Subject: RE: Public Records Act Request
From: "Clerk, City" <city.clerk@culvercity.org>
Date: 8/18/2020, 4:56 PM
To: "plgreen@att.net" <plgreen@att.net>
CC: "Clerk, City" <city.clerk@culvercity.org>

Dear Les Greenberg:

The City of Culver City ("City") is in receipt of your request for records under the California Public Records Act, California Government Code section 6250 et seq. Please be advised, the City of Culver City is operating under a Local Emergency, due to the spread of the coronavirus (COVID-19). City staff is engaged in focusing on crisis management and emergency response, and the majority of City employees are working remotely. As a result, access to many City files and documents may be limited. In addition, there is a concern that responding to lengthy and complicated requests on non-emergency matters may take away valuable staff time from the essential and necessary emergency work.

Culver City values its record of transparency and timely responsiveness to the public. We are asking for your patience at this time, as the City finds it necessary to and is extending the initial 10-day response deadline, or any previously issued extension, by an additional 14 days. In this regard, the City will respond to your request on or before **September 14, 2020.**

If your request is routine and does not require considerable review and analysis of documents, staff will respond as quickly as possible under the circumstances, if the document is accessible. If your request involves detailed review of documents or emails, or if exempt information will need to be redacted, we ask that you are patient with staff in getting the information to you when time allows. We will keep you apprised of the status of your request.

Sincerely,

City Clerk's Office
City of Culver City
(310) 253-5851
city.clerk@culvercity.org

From: Les Greenberg <plgreen@att.net>
Sent: Tuesday, August 18, 2020 4:16 PM
To: Clerk, City <city.clerk@culvercity.org>
Subject: Public Records Act Request

A 4/9/20 article entitled "Culver City Council Member Small Talks About Culver City Forward & Feed a City in Crisis" in the *Culver City Cross Roads* states, in part:

> The still-forming Culver City Forward will be headed by [Thomas] Small as CEO. … While a complete mission statement was not available, Small offered that "CCF is intended to help the city and the community do more than the city can afford to do on its own." The brainchild of Michael Hackman of Hackman Capital Partners, the organization is funded primarily by Hackman and Culver Studios, along with many other business interests in the city. [¶] When asked about possible conflicts of interest between council duties and

> the non-profit desk, Small noted that he held "extensive discussions with City Attorney [Carol Schwab] and City Manager [John Nachbar] and we also engaged outside council. [sic] How I will deal with the conflicts of interest issues," admitting that they were likely to happen, "would be by recusing myself on certain votes. Of course, if I have to recuse myself all the time, then I won't be an effective council."

As to each discussion dealing with potential conflicts of interest of Thomas Small related to Michael Hackman and/or Hackman Capital Partners, where Carol Schwab and/or John Nachbar participated, please provide me with a copy of the following:

(1) each section of the calendar of City Attorney Carol Schwab related to the discussion, but not limited to the date(s) thereof;

(2) each section of the calendar of City Manager John Nachbar related to the discussion, but not limited to the date(s) thereof;

(3) a record showing the name of each person who participated in the discussion;

(4) a record showing all communications within 30 days before and 30 days after the discussion between each person who participated in the discussion and any other participant relating to Thomas Small, Michael Hackman and/or Hackman Capital Partners;

(5) all guidelines provided by Culver City to Thomas Small for dealing with potential conflicts of interest involving Michael Hackman and/or Hackman Capital Partners;

(6) a record memorializing the content the discussion;

(7) a copy of each record produced during the discussion by each participant.

Thank you.
Les Greenberg

OFFICE OF THE CITY ATTORNEY

CITY OF CULVER CITY

9770 CULVER BOULEVARD, CULVER CITY, CALIFORNIA 90232-0507

(310) 253-5660
•
FAX (310) 253-5664

CAROL A. SCHWAB
City Attorney

August 26, 2020

Via Email Only

Les Greenberg
plgreen@att.net

Re: Public Records Request – August 18, 2020

Dear Mr. Greenberg:

This letter shall serve as the City's response to your request for inspection of public records, pursuant to the California Public Records Act (Government Code Section 6250, et seq.), which was received by the City Clerk's Office on August 18, 2020.

The City has evaluated your request in an effort to make a determination as to whether the records sought are public records that are subject to disclosure and in the possession of the City. You requested the following categories of records pertaining to "each discussion dealing with potential conflicts of interest of Thomas Small related to Michael Hackman and/or Hackman Capital Partners, where Carol Schwab and/or John Nachbar participated":

1. Each section of the calendar of City Attorney Carol Schwab related to the discussion, but not limited to the date(s) thereof.

   Response: *There are no disclosable records responsive to this request. All responsive records are exempt from disclosure under the Public Records Act, pursuant to Government Code Section 6254(k) (including, but not limited to, attorney-client privileged communications and work product) and Section 6255.*

2. Each section of the calendar of City Manager John Nachbar related to the discussion, but not limited to the date(s) thereof.

