

## **Introduction: The Story of The Laguna Beach Police Department**

Public safety is always the number one concern of any City Government, so I want to thank all LBPD employees for their service to our community. They sacrifice family time by working holidays, weekends and night shifts and put their own safety at risk every day in the field. For that we should all be grateful. However, there is much room for improvement, so consequently, I've taken it upon myself over the past year or more to investigate the status of the Laguna Beach Police.

While there is much positive to report, there is also much that gravely concerns me – areas that are in great need of improvement and troubling actions which to my mind have undercut the safety of Laguna Beach.

**This following report covers a great many issues, including:**

- 1. The troubling Police Employee's Association's survey which cites disturbingly low morale and low job satisfaction**
- 2. The City's attempt to suppress public discussion of this Police Employee's Association's survey**
- 3. One-on-one interviews with rank-and-file police officers explaining why low morale is contributing to the City losing officers and having such extreme difficulties recruiting replacements.**
- 4. The mysterious, unexplained dismissal of former Police Chief Thompson**
- 5. The unusual relationship between the City Manager and the Chief Of Police which constrains police operations**
- 6. How the City Manager and Communications Manager can delay, edit, or suppress the release of police department reports and information to the public – presenting a distorted impression of public safety.**

While the enclosed information may seem lengthy, I encourage you to review the first four pages at bare minimum.

Reforms are needed to ensure public safety and accountability. And awareness is the first step to achieving those goals. Thank you for taking the time to read this material. I believe it has the power needed to change Laguna for the better.

Yours truly,  
George Weiss  
Laguna Beach City Councilman

### **The Story of The Police Department:**

I am writing to all Laguna residents, and every police department employee because I am concerned about the welfare of residents, police officers and civilian employees. I believe the loss of so many experienced officers and civilian employees over the last 18 months is devastating the Laguna Beach Police Department.

Why eight experienced officers have left Laguna Beach for other Orange County agencies since May, 2021 – and why the LBPD has not been able to hire a single police officer from

another city in Orange County in **nearly eight years**. This situation is unsustainable and is causing the remaining officers to work more hours, forcing sergeants and detectives to go on patrol duties and compromising investigations. One detective now has a backlog of **80** investigations while non-injury hit and run accidents are not being investigated at all. Meanwhile the number of traffic citations has plummeted significantly.

Issuing traffic citations keep our streets safer so it is concerning that these have gone down due mostly of lack of adequate staffing and employee engagement. With so many experienced officers leaving, the average experience level of new officers is just 3 years. Laguna Beach is among the most attractive places to work. But unfortunately, it appears that is not true for the LBPD.

**Why I Took An Interest In The Laguna Beach Police Department:** Former Police Chief Thompson was on the job for just five months before he was placed on administrative leave in May, 2021 –resigning shortly thereafter. Chief Thompson was never allowed to see the complaint against him or even know who initiated it. The previous City Manager (John Pietig) who placed Chief Thompson on administrative leave refused to allow elected officials – including me, to whom he reports – to see the complaint.

The City Attorney supported by an outside attorney argued that I was not entitled to see the complaint. I argued that any document that the City Manager can see, a Council member, acting in the execution of their fiduciary and oversight responsibilities, should be able to review.

I still believe this was and is an illegal action taken by the former City Manager in cooperation with the City Attorney, today's CM, and certain members of the City Council. I wrote to the Orange County District Attorney about this, but he declined to get involved. (The DA is loathed to get involved in local police matters.) **See Document No. 1 at the end of this report.**

From that time on, I was suspicious of what might be going on within the LBPD and how the City Manager and other officials were managing and/or mismanaging the LBPD. The Police Employees' Association Surveys: In early 2022, the Laguna Beach Police Employees' Association published its survey. The survey revealed that 72.5% of the respondents said they would or probably would leave the City for another opportunity. They did just that – six of eight officers have left since May 2021, taking positions with the Irvine Police Department. The survey also indicated that the rank-and-file respected half of the command staff, while expressing a low level of trust and confidence in the other half. I commented for the Laguna Beach Independent newspaper, saying these two results were "disturbing" and "concerning".

