

Modest request of an Elected Director denied by Sequoia Healthcare District CEO Lee Michelson and Board President Don Horsley

On Thursday, August 19, 2010 at 11:43 AM I sent the following modest request to Sequoia Healthcare District CEO Lee Michelson by e-mail:

“Lee, I would also like information regarding the PowerPoint presentation previewed at our last meeting. When, where and by whom will it be presented? I request a copy via e-mail.”

On September 16, 2010 at 11:39 PM I repeated that request pursuant to the PRA.

“Don and Lee, I repeat my request, this time pursuant to Section 6253 of the Government Code, also known as the California Public Records Act.

I request electronic copies (preferably by e-mail) of the following:

1. The latest version of the PowerPoint Presentation previewed at our last meeting
2. Schedule of District events, with participants and presenters, for September and October 2010”

They 34 e-mails below culminated in a denial of my original request. E-mail # 20 tells it all.

34. From: [Don Horsley](#)

To: ['Jack Hickey'](#) ; ['Lee Michelson'](#)

Sent: Monday, September 27, 2010 9:09 PM

Subject: RE: Public Records request for PowerPoint presentation

Yes, that is exactly what I meant.

33. From: Jack Hickey [mailto:jackcapp@sbcglobal.net]

Sent: Monday, September 27, 2010 4:38 PM

To: donhorsley@sbcglobal.net; 'Lee Michelson'

Subject: Re: Public Records request for PowerPoint presentation

Don, I trust you meant "contract". Please confirm.

Jack Hickey, Director

32. From: [Don Horsley](#)

To: ['Jack Hickey'](#) ; ['Lee Michelson'](#)

Sent: Monday, September 27, 2010 4:08 PM

Subject: RE: Public Records request for PowerPoint presentation

Lee, would you send Director Hickey a copy of Don Shoecraft's contact. Thank you.

31. From: Jack Hickey [mailto:jackcapp@sbcglobal.net]

Sent: Monday, September 27, 2010 9:23 AM

To: Lee Michelson; donhorsley@sbcglobal.net

Subject: Re: Public Records request for PowerPoint presentation

Don and Lee, am I to assume that you consider that my request "...will require the use of material District staff time or resources..."? Or, Don, have you made a unilateral change to our policy without Board approval?

In any event, consider this to be a request pursuant to the PRA:

Pursuant to the PRA, please send me a copy of the contract and/or other arrangements we have with Don Shoecraft.

Jack Hickey, Director

Don, you said "District policy is that all requests for information must be requested through the Board President."

In fact, our policy states:

2.6 Any request by an individual Director for substantive information and/or research from District staff or advisors, the response to which will require the use of material District staff time or resources, shall be submitted in writing (which includes email) through the Board President, who shall decide whether or not it is in the District's best interests to expend District resources in such a fashion and, for approved requests, shall advise staff regarding the appropriate level of resources to be devoted to the matter. If an individual Director's request is denied by the Board President, the request shall, if the individual Director wishes, be placed on the agenda of the next meeting of the Board (for which an agenda has not yet been posted). If a majority of the Directors (as defined in policy 21.2) approve the request for information and/or research, the Executive Director shall respond to the individual Director's request for substantive information and/or research.

30. From: [Lee Michelson](#)

To: 'Jack Hickey'

Cc: donhorsley@sbcglobal.net

Sent: Monday, September 27, 2010 8:24 AM

Subject: RE: Public Records request for PowerPoint presentation

Jack , as per policy Don would like you to request through him and he will then direct me . Thanks, Lee

29. From: [Lee Michelson](#)

To: 'Jack Hickey'

Sent: Monday, September 27, 2010 8:02 AM

Subject: RE: Public Records request for PowerPoint presentation

Will do

28. From: Jack Hickey [mailto:jackcapp@sbcglobal.net]

Sent: Friday, September 24, 2010 3:56 PM

To: Lee Michelson

Subject: Re: Public Records request for PowerPoint presentation

Lee, pursuant to the PRA, please send me a copy of the contract and/or other arrangements we have with Don Shoecraft.

