

EXHIBIT A

QUESTIONS FROM BOARD REPORT

BFC No. 11-104

Dated July 13, 2011

At the July 19, 2011 Fire Commission meeting the Commissioners asked the City Attorney to answer these eleven (11) questions and said the issue would be returned to the Fire Commission agenda for the September 20, 2011 meeting. The July 19, 2011 Board Report noted these are some of the questions the City Attorney had previously failed to answer:

1. What language of the City Charter supports the City Attorney's August 23, 2010 statement that the authority to "appoint, discharge, suspend or transfer" is **exclusive** to the Fire Chief?
2. How can the City Attorney's statement that the Fire Chief has "exclusive jurisdiction over the appointment, discipline, and transfer of employees in the department" be reconciled with the preamble to City Charter section 509 which says, "**Subject to the provisions of the Charter, the rules of the department and the instruction of his or her board**, the chief administrative officer of a department or bureau under the control and management of a board of commissioners, except the Police Department, shall ... appoint, discharge, suspend, or transfer the employees of the department?"
3. Why did the City Attorney's August 23, 2010 advice memorandum fail to discuss, distinguish or even mention City Charter section 509 when discussing the power and authority of a managing board such as the Board of Fire Commissioners?
4. Why did the City Attorney's Office fail to discuss, distinguish or even mention City Attorney Opinion No. 2006:1, dated May 9, 2006, the City Attorney's most recent formal opinion concerning the power and duty of a managing board (involving the Board of Animal Services Commissioners) in its August 23, 2010 advice memorandum when discussing the power and authority of the Board of Fire Commissioners?
5. Why did the City Attorney's August 23, 2010 advice memorandum fail to discuss, distinguish or even mention *Patton v. Board of Harbor Commissioners* (1970) 13 Cal.App.3d 536, 542-43, which discusses the ultimate power of a managing board, when discussing the power and authority of the Board of Fire Commissioners?
6. How does the City Attorney's Office reconcile its August 23, 2010 legal advice that the Board of Fire Commissioners has no role in personnel actions or discipline of department employees, and the Fire Chief has exclusive jurisdiction over the appointment, discipline and transfer of employees of the department, with the City Attorney's May 16, 2011 legal advice stating the Fire Chief's

functions of discharging and suspending department employees are subject to review and corrective instruction by the Fire Commission?

7. How does the Fire Commission review the Fire Chief's discharge and suspension of Fire Department employees, and issue appropriate corrective instructions to the Fire Chief, as permitted by the City Attorney's May 16, 2011 advice, without full and unfettered access to all confidential information the Fire Chief relied on in taking such disciplinary action?
8. What case or statute supports the City Attorney's August 23, 2010 advice that the power to audit, investigate and oversee the handling of misconduct complaints provides greater access to information than the power to audit, assess and review?
9. How does the City Attorney's Office reconcile its August 23, 2010 advice that the Fire Commission and the Independent Assessor do not oversee the Fire Department's disciplinary system with the Independent Assessor's class specification which says the Independent Assessor does assist the Fire Commission with such oversight, and the City Attorney's failure to object to this language when reviewing the class specification in December 2008?
10. How does the City Attorney's Office reconcile its August 23, 2010 advice that the Independent Assessor may not review complaint investigations with the Independent Assessor's class specification which says the Independent Assessor does review complaint investigations to determine whether investigations are conducted fairly and comprehensively, etc., and the City Attorney's failure to object to this language when reviewing the class specification in December 2008?
11. Knowing about specific efforts to reform the Fire Department as a result of litigation brought against the City and highly publicized negative audit findings, did the City Attorney's Office previously fail to recommend and draft Charter language needed to provide the Fire Commission and the Independent Assessor with the full access to all Fire Department information necessary to ensure reforms are successful?

EXHIBIT B



Stephen Miller <stephen.miller@lacity.org>

Legal Advice Questions

7 messages

Stephen Miller <stephen.miller@lacity.org>

Wed, Jul 27, 2011 at 4:27 PM

To: "Jackson, Janet" <janet.jackson@lacity.org>

Cc: "Hudley-Hayes, Genethia" <olivehayes315@att.net>, "Tolentino, Casimiro" <casimiro.tolentino@dss.ca.gov>, "Tolentino, Casimiro" <cutolentino@gmail.com>, "Tolentino, Casimiro" <cutol@aol.com>, alexa Daniels-Shpall <alexa.daniels@lacity.org>

Dear Janet:

Sorry for the delay in following up on the comments you made at the July 19, 2011 Fire Commission meeting. Since you are the Fire Department's general counsel and I am one of your clients with a direct, substantial and vested interest in the Independent Assessor's lawful authority I have some questions and concerns I wanted to raise with you. Quite frankly, I thought it would be much more appropriate to raise these questions now instead of hitting you with them on July 19, 2011.