   Response: *There are no disclosable records responsive to this request. All responsive records are exempt from disclosure under the Public Records Act, pursuant to Government Code Section 6254(k) (including, but not limited to, attorney-client privileged communications and work product) and Section 6255.*

3. A record showing the name of each person who participated in the discussion.

   Response: *There are no disclosable records responsive to this request. All responsive records are exempt from disclosure under the Public Records Act,*

pursuant to Government Code Section 6254(k) (including, but not limited to, attorney-client privileged communications and work product) and Section 6255.

4. A record showing all communications within 30 days before and 30 days after the discussion between each person who participated in the discussion and any other participant relating to Thomas Small, Michael Hackman and/or Hackman Capital Partners.

   Response: There are no disclosable records responsive to this request. All responsive records are exempt from disclosure under the Public Records Act, pursuant to Government Code Section 6254(k) (including, but not limited to, attorney-client privileged communications and work product) and Section 6255.

5. All guidelines provided by Culver City to Thomas Small for dealing with potential conflicts of interest involving Michael Hackman and/or Hackman Capital Partners.

   Response: There are no disclosable records responsive to this request. All responsive records are exempt from disclosure under the Public Records Act, pursuant to Government Code Section 6254(k) (including, but not limited to, attorney-client privileged communications and work product) and Section 6255.

6. A record memorializing the content of the discussion.

   Response: There are no disclosable records responsive to this request. All responsive records are exempt from disclosure under the Public Records Act, pursuant to Government Code Section 6254(k) (including, but not limited to, attorney-client privileged communications and work product) and Section 6255.

7. A copy of each record produced during the discussion by each participant.

   Response: No records responsive to this request were located or identified.

Sincerely,

Heather Baker
Assistant City Attorney

Cc: City Clerk

Law Office of
LES GREENBERG
10732 Farragut Drive
Culver City, California 90230-4105
Tele. (310) 838-8105
E-Mail: LGreenberg@LGEsquire.com

August 27, 2020

VIA EMAIL

Ms. Heather Baker
Assistant City Attorney
Office of the City Attorney
9770 Culver Boulevard
Culver City, CA 90212-0507

Re: August 18, 2020 Public Records Act Request

Dear Ms. Baker,

Thank you for your prompt response to my August 18, 2020 Public Records Act (PRA) request.

Essentially, Culver City asserts, "All responsive records are exempt from disclosure under the [PRA] pursuant to Government Code Section 6254(k) (including, but not limited to attorney-client privileged communications and work product) and Section 6255." As set forth, below, the response needs clarifications and the exemptions asserted are either inapplicable or have been waived. I suggest ways to resolve the matter.

Clarifications

Section 6254(k) states, "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." If Culver City seriously relies on other than the two specified privileges, it should explicitly identify any other exceptions upon which it relies. If it does, I would promptly reply to those added claims.

Section 6255 states: "(a) The *agency shall justify withholding* any record by demonstrating that the record in question is exempt under express provisions of this chapter *or* that on *the facts of the particular case* the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Italics added.) Please note that Culver City bears the burden to "justify withholding." Further, the Response is not clear as to whether Culver City relies on one or both provisions. If Culver City relies upon the balancing test, please inform me as to what Culver City contends are: (1) "the facts of the particular case"; and (2) the "public interest served by not disclosing the record"; and I will further reply.

Applicable Law

Code of Civil Procedure, Section 2018.030, when defining writings subject to a claim of work-product, states, in part: (a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

Evidence Code, Section 954, when defining attorney-client communication, states, in part: "Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a *confidential communication* between client and lawyer…." (Italics emphasis added.)

Evidence Code, Section 912, states in part: "(a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege) … is *waived* with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed *a significant part* of the communication…." (Italics emphasis added.)

Indisputable Facts

Mr. Nachbar has never been licensed to practice law in California.

An interview of Council Member Thomas Small (Small) was published in the April 9, 2020 *Culver City Cross Roads*. The article states, in part:

> [C]ulver City Council member Thomas Small reached out to *Culver City Crossroads* to highlight programs available to residents impacted by the pandemic, and introduce a new non-profit organization…. The still-forming Culver City Forward will be headed by Small as CEO. … Culver City Forward is working with three projects now, and has a fourth still in development. … The brainchild of Michael Hackman of Hackman Capital Partners, the organization is funded primarily by Hackman and Culver Studios, along with many other business interests in the city. When asked about possible conflicts of interest between council duties and the non-profit desk, Small noted that he held "extensive discussions with City Attorney [Carol Schwab] and City Manager [John Nachbar] and we also engaged outside coun[se]l. How I will deal with the conflict of interest issues," admitting that they were likely to happen, "would be by recusing myself on certain votes. Of course, if I have to recuse myself all the time, then I won't be an effective council." Noting that was a bridge that will need to be crossed later, it was also a topic for another time. After the original incorporation of Culver City Forward last year, there are still several legal steps that must be completed by September of 2020.

