



MEMORANDUM

FC 14 (01-25-23)

TO: Chair Nai Hsueh
Vice Chair Richard P. Santos

FROM: Rick Callender
Chief Executive Officer

SUBJECT: Potential theft of Valley Water
confidential documents

DATE: February 2, 2024

As I have verbally reported to you, I have the strong belief, and the attached evidence and staff report strongly affirms my belief, that Director Eisenberg took the investigative report regarding her behaviors, which she was allowed to only review from Valley Water Headquarters. This is despite the Director being advised that she was not authorized to remove it from the locked legal conference room where she was reviewing the report.

The details in Attachment 1 are meant to confirm custody of the investigative report as well as provide evidence of the events surrounding the disappearance of documents from the legal conference room where the documents were being reviewed by individual members of the Board of Directors.

As I would do with any employee, or person on Valley Water property, who has engaged in potentially illegal behavior, I have asked for the San Jose Police Department and the Santa Clara County District Attorney's office to investigate this incident and take appropriate action.

I am not aware of the full contents of the documents which Director Eisenberg likely has in her possession, but I believe it to be the full investigative report, which includes the names of witnesses, their full and unredacted statements, and other personal information which will cause a severe chilling effect on any potential witnesses to illegal, discriminatory or harassing behavior that may occur at Valley Water. If an employee had engaged in the behaviors which are likely to have occurred, they would be placed on immediate administrative leave and be subjected to disciplinary actions, including potential dismissal.

I recommend that the Board of Directors agendaize this incident at the February 13, 2024 meeting to discuss and take appropriate action under their board governance policies. This includes the determination of Board action relative to governance policy GP 6.19.3, which allows for admonition, sanction, or censure of a Board member as a result of their behavior or actions.

Please let me know if you have any questions and I look forward to discussing with you how you would like to proceed.

Rick L. Callender, Esq.
Chief Executive Officer

Attachment 1: Unauthorized Removal of Confidential Investigative Documents from District Property

Cc: J. Carlos Orellana, District Counsel; Michele King, Clerk of the Board

Attachment 1

Unauthorized Removal of Confidential Investigative Documents from District Property

Synopsis: on 01/29/24, between 1:24 PM and 1:28 PM, an Unauthorized Removal of Confidential Investigative documents occurred at the Valley Water Headquarters (HQ) located at 5700 Almaden Expressway, San Jose. Director Eisenberg, who is on the Board of Directors at Valley Water, was viewing documents in a conference room which were printed on paper and supposed to remain on the premises due to the confidential information contained in the documents. While in possession of the documents, Director Eisenberg collected the documents, walked out of the building, and placed the documents in the trunk of her vehicle. Director Eisenberg drove away with the documents in her vehicle. The documents have not been recovered.

Narrative: On 02/01/24, I, Loyd Kinsworthy, was working as a Senior Management Analyst in the Security Office for Valley Water. My supervisor, Ray Fields, and I were assigned to further investigate an incident of the unauthorized removal of confidential investigative documents from Valley Water, which occurred on 01/29/24 between 1:10 PM and 1:30 PM. Fields had been contacted on 01/30/24 to view and obtain video from the HQ building related to the incident (refer to Attachment I: Incident Timeline by Fields). Fields contacted Clerk of the Board Michele King and Assistant Officer Candice Kwok-Smith who were witnesses to the incident to schedule times to speak with them about the incident.

Statements: Statement of Clerk of the Board Michele King:

Fields and I interviewed Michele King at approximately 1 PM using a Zoom Video call. I asked King to tell us what occurred on 01/29/24 in relation to the incident. She stated that a confidential investigation had been completed by an outside attorney and the report for the investigation was available for the Board of Directors to view. King sent an email on Thursday, January 25th at 2 PM to all the Directors on the Board advising them the report was ready to be viewed. The email explained that the report could be viewed in her office. King had been instructed by the outside counsel (Samantha Zutler) and Board Chair Nai Hsueh to not make more than one copy of the document and not to send it out electronically due to the confidential information in the report. The report was approximately 2000 pages per King's estimate.

