In the interest of protecting the integrity of confidential information discussed during closed session, the Legislature enacted Government Code section 54963 as part of the Brown Act. This section prohibits board members from disclosing confidential information that has been acquired by being present in closed session to a person not entitled to receive it, unless the board authorizes disclosure.

Confidential information is defined as a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session. Closed session topics include student discipline; personnel performance discipline or dismissal; real property negotiations; labor negotiations; and existing, pending, or anticipated litigation.

A leak of confidential closed session information is considered a breach of legal and ethical responsibilities in that the disclosure of the information undermines the position of the public agency. Unless a legislative body has collectively authorized the disclosure of confidential information, it is strictly prohibited. The importance of maintaining the confidentiality of closed session information is underscored by the weight of the penalties assigned for violation of the statutory prohibition against such disclosure. Such penalties may include, but not be limited to, the following:

- Court injunction to prevent the disclosure of confidential information, a violation of which would be punishable by contempt of court. (Government Code section 54963(c)(1); California Code of Civil Procedure sections 1209(a)(5) and 1218 (The disobedience of a lawful judgment or order of a court constitutes a contempt punishable by a fine of up to $1,000, imprisonment not exceeding five days, or both.));
- Referral of a member of a legislative body who has willfully disclosed confidential information to the Grand Jury. (Government Code section 54963(c)(3); Government Code section 3060; People v. Tice, 146 Cal.App.2d 750 (1956); Steiner v. Superior Court, 50 Cal.App.4th 1771 (1996)).

If you have any follow-up questions, please feel free to contact Atkinson, Andelson, Loya, Ruud & Romo.
Brown Act — Confidentiality of Closed Session Information

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