

July 7, 2011

City of Rio Dell

David Martinek, City Attorney

P.O. Box 1266

Eureka, CA 95502

Re. Public Records Act Request

Dear Mr. Martinek:

This is in response to your May 27, 2011 letter yet again denying our request for information. We have been exceedingly busy recently and I have been unable to respond until now.

Your letter states that no action and no vote was taken regarding the resignation of either Nancy Flemming or Jim Hale but does not address the question of whether or not there was any type of settlement agreement with either party. My May 8<sup>th</sup> letter provided quotes from council member Mike Dunker contained in a Times Standard interview conducted at the time that clearly stated the council voted to accept Nancy Flemming's resignation and expressed Dunker's disappointment in this action. This is a direct contradiction to your contention that no action was taken. Either you believe Mr. Dunker was lying or an action was taken. Mr. Dunker clearly expressed his frustration in the 7.7.09 Times Standard article that the city council had "accepted Flemming's resignation" which again is in direct contrast with your assertion. There has been no indication that you were present at the council meeting in question but Mr. Dunker was which would lead a reasonable person to conclude he was in a better position to state what happened than yourself.

The follow-up Times Standard article of 7.23.09 also refers to an independent investigation into public works which was not released. You stated in your letter that Mr. Hale was "placed on administrative leave" for months before he simply quit. Allegations that Mr. Hale had an unmetered water line installed at his private residence had surfaced after Mr. Hale had gotten into a fist fight at the Rio Dell Shell Station with a local resident who had worked on the crew that installed that private line. There was a police report taken at the time and we reported on the incident based on two independent sources of information to our community website ([www.riodelltimes.com](http://www.riodelltimes.com)). It was then that Mr. Hale was put on administrative leave while an independent investigation took place. The investigation is subject to disclosure as well as any settlement agreements reached between the city and Mr. Hale. There is a compelling public interest in disclosure of any investigation or complaints surrounding the public works department and/or Mr. Hale specifically that are not protected documents under Government Code §6254.

Complaints about the performance of public employees other than peace officers are public if they lead to disciplinary action, *AFSCME v. Regents*, 80 Cal. App. 3d 913 (1978) or even, discipline or not, if they are 'well founded' or reasonably reliable in terms, for instance, of their substance, frequency and/or sources *Bakersfield City School District v. Superior Court*, 118 Cal. App. 4<sup>th</sup> 1041 (2004). As such, we request disclosure of any and all complaints involving Mr. Hale during his tenure with public works, including all investigations, disciplinary actions, etc. including any supporting documentation. There are no legitimate personal privacy exemptions that would allow you to continue to withhold the requested information. Public interest is clearly served by disclosure of the record.

In your past rejections of our requests you have cited the personal privacy protection clause of Government Code §6254 however this broad claim is not supported by the California Public Records Act (CPRA) or court precedent. "The Assembly Committee on Statewide Information Policy, in preparing what became the CPRA in 1968, noting the broad definition of public records, observed, "Only purely personal information unrelated to 'the conduct of the public's business' could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally devoid of reference to governmental activities." (Cited in *San Gabriel Tribune v. Superior Court*, 143 Cal. App. 3d 762 (2d Dist. 1983)). A comparable list of private topics was taken by one court from a federal case interpreting the privacy exemption in the Freedom of Information Act, namely "marital status, legitimacy of children, identity of fathers of children, medical conditions, welfare payments, alcoholic consumption, family fights, reputation and so on." (*Sims v. Central Intelligence Agency*, 642 F.2d 562 (D.C. Circ. 1980), cited in *Braun v. City of Taft*, 134 Cal. App. 3d 332 (California Court of Appeal, 5th Dist. 1984))" *Exemption for private personal information*, First Amendment Coalition.

Our letter to you of 4.10.11 requested "any and all settlements or settled claims by the city reached between 2003-present." Your May 27, 2011 letter did not state whether or not the city intended to provide the requested information as specified in Government Code 54957.1(3)(A). We again request this information and agree to a cost of 10 cents per page.

Your recent letter included a laundry list of possible objections to disclosure of clearly public information. There seems to be a great deal of interest in preventing the disclosure of public information that is provided for within the Government Code which continues to do an extreme disservice to the residents of Rio Dell and the public interest. Your reference to Government Code 54960.1 does not apply to public records requests. The Brown Act is clearly defined within the Government Code beginning with section 54950, which states "The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining

informed so that they may retain control over the instruments they have created.” We will post information regarding the application of the Brown Act and the California Public Records Act on our website and would encourage you to familiarize yourself with the material regarding what is public information as well as the many citations to precedent that supports our request.

We request the following items:

1. Disclosure of any/all complaints, disciplinary actions, investigations and supporting documentation regarding the public works department during the tenure of Mr. Hale (as per cited precedent)
2. Disclosure of any/all complaints, disciplinary actions, investigations and supporting documentation involving Mr. Hale specifically during his tenure with the City of Rio Dell (as per cited precedent)
3. Disclosure of any/all complaints, disciplinary actions, investigations and supporting documentation involving Ms. Flemming during her tenure with the City of Rio Dell (as per cited precedent)
4. Disclosure of any/all settlement agreements reached between the City of Rio Dell and Mr. Hale and/or Ms. Flemming as well as each council members vote (as per Gov't Code 54957.1(3)(A))
5. 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))

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

Regards,

A handwritten signature in black ink that reads "Sharon Wolff". The signature is written in a cursive, flowing style.

Sharon Wolff

3 Painter St.

Rio Dell, CA 95562

[steve@riodelltimes.com](mailto:steve@riodelltimes.com)

cc Ron Henrickson, Rio Dell City Manager