



OFFICE OF THE

# DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

February 24, 2016

City of Garden Grove  
Scott Stiles, City Manager

Re: Allegations of Brown Act Violations  
District Attorney Investigations Case # S.A. 14 -130

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SENIOR ASSISTANT D.A.  
VERTICAL PROSECUTIONS/  
VIOLENT CRIMES

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CHIEF OF STAFF

The Office of the Orange County District Attorney (OCDA) has completed an investigation regarding Ralph M. Brown Act violations by the City Council for the City of Garden Grove.

The district attorney is authorized not only to prosecute violations of the Brown Act, but short of litigation, the district attorney's office may issue public findings concerning, and/or admonitions, to offending local agencies.

The Brown Act [codified in Government Code §54950 *et seq*] is intended to ensure the public's right to attend the meetings of public agencies.... The Act thus serves to facilitate public participation in all phases of local government decision making and to curb misuse of the democratic process by secret legislation of public bodies. *Mckee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App. 4<sup>th</sup> 354, 358.

## OVERVIEW

This letter contains a description of the scope and legal conclusions resulting from the OCDA investigation into the allegations that the Garden Grove City Council violated the Brown Act in August and September of 2014. This letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the allegations and determining whether there is sufficient evidence to prove beyond a reasonable doubt that a crime was committed.

In early December 2014, the OCDA received information from law enforcement regarding possible violations of the Brown Act by the Garden Grove City Council in connection with creating the new position of Public Safety Administrative Officer and appointing David Barlag to this newly created position. Subsequently, OCDA also received a complaint from a resident of Garden Grove regarding similar allegations.

The OCDA conducted an independent and thorough investigation of the facts and circumstances surrounding these allegations and impartially reviewed all available evidence and legal standards. The scope and findings of this investigation and legal review are expressly limited to determining whether the Brown Act was violated during the process of creating the position of Public Safety Administrative Officer.

## PROCEDURAL BACKGROUND

The initial information OCDA received alleged that the City of Garden Grove violated the Brown Act by creating the position of Public Safety Administrative Officer in a closed session meeting of the City Council. It was further alleged that the Garden Grove City Council appointed Garden Grove Fire Department (GGFD) Chief Barlag to this newly created position as part of an agreement between the City and Barlag after Barlag resigned his position as the Fire Chief of GGFD, and that this agreement was entered into in order to compensate Barlag for his resignation as Fire Chief of GGFD after a vote of no-confidence by the Firefighters' Union (Union). Any reference in this letter to "City Council" is intended to mean the Garden Grove City Council members and the mayor. The following is a list of individuals referenced in this letter:

- Bruce Broadwater: Then-Mayor of Garden Grove. He was voted out of office in November 2014 with his term ending in December 2014.
- Matthew Fertal: Then-City Manager of Garden Grove. Fertal was appointed the City Manager in February 2004, and he retired in December 2014.
- David Barlag: Public Safety Administrative Officer of Garden Grove. Prior Fire Chief of GGFD.
- Jeremy Broadwater: GGFD firefighter. Prior Garden Grove Park Ranger for approximately seven years. Son of former Mayor Bruce Broadwater.
- Steve Jones: Councilmember, City of Garden Grove.
- Kris Jones: Councilmember, City of Garden Grove.
- Dina Nguyen: Then-Councilmember, City of Garden Grove.
- Chris Phan: Councilmember, City of Garden Grove. Chris Phan is currently an Orange County deputy district attorney. The OCDA consulted with the California Attorney General's Office (CAG) prior to the commencement of this investigation, and the CAG concluded that it was appropriate for OCDA to investigate this matter notwithstanding the fact that Chris Phan is also employed as an Orange County deputy district attorney.
- Thomas Nixon: Then-Garden Grove City Attorney.

During this investigation and legal review, the OCDA obtained and considered a wide range of documents, including but not limited to the following documents:

- Agreement and release between the City of Garden Grove and Barlag;
- Garden Grove Resolution – salary plan for the position of Public Safety Administrative Officer;
- Emails and City documents belonging to Fertal;
- 35 emails and attachments from Barlag;
- Copies of all California Public Record Act requests filed with the City of Garden Grove from June 1, 2014, to March 9, 2015, relating to Barlag, and any responsive documents or letters submitted by the City of Garden Grove in response to such Public Record Act requests;
- Expense reports for Barlag;
- Statements of earnings for Barlag;
- Personnel records relating to Jeremy Broadwater's application to become a GGFD firefighter as well as records relating to his interviewing process;
- The letter communicating the Union's Vote of No Confidence in Barlag;
- All written correspondence between the City of Garden Grove and Barlag;
- Work product generated by Barlag from Sept. 30, 2014, to March 20, 2015; and
- City of Garden Grove records relating to City Council meetings and agendas.

