

September 12, 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 correspondence of 8.31.11 which included documentation related to six different settlement agreements, thank you. The letter did not indicate if we would be receiving similar documentation for additional settlements that weren't included. There are no doubt additional settlement agreements that we are unaware of as disclosure has been an issue with Rio Dell for years now; we are aware of the settlement agreement in the Concerned Citizens v. Rio Dell case that wasn't included for example. There are numerous references to "pending litigation" throughout the city council agendas over the years which makes it hard to believe that only six resulted in a settlement agreement.

The council meeting of 5.17.11 included a reference to "significant exposure" to 2 potential lawsuits, if there are final settlement documents related to either of those then we request a copy. The agenda for the council meeting of 4.5.11 included a closed door meeting regarding anticipated litigation involving "CDBG rehabilitation loan portfolio concerns 2010." We request documents related to that issue as well. If the matters are not final yet then please state so; our request for the settlement documents once they become final remains in effect.

The council agenda of 7.14.09 closed door session refers to "significant exposure" to three separate lawsuits. We request disclosure and documents related to all three items. The various council agendas have repeatedly referred to a variety of "pending litigations" over the years; it is hard to believe that only six resulted in settlement documents. As the attorney for the city over the last 18 years, you are in the best position to find and disclose all of the settlement agreements as required by government code (see prior correspondence for an exhaustive list of citation and precedent).

The council agenda of 5.19.09 referred to a closed door session regarding "significant exposure" to two different lawsuits. The government code cited was 54956(b) which doesn't exist so I assume they meant 54956.5(b) which permits a special meeting on short public notice in the case of an "emergency situation" involving "matters upon which prompt action is necessary due to the disruption or threatened

disruption of public facilities.” We request all documentation related to both of the pending litigation items referred to on the 5.19.09 agenda as well as information related to the emergency requiring the meeting that involved public facilities?

Our letter to you dated 8.9.11 also included a request for information related to the false 1099 Misc. tax document the city filed with the IRS claiming to have given us a payment of \$50,000. We are very interested in the resolution of that matter once the IRS investigated and confirmed we were never given the money and did not owe the taxes and penalties. The IRS would have likely contacted the city for information as they sought the rightful taxpayer of the money. We request any and all documentation related to this matter or any other IRS investigation involving the city in any way from 2003 to present.

The August 9<sup>th</sup> letter also provided multiple citations to code and precedent regarding our long standing request for documentation regarding an investigative report (you have previously confirmed its existence). An investigative report into alleged wrongdoing at a publicly funded department such as public works or city hall is absolutely and unequivocally subject to disclosure; this has been a matter of settled law for years now. You have previously contended that an investigative report that involves personnel (as all of them would to some degree) is protected from disclosure as part of a personnel record. This contention flies in the face of the code, court rulings and common sense. If your rationale was correct, absolutely no wrongdoing by any public official would ever be disclosed. We requested you provide some citation to anything that would support your contention that the report is protected but your recent letter failed to address the issue at all. The city should be prepared to pay to defend this denial of records so they should be very clear as to the legal basis of your opinion.

There are some questions that immediately come to mind after reading the documents you provided in your recent correspondence. For example, why would the city pay \$70,000 in a settlement agreement with Joe Enes months after the Humboldt County Courts granted an order of taking under eminent domain? The documents referred to the property having an appraised total of \$9,700. A settlement agreement after the issuance of the court order granting permission to take the property for the water tank would seem to be unusual without further information as to its justification. Was the property in question then developed by the city as part of the water tank project?

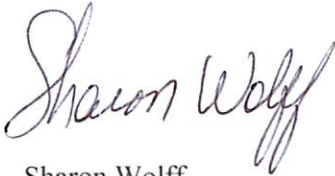
The Mintz settlement document you included referred to the city having to pay \$41,000 in interest since the judgment was not paid until ten years later. Why did the city wait so long to pay a lawful judgment which then resulted in such a large sum of unnecessary interest to accrue? You were the city attorney at the time of the original judgment and in the subsequent years and are in a good position to know why the judgment was left unpaid for that length of time. The taxpayers wound up having to pay tens of thousands of dollars in unnecessary costs due to the failure to pay in a timely manner so it is a matter of public interest.

We appreciate the information that you recently provided and look forward to receiving the remaining documents as requested. I have included a list of the items requested in this letter below in order to be perfectly clear about the requested information.

1. Disclosure and documentation related to all settlement agreements involving the city since 2003 with the exception of the six agreements provided already
  - a. Including but not limited to items posted on the city council agendas of 5.7.11, 4.5.11, 7.14.09 and 5.19.09
  - b. Including disclosure and documentation related to the “emergency” referred to in the 5.19.09 agenda involving a public facility
  - c. Including but not limited to the settlement agreement regarding the Concerned Citizens v. Rio Dell case
  
2. Any and all documentation related to the false 1099 Misc. form filed by the city and referred to above or any other IRS investigation involving the city in any way from 2003 to present
  
3. Disclosure and documentation of any investigative report involving public works and/or city hall as required by previously cited government code and court precedent
  - a. If you continue to refuse to disclose the information then please cite specifically the government code or court precedent supporting your contention as personnel record confidentiality clearly does not apply
  
4. Information related to the Joe Enes settlement previously disclosed
  - a. Why did the city pay \$70,000 for the property in question long after being granted an order to use eminent domain to take the property at fair market value (appraised value was \$9,700 according to the included documentation)
  - b. Was the property in question used for the intended purpose or any other by the city
  
5. Information related to the Joel Mintz settlement previously disclosed
  - a. Why did the city wait a decade before paying the lawfully entered judgment which resulted in over \$40,000 of additional interest

We understand that the breadth of the public records request is large but it is directly a result of the failure by the city to properly disclose required public information over so many years. Following the clear codes and guidelines that regulate a municipality regarding public records would avoid the issue entirely.

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