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August 4, 2008

Sent by Facsimile and Regular Mail

Ms. Carolyn Y. Smith, President
Southeastern Economic Development Corporation
4393 Imperial Avenue, Suite 200
San Diego, CA 92113

Re: Public Records Act Request of July 9, 2008 by Voice of San Diego and Retention of all Documents.

Dear President Smith:

It has come to our attention that a request under the California Public Records Act was made to the Southeastern Economic Development Corporation ("SEDC") on July 9, 2008 by Mr. Will Carless of the Voice of San Diego. A copy of this request is attached to this letter. The request was addressed to Alexis Dixon and Kimberly King. I am bringing this matter to your attention because of the failure of SEDC to properly and legally respond to this request within the time limits set forth in the California Government Code.

I am very familiar with these types of requests, and appreciate the amount of effort needed to comply with them. However, under the law, that does not excuse a timely response and making the public documents available for viewing. I am also aware of the changes which are occurring at SEDC. Again, however, the law does not consider such events as a permissible excuse for failing to timely comply with such a request.

I have reviewed the attached request and respectfully but strongly urge your organization to use all efforts forthwith to make all public documents available for inspection and review by Mr. Carless. Failure to comply will subject SEDC to possible legal action which, if filed and pursued to its logical conclusion, will result in an unfavorable result for SEDC and which will most likely include the award of costs and attorneys fees. Please be advised that the courts and the resulting case law have broadly construed the intent and spirit of the Public Records Act so that any documents claimed to be exempt from public disclosure must meet a specific exemption and meet a high standard before such exemption can be legally sustained.

On a related matter, all documents involving each and every project, proposal, RFP, RFQ, etc. in which SEDC has had some form of interaction must be retained. Ideally, these documents should be kept in their proper files, with a cover "control" sheet itemizing each and every document in the file. First and foremost, these documents were either generated by or received by or at the direction of the staff of SEDC and are thus the result of the efforts of such staff that are being paid with taxpayer dollars. Second, while transition is never easy, it is better facilitated by all documents being kept and properly catalogued so that successors and others necessary to this process can follow the history and process of all projects, proposals, etc. in order to better understand the current status of them. Third, it would not be reasonable to assume that this will be the last public records act request and a response that documents requested the next time around did at one time exist but are no longer in existence will potentially result in severe judicial repercussions.

Under the current circumstances, I appreciate your time and commitment to ensuring that the requests made in this letter are effectuated immediately.

Very truly yours,

MICHAEL J. AGUIRRE, City Attorney

By


Huston Carlye
Chief Deputy City Attorney

Attachment

July 9, 2008,

To Alexis Dixon, Kimberly King,

RE: Public Records Act Request

Dear Mr. Dixon and Ms. King,

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.) and the California Constitution, as amended by passage of Prop 59 on November 3, 2004, I am writing to request a copy of the following records, which I understand to be in the possession of your agency:

- Copies of SEDC's Form 990s for fiscal years 1998, 1999, 2000, 2001, 2002, 2003 and 2004.
- A full accounting of budgeted positions at SEDC for each fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008, including:
 - The job title for every budgeted position;
 - The name of the individual who filled each position during that fiscal year, and the months that individual worked during the year. If the individual worked for the whole of the fiscal year, please make that clear in your reply.
 - The precise salary (not salary range) that was budgeted for each position.
 - The precise salary (not salary range) that was paid to each of the above named individuals.
 - The total compensation received by each of the above named individuals throughout each fiscal year (i.e. please list the figure that either appears in the "compensation" column of the Form 990 for each of the above named individuals if they were included on those forms, or the figure that would have appeared in that column had the individual been included on the Form 990.)
 - The total benefits paid for each of the above named individuals throughout the fiscal year (i.e. please list the figure that either appears in the "contribution to EBP & DC" column of the Form 990 for each of the above named individuals if they were included on those forms, or the figure that would have appeared in that column had the individual been included on the Form 990.)
 - The total benefits paid for each of the above named individuals throughout the fiscal year (i.e. please list the figure that either appears in the "Expense account/other" column of the Form 990 for each of the above named individuals if they were included on those forms, or the figure that would have appeared in that column had the individual been included on the Form 990.)
 - An accounting of any extra compensation, bonuses etc. paid to each of the above named individuals over and above that individual's base salary, i.e. a breakdown, for each of the above names individuals, of the difference between that individual's budgeted salary and their actual compensation for each fiscal year.

