



CITY OF STOCKTON

OFFICE OF THE CITY CLERK

DATE: August 27, 2014

TO: Hon. George J. Abdallah, Jr.
Judge of the Superior Court and Advisor to the San Joaquin County
Grand Juries
c/o Teresa Martinez
222 E. Weber Avenue, Room 303
P.O. Box 201022
Stockton, CA 95201

FROM: Bonnie Paige, CMC
City Clerk, City of Stockton

SUBJECT: CHANGES TO COUNCIL POLICY STRENGTHENING AND DEFINING
DISCLOSURE OF CONFIDENTIAL INFORMATION WITHOUT
PERMISSION AND CREATING A CENSURE POLICY; CITY COUNCIL'S
GRAND JURY RESPONSE POLICY AND MAYOR SILVA'S PREPARED
PERSONAL RESPONSE

The following Minutes Excerpt is a true and exact motion of the Stockton City Council at its regular meeting of August 12, 2014:

PRESENT: Councilmember Burgos Medina, Councilmember Holman , Councilmember Miller, Councilmember Tubbs, Councilmember Zapien, Vice Mayor Canepa, and Mayor Silva

15.1 14-0773 RESPONSE TO 2013 - 2014 CIVIL GRAND JURY FINAL REPORT FOR CITY OF STOCKTON AND THE BROWN ACT, CASE NO. 1113

Motion 2014-08-12-1501/1502 authorizing the City of Stockton's Response to the 2013 - 2014 Civil Grand Jury Report for Investigating Case No. 1113 relating to the Brown Act; adding additional language under item 1.2 to note that the Legislation Environmental Committee drafted and made changes to Council Policy to strengthen and define what it means to disclose confidential information without permission and created a Censure Policy; and authorizing the City of Stockton's Response to the 2013-2014 Civil Grand Jury Report for Investigating Case No. 1613 relating to the City's approval of responses to Grand Jury Reports and adding under item 2.1 that the Legislation Environmental Committee will develop a policy on how future Grand Jury responses will be presented to Council to include follow up briefings on the responses submitted to the Grand Jury; and, directing the City Manager to sign the responses on behalf of the City and to transmit the

responses to the Presiding Judge of the Superior Court of San Joaquin County, and submit the personal response prepared by Mayor Silva.

Moved by: Councilmember Zapien, seconded by Councilmember Burgos Medina.

Vote: Motion carried 7-0

Yes: Councilmember Burgos Medina, Councilmember Holman , Councilmember Miller, Councilmember Tubbs, Councilmember Zapien, Vice Mayor Canepa, and Mayor Silva.

PRESENT: Councilmember Burgos Medina, Councilmember Holman , Councilmember Miller, Councilmember Tubbs, Councilmember Zapien, Vice Mayor Canepa, and Mayor Silva

15.2 14-0903 RESPONSE TO 2013 - 2014 CIVIL GRAND JURY FINAL REPORT FOR AGENCY APPROVAL OF RESPONSES TO GRAND JURY REPORTS, CASE NO. 1613

Motion 2014-08-12-1501/1502 authorizing the City of Stockton's Response to the 2013 - 2014 Civil Grand Jury Report for Investigating Case No. 1113 relating to the Brown Act; adding additional language under item 1.2 to note that the Legislation Environmental Committee drafted and made changes to Council Policy to strengthen and define what it means to disclose confidential information without permission and created a Censure Policy; and authorizing the City of Stockton's Response to the 2013-2014 Civil Grand Jury Report for Investigating Case No. 1613 relating to the City's approval of responses to Grand Jury Reports and adding under item 2.1 that the Legislation Environmental Committee will develop a policy on how future Grand Jury responses will be presented to Council to include follow up briefings on the responses submitted to the Grand Jury; and, directing the City Manager to sign the responses on behalf of the City and to transmit the responses to the Presiding Judge of the Superior Court of San Joaquin County, and submit the personal response prepared by Mayor Silva.

Moved by: Councilmember Zapien, seconded by Councilmember Burgos Medina.

Vote: Motion carried 7-0

Yes: Councilmember Burgos Medina, Councilmember Holman , Councilmember Miller, Councilmember Tubbs, Councilmember Zapien, Vice Mayor Canepa, and Mayor Silva


BRET HUNTER
ASSISTANT CITY CLERK



CITY OF STOCKTON

OFFICE OF THE CITY MANAGER

City Hall • 425 N. El Dorado Street • Stockton, CA 95202-1997 • 209 / 937-8212 • Fax 209 / 937-7149
www.stocktongov.com

August 12, 2014

Presiding Judge
San Joaquin Superior Court
222 East Weber Avenue
Stockton, CA 95202

CITY OF STOCKTON RESPONSE 2013-14 CASE NO. 1113 – STOCKTON CITY COUNCIL AND THE BROWN ACT: THE LAW APPLIES TO EVERYONE

On December 3, 2013, City Council voted in open session to authorize the referral of the Mayor's action to the Grand Jury regarding the recruitment process for the City Manager position for the City of Stockton.

