

May 8, 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 recently received your May 5th, 2011 letter regarding our public records request and we appreciate your releasing the employment contracts of Mr. Hale and Ms. Flemming but the rest of the request was refused or ignored.

You stated that to the best of your recollection, both Mr. Hale and Ms. Flemming simply quit so the council never took an action that would require disclosure. The information available at the time of Ms. Flemming's departure doesn't agree with that assessment of the situation. According to an interview with then City Council Member Mike Dunker for a 7.9.09 article, "Rio Dell once again looking for a city manager" in the Times Standard, "Dunker expressed his frustration that the council had accepted Flemming's resignation..." The article goes on to reiterate that "City Manager Nancy Flemming resigned during the closed session preceding the regular City Council meeting. Neither the mayor nor the City Council announced the city manager's resignation, although Flemming was not present for the regular session. The mayor simply announced that no action had been taken in the preceding executive session." A subsequent article (7.23.09) included a lengthier interview with Dunker who confirmed that the council accepted her resignation during the closed session held prior to the regular council meeting of July 7, 2009. Accepting a resignation is an action that requires a vote which is then subject to disclosure as per The Brown Act § 11125.2. Dunker spoke about the problems leading up to the resignation after months of closed door meetings regarding Flemming's performance review; the article went on to state "One of the challenges was the situation with the termination of the former public works director-the precise reasons

for which haven't been made public, and the result of an independent investigation was not released.”

This also confirms the termination of Mr. Hale, which is an action that required public disclosure, as well as the existence of the independent investigation that we inquired about in our original records.

As I pointed out in the original records request of 3.19.11, there was a special meeting held with Mann, Urrutia & Nelson, CPA's on 1.20.09 where audit results were discussed. The minutes of that meeting refer to a special audit for “the purpose of investigating certain findings from the annual audit.” The interview with Dunker also refers to the independent investigation results. Your original response to our request for this investigation report included a letter from Finance Director Stephanie Beauchaine saying that no special audit was commissioned. Dunker as well as the minutes of that Jan. meeting indicate that there was an independent investigation done and we again request the documentation from this investigation. Rio Dell taxpayers have a right to full disclosure of the city activities, particularly where public money is used or involved in any manner. There is no right to privacy privilege available to hide information regarding the public money or public trust. If no investigation or audit was undertaken, as the letter states, then I would like to know why no investigation was conducted. Obviously, there were problems found in the audit report discussed 1.20.09 which necessitated the discussion of a special investigation. Council Member Jack Thompson was obviously very upset with the outcome of the audit or report when he criticized then city manager Nancy Flemming for refusing “to exercise her powers and duty (responsibility) granted her” and stated “the City Council has known of some of the stated charges for over two years yet did not take appropriate action under the responsibility to the citizens of Rio Dell by ordering the City Manager to investigate the rumors and report back to the council.” Why would there not be an investigation into the situation that gave rise to this criticism? Failure to investigate audit findings that were questionable would be a dereliction of fiduciary duty by the city and the council.

The 3.29.11 letter from the city also states that there was no reportable action ever taken after months of Mr. Hale being on administrative leave (unknown if it was paid or unpaid); that not only defies all leaps of logic, it is also contradicted by the interview of Dunker when he referred to the “termination of the former public works director.” The letter also states that no reportable action was taken regarding the employment of Ms. Flemming but as we have pointed out above, the statements of Dunker verify that

the council accepted her resignation which is a reportable action. Government Code Section 54957.1(5) requires disclosure of any “action taken to appoint, employ, dismiss, **accept the resignation of**, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.”

I requested a copy of the 2008/2009 audit report that was discussed at that Jan. meeting and Beauchaine stated that the report was available online in the written response but that a hard copy could be provided at cost. I would like that hard copy as I do not find the 2008/2009 audit report at the city site at the finance department page. The site lists only the audited financial statements from 05/06, 06/07, and 07/08. Please provide a copy of that report at the cost of 10 cents a page.

The 4.10.11 letter also requested “any and all settlements or settled claims by the city reached between 2003-present.” Your May 5, 2011 letter did not state whether or not the city intended to provide the requested information as provided for in Government Code 54957.1(3)(A). We again request this information and agree to a cost of 10 cents per page. Your letter misstates Government Code Section 54957.1(3) when you claim it only concerns “disposition of claims arising pursuant to Government Code Section 54956.95” which refers to settlements by a joint powers agency. The code section I cited refers to “approval given to its legal counsel of a settlement of pending litigation, as defined in **Section 54956.9...shall be reported after the settlement is final.**” Section 54956.9 applies to any local agency which is a critical point to be aware of as you represent multiple local agencies that would be subject to the disclosure requirements. We again request any and all settlements and/or agreements entered into by the city from 2003 to present.

We request the following items:

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))

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))
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))
4. Hard copy of 2008/2009 audit and supporting documentation as well as any subsequent reports or investigations into audit findings

Please be aware that we will continue to pursue this records request to the full extent of the law.

Regards,

The image shows two handwritten signatures in blue ink. The first signature is "Steve I. Wolff" and the second is "Sharon L. Wolff". Both signatures are written in a cursive, flowing style.

Steve and Sharon Wolff

3 Painter St.

Rio Dell, CA 95562

steve@riodelltimes.com

cc Ron Henrickson, Rio Dell City Manager