

## FORMAL LEGAL RESPONSE LETTER

**RE: Public Records Request R105882-120425**

**Original Request Date: December 4, 2025**

**Date: February 5, 2026**

Kimberly Burns

City Clerk

City of Cape Coral  
1015 Cultural Park Blvd.  
Cape Coral, FL 33990

[kburns@capecoral.gov](mailto:kburns@capecoral.gov)

To City Clerk Kimberly Burns:

This letter responds to your February 2, 2026 correspondence regarding my **December 4, 2025** public records request for employee- level pension bonus (DROP accrual) information.

Your response confirms multiple violations of Florida's Public Records Act, Chapter 119, Florida Statutes, and raises additional concerns regarding the City's handling of pension- related documents.

---

### **1. The City's own letter admits the requested records exist and are being withheld**

Your February 2 message states:

“The City is not in possession of the records... but [they] are in the possession of Foster and Foster who will be pulling them to fulfill your request.”

This is a direct admission that the requested pension bonus records **do exist** and are held by the City's actuary **on behalf of the City**.

Under Florida law, records held by a contractor performing a government function **are public records** and must be produced promptly.

The City cannot avoid disclosure by claiming the vendor “has” the records.

This admission also contradicts the City's earlier statement that **“no such records exist.”**

---

### **2. The City is in violation of §119.07(1)(a), Florida Statutes**

Florida law requires:

**“Every person who has custody of a public record shall permit the record to be inspected and copied... at any reasonable time, under reasonable conditions.”**

My request was submitted on **December 4, 2025** — now **two months ago**.

Since then, the City has:

- Denied the existence of the records
- Later admitted partial records exist
- Now admits Foster & Foster holds the remaining records
- Still refuses to produce the pension bonus amounts
- Demands payment before confirming what records exist
- Failed to produce any responsive documents

This is not “reasonable time.”

This is **unlawful delay and obstruction**.

---

### **3. The City is misusing §119.07(4)(d) and the “extensive research” clause**

You cite §119.07(4)(d) and the Colby case to justify charging \$225.

However, the “extensive research” provision applies only when an agency must **locate, review, or redact** records.

It does **not** apply when:

- The records already exist
- The records are routinely provided to the City
- The vendor already produces the documents as part of its contract
- No redaction is required

Foster & Foster already provides the City with:

- Annual actuarial valuation reports
- DROP accrual schedules
- Employee-level pension bonus data
- Documents used by HR to confirm pay, service time, and DROP changes

These are **existing public records**, not custom work.

Charging citizens to “compile” information the City already receives is improper and unlawful.

---

### **4. Formal demand for production of all existing pension-bonus documents**

In addition to the original request, and based on your admission that Foster & Foster holds responsive records, I hereby demand the immediate production of:

**All documents, spreadsheets, reports, emails, actuarial schedules, or data files sent by any vendor — including Foster & Foster — to the City of Cape Coral or its Human Resources Department that contain:**

- Employee- level DROP accrual amounts
- Employee- level pension bonus calculations
- Pensionable pay changes
- Service- time adjustments
- DROP entry or exit confirmations
- Any actuarial data used by HR to verify pay, benefits, or personnel changes

These documents are routinely transmitted to the City for payroll, HR, and pension administration purposes and are therefore **public records**.

They must be produced **without delay** and **without charge**.

---

## **5. I dispute the fee and will not pay it**

For the record:

**I dispute the City's fee demand and will not pay any deposit.**

The delay in producing these records is solely attributable to the City.

Until the City confirms whether it is withholding existing public records, no fee is appropriate or lawful.

---

## **6. Required written clarification**

Before I determine next steps under §119.11 (judicial enforcement), please provide written answers to the following:

1. Does the City possess — directly or through Foster & Foster — any existing documents containing employee- level DROP accrual or pension bonus amounts?
2. If yes, why have these existing records not been produced?
3. If no, is the City asserting that Foster & Foster does **not** provide the City with any employee- level pension accrual data?
4. Why did the City initially claim “no such records exist” when your February 2 letter now states Foster & Foster holds them?
5. What is the legal basis for charging a fee for records that already exist and require no redaction?
6. What is the legal justification for a delay now exceeding **two months**?

Please respond within **five business days**.

Sincerely,  
**Dave Jaye**  
25810 Hickory Blvd. Apt. 603

Bonita Springs, FL 34134

586 488 5177