



CITY COUNCIL AGENDA REPORT

City of Anaheim CITY ATTORNEY'S OFFICE

DATE: JULY 18, 2023

FROM: CITY ATTORNEY'S OFFICE

SUBJECT: WAIVER OF ATTORNEY-CLIENT PRIVILEGE TO PRODUCE REDACTED JL GROUP INVESTIGATION REPORT FOR PUBLIC RELEASE AND A CONFIDENTIAL UNREDACTED REPORT TO LAW ENFORCEMENT

ATTACHMENT (Y/N): NO **ITEM #** 03

GOVERNMENT CODE § 84308 APPLIES: NO

REQUESTED ACTION:

1. That the City Council, by Motion, waive the attorney-client privilege that currently attaches to the investigation report prepared by JL Group, LLC ("JL Group") so that a redacted report can be prepared for public release.
2. That the City Council, by Motion, waive the attorney-client privilege for the specific and limited purpose of allowing the California Attorney General and the Federal Bureau of Investigation ("FBI") access to a confidential unredacted copy of the JL Group report.

DISCUSSION:

1. Introduction

In August of 2022, in the wake of an FBI affidavit detailing potential criminal conduct on the part of former Anaheim Mayor Harry Sidhu, the City retained JL Group to conduct an independent investigation into the incidents detailed in the affidavit and certain related items.¹ Consistent with other investigations involving City officials/employees, the contract between the City and JL Group provided that JL Group's work product and report would be confidential in order to protect applicable privileges and the constitutional privacy rights of any affected employees. Specifically, the contract states that "All documents, including drafts, notes, ideas and communications that result from the Services provided under this Agreement are

¹ The focus of the investigation was campaign contributions made to Mr. Sidhu and other members of the City Council, whether campaign donors had been awarded City projects or contracts, whether City staff was involved in any potential misconduct related the issues identified in the FBI investigation, and whether any serial communications/meetings in violation of the Brown Act occurred in the context of the facts alleged in the federal investigation.

protected by the attorney-client privilege and shall be kept confidential by [JL Group] and only disclosed to ANAHEIM and/or Clay M. Smith, the neutral assigned to the Project, unless otherwise authorized in writing by ANAHEIM.” It was only by such assurances of confidentiality that the City was able to give JL Group far-reaching access to privileged and sensitive City documents and communications without waiving the protections applicable to them.

Consistent with the contract and the parties’ arrangement, the JL Group has produced a report, the entirety of which is currently protected by the attorney-client privilege (because it is a communication between lawyers and a client), which the report itself prominently states. In order to produce a redacted version of the report that can be released to the public, the Council must waive the attorney-client privilege as to the report itself (but not any underlying privileged communications repeated in the report, which will be redacted to preserve the privilege).

Furthermore, at the request of Mayor Pro Tem Rubalcava at the July 11, 2023 City Council meeting, the Council is being asked to waive the attorney-client privilege for the limited purpose of disclosing the unredacted report to the Office of the California Attorney General. Staff has added the FBI to this request to avoid any further need to seek a waiver for this purpose.

2. Prior Council Action

Although the contract between the City and the JL Group’s expressly provides that the Group’s report is privileged, in November of 2022, the then-sitting City Council directed that it be publicly released immediately upon its completion. When the JL Group and Judge Smith became aware of that direction, they raised concerns about this approach, on the grounds that a public release would compromise the attorney-client privilege and potentially violate employee privacy rights.

On May 2, 2023, in response to these concerns, the current Council decided to modify the prior direction and to retain outside counsel to review the report and redact information protected by the attorney-client privilege and constitutional privacy rights before its public release. However, the Council was not specifically asked, and did not decide whether, to waive the privilege that attaches to the JL Group report itself. Council needs to take this action in order for a redacted report to be released to the public because without such a waiver, given the relationship between JL Group attorneys and the City and the express terms of the parties’ contract, the entirety of the report is protected by the attorney-client privilege.

3. The Current Waiver Request

Waiver is defined as “the intentional relinquishment of a known right after knowledge of the facts.” *Roesch v. De Mota* (1944) 24 Cal.2d 563, 572; *Craig v. White* (1921) 187 Cal. 489, 498 (there can be no waiver where the one against whom waiver is asserted has acted without full knowledge of the facts). Here, the Council’s only express waiver of the attorney-client privilege (which occurred on February 28, 2023) was limited to

allowing the JL Group to share information with the District Attorney's office related to potential criminal misconduct. The Council has not previously waived the attorney-client privilege to allow for a wider release of the JL Group report, although that was certainly contemplated in, and the purpose of, the Council's May 2 decision to retain outside counsel to prepare a redacted report for public review.

Now that the JL Group report is complete, it is requested that the Council waive the privilege that attaches to that report, so that outside counsel can produce a redacted version for public release consistent with (and in order to effectuate) Council's previous direction. The report is over 300 pages long and the information that is currently envisioned to be redacted from the public report are communications protected by the attorney-client privilege (*i.e.*, pre-existing privileged communications that are cited or quoted in the report), as well as potentially (very limited) redactions to protect employee privacy. The redactions are not extensive, particularly given the length of the report. In addition to the public report, Mayor Pro Tem Rubalcava is requesting that an unredacted report be released to the California Attorney General, which staff is suggesting also include release to the FBI to avoid redundancy.

Outside counsel and reviewing staff anticipate that a redacted report can be ready for public release in the next two to three weeks. It should be noted that this does not include attachments to the report, which are very voluminous and, where pertinent, are summarized in the report.

IMPACT ON BUDGET:

Approval of this item will have no budgetary impact.

Respectfully submitted,

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Civil Division