During the July 19, 2011 Fire Commission meeting you said the Independent Assessor's authority was watered down by the City Council and that a lot of the authority the Commission now seeks to give the Independent Assessor was removed. I agree that as the Independent Assessor I do not have the power and duty to audit, investigate and oversee the Fire Department's handling of misconduct complaints, and other things, as the Inspector General does. As the Independent Assessor I only have the power and duty to audit, assess and review the Fire Department's handling of misconduct complaints, and other things. However:

1. Even given these limited powers and duties, please explain to me how the power and duty to audit, assess and review the Fire Department's handling of misconduct complaints determines access when Charter section 523 says only one thing about the right to access which is: "The Independent Assessor ... shall have the same access to Fire Department information as the Board of Fire Commissioners." (Emphasis added.)
2. How is the Fire Commission trying to give the Independent Assessor more authority when there has been no attempt to give the Independent Assessor anything more than the same access to information currently held by the Fire Commission? If no one is currently advocating restoration of the Independent Assessor's investigative authority, how is anyone trying to expand the Independent Assessor's authority by simply insisting on the same access to information as the Fire Commission when Charter section 523 says the Independent Assessor shall have the same access to information as the Fire Commission? If all that is sought is access to information equivalent to what the Fire Commission currently has, how is anyone attempting to expand the Independent Assessor's authority?

I am the Fire Commission's employee with certain powers and duties. As the Independent Assessor I do not have the broader powers and duties of the Police Commission's Inspector General. Although my powers and duties are more limited than the Inspector General's power and duties, I have exactly the same access to information as the Inspector General. We both have access to the same information as our respective commissions regardless of our powers and duties. If you contend the duties and powers determine access to information please explain:

1. How do the limited powers and duties of the Fire Commission's subordinate employee expand or restrict the Fire Commission's right to access Fire Department information?
2. When the Inspector General is also subordinate to the Police Commission, how does the Inspector General's broader powers and duties impact the Police Commission's right to access information in and under the control of the Police Department?
3. How do the powers and duties to investigate, audit, assess, review or oversee determine access when the Charter only says the Inspector General and the Independent Assessor shall have the same access to department information as their respective Commissions?

If you are going to persist in publicly or privately stating the Independent Assessor's watered down powers and duties determine access by the Fire Commission and the Independent Assessor to Fire Department information, please simply provide the case, Charter or statutory authority that supports the contentions that:

1. The powers and duties of the Independent Assessor somehow limit or expand the Fire Commission's right to access Fire Department information, or
2. The Inspector General's powers and duties expand or limit the Police Commission's access to information at the Police Department.

When answering these preceding questions about access may I respectfully suggest that you consider City Attorney Report No. R99-0302, which separately analyzes the Inspector General's right to access information and the Inspector General's investigative authority. Report No. R99-0302 appears to make it very clear access to information is not related to an investigative power and duty. Rather, the Inspector General's access is independent from the Inspector General's investigative authority. Access is solely dependent on the degree to which the employing authority (the Police Commission for the Inspector General and the Fire Commission for the Independent Assessor) have access. Please also note the City Attorney's January 6, 1997 letter to Inspector General Katherine Mader says: "In auditing any internal investigation, the IG may require the cooperation of any Department employee(s), conduct interviews and obtain documents and things necessary to a thorough investigation." (Emphasis added.)

When determining the extent to which the Independent Assessor has access to Fire Department information, the only question is the

degree to which the Fire Commission has a right to access Fire Department information. During the July 19, 2011 Fire Commission meeting you repeatedly said the Fire Commission would be going against the City Attorney's opinion by accepting the Independent Assessor's policy statement concerning access. I believe you were referring to the August 23, 2010 advice. Please let me ask a couple of questions since the August 23, 2010 advice is addressed to both the Fire Commission and to me, and I am a City Attorney client just like the Fire Commission. I have a direct and substantial interest in the legal analysis concerning the extent to which the Fire Commission has access to Fire Department information because the extent of the Fire Commission's access also establishes the Independent Assessor's access. My questions are asked in the context of what the City Attorney's Office has told the Fire Commission and me in writing about the Fire Commission's powers and authority:

On August 23, 2010, the City Attorney's Office wrote a memorandum addressed to the Fire Commission and me stating the Fire Commission "has no role in personnel actions or discipline of Department employees, and has no role in oversight of the disciplinary process" without discussing, distinguishing or even mentioning City Attorney Opinion No. 2006:1, dated May 9, 2006, or *Patton v. Board of Harbor Commissioners* (1970) 13 Cal.App.3d 536, 542-43. The City Attorney's Office did cite City Attorney Opinion No. 2006:1 and *Patton v. Board of Harbor Commissioners* on May 16, 2011, in an advice memorandum addressed to the Fire Commission and to me. That May 16, 2011 advice said the Fire Chief's actions of discharging and suspending Department employees are "subject to review and corrective instruction from the Fire Commission."

