



Altadena Library District

Report of Board's Compliance with Brown Act

December 3, 2018



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ATTORNEYS AT LAW

Report Overview

- Review of The Brown Act
- Overview of Alleged Brown Act Violations
- Report & Illustrations
- Public Comment



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Brief Review of The Brown Act

Purpose

- To ensure that almost all aspects of the decision-making process of **legislative bodies** of local agencies are conducted in public and open to public scrutiny.



Brief Review of The Brown Act

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”

Gov. Code § 54953(a)



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Brief Review of The Brown Act

Brown Act-at-a-Glance

- ✓ Is the body a legislative body?
 - If so, the Brown Act applies.
- ✓ Is the gathering a meeting?
 - If so, the meeting must be open and public.
- ✓ Has adequate notice been provided of the meeting?
 - If not, then no formal actions can be taken.
 - Any actions taken are null & void.



Brief Review of The Brown Act

What is a meeting?

- a majority of the members of the legislative body
- to hear, discuss or deliberate upon any matter under their jurisdiction
- action is not required
- conversations between members on issues confronting the agency is sufficient



Brief Review of The Brown Act

What is NOT a meeting?

- individual contacts between members
- conferences and seminars
- community meetings
- social or ceremonial occasions
- attendance at standing committee meetings
- meetings with other legislative bodies



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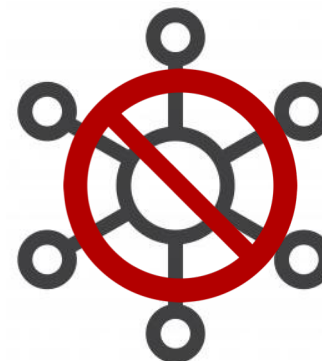
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Brief Review of The Brown Act

Serial Meetings

- meetings that at one time involve a portion of the legislative body, but eventual involve a majority
- a member of a legislative body can meet with constituents & confer with colleagues or staff
- avoid daisy chain & hub-spoke communications
- applies to emails, text messages, blogs, and social media



Brief Review of The Brown Act

Serial Meetings

- In-person meetings
- Telephone conversations
- Emails
- Written correspondence
- Use of intermediaries
- Social networking sites, such as Facebook and Twitter



Brief Review of The Brown Act

Serial Meetings - Exceptions

- one-on-one communications by a non-member (i.e., staff) with members of the legislative body
- communications to call or schedule a special meeting



Brief Review of The Brown Act

Other Key Provisions

- Meeting agendas must be posted prior to a meeting.
 - Regular meetings – at least 72 hours prior
 - Special meetings – at least 24 hours
- At every regular meeting, the public has a right to directly address the body on any item of public interest if that item is under the jurisdiction of the body.
- No action or discussion allowed for any item not listed on agenda, except under specific circumstances.
- Closed sessions are authorized for specific topics, but must be noticed, briefly described in agenda, and report out may be required if an action is taken



Brief Review of The Brown Act

Other Key Provisions (*continued*)

- [Relevant] Closed Session Topics
 1. Real Property Transactions
 2. Litigation [Existing, Anticipated, & Initiation]
 3. Personnel Issues
 - Appointment
 - Performance Evaluation
 - Discipline/Dismissal/Release
 4. Labor Negotiations
 5. Grand Jury Testimony (subpoena)
 6. Threats to Public Services of Facilities



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Categories of Brown Act Violations

- 1) Improper Closed Session Descriptions on Meeting Agendas
- 2) Improper Reporting Out Following Closed Sessions
- 3) Failure to Hold a Public Vote Following Closed Sessions
- 4) Board Action on an Item Posted as Informational
- 5) Improper Limitations on Public Comment
- 6) Serial Meetings Among Board Members

Other Consideration

- 1) Use of personal email accounts



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Use of Personal Email Accounts

