



*City of Arts & Innovation*

# City Council Memorandum

**TO: HONORABLE MAYOR AND CITY COUNCIL      DATE: JUNE 5, 2018**  
**FROM: CITY ATTORNEY      WARDS: ALL**  
**SUBJECT: ATTORNEY-CLIENT PRIVILEGE**

## **ISSUE:**

A review of the laws and policies relating to the attorney-client privilege.

## **RECOMMENDATION:**

It is recommended that the City Council review, discuss and give further direction regarding the attorney-client privilege.

## **BACKGROUND:**

What is the attorney-client privilege? In California, the attorney-client privilege, also known as the lawyer-client privilege, is codified in California Evidence Code, Section 954. It states, in pertinent part, that "... the client ... has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer ...." The purpose of this privilege is to ensure clients that information flowing between the client and the lawyer is kept confidential and not shared with others outside the privilege.

Who is the client? A "client" is defined in Evidence Code, Section 951. It states, in pertinent part, that client "means a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity ...."

The City of Riverside, as represented by the City Council, is the client. The Charter of the City of Riverside (hereinafter "Charter"), Section 406, vests all powers of the City in the City Council except as otherwise provided therein. The Charter, Section 702, states that "[t]he City Council shall have control of all legal business and proceedings and may employ other attorneys to take charge of any litigation or matter or to assist the City Attorney therein."

Who is the attorney? The City Attorney is the City's lawyer. The Charter, Section 700, vests in the City Council the power to appoint a City Attorney to serve at the pleasure of the City Council. The Charter, Section 702, sets forth the power and duties of the City Attorney. Among other powers and duties, the City Attorney represents and advises the City Council. Therefore,

the attorney-client relationship exists between the City Council as the client, and the City Attorney as the lawyer.

Although the Charter, Section 702 sets forth other powers and duties of the City Attorney to include representing and advising other City officers in all matters pertaining to their office, the City Attorney does not represent such officers in matters that create a perceived or actual legal conflict of interest between the interests of that officer and the interests of the client. Further, the City Attorney is not the lawyer for any individual in their personal capacity.

*What is a confidential communication?* A “confidential communication between client and lawyer” is defined in Evidence Code, Section 952. It states, in pertinent part, that confidential communication means “information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.”

Except as otherwise instructed by the City Council, those positions included in attorney-client communications historically include the City Council, Mayor, and the three Charter Officers (City Manager, City Clerk, and City Attorney). These are the same positions included by the City Council in closed sessions of the City Council. All of these positions are bound by the attorney-client privilege to keep all such communications confidential and are not to disclose them to others without the expressed consent of a majority of the City Council to make public such communications.

*Who is the holder of the privilege?* Evidence Code, Section 953, states, in pertinent part, that the “holder of the privilege” is the “client.” As the holder of the attorney-client privilege, only the City Council has the authority to expand the scope of the privilege to include other representatives of the client necessary for the particular confidential communication.

*Who has the authority to waive the attorney-client privilege?* Evidence Code, Section 912, states, in pertinent part, that “the right of any person to claim a privilege provided by Section 954 ... 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 or has consented to disclosure made by anyone.”

As the only holder of the attorney-client privilege for the City of Riverside, only a majority of the City Council has the authority to waive the privilege. The privilege cannot be waived by anyone other than a majority of the City Council. This means that the privilege cannot be waived by any individual Council Member, the Mayor, any of the three Charter Officers, or any other representative of the client made privy to such communication.

City employees should aspire to act in a trustworthy, truthful, and fair manner. City of Riverside Administrative Manual Number 1.009.01 sets forth an aspirational code of ethics and conduct for City employees. Although this policy may not form the basis of any disciplinary action against an employee, it does set forth the ethical behavior to which all employees should aspire.

City employees who receive attorney-client protected information should not make such information known to anyone else without the expressed consent of the City Council. The City Council places trust in the officers and employees of the City to whom confidential communications are shared to act in an ethical and trustworthy manner concerning such communications.

The City's Technology Use and Security Policy prohibits email messages sent to or from the City Attorney's Office from being forwarded to any person not in the original transmission list without the express written permission of the City Attorney. City of Riverside Administrative Manual Number 3.002.00 sets forth the technology use and security policy of all users of City technology, including email. Employees may only access the files and information they are authorized to access. Furthermore, that policy specifically states: **"E-mail messages sent to or from the City Attorney's office should not be forwarded to any person not originally included in the e-mail transmission list without the express written permission of the City Attorney or his or her designee."**

As part of the Charter duties of the City Attorney, the City Attorney advises all City officers and employees in all matters of law pertaining to their office. Even though such communications may or may not be addressed to the City Council, such communications are still legal advice sought and given under the attorney-client privilege. Therefore, the City Attorney determines to whom such communications are addressed to maintain the integrity of the attorney-client privilege. No individual who uses the City's technology is authorized to share such communications with anyone not included in the original transmission from the City Attorney without first obtaining the written permission of the City Attorney. This policy applies to **everyone** who uses the City's technology, including email.

Violations of the City's Technology Use and Security Policy. City of Riverside Administrative Manual Number 3.002.00 provides the following penalties for violation of this policy by any user of City technology: "Any user violating this policy may be subject to discipline not limited to revocation of access rights to the Internet, City network, departmental resources, application access rights, or any City technology asset. Also, the City may advise appropriate law enforcement officials of any illegal violations and cooperated in investigations conducted by law enforcement officials."

Code of Ethics and Conduct. Riverside Municipal Code (hereinafter RMC) Chapter 2.78 is the City's Code of Ethics and Conduct that applies to the Mayor, City Council, and all members of boards commissions and committees appointed by the Mayor, City Council, or Mayor and City Council. RMC Section 2.78.060 B prohibits the use or divulgence of confidential or privileged information. Unauthorized disclosure of confidential communications protected by the attorney-client privilege would be included in this section.

Any individual who is subject to the Code of Ethics and Conduct and who violates the attorney-client privilege may be subject to a Code of Ethics complaint for an unauthorized disclosure of a confidential communication.

**FISCAL IMPACT:**

There is no fiscal impact associated with this report.

Prepared by: Gary G. Geuss, City Attorney

Certified as to  
availability of funds: Adam Raymond, Chief Financial Officer/City Treasurer  
Approved by: Gary G. Geuss, City Attorney