



The Superior Court

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FOR IMMEDIATE RELEASE
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2013-2014 GRAND JURY RELEASES REPORT ON STOCKTON CITY COUNCIL AND THE BROWN ACT

Today, the San Joaquin County 2013-2014 Civil Grand Jury released its report investigating the Stockton City Council (City Council). The investigation was initiated as a result of the City Council's request for the City Attorney to provide options in dealing with the current Mayor's release of information from a closed session meeting to the public without City Council authorization, as required by the Brown Act. On November 22, 2013, the City Council voted in open session to authorize the preparation of the admonishment resolution and to refer the Mayor's actions to the Grand Jury.

In the course of its investigation, the Grand Jury reviewed numerous materials, including, but not limited to: information about the Ralph M. Brown Act, training materials for new council members, City Council Handbook, e-mails to and from elected and appointed city officials, three city manager recruitment brochures, and City of Stockton Administrative Directives related to city computer security and procedures. Additionally, interviews with City Council members, the City Attorney, and others were conducted.

The Grand Jury found that the City Council's recruitment for a new city manager in 2013 was ill-managed, contentious and opened too many opportunities for self-interest parties to manipulate the process and to deliberately expose confidential information from City Council Closed Session meetings in violation of the Ralph M. Brown Act. The Mayor was admonished for releasing confidential information on one occasion. However, the Grand Jury found that there were many occasions during the recruitment period when all members of the City Council knew about violations of the Brown Act. Despite this knowledge, they did not publicly disclose the unlawful releases of confidential information even when they were aware of it weeks before the Mayor's eventual press release debacle. In addition, the investigation of this activity also led to discovery of a potential liability exposure resulting from lack of supervision and training for elected officials' volunteers regarding City computer security and procedures.

The Grand Jury concluded that all of the Council Members were aware of the confidential leak; however, took no steps to address it. While there was no legal requirement for the Council Members to take action, there was an ethical obligation. The Grand Jury believes there is an ongoing culture in Stockton City Hall, among elected and appointed officials and city employees that ignores the need for confidentiality when it suits their personal advantage.

The release of confidential information by the Mayor potentially exposed the City to substantial financial liability, subjected the City to ridicule and lowered public confidence in the City's legislative body. The Grand Jury has no authority to recommend or to take legal action against the Mayor. The Government Code provides no additional criminal or civil judicial redress for the Mayor's actions. Any action at this point rests solely with the citizens of the City of Stockton. This is not an issue that can be solved through a legal process, it is a political issue.

The Stockton City Council is required to submit a response to the Presiding Judge of San Joaquin County Superior Court within 90 days as to each finding and recommendation contained in the Grand Jury's report.

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(Copy of report attached)

San Joaquin County Grand Jury



STOCKTON CITY COUNCIL AND THE BROWN ACT: *THE LAW APPLIES TO EVERYONE*

2013 - 2014 Case No. 1113

Summary

The Stockton City Council (City Council) conducted a recruitment for a new city manager in 2013 that was ill-managed, contentious and opened too many opportunities for self-interest parties to manipulate the process and to deliberately expose confidential information from City Council Closed Session meetings in violation of the Ralph M. Brown Act. The Mayor was admonished for releasing confidential information on one occasion. However, there were many occasions during the recruitment period when all members of the City Council knew about violations of the Brown Act. Despite this knowledge, they did not publicly disclose the unlawful releases of confidential information even when they were aware of it weeks before the Mayor's eventual press release debacle.

The investigation of this activity also led to discovery of a potential liability exposure resulting from lack of supervision and training for elected officials' volunteers regarding City computer security and procedures.

Glossary

AB 1234	Assembly Bill 1234, adopted in 2005, adding Sections 53234 through 53235.2 of the Government Code requiring local agency officials to take an ethics training course upon election or appointment and every two years during their term
Brown Act	The Ralph M. Brown Act (Government Code Sections 54950 <i>et seq.</i>) regulating the conduct of public meetings, closed session meetings and related public information requirements
<i>et seq.</i>	To include the sections that immediately follow the identified section and pertaining to the same topic
City	The City of Stockton, California
City Attorney Stockton in all	The appointed attorney representing the City Council and City of legal matters
City Charter	The Charter of the City of Stockton which establishes the general framework for the government organization, authority, and operations
City Council	Unless otherwise specified, includes the six elected council members and the mayor of the City of Stockton
City Manager	The chief executive officer hired by the Stockton City Council to administer day-to-day operations of the City
Closed Session	A meeting of a legislative body outside of public review to discuss specific actions permitted by the California Government Code
Council Member	Any of the six elected members of the Stockton City Council; does not include the mayor
Council Policy 100-6	Stockton City Council policy related to Closed Council Sessions and confidentiality of closed session information, and that unauthorized disclosures are violations of the Brown Act
DOQ	Depending on qualifications
EEO	Equal Employment Opportunity employer