- any public employees communication about official agency business is subject to the Public Records Act, regardless of the device or the account that transmits the communication
- when it comes to personal devices, employees should search their own devices for records that are responsive to a request (
 - after proper training on how to distinguish what is a public vs. a private record
- employees will need to be prepared to sign affidavits that they have conducted adequate searches and produced the responsive records

(San Jose (2017) 2 Cal.5th 608)



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Overview of Alleged Violations

PRA Requests & Productions

- **PRA Request #2:** All emails that former Trustee McDonald “permanently deleted” from his District trash folder on or after January 19, 2018. [Qty: 123 Records]
- **PRA Request #7:** All emails from February 26, 2018, to March 26, 2018, in which one or more Board members are either senders or recipients of the emails and which in any way refer to or concern the District, its Board, or Ms. Kittay. [Qty: 1,005 Records]
- **PRA Request #8:** All emails that related to the District that Trustee Bershatsky has had in any personal email account at any time from February, 2017, to May 7, 2018. [Qty: 2,211 Records]



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Overview of Alleged Violations

PRA Requests & Productions

- **PRA Request #9:** All emails that related to the District that former Trustee McDonald has had in any personal email account at any time from February, 2017, to May 7, 2018. [Qty: 1,690 Records]
- **PRA Request #11:** (1) The email referred to by Trustee Zambrano in his Jan. 18, 2018, 8:16 pm email to former Trustee McDonald by the following sentences: “Btw I received a long email from a person named Dave Herman re many problems at the library. I asked him if he would share his concerns with you He hasn’t responded.” (2) All other emails between Trustee Zambrano and Dave Herman. [Qty: 9 Records]



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Overview of Alleged Violations

PRA Requests & Productions

- **PRA Request #16:** (1) The agenda for the Board meeting held on August 17, 2017, at Loma Alta Park Community Center. (2) The notice required by Government Code §54956(a) to be posted on the District web site for the Board meeting on August 17, 2017, at Loma Alta Park Community Center. (3) The minutes of the Board meeting on August 17, 2017, at Loma Alta Park Community Center. (4) All emails that refer to the August 17, 2017, Board meeting on August 16, 2017, except for those previously produced in the initial response to PRA #8 received this past Monday. [Qty: 11 Records]



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Report

Serial Meetings Among Board Members

Findings

1. The serial meetings were prevalent over the course of the entire timeframe covered by the PRA requests.
2. The violations are steeped in an incomplete understanding of the Brown Act—by both staff and Board members.
3. There appears to be a lack of intention by the Board members to hide things from the public.
4. Often, the violations were attempts by the Board members to manage District operations.
5. With proper guidance, there were simple corrective actions that the staff and Board members could have taken.



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Serial Meetings Among Board Members

The serial meetings were prevalent over the course of the entire timeframe covered by the PRA requests.



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Serial Meetings Among Board Members

The violations are steeped in an incomplete understanding of the Brown Act—by both staff and Board members.



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To: Ira Bershatsky[bwst@sbcglobal.net]; Ira Bershatsky[ibershatsky@altadenalibrary.org]; John McDonald[jmcdonald@altadenalibrary.org]; Armando Zambrano[azambrano@altadenalibrary.org]; Gwendolyn McMullins[g.mcmullins1913@gmail.com]; Adalila Zelada-Garcia[adalila76@yahoo.com]; Adalila Zelada-Garcia[azgarcia@altadenalibrary.org]
Cc: Audrienne AAL Adams Lee[adamslee@hrnetworkinc.com]; Lorraine LC Calder[lorrainec@hrnetworkinc.com]
From: Mindy Kittay
Sent: Tue 8/8/2017 3:53:49 PM
Subject: Questions from Closed Session Annual Review on July 24 2017
[Memo to Board 882017.pdf](#)

Attached please find a Memo to the Board dated 8/8/2017

At the conclusion to the closed session referenced above there were some questions and some concerns from some Trustees regarding the Altadena Library Salary Schedule (Steps) and the Director's Contract and PAF's (Personal Action Forms). After speaking with Armando yesterday evening, it reminded me that most of the Board has not been seated for some of my tenure so I am sharing with you all a more complete picture of my role in the financial operations and budgeting of the district as well as the history of the District in relation to this issue. At his suggestion, I have created this package of information for your use. I have created this package as a way to assist the Board in wrapping this issue up.