In addition to reviewing records and documents, OCDA interviewed in excess of 20 individuals connected to the subject matter of the investigation.

On Feb. 6, 2015, prior to attempting to interview any official from the City of Garden Grove, OCDA requested that the Garden Grove City Council waive any potential attorney-client privilege relating to the subject matter of this investigation. This waiver was requested so that OCDA could interview all involved officials without having any such official refuse to answer questions on the grounds that the answers would violate the attorney-client privilege. Six days later, on Feb. 12, 2015, then-interim City Manager Allan Roeder confirmed to our office that the Garden Grove City Council agreed to the OCDA's request and waived the attorney-client privilege as it relates to the subject matter of this investigation. We thank them for their cooperation.

### FACTUAL BACKGROUND

In November 2012, Barlag was appointed the Fire Chief of GGFD. The position of Fire Chief was an "at-will" position within the City of Garden Grove as detailed in a resolution approved by the City Council. An "at-will" appointment can be terminated by the City without cause. Barlag did not have a contract with the City guaranteeing him the position of Fire Chief for any specified period of time. As the Fire Chief of the GGFD, Barlag earned an annual salary of \$226,599.96. Prior to his appointment as Fire Chief, Barlag had worked for GGFD for about 30 years and rose through the ranks of the department after starting as a firefighter. Barlag was appointed Fire Chief by Garden Grove City Manager Fertal, who had the authority to make the appointment.

In October 2013, Jeremy Broadwater, who had previously worked for about seven years as a Garden Grove park ranger, was hired, at Barlag's direction, as a Garden Grove firefighter.

In June 2014, the Garden Grove Firefighters' Union held a "Vote of No Confidence" in Barlag as their Fire Chief. The Union notified the City Manager and the City Council of their vote of no confidence in Barlag, and also cited internal issues over the hiring of Jeremy Broadwater by Barlag as one of the reasons for their lack of confidence in Barlag's leadership. As a result of the management related issues at GGFD and the vote of no confidence as reported by the Union, the City Manager with the approval of the City Council retained the services of Management Partners, an independent management consulting firm, to conduct an audit of GGFD and identify problems within the department.

Between August 2014 and October 2014, a verbal report compiled by Management Partners was given to the City Manager. The City Manager subsequently verbally relayed the conclusions of the report to the members of the City Council. The report compiled by Management Partners identified the following issues at GGFD:

- Barlag not exercising appropriate managerial control;
- Lack of appropriate discipline within GGFD; and
- An appearance of favoritism by Barlag in hiring Jeremy Broadwater as a firefighter.

In early August 2014, Barlag contacted the Garden Grove City Attorney and notified him that he (Barlag) had spoken to a lawyer. In his conversation with the City Attorney, Barlag threatened litigation against the City of Garden Grove if he were removed as Fire Chief of the GGFD. Barlag also notified the City Manager of his intent to sue the City of Garden Grove if removed as Fire Chief. On Aug. 12, 2014, after speaking to Barlag earlier in the month, the City Attorney and the City Manager briefed the City Council in a closed session meeting about Barlag's threat of litigation. After they briefed the City Council on what they

described as a credible threat of litigation by Barlag, and without any meaningful discussion about the fact that Barlag was an "at-will" employee or the fact that the City could terminate Barlag's appointment without cause, the City Council directed the City Manager to find a resolution to Barlag's threat of litigation. It also became apparent that some members of the City Council concluded that Barlag should no longer remain the Fire Chief of GGFD because they lost confidence in his ability as well as his effectiveness in leading the department.