On 01/29/24, at approx. 12:20 PM – 12:30 PM Director Barbara Keegan began reviewing the report in the Legal Conference Room in the HQ Building. The conference room is just outside of the Clerk of the Board area. Director Keegan was escorted to the conference room and provided the copy of the report by Assistant Officer Candice Kwok-Smith.

At 1:06 PM, King received an email read receipt from Director Rebecca Eisenberg confirming she had read the email regarding the instructions for reviewing the report. At approximately 1:10 PM hours, Director Eisenberg entered King's office. Director Eisenberg asked to see the report. King advised her there was only one copy of the entire report and Director Keegan currently was in possession of the report and reviewing it. King told Director Eisenberg once Director Keegan was done reviewing the report Director Eisenberg would be able to view it. Director Eisenberg did not want to wait and began yelling and being verbally abusive to King. Director Eisenberg stated that King was not following the "process" and King advised her that there was no process for this situation because it was out of the norm. Director Eisenberg continued to be excited and upset about not being able to immediately review the report.

At approximately 1:20 PM, Director Keegan left the conference room. She left the report in the room. Smith then took Director Eisenberg to the conference room so Director Eisenberg could review the report.

At approximately 1:30 PM, King and Director Keegan were talking in King's office. There is a door between King's Office and the Board lounge. The door was open. King heard noises in the Board lounge. She asked Director Keegan if it was Director Eisenberg in the Board lounge. Director Keegan walked over to the open door and confirmed that it was Director Eisenberg who was collecting her property and leaving.

At approximately 1:30 PM, King contacted Kwok-Smith and asked her to go to the conference room to see if the report was in the room. Kwok-Smith went to the room and noted that the report was gone and only binder clips were left behind.

At approximately 1:37 PM, King texted Samantha Zutler and advised her that Director Eisenberg had taken the report out of HQ and left with it. King also notified Board Chair Hsueh of the incident.

I asked King if she had advised Director Eisenberg the documents were confidential and not to leave the premises. King said she did not advise Director Eisenberg of information. However, King stated the documents had wording stating the documents were confidential and attorney-client privileged in the footer of all the pages. King also had advised Director Eisenberg in their earlier conversation the documents were confidential and that she could not print another copy for Director Eisenberg.

I asked King if the Directors were trained on how to handle confidential documents and she was not sure if they received specific training on the topic but did state they attended legal counsel training.

I asked King if any other Board members were allowed to take the report off District property. King advised me the Board Chair was allowed to take the report off campus, but no other Directors were allowed to remove it from the Clerk of the Board area. Board Chair Hsueh was provided the report shortly after it was released to the District. Directors Beall, Keegan, and Estremera were the other Board members who reviewed the report. None of the other Directors removed the documents from HQ.

I asked her who she believed took the documents. She believed it was Director Eisenberg who took the documents. I asked King if she saw Director Eisenberg leaving with the documents. She did not see her walk out with the documents, so I asked her why she believed it was Director Eisenberg who took the documents. King told me Director Eisenberg left shortly after gaining access to the documents, the documents were then missing, and Director Eisenberg avoided contacting King before leaving the building.

I asked King if there were any other staff who may have information regarding the incident other than her and Kwok-Smith. King stated that Max Overland was in her office when Director Eisenberg was yelling and agitated.

Statement of Assistant Officer Candice Kwok-Smith:

At approximately 1:40 PM, Fields and I interviewed Kwok-Smith in her office. She stated that on 01/29/24 at approximately 12:50 PM, Director Eisenberg came into Kwok-Smith's office. Director Eisenberg asked why Director Hsueh was able to look at the report in question. Kwok-Smith informed Director Eisenberg the report was available for all Board members to review, and that King had sent out

an email the prior week with instructions on how to view the report. Director Eisenberg opened her email on her phone and saw the email regarding the report review. Director Eisenberg wanted a copy of the report and Kwok-Smith informed her Director Keegan was currently reviewing it and there was only one copy allowed so she could not view it until Director Keegan was finished. Director Eisenberg insisted on seeing the report, so Kwok-Smith went and asked Director Keegan how much longer she needed to complete her review of the document. Director Keegan advised she needed an additional 15 minutes. Kwok-Smith updated Director Eisenberg and then Director Eisenberg walked over to King's office.

