

August 9, 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 August 1, 2011 letter yet again failing to address the request for all settlement agreements. Despite having clearly requested 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)” in our correspondence of 4/10/11, 5/8/11, 7/7/11 we have yet to receive an acknowledgement of the request, let alone the requested information. The request has been ignored in its entirety by yourself in each of your subsequent responses. The request is regardless of the other involved parties; if the City of Rio Dell entered into an agreement with any other party from 2003 to present that involved public funds in any way then we request a copy of the final settlement agreement or settled claim. Provided the agreement is a final agreement and the period for appeal is over, there is absolutely no justification for not disclosing the information as it is clearly provided for with the government code. Failing to address the issue entirely, as has been done to this point, will only result in further action that will cost the taxpayers of Rio Dell unnecessarily. Failure to release public records lawfully requested in King County Washington recently cost the taxpayers \$125,000 in settlement costs alone for example.

The applicable government code section 54957.1 states that the “legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present” regarding any settlements of pending litigation (section 3), acceptance of any settlement agreements (3)(A), disposition reached as to claims discussed in closed session (4), etc. The law is very clear on the subject, if public funds are expended then the public has a right to know about it provided the settlement is final. The requirements for disclosure then creates a public document, the final settlement agreement. I would direct you to the court ruling in *Register Div. of Freedom Newspapers, Inc. v. County of Orange*, 158 Cal.App.3d 893 regarding the required disclosure of settlement agreements among other public records. The ruling provides clear guidelines for public documents, particularly investigations, settlement agreements and closed door meeting records among others. The case is easily

found online and would be critical to understand for any attorney advising municipalities on issues of public records. We have become increasingly concerned about the depth of secrecy from city hall regarding public funds; such as those used to pay settlements as well as their practice of burying investigations into alleged wrong doing by public officials. I would recommend reviewing the “Public Records Act Compliance Audit of California State Agencies (2006)” produced by the Center for Public Forum Rights (available online) and its succinct clarification of required disclosure for public records.

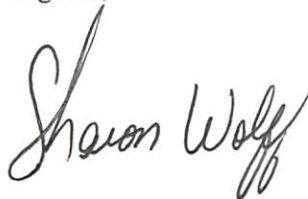
It is not believable that the city would have not entered into a single settlement agreement or settled any pending litigation since 2003 that have utilized public money. The HUD investigation into our own housing situation and the cities administration of the First Time Homebuyers Program resulted in the city having to use \$50,000 of HUD grant money to settle the issue and bring our home up to a minimal level of code compliance. That action required signed agreements between ourselves and the city as well as between the city and HUD which are public records. Later, the city falsely filed an IRS form 1099 misc. claiming to have given us a check for \$50,000 in tax year 2005. We received notice of the fraudulent tax form when we got a letter from the IRS saying we owed them over \$14,000 in fees and penalties for not declaring the imaginary check. After providing the IRS with all of the information regarding the city, we were exonerated by the IRS who presumably sought their tax money from the city. Any settlement or agreement with the IRS to pay those penalties and fees would have also utilized public funds which makes it subject to disclosure as a public record. There have been numerous other closed door agenda items of “pending litigation” since 2003 which are also subject to disclosure after their final disposition, whether that is by settlement or not. These are examples of the type of documents being requested.

Additionally, the investigative report of Mr. Hale, referred to in your last refusal, is not subject to attorney client privilege nor is it exempt from disclosure as a personnel record, see *Register Div. of Freedom Newspapers, Inc. v. County of Orange*. The court clearly found that disclosure of investigation reports to “be necessary in evaluating the County’s decision to settle the claim with public funds. Further, in determining whether disclosure of the reports is against public interest the interest of the public entity as a party in the outcome may not be considered (Evid. Code § 1040, subd.(b)(2).)” Attorney client privilege is addressed by the court as well; “the mere presence of county counsel at a meeting will not turn deliberations regarding the settlement of a tort claim into ‘confidential’ attorney-client communication” further “neither the attorney’s presence nor the happenstance of some kind of lawsuit may serve as the pretext for secret consultations whose revelation will not injure the public interest.” Investigations into wrongdoing by public officials are exactly the type of public records envisioned by the intent of the California Public Records Act (CPRA); “[T]he Legislature, mindful of the right of individuals to privacy, finds and declares that access to

information concerning the conduct of the people's business is a fundamental right of every person in this state" Government Code Section 6250. Your letter confirms the existence of the investigation report but incorrectly asserts attorney client privilege and personnel records exemptions to prevent disclosure. This defense is not supported by the law or court precedent and it will wind up costing the taxpayers of Rio Dell more money which they can't afford. Please provide some reference to any applicable court holding that supports your contention that investigations into wrong doing by a public official are exempt from disclosure as well as final settlements agreements that expend public funds. I have provided numerous citations in this and prior correspondence which clearly provide for the release of the public records requested.

The "magic words to lay these issues at rest" you refer to in your most recent refusal are simple; release the required public records as requested. Please state clearly whether or not the city will disclose final settlement agreements entered into since 2003 no matter who the other parties are. Release of the records is clearly mandated by government code, the CPRA and court rulings. The investigative report regarding the Public Works Department is also a public record and required to be disclosed. We would be very unhappy to see the City of Rio Dell waste precious public resources continuing to resist the disclosure of public records mandated by law as we will continue to pursue the matter fully.

Regards,

A handwritten signature in black ink that reads "Sharon Wolff". The signature is written in a cursive style with a large initial "S".

Sharon Wolff

3 Painter St.

Rio Dell, CA 95562

steve@riodelltimes.com

cc Ron Henrickson, Rio Dell City Manager