

April 10, 2011

City of Rio Dell

David Martinek, City Attorney

P.O. Box 1266

Eureka, CA 95502

Re. Public Records Act Request

Dear Mr. Martinek:

We received your response to our March 19th, 2011 FOIA request which refused to disclose the majority of our request citing personal privacy pursuant to Government Code Section 6254(c). While we are not interested in violating a lawful right to privacy for any individual, the law most certainly provides access to specific items such as any action that affects the employment status of a public employee. I would direct your attention to Government Code Section 6254.8 which states "Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255." The section that you cited as the basis for refusing our request only provides protection for "personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." To use this clause as a basis for refusal to comply with the Brown Act is simply wrong; as an attorney who provides legal advice to Rio Dell and other municipalities it is surprising that you are unfamiliar with the basics of reportable information.

The Brown Act § 11125.2 states clearly "Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body." Not only is the action taken in closed session to dismiss or accept the resignation of a public employee subject to disclosure, the vote of each city council member is also required to be disclosed. Mr. Hale and Mrs. Flemming both were employed by the city and then not employed by the city. Logically, this means that there was some type of action taken regarding their employment which is absolutely subject to Brown Act disclosure. Once again, we request information on the action taken to end the employment of Mr. Hale and Mrs. Flemming as well as each council members vote on the issue. If the council accepted

the resignation of the employee or terminated their contract is subject to disclosure and not allowed to be hidden from the taxpayers. This is a very basic provision and not one that should come as a surprise to any attorney involved with advising municipalities. You stated in your March 29th, 2011 response that "I am not aware of any reportable action having been taken." If no action has been taken by the council regarding the employment status of Mr. Hale or Mrs. Flemming then they must still be employed, otherwise some type of action had to have been taken. They didn't simply vanish from the city as your letter would imply.

A request for records must be reasonably specific, as you stated in your letter, so let me be very specific; we request disclosure of the action taken regarding the employment status of Mr. Hale and Mrs. Flemming as well as each council members vote on the issue as provided for in § 11125.2 of the Brown Act and all supporting/related documentation or settlement agreements. Any and all settlement agreements are subject to disclosure once final, as per Government Code 54957.1(3)(A) as well as each council members vote on the issue; "If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held." We request disclosure of any settlement agreements reached with Mr. Hale and Mrs. Flemming. We would also direct your attention to 54957.1(4) which states "disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant." Since you are unfamiliar with the required disclosure of settled claims and/or settlements, we are now concerned with what other ones have been reached without public knowledge. As such, we expand our original request to include any and all settlements or settled claims by the city reached between 2003-Present. There have been numerous closed door items regarding "pending litigation" on city agendas for years without any disclosure of the eventual outcome. While some of those may have been dropped by the claimant, it stands to reason that at least some resulted in an agreement or settlement which is then subject to disclosure.

Failure to disclosure these records and the votes is a direct violation of the law and will be pursued by ourselves to the full extent of the law. If you are still unclear on the provisions of the Brown Act, we would recommend you consult with the First Amendment Coalition as we have (www.firstamendmentcoalition.org). The lack of knowledge exhibited by yourself regarding the

simple concept of what is a reportable action is very concerning and begs the question of what other information has not been disclosed as required. The incorrect legal advice you have provided to the city puts Rio Dell at risk of legal action and in a very vulnerable and indefensible position.

We look forward to receiving the requested Items as provided for in California law:

1. Disclosure of any/all actions taken regarding the employment status of Mr. Jim Hale from 2003-Present; including any settlements or settled claims involving Mr. Hale as well as each council members vote (as per Gov't Code 6254.8, Brown Act § 11125.2, Gov't Code 54957.1(3)(A), Gov't Code 54957.1(4))
2. Disclosure of any/all actions taken regarding the employment status of Mrs. Nancy Flemming from 2003-Present; including any settlements or settled claims involving Mrs. Flemming as well as each council members vote (as per Gov't Code 6254.8, Brown Act § 11125.2, Gov't Code 54957.1(3)(A), Gov't Code 54957.1(4))
3. Disclosure of any/all settlements or settled claims involving the City of Rio Dell from 2003-Present as well as each council members vote (as per Gov't Code 54957.1(3)(A), Gov't Code 54957.1(4))

Since the above requested information is clearly provided for in California law and required to be disclosed by the city, we ask the city to immediately rectify the failure to disclose in open public session. We further ask the city attorney to research the issue of public disclosure and the provisions of The Brown Act so that the city can receive accurate advice and comply with the law; the above cited codes are a good place to begin but by no means are they a complete list.

Regards,

Handwritten signatures of Steve and Sharon Wolff. The signature on the left is "Steve L. Wolff" and the signature on the right is "Sharon L. Wolff".

Steve and Sharon Wolff

3 Painter St.

Rio Dell, CA 95562

steve@riodelltimes.com

cc Ron Henrickson, Rio Dell City Manager