1. Does the August 23, 2010 advice that fails to cite City Attorney Opinion No. 2006:1 and fails to cite *Patton v. Board of Fire Commissioners* correctly advise the Fire Commission about their power and authority, or does the May 16, 2011 advice that cites both City Attorney Opinion No. 2006:1 and *Patton v. Board of Harbor Commissioners* correctly advise the Fire Commission about their authority?
2. Since the May 16, 2011 advice cites both City Attorney Opinion No. 2006:1 and *Patton v. Board of Harbor Commissioners*, and is also consistent with formal opinions from the City Attorney's Office dating as far back as at least 1946, please explain how the Fire Commission can review and issue corrective instructions to the Fire Chief without having access to the same confidential information the Fire Chief uses in imposing suspensions and terminations?
3. Why would the doctrine of implied or presumed powers as set forth in 33 Ops.L.A.City 46, 49, the City Attorney's advice letter of January 6, 1997 to Inspector General Katherine Mader and *California Civil Code* section 3522 fail to provide the Fire Commission with unfettered access to all Fire Department information if the Fire Chief's actions to discharge and suspend Fire Department employees are "subject to review and corrective instruction from the Fire Commission?"
4. As the Fire Commission's general counsel, and as my attorney, did you know about and/or fail to advise us about City Attorney Opinion No. 2006:1 and *Patton v. Board of Harbor Commissioners* at any time between August 23, 2010 and May 16, 2011, and the impact these authorities have on the question of what authority the Fire Commission has to review and issue corrective instructions to the Fire Chief when he or she discharges and suspends Fire Department employees?
5. Why did you fail to inform the Fire Commission on July 19, 2011 that the City Attorney issued a May 16, 2011 advice memorandum stating that the Fire Chief's actions to discharge and suspend employees are "subject to review and corrective instruction from the Fire Commission when urging the Fire Commission to not adopt the Independent Assessor's policy statement on the basis of the City Attorney's August 23, 2010 advice that said the Commission has no role in personnel and disciplinary actions and the Fire Chief has exclusive jurisdiction over discipline?"

Before the August 23, 2010 advice was issued, you as the general counsel recommended the Fire Commission's Personnel Committee hold closed session meetings pursuant to the *Brown Act* to discuss Fire Department employee disciplinary matters. On November 19, 2010, after issuance of the August 23, 2010 advice that says the Fire Commission has no role in personnel actions, you advised the full Fire Commission to hold a closed session meeting to discuss the Fire Chief's performance evaluation pursuant to the personnel exception of the *Brown Act*. City Attorney Opinion No. 2004:8 says *Brown Act* violations may be punished by civil or criminal penalties. With these facts in mind:

1. Did closed session meetings held by the Fire Commissioners to discuss personnel and disciplinary matters both before and since August 23, 2010 violate the *Brown Act*?
2. To what extent are members of the Fire Commission now exposed to criminal and civil penalties for holding closed session meetings to consider personnel matters and disciplinary actions before and since August 23, 2010 violate the *Brown Act*?
3. If the Fire Chief's actions of discharging and suspending Department employees are "subject to review and corrective instruction from the Fire Commission" as indicated by the City Attorney's May 16, 2011 advice, can the Fire Commission conduct such reviews of confidential personnel information, and issue corrective instructions to the Fire Chief, in public session or would the City Attorney's Office recommend such reviews and corrective instruction take place in closed session?

Pages 13 and 14 of the August 23, 2010 advice addressed to the Fire Commission and to me says that in both the Police and Fire "Departments, the Chief Administrative Officer (i.e., the Police Chief or the Fire Chief) has exclusive jurisdiction over the appointment, discipline, and transfer of employees in the department. Charter Sections 509(b) and 574(c)." The City Attorney's August 23, 2010 advice does not cite City Attorney Opinion No. 2006:1 or *Patton v. Board of Harbor Commissioners*, and what Charter section 509 actually says is:

"Subject to the provisions of the Charter, the rules of the department and the instruction of his or her board, the chief administrative officer of a department or bureau under the control and management of a board of commissioners, except the Police Department, shall:"

...
 "(b) appoint, discharge, suspend, or transfer the employees of the department ...;"

"(c) issue instructions to employees, in the line of their duties," (Emphasis added.)

As the Fire Commission's general counsel and as my attorney as well:

1. Did you become aware at some point that the portion of the August 23, 2010 advice that says the Fire Chief has exclusive jurisdiction over the discipline of Fire Department employees appears to be inconsistent with the actual language of Charter section 509?
2. At some point did you become aware that the portion of the August 23, 2010 advice that says the Fire Chief has exclusive jurisdiction over the discipline of Fire Department employees appears to be inconsistent with not only Charter section 509 but also City Attorney Opinion No. 2006:1 and the Court's opinion in *Patton v. Board of Harbor Commissioners*?
3. At some point did you become aware that the portion of the August 23, 2010 advice that says the Fire Chief has exclusive jurisdiction over the discipline of Fire Department employees appears to be inconsistent with the City Attorney's May 16, 2011 advice that says the Fire Chief's actions of discharging and suspending department employees are "subject to review and corrective instruction from the Fire Commission?"
4. At the point you became aware that this portion of the August 23, 2010 advice was inconsistent with the actual language Charter section 509, was inconsistent with City Attorney Opinion No. 2006:1, was inconsistent with *Patton v. Board of Harbor Commissioners* and/or was inconsistent with the City Attorney's May 16, 2011 advice, what did you do to communicate the inconsistencies to the Fire Commission, its subcommittee or to me?