Thank you and please let me know if you have any questions or would like any additional information,
Mindy

Mindy Kittay

District Director / Altadena Library District

(626) 798-0833 x 103 / mkittay@altadenalibrary.org / www.altadenalibrary.org

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Join us for Taste of 'Dena on Saturday September 23, 2017

<https://tasteofdena.eventbrite.com>



Source: PRA #8 - 000011



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From: Mindy Kittay <MKittay@AltadenaLibrary.org>
To: Ira Bershatsky <bwst@sbcglobal.net>
Sent: Wednesday, August 23, 2017 6:52 PM
Subject: RE: Agenda item edit

Unfortunately (or fortunately – I guess it depends upon how you look at it), the law does not allow the Board to vote on anything in Closed Session.

For example, as I was explaining last night, once the Board has agreed upon a Contract it cannot be voted on in the closed session it must be brought to open session, described and then voted upon. Let me know if you need additional information about when and how the Board can vote on various items.

Thanks,

Mindy

Mindy Kittay

District Director / Altadena Library District

[\(626\) 798-0833 x 103](tel:(626)798-0833x103) / mkittay@altadenalibrary.org / www.altadenalibrary.org

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Join us for Taste of 'Dena on Saturday September 23, 2017

<https://tasteofdena.eventbrite.com>



Source: PRA #8 - 0001826



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To: Armando Zambrano[azambrano@altadenalibrary.org]
Cc: Mindy Kittay[MKittay@AltadenaLibrary.org]; Adalila Zelada-Garcia[adalila76@yahoo.com]; Gwendolyn McMullins[g.mcmullins1913@gmail.com]; Ira Bershatsky[ibershatsky@altadenalibrary.org]; Kylynn Chaney[KChaney@AltadenaLibrary.org]; William Ryan Roy[WRoy@AltadenaLibrary.org]; Dennis Timoney[dtimoney@sdrma.org]
From: jmcdonald@altadenalibrary.org
Sent: Thur 1/18/2018 8:13:56 AM
Subject: Re: Updated Agenda for 1/22/17

Sorry - no, I was agreeing that we should not discuss the construction of the agenda as a group. That could lead to discussion and debate and be deemed a Brown Act violation, though it's a good question to ask during our training next week!

I disagree with the statement about copies of incident reports - redacted copies could be distributed to the Board for sure and in closed session, in my opinion.

Mindy has disagreed with me that we can hear from her or HRNetwork about HR issues during closed session. I have asked her to research that and provide backing information regarding the proper protocol.

On Jan 18, 2018, at 11:08 AM, Armando Zambrano <azambrano@altadenalibrary.org> wrote:

Hi John:

Please specify what it is you are in agreement.

Do you agree with Mindy that "The Board is not entitled to copies of incident reports ..."

Thanks,

Armando

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Source: PRA #9 - 0000394



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Report

Serial Meetings Among Board Members

There appears to be a lack of intention by the Board members to hide things from the public.



