

EXHIBIT A



February 22, 2021

Muckrock Anonymous Requester  
 94992-15550486@requests.muckrock.com

Dear Requester:

We write to supplement our response to your June 11, 2020 request for communications contained in personal or government accounts of former San Francisco Public Utilities Commission (“SFPUC”) General Manager Harlan Kelly, Jr. As you know, the SFPUC provided responsive records to you on July 2 and July 6, 2020, including a document showing numerous text messages between Mr. Kelly and Walter Wong on Mr. Kelly’s personal cell phone. In that document, which the SFPUC produced in Bates-stamped pages 161 to 219, Mr. Kelly redacted a significant number of text messages. As explained below, in light of the unique and extraordinary circumstances surrounding these records, the City Attorney, working with the SFPUC, has recently reviewed an unredacted draft of the document containing those text messages in the City’s possession. Following that review, we are now providing you with a new version of the document. We have redacted certain portions of the text messages that do not contain information relating to the conduct of the public’s business and therefore do not constitute public records responsive to your request (see Cal. Gov’t Code § 6252(e); *City of San Jose v. Superior Court*, 2 Cal.5th 608 (2017) (*San Jose*)), would constitute an unwarranted invasion of personal privacy (Cal. Const. Art. I, Sec. 1; Cal. Gov’t Code § 6254(c)), or would disclose confidential personnel information (Cal. Gov’t Code § 6254(c)).

Your request sought text messages, chats, and emails between Mr. Kelly and other individuals including Walter Wong “on government or personal accounts” during the period from January 1, 2015 through June 11, 2020. Under the California Supreme Court’s 2017 decision in *San Jose*, communications on City employees’ personal accounts or devices, including text messages on personal cell phones, may be public records subject to disclosure if those communications involve the conduct of the public’s business. As the City Attorney described in a [public memorandum](#) dated March 24, 2017, departments generally satisfy the legal duty under the Public Records Act to search for and produce public records on an employee’s personal electronic device by entrusting the employee to conduct the search and retrieve responsive records. That memorandum instructs that the department must notify the employee of the request and acquaint the employee with the standards for determining whether a writing on the device is a public record and responsive to the request. And should there be a court proceeding

- London N. Breed**  
Mayor
- Sophie Maxwell**  
President
- Anson Moran**  
Vice President
- Tim Paulson**  
Commissioner
- Ed Harrington**  
Commissioner
- Newsha Ajami**  
Commissioner
- Michael Carlin**  
Acting  
General Manager



concerning the request, the employee may be required to testify under oath or submit a statement under penalty of perjury, describing the search conducted on the device and explaining the types of writings on the device that were not provided to the requester because of not being responsive public records.

Consistent with the longstanding advice of the City Attorney's Office as described in the March 24, 2017 memorandum, the SFPUC asked Mr. Kelly to conduct a search of his personal cell phone and email accounts and produce all responsive records related to City business. In response, Mr. Kelly provided a document (Bates-stamped pages 161-219) containing a series of text messages between himself and Mr. Wong beginning January 1, 2015. Mr. Kelly redacted a significant number of text messages in the document, asserting that the redacted communications between him and Mr. Wong did not relate to City business. Following the standard practice of City departments and the general guidance of the City Attorney's Office, the SFPUC relied on Mr. Kelly to prepare the redactions, and did not ask to review the unredacted text messages before producing the document to you in response to your records request.

Mr. Kelly attempted to redact text messages in the document by covering those text messages with black rectangles. But this redaction method was insufficient; it did not completely redact the content that Mr. Kelly wanted to withhold. On July 7, 2020, after the SFPUC provided you with the document prepared by Mr. Kelly including redacted text messages, you informed us that Mr. Kelly had not properly redacted the text messages, so a member of the public could make the redacted text visible on a computer. You informed us that at least some of that information appeared to be sensitive personal information like a security code. We appreciate your letting us know. After receiving your email, the SFPUC asked you to destroy the original document in your possession and remove it from the internet. The SFPUC based this request on its understanding that the redacted text messages in the document did not relate to City business, relying on Mr. Kelly's representation.

