

Office of the City Manager

September 21, 2009

Roger Marquis
230 The Uplands
Berkeley, CA 94705

Re: Public Records Act Request

Dear Mr. Marquis:

I am writing in response to your September 11, 2009 Public Records Act request. Specifically, you have requested the following categories of documents:

1. "Public Records relating to the Memorandum dated June 2, 2009 from the City Manager to the Mayor and Members of the Berkeley City Council regarding the financial impacts of a proposed Sunshine Ordinance. Such records include without limitation work papers, spread sheets, and intra staff memoranda."
2. "Other Public Records, whether generated prior to or subsequent to June 9, 2009, regarding the impact, financial or otherwise, of a Sunshine Ordinance."
3. "Documents reflecting costs incurred by the City of Berkeley during the past five years in connection with allegations that it has violated the California Public Records Act, or the Brown Act."

I understand you have already received copies of the June 2, 2009 Council report, Item 1. You may obtain copies of other public records responsive to your request number 2 in Records Online at <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=4222>.

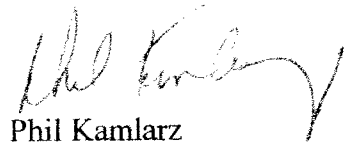
However, the City is withholding from disclosure staff's notes, preliminary drafts and e-mail as these documents are exempt from disclosure under Government Code sections 6254(a) and 6255. These documents contain the personal notes and comments of City staff which were not prepared in anticipation that they would be subject to public scrutiny. Disclosure of these documents which reflect the deliberative process would impede the effective functioning of government as employees would be reluctant to maintain informal notes or engage in open discussion and debate regarding pending matters if their notes regarding such matters will be subject to public scrutiny. The City must encourage public officials to speak frankly and openly with City staff regarding pending matters. This is the only way to ensure that all possible views on an issue are considered before a final governmental decision is made. It is for these reasons, that under Government Code section 6255, the City's interest in not disclosing the documents outweighs the public interest in the documents. The City is also withholding from disclosure communications between the City Attorney

Roger Marquis
September 21, 2009
Page 2

and Staff pursuant to Govt. Code 6254(k) as such documents as protected by the attorney/client communication privilege.

With respect to your request No. 3, the City does not have any documents which reflect "costs incurred" in connection with alleged violations of the California Public Records Act or Brown Act. This is likely due to the fact that during the last five years, the City has only been sued once for an alleged violation of the Public Records Act. That litigation was handled by the City Attorney's Office and thus no outside counsel fees were incurred. Additionally, because the City prevailed on the Public Records Act cause of action, the Court did not order the City to pay any costs or damages.

Sincerely,



Phil Kamlarz
City Manager

cc: Sarah Reynoso, Acting Assistant City Attorney