Jack Hickey, Director

27. From: [Lee Michelson](#)

To: 'Jack Hickey'

Sent: Friday, September 24, 2010 9:09 AM

Subject: FW: Public Records request for PowerPoint presentation

This is the opinion of our attorney.

26. From: Mark Hudak [mailto:MHUDAK@carr-mcclellan.com]

Sent: Friday, September 24, 2010 9:03 AM

To: Lee Michelson

Subject: Public Records request for PowerPoint presentation

Lee: Director Hickey has requested a copy of the PowerPoint presentation that you use for public presentations. This presentation was developed by the District's consultant, Don Shoecraft, and includes artwork and other materials prepared by him as well as text regarding the District that has been developed jointly. Because the PowerPoint was developed by the consultant, it does not exist on the District's servers. The presentation is on a CD that is held by Mr. Shoecraft. At public presentations, paper copies of the slides are distributed.

The District has provided Director Hickey with a paper copy of the slides from the PowerPoint, but he is insisting on having the PowerPoint "in electronic format."

The controlling statute is Government Code section 6253.9. Subsection (a)(1) provides that "The agency

shall make the information available in any electronic format in which the agency holds the information.”

Subsection (a)(2) provides, in relevant part: “Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use....”

Based on the facts above, the District does not have an obligation to provide the PowerPoint in an electronic format. The District does not have the PowerPoint in an electronic format within the meaning of section 6253.9(a)(1). The District has not made electronic copies of the CD for its own use under section 6253.9(a)(2).

Additional issues have been raised. Mr. Shoecraft claims a copyright on the PowerPoint presentation and other proprietary rights under his consulting contract. Further, there is a concern that providing the presentation in electronic format will allow others to manipulate the presentation, potentially misstating District policies or positions. Section 6253.9(f) provides that a local agency may refuse to provide information in an electronic format if the release would jeopardize the integrity of the original record. Since I have concluded that the provision of paper copies of the slides satisfies the Public Records request, I have not researched these issues. If it should be determined that the paper copy of the PowerPoint is not sufficient under the Public Records Act, we would need to give careful consideration to these issues.

25. From: [Lee Michelson](#)

To: 'Jack Hickey'

Cc: donhorsley@sbcglobal.net

Sent: Friday, September 24, 2010 7:49 AM

Subject: RE: PRA Request

The District mailing is in the process of being created and will be finished on October 5 with scheduled mailing by October 19. The Board will be presented an advance copy before mailing. I use a printed version of the power point for my script, the same one I provided to you on paper.

24. From: Jack Hickey [mailto:jackcapp@sbcglobal.net]

Sent: Friday, September 24, 2010 7:38 AM

To: donhorsley@sbcglobal.net; Lee Michelson

Subject: PRA Request

Lee and Don, pursuant to Section 6253 of the Government Code, also known as the California Public Records Act. I request electronic copies (preferably by e-mail) of the following:

1. Script or talking points for PowerPoint presentation
2. District mailing to community
3. Schedule of mailing to community

Jack Hickey, Director

23. From: [Lee Michelson](#)

To: 'Jack Hickey'

Sent: Thursday, September 23, 2010 2:50 PM

Subject: FW: PowerPoint presentation

I will consult with Mark and get back to you soon. Lee

22. From: Don Horsley [mailto:donhorsley@sbcglobal.net]

Sent: Thursday, September 23, 2010 2:35 PM

To: 'Lee Michelson'; 'Don Shoecraft'

Subject: RE: PowerPoint presentation

I think that you should seek Mark Hudak's advice.

21. From: Lee Michelson [mailto:lmichelson@sequoiahealthcaredistrict.com]

Sent: Thursday, September 23, 2010 2:29 PM
To: donhorsley@sbcglobal.net; 'Don Shoecraft'
Subject: FW: PowerPoint presentation
Let's discuss our response

20. From: Jack Hickey [mailto:jackcapp@sbcglobal.net]

Sent: Thursday, September 23, 2010 12:19 PM

To: donhorsley@sbcglobal.net; Lee Michelson

Cc: Gary Wesley

Subject: Re: PowerPoint presentation

Don and Lee, are you saying that you can not comply with my Public Records Act request because the PowerPoint file previewed to the Board and being presented by our PR consultant (who receives \$4,200/month in compensation) and narrated by our CEO does not belong to the District? If so, please issue a denial of my request so that I might take further action.