Subsequent events have caused the SFPUC to reconsider whether it is appropriate for it to review the text messages in their original, unredacted form. On June 24, 2020, approximately one week before the SFPUC responded to your initial request for records, the U.S. Attorney for the Northern District of California announced that he had charged Walter Wong with conspiring for over 15 years to defraud the public of its right to the honest services of City officials, including schemes involving bribery, kickbacks, and money laundering. On November 30, 2020, the U.S. Attorney's Office announced that it had charged Mr. Kelly in a federal criminal complaint with honest services wire fraud. The complaint alleged that Mr. Kelly engaged in a long-running bribery scheme and corrupt partnership with Walter Wong, and that as part of the scheme, Mr. Wong provided items of value to Mr. Kelly in exchange for official acts by Mr. Kelly that benefited or attempted to benefit Mr. Wong's business ventures. The U.S. Attorney alleged that Mr. Kelly and Mr. Wong had a longstanding relationship involving multiple international trips paid for or subsidized by Wong, cash exchanges, free meals, repairs to Mr. Kelly's personal residence, and personal car services, all while Mr. Kelly tried to use his City position to benefit Mr. Wong and his businesses.

Although the criminal charges are still pending and have not been proven in a court of law, the complaint alleges that the entire course of Mr. Kelly's personal relationship with Mr. Wong was entangled with City business because Mr. Wong allegedly gave Mr. Kelly personal favors and gifts in the hope of exchange for Mr. Kelly's acts as the General Manager of the SFPUC. Given the seriousness of these criminal allegations and the compelling public interest in potential misconduct by government employees, certain text messages between Mr. Kelly and Mr. Wong that previously appeared to be purely personal, non-City business may now reasonably be understood as related to the conduct of the City's business. In reaching this conclusion, we emphasize that Mr. Kelly, like any criminal defendant, is entitled to a presumption of innocence, and we do not suggest or imply anything to the contrary. But given the allegations in the criminal complaints against Mr. Kelly and Mr. Wong, the SFPUC deemed it prudent to review the unredacted text messages to determine whether they were clearly private or unrelated to City business. The redactions in the new version we are providing today redact only those matters that are clearly private or clearly unrelated to City business.

Two extraordinary factors, unlikely to recur, support this unorthodox approach. First, the SFPUC now has in its possession a copy of the full text exchange unredacted, such that the City is able to review the full text exchange. Second, the charges against Mr. Kelly and Mr. Wong allege that personal communications between the two men actually relate to City business and memorialize interactions and transactions related to Mr. Kelly's exercise of duties as the SFPUC's General Manager. The SFPUC's decision to review the unredacted text messages is based on these unique circumstances and does not change the City's usual protocols for responding to requests for communications on employees' personal devices, as described in the City Attorney's 2017 memorandum.

Accordingly, please find attached a new copy of the document provided by Mr. Kelly reflecting his communications with Mr. Wong between January 1, 2015 and June 11, 2020. As noted above, we have redacted several portions of the text exchange. We redacted those portions of the exchange the disclosure of which would constitute an unwarranted invasion of personal privacy, such as discussions of family illnesses, children, and personal residential addresses or personal cell phone numbers, and a reference to a personnel matter on page 51 of the document. See Cal. Const., Art. I, § 1; Cal. Gov. Code § 6254(c),(k); S.F. Admin. Code § 67.1(g). We have also redacted the text message on page 1, dated January 1, 2015, because it does not contain information relating to the conduct of the public's business and therefore is not a public record responsive to your request. See Cal. Gov't Code § 6252(e). We have also excluded the portions of the first page that Mr. Kelly previously redacted because that portion of the text exchange occurred before January 1, 2015 and is not responsive to your June 11, 2020 request.

Best Regards,



Michael P. Carlin  
Acting General Manager  
San Francisco Public Utilities Commission