



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Sarah Zárate

SUBJECT: PUBLIC RECORDS APPEAL -
RAMONA GIWARGIS

DATE: June 18, 2021

Approved

Date

06/18/21

RECOMMENDATION

Deny the appeal from Ramona Giwargis regarding the City's response to her Public Records Act request.

BACKGROUND

On May 9, 2021 through the City's online Public Records Act request form, Ramona Giwargis requested a copy of all emails, texts 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.

On May 18, 2021 the City notified Ms. Giwargis of its decision to withhold responsive documents under the Attorney-Client Privilege pursuant to California Government Code §6254(k). The withheld documents were confidential correspondences seeking and providing legal advice between the Mayor's Office Staff and the City Attorney's Office and are therefore exempt from production under the California Public Records Act. On June 3, 2021 Ms. Giwargis formally appealed the City's decision to withhold the records stating that it is her belief that these records do not qualify under California Government Code §6254(k), and believes nonprivileged responsive records were improperly withheld. Ms. Giwargis' appeal is included as Attachment A.

On June 3, 2021, Ms. Giwargis submitted a second request similar to the one currently on appeal. The second Public Records Act Request asked for email, text and Slack (or other messaging system) communications between Mayor Sam Liccardo/Chief of Staff Jim Reed, Mayor's staff members and any entity or person not affiliated with the City (not City staff) that uses the phrase "Solutions San Jose" over the past six months. Staff reached out to Ms. Giwargis asking if she would be willing to wait until staff filled the second request before pursuing the appeal. Ms.

Giwargis informed staff that, although she had placed a second request, she wanted the appeal to proceed. On June 14, 2021, Mayor’s Office staff responded that there were no responsive records to Ms. Giwargis’ second request.

ANALYSIS

Ms. Giwargis is appealing the City’s response to her May 9th Public Records Act request. The City located documents and determined that the located documents needed to be withheld pursuant to the Attorney-Client Privilege under Government Code Section 6254(k). These documents are confidential correspondences between the Mayor’s Office Staff and the City Attorney’s Office and are therefore exempt from production.

Ms. Giwargis contends that because the request relates to communications with Solutions San Jose, a non-City entity, it is not possible that all correspondences qualify under the attorney-client privilege.

In an effort to respond expeditiously, the City read Ms. Giwargis’ May 9th request broadly, and determined that emails between the Mayor’s Office staff and the City Attorney’s Office mentioning Solutions San Jose were responsive. On May 18, 2021, the City notified Ms. Giwargis of its decision to withhold responsive documents under the Attorney-Client Privilege pursuant to California Government Code §6254(k). In hindsight, these emails were not responsive to Ms. Giwargis’ request because they were not between the Mayor’s Office staff and Solutions San Jose.

There are no records “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”.

The withheld documents are communications that fall within the Attorney-Client Privilege. The Public Records Act exempts from disclosure confidential communications between attorney and client under both California Government Code Section 6254(k) and California Evidence Code Section 954. This exemption allows staff to have frank and candid conversations with their attorney; disclosure would have a chilling effect on this ability. For a correspondence to qualify under statutory law, “there must be a (1) communication, (2) intended to be confidential, and (3) made in the course of the lawyer-client relationship”¹. The existing documents meet each of these three requirements.

In addition, California Evidence Code Section 954 states that this privilege can only be waived by the holder of the privilege. The City Council holds the authority to waive said privilege and can direct City staff to disclose the protected records.

¹ City & County of S.F. v. Superior Court (1951) [37 Cal. 2d 227](#), 234-235 [231 P.2d 26, 25 A.L.R.2d 1418].)

CONCLUSION

Ms. Giwargis' request for a copy of all emails, texts 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 involves records that are exempt from disclosure based on the attorney-client privilege.. Staff recommends that the Rules and Open Government Committee deny the appeal from Ms. Giwargis.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

/s/
SARAH ZARATE
Director of the Office of Administration, Policy and
Intergovernmental Relations

For questions please contact Jessica Lowry, Open Government Manager, at publicrecordsrequest@sanjoseca.gov.

Attachment A: Correspondence with Ramona Giwargis