As a result of my comments in this public media (**see addendum Document 2 below**), the Police Management Association allegedly threatened to sue the City of Laguna Beach, targeting me. ***I found out just recently that the Police and Fire Management Association Board discussed this issue but did not vote to pursue litigation.*** So the question is: Who worked with City Attorney Phil Kohn to bring this forward as a "threat of litigation," which was placed on the City Council's closed session agenda for February, 2022. This was just a very weak attempt by the City Attorney and the others mentioned above to silence and intimidate me. By taking this item to a closed session meeting, they knew everything discussed would by law have to remain privileged information, without public release.

**Rescued By Friends:** Fortunately, Mr. James Grossberg, a noted First Amendment rights

attorney, and Howard Hills, a local lawyer who works for the U.S. State Department, came to my rescue. Mr. Grossberg wrote a letter (see addendum Document 4) to the City Attorney expressing concerns that this item in closed session was not properly being held and it would violate the Brown Act and my First Amendment rights under the U.S. Constitution if it were held. **See excerpts of the code cited in the letter below:**

**Jim Grossberg's letter:** *"It strains credulity to imagine a legitimate legal claim against the City or one of its officials for anything contained in or even related to the Association survey since the Association is not an official entity of the City, the City presumably played no role in conducting the survey, the survey apparently already has been made public by the association and it was not created by or provided to the City in confidence as a personnel record. Given the unlikeliness of such a claim, Council members must require, at the very least, that the City Attorney specifically identify such "facts and circumstances" for the Council to discharge its legal duty to comply with the Brown Act.*

*"Moreover, the only public statements regarding the survey of which I'm aware are those by Councilman George Weiss at a Council meeting and those by Mr. Weiss and City Manager Dupuis in an article in the Laguna Beach Independent. Statements by a Council member during a Council meeting are legally privileged under California law so cannot be the basis of any claim against the City or Mr. Weiss. Moreover, Councilman Weiss's reported statements to the Independent essentially repeat his privileged statements so cannot give rise to liability against him or the City either. Even if they did not, they would clearly be insufficient to create liability because all Mr. Weiss did was describe "a disconnect between command staff and the rank and file" and a lack of trust among some in the police department in a very general way, without identifying any individuals, which is not defamatory of any individual nor likely to lead to a defamation claim. In addition, the statement almost certainly was not made with the high degree of awareness of probable falsity that the First Amendment requires in this instance."*  
James Grossberg

Because of this letter being sent to the City Attorney, he cancelled discussion of this item LESS than TWO hours prior to the scheduled closed session. In cancelling, he sent an email explaining his actions. See below:

**Phil Kohn's email:** *Tuesday, February 8, 2022, 2:05 PM "Please be aware that I am withdrawing the item pertaining to the PEA Survey from tonight's closed session agenda, leaving the Sea Bluff Lane storm drain claim as the only item for discussion. The City's special legal counsel on employment matters and I will be consulting further on the Police Officer Bill of Rights issues implicated by the survey with regard to confidential personnel information, and plan to return at a future City Council meeting. In the meantime, pending a more extensive briefing on the avoidance of potential exposure of individual Councilmembers and the City to claims and/or litigation, the previously communicated admonition – that copies of the PEA Survey should not be distributed and public comments about the survey or its contents are discouraged – remains in effect. Thank you for your attention to this matter."*

The City Attorney never brought this item back for a closed or open City Council meeting. I have since learned that the Police and Fire Management Association never voted on the possibility of pursuing legal action so I suspect this was the work of Chief Calvert and the City Attorney without proper authorization. **This was entirely illegal, in my opinion.** As can be seen from these events, things are not exactly what they appear to be within the LBPD and City Hall.

**The Results of My Interviews With LBPD:** Since those previous events, I have been holding open-ended interviews with current and former members of the LBPD and civilian employees

to determine why experienced people are leaving and why we can't attract candidates from other OC cities. The LBPDP has not been able to hire a single police officer from another city in Orange County in eight years. Why?

The results of 20 confidential interviews, (I have included notes from 16 in an attachment) indicate a story of low morale, favoritism in promotional practices, lack of communication between command staff and the rank and file, commitments made but not met, and a lack of confidence in the leadership of the Chief. Many comments also singled out the City Manager for allegedly controlling the department.