As a result of the report issued on May 19, 2014 from the 2013-2014 Grand Jury for the County of San Joaquin this response has been prepared to address any and all findings and recommendations. In accordance with Sections 933 and 933.05 of the California Penal Code, the City Council of the City of Stockton offers responses to the Grand Jury Report on the above-referenced case as follows:

FINDINGS & RECOMMENDATIONS

1.0 Release of Confidential Closed Session Information

F 1.1 The Mayor knowingly disclosed information regarding selection of Mr. Garcia as City Manager, prior to City Council approval, and based on discussions and actions that had occurred in legal closed sessions of the Stockton City Council. The disclosure occurred without the authorization of the City Council as required by Government Code Section 54963(a).

***Response:** The respondent agrees with this finding. Council has hired a new City Manager since the occurrence. The new City Manager has worked on improving communication with the Mayor and the City Council*

in efforts to provide clear expectations, preserve ethical standards and adhere to the Government Code and local policies and ordinances.

- F 1.2 All members of the City Council were aware that the names of the city manager candidates were known by a number of members of the public weeks in advance of the Mayor's disclosure. That information would have been available from disclosure of closed session discussions. However, no Council Member raised a concern or took steps to address the unlawful disclosures during council meetings, closed or open.

Response: The respondent agrees in part with this finding. The approval of Resolution 2013-12-03-1502, which admonished Mayor Anthony Silva for an unauthorized release of confidential information from a closed session meeting, demonstrates City Council members did take steps to address disclosures to media. Also, the Legislation Environmental Committee drafted and made changes to Council Policy to strengthen and define what it means to disclose confidential information without permission and created a Censure Policy.

- F 1.3 The repeated release of the candidates' names to the public, contrary to expressly stated assurance by the City Council, Mayor and recruiter that the names would be kept confidential, potentially exposed the City of Stockton to significant liability.

Response: The respondent agrees with this finding.

- F 1.4 The actions taken by the Mayor in violation of the Brown Act do not appear to be subject to additional criminal or civil penalties.

Response: The respondent agrees with this finding.

2.0 Recruitment for Stockton City Manager

- F 2.1 Overall, the recruitment process for the city manager position was flawed due to a lack of clear leadership and adherence to provisions of the Request for Proposal and recruitment contract.

Response: The respondent agrees with this finding.

- F 2.2 The advertised closing date for the recruitment was three weeks after the City Council met to interview candidates and select two finalists. This may have resulted in highly qualified applicants not being considered.

Response: The respondent neither agrees nor disagrees with this finding. While there may have been additional qualified candidates that were not considered, ultimately the process did take additional time and

further applications and expressions of interest were accumulated by the Human Resources Department and provided to City Council. It is not uncommon in the recruitment of high-level executives such as City Managers for the selected recruiter to move forward with the process prior to the close of the application period.

- F 2.3 The Mayor was overly involved in the recruitment process to the detriment of a professional recruitment. This far exceeded the nominating authority contained in the City Charter.

Response: *The respondent partially agrees with the finding. The City agrees that the Mayor was very involved in the recruitment process. However, Mayor Involvement is not uncommon in the recruitment process of a City Manager position. This level of management and leadership has an integral and sometimes complex relationship with the Mayor and Council members. It is important that the Mayor and Council play an active role in the recruitment process. An experienced recruiter should be used to guide Council through a recruitment process. The recruiter should work with Council to determine how they desire the process to work and the recruiter should adhere to that process.*

- F 2.4 The series of personal meetings between some Council Members and some applicants resulted in unfair advantages for applicants involved in the meetings.

Response: *The respondent partially agrees with this finding. A Council subcommittee was established to vet the perspective candidates, therefore it was understood by Council there would be meetings with prospective candidates that not all Council members would attend. However, the candidate meetings were not always with the subcommittee and became somewhat inconsistent. This was not consistent with the process initially recommended to and approved by the Council.*

- F 2.5 Some Council members had information from personal meetings with applicants that they did not share with other Council Members.

Response: *The respondent neither agrees nor disagrees with this finding. The finding does not provide sufficient information for follow up with Council Members and is too vague to make a determination.*

- F 2.6 The lack of experience with executive recruitments for most Council Members was a factor in the recruitment's failures.

