



OFFICE OF THE DISTRICT ATTORNEY  
CONTRA COSTA COUNTY

*Diana Becton*  
DISTRICT ATTORNEY

August 31, 2018

Ms. Ann Danforth  
General Counsel  
Kensington Police Protection and Community Services District  
217 Arlington Avenue  
Kensington, CA 94707

RE: Investigation into Kensington's handling of 2009 Initiative Petitions  
DA report #013-0958464

Dear Ms. Danforth,

The Contra Costa County District Attorney's Office has completed our investigation into the above-entitled matter. Although the decision has been made not to pursue criminal charges with respect to this investigation at this time, please be advised of the findings below and advise your clients so as to ensure that in the future Kensington remedies all shortcomings with respect to the handling of voter information.

Our investigation revealed that the 2009 initiative petitions entitled "2009 Initiative – Kensington Police Protection & Community Services District" were mishandled. Once the Registrar of Voters verified the signature documents, the documents (which contained names, signatures and addresses) were returned to Kensington by then Sergeant Ricky Hull who took possession of all sections of the petition and the clerk's certificate from the Contra Costa County Elections Department on September 24, 2009. Neither Sgt. Hull nor anyone in Kensington secured or destroyed these petitions in accord with the law; instead, it appears the petitions were maintained in an unsecured blue box with other old files in a closet. They were not marked or sealed and access to them was not monitored or limited. According to the manager's report by GM Constantourous, "then GM/COP Greg Harman apparently decided that the District should retain the petitions for future use" and at some point "[d]istrict staff moved the box into the storage area" without "mark[ing] it in any way to indicate it contained private records."

Around 2015, a citizen named [REDACTED] somehow obtained copies of the 2009 petition, including some names, addresses and signatures on the petition, and posted it on his website [REDACTED] as historical information about the governance in Kensington. [REDACTED] initially recalled that he received this information from a friend who said that person received the information from the Clerk's office, and claimed it was received in response to a Freedom of Information Act request. Assistant Registrar of Voters Scott Konopasek has been interviewed and opined that the documents posted by [REDACTED] were those that had been returned to Kensington. Later, [REDACTED] informed us that these documents were not received via FOIA request, but said they were received from a friend he refused to name who told him

“even if it were a violation ,which it isn’t, it is not criminal and it’s past the statute of limitations.” It appears that neither [REDACTED] nor anyone else ever made an application for voter registration information pursuant to CA Elections Code section 2188. [REDACTED] stated that he removed the petition documents from his [REDACTED] website and then reposted them without signatures once he learned that there could be a legal issue with respect to the publishing of the petition.

In 2018, apparently in response to public questions regarding whether the language in the petition residents had signed in 2009 matched the language of the ordinance that passed, Director Deppe of the Kensington Police Protection and Community Services District requested to see the box of petitions after learning via now Interim Chief Ricky Hull that the ballot box was still at the Kensington District Office. Interim Chief Hull retrieved the box and drove it to the home of Director Deppe. Director Deppe received the box and says that he reviewed its contents, doing what he described as a “crop scan” of the petition verbiage and made a “copy of the language” while “being careful not to copy anyone’s personal information,” then personally returned the box and its contents to the police station. He described that the box was a generic file and contained nothing saying “do not open,” “private,” “to be destroyed,” or “anything like that.” Director Deppe claims he did “not realize how confidential the materials in the box” were “until he examined them,” and was “completely unaware that he may have broken any laws by examining the contents of the box.”

Once our office was made aware of this situation, and of your department’s decision to destroy the petitions in the spring of 2018, our office sent Senior Inspectors to the Kensington Police Department to receive the petition documents and preserve them pending our investigation.

On April 19, 2018 Inspectors arriving at Kensington PD observed the ballot box “sitting on a counter in a small hallway near the front door of the police department.” Detective Rodney Martinez told Inspectors that he had “found” the box “sitting on his desk in his office” when he “came to work this morning.” Detective Martinez said he did not know who put the box on his desk but said that he had received an email from Chief Hull about it that morning at 2 a.m. stating that “[s]omeone from the DA’s office will be coming by to pick up the blue box today.”