Thereafter, the City Manager proposed a solution to the City Council to the situation they were confronting in a closed session meeting. The City Manager proposed creating a new position for Barlag with the City of Garden Grove in exchange for removing him as the Fire Chief of the GGFD. Acting on Fertal's recommendation, the City Council directed the City Manager, in a closed session meeting, to move forward with his proposal and negotiate a resolution with Barlag. The City Manager and the City Attorney drafted a settlement agreement between Barlag and the City of Garden Grove. The agreement included the following terms:

- Barlag's resignation as Fire Chief of GGFD;
- The creation of the position of Public Safety Administrative Officer in the City of Garden Grove;
- Upon Barlag's resignation as the Fire Chief of GGFD, Barlag would be appointed as the City's first Public Safety Administrative Officer;
- Barlag's new salary as the City's Public Safety Administrative Officer would be the salary he was earning as the Chief of GGFD (\$226,599.96) plus a training premium of five percent;
- Barlag would no longer receive a vehicle allowance, which he was receiving as the Fire Chief of GGFD;
- Barlag would be able to hold the position of Public Safety Administrative Officer for over two years and will retire from the City on Dec. 31, 2016;
- Barlag's enhanced salary as the City's Public Safety Administrative Officer would continue to count toward the calculation of his pension from the City upon his retirement in December 2016;
- The City would pay Barlag's attorney's fees in the amount of \$3,750; and
- A confidentiality non-disclosure clause will be included as part of the agreement.

The Public Safety Administrative Officer position was a new position in the City of Garden Grove. This position did not previously exist, and there was never a discussion about any need for such a position prior to the settlement agreement between the City and Barlag. This new position was created without a resolution of the City Council prior to the settlement agreement with Barlag. In total, the City Council held three closed session meetings in connection with this matter. The three closed session meetings were held on Aug. 12, 2014; Aug. 26, 2014; and Sept. 23, 2014. On Sept. 29, 2014, Barlag notified the City Manager in an email of his intent to resign as Fire Chief of GGFD after 32 years of service with the City.

On Sept. 30, 2014, the settlement agreement reached between the City of Garden Grove and Barlag was signed by both parties and it became effective immediately; Barlag was appointed as the City's Public Safety Administrative Officer and he was also referred to as the City's Public Safety Director. Barlag immediately started drawing an increased salary. None of these actions were properly created or approved on that date. Not until there was public inquiry was the position of Garden Grove Public Safety Administrative Officer, along with increased salary and benefits, properly created or authorized through open deliberations.

On or about Oct. 14, 2014, Management Partners completed and submitted their final written report regarding the management of GGFD. The written report included the above listed points from the verbal review previously provided to the City Council by the City Manager.

Acting under the pressure of multiple Public Records Act requests by members of the media, on Nov. 25, 2014, the City Council, in an open public session, adopted and ratified an amendment to Resolution Number 9251-14, publicly creating the new position of Public Safety Administrative Officer. This was the first public act by the City Council regarding the secret creation of a new position that paid over a quarter million dollars annually in public money.

On Dec. 8, 2014, the above detailed allegations relating to possible Brown Act violations were reported to OCDA by the Garden Grove Police Department. Shortly thereafter, in a conversation covertly taped by OCDA, Barlag stated that he (Barlag) and the City Manager had an understanding about Barlag's new position as Public Safety Administrative Officer. Barlag stated that his understanding with the City Manager was that Barlag will not be required to report to the City for work and it was based on this specific understanding that Barlag was no longer collecting a car allowance as part of the agreement signed on Sept. 30, 2014.

After his interview with OCDA on Feb. 19, 2015, and at the request of OCDA, the City Attorney provided OCDA with a legal memorandum detailing his legal position for why he felt it was legally appropriate for the City Council to hold closed session meetings in connection with the creation of the new position of Public Safety Administrative Officer, and why he felt it appropriate to keep such action secret until the City was forced to reveal it under the pressure of multiple Public Records Act Requests. We do not agree with that analysis with respect to the creation of a new job.

## LEGAL ANALYSIS

### 1. Open Meetings

The Brown Act is codified in Government Code section 54950 *et seq.* Broadly, the Brown Act requires legislative bodies, including City Councils, to conduct the public's business in public. (Preamble, Government Code section 54950.) With certain limited exceptions, all meetings of the legislative body must be open to any member of the public to attend. (Government Code section 54953.) Before any decisions are made, members of the public must be given notice, by putting the item on the agenda, that the topic will be discussed at a particular meeting. (Government Code section 54954.2.) If an item is not on the agenda, it may not be discussed or voted on in the public meeting. (Government Code section 54954.2.) Furthermore, members of the public must be given the opportunity to comment on the matter before a vote is taken or a decision is made. (Government Code section 54954.3.) Under the Brown Act, private or secret meetings between a majority of the members of the legislative body are prohibited. (Government Code section 54952.2.) However, under certain limited circumstances, a legislative body may meet in "closed session" to discuss certain matters, such as labor or real property negotiations (Government Code sections 54957.6 & 54956.8), certain personnel matters (Government Code section 54957,) and to confer with legal counsel regarding "pending litigation," (Government Code section 54956.9.)