FLSA	Fair Labor Standards Act, which includes employment status requiring overtime pay
LCC	League of California Cities; an association comprised of and representing the cities in California
Mayor 2012	The current mayor for the City of Stockton elected in November 2012
mayor	The separately elected mayor of the City of Stockton pursuant to the City Charter with limited and defined authority under the City's Council/Manager form of government
Section 54963 G.C.	Section of the Brown Act in the California Government Code related to the disclosure of confidential information from closed session meetings

Background

The Ralph M. Brown Act was originally adopted in 1953 to assure the public has access to information on the actions under consideration by public legislative bodies and that the actions are conducted in open public forums. In the initial legislation, and through amendments adopted over the years, provisions were included to permit the legislative bodies to meet in closed session for very specific purposes. These included personnel matters, labor negotiations, existing litigation, potential litigation and real property negotiations. The closed sessions are not open to public participation, but the general topics to be discussed must be publicly announced in advance. Also, if any final action is taken by the legislative body in closed session, the action and any vote must be reported to the public in an open meeting immediately following the closed session.

As it relates to confidentiality of closed session meetings, California Government Code Section 54963 states:

“(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Sections 54956.7... to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, “confidential information” means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief...

(2) Disciplinary action against an employee...

*(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grandjury.
(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.”*

The California Attorney General’s Office has issued opinions related to the penalties and remedies available for violations of the Brown Act. Criminal misdemeanor penalties are allowed for certain violations involving a deliberate intent to deprive the public of information to which the public is entitled. Civil penalties can be granted by a court, or the action taken by the legislative body can be voided. These remedies, however, pertain to an action that had been taken by the legislative body, not the release of confidential information which is the subject of the 2013-2014 Grand Jury’s investigation.

In the course of the investigation, the Grand Jury determined that the sequence of events during the recruitment of the city manager had significant bearing on the review of information and identification of findings. Based on information provided from materials received and sworn testimony from witnesses, the following are some significant milestones related to the 2013 city manager recruitment process:

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| August 19, 2013 | A special City Council meeting was held to interview, in open session, three firms proposing to provide executive recruitment services for hiring a new city manager. |
| August 28, 2013 | A contract was entered into between the City of Stockton and Mathis Consulting Group to provide executive recruitment services for the city manager position. |
| September 18-20, 2013 | League of California Cities Annual Conference was held in Sacramento, California. |
| October 10, 2013 | City Council held a special Closed Session meeting at the City of Stockton Human Resources Department offices to interview six candidates for the city manager position. Two finalists were selected. |
| November 1, 2013 | This was advertised as the final filing date for submitting applications for the city manager position. |
| November 2, 2013 | City Council held a special Closed Session meeting at the Stockton Hilton to interview the two finalists for the city manager position. A final candidate was selected but the name was not released. |

- November 5, 2013 City Council held a Closed Session meeting prior to the regular City Council meeting to include review of employment terms with the final candidate and approve the individual's appointment as city manager.
- November 19, 2013 The City Council met in closed session to discuss with the City Attorney options related to the Mayor's release of confidential closed session information on November 5, 2013.
- November 22, 2013 The City Council approved a resolution admonishing Mayor Anthony Silva for his conduct in disclosing confidential information from a Closed Session meeting and referred the matter to the San Joaquin County Civil Grand Jury.

Reason for Investigation

The Stockton City Council requested the City Attorney to provide options in dealing with the current Mayor's release of information from a closed session meeting to the public without City Council authorization, as required by the Brown Act. On November 22, 2013, the City Attorney provided options that included preparing a resolution of admonishment and referring the matter to the San Joaquin County Civil Grand Jury. The City Council voted in open session to authorize the preparation of the admonishment resolution and to refer the Mayor's actions to the Grand Jury. The City Council complaint was issued on that same date.

On December 3, 2013, the Stockton City Council voted five to two to adopt Resolution 2013-12-03-1502 which admonished Mayor Anthony Silva for an unauthorized release of confidential information from a closed session meeting and for violation of Council Policy 100-6.