Director Eisenberg was verbally aggressive with King. After a short time, King came into Kwok-Smith's office. Director Eisenberg followed King into the office. Director Eisenberg was still agitated and stated it was illegal to only have one copy because she needed a copy for her and her lawyer.

Director Keegan completed her review of the report and came out of the conference room. Director Keegan notified Kwok-Smith that she left the report in the conference room. Kwok-Smith then walked Director Eisenberg to the conference room. When Kwok-Smith opened the door, she could see the report on the table in the conference room. Kwok-Smith let Director Eisenberg into the room. Director Eisenberg asked Kwok-Smith if the report needed to stay in the room or if I (Director Eisenberg) needed to stay in the room with the report. Kwok-Smith could not remember to exact statement, but it was something to the effect of one of the two statements. Kwok-Smith told Director Eisenberg the report needed to stay in the room. Kwok-Smith left Director Eisenberg in the room and went back to her office. When Director Eisenberg entered the room, she had only a small purse with her.

At approximately 1:30 PM, King contacted Kwok-Smith and asked her to see if the report was still in the room. Kwok-Smith went to the room and when she opened the door, she could see that the report and Director Eisenberg were gone and only three binder clips remained on the table. The clips were originally connected to the report. She said the report was large which she described as close to 2000 pages, so it was easy to see it was gone. Kwok-Smith advised King the report was gone from the room.

I asked Kwok-Smith if the directors were ever trained on how to handle confidential information. Kwok-Smith stated the Directors receive a class from District Counsel, but she was unsure what is discussed in the class.

I asked her if the other Board members had reviewed the report and she told me other Board members have reviewed the report. She stated that none of the other Board members took the report out of the room.

I asked her if she saw Director Eisenberg walk out with the report and she said did not see Director Eisenberg leave with the report. She did not know the report was gone until King asked her to go to the conference room to see if the report was still in the room and then she looked in and saw the report was not in the room.

I asked Kwok-Smith who she believed took the report and she stated she believed it was Director Eisenberg. She explained that Director Eisenberg was the only one in the room with the report when Kwok-Smith left the room. The only people who knew the report was in the room were Director Keegan, King, and her.

Fields asked her if there was any other staff member who may have information regarding the incident and she stated Max Overland was in King's office when Director Eisenberg was asking for the report and yelling at King.

Statement of Deputy Clerk of the Board Max Overland:

At 2:08 PM, Fields and I interviewed Overland in the Legal Conference Room at HQ. Overland told us on 01/29/24, at approximately 1:05 PM hours, he was in King's office having a meeting with King. Director Eisenberg entered King's office and stood against the wall. She did not say anything so Overland and King continued their meeting. A short time later, Director Eisenberg interrupted the meeting and asked to see the report. King advised Director Eisenberg that Director Keegan was currently reviewing the report and would be done in 15 minutes which Director Keegan said 10 minutes prior. Director Eisenberg demanded she be provided the document immediately and asked, "How come we stepped out of the process and how we handled this?" King explained they did not have a process for the situation because it was something new. Director Eisenberg asked why the report needed to be viewed on the premises and King advised it was the direction of the outside counsel and the Board Chair for the documents not to leave the District. Director Eisenberg stated that her attorney needed a copy of the report. They were advised Keegan was done with the report.

Kwok-Smith took Director Eisenberg to the conference room to review the report. Overland said he had a feeling based on prior interactions and Director Eisenberg's conduct that day that she may try to take the report. Overland kept watch on the outside of the conference room but was called away on other business. When he completed his other business, he walked by the conference room to see if the lights were on in the room which would signal to him someone was in the room. The lights were off when he walked by which he thought was approximately 1:22 PM. He contacted King to see if the document was returned but was advised the document had been taken out of the building.

Overland stated Director Keegan was a witness to how Director Eisenberg was treating the staff in relation to the report.