### 2. Anticipated/Pending Litigation Exception

In order for OCDA to file criminal charges for a violation of the Brown Act, the OCDA must be able to prove beyond a reasonable doubt a specific intent and mental state on the part of the accused. Government Code section 54959 requires that each "member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor."

Based on the position taken by the City Attorney, it appears that the Garden Grove City Council, on the advice of the City Attorney, relied on the "pending litigation" exception by holding multiple closed session

meetings to discuss Barlag and the creation of the new position of Public Safety Administrative Officer. Regarding the "pending litigation" exception to the Brown Act requirements, Government Code section 54956.9 (d) provides the following:

"Litigation shall be considered *pending* when any of the following circumstances exist:

- (1) Litigation, to which the local agency is a party, has been initiated formally.
- (2) A point has been reached where, *in the opinion of the legislative body* of the local agency *on the advice of its legal counsel*, based on existing facts and circumstances, *there is a significant exposure to litigation against the local agency.*
- (3) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2).
- (4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation."

The courts have also recognized the need for a legislative body to confer in closed session with legal counsel when contemplating taking action which will likely result in litigation. In *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4<sup>th</sup> 1099, the Court of Appeal agreed with the County Board of Supervisors' conclusion that the "pending litigation" exception applied to a closed session discussion of the County's decision to cut Medicare funding to the King/Drew Medical Center, even though no lawsuit had yet been filed as a result of the decision.

### 3. Civil/Criminal Enforcement

#### a. Civil Litigation

As to civil enforcement, the allegation of Brown Act violations were submitted to the OCDA on Dec. 8, 2014, more than 90 days after the first closed session meeting on Aug. 12, 2014. In addition, by the time the allegations were submitted to the OCDA, the City Council had already cured the alleged violation by holding a public meeting and taking a public vote on the matter. Therefore, seeking a civil remedy is not an option since the City of Garden Grove had already taken corrective action on Nov. 25, 2014, by voting publicly on the creation of the position of Public Safety Administrative Officer.

#### b. Criminal Prosecution

In order to prove a Brown Act violation beyond a reasonable doubt, we must fairly consider the arguments and information provided to OCDA at our request by the Garden Grove City Attorney. The City Attorney's legal position is essentially that the City Council was allowed to discuss Barlag's situation in closed session, without reporting their actions, because Barlag had threatened to sue the City. The City Attorney argues that these closed session discussions pertaining to a pending litigation are authorized by Government Code section 54957.1(a)(3). The claimed legal reason for the City Attorney's assertion that the action taken in the closed session meetings did not need to be reported out is because the action was, ostensibly, to authorize the City Manager to offer employment to Barlag in exchange for Barlag waiving any legal claims he may have against the City. Therefore, the City Attorney took the position that the City Council's action did not settle the lawsuit *per se*, and therefore it was not required to be reported out in a public session because the offer to settle still had to be accepted by Barlag before it went into effect. This position was asserted by the City Attorney because if the City Council approved a settlement already agreed to by Barlag in a closed session, the Brown Act would have required this action to be disclosed to the public in open session, at the conclusion of the closed session.

In deciding if OCDA can prove beyond a reasonable doubt that this reliance on the "pending litigation" exception was a ruse or a pretext, we have to fairly and reasonably consider the following two legal points.

First, the open session requirements of Government Code section 54957.1(a)(5) apply only to actions taken as a result of a complaint or charges made against the affected City employee in accordance with Government Code section 54957, and only when an open session is requested by the affected employee. In this case, the affected employee is Barlag and he never made such a request. In *Furtado v. Sierra Community College* (1998) 68 Cal.App.4<sup>th</sup> 876, a former employee of the community college challenged the decision of the college's board of trustees to not renew her contract. The superior court ruled against her and she appealed, arguing that the board's decision violated the Brown Act. The court of appeal rejected her argument and held that the open session requirement applies only to the portion of the meeting pertaining to specific complaints or charges brought against the employee. (*Furtado, supra*, at pp. 880-882.) And even then, the Brown Act only requires that the discussions take place in open session when requested by the affected employee. (*Ibid.*) The court went on to note that in drafting the Brown Act, "the Legislature has drawn a reasonable compromise, leaving most personnel matters to be discussed freely and candidly in closed session ... ." (*Id.* at p. 882.)