Jack Hickey, Director

19. From: [Don Horsley](#)

To: ['Jack Hickey'](#)

Cc: ['Lee Michelson'](#) ; MHUDAK@carr-mcclellan.com

Sent: Wednesday, September 22, 2010 12:23 PM

Subject: RE: PowerPoint presentation

Jack,

The only concern that I have is that you may be planning on altering the power point for political purposes related to the November election. If that is what you intend on doing, then you should make your own power point. You have adequate information and I believe that you have the technical ability to do so. Secondly, if the District had the power point, I would have them give it to you but as I understand it, we do not have the disk. It was made by Don Shoecraft on his own and he holds the disc.

18. From: [Jack Hickey](#)

To: donhorsley@sbcglobal.net

Sent: Wednesday, September 22, 2010 11:50 AM

Subject: Fw: PowerPoint presentation

Don, this contains some missing threads which you did not receive.

I went down to the office and did not get the disc as promised, but thumbnail copies on paper.

There are many questions to be answered.

Jack Hickey, Director

17. From: [Lee Michelson](#)

To: ['Jack Hickey'](#)

Sent: Tuesday, September 21, 2010 4:30 PM

Subject: RE: Powerpoint presentations

I made one today to the Sunrise Rotary, I am scheduled on October 19 at the Redwood City Rotary, October 14 at Redwood City Kiwanis. In the past I have spoken to Woodside Rotary, San Carlos Rotary, and Belmont Rotary. The last three were at least 4-6 months ago. I am not aware of anyone else doing any.

16. From: Jack Hickey [mailto:jackcapp@sbcglobal.net]

Sent: Tuesday, September 21, 2010 2:52 PM

To: Lee Michelson

Subject: Powerpoint presentations

Lee, how many presentations have been made to date? Where, when, and by whom?

Jack Hickey

15. From: [Jack Hickey](#)

To: donhorsley@sbcglobal.net

Sent: Tuesday, September 21, 2010 1:32 PM

Subject: Fw: PowerPoint presentation

Don, this is highly irregular. I suggest that Don Shoecraft's contract be terminated and presentations be suspended until further action from the Board.

Jack Hickey, Director

14. From: [Don Shoecraft](#)

To: [Lee Michelson](#)

Cc: ['Jack Hickey'](#)

Sent: Tuesday, September 21, 2010 12:19 PM

Subject: Re: PowerPoint presentation

It should also be noted that Lee does not present the slide show, I do.

Lee makes verbal remarks; however, the presentation is presented by me.

Don

13. From: [Lee Michelson](#)

To: ['Jack Hickey'](#)

Cc: ['Don Shoecraft'](#) ; ['Don Shoecraft'](#)

Sent: Tuesday, September 21, 2010 10:47 AM

Subject: FW: PowerPoint presentation

Jack, I met with Don Shoecraft this morning. The artwork and photography he did for the power point he feels that he owns and has loaned it to us for our use as for stated purposes. He is unaware of how you plan to use it and whether or not you might alter it in anyway and is therefore reluctant to turn over the materials in an electronic format. Don Horsley is aware of his feelings. You can directly respond your intentions to Don. Shoecraft did the project at my request outside the specific scope of his duties. He did not charge the District for this project. Many photographers and graphic artists take this stance. Lee

12. From: don@mtkcom.cim [<mailto:don@mtkcom.com>]

Sent: Monday, September 20, 2010 10:54 AM

To: Jack Hickey

Cc: Lee Michelson; <donhorsley@sbcglobal.net>

Subject: Re: PowerPoint presentation

Electronic files may be modified and easily distributed contra any copyright. This presentation was prepared for specific use of Lee Michelson as he informs the community about district activities and should not be released as editable PowerPoint because it may be used and/or altered for uses other than the intended, controlled use.

