

‘Kept in the dark’: In Iowa, big tech’s tactics can tie up information as data centers get millions in tax breaks

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Twelve minutes.

That was how long the details of a development agreement that would give Facebook an estimated \$40 million in tax incentives were available to the public before the Altoona City Council approved the agreement on May 6.

Facebook was seeking a 20-year tax exemption for its fifth data center building in Altoona, a \$400 million project that will measure nearly one million square feet when complete.

The public had little way of knowing the scope of the action ahead of time.

Although a vote on the development agreement was listed on the council’s agenda, city officials wouldn’t share details before the meeting, saying a nondisclosure agreement kept them from revealing anything. The city declined a Des Moines Register reporter’s request to view the agreement before the meeting, saying the document was under attorney-client privilege.

Facebook’s name wasn’t on the agenda. Instead, the company heading the project was listed as Siculus Inc., a subsidiary company that Facebook has used in its dealings at the site in the past.

Prior to the meeting, city officials said they couldn’t confirm Facebook’s involvement in the project. Facebook was similarly silent.

In the last dozen years, Iowa’s availability of land, inexpensive energy, water and fiber optic networks have attracted several large-scale data center construction projects. As they have announced plans for more than \$9 billion in construction, Facebook, Google, Microsoft and Apple so far have received approval for nearly \$130 million in tax incentives from the state of Iowa and hundreds of millions more from local governments.

But in many cases, large tech companies also have received a heightened level of secrecy as they land the high-dollar deals.

Facebook and Google have both used restrictive nondisclosure agreements to limit what city officials can say about their plans ahead of their passage. Projects without nondisclosure agreements have used codenames extensively — like the name, “Project Morgan,” for Apple’s \$1.375 billion project. The company’s name wasn’t announced until the day it received approval for more than \$200 million in state and local incentives. Few details of that deal were public ahead of time.

Cities say, despite the secrecy, they are following Iowa’s open records laws. Tech company officials say they seek confidentiality to maintain privacy during the competitive site selection process.

Though a level of confidentiality is common in the economic development process, critics say the secrecy given to data center deals often goes too far, giving residents little time to weigh in or push back on the hefty tax-break packages the projects have received.

“The spirit of (Iowa’s open records) law is the public should be informed in advance of the meeting of the decision that is going to be made,” said Randy Evans, executive director of the Iowa Freedom of Information Council. “I don’t think that has happened as these computer data centers have become more prevalent.”

Altoona Mayor Dean O’Connor said at times like the May vote, he can understand how the public would feel shut out.

But he said Altoona has been bound in what it can say publicly by the nondisclosure agreement that it has with Facebook.

“I, personally, think a little more transparency would be good,” he said. “But we just follow the rules that are set for us right now, and if those change we’ll follow those rules.”

City administrator Jeff Mark said in May that the city saw its deal with Facebook as mutually beneficial and did what it needed to get the deal done. The city’s previous agreement had also given Facebook a 20-year tax exemption, but the new one included a new feature: An agreement by Facebook to pay the city a flat fee of \$3 per square foot of new building per year over the next 20 years. It’s estimated to recoup about 55 to 60% of what Facebook would otherwise owe in property taxes.

Mark said the new agreement also applies to any future construction at the Altoona site over the next 20 years. If Altoona builds further at its campus — as some city officials have said they believe it will — the deal could be worth much more.

While not all development deals are completely secret ahead of their passage, some are approved by cities without sharing the name of the company in question with the public ahead of time.

That was the case for Google and Apple. In 2007, the city of Council Bluffs approved a development agreement that would offer a staggered scale of tax rebates for a project by an unnamed company. While terms of the incentives in the deal were public beforehand, according to reports in the Council Bluffs Daily Nonpareil, Google’s name wasn’t available ahead of time, reportedly even to City Council members.

The city of Council Bluffs provided copies of the city’s development agreements with Google to the Register, but the legal department did not respond to questions about the transparency of the deal by press time.

Waukees spokeswoman Summer Evans said the city lets companies make their own announcements and withheld the name to respect that.

"The city typically allows for companies to make their own public announcements on their own timelines," an email from Evans said. "(Project Morgan) is the name Apple gave the project, thus that's the name the city utilized as well."

Waukees and West Des Moines officials told the Register they did not have any nondisclosure agreements with Apple or Microsoft.

Google, Microsoft and Apple did not return requests for comment on their confidentiality practices. A Facebook spokesperson in a statement said the site selection process is complex and competitive.

"We treat our preliminary discussions as confidential because it is a competitive process and there are a number of steps needed for the project to ultimately move forward," the statement said. "We work closely with state, regional and local officials to craft an agreement that is mutually beneficial and that brings jobs and investment to the region."

In 2017, details of the state of Iowa's plan to give nearly \$20 million in tax credits to Apple Inc. were not made public until 90 minutes before the meeting in which they were awarded, although the agenda itself had been posted. The state did not have a nondisclosure agreement in place.

In 2013, the Register reported there was also no notice a day ahead of the IEDA's decision to provide Facebook \$18 million in tax credits for its initial data center.

The state group typically keeps terms of agreements confidential until releasing information to local media and legislators the day before they are approved.

Matsen said that if the state is still working out portions of the deal, it may release information later.

"Each project is unique, and there are times when the details are still being finalized in the lead-up to the meeting," Matsen said. "The data center projects were exceptionally large projects, so it wouldn't be unusual for the details to be finalized closer to the board meeting time."