Statement of HQ Lobby Security Guard Razia Khan:

At approximately 2:20 PM, Fields and I contacted Khan to ascertain if she had seen Director Eisenberg exit through the lobby on Monday, 01/29/24. Khan advised us that she did not see Eisenberg exiting through the lobby on Monday.

Narrative (continued):

After conducting the interviews, we continued our investigation into the incident. Fields gathered Director Eisenberg's access control reports and reviewed the collected video over a period of 30 days. The access report showed Director Eisenberg almost always entered through the Board patio door. Video review determined Director Eisenberg exited through the same Board Patio door for the entire 30 days with the exception of exiting through the HQ Lobby in the afternoon of 01/29/24.

Please refer to Fields' Attachment I: Incident Timeline for a detailed timeline of events for 01/29/24; Attachment II: Exit Route Visual created by Fields; Attachment III: Video and Screen Shots.

As of 02/01/24, at 8:00 PM, the report has not been recovered by Valley Water.

Further Investigation/Next Steps

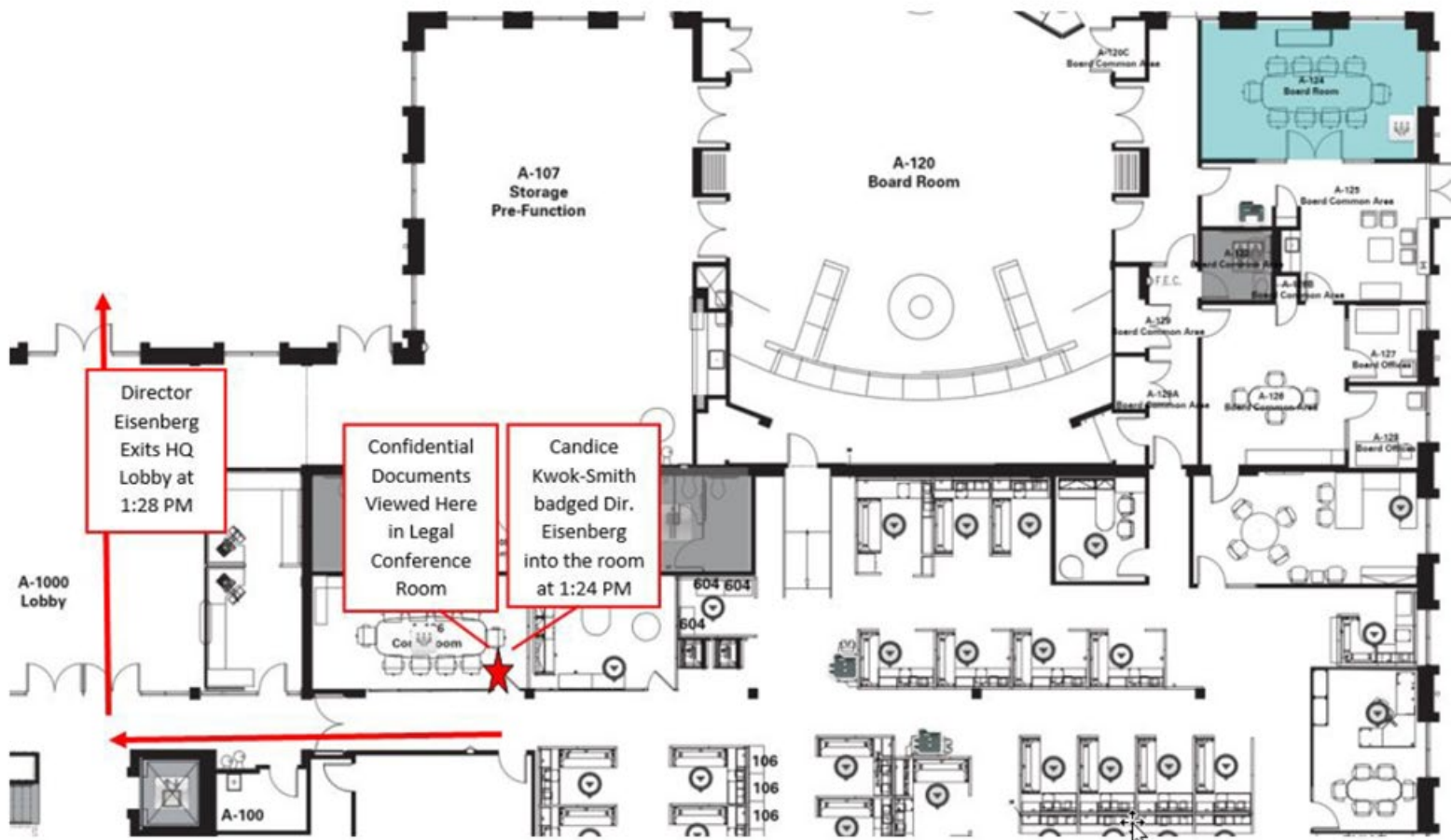
Based on this investigation, Valley Water may exercise the option of submitting this matter to law enforcement for possible criminal charges against Director Eisenberg.

