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Open Government

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County of San Diego
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Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – HALL OF JUSTICE

PROJECT FOR OPEN GOVERNMENT,	)	CASE NO. 37-2022-00028202-CU-MC-CTL
Plaintiff and Petitioner,	)	
vs.	)	VERIFIED COMPLAINT FOR
	)	DECLARATORY AND INJUNCTIVE
	)	RELIEF AND PETITION FOR WRIT
CITY OF SAN DIEGO; and DOES 1 through 100,	)	OF MANDATE UNDER THE
Defendants and Respondents.	)	CALIFORNIA PUBLIC RECORDS
	)	ACT AND OTHER LAWS

Plaintiff and Petitioner PROJECT FOR OPEN GOVERNMENT ("PLAINTIFF") alleges as follows:

Introductory Statement

1. PLAINTIFF brings this lawsuit under the California Public Records Act ("CPRA"), as well as the California Constitution, the San Diego City Charter, and other applicable legal authorities. PLAINTIFF is suing for itself and on behalf of all other persons who have made CPRA requests to Defendant and Respondent CITY OF SAN DIEGO ("CITY") but have not received timely responses to their requests and/or timely disclosure of all responsive records.

Parties

2. PLAINTIFF is a non-profit corporation formed and operating under the laws of the State of California. It serves as a government "watchdog" for purposes of making sure that public agencies and officials are transparent in their conduct, accountable for their conduct, and conform their conduct

1 to all applicable legal requirements. At least one of PLAINTIFF's members resides in and pays taxes
2 in the City of San Diego.

3 3. Defendant and Respondent CITY OF SAN DIEGO ("CITY") is a "local agency" within
4 the meaning of Government Code Section 6252.

5 4. The true names and capacities of the Defendants/Respondents identified as DOES 1
6 through 100 are unknown to PLAINTIFF, who will seek the Court's permission to amend this pleading
7 in order to allege the true names and capacities as soon as they are ascertained. PLAINTIFF is informed
8 and believes and on that basis alleges that each of the fictitiously named Defendants/Respondents 1
9 through 100 has jurisdiction by law over one or more aspects of the public records that are the subject
10 of this lawsuit or has some other cognizable interest in the public records.

11 5. PLAINTIFF is informed and believes and on that basis alleges that, at all times stated
12 in this pleading, each Defendant/Respondent was the agent, servant, or employee of every other
13 Defendant/Respondent and was, in doing the things alleged in this pleading, acting within the scope of
14 said agency, servitude, or employment and with the full knowledge or subsequent ratification of
15 his/her/its principals, masters, and employers. Alternatively, in doing the things alleged in this pleading,
16 each Defendant/Respondent was acting alone and solely to further his/her/its own interests.

17 **Jurisdiction and Venue**

18 6. The Court has jurisdiction over this lawsuit pursuant to Government Code Sections 6258
19 and 6259; Code of Civil Procedure Sections 526a, 1060 *et seq.*, and 1084 *et seq.*; the California
20 Constitution, and the San Diego City Charter, among other provisions of law.

21 7. Venue in this Court is proper because the obligations, liabilities, and violations of law
22 alleged in this pleading occurred in the County of San Diego in the State of California.

23 **Legal Background**

24 8. At all times relevant to this lawsuit, Government Code Section 6253 has provided as
25 follows:

26 (a) Public records are open to inspection at all times during the office
27 hours of the state or local agency and every person has a right to inspect
28 any public record, except as hereafter provided. Any reasonably
segregable portion of a record shall be available for inspection by any
person requesting the record after deletion of the portions that are
exempted by law.

1 (b) Except with respect to public records exempt from disclosure by
2 express provisions of law, each state or local agency, upon a request for
3 a copy of records that reasonably describes an identifiable record or
4 records, shall make the records promptly available to any person upon
5 payment of fees covering direct costs of duplication, or a statutory fee if
6 applicable. Upon request, an exact copy shall be provided unless
7 impracticable to do so.

8 (c) Each agency, upon a request for a copy of records, shall, within 10
9 days from receipt of the request, determine whether the request, in whole
10 or in part, seeks copies of disclosable public records in the possession of
11 the agency and shall promptly notify the person making the request of
12 the determination and the reasons therefor. In unusual circumstances, the
13 time limit prescribed in this section may be extended by written notice
14 by the head of the agency or their designee to the person making the
15 request, setting forth the reasons for the extension and the date on which
16 a determination is expected to be dispatched. No notice shall specify a
17 date that would result in an extension for more than 14 days. When the
18 agency dispatches the determination, and if the agency determines that
19 the request seeks disclosable public records, the agency shall state the
20 estimated date and time when the records will be made available. As
21 used in this section, "unusual circumstances" means the following, but
22 only to the extent reasonably necessary to the proper processing of the
23 particular request:

24 (1) The need to search for and collect the requested records from
25 field facilities or other establishments that are separate from the office
26 processing the request.