Method of Investigation

Materials Reviewed

- Ralph M. Brown Act, California Government Code Section 54950 *et seq*
- Assembly Bill 1234
- "Open & Public IV: A Guide to the Ralph M. Brown Act", 2nd Edition, Revised July 2012, published by the League of California Cities
- September 2013 Supplement to the "Open & Public IV: A Guide to the Ralph M. Brown Act", 2nd Edition, Revised July 2012
- California Attorney General's Office 2003 handbook related to the Ralph M. Brown Act

- Training materials for new council members used by Stockton City Attorney
- City of Stockton Council Handbook
- Revised Stockton City Council Policies 100-2, 100-3 and 100-6 adopted December 2013
- E-mails to and from elected and appointed city officials
- Three city manager recruitment brochures
- Stockton City Charter
- Professional Services Contract between City of Stockton and Mathis Consulting Group dated August 28, 2013
- Press releases related to selection of new city manager
- Proposed employment term sheet from David Garcia
- Stockton City Council Resolution 2013-12-03-1502 admonishing Mayor Anthony Silva
- City of Stockton Administrative Directive IT-04 related to “E-mail access and acceptable use”
- City of Stockton Administrative Directive IT-07 related to “Internet access and acceptable use”
- City of Stockton Administrative Directive IT-09 related to “Information technology security program”
- City of Stockton Administrative Directive HR-40 related to “Fingerprinting of applicants, employees, and volunteers applying for and holding positions with the City of Stockton”

Interviews Conducted

- Stockton Council Members
- Stockton City Attorney
- Recruiter for the city manager position
- Two members of the public
- Five City of Stockton employees

Discussions, Findings, and Recommendations

1.0 Release of Confidential Closed Session Information

All members of the City Council and the Mayor received training on the requirements of the Ralph M. Brown Act. Upon election, the City Attorney briefs each member on various requirements related to their elected positions. This includes providing and discussing the League of California Cities’ (LCC) publication, *Open & Public IV: A Guide to the Ralph M. Brown Act* which includes the confidentiality of information disclosed and discussed in closed session. The briefing also includes a discussion of the Stockton City Council’s policies, of which Policy No. 100-6 “Closed Council Sessions”, Section C, very clearly states that all closed sessions are confidential and disclosure of

confidential information is a violation of the Ralph M. Brown Act and City Policy. City Council Members and the Mayor received a copy of the *Council Handbook* which contains the City Council policies.

In sworn testimony, all Council Members and the Mayor indicated they had also received other training on the Brown Act either through the LCC or other organizations. Further, Article 2.4(d) of AB 1234 requires all elected City officials to take ethics training which includes a review of open government laws, including the Brown Act. The Grand Jury reviewed the “Public Service Ethics Education Online Proof of Participation Certificate” signed by each of the Council Members and the Mayor in which they certify that they have reviewed the content of the entire online AB 1234 course. The Grand Jury found no acceptable excuse for any member of the City Council or the Mayor not knowing about the requirement for confidentiality of information discussed in all closed session meetings.

Individuals who had any involvement in the recruitment process testified that they were repeatedly advised that the names of the candidates for the position must be kept confidential. The only name that could be publicly released would be the person actually hired after City Council approval. This warning came from the recruiter and the City Attorney to make potential applicants feel comfortable about applying. Disclosure could expose the City to financial liability if an applicant was terminated from their current position as a result of the information released. All Council Members and the Mayor understood this potential exposure.

The basis for the complaint to the Grand Jury was that on November 5, 2013, local news media were provided a press release indicating that David Garcia had been hired as the City of Stockton’s new City Manager. The information was provided by the Mayor to television station KCRA Channel 3 that morning. Other news media were also provided with the information early that afternoon by the Mayor. He authorized the press release to be issued to other local news media at approximately 5:30 p.m. that day. The press release indicated that contract negotiations were complete and the new city manager would begin work in Stockton on December 16, 2013. It also stated the contract would be for five years at an annual salary of \$250,000. All of the information was based on discussions held during Closed Session meetings, and at no time did the City Council authorize (as required Section 54963(a) G.C.) the disclosure of the information. All persons present in the Closed Session meeting indicated that after it was known that Mr. Garcia’s name had been released to the press, it was clear to them that the Mayor was the source. It was stated that the closer it came to 5:30 p.m. (the normal ending time for closed session meetings before a regular City Council meeting) the more agitated the Mayor became, pressing for a final action to hire Mr. Garcia and to approve the employment terms the candidate wanted.