This is a composite of the most frequent and disturbing comments on the workplace environment that exists within the LBPDP today. These responses pointedly suggest the reputation of Laguna's Police Department and its mismanagement by City officials is why police officers from other OC cities will not transfer to work here. The last police officer to transfer was from Santa Ana and he transferred back in 2015. Those officers who are applying generally come from Sheriff's Departments. And the "**culture shift**" for those coming from LA to OC can be challenging.

**Impact on People Lives:** Changing jobs can be extremely stressful for officers. So, when talking to those experienced officers who have left Laguna for other departments, it was concerning to learn they were leaving behind friends and colleagues mostly because of what they perceived as a poor work environment. The commute to a new position is the easy part, but the loss of seniority, demotion to a lower rank, assignment to undesirable schedules and other impacts make any change of jobs exceptionally challenging. Yet many are apparently willing to pay that price.

**What Does The Chief Say:** When I asked Chief Calvert why both the 2021 and 2022 Police Employees' Association surveys indicated low morale, he said that he discounted this information and went on to add that morale was an individual's choice. I found that to be insensitive to the 20 current and former officers and employees I interviewed.

When asked why the LBPDP is unable to hire officers from other OC cities, the Chief said this is due to the inequities in the pension plans. However, he neglected to say these inequities were corrected in 2014 – any police officer who wanted to join the LBPDP or started working in or after 2014 will have absolutely no pension impact.

Regarding the hiring environment in general, the Chief points to the George Floyd incident and protests at Main Beach opposing the police, along with the defund the police movement (which has had limited results across the country) as potential law enforcement career deterrents.

These are challenging times for police recruiting, but Laguna is a **uniquely attractive** place to work, offering excellent pay and benefits, and strong public support. Yet considering the loss of personnel and the Police Employee's Association assessments, it seems the entire LBPDP should be reformed to meet the demands of its employees using best practices for our town. Working with UC Irvine's Department of Criminology, Law, and Society on ways to reform the LBPDP could go a long ways in instituting these changes.

As for the turnover rate, Chief Calvert says he inherited a department that was severely impaired and that the turnover rate for the last five years has been steady. Statistics indicate otherwise.

**Chief Thompson:** Laguna's previous Police Chief, Rob Thompson, served for five months

and then went returned to his job in Northern California with a raise and new contract. While here, he was a reformer who tried to hold command staff accountable. He wasn't perfect by any measure, but he was making changes to the department that certain members of the command staff apparently did not like. During his short tenure, he interviewed the vast majority of the employees to learn about them as individuals, about their career goals and their families. Read addendum Document 7, Chief Thompson's farewell letter to LBPD employees, and you will gain some insight into his character.

**The Relationship Between City Management And LBPD:** While serving for over two years as a City Councilman, I have come to the impression that the City of Laguna Beach is run like a family business. I can think of no other more accurate way of describing it. The last three City Managers have not delegated authority to the Chiefs of Police to run their department as they see fit. The City Manager and Communications Manager now review all LBPD press releases, causing delays and editing of the document written by the Police Information Officers. Additionally, they retain the power to suppress and spin this information. I know of no other cities that do this. The result is that important information may be omitted from the press release that the public should by all rights know.

**How The City Manager And Communications Manager Can Delay, Edit, Or Suppress The Release Of Police Department Reports And Information To The Public – Presenting A False Impression Of Community Crime And Safety:**

The Police Department has three trained Public Information Officers (PIO) whose job is to get out press releases and notifications of crimes that affect our community.

Unlike other Orange County Police Departments, ALL communications from the PIO officers must be reviewed and are often edited by the City Communications Manager, and the City Manager. This process has resulted in delays and information being redacted.

**Example 1:** The video of the fatality that occurred at Pearl St. and South Coast Highway was accessed two hours after the incident, but the press release was not issued until the next day at 1:00 PM.

**Example 2:** The press release concerning the woman who was hit by multiple vehicles and killed at Coast Highway near Ruby's restaurant to say that alcohol or drugs were not deemed to be involved when in fact a vial of methamphetamines was found in the debris field. The press release regarding a domestic violence incident where the victim reported that the person assaulting her had a knife was edited so in the PR release it was stated he was unarmed. He subsequently stole a car, crashed it, stole another, and was apprehended the next day in Anaheim.