In the present case, even if the City Council's reliance on the pending litigation exception was a ruse, and its primary objective was to discuss Barlag's employment, the discussion would only need to be held in an open session if it were a result of a complaint or charge brought against Barlag. Even then, the discussion would only need to be held in an open session if Barlag specifically requested that the complaint or charges be discussed in open session. While it could easily be argued that the City Council's discussion came about as a result of a complaint or charge pertaining to Barlag's recent personnel related decisions while at the helm of the GGFD, there is no indication whatsoever that Barlag requested a public airing of the grievance in an open session. Quite the contrary, there is every indication that Barlag wanted this matter resolved quietly and privately.

Accordingly, because there was no request by Barlag to discuss the complaints or charges in an open session, the requirements of Government Code section 54957.1(a)(5) do not apply, and OCDA cannot rely on this section to prove, beyond a reasonable doubt, that the City Council's actions violated the Brown Act.

Secondly, we have to take into account the fact that the action taken by the City Council did **not immediately affect** Barlag's employment status. The Brown Act only requires immediate reporting of a closed session action when the action immediately affects the employment status of the employee. In *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4<sup>th</sup> 1165, the plaintiff sued to block the Library Commission's nomination of candidates for City Librarian. The plaintiff argued that the Brown Act (as well as the City of San Francisco's *Sunshine Ordinance*) required that the Commission's discussion be held in open session. In the alternative, the plaintiff argued that the Commission's decision, made in closed session, should have immediately been reported out. In rejecting the plaintiff's arguments, the court of appeal reasoned that because the Commission's decision was to *nominate* candidates for City Librarian, only one of which was to be *appointed* at a later date by the mayor, the closed session discussion was proper and the action taken need not be reported out. The court of appeal noted that the "plain reading of these statutes compels the conclusion that only actions taken in closed session which *immediately* affect the employment status of a public official are to be reported the same day." (*Gillespie, supra*, at p. 1175; *emphasis in original.*) The court of appeal relied heavily on an Attorney General's Opinion (*Compensation of Hospital Administrator*, Attorney General's Opinion No. 79-1110, 63 Ops.Cal.Atty.Gen. 215 (1980)) which concluded that "to require a public report on all 'action taken' in executive [closed] session on 'personnel matters' could effectively destroy the 'personnel exception.'" (*Id.*, at p. 1176, quoting from page 220 of the Attorney General's Opinion.)



In the present case, the action taken by the Garden Grove City Council was to authorize the City Manager to offer a new position with the City to Barlag, and this new position was to take effect at a future date after the closed session meeting. In addition, the offer of new employment to Barlag was conditional upon Barlag resigning as Fire Chief of GGFD and waiving any legal claims he may have against the City of Garden Grove. Like the decision made by the library commission in *Gillespie*, there is an argument to be made that the action taken by the Garden Grove City Council did not *immediately* affect the employment status of Barlag. The new employment of Barlag did not take effect immediately on any of the days of the closed session meetings, and the terms and conditions still needed to be agreed to by Barlag. As a result, even if the City's pending litigation argument was simply a ruse to take action on Barlag's employment status, the way in which the City Council went about it, whether intentional or not, appears to give the City Council a defense against the applicability of the reporting requirements of the Brown Act. Consequently, because the courts have been inclined to show a deference to a City Council handling employment matters in closed sessions, the conclusion that the Garden Grove City Council's action was primarily an employment decision, and only tangentially related to a pending litigation, and the OCDA would likely come up short of being able to prove a violation of the Brown Act beyond a reasonable doubt.

Accordingly, it is our opinion that there is a lack of sufficient evidence to prove a violation of the Brown Act beyond a reasonable doubt, and therefore, it will not be appropriate for the OCDA to file criminal charges alleging a violation of the Brown Act under the anticipated/pending litigation exception.

### OCDA'S FINDINGS AND CONCERNS

OCDA believes it is necessary to make findings and recommendations. It is the position of OCDA that the actions taken by the City of Garden Grove in this instance violated the spirit and intent of the Brown Act. Even though there are no litigation remedies available to us, it is important that the OCDA makes public findings.