The state's delay in releasing information about the Apple deal was coupled with little notice from the City of Waukees to residents about its plans for Apple's tax incentives.

The only indication given by the city to the public ahead of time for its \$190 million deal came as a published notice a week prior in the Dallas County News, a weekly newspaper. The notice referred to the data center as "Project Morgan," with no mention of Apple's name. The notice said a hard copy of the agreement was available at Waukees City Hall for viewing.

Concealed names and delays in revealing details of development agreements are nothing new when it comes to large data center projects, said Kasia Tarczynska, research analyst with Good Jobs First, a Washington, D.C.-based nonprofit that advocates for more

transparency in economic development deals.

Tarczynska said companies have power and often require agreements with cities that can keep their name out of the deal as long as possible or keep the terms of their agreements out of the public eye. That's a problem when residents want to weigh in on what companies are moving into their communities and how their tax dollars are going to be spent, she said.

"It's the public's money," she said. "As a public, we should be able to know what companies we are investing in."

One obvious reason large-scale tech companies are so guarded about their data centers is the assets are their most critical, said Yevgeniy Sverdlik, editor in chief of Data Center Knowledge, an online publication that covers the data center industry.

"This is kind of the soft tissue of their business," he said. "They are very secretive, especially in the initial stages when they're going through negotiations with local officials."

Sverdlik said he suspects large tech companies also want to fly under the radar as much as possible when negotiating tax breaks to avoid public opposition. He said some projects can generate opposition because they command large tax benefits but often don't offer as many jobs.

The secrecy isn't necessarily prohibited by Iowa law. Governing bodies are not required to publish packets of information online when they post their agendas. While documents provided to city council members for vote at a meeting are public information, there are exemptions under Iowa code that allow some documents to be kept private.

Votes on agreements kept confidential until the last minute like Facebook's may technically follow Iowa code, said Evans, but the practice "certainly is not in keeping with the spirit of the open meetings law."

"When the public is kept in the dark until the meeting begins, citizens are not able to effectively share their concerns and their preferences with their council members," he said.

Evans said he's less concerned about the names of the companies themselves being public as he is about the tax credits and how the companies will affect the city in other ways such as utility usage.

Google's Council Bluffs data center is seen from the inside. The Mountain View, Calif.-based tech company announced Friday it will invest a total of \$2.5 billion into the data center.

A public records request the Register placed to the city of Altoona for previous development agreements and nondisclosure agreements with Facebook was delayed for more than three weeks because of a clause in the company's agreement with the city that allows Facebook to review and delay such requests.

Similarly, Google put a clause in its agreement with Council Bluffs that requires the city not provide public information until Google has had several business days to review it, said Mariah Montgomery, campaign director with the Partnership for Working Families.

She said among all the Google agreements that the Partnership for Working Families has reviewed, that clause jumped as being among the most restrictive.

"It essentially hits a pause button on public disclosure while Google develops a strategy," she said.

Evans said the practice is allowable under Iowa law and something he's seen before, often involving large corporations.

Both Democrats and Republicans have said data center deals should be conducted with more transparency. Some have also called for changes to the state's tax credit program.

Iowa Sen. Zach Nunn, R-Bondurant, said he believes cities should be able to disclose the basic details of a deal while keeping the necessary secrecy involved in these projects.

Nunn, whose district includes Altoona, said he believes the May Facebook deal was a favorable one for both the city and the company. But he said the public didn't have a chance to know that until it was almost too late to weigh in.

Sen. Joe Bolkcom, D-Iowa City, said he would call on both cities and the state to allow more "more sunshine" to their economic development deals.

"I think the confidentiality and secrecy around this is completely overdone," Bolkcom said. "If taxpayers are going to subsidize these enormous projects with our taxpayer dollars, we ought to know more about the deals before they're done."

Rep. Dave Jacoby, D-Coralville, suggested a requirement that development agreements pass three readings at a local level to allow for more time for public comment. He said that would give the public two to six weeks to examine them and respond.

Nunn said he doesn't necessarily support Iowa enacting stricter laws to govern reporting of tech deals — he doesn't want to disadvantage cities in the competition to land more projects. But he said he believes cities can work out a way to juggle transparency with the needed secrecy.

Bolkcom said he believes the state's tax credit program needs to be overhauled, and he wants to see the state's high-quality jobs program taken "off autopilot" and based more on need.

"Tax incentives are really a symptom of a business tax environment that's not competitive," he said.

In July, the Iowa Legislative Council established an interim study committee that will include five Senate and five House members to begin a review of the state's tax credits and incentive programs.

But the large tax breaks for data center projects may be going away at the state level, according to the IEDA. Matsen said the state has used the tax credits in the past to establish a sort of data center "hub" and is now no longer providing state-level incentives for future growth.

Major Iowa data centers by the numbers

Apple

Location: Waukee
First announced: 2017
Total investment: \$1.375 billion
Incentivized jobs: 50
State incentives: \$19.65 million

Microsoft

Location: West Des Moines
First announced: 2008
Total announced investment: \$3.5 billion-\$4.5 billion
Incentivized jobs: 218
State incentives: \$46 million

Facebook

Location: Altoona
First announced: 2013
Total announced investment: \$2 billion
Incentivized jobs: 62 (Facebook has said it will eventually employ around 400)
State incentives: \$26 million

Google

Location: Council Bluffs
First announced: 2007
Total investment: \$2.5 billion
Incentivized jobs: 130
State incentives: \$38 million

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