

From: [Paul Rankin](#)
To: [Lynne Bourgault](#)
Cc: [Elizabeth Echols](#); [Dee Rosario](#); [Dennis Waespi](#); [Ellen Corbett](#); [Olivia Sanwong](#); [John Mercurio](#); [Colin Coffey](#); [Robin](#); [Connie Swisher](#); [Public Records Requests](#); [Sabrina Landreth](#); [Deborah Spaulding](#); [Monica Alvarez-Selles](#); [Sean M. Donnelly](#)
Subject: Public Records Follow-up Request
Date: Tuesday, April 23, 2024 2:00:20 PM

24 April 2024

Via E-Mail

To: Lynne Bourgault, EBRPD General Counsel

Cc: EBRPD Board of Directors
EBRPD Deferred Compensation Advisory Committee (via
CSwisher@ebparks.org)

publicrecords@ebparks.org

Sabrina Landreth, EBRPD General Manager

Deborah Spaulding, CFO/Controller

Monica Alvarez-Selles, Benefits Manager

Sean Donnelly, Legal Assistant

Interested Parties

RE: April 22, 2024 EBRPD Response to Request For Public
Information
Request For Clarification / Follow-up

On April 11, 2024, I was advised by Deborah Spaulding that one of my four questions posed via e-mail would be processed as a Public Records Request.

On April 22, 2024, I followed up to determine when I may expect a response. Later that afternoon, I received an e-mail response sent under your signature via Sean Donnelly.

Your response addressed two questions, while I had understood from Ms. Spaulding that only one was a Public Records request. This creates a need for me to clarify whether the previous answer from Ms. Spaulding has in some way changed.

Further, your response on the second item did not address the subject

matter of my question. It is my intent that information in this e-mail will fully clarify the requested information.

Question Previously Answered By Ms. Spaulding

April 11, 2024 Rankin Question Regarding Board Finance Committee:

“3. Please direct me to any reports and/or agendas where the Board Finance Committee was involved in the review of the change in Deferred Compensation Administrators. (I looked and did not find an agenda item but perhaps I overlooked it?)”

Deborah Spaulding Response April 11, 2024

“The Finance Committee did not review the Deferred Compensation plan change. It was brought directly to the Board because the Board is the fiduciary for the plans.”

District Counsel Response April 22, 2024

“Regarding Request...the Park District has no responsive records...”

CLARIFICATION REQUESTED – Board Finance Committee

I would like to confirm that your response does not in some way modify the previous response that the Board Finance Committee did not review the changes to the Deferred Compensation Plan approved in October 2023. This would include any meeting verbal updates or via e-mail provided to the Board Finance Committee, both during and outside of a public meeting of that body. Of interest would be verbal updates or e-mails from June 2023 until action was taken by the full Board of Directors to award an agreement to Empower in October 2023.

I had presumed that since it was not included on the agenda that records would not exist, but it was odd to get your response, when I was not informed that was a public record request. This made me wonder if your response was intended to somehow suggest that potentially communications other than agendas or reports may exist.

If verbal updates occurred at the meeting, perhaps you can direct me to a recording and the approximate location on the recording. If there were e-mails or other electronic communications with the members of the Board Finance Committee on this topic, and during the period specified, I would appreciate a copy.

Schedule Received From District Counsel 4/22/24 - Was Not The Information Requested

April 11, 2024 Rankin Question Regarding Cost Comparison From RFP

"4. It is my understanding that 4 responses were received to the RFP for the Deferred Compensation Administrator. Please provide a copy of calculations made to compare the fees under each of the proposals received in August 2023 and / or comparing any "finalist" proposals." [1] [SEP]

Deborah Spaulding Response April 11, 2024

"Your request # 4 is being handled as a public records request, so you will receive a response from the public records email address."

District Counsel Response April 22, 2024

"...the Park District is providing a record responsive to your request for comparisons between two of the proposers (Empower and MissionSquare). Evaluations and notes by individual panelists are exempt from the Public Records Act pursuant to the deliberative process privilege."

Please Confirm Schedule Provided: The schedule provided in your April 22, 2024 response is labeled Attachment C and a release date of January 22, 2024. It appears to be the same document that was attached to the Board of Directors Consent Calendar Agenda item 11 "Approval of Investment Policy Statement and Proposed Fund Lineup for Deferred Compensation Plans" on the Board Agenda February 6, 2024. **Please advise if the schedule provided in response to the Public Records Request is a different document.**

Schedule Provided Does Not Respond To Information Requested

My specific request on April 11, 2024 was for comparisons of the fee structures of the four firms that responded to the District RFP in August 2023. It is my understanding that what you have provided, is the Empower fees based on the October 2023 award of contract compared to MissionSquare Fees in place under their previous agreement (which is approximately 7 years old). It does not appear that this schedule compares MissionSquare fees as they may have been proposed in their response to the August 2023 Request For Proposal issued by the District.

I realize your response is not intended to address the validity of the calculations contained in the schedule. However, it must be noted that

the comparison is lacking in several areas. In addition to what is stated above, a fair comparison is skewed by using inconsistent treatment of fee calculations for some line items (particularly where “no fee” is shown for Empower.) The comparison is also incomplete in that it only shows investment costs. It does not disclose: plan administration, record keeping, and / or other transactional fees collected by the Administrator.

In September 2023, Staff made verbal representations to the DCAC at a public meeting that Empower had the lowest fees. When asked by a Committee Member how much lower Staff was unable to provide a specific dollar amount, even though Empower was being recommended a few days later to the Board of Directors.

Cost of services is typically an element that would be reasonably expected to be part of a comparison of RFP responses. In order to professionally assess the proposals, it would be typical to produce a side-by-side cost comparison of the proposals being considered. As reported by Staff four proposals were received and all four providers were interviewed.

I note that the Deferred Compensation Advisory Committee had previously discussed using a consultant to assist with the RFP evaluations. It is not uncommon to engage a professional consultant to assist with cost comparisons and other elements of the selection process, since it can be complex and there are fiduciary responsibilities for those approving. It is my understanding that the District chose not to engage additional professional expertise for this purpose.

Request To Receive Documentation As Described In Original Request

It is possible that there was a misunderstanding of what I originally requested, and I would hope that by way of the additional details above that is helpful to allow you to target the requested records. If there are questions or additional clarification required, please feel free to contact me.

The following information is sought at this time and each item relates to fees as proposed by respondents to the RFP for Deferred

Compensation Administration received by the District on or about August 2023.

A. Please provide the basis for the representation made verbally by Staff at the DCAC September 2023 meeting, which suggested that Empower had the lowest fees of all proposals. Please provide all associated notes, memos, emails, reports, calculations, assumptions, worksheets, or other documents developed to support the fee comparison statement, which was purported to be a factor in the selection of Empower.

B. Please provide a copy of the fee proposals presented by each of the four RFP respondents received by the District to the RFP for Deferred Compensation Administration. This includes all fees proposed; including but not limited to: plan administration, plan record keeping, administrative transaction fees, and investment fees.

C. Please advise whether any vendor, consultant, or third party was involved in preparing cost comparisons of the responses to the Deferred Compensation Administration RFP. Please provide third party name and all associated reports, calculations, worksheets, or representations, to the extent that you have not already provided.

This information is requested in the spirit of the adopted EBRPD Board Mission and Values statement that includes: **“Ensure open and inclusive public processes”** as well as under provisions of the California Public Records Act.

Respectfully

Paul S. Rankin
Former EBRPD CFO/Controller (1999-2002)