



SACRAMENTO
SAN FRANCISCO

Jason H Jasmine
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May 28, 2019

VIA E-MAIL AND U.S. MAIL

JGIFFEN@KAGLAW.NET

John Giffen
City Attorney
City of Carmel
24591 Silver Cloud Court, Suite 200
Monterey, CA 93940

Re: Steve Dallas Personnel File and Report of Investigation

Dear Mr. Giffen:

The undersigned represent former Carmel Mayor Steve Dallas with respect to the proposed release of confidential personnel documents, and potential litigation regarding the same.

First, pursuant to Labor Code section 1198.5, we ask that the City of Carmel ("City") promptly (and certainly in advance of any other potential disclosure) provide Mr. Dallas (through our office) with both a complete copy of his personnel file and/or any other file used for personnel purposes with respect to Mr. Dallas, as well as any and all documents the City has in its custody, possession, or control, with respect to the investigation into allegations made against Mr. Dallas conducted by Irma Moisa. This would include any documents maintained by a third party for or on behalf of the City. Please produce these documents in both electronic and hard copy immediately.

While the requested documents are NOT subject to production pursuant to the California Public Records Act, to the extent the City contends these documents ARE subject to production, then clearly, the City must acknowledge that Mr. Dallas would also have a right to obtain the documents under that section.

To be clear, we are demanding that the City NOT disclose confidential personnel investigations involving Mr. Dallas. However, if the City does intend to produce any such records, we insist that in addition to the request above, the City also provide to Mr. Dallas (prior to producing them to anyone else) the records in exactly the manner (i.e., level of redaction, etc.) that the City intends to produce them to any requesting party. At the May 7th Council meeting, you announced that the Council had agreed to release a "redacted version of the report." Thus, we are asking for a copy of this "redacted version" as well as the unredacted version.

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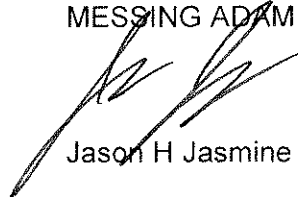
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The investigation conducted by Attorney Irma Moisa, and the report she prepared concerning her impressions and findings arising out of that investigation, is subject to the attorney-client privilege and constitutes attorney work product. Government Code section 6254 (b), (k); and Evidence Code section 952. The City should not simply waive its privilege due to what appears to be an attempt to attack Mr. Dallas politically and personally. However, even if the City does choose to waive its privilege and the exemption based on attorney work product, the documents are still not subject to disclosure. As you are no doubt aware, employees have a substantial privacy interest regarding information in their personnel files. *Teamsters Local 856 v. Priceless LLC* (2003) 112 Cal.App.4th 1500, 1512-1514. In order to violate this privacy interest, the City must show some compelling public interest in obtaining that information that outweighs Mr. Dallas' substantial interests and rights. This is an even more daunting (and ultimately insurmountable) requirement when the investigation is one that included multiple baseless allegations that were determined to be unfounded.

Ultimately, the documents at issue should not be disclosed to anyone other than Mr. Dallas, and we are confident that the City will reconsider its ill-reasoned and politically and personally motivated decision to waive its privileges and disclose exempt documents in response to a Public Records Act request.

Sincerely,

MESSING ADAM & JASMINE LLP



Jason H Jasmine

JHJ:lam

cc: Steve Dallas

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