Quite frankly, I have a choice to make:

1. Follow the advice the City Attorney has set forth in formal published opinions and formal reports to the City Council from at least 1946 through May 2006, the Court's published opinion in *Patton v. Board of Harbor Commissioners*, as well as the City Attorney's May 16, 2011 written advice, or
2. Follow only the August 23, 2010 advice that fails to cite City Attorney Opinion No. 2006:1 and *Patton v. Board of Harbor Commissioners*, which also appears to be inconsistent with Charter section 509.
3. What presents a better and more reasoned analysis- the formal opinions and reports of the City Attorney from at least 1946 through 2006, the Court of Appeal's published opinion in *Patton v. Board of Harbor Commissioners* and the City Attorney's May 16, 2011 advice (that does cite City Attorney Opinion No. 2006:1 and the *Patton* decision) or the City Attorney's August 23, 2010 advice that does not cite either City Attorney Opinion No. 2006:1 or *Patton*, and which is also inconsistent with everything else the City Attorney's Office has written and published on the subject of a Commission's powers and authority?
4. When I am faced with a published decision by the Second District Court of Appeal involving the power and authority of a City of Los Angeles commission, and the Court's interpretation of language that is almost exactly the same as Charter section 509, am I really supposed to follow the City Attorney's August 23, 2010 advice that does not cite *Patton*, or do I follow the City Attorney's May 16, 2011 advice that does cite *Patton*? As my attorney, do you suggest that the non-published August 23, 2010 advice memo from the City Attorney's Office carries more weight than a published decision from the Court of Appeal that is binding on the City of Los Angeles and relied on by your office to support its May 16, 2011 advice?

Your July 19, 2011 comments suggested that the Independent Assessor does not have the authority to adopt policies for the operation of the office and how the business of audits, assessments and reviews are conducted by the Office of the Independent Assessor. If that is your position please answer the following questions:

1. What legal authority do you have to support a contention that the Independent Assessor may not adopt policies for how audits, assessments and reviews are conducted?
2. How is Policy Statement No. 1 inconsistent with the advice and opinions of the City Attorney's Office if it is entirely consistent with City Attorney opinions and reports from 1946 through 2006, with *Patton v. Board of Harbor Commissioners* and with the City Attorney's advice dated May 16, 2011?

Your July 19, 2011 comments suggested the City Attorney's Office has provided the Fire Commission and myself with advice concerning access, and the Fire Department or Fire Chief with additional advice concerning the Fire Chief's liability for allowing access to Fire Department information.

1. Has the City Attorney's Office provided advice to the Fire Chief concerning the Independent Assessor's access to information that has not been provided to the head of the Fire Department or to me while knowing the Fire Commission is extremely interested in the issue?
2. If the City Attorney's Office has provided advice concerning the Fire Chief's liability for granting access, does the advice discuss and consider the application of the Discretionary Acts Immunity doctrine as set forth in *California Government Code* section 820.2?

Your July 19, 2011 comments suggested it would be illegal if we chose to access information.

1. How is it illegal if everything the City Attorney's Office has provided before and since August 23, 2010, with the exception of the August 23, 2010 advice, says the Fire Commission has access to all Fire Department information because as head of the Fire Department the Fire Commission has the power to supervise, control, regulate and manage the Fire Department pursuant to Charter section 506, and the Fire Chief's actions of discharging and suspending Department employees are "subject to review and corrective instruction from the Fire Commission pursuant to section 509?"
2. If there is a dispute as between the Fire Commission and the Fire Chief concerning the right to access Fire Department information and a decision has to be made about accepting or rejecting the City Attorney's advice, isn't that a decision for the head of the Department to make? Isn't this especially true given that the Mayor's Office reviewed the Fire Chief's July 14, 2010

- memorandum concerning the Independent Assessor's access to Fire Department information prior to its issuance, and the Fire Commission adopted its policies concerning access in December 2009?
3. Isn't the City Attorney's role restricted to providing advice with the client making the decision whether to follow the advice or not?
 4. To what extent may the City Attorney's Office dictate policy for the Fire Commission, the Independent Assessor or the Fire Department especially when the policy the City Attorney's Office is inconsistent with a published Court of Appeal decision and is inconsistent with more recent advice from the City Attorney's Office that relies on the published Court of Appeal decision when explaining the "ultimate" power and authority of a Commission over disciplinary actions?

Given these issues and questions have been pending for years now, please provide your expeditious written response. Thank you,
Steve

Alexa Daniels-Shpall <alexa.daniels@lacity.org>
To: stephen.miller@lacity.org

Wed, Jul 27, 2011 at 4:28 PM

Your message

To: Alexa Daniels-Shpall
Subject: Legal Advice Questions
Sent: 7/27/11 4:27:08 PM PDT

was read on 7/27/11 4:28:04 PM PDT

Janet Jackson <janet.jackson@lacity.org>
To: stephen.miller@lacity.org

Wed, Jul 27, 2011 at 4:39 PM

Your message

To: Janet Jackson
Subject: Legal Advice Questions
Sent: 7/27/11 4:27:08 PM PDT

was read on 7/27/11 4:39:19 PM PDT

Tolentino, Casimiro@DSS <Casimiro.Tolentino@dss.ca.gov>
To: "stephen.miller@lacity.org" <stephen.miller@lacity.org>

Wed, Jul 27, 2011 at 8:47 PM

Your message was read on Thursday, July 28, 2011 3:47:39 AM UTC.