**Example 3: Polestar:** A review of one more recent incident: A couple of weeks ago, LBPD arrested a person causing a ruckus at Main Beach. LBPD officer reports stated that they suspected he was highly intoxicated. He was taken to the station, interviewed, and given a test for alcohol intoxication which came up negative. He was in custody for several hours and released by LBPD throw a brick into the Polestar showroom soon after being released, and trashed the showroom and stole a car. Later that morning the Newport Police arrested him for numerous charges including for driving under the influence of drugs. In a subsequent press release Chief Calvert made no mention of the suspect being in custody by LBPD in the late hours the day before. Why? This may be a symptom of the bigger problem mentioned above. And in this case the City may have liability for not conducting the proper testing of the suspect for being under the influence of drugs.

City management should not be involved in reviewing **every** Police communication. Let the

trained PIO officers do their work. This delays in getting information to the public may result in a negative impacts on public safety and give the impression that there is less crime in the town than there actually is.

### **Conclusions:**

The LBPD is badly in need of reform. The culture must change from one that values loyalty and the status quo to one that allows for open communication, fairness in promotional practices and change. Also, one that values every individual, not just those who are subservient to those in control of the department.

Laguna Beach has lost too many experienced officers and is replacing them with rookies or officers with much less experience. That is not good. It takes years for police officers to understand how to deal with Laguna's complex diversity of residents – from the rich to those just getting by. All further complicated by over the 6.5M visitors we welcome to our town each year.

Our patrol officers have between an average of one to three years of experience. Meanwhile, our police supervisors have often been promoted into these positions without the benefit of enough patrol experience. If you want to help secure our police force and the town's safety, I ask that you take the first step: petition the City Council at City Council meetings and with social media and press the Council begin reforming the police department. Our police officers and civilian employees deserve a workplace that is grounded in the principles of equal treatment for all, fairness in the promotion process, honesty, and ethical standards of conduct. The safety of all Laguna residents is at stake.

### **ADDENDUM OF DOCUMENTS CITED IN THIS REPORT:**

#### **Document 1: Letter To District Attorney Outlining Police Chief Thompson's Dismissal, Claiming City's Illegal Suppression Of Information**

*July 29, 2021*

*Mr. Todd Spitzer  
District Attorney,  
County of Orange  
300 N Flower St,  
Santa Ana, CA,92703*

*Dear Mr. Spitzer,*

*I am writing as elected officials regarding a matter that concerns due process and if unaddressed may have adverse effects on public safety in Laguna Beach.*

*On or about May 13th, 2021, Chief of Police, Robert Thompson was relieved of duty by then City Manager, John Pietig. At no time during this meeting did Chief Thompson see the complaint upon which he was relieved of duty. From an eyewitness account I learned that only a verbal summary was given to Chief Thompson by City Manager John Pietig.*

*Following that event, City Manager John Pietig called a closed session meeting whose purpose, as related to me in a phone call by Mayor Bob Whalen, was to discuss the process taken by the City regarding relieving Chief Thompson of his duties. Instead the sole topic of the meeting was the approval of a separation agreement between the City and Chief Thompson. This meeting therefore was improperly noticed, which may be a violation of the Brown Act. At that meeting, fellow Councilmember Toni Iseman and I asked to review the complaint upon which City Manager, John Pietig based his actions. The City Manager said he*

could not share that with the City Council and based his refusal on privacy issues. I raised the point that the City Council is an elected body of the people with oversight responsible for the City. We could read the complaint in closed session, I said, and this would allow us to determine if there was sufficient cause for approving a separation agreement. Mayor Bob Whalen brought the separation agreement to a vote and by a 4-1 margin the City Council approved the separation agreement. Councilmember Toni Iseman expressed regrets for her vote. I voted no and commented that I would like to see the investigation of the complaint against Chief Thompson move forward so its validity could be determined, and the facts known.

In a subsequent close session City Council meeting, the current City Manager Shohreh Dupuis stated that City Council did not see the complaint against Chief Thompson because he had offered to resign upon being read a verbal summary of the allegations by City Manager John Pietig on or about May 13th. The information relayed to us by the current City Manager, Shohreh Dupuis, does not fit the facts. I called Chief Thompson, in late June, who by now had been reinstated as Chief in Dixon with a raise and work contract. He categorically denied offering to resign at the meeting with City Manager, John Pietig as he wanted to keep his options to see if he could return to his job at Dixon. Upon being relieved of duty Chief Thompson called the Dixon City Manager and was verbally offered his job back pending a discussion with the Dixon City Council which took place a few days later. Dixon's City Council unanimously approved re-appointing Chief Thompson to his former post with a raise and employment agreement.