Response: *The respondent partially agrees with this finding. The current Council does not have extensive experience with executive recruitments and the City ascertains that training would provide a benefit for future*

recruitment efforts. A professional recruiter was used and was unable to provide a process that was effective or that mitigated the complicating factors that typically arise during executive recruitments. The recruiter should be able to be relied upon to guide City Council through recruitment. However, the City does not deem this recruitment a failure in light of the appointment ultimately being made for the current City Manager. With the additional time allowed for the process, the candidate pool was expanded and yielded interest from additional candidates who originally chose not to participate in the process including the person ultimately selected.

- F 2.7 The mishandling of contract negotiations may have been a substantial factor in the failure to reach agreement on employment terms.

Response: The respondent partially agrees with this finding. Contract negotiations may indeed have been a factor in the failure to reach agreement on employment terms, however there could have been many other factors as well.

3.0 Access to Confidential Information by Mayor's Volunteers

- F 3.1 The Mayor has volunteers working out of the Mayor's City Hall office with unknown levels of supervision.

Response: The respondent agrees with this finding.

- F 3.2 The City of Stockton has no policies or procedures established to provide volunteers working for a mayor or council member with instructions on City policies, procedures, and directives related to access to computer files and the internet.

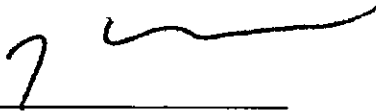
Response: The respondent disagrees partially with this finding. The City's policy 200-2 established guidelines for all volunteers. The City does not have a policy specifically for volunteers who work directly with the Mayor and the City Council members. However, the current policy relates to and includes all those who volunteer inclusive of all capacities.

- F 3.3 The City of Stockton has potential liability exposure from volunteers accessing and releasing confidential information obtained through City Hall computer access.

Response: The respondent agrees with this finding. The City has referred this matter to the City Auditor who is currently conducting a needs based assessment to assist the City in updating policies and streamlining procedures to ensure effectiveness and efficiency. Consideration will be made in this process for ensuring that sufficient policies and procedures are in place related to the role and access to information of volunteers.

- R 3. That the City Council adopt an ordinance prior to October 1, 2014, requiring all volunteers working for any City elected official to undergo training through the City's Human Resources Department and Information Technology Department on the City's directives related to computer access, e-mails and security and be required to sign an acknowledgement that they understand and will comply with the directives.

Response: The respondent partially agrees with the recommendation. This recommendation has been referred to the City Auditor for review and further investigation. The City Auditor is currently reviewing City processes which include Human Resource practices and Information Technology procedures. The City does agree to reviewing current policy. Review and analysis will help determine if a change is needed and what vehicle and policy level to utilize to implement the change to garner the most effective outcome.



KURT O. WILSON
CITY MANAGER

KW:LM/aa

ANTHONY SILVA
Mayor



CITY OF STOCKTON



OFFICE OF THE MAYOR
CITY HALL • 425 N. El Dorado Street • Stockton, CA 95202
209/937-8499

Response to 2013-2014 Grand Jury City Manager Recruitment Stockton City Council & The Brown Act Case No. 1113



Findings & Recommendations

1.0 Release of Confidential closed Session Information

F 1.1 The Mayor disagrees with this finding.

F 1.2 The Mayor disagrees with this finding.

F 1.3 The Mayor agrees with this finding.

F 1.4 The Mayor agrees with the finding.

2.0 Recruitment for Stockton City Manager

F 2.1 The Mayor disagrees with this finding.

F 2.2 The Mayor neither agrees or disagrees with this finding.

F 2.3 The Mayor partially agrees with this finding.

F 2.4 The Mayor partially agrees with this finding.

F 2.5 The Mayor neither agrees or disagrees with this finding.

F 2.6 The Mayor agrees with this finding.

F 2.7 The Mayor agrees with this finding.

3.0 Access to Confidential Information by Mayor's Volunteers

F 3.1 The Mayor disagrees with this finding.

F 3.2 The Mayor neither agrees or disagrees with this finding.

F 3.3 The Mayor disagrees with this finding.

R 3. The Mayor agrees with this recommendation.

Statement from the Mayor:

As you know, Stockton is a City with real problems such as Crime, Bankruptcy, and high unemployment. In the grand scheme of issues facing our City, it saddens me that a Civil Grand Jury would play into local politics by getting involved in this internal City of Stockton matter. Nearly every organization that I am aware of has some internal issues that need to be worked out within the organization rather than in the court of public opinion and the media. The issues surrounding the recruitment of the City Manager is a simple case of "dirty politics." The City

Council selected the recruiter after listening to multiple presentations. They had worked with Dr. Mathis in the past and they were comfortable with him. As far as I am concerned, he did his job. I never heard a single complaint about the process until the afternoon of November 2, 2013 when the Council voted 5-2 to hire the finalist. The recruiter made it very clear about the financial expectations of the finalist and no one from the council disagreed. At that point, we should have immediately reported out our actions. At this point, there would be no potential for a Brown Act Violation. As an example, this same process was used to hire our current City Manager Kurt Wilson. Once the votes were there in closed session, we immediately reported it out and only weeks later did we negotiate a contract and eventually approve it in public. The difference was that Kurt Wilson was not viewed as "my candidate" and so there was no political mischief. In my opinion, there was too much time between the final selection on November 2, 2013 and the council meeting on November 5, 2013. This allowed individual council members and their close supporters to figure out a way to stop the process because they believed that the finalist would be working too closely with me. In addition, I want to make it very clear that no "interns" or "volunteers" working in my office ever had access to keys, or computer codes of any kind.

