

AUDIT AND FINANCE COMMITTEE

Public Record Act

Citizen Complaint #C4-02/03

Reason for the Report

A complaint was made against the El Dorado County Counsel (County Counsel) for not providing information as required by the Public Record Act in a timely manner. However, the investigation revealed the complaint should have been directed to the El Dorado County Auditor-Controller (Auditor-Controller).

Scope of the Investigation

The members of the Grand Jury:

- Interviewed the Complainant;
- Interviewed the Auditor-Controller;
- Reviewed Public Record Act;
- Reviewed data furnished by the Complainant;
- Reviewed accounting records furnished by the Auditor-Controller for payments made to a law firm (The Firm).

Background

A series of written and verbal exchanges occurred between the complainant and the Auditor-Controller dating from February 1999 through December 2001. The complainant attempted to obtain a record of payments made to The Firm for services in connection with the general plan and specific development proposals from the time of The Firm's start date (Summer 1995) to the present.

The complainant wanted to make sure the payments started with The Firm's start date of summer 1995. The Auditor-Controller never provided this information. The Auditor-Controller provided a series of correspondence of payment information that appears to be misleading and fragmented.

Several letters sent by the Auditor-Controller contained quotations referring to possible payments by others. Some of these statements are:

1. “It is important to remember that the County is reimbursed from developers for a significant portion of these payments.”
2. “The County is undergoing an accounting system conversion at this time, and it is unlikely that more complete information will be readily available for sometime.”
3. “We have not summarized any payments made by Third Party Administrator (TPA) of the County’s Self-Insurance Program. Specific payments made by the County’s TPA are not recorded in the County’s general or disbursements ledgers. It is my opinion that the County chooses to have the TPA make these ‘self insurance’ payments to make it more difficult for the public and the Auditor-Controller to identify and summarize the payment of claims and payments to outside counsel.”

Statement 3 prompted the complainant to write a letter to the County Counsel requesting a record of payments made through Risk Management to The Firm. The County Counsel replied by letter stating, “Risk Management has been contacted and they do not have any records of payments made by them.”

The complaint was investigated and the Auditor-Controller was asked to provide copies of invoices and payments from the summer 1995 to the present. After reviewing the invoices (never provided to the complainant) and payments made to The Firm, the Grand Jury was able to reconcile all invoices to payments.

The Grand Jury wrote a letter to the complainant summarizing invoices by The Firms and related payments by the County. The investigation did not find evidence that any payments were made to The Firm by the County Counsel or Third Party Administrator.

Findings

- F1. Although the complaint was made against the County Counsel it should have been directed to the Auditor-Controller.

Response to F1: The respondent disagrees wholly with the finding. The County attempts to insure that a public records request is responded to by the appropriate county departments, regardless of where the request was originally directed. Often a request asks for a variety of records that may be maintained by several departments, in which case each department may respond separately or the responses may be coordinated, whichever is more appropriate. In this case, the original request for payments to a specific law firm was directed to the Auditor-Controller, who responded in accord with County policy by providing a summary of the payments and dates, but did not release the raw bills because they contain information that the Board of Supervisors has previously determined to contain information protected by the attorney-client privilege that cannot be released. A later request was made to County Counsel’s Office which responded on behalf of Risk Management by advising that Risk had no records. Since it appears that the requests were answered appropriately, then no complaint was justified against either official.

- F2. The Public Record Act request was submitted in February 1999 but the complaint was made in February 2002, this request had not been satisfactorily answered.

Response to F2: The respondent disagrees wholly with the finding. The two records requests were responded to properly. The complainant may not have been satisfied with the information received because it did not assist in her litigation against the County, but the complainant received a full and accurate response that contained everything that should be legally divulged. There is no specific time limit in the Public Records Act for production of documents. The nature of the request, for privileged documents relating to then-pending litigation at a time when the accounting system was undergoing a conversion process, in large part determined the nature and timing of the response.

- F3. On December 31, 2001, the Auditor-Controller furnished an accounting spreadsheet to the complainant showing all payments made to The Firm, but never identified a payment associated with The Firm's start date of summer of 1995.

Response to F3: The respondent agrees with the finding. The complainant received a full and accurate summary of all payments made to the law firm, so the complainant could determine which payments were associated with certain events or dates.

Recommendations

- R1. The Auditor-Controller should respond to Public Record Act requests in a timely manner and with accurate information.

Response to R1: The recommendation has been implemented. In this case, and in every other case of which we are aware, the Auditor-Controller has responded to public records requests in a timely and accurate manner.

- R2. The Auditor-Controller should not attempt to shift responsibility to other departments.

Response to R2: The recommendation has been implemented. Both the Auditor-Controller and the County Counsel's Office responded in a proper manner to the two specific public records requests mentioned in the grand jury report, and each takes responsibility for their respective actions.

Responses Required for Findings

- F1 through F3
El Dorado County Board of Supervisors
El Dorado County Auditor-Controller

Responses Required for Recommendations

- R1 and R2
El Dorado County Board of Supervisors
El Dorado County Auditor-Controller