(Underline emphasis added.) The content of the article is truthful, as there is no evidence that Small sought a correction. Further, Small received a copy of my Letter to the Editor that referenced the article, and has not claimed any error.

Small is the alleged "client." Small was not coerced into giving the interview.

Significant Disclosure

In substance, Small advised the public and the business interests of the conflicts-of-interest advice he received from City Attorney Schwab, i.e., "I will deal with the conflict of interest issues … by recusing myself on certain votes." Small's disclosures, among other things, reveal: (1) "business interests in the city" funded Culver City Forward; (2) one such interest put Small in control of Culver City Forward; (3) Small had "extensive discussions" with City Attorney Schwab and/or City Manager Nachbar on the conflicts-of-interest issue; (4) an unspecified "we" engaged an unidentified "outside counsel" to deal with his conflicts-of-interest issues; and (5) after those "extensive discussions," Small said that he will have to recuse himself from certain votes as the situations arise.

That legal advice is consistent with what City Attorney Schwab publicly revealed to be her general legal advice when dealing with a City Council Member's potential bias or conflicts of interest. "Carol Schwab, City Attorney, discussed instances where a conflict of interest arises; the appearance of bias; and she clarified that it is up to the individual Councilmember to make the decision." (5/27/14 City Council Minutes, p. 19.)

Reply to Responses

Request No. 1: A calendar's purpose is to remind one of the date, time, and location of an appointment with others. It might also state its purpose. In this case, the purpose is known—Small (and possibly others) desired an opinion dealing with Small's potential conflicts of interest. It is highly improbable that the requested sections of City Attorney Schwab's calendar contain any confidential communication to a client or her impressions, conclusions, opinions, or legal research or theories. If they do, Culver City could redact that information and provide me with the rest of the record. Most probably, the sections would set forth when the "extensive discussions" occurred and the identity of those expected to participate, e.g., "we," "outside legal counsel."

Request No. 2: Please see comments in No. 1, above. Further, City Manager Nachbar is not licensed to practice law in California. Thus, the assertion of attorney-client privileged communication or work product to exempt sections of his calendar is extremely problematic.

Request No. 3: Small has disclosed that he, City Attorney Schwab and/or City Manager Nachbar and, possibly, "we" and/or "outside counsel" participated in one or more of the "extensive discussions." The identity of the persons who participated does not contain any confidential communication with Small or the City Attorney's impressions, conclusions, opinions, or legal research or theories. If the identifying information is contained in a writing, which contains other information, Culver City should redact the other information and provide me with the rest of the writing.

Request No. 4: No. 3 seeks the identity of all who participated in the "extensive discussions." This Request deals with communications between those persons on particular subjects. The validity of the claims of exemption is a function of who participated in the "extensive discussions." Further, no valid ground for objection would exist if the "we" included Michael Hackman or any of the "other business interests" or, if "outside counsel" represents

other than only Small. For instance, the General Counsel of Hackman Capital Partners LLP performed various legal services that benefited Small. Another situation might consist of the General Counsel participating in the "extensive discussions" and sending Ms. Schwab and/or Mr. Nachbar a memorandum confirming the content of the "extensive discussions" and/or their representations during the discussions. To expedite resolution of this issue, Culver City could redact the content of the communications—leaving the date of the record, the identity of the sender and each recipient of the original and each copy, and the subject matter line—and forward a copy of the remainder of the record to me.

Request No. 5: Please see No. 4, above. The validity of the asserted confidential communication is dependent upon who participated in the "extensive discussions" and whether Small has revealed a "significant part" of the communication. To expedite resolution of this issue, Culver City could redact the content of the communications—leaving the date of the record, the identity of the sender and each recipient of the original and each copy, and the subject matter line—and forward a copy of the remainder of the record to me.

Request No. 6: Please see No. 4, above. For instance, if a memorandum was sent to Hackman Capital Partners LLP, Michael Hackman and/or Hackman's legal representative, or others, any claim of privilege would dissolve. Further, City Manager Nachbar or another employee of Culver City, who is not an attorney, might have issued the guidelines to Small. To expedite resolution of this issue, Culver City could redact the content of the communications—leaving the date of the record, the identity of the sender and each recipient of the original and each copy, and the subject matter line—and forward a copy of the remainder of the record to me.

Request No. 7: Noting the verbiage was employed in the response to Nos. 1-6, inclusive, differs from that in No. 7, one could reasonably assume that records do exist with respect to Nos. 1-6, inclusive, but are being withheld.

I suggest that Culver City promptly provide me with redacted records. If you believe that it would help to discuss the matters, I am available on short notice

Very truly yours,

LES GREENBERG

LG:pg

ec: City Clerk