 ATT00001
1K

Janet Jackson <janet.jackson@lacity.org>
To: Stephen Miller <stephen.miller@lacity.org>
Cc: Genethia Hudley-Hayes <olivehayes315@att.net>

Mon, Aug 1, 2011 at 12:57 PM

Thank you for your email, I am reviewing the matter with my office.

J

[Quoted text hidden]

--
Janet Jackson
Fire General Counsel
Office of the City Attorney
(213) 978-8386
janet.jackson@lacity.org



Stephen Miller <stephen.miller@lacity.org>

Legal Advice Questions

12 messages

Stephen Miller <stephen.miller@lacity.org>

Wed, Jul 27, 2011 at 4:28 PM

To: "Echeverria, Pete" <pete.echeverria@lacity.org>, Zna Houston <Zna.Houston@lacity.org>, Vivienne Swanigan <vivienne.swanigan@lacity.org>

Cc: "Hudley-Hayes, Genethia" <olivehayes315@att.net>, "Tolentino, Casimiro" <casimiro.tolentino@dss.ca.gov>, "Tolentino, Casimiro" <cutolentino@gmail.com>, "Tolentino, Casimiro" <cutol@aol.com>, "Jackson, Janet" <janet.jackson@lacity.org>, alexa Daniels-Shpall <alexa.daniels@lacity.org>

Dear Pete, Zna and Vivienne:

I would like to make another attempt to resolve questions and issues related to your advice concerning the Independent Assessor's legal authority, as well as problems related to communications with me. Please remember I am your client, just like the Fire Commission is your client, and I have a direct, substantial and vested interest in the Independent Assessor's lawful authority.

Legal advice:

Given the comments made by Deputy City Attorney Janet Jackson at the July 19, 2011 Fire Commission meeting and the prior advice, opinions and reports from the City Attorney's Office, I have the following questions.

On August 23, 2010, the City Attorney's Office wrote a memorandum addressed to the Fire Commission and to me stating the Fire Commission "has no role in personnel actions or discipline of Department employees, and has no role in oversight of the disciplinary process." This memorandum did not discuss, distinguish or even mention City Attorney Opinion No. 2006:1, dated May 9, 2006, or *Patton v. Board of Harbor Commissioners* (1970) 13 Cal.App.3d 536. The City Attorney's Office did cite City Attorney Opinion No. 2006:1 and *Patton v. Board of Harbor Commissioners* on May 16, 2011, in an advice memorandum addressed to the Fire Commission and to me. That May 16, 2011 advice said the Fire Chief's actions of discharging and suspending Department employees are "subject to review and corrective instruction from the Fire Commission."

As your client, please tell me:

1. Why does the City Attorney's August 23, 2010 advice memorandum addressed to the Fire Commission and to me fail to cite City Attorney Opinion No. 2006:1, dated May 9, 2006 and the *Patton* case, and say the Fire Commission "has no role in personnel actions or discipline of Department employees, and has no role in oversight of the disciplinary process" when City Attorney Opinion No. 2006:1, the *Patton* case and the City Attorney's May 16, 2011 advice memorandum say the Fire Chief's actions of discharging and suspending Department employees are "subject to review and corrective instruction from the Fire Commission?"
2. How can the Fire Commission appropriately and responsibly review the Fire Chief's discharge and suspension of Fire Department employees and issue appropriate corrective instructions to the Fire Chief, as permitted by Charter section 509, City Attorney Opinion No. 2006:1, *Patton v. Board of Harbor Commissioners* and the City Attorney's May 16, 2011 advice memorandum, without having access to the same confidential information the Fire Chief uses in imposing suspensions and discharges?
3. Why would the doctrine of implied or presumed powers as set forth in 33 Ops.L.A. City Atty 46, 49, the City Attorney's advice letter of January 6, 1997, to Inspector General Katherine Mader and *California Civil Code* section 3522 fail to provide the Fire Commission with unfettered access to all Fire Department information if the Fire Chief's actions to discharge and suspend Fire Department employees are "subject to review and corrective instruction from the Fire Commission?"

On pages 13 and 14 of the August 23, 2010 advice memorandum addressed to the Fire Commission and to me, it says that in both the Police and Fire "Departments, the Chief Administrative Officer (i.e., the Police Chief or the Fire Chief) has exclusive jurisdiction over the appointment, discipline, and transfer of employees in the department. Charter Sections 509(b) and 574(c)." The City Attorney's August 23, 2010 advice does not cite City Attorney Opinion No. 2006:1 or the *Patton* case. What Charter section 509 actually says is:

"Subject to the provisions of the Charter, the rules of the department and the instruction of his or her board, the chief administrative officer of a department or bureau under the control and management of a board of commissioners, except the Police Department, shall:"

...