Although only on the job for 5 months in Laguna Beach, Chief Thompson was well liked by the rank and file but not so much by some of the command staff who, I believe, were responsible for authoring the complaint and were aided by others, including City Manager John Pietig with the goal of removing Chief Thompson.

By way of background, Chief Thompson had been interviewed previously for the position of Chief and, as he related to me, was offered the position that Chief Laura Farinella accepted. Upon assumption of his duties in January 2021, Chief Thompson offered to meet with ALL of police department employees and did meet with most of them. His letters attached demonstrate a deep concern for the welfare and success of the rank and file.

On May 31st. The City of Dixon issued a press release announcing the re-hiring of Chief Thompson. Here's an excerpt from that press release which is attached.

"I am extremely pleased to announce the return of Chief Thompson," said City Manager Lindsey. "He is a true leader, deeply respected by our police officers and truly appreciated by the community. His modern approach to law enforcement has made Dixon a better, safer, and more welcoming place to live. We are very happy he is back."

According to Chief Thompson, his separation agreement called for the City to provide him with a copy of the complaint within two weeks of the separation agreement being executed. Since that time, as Chief Thompson related to the City Attorney read the complaint to Chief Thompson's attorney and that no copy of the complaint has been provided nor has the City revealed the names of those who filed the complaint. Furthermore, Chief Thompson said that the City has now told him that the complaint will not be provided without a court order. These actions are cause for concern.

The concern I have is the effect this event has had and will continue to have on the morale of the rank-and-file members of our police department and its potentially chilling effect on the City's ability to hire a new Chief that will take the steps necessary to reform and modernize the

department. I have asked a former police chief from Anaheim about the reputation of our police department and its relationship to the City's upper management. He said that Laguna has had a reputation for having a bad relationship between City management and police department since the 1980s. I asked if this was normal as I have little knowledge of police affairs and he said it was not normal.

I have other documents for your review that may add some detail to this issue. See attached list of documents I am sending along with this email. I would be glad to meet with you to discuss this matter further. My actions are based on a concern for the integrity of our police department, the welfare of the rank and file, and the impacts on public safety for our residents.

Sincerely,

George Weiss, City Council Member

**[Document 2: Newspaper Article Regarding Poor Police Department Morale Survey Illuminates Poor Morale Among Some Laguna Beach Police Employees. By Daniel Langhorne, Laguna Beach Independent](#)**

January 21, 2022

A survey conducted by the labor union representing Laguna Beach police employees reported poor morale among a cohort of the rank and file, alarming some local officials and policing experts.

The Laguna Beach Police Employees' Association issued the survey to its members after the City Council contracted a research firm, Polco, to survey city employees-in-general and police employees specifically last July. The Polco survey results were presented in a format that mostly highlights positive or affirmative responses.

While Laguna Beach police employees work at a small agency with a relatively low crime rate—policing a world-renowned coastline—they're not immune to the nationwide outrage surrounding the murder of George Floyd and the pandemic-burnout endured by public safety employees, law enforcement experts said.

Forty employees responded from among 78 police union members who were sent the organization's survey in October. By compassion, the Polco survey invited 86 police employees and 61 responded.

Only 56% of Laguna Beach police employees said they were very or somewhat likely to recommend working for the Laguna Beach Police Department, according to the Polco study. By comparison, only 35% of union survey respondents said they were very likely to refer a friend or family member to work at the Department.

These figures are better than a nationwide study by the RAND Center for Quality Policing, which reported only a quarter of respondents would encourage young people to choose policing as a career.

The Polco study reported 85% of Laguna Beach police employees said staff morale in their work unit was excellent, good, or fair. By comparison, 47.5% of police union survey respondents said morale of the department was poor or in crisis.

