



**CITY OF SAN BERNARDINO  
PUBLIC WORKS DEPARTMENT**

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**Date:** October 11, 2011  
**To:** James Penman, City Attorney  
**From:** Nadeem Majaj, P.E.  
Director of Public Works  
**Subject:** City Attorney's Actions

On Wednesday, October 5<sup>th</sup>, 2011, you demanded that I attend an unexpected meeting to discuss the Public Records Request by Mr. Randy Kuettle. Mr. Kuettle was the interim director for Public Works for over a two year period. Upon my arrival, Mr. Kuettle became the Deputy Director of Public Works and also managed the Operations & Maintenance Division. This division is responsible for maintenance of road pavement, including the work discussed herein.

Upon my arrival at the October 5<sup>th</sup> meeting (at 11:00 am), you handed me a memo from your deputy, Jolena Grider, addressed to me. In attendance were: you, Ms. Easland, Ms. Britton, Mr. Pepler, Mr. McNeely, Ms. Travis-Miller and Ms. Livingston. The memo regarded your allegation that I may have removed or destroyed public documents. As I clearly indicated in the meeting, I find the memo, drafted under your direction, to be offensive and I demanded its retraction. Instead, you proceeded with unprecedented threats, explaining that you are there as a "prosecutor" while the rest of your staff are there as City Attorneys. Ironically, Ms. Grider (who wrote the letter) was not in attendance.

Please let this letter serve as my formal response to the memo given to me, a copy of which is attached, the allegations you made during the October 5<sup>th</sup> meeting, clarification as to the reason I truly believe that Mr. Kuettle's Public Records request does not qualify under the Public Record Act (PRA), and my concerns regarding your office's false accusations and recent actions toward me.

I will first address your shocking accusation that I was unresponsive to the PRA request. Upon my arrival to this City, I realized that Public Records Requests were not timely addressed by my department. I found that unacceptable and directed my department to escalate this task to the highest priority for each division. I also have directed my executive assistant to follow up on each and every one of such requests to ensure that we are providing your department the support it deserves. I raised this point during your contentious meeting and asked if any of your staff in the room, disagreed. No one did. In fact, Ms. Britton indicated that the Public Works Department had been responsive. You are also very aware, that I communicated with you and your staff by email and by phone regarding my respect for the Public Records Act and my interest in working with your office and the City Manager's office to address Mr. Kuettle's request.

as 1/50<sup>th</sup> of the average of the other bidders. The result is Matich was the lowest bidder and won the project. Had those items not been included, two other bidders would have been lower than Matich, despite the 5 percent advantage provided to Matich as a local business. I further realized that the contract was not officially renewed for the first option year and we had spent over one million dollars on an expired contract (in the first option year). The above troubling revelations prompted me to send a letter to Matich requesting that they immediately cease all work. As of this writing, I have never been contacted by Matich to inquire about the termination of their multimillion dollar contract. This I find to be highly suspicious and unusual.

In addition, months after Mr. Kuettle had left the City, several Public Works employees began to openly discuss Mr. Kuettle's relationship with Mr. Matich. According to these employees, Mr. Kuettle had engaged in the following alleged activities:

- Removed a City inspector from inspecting the work from Matich because he was questioning the legitimacy of Matich's work. This left all such work (in the millions) uninspected (I did find it suspect that a director, leading five major City divisions with over 260 staff can find time to inspect paving projects. The files didn't contain inspection approvals, notices of completion, etc. Rather, the files were very thin with hardly any documents within them).
- Mr. Kuettle's assistant removed and destroyed electronic and hard copy documents, upon Mr. Kuettle's departure. According to witnesses, she was frantically shredding hundreds of documents.
- Went on fishing trips and a trip to Hawaii at the expense of Mr. Matich.
- Received a leather jacket as a gift from Mr. Matich.
- Received a truck load of Christmas presents, which Mr. Matich personally delivered to the City Corporation Yard.
- Provided food for the Public Works Department, including approximately 200 Rib Eye steaks.

I knew if this information (and compounded with the information I discovered) was valid, then it would be unquestionable government corruption underneath the areas of collusion, bribery, conspiracy, fraud, and theft of public funds. After bringing this to the attention of the City Manager and the Chief of Police, an investigation was conducted by the Police Department (PD), in which several City employees willingly met (when asked) with detectives to share the information which they had knowledge of as it related to Mr. Kuettle and the Matich company.

Due to the mere fact that the PD conducted this investigation and not the Human Resources or Public Works Departments, as well as the seriousness of the allegations, I was under the reasonable impression that this was a criminal investigation, and not a personnel or administrative investigation. Therefore, for the safety and confidentiality of these employees, I refused to give Mr. Kuettle this report in its entirety underneath the protection of Government Code 6254 (f), which protects witnesses in a police investigation as this could "endanger the safety of a witness". Further some witnesses (and myself) should be viewed as "whistle blowers" and have added protection underneath the Whistleblowers Laws of California. As I have requested in my emails to your office, I also sought the correct

interpretation of this Code in the event I misunderstood its meaning. I never received a response. To help Mr. Kuettle and your office, I even provided a summary regarding the findings of the limited investigation.

