

## Response to Grand Jury Report Form

**Report Title:** "WHAT WAS THE DEAL BETWEEN THE CITY OF ATASCADERO AND THE FORMER POLICE CHIEF?"

**Report Date:** The Grand Jury Report is undated, but was sent to the City by correspondence from the Grand Jury dated June 16, 2011.

**Response by:** Wade McKinney

**Title:** City Manager

### FINDINGS

I (we) agree with the findings numbered: 1, 2 and 5

I (we) disagree wholly or partially with the findings numbered: 3 and 4

*(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons.)*

### RECOMMENDATIONS

Recommendations numbered N/A have been implemented.

*(Attach a summary describing the implemented actions.)*

Recommendations numbered 1 and 2 have not yet been implemented, but will be implemented in the future.

*(Attach a timeframe for the implementation.)*

Recommendations numbered N/A require further analysis.

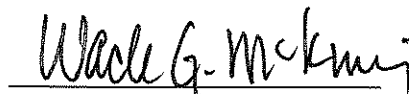
*(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)*

Recommendations numbered N/A will not be implemented because they are not warranted or are not reasonable.

*(Attach an explanation.)*

Date: September 13, 2011

Signed:

  
Wade McKinney, City Manager

Number of pages attached 2

## ATTACHMENT TO GRAND JURY REPORT FORM RESPONSE BY CITY OF ATASCADERO

### FINDINGS

3. Finding: The City Manager released the Settlement Agreement only in response to a public information request.

#### Response to Finding 3:

The City appreciates the fact that in Finding No. 1 the Grand Jury found there was no violation of law or other improper action by the City Manager of Atascadero in negotiating and signing a mutual agreement to terminate the employment of the former Chief in accordance with Section 3A of the former Chief's Employment Agreement. Finding 1 is significant and should be considered when evaluating Findings 2 through 4 of the Grand Jury.

With regard to Finding No. 3, this Finding is not complete on the subject of the release of the Settlement Agreement by the City. The Settlement Agreement was executed by the City and James Mulhall on January 7, 2011. Under Section 4 (g) of the Settlement Agreement, as required by law, James Mulhall had seven days after January 7, 2011 to revoke the Settlement Agreement which would make the Settlement Agreement Effective Date Friday, January 14, 2011. On January 18, 2011, the City notified James Mulhall that a copy of the Settlement Agreement was going to be released to the public by the City. On January 19, 2011, only two (2) business days following the Settlement Agreement Effective Date of January 14, 2011, the City provided a copy of the Settlement Agreement to the party who submitted the public records request, and the City also provided a copy of the Settlement Agreement to all 19 members of the press who received the press release which included:

Alison Reeder [alisonreeder@kcoy.com](mailto:alisonreeder@kcoy.com)  
Amer Gen Media (KZOZ, K-Jug, Q-104, The Krush)  
[ksignorelli@americangeneralmedia.com](mailto:ksignorelli@americangeneralmedia.com)  
Atas Chamber of Commerce [info@atascaderochamber.org](mailto:info@atascaderochamber.org)  
Bethany Tucker [btucker@ksby.com](mailto:btucker@ksby.com)  
KCET-Zack Barons [newsdesk@kcet.org](mailto:newsdesk@kcet.org)  
KCOY News12 [kcoy.com](mailto:kcoy.com)  
KEYT [jbeck@keyt.com](mailto:jbeck@keyt.com)  
KPRL [reception@kprl.com](mailto:reception@kprl.com)  
KSBY [news@ksby.com](mailto:news@ksby.com)  
KVEC [news@920kvec.com](mailto:news@920kvec.com)  
KXDZ [amy@radiocentralcoast.com](mailto:amy@radiocentralcoast.com)  
Main Street [atasms@sbcglobal.net](mailto:atasms@sbcglobal.net)  
Matt Fountain [MFountain@newtimesslo.com](mailto:MFountain@newtimesslo.com)  
New Times [calendar@newtimesslo.com](mailto:calendar@newtimesslo.com)  
Paso Press [city@pasoroblespress.com](mailto:city@pasoroblespress.com)  
Paula McCambridge [news@atascaderonews.com](mailto:news@atascaderonews.com)  
Santa Barbara News [mcole@thesbnn.com](mailto:mcole@thesbnn.com)  
The Tribune [newsroom@thetribunenews.com](mailto:newsroom@thetribunenews.com)  
Tonya Strickland [tstrickland@thetribunenews.com](mailto:tstrickland@thetribunenews.com)

Thus, the City did not limit the disclosure of the Settlement Agreement to only the party who submitted the public records request.

4. Finding: The City's partial and sequential disclosure of the circumstances surrounding the mutual agreement to terminate the employment of the former Chief exposed the City to media and community complaints about a lack of transparency from the City.

Response to Finding 4:

The Settlement Agreement was executed by the City and James Mulhall on January 7, 2011. Under Section 4 (g) of the Settlement Agreement, as required by law, James Mulhall had seven days after January 7, 2011 to revoke the Settlement Agreement which would be until Friday January 14, 2011 which was designated as the Effective Date of the Settlement Agreement. On January 19, 2011, only two (2) business days following the Settlement Agreement Effective Date of January 14, 2011, the City provided a copy of the Settlement Agreement to the party who submitted the public records request and the City also issued a press release as noted above to multiple media sources. The City respects the right to privacy of its employees which must be considered in this process. The Settlement Agreement sets forth in full the terms of the separation of James Mulhall from his employment with the City of Atascadero.

**RECOMMENDATIONS**

1. Recommendation: The City of Atascadero should review and consider an appropriate revision to the process by which its personnel decisions are disclosed to the public. This recommendation relates to Finding 2, 3 and 4.

Response to Recommendation No.1:

The City will review and consider an appropriate revision to the process by which the City's personnel decisions are disclosed to the public consistent with all applicable laws. In regard to time frame, this review and consideration process is ongoing.

2. Recommendation: The City Council should review the possible risk it is exposed to by a disparity between an Employment Agreement that requires the City Manager to provide a written annual review and an actual practice that does not conform to this provision. This recommendation relates to Finding 5.

Response to Recommendation No. 2:

The City is conducting a review of the Personnel Rules and Regulations which will include the period performance review issue. We expect the Rules and Regulations will be presented to the City Council for discussion and action during the Fall of 2011.