



Memorandum

TO: RULES COMMITTEE

FROM: Lee Price, MMC
City Clerk

SUBJECT: RESPONSE TO PUBLIC RECORDS **DATE:** March 28, 2007
ACT-POTENTIAL SOCCER STADIUM

RECOMMENDATION

On March 28, 2007 the Rules and Open Government Committee referred this communication from the City Attorney's Office to the Mercury News regarding a potential soccer stadium to be placed on the April 4, 2007 agenda of the Rules and Open Government Committee for discussion.

A handwritten signature in cursive script, appearing to read "Lee Price".

LEE PRICE, MMC
City Clerk

March 28, 2007

BY EMAIL

Mr. Barry Witt
San José Mercury News

**Re: Response to Public Records Act — Potential Soccer Stadium
Transmitted via electronic transmission on March 22, 2007**

Dear Mr. Witt:

This is in response to your public records request described above in which you have requested documents “submitted by Lew Wolff’s organization related to his attempts to secure a new stadium for a Major League Soccer team....which should include any records, whether electronic or otherwise, submitted by Lew Wolff or his representatives to the [C]ity in regard to rebuilding Spartan Stadium or paying for stadium construction through a general plan change elsewhere in the [C]ity.”

As you noted in your electronic message, my Office (in coordination with the City Manager’s Office) previously informed you last week, in response to your oral request for a copy of any such written proposal from Mr. Wolff’s organization, that disclosure of this very preliminary, draft document is exempt from public disclosure under the provisions of the California Public Records Act (California Government Code sections 6250 *et. seq.*). You have asked the City to reconsider this position. After careful consideration of your request, we believe the public interest is better served at this time by not disclosing this very preliminary document while ongoing discussions regarding its concepts remain pending and that disclosure may properly await conclusion of such discussions.

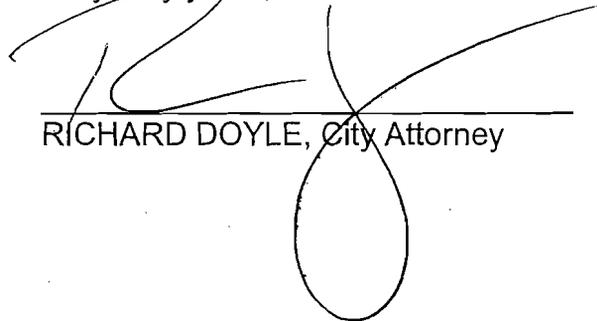
This approach is recognized and supported by the provisions of the Public Records Act. Under Sections 6254(a) and 6255 of the Act, preliminary draft documents not retained by the City in the ordinary course of business may be withheld from disclosure if the public interest in withholding the document clearly outweighs the public interest in its disclosure. Dissemination of a very preliminary document at this early juncture would not serve the public interest inasmuch as City staff have not yet had an opportunity to meet in order to review or evaluate the document, any discussions and preliminary negotiations related to such matter remain currently pending, and disclosure at this early point may jeopardize or adversely impact those discussions as well as

possibly disseminate misinformation or misperceptions about this matter to the public. Additionally, discouraging or hindering the ability of major sports teams, developers or other entrepreneurs from approaching the City staff privately to explore and discuss preliminary ideas, concepts or innovative proposals jeopardizes the ability of the City to investigate, research and ultimately obtain the best social and economic results for the City.

While I strongly support the public's interest in scrutinizing and commenting upon any proposal ultimately brought forward for City Council consideration, that review and those comments would be *most* effective: (a) after preliminary discussions are completed, so that a firmer proposal has an opportunity to crystallize, and (b) certainly well before any City Council action on a proposal so that the public has a meaningful opportunity to provide input.

Thank you again for your communication on this matter.

Very truly yours,



RICHARD DOYLE, City Attorney