"(b) appoint, discharge, suspend, or transfer the employees of the department ...;"

"(c) issue instructions to employees, in the line of their duties, ...;" (Emphasis added.)

As your client, please tell me:

1. Why does the City Attorney's August 23, 2010 advice memorandum addressed to me cite Charter section 509(b) and 574(c) for the proposition that both the Police Chief and the Fire Chief have exclusive jurisdiction over discipline in their respective departments when it is Charter section 571(b)(1) (and not either section 509 or 574) that says only the Police Chief has such exclusive jurisdiction?
2. Why does the City Attorney's August 23, 2010 advice memorandum addressed to me say the Fire Chief has exclusive jurisdiction

over the discipline of Fire Department employees when Charter section 509, City Attorney Opinion No. 2006:1, dated May 9, 2006, the *Patton* case and the City Attorney's May 16, 2011 advice memorandum addressed to me all say the Fire Chief's actions of discharging and suspending Department employees are "subject to review and corrective instruction from the Fire Commission?"

The City Council did remove the Independent Assessor's investigative function before the proposed position was approved by the voters. The Independent Assessor has the power and duty to audit, assess and review how the Fire Department handles misconduct complaints. The Independent Assessor does not have the broader powers and duties of the Police Commission's Inspector General.

As your client, please tell me:

1. How does the power and duty to audit, assess, review, investigate or oversee provide access to anything if all Charter section 523 says about access is, "The Independent Assessor ... shall have the same access to Fire Department information as the Board of Fire Commissioners?" (Emphasis added.)
2. How does the Inspector General's power and duty to conduct investigations provide greater access to anything when all Charter section 573 says about access is, "The Inspector General ... shall have the same access to Police Department information as the Board of Police Commissioners?" (Emphasis added.)
3. What case, Charter or statutory authority says access is dependent on the power and duty to investigate?
4. How do you support any claim that investigative authority determines access to department information when the City Attorney previously analyzed both the Inspector General's right to access information and the Inspector General's investigative authority in City Attorney Report No. R99-0302 that never comes close to even suggesting investigative authority determines the extent to which the Inspector General has access to Police Department information? City Attorney Report No. R99-0302 makes it clear that access is solely dependent on the Commissions right to access and nothing else.
5. How do the powers and duties of subordinate employees, such as both the Inspector General and the Independent Assessor, expand or restrict the powers and authority of their respective commissions, when both commissions are the heads of their departments, with the same power to supervise, control, regulate and manage their departments, and with the Fire Commission having the added power to review and instruct the Fire Chief in disciplinary matters, that the Police Commission does not have?
6. Why doesn't the Independent Assessor have access to confidential Fire Department information if: a) the Fire Chief's actions to discharge and suspend employees are "subject to review and corrective instruction from the Fire Commission; b) the Fire Commission cannot appropriately and responsibly review the Fire Chief's discharge and suspension of Fire Department employees without having access to the same confidential information the Fire Chief relied on in imposing suspensions and discharges; and c) the doctrine of implied or presumed powers presumes the Fire Commission has all powers essential to carry out its ability to review and issue corrective instruction to the Fire Chief when all Charter section 523 says about access is, "The Independent Assessor ... shall have the same access to Fire Department information as the Board of Fire Commissioners?" (Emphasis added.)

I have received information suggesting the City Attorney's Office has provided the Fire Department with advice indicating the Fire Chief is acting illegally, is exposing him or herself to liability or is somehow acting beyond his or her authority by providing the Independent Assessor with access to all Fire Department information. On July 19, 2011 Deputy City Attorney Jackson told the Fire Commission that the Commission could not direct an employee to engage in illegal activity. Therefore, please answer the following questions:

1. What actually makes it "illegal" to provide the Independent Assessor with access to Fire Department information if the Fire Department simply decides to not follow the City Attorney's August 23, 2010 advice that fails to correctly cite Charter sections 509, 574 or 571, fails to cite City Attorney Opinion No. 2006:1, dated May 9, 2006, fails to cite the *Patton* case, and fails to indicate the Fire Chief's actions of discharging and suspending employees are "subject to review and corrective instruction from the Fire Commission," as does the City Attorney's May 16, 2011 memorandum?
2. If the City Attorney's Office has provided the Fire Department advice suggesting it is illegal or otherwise improper to provide the Independent Assessor with access to Fire Department information, that is in addition to the advice contained in the August 23, 2010 advice memorandum, has the City Attorney's Office provided a copy to the Fire Commission as the head of the Fire Department, given the City Attorney's Office knows the Fire Commission has questions about the Independent Assessor's authority to access Fire Department information?
3. If the City Attorney's Office has provided anyone in the Fire Department with advice suggesting it is illegal or otherwise improper to provide the Independent Assessor with access to Fire Department information that is in addition to the advice contained in the August 23, 2010 advice memorandum, did the City Attorney's Office ever provide such advice to the Fire Commission, knowing the Commission adopted a formal policy requiring all Fire Department employees to cooperate with the Independent Assessor's access to Fire Department information in December 2009?
4. If the City Attorney's Office has provided the Fire Department advice suggesting it is illegal or otherwise improper to provide the Independent Assessor with access to any Fire Department information, to what extent does such advice address the Discretionary Acts Immunity doctrine set forth in *California Government Code* section 820.2?
5. What is it that requires the Fire Commission, the Independent Assessor or the Fire Chief to follow the City Attorney's August 23, 2010 advice memorandum that fails to correctly cite Charter sections 509, 574 or 571, fails to cite City Attorney Opinion No. 2006:1, dated May 9, 2006, fails to cite the *Patton* case, and fails to say the Fire Chief's actions of discharging and suspending employees are "subject to review and corrective instruction from the Fire Commission" as the City Attorney's May 16, 2011 advice memorandum does?
6. Doesn't City Attorney Opinion No. 2006:1, and other City Attorney opinions and reports, say the Fire Chief "must follow" the Fire Commission's instructions if, as head of the Fire Department, the Fire Commission decides to follow the City Attorney's advice set forth in City Attorney Opinion No. 2006:1, the Court of Appeal's decision in *Patton v. Board of Harbor Commissioners* and the City Attorney's advice set forth in its May 16, 2011 advice memorandum that says that the Fire Chief's actions of discharging and suspending employees are "subject to review and corrective instruction from the Fire Commission?"