Police union leaders also spotlighted that 72.5% of survey respondents said they would or probably would leave the City for another opportunity. "Our inability to attract and retain the best people is directly related to the quality of service that we strive to provide to our community. That's concerning to us, and it should concern our community," the Laguna Beach Police Employees' Association Board of Directors said in a statement.

*The union's current agreement with Laguna Beach expires at the end of this year but negotiations haven't started yet Jarrod Sadulski, a police stress researcher, and former police officer for Sunrise, Fla., said city leaders and residents should take notice of the union survey results signaling some employees are experiencing poor morale and low levels of trust in command staff.*

*"It impacts the quality of police services in a significant way that can have an adverse impact on the community," Sadulski said. "Low morale causes officers to become solely reactive, instead of proactively going out actively trying to stop crime trends... because they don't feel they have the backing of the administration and that's bad. It's bad for communities and correlates to increases in crime."*

*There are some steps police commanders can take to mitigate low morale, including community engagement events like National Night Out, publicizing heroic or good deeds by employees, and the police chief personally contacting traumatized officers. Laguna Beach police have dabbled in all of these. It's also possible Laguna Beach is representative of thousands of strained police departments across the nation, Sadulski said. "I don't know any law enforcement agency that can boast high morale and low attrition rate," he said.*

*It's important that police commanders take this opportunity to listen to their employees, Joe Vargas, a retired Anaheim police captain and columnist for Behindthebadge.com. Whether or not the survey results are based on facts, these experiences are real for the respondents. "There might be other dynamics outside their control that are affecting morale as well," Vargas said. "[For example], as a police chief, I don't control their salary that's between labor negotiators and the City."*

*In an interview with the Independent over Zoom, City Manager Shohreh Dupuis downplayed that nearly three-quarters of union survey respondents said they would or probably would leave the City for another opportunity. "I'm not really that concerned about it," Dupuis said. "When you are part of a small police department there are not a lot of opportunities if you want to specialize. A lot of younger police officers when they go to work for a small organization they want to work for a larger organization like the Sheriff's Department."*

*"I would love for all of them to stay here and become a seasoned police officer," Dupuis said. Police union leaders have scrutinized Dupuis' claims.*

*"We're troubled by that statement and her lack of concern. It's true; we do have fewer specialty positions than larger agencies, but that's not why most people leave. Frankly, we should all be concerned when quality employees leave, regardless of the reason," the Association's Board of Directors said. Dupuis also pointed out that employees' rating of trust in the command staff could be skewed if they were previously disciplined.*

*Unnecessarily low morale, even if it's only felt by a section of the Department, can have an impact on individual employees. Researchers have found officers who experience police stress endure cardiovascular conditions, marital discord, and can be at greater risk of suicide, Sadulski said. Dupuis said the City is committed to fostering a culture of wellness and health for the police department. Among the initiatives to accomplish this goal is earmarked funding for a new police employee leadership program. City officials are still exploring what this program would look like but plan to have it in place later this year.*

*Councilmember George Weiss brought the public's attention to the union survey during the Jan. 11 council meeting. "It's very disturbing that such a high percentage of people in our police department would leave for another job. It needs to be addressed," Weiss said in a*

phone interview. "There's also a disconnect between command staff and the rank and file where there's half who trust and another half that's not the case. It is a reason for concern."

**Document 3: Mr. James Grossberg's Response To City Attorney's Email Regarding the Suppression Of Police Employee's Association Survey Discussions February 7th, 2023**

Dear Mayor and City Council members:

*First, please allow me to introduce myself to those who do not already know me. I am a 26-year resident of Laguna Beach. For almost 40 years, I practiced First Amendment and public access law, during which I served for more than two decades as principal newsroom counsel for the Orange County Register, as well as representing several major national news organizations in a variety of First Amendment, defamation, public access, and other matters. I also served as the president of the largest national organization of news media attorneys, the Defense Counsel Section of the Media Law Resource Center, and chaired a committee on First Amendment law for the American Bar Association. (I have since retired from my practice.)*

*I do not represent any entities or individuals relating to the content of this letter. I write solely as a concerned Laguna Beach resident. I, like other Laguna residents, have followed with interest and concern public reports, by both the news media and City Council members during Council sessions, about the most recent survey by the Laguna Beach Police Employees Association, which indicates a great amount of job dissatisfaction among its members. A closed Council session has been announced for tomorrow, Feb. 8, for, among other things, "significant exposure to litigation against the city regarding the "Police Employees Association survey," according to the City's posted agenda for the closed session.*

