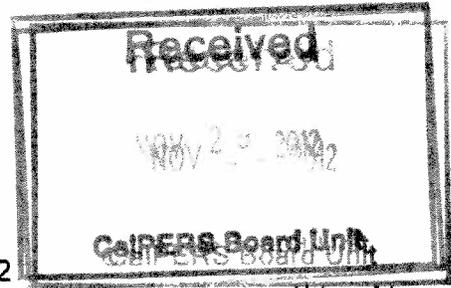


ATTACHMENT C
RESPONDENT'S ARGUMENT



November 29, 2012

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**Re: Respondent Randy G. Adams' Argument
Agency Case No. 2011-0788; OAH No. 2012030095**

Dear Ms. Swedensky:

The following is Respondent Randy Adams' argument:

I

ISSUE PRESENTED

1. Did the Administrative Law Judge's ("ALJ") denial of two motions to continue the hearing unfairly prejudiced Respondent Adams?
2. Did the ALJ err in his conclusion that Respondent Adams' did not establish by a preponderance of the evidence that his earnings from the City of Bell were made pursuant to a publically available pay schedule.

II

RESPONDENTS' ARGUMENT

A. Background Facts

Respondent Adams has been a dedicated public servant for more than 38 years, serving as the Police Chief of Simi Valley and later the Police Chief of Glendale. This case involves Adams' time as the Police Chief of Bell from July 27, 2009 until July 31, 2010.

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**B. The ALJ's Denial of Two Motions to Continue Unfairly
Prejudiced Respondent Adams**

1. Good cause existed to continue the hearing

The City of Bell and, by extension, Respondent Adams, have been embroiled in controversy since July 2010 over allegations of improper salary payments to Bell City officials. Since the issues concerning Bell broke in 2010, several of Bell's formal officials have been charged with criminal offenses relating to actions they took while employed. To date, Adams has not been charged with any crime, but he remains subject to possible criminal charges. Thus, under direction of counsel, he has declined to testify—as explained in a declaration filed with respect to a Motion to Continue the Proceeding, and at the Hearing itself—until the statute of limitations runs on all possible criminal charges. The statute of limitations is estimated to expire by August 30, 2013—meaning the hearing could occur with full testimony by Adams in September 2013.

In order to protect his right to a fair and impartial hearing, Respondent Adams filed a Motion to Continue the hearing on August 2, 2012 arguing that he would be unfairly prejudiced by proceeding with the hearing as scheduled. Respondent Adams requested a year delay so that he would be free from the threat of criminal charges before testifying on his behalf.

Respondent Adams cited his inability to testify along with the fact that he intended to call as witnesses individuals who are currently on trial for criminal charges related to their employment with the City of Bell. Moreover, the Motion to Continue noted that only Adams stands to suffer any harm from the continuance (in the form of delayed accurate pension payments) while CalPERS could point to no cognizable harm flowing from a continuance. CalPERS filed an Opposition to the Motion to Continue asserting that Adams was merely "speculating" that material witnesses would be unavailable to appear and testify at the hearing. The Motion was denied on August 8, 2012.

Respondent Adams renewed his request to continue the hearing on the record on the first day of the hearing, September 19, 2012. This oral motion was based on the reasons articulated in the Motion to Continue as well as developments that had occurred since the denial of the written Motion to Continue. First, Respondent Adams had been advised that the two most important witnesses, Robert Rizzio and Angela Spaccia, had advised Adams'

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through their attorney, that they would not appear to testify at the hearing.¹ In addition, on the day the hearing commenced, September 19, 2012, Respondent Adams received hundreds of documents relating to materials released by the City of Bell to members of the media in response to California Public Records Act requests. The documents were produced only after Respondent Adams demanded that Respondent City of Bell comply with the document requests. Given the belated nature of the document production, it was impossible for Respondent Adams to review the documents in time for use at the hearing.

The oral motion to continue was denied.

2. Respondent Adams was unfairly prejudiced in his ability to present his case

The ALJ's denial of the motions to continue was an error. Given the intense media scrutiny surrounding this case as well as the pending criminal charges, or threats of criminal charges, against the key witnesses in this case, Respondent Adams was denied due process to represent himself in this case. Although Spaccia ultimately testified, the two most important witnesses to the case and the only people who could testify as to what actually happened in this case, Randy Adams and Robert Rizzio, did not testify.

And as noted in Respondent Adams' Motion to Continue, in contrast to the harm suffered by Respondent Adams, CalPERS faced no cognizable harm by the year-long delay requested by Adams.

In fact, given that it is Adams who was appealing the amount of his CalPERS pension, he would be the only party suffering harm by further delay, something he was prepared to accept in order to continue the hearing until such time as he could testify.

C. Respondent Adams' Earnings Under the May 29, 2009 Employment Contract Were Made Pursuant to a Publically Available Pay Schedule.

The ALJ correctly determined that Respondent Adams was subject to a single employment contract dated May 29, 2009. However, the ALJ incorrectly determined that those earnings were not made pursuant to a "publicly available pay schedule."

¹ Although her attorney advised Adams' attorney that she would not appear and testify, Ms. Spaccia did abide by the lawful subpoena and testify.

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The reference to "publicly available pay schedule" in section 20636, subdivision (b)(1), was added by the Legislature following the trial court's judgment in (what ultimately became) *Prentice v. Board of Admin.* (2007) 157 Cal.App.4th 983—see footnote 4 of *Prentice*, referencing Stats.2006, ch. 118, § 4.) Reviewing the 2006 legislative history offers little to expand on a common sense meaning for "publicly available pay schedule" and certainly none of the specificity that followed in 2011 (see below). (2006 Cal. Legis. Serv. Ch. 118 (A.B. 2244) (WEST).)

Adams' contract itself was publicly available. California has in its Public Records Act a codified process for ensuring the disclosure of public documents. (Gov't Code section 6250 *et seq.*) It defines what must be disclosed and when. Bell produced Adams' contract—again, fully and voluntarily—when it was sought by the LA Times and a police union law firm. (Adams' RJN Exh. G; Exh. A17, A18; Valdez and Garcia testimony.) Adams' payrate was also memorialized in the Payroll Authorization Record, prepared soon after he began employment, and retained in regular City records.

The ALJ's reliance on California Code of Regulations ("CCR") section 570.5, which contains an expansive list of what constitutes a "publicly available pay schedule," was erroneous. CCR 570.5 took effect on August 10, 2011, more than a year after Adams had departed Bell and long after he officially retired. CalPERS cannot change the rule for Adams after he has already retired.

The fallout from Bell probably had some part in CCR 570.5's creation. But on its face CCR 570.5 is an extensive list of *new* criteria and it highlights *the previous lack of such criteria*.

California has a codified procedure for requesting public documents. When members of the media requested copies of Adams' contract, it was provided pursuant to that Act. The ALJ's decision that Adams' contract was not publicly available is at odds with the fact that it was made public pursuant to the CPRA's statutory framework.

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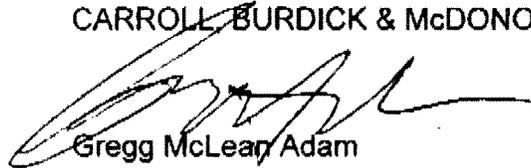
III

CONCLUSION

For the reasons stated, Adams' Bell compensation from the City of Bell should be included in CalPERS' calculation of his "compensation earnable."

Respectfully submitted,

CARROLL BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:JSS:jo

cc: Wesley E. Kennedy, Esq., *via email and regular mail*
Stephen R. Onstot Esq., *via email and regular mail*
Randy G. Adams