27 (2) The need to search for, collect, and appropriately examine a
28 voluminous amount of separate and distinct records that are demanded
in a single request.

(3) The need for consultation, which shall be conducted with all
practicable speed, with another agency having substantial interest in the
determination of the request or among two or more components of the
agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or
a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to
delay or obstruct the inspection or copying of public records.

(1) A requester who inspects a disclosable record on the premises
of the agency has the right to use the requester's equipment on those
premises, without being charged any fees or costs, to photograph or
otherwise copy or reproduce the record in a manner that does not require
the equipment to make physical contact with the record, unless the
means of copy or reproduction would result in either of the following:

(A) Damage to the record.

(B) Unauthorized access to the agency's computer
systems or secured networks by using software, equipment, or any other

1 technology capable of accessing, altering, or compromising the agency's
2 electronic records.

3 (2) The agency may impose any reasonable limits on the use of
4 the requester's equipment that are necessary to protect the safety of the
5 records or to prevent the copying of records from being an unreasonable
6 burden to the orderly function of the agency and its employees. In
7 addition, the agency may impose any limit that is necessary to maintain
8 the integrity of, or ensure the long-term preservation of, historic or
9 high-value records.

10 (3) The notification of denial of any request for records required
11 by Section 6255 shall set forth the names and titles or positions of each
12 person responsible for the denial.

13 (e) Except as otherwise prohibited by law, a state or local agency may
14 adopt requirements for itself that allow for faster, more efficient, or
15 greater access to records than prescribed by the minimum standards set
16 forth in this chapter.

17 (f) In addition to maintaining public records for public inspection during
18 the office hours of the public agency, a public agency may comply with
19 subdivision (a) by posting any public record on its internet website and,
20 in response to a request for a public record posted on the internet
21 website, directing a member of the public to the location on the internet
22 website where the public record is posted. However, if after the public
23 agency directs a member of the public to the internet website, the
24 member of the public requesting the public record requests a copy of the
25 public record due to an inability to access or reproduce the public record
26 from the internet website, the public agency shall promptly provide a
27 copy of the public record pursuant to subdivision (b).

28 9. At all times relevant to this lawsuit, San Diego City Charter Section 215 has provided
as follows: "All books, records and accounts of every office and Department of the City shall be open
to inspection by any citizen at all reasonable times and under reasonable regulations established by the
Council, except such records and documents the disclosure of which would tend to defeat the lawful
purpose which they are intended to accomplish."

10. At all times relevant to this lawsuit, San Diego City Charter Section 216 has provided
as follows: "Copies or extracts, duly certified, from said books and records open for inspection, shall
be given by the officer having the same in custody to any person demanding the same who shall be
charged for such copies or extracts, and for certification, the charge to be fixed by the Council."

11. At all times relevant to this lawsuit, Section 5.2.3 of San Diego Administrative
Regulation 95.21 has provided as follows: "*Departments* may not delay a response to a *Request* due to
staffing levels or staff absences. If the *PRA Liaison* is out of the office during the time in which the City

1 must respond to a *Request*, the Department must have a backup for the PRA *Liaison* to work on the
2 *Request* to ensure that all deadlines are met.”

3 12. At all times relevant to this lawsuit, Section 5.4 (labeled “Ten-Day Response to
4 Requestor for *Mayoral Departments*”) of San Diego Administrative Regulation 95.21 has provided as
5 follows:

6 Within 10 calendar days of the City’s receipt of the *Request*, *PRA*
7 *Program* staff must respond to the requester on behalf of the City. If the
8 tenth calendar day after receipt falls on a Saturday or Sunday, the ten-day
9 initial response must be sent on the previous Friday. If the tenth calendar
10 day after receipt falls on a City holiday, the ten-day response must be
11 sent no later than the day after the holiday. *PRA Program* staff serve as
12 the point of contact for the requester throughout the timeline of the
13 *Request*.

14 5.4.1. The ten-day response must contain the estimated date and
15 time upon which the disclosable *Public Records* will be made available.

16 5.4.2. If all responsive *Public Records* are located and provided
17 by the tenth day, or if the ten-day response states that no responsive
18 *Public Records* exist, the *Request* can be closed.

19 5.4.3. The ten-day response does not require the actual disclosure
20 of *Public Records*. Rather, responsive non-*Exempt* records must be
21 promptly disclosed following a reasonable search and review of the
22 records for exemptions.

23 5.4.4. In unusual circumstances, as specified below, *PRA*
24 *Program* staff may extend the ten-day requirement by written notice to
25 the requester setting forth the reasons for the extension and the date on
26 which a determination as to whether the request in whole or in part seeks
27 copies of disclosable public records will be made. The notice must
28 specify a date that is within 14 calendar days of the notice. If the
determination is that responsive non-exempt records exist, then the
estimated date of disclosure must be provided to the requestor. It is the
responsibility of the PRA Liaisons for the assigned department(s) to
provide this determination to the PRA Program prior to the conclusion
of the 14-day extension period.

