



July 26, 2021

To: San Jose City Clerk Toni Taber

**Re: Appeal of PRA request to San Jose Board of Fair Campaign and Political Practices**

This letter is to inform you of San José Spotlight's request to file an appeal with the San José Board of Fair Campaign and Political Practices (BFCPP) regarding its Public Records Act request dated May 9, 2021.

Under the California Public Records Act, San José Spotlight on May 9, 2021 requested the following:

*A copy of all email, text and Slack (or other messaging system) communications between Mayor Sam Liccardo, Chief of Staff Jim Reed and any and all other mayor's staff, consultants, lobbyists or associates related to Solutions San Jose over the past six months. Please include emails/texts sent and received from personal devices and accounts as it relates to public business.*

On May 18, 2021, Henry Smith, an agenda services manager with the office of Mayor Sam Liccardo, denied the request in its entirety. He cited one statute for the denial decision: *Attorney-Client Privilege [California Government Code § 6254(k)]*

San José Spotlight appealed the decision to withhold communications under the attorney-client privilege, which we believe is an improper denial of records. The Rules and Open Government Committee heard the appeal on June 23, 2021. The committee unanimously directed city officials to 1. Conduct a second, more thorough search of emails within the scope of the request, including the mayor's personal accounts and devices, and 2. Produce a privilege log disclosing the email addresses used, sender/receiver/cc, time/date, etc. of the withheld communications.

The city produced the privilege log on June 28, 2021. Based on our review, we are appealing the city's initial decision to withhold these records to the city's BFCPP as outlined in San Jose Municipal Code 12.21.430 for the following reasons:

- The time stamp on the three withheld emails, according to the city's own log, range from 2:36 p.m. to 5:11 p.m. on Feb. 12, 2021. The communications involve Liccardo's chief of staff, Jim Reed, and were sent/received on a Friday during business hours. This raises questions about how the mayor's office might be using public resources for campaigning and/or non-city entities such as Solutions San Jose.
- The privilege log shows that Neelam Naidu of the City Attorney's Office first emailed Reed at 2:36 p.m. on Feb. 12, followed by Reed's reply and another response from Naidu.

The first communication came from the attorney. This is in direct conflict with statements made by the City Attorney's Office that suggested Liccardo and/or his staff reached out for "general advice" about the use of city staff and resources on third-party nonprofits and outside organizations. This clearly shows Reed did not reach out first to seek advice, as characterized -- at least via email -- and that Naidu contacted the mayor's office first. This raises additional questions about the nature of the discussion and whether any prior communications occurred.

- The Rules and Open Government Committee on June 23 made a decision on our PRA request appeal without having seen any of the emails city officials claim are privileged. That means they decided to withhold records without even reviewing them. This problematic practice raised public concern from one member, and warrants a review of the records by an independent board or commission since the Rules Committee never saw the emails in question before voting.
- The City Attorney's Office is unclear about its role in these communications. City Attorney Nora Frimann told us in an email on June 17 that "we have not provided legal advice about Solutions San Jose to the Mayor or members of his office." Now the city is saying it provided "general advice" in its privilege log. Which is it? And what's the difference between "legal" and "general" advice? The city attorney is not being clear about her office's involvement in this matter, warranting a closer look by the BFCPP.

For the reasons cited above, we are appealing to the city's BFCPP to reevaluate this improper denial of public records and the murky process by which that decision was made. We believe these emails are of public interest and should immediately be released pursuant to our request.

Please advise us of next steps, including when the committee will consider our appeal during its regularly scheduled meeting. If you have any questions regarding this appeal, please do not hesitate to contact Ramona Giwargis at [REDACTED] or [REDACTED].

We look forward to hearing from you.

Sincerely,



Ramona Giwargis  
Co-founder and editor  
San José Spotlight