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From: Mindy Kittay
Sent: Tuesday, August 29, 2017 3:38 PM
To: Ira Bershatsky <bwst@sbcglobal.net>; Ira Bershatsky <ibershatsky@altadenalibrary.org>; John McDonald <jmcdonald@altadenalibrary.org>; 'Adalila Zelada-Garcia' <adalila76@yahoo.com>; Gwendolyn McMullins <gmcullins@altadenalibrary.org>; Armando Zambrano <azambrano@altadenalibrary.org>
Cc: ALD-All <ALD-ALL@altadenalibrary.org>
Subject: Possible Closure of the Branch
Importance: High

Earlier today the A/C went out at the Branch. The temperature inside the Branch was 90. The A/C vendor came and was able to get it turned back on.
At 3:30pm the A/C went off again and the temperature is already in the high 80's. We have notified the A/C vendor but feel that it is best to close the Branch at this time for the remainder of the day. Normal closing time is 6pm.
Ryan is at the Branch now helping staff to notify patrons and close.
All staff will come to the Main Library to finish out the day.
We will do our best to resolve this issue as quickly as possible.
We know that temperatures are estimated to be over 100 for the remainder of the week.
We do not know the full extent of the problem with the A/C or how long it will take to fix it at this time.
We will keep the Board and Staff (and the public through our website, signage and Facebook/Social Media), notified.
Thanks,
Mindy

Mindy Kittay
District Director / Altadena Library District
 [\(626\) 798-0833 x 103](tel:(626)798-0833) / mkittay@altadenalibrary.org / www.altadenalibrary.org
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Source: PRA #9 - 0000145



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To: Mindy Kittay[MKittay@AltadenaLibrary.org]
Cc: Ira Bershatsky[ibershatsky@altadenalibrary.org]; Ira Bershatsky[bwst@sbcglobal.net]; Gwendolyn McMullins[g.mcmullins1913@gmail.com]; Adalila Zelada-Garcia[azgarcia@altadenalibrary.org]; Adalila Garcia[adalila76@yahoo.com]; Armando Zambrano[azambrano@altadenalibrary.org]
From: jmcdonald@altadenalibrary.org
Sent: Thur 12/7/2017 9:53:13 AM
Subject: Re: Fence on South of Altadena Library

Hi Mindy,

The wall and fence is on their side of the property line, correct? Has there been a recent survey and are the survey monuments clearly marked? We have no history of disputing the property lines or disagreement over whose wall/fence it is currently, correct?

If so, this just serves as neighborly notice that they are replacing a fence and we don't need legal review in any fashion.

If the wall/fence is on District property, please let us know so we can attempt to address it in another fashion.

John

On Dec 6, 2017, at 12:40 PM, Mindy Kittay <MKittay@AltadenaLibrary.org> wrote:

Board Members,

It is my recommendation that I run this request by Los Angeles County Counsel to ask if they feel if we should have a letter of agreement or if they believe the email below will be sufficient. Do I have your permission to do so?

If you are not agreeable to the plans of the Crabbs please let me know how you wish to proceed.

Thank you,
Mindy

Mindy Kittay
District Director / Altadena Library District
 [\(626\) 798-0833 x 103](tel:(626)798-0833) / mkittay@altadenalibrary.org / www.altadenalibrary.org
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Source: PRA #9 - 0000361

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Serial Meetings Among Board Members

Often, the violations were attempts by the Board members to manage District operations.



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To: Mindy Kittay[MKittay@AltadenaLibrary.org]
From: Ira Bershatsky
Sent: Tue 7/25/2017 6:09:41 AM
Subject: Thanks for the back and forth last night

Mindy,

Thanks for the discussion. It was quite enlightening. There are a lot of detail items that staff or you would know that we on the Board need your guidance on such as employee contracts (yours), etc.

You have let the community know that when the library is successful with the community both benefit. The same with the staff. Next, are the Boards and that will be successful, too.

One item where I professionally disagree is that we have more things going on at our library so our meetings have to be longer. The Palos Verdes Library did Community Conversations and had it as one agenda item along with about 18 others and still finished in less than 90 minutes. They also have more branches where things are going on. The Sierra Madre Library is going through a \$1-3 million capital campaign and that was on the agenda and there was probably a lengthy discussion.