I also disagree with the statement made by the Grand Jury that says that I believed that I could select the City Manager all by myself rather than nominate. If that was the case, and I really believed that; then why would I have ever involved the City Council in the first place?

More so is the fact that some staff within City Hall were lobbying for one of the candidates. Many City Staff members already had knowledge of who the (2) finalists were long before by alleged leak. A few department heads even participated in the final interviews with the council. So to think that between 16-20 people with knowledge of who these (2) finalists were never said anything and I am the only one to blame is just silly.

The truth is that if I would have given the staff and City Council the City Manager they wanted from the beginning, then we would not be having this discussion.

However, "the captain must go down with the ship" and as the Mayor I must accept the responsibility and the criticism that may come with any project that is not successfully completed and so I apologize for any actions on my part that did not result in the smooth hiring of a City Manager. I have learned from this experience.



CITY OF STOCKTON

OFFICE OF THE CITY MANAGER

City Hall • 425 N. El Dorado Street • Stockton, CA 95202-1997 • 209 / 937-8212 • Fax 209 / 937-7149
www.stocktongov.com

August 12, 2014

Presiding Judge
San Joaquin Superior Court
222 East Weber Avenue
Stockton, CA 95202

CITY OF STOCKTON RESPONSE 2013-14 CASE NO. 1613 – CITY OF STOCKTON APPROVAL OF RESPONSES TO THE GRAND JURY REPORTS

The 2013-2014 Grand Jury (Grand Jury) determined that some members of the City of Stockton Council did not personally agree with the official responses they approved. Interviews and surveys were conducted by the Grand Jury to analyze the findings and make determinations through a report.

As a result of the report issued on June 16, 2014 from the 2013-2014 Grand Jury for the County of San Joaquin this response has been prepared to address any and all findings and recommendations. This matter was thoroughly reviewed and examined to ensure transparency and offer an in-depth report by the City.

In accordance with Sections 933 and 933.05 of the California Penal Code, the City Council of the City of Stockton offers responses to the Grand Jury Report on the above-referenced case as follows:

FINDINGS & RECOMMENDATIONS

1.0 Stockton City Council Members Do Not Agree With Their Own Responses

F 1.1 A majority of Stockton City Council Members stated that they disagreed with official responses they had previously approved on August 13, 2013, which raises concerns of whether members read the report and responses.

***Response:** The respondent partially agrees and partially disagrees with this finding. Without understanding the detail of the disagreement it is impossible to respond to the finding. There is no data provided to help determine what portions of the report were called into question and if it was a minor detail or a major policy implication. Five reports were submitted to the City by the Grand Jury in 2012-2013. These reports contained a total of 40 findings and 33 recommendations. This led to a lengthy staff report with multiple attachments and complex responses,*

particularly to a report that outlined the City's financial status (Case No. 0112 – Recovering from Stockton's Financial Sinkhole – Don't fall back in). The complexity of reviewing various reports may have led to confusion on the part of Council to address any issues regarding opposition to the responses.

- F 1.2** A majority of Stockton City Council Members stated that they disagreed with official responses they had previously approved on August 13, 2013, which raises concerns about why they did not question the responses at the public Council Meeting when their responses were approved.

Response: The respondent partially agrees and partially disagrees with this finding. Although, the City encourages dialogue and discussion, without understanding the detail of the disagreement it is impossible to respond to the finding.

2.0 How Responses to Grand Jury Reports are Approved

- F 2.1** Over the last four years, almost all responses by the County and the Cities were approved by unanimous votes after little or no discussion by the elected officials or the public.

Response: The respondent agrees with this finding.

- R 2.1** All legislative bodies publicly explain the reasons for its response to Grand Jury Findings and Recommendations prior to voting to approve their response.

Response: The respondent agrees with the recommendation. The Legislation Environmental Committee will develop a policy for Council approval on how future Grand Jury responses will be presented to Council to include follow-up briefings on the responses submitted to the Grand Jury. Until this policy is developed, Grand Jury Report Responses will be placed on New Business as separate items on the public City Council meeting agenda in order to allow for any needed discussion.


KURT O. WILSON
CITY MANAGER

KW:LM/aa