

August 18, 2021

Sent via Email

Ms. Giwargis,

The City has received San José Spotlight's request to the Board of Fair Campaign and Political Practices, dated July 26, 2021, to appeal the decision of the Rules and Open Government Committee regarding the Spotlight's May 9, 2021 public records request.

The City's rationale for declining to produce the requested records is that they are privileged attorney-client communications and, therefore, exempt from disclosure under the Public Records Act. (Gov. Code §6254(k), See *St. Croix v. Superior Court* (2014) 228 Cal.App.4th 434, 441.)

The City Clerk will process Spotlight's request to the Board, as it is authorized under Section 12.21.430.C of the Municipal Code. This communication is to advise you that the Board is not authorized to review privileged records or waive the attorney-client privilege for the City. The City Council is the holder of the attorney-client privilege and is the only body authorized to review the records and waive the privilege for the City. (Evid. Code §953, See *Roberts v. Palmdale* (1993) 5 Cal. 4th 363, 373.)

In addition to permitting a requestor to file a complaint with the Board, Section 12.21.430.C allows a requestor to go directly to the City Council by submitting an appeal to the City Clerk. Furthermore, Section 12.21.430.D states "if the response of the [Board] is unacceptable to any party, the party may appeal to the City Council by submitting an appeal to the Office of the City Clerk." Considering the nature of the requested documents, the Council is ultimately the appropriate forum for your appeal.

Please advise as to whether you would like to amend your request and pursue the appeal directly to the City Council as permitted under Section 12.21.430.

Very truly yours,

By: /s/ Mark Vanni
Mark Vanni, Senior Deputy City Attorney

CC: Toni Taber, City Clerk