Our Board meetings are too long due to lengthy presentations that can be shortened and agenda items that relate more to implementation of the Board's policies than actual Board policies. Last night we had the video presentation and the Taste of Dena presentation along with my presentation and 17 other agenda items and still finished in 90 minutes. It can be done!

Ira

Source: PRA #8 - 0001817



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From: John McDonald
Sent: Tue 1/23/2018 2:17:24 PM
Subject: Director - Medical Leave

Hello esteemed Trustees!

I just received notice from Ryan that Mindy has been placed on medical leave until 2/22/2018. I cannot otherwise share details due to the nature of the leave but HRNetwork is working on the paperwork and worker's comp issues.

I believe that we need to name Ryan as acting director during her leave. Does anyone have any objection to me taking this action immediately?

John

Source: PRA #8 - 0001192



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Serial Meetings Among Board Members

With proper guidance, there were simple corrective actions that the staff and Board members could have taken.



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From: Ira Bershatsky <bwst@sbcglobal.net>

Sent: Sunday, January 28, 2018 11:55 AM

To: John McDonald; Armando Zambrano; Armando Zambrano; Gwendolyn McMullins; Gwendolyn McMullins; Ira Bershatsky; William Ryan Roy

Subject: Trustee vacancy posted on the Altadenalibrary.org website

I saw that the Trustee vacancy was posted on the Altadena Library website on Friday, the 26th, in the afternoon. The posting was by "Anonymous". My first thought was why is an anonymous community member posting the Trustee vacancy? The response e-mail is hello@altadenalibrary.org. An anonymous-type e-mail.

In the past, the Trustee vacancy was posted by the Director with their e-mail address as the response e-mail. Ryan is the Acting Director. Was the decision to post the vacancy anonymously and with an anonymous-type response e-mail done in consultation with Ryan and possibly the President of the Board of Trustees?

Source: PRA #8 - 0000454



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From: William Ryan Roy <WRoy@AltadenaLibrary.org>
To: John McDonald <jmcdonald@altadenalibrary.org>; Armando Zambrano <azambrano@altadenalibrary.org>; Armando Zambrano <axzambrano@gmail.com>; Gwendolyn McMullins <g.mcmullins1913@gmail.com>; Gwendolyn McMullins <gcmullins@altadenalibrary.org>; Ira Bershatsky <ibershatsky@altadenalibrary.org>; Ira Bershatsky <bwst@sbcglobal.net>
Sent: Sunday, January 28, 2018 2:19 PM
Subject: Re: Trustee vacancy posted on the Altadenalibrary.org website

Hi everyone.

In response to Ira's questions:

Kylynn has been given the go-ahead to follow the outlined procedure for filling the vacant Board position. She has been keeping John and I updated as she moves through the process.

The "Anonymous" blog posting does appear rather odd in it's authority. I was not aware of it before, but looking at the post, it seems to be a generic login to edit our website, so that staff who need to post items (but do not have an individualized login) can do so. This likely exists because our website is administered by an off-site third party, and creating new individual logins costs the District each time one is created. As I don't believe Kylynn has an individual login, it appears that she used the Anonymous login to post the Board opening in Mindy's absence. I do have an individual login to edit the website, so I have edited the post itself to change it's author to me. (The author of the post will now display as my website login username WRoy -- however, it takes an hour or two for any edits we make to go live on the web server.)

Similarly, the hello@altadenalibrary email address was set up as non-individualized email used on some flyers and postings so that the public can reach library administration. Kylynn monitors the inbox for this email address. I have changed the website posting to reflect to my email address as the contact, since that has been the practice traditionally, as Ira noted (with applications going to the District Director). I don't believe our outline for filling the Board vacancy specifies many of these details, so while the decision was not done in consultation with me, I believe Kylynn has been moving forward to the best of her judgement. I will have her use me as the contact for any Board of Trustees applicants moving forward, and my edits to the "Anonymous" posting should be reflected on the website shortly.

Ryan

Source: PRA #8 - 0000454

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Public Comment



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