November 5, 2013, was not the first incident of confidential closed session information being disclosed. Council Members were approached shortly after the October 10, 2013, Closed Session meeting with inquiries and comments about the actions taken during that session. These ranged from why certain Council Members did not vote in favor of

specific applicants to the need for a specific ethnic candidate to be selected. An e-mail was sent to one Council Member from a Stockton Firefighters' Association leader. The individual indicated his support of the Mayor's preferred candidate and wrote, "I'm checking the others, but I've been told we are down to two." The Council Member responded by saying that it was "closed session stuff and I can't divulge that info." Another Council Member indicated he or she had received a text from a leader within the Stockton Police Officers Association who indicated the names of the two finalists and that the Association was in support of the Mayor's preferred candidate. Other Council Members were contacted by members of the public by phone, in person or by e-mail regarding the vote taken during the October 10, 2013, Closed Session meeting or regarding the two finalists selected. It is the observation of the Grand Jury that the majority of those individuals identified as having contacted Council Members on this issue, are known to be supporters of the Mayor on other issues. Clearly, closed session information about the recruitment had been divulged, yet it was not discussed by any Council Member, City employees or members of the public with other Council Members or with the City Attorney in an effort to stop the disclosures.

The only time the City Council authorized the release of information regarding closed session actions was after the November 2, 2013, meeting. At that meeting, the Council drafted and approved a press release related to their actions that indicated the Mayor was "...authorized to negotiate a contract with a candidate for city manager." The release appeared in the November 3, 2013, edition of *The Record*.

City staff was also part of the information disclosure scenario. As previously indicated, union representatives knew the names of the finalists. Three Council Members indicated that they were "lobbied" by City staff to support their own preferred applicant. Staff members indicated the Mayor had mentioned to them information about the final candidate prior to the November 5, 2013, Council meeting. It was determined that a volunteer working for the Mayor had a copy of the draft press release naming Mr. Garcia prior to the City Council's Closed Session meeting on November 5, 2013.

The California Attorney General's Office has issued opinions regarding violations of the Brown Act. These included the topics of criminal penalties and civil remedies for violations. The information reviewed by the Grand Jury was limited to decisions made by a legislative body in violation of open meeting laws where either required information was not provided to the public, or an action was taken without the required notifications and opportunities for public comment. The remedy outlined in the Brown Act for violations, is to expose the missteps of elected officials in the hope they will not be repeated.

Findings

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).

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 only 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.

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

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.

2.0 Recruitment for Stockton City Manager

The Grand Jury discovered that the recruitment for the city manager position was not conducted in a well-managed and controlled manner. There was consensus among those involved in the process that problems existed. Statements such as: it was not the professional level of services that we would have liked; there could have been better coordination among the parties; there seemed to be a lack of structure; and the recruiter lost control of the process were not uncommon. Most agreed the time allotted for the recruitment was very tight which may have impacted the process.

Most City Council Members had no previous experience in the recruitment of management executives in either the public or private sectors. Some of the Council Members indicated this lack of experience made them unsure of what their role could be or how the process should work. Various Federal and State laws, including the Brown Act, place specific requirements and restrictions on hiring public employees. While the lack of experience is not unusual among elected city officials, this emphasizes the importance of having knowledgeable individuals involved in the recruitment process. Some members of Stockton's management team had the experience to conduct a professional city manager recruitment. Yet, the City Council marginalized their involvement to scheduling meetings, handling the recruiter or reviewing documents.

The recruiter was selected by the City Council from among three firms that submitted a proposal to conduct the city manager recruitment. One of the reasons for the selection was the recruiter's prior work with the Stockton City Council in team building sessions. To coordinate the recruitment process with the City Council, the Mayor appointed the Vice-Mayor and a Council Member to serve with him on an ad hoc committee to work with the recruiter. The actual involvement of this committee during the process was unclear from the Grand Jury's investigation and the materials reviewed. It is clear that the Mayor took a strong personal role in the process by heading public meetings the

recruiter should have managed, arranging meetings with members of the public, and following the recruiter as he met with individuals in the community.