7. Doesn't City Attorney Opinion No. 2006:1, and other City Attorney opinions and reports, say the Fire Chief "must follow" the Fire Commission's instructions if, as head of the Fire Department, the Fire Commission decides to reject the City Attorney's August 23, 2010 advice because the August 23, 2010 advice does not correctly cite Charter sections 509, 571 and 574, and fails to cite either City Attorney Opinion No. 2006:1 or the *Patton* case?"
8. Why should the Fire Commission, the Fire Chief or the Independent Assessor follow the advice set forth in the City Attorney's August 23, 2010 memorandum when it does not properly cite Charter sections 509, 574 and 571, when it fails to cite City Attorney Opinion No. 2006:1, when it fails to cite a controlling decision of the Court of Appeal in *Patton*, and is obviously questionable when it says the Fire Commission has no role in personnel and disciplinary matters and the Fire Chief has exclusive jurisdiction over discipline?
9. Why should the Fire Commission, the Fire Chief or the Independent Assessor follow the advice set forth in the City Attorney's August 23, 2010 memorandum when the City Attorney's May 16, 2011 advice memorandum does cite City Attorney Opinion No. 2006:1 and the Court of Appeal's controlling decision in the *Patton* case to support the statement that the Fire Chief's actions to discharge and suspend employees are "subject to review and corrective instruction from the Fire Commission?"
10. What requires the Fire Commission, the Independent Assessor or the Fire Chief to follow the City Attorney's non-published and informal August 23, 2010 advice when controlling legal authority in a published Court of Appeal decision describing the "ultimate" power and authority of a City of Los Angeles commission over discipline is cited and relied on by the City Attorney's May 16, 2011 advice that says the Fire Chief's actions to discharge or suspend employees are "subject to review and corrective instruction from the Fire Commission?"
11. Why did Deputy City Attorney Jackson fail to inform the Fire Commission that the City Attorney issued a May 16, 2011 advice memorandum indicating that the Fire Chief's actions to discharge and suspend employees are "subject to review and corrective instruction from the Fire Commission when urging the Fire Commission to not adopt the Independent Assessor's policy statement on the basis of the City Attorney's August 23, 2010 advice that said the Commission has no role in personnel and disciplinary actions and the Fire Chief has exclusive jurisdiction over discipline?"

Direct client communications:

My March 2010 report concerning the Fire Department's disciplinary process raised concerns about the Independent Assessor's access to Fire Department information. In May 2010, I asked questions about the authority of the Fire Commission and my authority as the Independent Assessor and was told the City Attorney's Office would discuss their opinion with me. In December 2010 the Mayor's Office provided two of you with a draft of my concerns about your August 23, 2010 advice. On August 17, 2010, Deputy City Attorney Jackson told the Fire Commission they could ask questions about and discuss the City Attorney's legal advice but had to do it in public.

On September 21, 2011, Chief Assistant City Attorney Pete Echeverria publicly proposed having the Commission appoint a subcommittee to discuss the City Attorney's advice in private. The Fire Commission made it clear that I was to be a part of the private discussion sought by the City Attorney's Office. I helped draft written questions about the City Attorney's advice concerning the Independent Assessor's authority that were sent by that subcommittee to the City Attorney in January 2011. When the Commission's subcommittee and I met with the City Attorney's Office on March 1, 2011, the City Attorney's Office did not answer the written questions sent to your office in January 2011. The written questions have not been answered at any time since the March 1, 2011 meeting.

As your client, please explain why your office:

1. Failed to discuss the Independent Assessor's authority directly with me at anytime since publication of my March 27, 2010 report concerning the Fire Department's disciplinary process, and
2. Failed to answer the written questions about the City Attorney's August 23, 2010 advice memorandum sent to your office by the Fire Commission's subcommittee in January 2011 that I helped draft.