Attachment I: Incident Timeline

- 10:33 AM: Director Eisenberg arrives at the Valley Water campus
- 11:00 AM: Director Eisenberg attends the Water Conservation and Demand Management Committee Meeting
- 12:50 PM: Director Eisenberg walks into Candice Kwok-Smith's office to converse.
 - 12:33 PM: Director Keegan began her review of the investigative report in the Legal Conference Room
- 1:05 PM: Director Eisenberg, through conversation with Candice Kwok-Smith, learns that the investigative report is available and that notification of its on-site availability and review was sent to all Directors on Thursday, January 25, 2024. Director Eisenberg checks for this email via smartphone and reads the email at that time
- 1:06 PM: Director Eisenberg enters Michele King's office and aggressively demands the investigative report
- 1:20 PM: Director Keegan exits the Legal Conference Room while leaving the investigatory report inside the locked conference room
- 1:24 PM: Candice Kwok-Smith gives access to Director Eisenberg into the Legal Conference Room. Candice Kwok-Smith saw that the investigative report was on the conference room table as Director Eisenberg entered the conference room
- 1:28 PM: Director Eisenberg exits the Headquarters' Lobby with an excessively large amount of paper which she needs both arms to secure. Based on the description of the investigative report being nearly 2000 pages along with the circumstances, the item being carried by Director Eisenberg appears to be the report in question
- 1:29 PM: Director Eisenberg places the investigatory report into the trunk of her vehicle
- 1:29 PM: Director Eisenberg enters back into the Headquarters Building via the Board of Directors patio
- 1:29 PM: Michele King and Director Keegan believed they heard Director Eisenberg in the Board lounge. Michele King stated that Director Keegan visually verified that Director Eisenberg was in the lounge at that time
- 1:30 PM: Director Eisenberg exits through the Board of Directors patio and leaves in her vehicle
- 1:31 PM: Candice Kwok-Smith enters the Legal Conference room and discovers that the investigative report is no longer in the conference room

Note: Times are approximations. Times are ascertained through video review, access control reports, and staff interviews

Exit Route of Director Eisenberg while in Possession of Documents



Attachment III: Video and Screen Shots

Timeline for Monday, January 29, 2024, Incident

Clip 1 - 10:31:15 – Director Eisenberg arrives at the District campus. She brings in a large black bag, purse, and cross-body satchel from the passenger side of the car. She does not retrieve anything from the trunk of her vehicle

Clip 2 - 1:28:09 – Director Eisenberg exits interior Headquarters’ glass double doors coming from the Clerk of the Board area with an excessively large amount of paper which she needs both arms to secure

Clip 3 - 1:29:05 – Director Eisenberg places, what appears to be, a large paper document in the trunk of her vehicle

Clip 4 - 1:30:27 – Director Eisenberg leaves the District. She exits from the Board of Directors patio carrying a large black bag, purse, cross-body satchel, and to-go lunch

Screenshot #1 – Director Eisenberg exiting interior glass doors with an excessively large amount of paper which she needs both arms to secure

Screenshot #2 – Director Eisenberg placing “document” in the trunk of vehicle