- In the accounting and detailing of the extra compensation paid to each of the above named individuals, please further detail the amount paid under each of the following extra compensation programs:
 - Cost of living;
 - Sick pay and holiday pay in lieu;
 - Acknowledgment;
 - Holiday bonus;
 - Any other compensation programs that provide employees with compensation that is not included in that employee's base salary.
- Copies of SEDC's budget for fiscal years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008.
- Minutes and audio or video recordings of any meetings of the SEDC Board of Directors for fiscal years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008, in which any of the following issues were mentioned or discussed:
 - Approval/discussion of SEDC's budget;
 - Approval/discussion of salaries paid to SEDC employees;
 - Approval/discussion of benefits paid to SEDC employees;
 - Approval/discussion of bonuses paid to SEDC employees;
 - Approval/discussion of any extra compensation that is not included as part of an employee's base salary that is paid to SEDC employees;
- Copies of any SEDC staff or board policies from fiscal years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008 regarding the payment of the following extra compensation payments to employees:
 - Cost of living;
 - Sick pay and holiday pay in lieu;
 - Acknowledgment;
 - Holiday bonus;
 - Any other compensation programs that provide employees with compensation that is not included in that employee's base salary.
- Copies of any formulas or any documentation, policy or any other document from fiscal years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008 used to calculate the following extra compensation payments to SEDC employees:
 - Cost of living;
 - Sick pay and holiday pay in lieu;
 - Acknowledgment;
 - Holiday bonus;
 - Any other compensation programs that provide employees with compensation that is not included in that employee's base salary.
- An accounting of the date each of the following extra compensation payments was introduced as a program administered by SEDC and any staff or board

memos, documents, staff reports etc. pertaining to the introduction of each of the following extra compensation programs:

- Cost of living;
 - Sick pay and holiday pay in lieu;
 - Acknowledgment;
 - Holiday bonus;
 - Any other compensation programs that provide employees with compensation that is not included in that employee's base salary.
- A copy of Carolyn Smith's current contract.
 - A copy of Dante Dayacap's current contract.
 - Copies of any board minutes, documents, etc. related to any performance review or other assessment of Carolyn Smith's performance as president of SEDC in fiscal years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008.

During an interview on Wednesday, June 25, Carolyn Smith asserted that certain information regarding the extra compensation paid to employees at SEDC cannot be released because of privacy concerns.

That is an incorrect statement. The courts have spoken unambiguously in this manner. On Aug. 28, 2007, the state Supreme Court, in *Contra Costa Times v. The City of Oakland*, ruled that detailing the compensation (including overtime and additional payments) of public employees is mandatory under the California Public Records Act. The court found that public employees should not have an expectation of privacy in relation to their salaries, even if that causes discomfort or embarrassment.

The court ruled that the disclosure of such information is "in many cases necessary to disclose inefficiency, favoritism, nepotism, and fraud with respect to the government's use of public funds for employee salaries."

In that ruling, Chief Justice Ronald George wrote that "Openness in government is essential to the functioning of a democracy.

You are compelled by law to respond to my request. If I am forced to sue to obtain the records and the agency is unable to justify its refusal to provide access to the records (and its failure to even respond to my request, as it is required to do), I will be entitled to recover my attorneys' fees under Cal. Gov. Code sec. 6259(d).

I ask for a determination on this request within 10 calendar days of your receipt of it, and an even earlier reply if you can make that determination without having to review the record(s) in question.

If you determine that any or all of the information is exempt from disclosure, I ask that you reconsider that determination in view of Prop 59, which has amended the state Constitution to require that all exemptions be "narrowly construed." Prop 59 may modify or overturn authorities on which you have relied in the past.

If you nonetheless determine that the requested records are subject to a still-valid exemption, I would further request that: (1) you exercise your discretion to disclose some or all of the records

notwithstanding the exemption; and (2) that, with respect to records containing both exempt and non-exempt content, you redact the exempt content and disclose the rest.

Finally, should you deny part or all of this request, you are required to provide a written response describing the legal authority or authorities on which you rely. Please also address the question whether Prop 59 requires disclosure even though authorities predating Prop 59 may appear to support your exemption claim.

If I can provide any clarification that will help expedite your attention to this request, please contact me at 619/325-0525. I ask that you notify me of any duplication costs exceeding \$20 so that I may decide which records I want copied.

Thank you for your time and attention to this matter.

Sincerely,

Will Carless