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March 1, 2016

Dear Mr. Beard

The District has received your letter dated January 29, 2016 requesting access to your personnel files. As you noted, Labor code section 1198.5 does provide you the right to review and copy your personnel files. However; per District's Records Retention Schedule, employee personnel records are not maintained beyond seven (7) years after termination of employment. Our records indicate your retirement from employment as 9/25/07; therefore, your employee personnel file would not be available since it no longer exists.

For clarification, your letter requests that the inspection and copying be performed by your representative, Tiffany Anderson. Should you fall within the appropriate time frame for personnel record retention, the District would decline that request.

First of all, an employee's personnel file contains very confidential information including social security number, date of birth, performance evaluations etc. The District is not able to allow access to that information without a hold harmless agreement from the requesting employee, in which that employee would agree to release the District from any liability which might arise from allowing a third party to have access to the employee's confidential information.

Second, while Labor code section 1198.5 does provide that every "current and former employee, or his or her representative" has the right to inspect, the District does not consider Ms. Anderson as qualifying as a representative. Neither section 1198.5, nor the surrounding sections, define 'representative. As a former employee of the District your rights are affected by the Myers Millias Brown Act (MMBA) Government Code section 3500 et seq. That act does discuss representation and provides that "Recognized employee organizations shall have the right to represent their members in their employment relations with public agencies". It also provides that you as an individual can represent yourself. Your attorney no doubt would have the right to represent you and review the records, but the District must be careful about whom it considers to be an employee representative. MMBA does not provide that everyone else can act as an employee representative.

Should you have any questions, please feel free to contact me.

Sincerely,

Eddie Lucchesi  
Manager