*It appears that the posted agenda fails to provide the requisite legal predicate for a closed Council meeting pursuant to the requirements of the Brown Act. The agenda states only, in relevant part, that the session will be held for the purpose of a "[c]onference with Legal Counsel Regarding Anticipated Litigation (pursuant to Government Code section 54956.9(d)(2) — significant exposure to litigation against the City — . . . Police Employees Association survey." That plainly is insufficient under the Brown Act to permit a closed Council session. The Act specifically requires that for a meeting to be closed pursuant to subsection(d)(2), the provision cited in the agenda, the following "circumstances" must exist: "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." Unless the City has received a claim or specific threat of litigation, the requisite "existing facts and circumstances" shall consist only of one of the following:*

*"(1) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.*

*(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced."*

*Government Code Sec. 54956.9(e). It strains credulity to imagine a legitimate legal claim against the City or one of its officials for anything contained in or even related to the*

*Association survey since the Association is not an official entity of the City, the City presumably played no role in conducting the survey, the survey apparently already has been made public by the association and it was not created by or provided to the City in confidence as a personnel record. Given the unlikelihood of such a claim, Council members must request, at the very least, that the City Attorney specifically identify such "facts and circumstances" for the Council to discharge its legal duty to comply with the Brown Act.*

*Moreover, if the closed Council session is being held under subsection (e)(2), then the relevant "facts or circumstances" that might result in litigation must be set forth in the meeting notice. Yet, the only factual reference at all in the notice is the unexplained phrase, "Police Employees Association survey." Those words alone are virtually meaningless. They tell the public nothing about how the survey might result in such litigation and therefore provide no information upon which members of the public can make an intelligent evaluation of the propriety of the meeting closure. Good faith by the City Council and its legal counsel requires, at the very least, that the notice provides whatever additional information it can that will not prejudice the City's position in potential litigation. It does not appear that such an effort has been made here.*

*If the City has in fact received a claim or specific threat to commence litigation, the City is required to provide written evidence of such claim or threat to the public, except in the unlikely event that the threat was made orally "in an open and public meeting." To my knowledge, the City has not done so.*

*Moreover, the only public statements regarding the survey of which I'm aware are those by Councilman George Weiss at a Council meeting and those by Mr. Weiss and City Manager Dupuis in an article in the Laguna Beach Independent. Statements by a Council member during a Council meeting are legally privileged under California law so cannot be the basis of any claim against the City or Mr. Weiss. Moreover, Councilman Weiss's reported statements to the Independent essentially repeat his privileged statements so cannot give rise to liability against him or the City either. Even if they did not, they would clearly be insufficient to create liability because all Mr. Weiss did was describe "a disconnect between command staff and the rank and file" and a lack of trust among some in the police department in a very general way, without identifying any individuals, which is not defamatory of any individual nor likely to lead to a defamation claim. In addition, the statement almost certainly was not made with the high degree of awareness of probable falsity that the First Amendment requires in this instance.*

*Likewise, the City Manager's quoted statements come nowhere close to defaming any individual. Nor does it appear plausible that any such statements disclosed any City personnel records of the type that might create legal exposure. Accordingly, there does not appear to be any credible exposure to litigation against the City or its officials relating to the Police Employees Association survey, and thus there appears to be no legitimate basis under the Brown Act for holding a closed meeting in this instance.*

*A Council meeting closed in violation of the Brown Act, including its notice requirements, can result in serious penalties against both the City and individuals involved in the meeting, including civil and criminal penalties. I urge the Council to avoid such a violation, as well as a violation of public trust, by illegally closing the relevant scheduled Council session.*

*Yours sincerely, James E. Grossberg*

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Below is information collated from the open-ended interviews I conducted with 16 LBPB officers and civilian employees. It paints a woeful picture of the department's leadership. A document containing the notes from all the interviews is attached.

**[Document 4: Table Of Most Frequent Comments By Current And Sworn LBPB Officers And Civilian Staff](#)**

**[Summary of most frequent comments taken from candid, confidential, one-on-one interviews with past and current police officers.](#)**







