

DAVID H. DUN
(dhd@dunmartinek.com)

DAVID E. MARTINEK
(dem@dunmartinek.com)

PAMELA GIOVANNETTI
(pam@dunmartinek.com)

RANDALL H DAVIS
(rhd@dunmartinek.com)

SHELLEY C. ADDISON
(sca@dunmartinek.com)

DUN & MARTINEK LLP
ATTORNEYS AT LAW
2313 I STREET
EUREKA, CALIFORNIA 95501
TELEPHONE: (707) 442-3791
FACSIMILE: (707) 442-9251

MAILING ADDRESS
P.O. BOX 1266
EUREKA, CALIFORNIA 95502

LEGAL ASSISTANTS

JO-ANNE STEVENS
(jaf@dunmartinek.com)

RUTH A. JOHNSON
(raj@dunmartinek.com)

PAT VISSER
(pat@dunmartinek.com)

May 5, 2011

Steve and Sharon Wolff
3 Painter St.
Rio Dell, CA 95562

Re: Public Records Act Request

Dear Mr. and Ms. Wolff:

Please consider this as the city's response to your letter of April 10, 2011. As I indicated previously, I would be responding by May 5. Thank you for your patience.

I agree with your reading of Government Code Section 6254.8. Therefore, I will be instructing city personnel to search for the employment contracts of Mr. Hale and Ms. Flemming and provide you with copies.

You ask for documents concerning Mr. Hale's and Ms. Flemming's separation of employment from Rio Dell, citing Government Code Section 54957(b)(1), arguing that at some point the city must have considered their "appointment, employment, evaluation of performance, discipline, or dismissal..."

To my recollection, both Mr. Hale and Ms. Flemming quit. Therefore, the city did not need to consider their "appointment, employment, evaluation of performance, discipline, or dismissal..." When a public employee quits, I'm not aware of any requirement that the legislative body of that public entity needs to act. It seems to me that an employee quitting is a self-effectuating act.

I believe that Ms. Wolff works for the county. When a county employee quits, they simply inform the county of that fact. I'm not aware that the Board of Supervisors needs to agendize for closed session, act, and then report out of closed session for everyone who quits. I'm sure there are all sorts of ways that a public employee can quit, but I don't believe they require action by the legislative body of that public entity.

In a city such as Rio Dell, it would appear that the city manager would have authority to deal with personnel issues as they arise, using his or her best discretion. See, for example, Section 2.15.050 of the Rio Dell Municipal Code.

You also request copies of any settlement agreements entered into with Mr. Hale or Ms. Flemming. I don't believe there was any such agreement with respect to Mr. Hale. In any event, in my view, these are personnel records not subject to public disclosure, pursuant to Government Code Section 6254(c).

Your letter also cites to a portion of Government Code Section 54957.1, concerning approval of a settlement offer relating to pending litigation signed by the opposing party. To my knowledge, there was none concerning either former employee.

Finally, your letter cites to a portion of Government Code Section 54957.1 concerning disposition of claims arising pursuant to Government Code Section 54956.95. Government Code Section 54956.95 refers to settlements by a joint powers agency. None was involved here.

As I said above, I appreciate your patience. The events you are concerned with took place about two years ago, and as you know during this time the city was advised on personnel matters by the specialty law firm Liebert Cassidy Whitmore, so responding to your letter took longer than it otherwise might have done.

I would be happy to respond to questions or comments. Please be advised that I will be out of the office from late May to mid-June, which will affect my timing in responding to you. Please accept my apologies for not better understanding that your original request encompassed employment agreements.

Very truly yours,

~~DUN & MARTINEK LLP~~



David E. Martinek

cc: Client