



June 3, 2021

To: Jessica Lowry, San Jose open government manager
cc: San Jose Rules & Open Government Committee
Re: Appeal of denial of PRA request

This letter is to inform you of San José Spotlight's request to appeal the city's denial of a recent public records request.

Under the California Public Records Act, San José Spotlight on May 9, 2021 requested the following: *A copy of all email, text and Slack (or other messaging system) communications between Mayor Sam Liccardo, Chief of Staff Jim Reed and any and all other mayor's staff, consultants, lobbyists or associates related to Solutions San Jose over the past six months. Please include emails/texts sent and received from personal devices and accounts as it relates to public business.*

On May 18, 2021, Henry Smith, an agenda services manager and strategic initiatives associate with the office of Mayor Sam Liccardo, denied the request in its entirety. He cited just one statute for the denial decision: *Attorney-Client Privilege [California Government Code § 6254(k)]*

This is an improper denial of San José Spotlight's public records request, for the following reasons:

- Our request asked for all communications between Liccardo and other city staffers or consultants, associates, etc. The city has asserted one exemption, 6254(k), which allows the city to invoke attorney-client privilege as a basis to withhold. However, that privilege has well-defined limits.
 - It applies only to (1) communications between a lawyer and her client, (2) regarding legal advice, (3) that is not disclosed to third parties. See California Evidence Code section 952.
- It is simply not possible that all communications relating to Solutions San Jose meet all three of the privilege's requirements.
- First, Solutions San Jose is not a city entity. So, to the extent there are legitimately privileged communications between the city attorney and Liccardo regarding legal advice, the privilege would be destroyed if those communications were shared with anyone outside the attorney-client relationship (i.e., anyone other than city staff, including anyone associated with Solutions San Jose who is not also on city staff).
- Second, it is not possible that all internal city communications -- i.e., those as to which the privilege was not destroyed -- regarding Solutions San Jose are actually subject to the privilege, for two basic reasons:
 - For a communication between an attorney and client to be privileged, it has to relate to legal advice. Simply copying a lawyer does not render the communication privileged. It is very difficult to imagine that all communications between city officials relating to Solutions San Jose related to legal advice.



- In particular, it's difficult to imagine that all such communications were related to legal advice about Solutions San Jose. Why would the city attorney be advising city staff about legal issues surrounding a non-city entity like Solutions San Jose?

For the reasons cited above, we are appealing to the city's open government manager and its Rules & Open Government Committee to reevaluate this improper denial of public records and immediately release records pursuant to our request.

California law requires public agencies to separate exempt and non-exempt records. With this blanket denial, it appears the city did not attempt to provide any documents that might be disclosable, even with redaction. A more careful search is warranted.

Please advise us of next steps, including when the committee will consider our appeal during its regularly scheduled meeting. If you have any questions regarding this appeal, please do not hesitate to contact Ramona Giwargis at [REDACTED] or [REDACTED].

We look forward to hearing from you.

Sincerely,

[REDACTED]

Ramona Giwargis
Co-founder and editor
San José Spotlight