I am out of the office and contact for most of the day today and can address this further tomorrow.

Sent from my iPhone

From: [Lee Michelson](#)

To: ['Jack Hickey'](#)

Sent: Monday, September 20, 2010 9:57 AM

Subject: RE: PowerPoint presentation

Any time

From: Jack Hickey [mailto:jackcapp@sbcglobal.net]
Sent: Monday, September 20, 2010 9:56 AM
To: Lee Michelson
Subject: Re: PowerPoint presentation
DVD or CD would be fine. When can I pick it up?
Jack

From: [Lee Michelson](#)
To: ['Jack Hickey'](#)
Sent: Monday, September 20, 2010 9:31 AM
Subject: RE: PowerPoint presentation
It has been explained to me that because of the graphics involved that it is difficult to send electronically. I can give you an actual disc.

From: Jack Hickey [mailto:jackcapp@sbcglobal.net]
Sent: Monday, September 20, 2010 9:21 AM
To: Lee Michelson; donhorsley@sbcglobal.net
Cc: Don Shoecraft
Subject: Re: PowerPoint presentation
Lee and Don, The file must exist on the computer used for the presentation. Perhaps Don Shoecraft can help.

From: [Lee Michelson](#)
To: ['Jack Hickey'](#)
Sent: Monday, September 20, 2010 9:14 AM
Subject: RE: PowerPoint presentation
Sorry , I do not have it in that format.

From: Jack Hickey [<mailto:jackcapp@sbcglobal.net>]
Sent: Monday, September 20, 2010 9:13 AM
To: Lee Michelson; donhorsley@sbcglobal.net
Subject: Re: PowerPoint presentation
Lee, the format I requested was electronic by e-mail.
E-mail is electronic format. The PowerPoint presentation exists in electronic format.
Jack Hickey, Director

From: [Lee Michelson](#)
To: ['Jack Hickey'](#)
Sent: Monday, September 20, 2010 8:58 AM
Subject: FW: PowerPoint presentation
I have mailed to you a copy of the power point slides. The only speaking engagement that I have is tomorrow morning to the sunrise rotary. Lee

11. From: Don Horsley [<mailto:donhorsley@sbcglobal.net>]
Sent: Friday, September 17, 2010 4:30 PM
To: 'Jack Hickey'
Cc: 'Lee Michelson'
Subject: RE: PowerPoint presentation
Hi Jack,
Thanks for the information. I will ask Lee to send it to you in the format that you request. Thanks for following protocol, I appreciate it.

10. From: Jack Hickey [<mailto:jackcapp@sbcglobal.net>]

Sent: Friday, September 17, 2010 3:45 PM

To: donhorsley@sbcglobal.net

Cc: 'Lee Michelson'

Subject: Re: PowerPoint presentation

Don, FYI.

CA Gov.Code 6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

E-mail is electronic format. The PowerPoint presentation exists in electronic format. I request that it be e-mailed to me this afternoon.

Jack Hickey, Director

9. From: [Don Horsley](#)

To: 'Jack Hickey'

Cc: 'Lee Michelson'

Sent: Friday, September 17, 2010 3:20 PM

Subject: RE: PowerPoint presentation

You're probably correct that it doesn't require that you say why you want the information but I am not precluded from asking. In any case, I will direct Lee to reproduce the slides on paper and either mail them to you or you can pick them up at your convenience. I will also direct him to tell when and where he is giving presentations with the use of the power point. And he is not required to give you this information by the end of today. It is my understanding that the required response time starts when you invoke the public records act, not when you made the request of Lee.

8. From: Jack Hickey [<mailto:jackcapp@sbcglobal.net>]

Sent: Friday, September 17, 2010 12:11 PM

To: donhorsley@sbcglobal.net

Subject: Re: PowerPoint presentation

The Public Records Act does not require disclosure of the reason for a request.

I expect the request to be filled by the end of the day.