The Grand Jury reviewed three versions of the “official” recruitment brochure for the city manager position. City staff and the recruiter were asked to provide the Grand Jury with the brochure they used as the official version sent to interested applicants. The Mayor also provided a copy which he indicated was the official recruitment brochure. None of the three versions matched completely. The Grand Jury also noted that the official filing deadline for applications was November 1, 2013, more than three weeks after the City Council had narrowed its selection to two final candidates. The City staff-provided copy had the most discrepancies among the three. There was additional text compared to the other versions: the wording under the “Ideal Candidate” section was substantially different; there was no Master’s Degree preference indicated under qualifications; the benefits for vacation and holidays differed from the other versions; and there was no EEO employer statement, rather an FLSA exemption clause was used. The version provided by the Mayor differed in that it listed the Annual Salary as \$240,000 - \$255,000. Both other versions stated the annual salary to be \$240,000 minimum (DOQ). The minimum salary statement in these two versions was also contained in on-line advertisements for the position.

The salary became a major point of contention during the appointment process. The Grand Jury learned some Council Members believed the salary advertised was the same as that paid to the retiring city manager. Others felt the advertised salary included what Mr. Garcia was requesting. The lack of certainty about the official salary range contributed to the problem of agreeing on what were acceptable employment terms.

A number of individual interviews were held between some of the Council Members and some of the applicants. Arranged at the suggestion of the recruiter, most were held during the LCC Annual Conference in Sacramento in mid-September. Not all of the City Council Members attended the conference, nor were all of the applicants present. This prevented the entire City Council from getting a complete picture of all of the applicants. Information obtained from applicants during these meetings was not shared among the Council Members. Two City Council Members who did not attend the LCC Conference, met with two of the candidates separately after the two finalists were selected. Again, there was no sharing of information about what was learned from the separate meetings. Based on information from surveys sent to major California public sector recruitment firms, it is not common practice to have these separate individual meetings between council members and candidates. When they are requested, every effort is made to assure all council members meet with all candidates. These meetings usually involve just the few finalists.

The Mayor was very involved in the recruitment process to the extent that many of the Council Members felt he was exerting undue influence on the process and was being given too much attention by the recruiter. Section 1200 of the City Charter, which is the only section dealing with a city manager recruitment, states in part:

“The Mayor shall nominate one (1) or more candidates for Council consideration for appointment to the position of City Manager. The City Manager shall be appointed by the Council for an indefinite term and shall not be removed from office except by a vote of a majority of the members of the Council; ...”

While the Mayor has expressed the opinion that he is given the authority to select the city manager, the Charter’s language clearly states that the mayor nominates a candidate for city manager but the final decision rests with the entire City Council. The Mayor believed the Council’s vote at the November 2, 2013, Closed Session meeting was the approval to hire Mr. Garcia and that contract negotiations were merely a technicality. However, a majority of the Council Members felt that their action was only to offer the city manager position to Mr. Garcia. A final decision to hire would follow contract negotiations since no terms of employment had been discussed to that point. Since no reportable action was announced following the November 2, 2013, Closed Session meeting it is impossible for the Grand Jury to determine what occurred during that meeting.

Another aspect of the recruitment the Grand Jury found disturbing was the employment contract negotiations between the City Council and Mr. Garcia. At the November 2, 2013, meeting there was a general discussion that contract terms with Mr. Garcia would be similar to those provided to the retiring City Manager. The recruiter indicated to the City Council that he felt these terms would be acceptable to Mr. Garcia. At this point the common practice in a city manager recruitment is for the recruiter to act as the intermediary between the City and the candidate on contract terms. This avoids a potential direct negotiations conflict between potential employer and employee. However, the Mayor proposed that he and the City Attorney would handle the negotiations and the recruiter was removed from the process. The recruiter had contacted Mr. Garcia and advised that his terms of employment should be sent to the City. During the November 5, 2013, Closed Session meeting, the City Council reviewed Mr. Garcia’s proposed terms of employment. They indicated their dissatisfaction with the differences between the prior City Manager’s contract and Mr. Garcia’s proposed terms, particularly with the annual salary amount, new elements regarding additional retirement benefits and additional travel costs to Stockton. On two occasions the Mayor left the closed session meeting room to have a separate telephone conversation with Mr. Garcia regarding the proposed terms of employment. The City Attorney accompanied the Mayor on both occasions. Mr. Garcia was told by the Mayor that if he would accept the Council’s offer, it would be made up to him later. After the two telephone conversations the Mayor announced to the full City Council there would not be an agreement on contract terms between the City Council and Mr. Garcia.

Findings

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.

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.

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.

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.

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

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

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

3.0 Access to Confidential Information by Mayor's Volunteers

In the course of its investigation the Grand Jury learned that the current Mayor had a number of volunteers working for him at Stockton City Hall. Due to issues of the release of confidential information and potential liability exposure for the City, the Grand Jury determined it should investigate the Mayor's volunteers' access to City Hall computers.

