

MEMORANDUM

TO: Jack Hickey
FROM: Mark D. Hudak
DATE: February 23, 2011
SUBJECT: Public Records Act Request

I have been asked to review the formal Public Records Act request that you sent to Lee Michelson. In it, you have requested "all financial records of the District, in electronic format, which are contained in folders created by Peachtree Software on computers used by the District."

As a preliminary matter, both the staff and the Board President are committed to ensuring that you have reasonable access to the financial records of the District. Currently, you are receiving a copy of the check register each month, a financial report at each Board meeting, including actual income and expenses compared to budget, and the annual audit. This is typical of information that is regularly provided to other public officials. Specific questions about individual items have been answered when you ask them.

Turning to your recent request, a basic rule is that a request for public records must be focused and specific. See, *Rogers v. Superior Court* (1993) 19 Cal App. 4th 469, 481.

The request you have submitted is very broad and not limited as to time. The Board President contacted you and asked for clarification or limitations. You refused to make any adjustments to your request.

Based on my legal review, your request does not meet the requirement that it be focused and specific. It does not specify the nature of the "financial records" sought. Further, the District has been using Peachtree software for many years. Read literally, the request would require the District to locate and produce every financial record, of every kind and nature, going back more than five years. This is neither focused nor specific.

There are other, practical problems. First, due to the nature of the software, only records for the two most current fiscal years can be opened. Staff has immediate access to records dating back to July 2009. Information from prior years is archived, but District personnel do not have the capability of opening the prior years. If you are requesting data from periods before July 2009, the District will need to arrange for a computer technician to retrieve the data. This will be at your expense. See, Government Code §6253.9(b). Otherwise, I would ask that you formally limit your request to data from the current and immediate past fiscal years.

Second, your request is that the information be emailed to you or downloaded onto a disk. District staff does not have that capability. If you want to have these records in electronic format, the District would have to engage a technician to perform this service, at your expense. See, Government Code §6253.9(b). Otherwise, the District will provide a paper copy of the responsive records, once the scope of the request has been determined.

Third, some of the information contained in the files is confidential. For example, some employees make voluntary contributions to their pension plans in addition to any contributions by the District. These voluntary contributions are protected by the employees' right of privacy. See, Government Code §6254(c). You have demanded that the records be provided electronically or on disk. Staff does not know how the exempt data can be deleted from the electronic format you are requesting without jeopardizing the integrity of the data stored in the District's computer. Under these circumstances, Government Code §6253.9(f) does not require the District to provide the data in electronic format.

There are two options: staff can provide paper copies of the records and manually delete the exempt information, or the District could engage a technician to attempt to download the nonexempt information onto a disk. However, there is no guarantee that a technician would be able to do so. Again, the technician would be at your expense. See, Government Code §6253.9(b).

If you are not willing to pay for a technician, then you should take into account the volume of pages being requested. For example, staff informs me that the general ledger for the current and past fiscal years is in excess of 150 pages. The general ledger is only one of the files maintained in Peachtree. Per Board Policy 19, the cost per page is \$0.15.

Based on the foregoing, I would ask that you re-consider the scope of your request and try to focus on specific categories of records. I am available to help you frame a request that satisfies your needs. You should carefully evaluate the length of time to be covered by your request. Further, a more specific description of "financial records" may avoid the problem associated with files that include exempt information.

Because of the many open issues and exceptional circumstances identified in this memorandum, additional time will be needed to comply with your request. Provided that we are able to better define the scope of your request and that you are willing to pay for a technician to provide data in the format requested, the District will make every effort to provide the responsive documents within the next 14 days.

Please contact me to discuss these issues.

cc: Kim Griffin
Lee Michelson