Jack Hickey, Director

7. From: [Don Horsley](#)

To: 'Jack Hickey'

Cc: 'Lee Michelson'

Sent: Friday, September 17, 2010 10:01 AM

Subject: RE: PowerPoint presentation

Now that you have made a formal request to me as the Board President, I would like to know why you want the information before I grant your request.

6. From: Jack Hickey [<mailto:jackcapp@sbcglobal.net>]

Sent: Thursday, September 16, 2010 11:39 PM

To: donhorsley@sbcglobal.net; Lee Michelson

Subject: Re: PowerPoint presentation

Don and Lee, I repeat my request, this time pursuant to Section 6253 of the Government Code, also known as the California Public Records Act.

I request electronic copies (preferably by e-mail) of the following:

1. The latest version of the PowerPoint Presentation previewed at our last meeting
2. Schedule of District events, with participants and presenters, for September and October 2010

Since my original request was made on August 19, 2010, I expect this request to be filled by end of day Friday, September 17, 2010.

Jack Hickey, Director

5. From: [Don Horsley](#)

To: '[Jack Hickey](#)' ; '[Lee Michelson](#)'

Sent: Thursday, September 16, 2010 9:09 PM

Subject: RE: PowerPoint presentation

Jack,

I will repeat my directive. If you want to get the information, please make the request directly to the Board President. Lee shouldn't be placed in the middle of this issue. I will evaluate your request and I will honor it if is pertinent and relevant. I am not asking you for anything more than courtesy to our staff and following our District procedures.

4. From: Jack Hickey [<mailto:jackcapp@sbcglobal.net>]

Sent: Thursday, September 16, 2010 6:15 PM

To: donhorsley@sbcglobal.net; Lee Michelson

Subject: Re: PowerPoint presentation

Don, you said "District policy is that all requests for information must be requested through the Board President."

In fact, our policy states:

2.6 Any request by an individual Director for substantive information and/or research from District staff or advisors, the response to which will require the use of material District staff time or resources, shall be submitted in writing (which includes email) through the Board President, who shall decide whether or not it is in the District's best interests to expend District resources in such a fashion and, for approved requests, shall advise staff regarding the appropriate level of resources to be devoted to the matter. If an individual Director's request is denied by the Board President, the request shall, if the individual Director wishes, be placed on the agenda of the next meeting of the Board (for which an agenda has not yet been posted). If a majority of the Directors (as defined in policy 21.2) approve the request for information and/or research, the Executive Director shall respond to the individual Director's request for substantive information and/or research.

My request requires the click of a mouse in an e-mail program.

Lee, follow the procedures. If my request will require the use of material District staff time or resources please say so in an e-mail.

Jack Hickey, Director

3. From: [Don Horsley](#)

To: '[Jack Hickey](#)'

Cc: '[Lee Michelson](#)'

Sent: Thursday, September 16, 2010 4:41 PM

Subject: RE: PowerPoint presentation

Director Hickey,

Especially because this is an election cycle and because it is important that both incumbents and non-incumbents have equal access to District information, it is important that all parties follow District policy in requesting information. District policy is that all requests for information must be requested through the Board President. As such, until you make your request per Board policy, I am instructing District staff to not respond to your requests.

2. From: Jack Hickey [<mailto:jackcapp@sbcglobal.net>]

Sent: Thursday, September 16, 2010 11:30 AM

To: donhorsley@sbcglobal.net

Subject: PowerPoint presentation

Lee, I repeat my request.

I would like information regarding the PowerPoint presentation previewed at our last meeting. When, where and by whom will it be presented? A calendar for Sept-Oct would be helpful.

I request a copy via e-mail.

Jack Hickey, Director

1. From: [Jack Hickey](#)

To: [Lee Michelson](#)

Sent: Thursday, August 19, 2010 11:43 AM

Subject: Re: specific info

Lee, I would also like information regarding the PowerPoint presentation previewed at our last meeting.

When, where and by whom will it be presented?

I request a copy via e-mail.

Jack Hickey, Director