



- **Board of Directors**

7/12/2022 Board Meeting

8-1

Subject

Approve public release of documents by Shaw Law Group, PC concerning its investigations of equal employment opportunity complaints by four employees, by waiving the attorney-client privilege and confidentiality in specified documents; the General Manager has determined that the proposed action is exempt or otherwise not subject to CEQA [Conference with legal counsel – anticipated litigation; based on existing facts and circumstances, including receipt of a legal claim threatening litigation, there is significant exposure to litigation against Metropolitan: unknown number of potential cases; to be heard in closed session pursuant to Gov. Code Section 54956.9(d)(2)]

Executive Summary

In June 2022, the Board voted to place an action item on the July 2022 Board agenda, for the Board to consider whether to approve the public release of reports prepared by Shaw Law Group, PC (SLG) of its investigations of equal employment opportunity (EEO) allegations. The release would require the Board's waiver of the attorney-client privilege and confidentiality which are applicable to the reports.

This Board letter contains public, non-confidential information regarding this action item. An accompanying confidential Board letter on this item has also been provided to the Board.

Details

In 2021, SLG conducted a climate assessment of Metropolitan on EEO issues, coordinated by the Ethics Office. SLG provided Metropolitan with its privileged climate assessment report in July 2021. In July 2021, the Board voted to waive the attorney-client privilege and publicly release the climate assessment report, with certain confidentiality redactions. The climate assessment report, with the approved redactions, has been posted publicly on Metropolitan's website since that time.

Also in 2021, SLG conducted four investigations of EEO allegations raised by four employees, coordinated by the Ethics Office under an agreement between SLG and the Ethics Office on behalf of Metropolitan. For each investigation, there was a report with SLG's factual determinations issued in August 2021, followed by a report with SLG's policy determinations and recommendations issued in September 2021. The role of the Ethics Office in coordinating the investigations ended on September 24, 2021, when SLG's completed reports were provided to the Assistant General Manager overseeing Human Resources, who was also serving as the interim EEO Officer, for resolution.

Like most entities, Metropolitan treats EEO investigations and reports as confidential. In addition, the SLG investigation reports are attorney-client privileged.

The investigation reports and related documents have been requested in Public Records Act (PRA) requests by the Los Angeles Times and AFSCME, Local 1902. The reports are not subject to public disclosure because they are

privileged, unless the Board waives the privilege. They are also subject to a balancing of interests (the public's interest in disclosure balanced with the public's interest in protecting individual privacy rights) under PRA law.

At the January 2022 Organization, Personnel and Technology (OP&T) Committee meeting, the Ethics Officer provided the Board with a briefing on the investigations and SLG's findings. The Ethics Officer explained that the Ethics Office ensured the investigations were conducted independently in an objective and fair manner. He explained that seven out of 16 allegations were substantiated by SLG, based on a standard of whether it was more likely than not that the conduct alleged occurred. He identified each allegation and explained whether it was substantiated or unsubstantiated, without identifying individuals involved.

Also at the January 2022 OP&T meeting, the General Manager explained that SLG determined that Metropolitan policies were either violated or needed to be updated or clarified; SLG did not recommend any discipline; but SLG recommended for Metropolitan to review and revise its EEO policies and procedures, provide training on EEO complaint and investigation processes and practices, review its direct threat assessment and paid administrative leave practices, and proceed as quickly as possible with hiring an experienced EEO Officer. The General Manager stated that Metropolitan was taking the SLG findings into consideration for further review and necessary actions as appropriate.

In February 2022, at a joint closed session meeting of the Legal and Claims Committee and the OP&T Committee, directors considered the potential public release of SLG documents. No action was taken.

At the June 2022 OP&T meeting, the General Manager reported that after reviewing the investigation reports and considering the recommendations of independent outside labor counsel regarding the appropriate corrective actions to take in response to the findings, the matters were now concluded with appropriate corrective actions taken. The General Manager explained that these actions included disciplinary and non-disciplinary actions, training, and policy updates.

There has been continued public comment and director comment in Board and Committee meetings for several months about disclosing the SLG investigation reports. In June 2022, the Board voted to place an action item on the July 2022 Board agenda to consider approving disclosure of the SLG investigation reports.

Policy

Metropolitan Water District Administrative Code Section 6305: Nondiscrimination, Harassment, and Retaliation by Officers and Employees

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities (Section 15378(b)(2) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Approve public release of documents by Shaw Law Group, PC concerning its investigations of equal employment opportunity complaints by four employees, by waiving the attorney-client privilege and confidentiality in specified documents.

Fiscal Impact: No identifiable fiscal impact at this time.

Business Analysis: Public release of identified SLG investigation documents can serve a public interest in transparency regarding the investigations.

Option #2

Do not approve public release of documents by Shaw Law Group, PC concerning its investigations of equal employment opportunity complaints by four employees, by waiving the attorney-client privilege and confidentiality in specified documents.

Fiscal Impact: No identifiable fiscal impact at this time.

Business Analysis: Not publicly releasing the investigation documents that may be withheld under the law can serve a public interest in protecting individual privacy rights.

Staff Recommendation

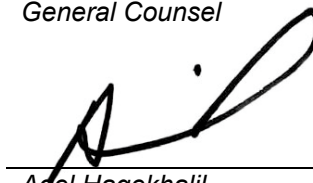
None



Marcia Scully
General Counsel

7/8/2022

Date



Adel Hagekhalil
General Manager

7/8/2022

Date