



Office of the City Manager

ACTION CALENDAR

February 24, 2015

(Continued from February 10, 2015)

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Zach Cowan, City Attorney

Subject: Confidential Closed Session Documents

RECOMMENDATION

Review and consider the information provided in response to the Council referral and determine whether to direct staff to develop a policy for closed session documents.

FISCAL IMPLICATIONS

None.

CURRENT SITUATION AND ITS EFFECTS

In response to Council direction at the October 21, 2014 meeting, this report provides information on the current practices and potential amendments to Council policy related to confidential documents distributed at closed session meetings.

Under current practice, the City Attorney issues confidential memos in advance of a closed session when complex litigation matters are before the Council and additional background and information are needed prior to discussion. In other cases, the City Attorney's advice is limited to an oral report. The City Attorney also provides a quarterly litigation report in writing to all Councilmembers, which summarizes the status of all current litigation. Councilmembers may then use this information to request that a closed session meeting be called to discuss the litigation in more detail. Councilmembers can, and currently do, receive confidential documents related to litigation prior to closed session meetings.

For labor negotiations, the current practice is to provide confidential documents to the City Council at the closed session meeting. This is due to the fluid nature of negotiations and the rapid changes that occur in advance of closed sessions on this topic. Often, staff is compiling changing financial implications and gathering data from comparable jurisdictions late into the day before a closed session meeting.

Adopting a procedure for the distribution of closed session information may assist the City Council in making sure that Council members are well-informed and at the same time ensure the confidentiality of the documents. Other cities use binders assigned to

each Councilmember but retained in City offices, to store and distribute confidential documents, and to allow for better retention and accountability when handling confidential documents.

Based on the practices of other jurisdictions, the basic elements of a binder system are:

- Each binder is numbered and specifically assigned to a certain Councilmember.
- The binders are retained by City staff in a secure location.
- The binders are distributed at the beginning of the meeting.
- All binders are collected by City staff at the end of the meeting.
- The policy may apply to certain types of documents or all documents (e.g. labor negotiations, litigation, real estate)

The adoption of a policy related to the distribution, handling, and retention of closed session materials would be in the form of an amendment to the City Council Rules of Procedure and Order. The Council may provide direction on the content of a policy and direct staff to return with an item that incorporates such a policy in the Rules of Procedure.

BACKGROUND

The Brown Act provides for the holding of closed meetings of legislative bodies under certain circumstances, and prohibits disclosure of confidential closed session information to persons not entitled to it (Attachment 1). The Brown Act does not expressly address the removal or retention of confidential documents by members of a legislative body. Practices or procedures related to the handling of confidential materials are developed at the local level depending on the policies of the relevant jurisdiction.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable sustainability effects or opportunities related to the content of this report.

ALTERNATIVE ACTION CONSIDERED

This report is in response to a City Council referral. The Council may direct staff based on the content of the report. Alternately, the Council may decide that no further action is necessary.

CONTACT PERSON

Zach Cowan, City Attorney, 981-6950

Attachments

1: Government Code Section 54963

Government Code Section 54963

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, “confidential information” means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grandjury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

(Added by Stats. 2002, Ch. 1119, Sec. 1. Effective January 1, 2003.)