We do not believe the City Attorney's legal analysis on this topic to be convincing. It is our opinion that there is a reasonable inference that the City Council simply used the pending litigation exception as a ruse or a pretext to get around the disclosure requirements of the Brown Act with respect to actions taken in closed session which affect employment status in accordance with Government Code section 54957.1(a)(5).

Our investigation concluded, and the City of Garden Grove has acknowledged, that it is the City Manager who makes employee decisions as to hiring, evaluation and termination, not council members. Garden Grove's City Council only governs the appointment of the City Manager. All other employee decisions are made by the City Manager. In that the City Manager makes employee decisions, previous California Attorney General Opinions have held that in those situations, the governing body (city council) has no authority to meet in closed session concerning the staff. (Attorney General's Opinion, 85 Ops.Cal.Atty.Gen. 77 (2002).)

What we have learned in our investigation is as follows:

- Closed session held Aug. 12, 2014, under the "Anticipated Litigation" exception, discussed employment status of Barlag.
- Closed session held Aug. 26, 2014, under the "Anticipated Litigation" exception, discussed employment status of Barlag.
- Closed session held Sept. 23, 2014, under the "Anticipated Litigation" exception, discussed employment status of Barlag.



- Councilmembers in closed session discussed the creation of a job that previously did not exist, Public Safety Administrative Director.
- Councilmembers in closed session discussed Barlag being made the Public Safety Administrative Director effective immediately upon signing the agreement.
- Councilmembers, along with the City Manager and City Attorney, in closed session did not discuss nor remember discussing the fact that Barlag was an “at-will” employee.
- Councilmembers, along with the City Manager and City Attorney, in closed session did not discuss nor remember discussing if there were any merits to Barlag’s threat of litigation.
- No councilmember in closed session, along with the City Manager and City Attorney, objected to any of the above-described actions.
- On Sept. 30, 2014, Barlag signed “CITY OF GARDEN GROVE SETTLEMENT AGREEMENT AND GENERAL RELEASE”.
- On Sept. 30, 2014, Barlag started receiving salary and benefits in the position of Public Safety Administration Officer.
- Until public and press inquiries, there was no requirement that Barlag report to work in the City of Garden Grove.
- The position of Public Safety Administration Officer was not officially created until the city council meeting on Nov. 25, 2014, in open session, on a vote of four votes for and one against.

It is our perception that the “Anticipated Litigation” exception to the Brown Act was manipulated in such a way to allow the Garden Grove City Council to go into closed session to allow the City Council to delay the public from finding out what their elected officials were doing with respect to the resignation of Barlag as Fire Chief, the creation of a highly paid new position, and the selection of Barlag to that position.

Based on the entirety of all the available evidence in this case, there appears to be reasonable cause to believe that the reliance by the former City Attorney and the former City Manager on this exception to the Brown Act requirement of Open Public Meetings is merely a pretext to keep this situation a secret for reasons not allowed under the Brown Act. Barlag was an “at-will” employee who could be terminated without cause. It is true that Barlag, just like any other “at-will” employee, could not be terminated for an “illegal cause.” An employee’s national origin, ethnic background, or sexual orientation are some of the examples of “illegal causes.” However, in Barlag’s situation, the need for terminating his employment had nothing to do with any illegal cause. In addition, the City Council was also aware of an independent audit prepared by an outside consulting firm showing ample cause to doubt the effectiveness of Barlag as the Fire Chief of GGFD.

### RECOMMENDATIONS


In light of the above detailed facts and circumstances, OCDA is recommending that the Garden Grove City Council consider adopting the following steps in the interest of promoting public transparency:

1. To record any and all future closed session meetings for a period of at least two years, effective immediately, in accordance with the provisions of Government Code section 54690;
2. If a new employment position is created in the future by the Garden Grove City Council, the City Council commits to disclose the creation of the new position in public before filling the position;
3. The Garden Grove City Council commits to refrain from relying on the ‘pending litigation’ exception, provided for in Government Code Section 54956.9, to create a new City position in closed session, without reporting this action immediately at the conclusion of the closed session meeting; and

4. The City audits the work and performance of the newly created "Public Safety Administrative Officer" to assure the public that the position is not a "no show" job.

Accordingly, the OCDA is closing its inquiry into this matter.

  
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MICHAEL LUBINSKI  
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