The Grand Jury's investigation revealed that there have been seven to eight individuals working for the Mayor as volunteers performing various functions such as preparing certificates and attending meetings. All have access to City Hall computers. The Grand Jury could not determine if the volunteers have access to confidential e-mails or attorney-client files. The Mayor was unable to name his volunteers and did not provide those names to the Grand Jury when requested to do so. The Grand Jury received limited information about the supervision of these volunteers while in City Hall. The Mayor or the Mayor's Executive Assistant may not always be present while the volunteers are in City Hall, nor do City employees supervise them.

However, a Mayor's volunteer had access to the draft press release being prepared for possible release on November 5, 2013. This draft had confidential information on the finalist's name and employment terms based on closed session discussions.

According to City employees, volunteers do not go through an employee orientation process where they would have been advised of the City's Information Technology policies and guidelines regarding e-mails, internet access, and security (Directives Nos. IT-04, IT-07, and IT-09). New employees are required to review and sign an acknowledgement that they have read and understood the directives and policies. City staff is not always aware of who is serving as a volunteer for the Mayor. Staff escorts the volunteer to the Mayor's office based on their statement that they are working for the Mayor. Most volunteers in other City Hall departments are vetted through established community programs and have very limited access to City Hall computers and files in the course of their activities.

The City has a potential liability exposure if a volunteer using a City computer accesses confidential information and releases that information to the public. There are no controls preventing an employee with confidential access from providing an unauthorized volunteer the passwords or other codes to access confidential information, except for the training and acknowledgements of the Administrative Directives.

Findings

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

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.

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

Recommendations

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.

Conclusion

The release of confidential information from closed sessions was persistent throughout the recruitment for Stockton's city manager position. Even before the City Council

interviewed the recruiter's short list of six candidates, names were known in City Hall and among a limited number of the public. Shortly after the October 10, 2013, Closed Session meeting when the City Council selected two finalists for further consideration, certain members of the public knew what the votes were in the closed session, who the finalists were, and very clearly who the Mayor's choice was for the city manager position. The people contacting Council Members about who they should vote for have supported Mayor Silva. All of the Council Members were aware of the confidential leak – yet took no steps to address it. While there was no legal requirement for the Council Members to take action, there was an ethical obligation. Are they not as culpable as the Mayor?

The Grand Jury believes there is an ongoing culture in Stockton City Hall, among elected and appointed officials and city employees that ignores the need for confidentiality when it suits their personal advantage. Details of closed session labor negotiations are known by employee unions before the next negotiation session. Details of sensitive financial negotiations mysteriously are known by the public and the media. Liability, unfair decisions, financial impacts and public ridicule are all potential results from violations of the Brown Act's confidentiality requirements. Changing that culture is not something that can be legislated or adjudicated. Change must come from a dedicated commitment from **ALL** elected officials and city employees. **The entire City Council needs to stop pointing fingers and start showing the public that it is serious about confidentiality requirements!**

The release of confidential information by the Mayor potentially exposed the City to substantial financial liability, subjected the City to ridicule and lowered public confidence in the City's legislative body. The Grand Jury has no authority to recommend or to take legal action against the Mayor. The Government Code provides no additional criminal or civil judicial redress for the Mayor's actions.

A professionally conducted recruitment of a city manager is a process that works as confirmed by the hundreds of recruitments that occur each year in California and throughout the United States. The Stockton City Council left those on staff with experience in executive recruitment out of the process. It hijacked a professional recruiter's efforts to the point the recruitment was not effective. Why did the elected officials not leave the details of a matter as important to a community as hiring a city manager to those with experience? The Council's principal role during a city manager recruitment is the evaluation of the candidates and the selection of a finalist. That role is important enough as the focus of their energy.

Any action at this point rests solely with the citizens of the City of Stockton. This is not an issue that can be solved through a legal process, it is a political issue. **How much more of these detrimental activities will the citizens of Stockton tolerate?**

Disclaimers

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

The Stockton City Council shall respond to each Finding and Recommendation contained in this Report.

Mail or hand deliver a hard copy of the response to:

Honorable Lesley D. Holland, Presiding Judge
San Joaquin County Superior Court
P.O. Box 201022
Stockton, CA 95201

Also, please email a copy of the response to Ms. Trisa Martinez, Staff Secretary to the Grand Jury at: grandjury@sjcourts.org.