members of a local government's governing body are entitled to the same access to information relevant to their governmental work. This access allows them to perform their governmental duties and adequately represent their constituents. But on occasion a member's personal or unique interests may affect his or her ability to impartially perform those governmental duties. On those occasions, the appropriate remedy is for the member to recuse him- or herself from all aspects of governing with respect to the matter. The public must be assured that their officials are free to exercise their best judgment without any hint of self-interest or partiality. *Matter of Titan Concrete, Inc. v. Town of Kent*, 202 A.D.3d 972, 974 (2d Dep't 2022). In *Titan Concrete*, the town supervisor – who had a personal interest in closing the Titan concrete plant – recused herself from voting on a local law that would prevent any

concrete plants from locating or remaining in Titan's current zoning district. *Id*. But the supervisor participated in other aspects of the concrete plant zoning issue and that participation tainted the enactment of the local law. *Id*. at 975. The appellate court upheld the trial court's nullification of the local law because the town supervisor had participated by presiding over public hearings, engaging in discussions with a representative of the concrete plant and the public on the matter, and voting on certain motions related to the local law. *Id*. at 974. To avoid any appearance of influencing the governmental process with her personal interest, the supervisor should have recused herself from performing her public duties in all aspects relating to the concrete plant zoning issue. "Where a substantial conflict is inevitable, the public official should not act." *Id*. at 975.

In short, when faced with a personal interest that conflicts with, or appears to conflict with, the impartial performance of public duties, the public officer must refrain from engaging in the public duties.

Here, the council member's interest as an individual involved in a legal matter against the remaining members of City Council mandates recusal from performing his public duties relating to the legal matter. This includes his oversight duties as a member of City Council. Accordingly, the other members of City Council and the City Manager can decline to provide confidential attorney-client communications regarding the legal matter to the individual adversarial council member.

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
in Charge of Opinions