Election officials required by law to receive or file in their offices any initiative or referendum petition shall preserve the petition until eight months after the certification of the results of the election for which the petition qualified, or, if the measure, for any reason, is to submitted to the voters, eight months after the final examination of the petition by the elections official. (CA Elections Code section 17200). Thereafter, the petition shall be destroyed as soon as practicable unless any of the conditions specified in CA EC 17200(b) are satisfied.

One entrusted with confidential voter information shall not use that information for any personal, private or commercial purpose, including reproduction in print, broadcast visual or audio, or display on the internet. (CA Elections Code section 2138.5). Additionally, one entrusted with such information shall employ reasonable security measures, including employing administrative and physical safeguards, and for affidavit of registration information available in an electronic form, technical safeguards to protect the voter registration information from unlawful disclosure and misuse. (CA Elections Code section 2138.5(b)(2)).

It is a misdemeanor for a person in possession of voter information to knowingly use or permit the use of all or any part of the voter information for any purpose other than as permitted by law. (CA Elections Code section 18109(a)). It is also a misdemeanor for a person to knowingly acquire possession or use of voter information from a county elections official without first complying with Section 2188. (CA Elections Code section 18109(b)).

In this instance, it appears that Kensington's failure to secure or destroy the voter information from this petition contributed to unlawful distribution and use of this material. Kensington was entrusted with this confidential voter information and failed to destroy it according to law. As a result, someone entrusted with this information gave it to [REDACTED] who displayed it on the internet. Additionally, Interim Chief Hull allowed it to be used for a purpose (confirming the language of the petition) which he had a personal interest in. Had the petitions been administratively and physically safeguarded as required by law, the distribution and use of the material at issue here could not have occurred. It is noteworthy that even while this investigation was pending the Kensington Police Department failed to adequately secure these documents in that they neither logged them into evidence at the police department nor created a chain of custody document with respect to their possession.

One particularly concerning aspect of this investigation is the involvement of Interim Chief Hull in this matter. Since the petition at issue here involved support for an ordinance regarding the contracting out of Kensington Police services, it was unwise for a member of the Kensington Police Department to be involved at all in the transportation, storage, handling or distribution of voting material on this topic. Although not a criminal matter, the common law doctrine against conflicts of interest requires a public officer "to exercise the powers conferred on him with disinterested skill, zeal and diligence and primarily for the benefit of the public." (*Noble v. City of Palo Alto* (1928) 89 Cal. App. 47, 51). "Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal." (*Ibid.*) As Interim Chief of Police, Chief Hull should have been aware of the law regarding the handling of voter information and should have so advised Director Deppe. If unsure of the law, Chief Hull should have consulted with counsel such as yourself prior to handling any of this material. Had he done so, I am confident that you would have advised him on the common law doctrine against conflicts of interest as well as the Elections Code, thus avoiding this whole situation.

Because we cannot prove beyond a reasonable doubt that this voter information was knowingly used or permitted to be used for any purpose other than as permitted by law, we are not filing charges against anyone in this matter at this time. The petitions in question, which are being held in evidence at the Contra Costa County District Attorney's Office, will be destroyed by our office. However, we note that now that government officials in Kensington are aware of the law regarding the handling of voter information, any future mishandling by Kensington officials will be deemed to be "knowing" so that future violations may be prosecuted if provable.

As soon as possible, and prior to the next election, all Kensington employees who are entrusted with voter information in the future must be trained as to its confidentiality. Additionally, policies and procedures for employing administrative and physical safeguards of this information must be established and enforced.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Lynn E. Uilkema  
Senior Deputy District Attorney  
Special Operations Division  
Contra Costa County District Attorney's Office

CC: Supervisor John Gioia, District 1  
Joseph Canciamilla, Contra Costa County Clerk-Recorder-Registrar  
Diana Becton, Contra Costa County District Attorney  
Interim Chief Ricky Hull, Kensington Police Department  
President Sherris – Watt, KPPCSD Board President  
Tony Constantouros, Kensington General Manager