Since the conclusion of the investigation, and up to the receipt of the PRA request, I believed that I had done all I possibly could do and moved forward with the work that this City hired me to do. This work includes leading the Public Works department, repairing and improving the infrastructure, setting up standards, lifting employee morale, and finally, lifting the negative public perception of my department. My concerns and worries started to develop as a result of the unprecedented interest you and your staff took into this records request. Your interest escalated to threats and intimidation tactics (e.g. telling me that you were now in the role of the "City's Prosecutor" and will have my car and home raided, as if I had committed a crime).

These actions, along with a recent experience I had with your Senior Deputy City Attorney, Henry Empeno Jr., regarding another paving contract, caused me deep concern. At the time, I had pulled a paving contract, won by another contractor, from the September 6, 2011, Council agenda (the item was subsequently approved at the September 19, 2011 Council meeting after ensuring that the contractor is adhering to the project's and the City's requirements). The reason being this contractor was completing another project for the City and we had to verify certain labor issues were not violated. I felt uncomfortable recommending to the Council approval of another contract, without verifying that the current contract was adhered to and the laws were followed. Mr. Empeno inquired as to why we were pulling the item and he suggested that we reject all bids and re-advertise the project. I indicated that if we needed to reject the low-bidder, we would normally contract with the next higher bidder (which was not Matich). He informed me that by rejecting all bids, the highest bidder, Matich, would have another chance at this bid. He mentioned that this firm (Matich) is very political and extremely powerful in this City. I was shocked at this suggestion and informed him that we will not do that. To better understand this open advocacy for Matich, I confirmed, through the Secretary of State's website, that Mr. Matich is a major contributor to your campaigns and has donated several thousand dollars to you throughout the years.

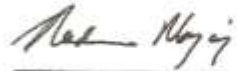
At the October 5<sup>th</sup> meeting, you openly discussed your friendship with Mr. Martin Matich and the "reverence" you and some other officials have for his firm. You commented that the Matich firm had made campaign contributions to several governors, the San Bernardino Sheriff, the San Bernardino District Attorney and the Attorney General. You noted that past investigations have not uncovered any wrongdoing. In an intimidating tone, you questioned me as to why I terminated the Matich contract and asked when I will restore it. I could not believe what I was hearing and realized that this meeting was all about restoring the contract. I also felt that I am in a very dangerous situation, promptly requested that this meeting end and then walked out. As the City Attorney, I believe that it is inappropriate for you or any other elected official to be involved with "steering" City staff toward contracting with one of your major contributors. I was equally appalled when you implied that I had terminated the Matich contract to enable other companies, which you suggested were my friends, to obtain contracts with the City.

Mr. Penman, I am especially concerned by your outward threats and the anger you displayed toward me during this meeting, as I do not feel safe conducting business with you, your office, or associates of your office. As all truthful attendees of this contentious meeting can confirm, your actions and tone in that meeting undoubtedly created a very hostile work environment. I see your support and advocacy for Match, and your dealings in the investigative report regarding Match and Mr. Kuettle, as a direct conflict of interest. At this same time, there is also concrete evidence that Councilperson Wendy McCammack (your very close associate and also a recipient of Match campaign contributions) was coaching Mr. Kuettle to make me terminate him so he could benefit financially. I also now feel that your aggressive attack on me is clearly a retaliatory act because of my cancelation of one of your major contributor's annual multi-million dollar contract. I believe that the City of San Bernardino has paid Match Corporation possibly \$40 million or more over the years.

I believe that there are no further issues regarding the PRA request and I, again, place responsibility upon you for the safety of all involved, should names be provided, verbally, in written form or otherwise, to anyone (especially Mr. Kuettle and/or Match), besides law-enforcement. Your unexpected and offensive attack on my integrity comes as a complete surprise, since I only meant to protect the City against either government corruption or the hint of government corruption. Therefore, the question must be answered: exactly what type of person would attack and persecute an individual who is trying to eradicate government corruption? I'm also under the belief that even though your office has dealt with the tardiness (which I committed to fix) of PRA requests, I'm certain that nobody else has been treated by you with the ferocity and intimidation that you displayed towards me.

In my short tenure with the City, it has become overwhelmingly apparent that you and some of your employees (not all) have created a cloud of fear throughout the City's organization and especially in City Hall and throughout the community. According to previous news reports and City staff, this is not the first time you have been accused of threats (including physical violence) and intimidation to other City employees. Common knowledge can discern your conduct is definitely an abuse of power by the elected office you hold, which I'm certain (at a minimum) is a violation of the State Bar of California's rules of professional conduct and integrity.

For the record, if anything adverse was to happen to any of the witnesses, myself or my family, I'm confident that due to your history, clear retaliatory actions, threats, abusiveness towards me, you will become the first subject of a new investigation.



Nadeem Maja, P.E.

Cc: Charles McNeely, City Manager  
Andrea Travis-Miller, Assistant City Manager  
Keith Kilmer, (outgoing) Police Chief  
Rob Handy, (incoming) Police Chief  
Linn Livingston, Human Resources Director  
Stephanie Easland, Senior Assistant City Attorney  
Jolena Grider, Assistant City Attorney/Prosecutor  
Shauna Britton, Deputy City Attorney  
Robert Pepler, Senior Investigator