Given these issues and questions are not new and have been pending for so long, and I am your client, please provide an expeditious and complete response. I realize that you have grown quite tired of my questions. However, as your client I have every right to ask questions and obtain satisfactory answers concerning my legal authority. While I certainly have no authority to practice law or provide legal advice on behalf of the City, I have every right to ask questions that are informed by my experience and by my review of relevant materials in your law library. There is nothing that requires that I depend solely on or be satisfied by the inquiry the Fire Chief, others in the Fire Department, or even the Fire Commission may or may not conduct concerning my lawful authority. Thank you,
Steve

Vivienne Swanigan <vivienne.swanigan@lacity.org>
To: stephen.miller@lacity.org

Wed, Jul 27, 2011 at 4:30 PM

Your message

To: Vivienne Swanigan
Subject: Legal Advice Questions
Sent: 7/27/11 4:28:42 PM PDT

was read on 7/27/11 4:30:43 PM PDT

Zna Houston <zna.houston@lacity.org>
To: stephen.miller@lacity.org

Wed, Jul 27, 2011 at 4:31 PM

Your message

To: Zna Houston
Subject: Legal Advice Questions
Sent: 7/27/11 4:28:42 PM PDT

was read on 7/27/11 4:31:35 PM PDT

Wed, Jul 27, 2011 at 4:35 PM

Alexa Daniels-Shpall <alex.daniels@lacity.org>
To: stephen.miller@lacity.org

Your message

To: Alexa Daniels-Shpall
Subject: Legal Advice Questions
Sent: 7/27/11 4:28:42 PM PDT

was read on 7/27/11 4:35:38 PM PDT

Wed, Jul 27, 2011 at 4:39 PM

Janet Jackson <janet.jackson@lacity.org>
To: stephen.miller@lacity.org

Your message

To: Janet Jackson
Subject: Legal Advice Questions
Sent: 7/27/11 4:28:42 PM PDT

was read on 7/27/11 4:39:19 PM PDT

Wed, Jul 27, 2011 at 4:48 PM

Pete Echeverria <pete.echeverria@lacity.org>
To: stephen.miller@lacity.org

Your message

To: Pete Echeverria
Subject: Legal Advice Questions
Sent: 7/27/11 4:28:42 PM PDT

was read on 7/27/11 4:48:36 PM PDT

Wed, Jul 27, 2011 at 8:50 PM

Tolentino, Casimiro@DSS <Casimiro.Tolentino@dss.ca.gov>
To: "stephen.miller@lacity.org" <stephen.miller@lacity.org>

Your message was read on Thursday, July 28, 2011 3:50:59 AM UTC.

 ATT00001
1K

Tue, Aug 2, 2011 at 12:32 PM

Vivienne Swanigan <vivienne.swanigan@lacity.org>
To: Stephen Miller <stephen.miller@lacity.org>
Cc: "Echeverria, Pete" <pete.echeverria@lacity.org>, Zna Houston <Zna.Houston@lacity.org>, "Hudley-Hayes, Genethia" <olivehayes315@att.net>, "Jackson, Janet" <janet.jackson@lacity.org>

Please be advised that my Office will be responding to you.

Also, it was a pleasure finally meeting you in person the other day. - Vivienne

[Quoted text hidden]

***** Confidentiality Notice *****

This electronic message transmission contains information from the Office of the Los Angeles City Attorney, which may be confidential or protected by the attorney-client privilege and/or the work product doctrine. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify us immediately by e-mail and delete the original message and any attachments without reading or saving in any manner. (v1.5)

Stephen Miller <stephen.miller@lacity.org>

Tue, Aug 2, 2011 at 12:51 PM

To: Vivienne Swanigan <vivienne.swanigan@lacity.org>

Cc: "Echeverria, Pete" <pete.echeverria@lacity.org>, Zna Houston <Zna.Houston@lacity.org>, "Hudley-Hayes, Genethia" <olivehayes315@att.net>, "Jackson, Janet" <janet.jackson@lacity.org>

Bcc: alexa Daniels-Shpall <alexa.daniels@lacity.org>

The pleasure was mine and thank you.

[Quoted text hidden]

Janet Jackson <janet.jackson@lacity.org>

Tue, Aug 2, 2011 at 1:01 PM

To: stephen.miller@lacity.org

Your message

To: Janet Jackson

Subject: Re: Legal Advice Questions

Sent: 8/2/11 12:51:59 PM PDT

was read on 8/2/11 1:01:11 PM PDT

Vivienne Swanigan <vivienne.swanigan@lacity.org>

Tue, Aug 2, 2011 at 1:02 PM

To: stephen.miller@lacity.org

Your message

To: Vivienne Swanigan

Subject: Re: Legal Advice Questions

Sent: 8/2/11 12:51:59 PM PDT

was read on 8/2/11 1:02:51 PM PDT

Tue, Aug 2, 2011 at 1:08 PM

Zna Houston <zna.houston@lacity.org>
To: stephen.miller@lacity.org

Your message

To: Zna Houston
Subject: Re: Legal Advice Questions
Sent: 8/2/11 12:51:59 PM PDT

was read on 8/2/11 1:08:05 PM PDT