Unusual circumstances means one or more of the following:

a. Location. The need to search for and collect the
requested *Public Records* from multiple City facilities or other
establishments that are separate from the office or *Department*
processing the *Request*.

b. Volume. The need to search for, collect, and
appropriately examine a voluminous amount of separate and distinct
Public Records that are requested in a single *Request*.

c. Multiple Agencies. The need for consultation, which
shall be conducted with all practicable speed, with another agency
having a substantial interest in the determination of the *Request*.

1 13. At all times relevant to this lawsuit, Section 5.9 (labeled “Procedure for *Independent*
2 *Departments*”) of San Diego Administrative Regulation 95.21 has provided as follows:

3 5.9.1. Ten-Day Response

4 Within 10 calendar days of the City’s receipt of the *Request*, the
5 *PRA Liaison* must respond to the requester on behalf of the City. If the
6 tenth calendar day after receipt falls on a Saturday or Sunday, the ten-day
7 initial response must be sent on the previous Friday. If the tenth calendar
8 day after receipt falls on a City holiday, the ten-day response must be
9 sent no later than the day after the holiday. The *PRA Liaison* serves as
10 the *Department* point of contact for the requester throughout the timeline
11 of the *Request*. [¶] See sections 5.4.1, 5.4.4 for Ten-Day Response
12 requirements.

9 **Factual Background**

10 14. Defendants/Respondents encourage anyone interested in inspecting and/or obtaining
11 copies of public records to submit his/her/its request through an online “NextRequest” platform located
12 (as of the time of this lawsuit’s commencement) at “<http://sandiego.nextrequest.com>.” That platform’s
13 home page states in part: “Use of the NextRequest platform is intended to facilitate public access to
14 public records. Official records are held by City departments and the Clerk pursuant to governing
15 document retention schedules.”

16 15. When a request is submitted through the NextRequest platform, a unique online file is
17 opened for the request, a unique number is automatically assigned to the request, and receipt of the
18 request is acknowledged in a “Timeline” included as part of the online file.

19 16. While the online file for a request is open, Defendants’/Respondents’ communications
20 with the person making the request and any responses thereto through the portal are posted in the
21 “Timeline.” Nobody other than the person making the request can see these communications until
22 Defendants/Respondents close the file for the request and it is formally “published” for public view
23 (minus the contact information for the person making the request) a few days after being closed.

24 17. Defendants/Respondents have a pattern and practice of not working diligently to locate
25 and disclose all public records responsive to requests. Instead, Defendants/Respondents issue periodic
26 progress updates – approximately every two weeks – similar in substance to this one: “The City is in
27 the process of reviewing other potentially responsive records. We expect to provide an update by end
28 of business on July 1. We reserve the right to withhold and/or redact any records or information that

1 may be exempt from disclosure under the Public Records Act, and/or other applicable legal privileges
2 including, but not limited to, attorney work product and attorney client privileges.” Sometimes the
3 updates will promise the disclosure of responsive records on a rolling basis: “To update you on the
4 status of your request, City staff continue to review potentially responsive records. We expect to provide
5 you with an update by the end of business on July 27, and will continue providing disclosable records
6 on a rolling basis as soon as they become available.” For the most part, these updates are false, are
7 known to be false when made, and amount to nothing more than a stall tactic.

8 18. PLAINTIFF is informed and believes and on that basis alleges as follows:

9 A. It is not uncommon for Defendants/Respondents to issue such false periodic
10 updates for months at a time, and sometimes for more than a year, without a single record being
11 produced, without any significant effort to determine whether responsive records exist, and/or without
12 any significant effort to review responsive records for applicable exemptions and disclose non-exempt
13 responsive records.

14 B. At any given time over the last 18 months, there have been dozens and possibly
15 hundreds of open requests for which Defendants/Respondents issue false periodic updates for extended
16 periods of time without a single record being produced, without any significant effort to determine
17 whether responsive records exist, and/or without any significant effort to review responsive records for
18 applicable exemptions and disclose non-exempt responsive records.

19 C. Such lethargy in responding to requests for public records is intentional.

20 **FIRST CAUSE OF ACTION:**
21 **Violation of Public-Records Laws**
(Against All Defendants/Respondents)

22 19. The preceding allegations in this pleading are fully incorporated into this paragraph.

23 20. Defendants/Respondents have a pattern and practice of delaying the disclosure of public
24 records responsive to requests. It is possible for Defendants/Respondents to make full or substantially
25 full disclosure of all requested public records within a reasonable period of time.

26 21. Defendants’/Respondents’ lethargy in responding to requests for public records violates
27 various laws. By way of example and not limitation:
28

1 A. Such lethargy violates the CPRA's mandate that responsive public records be
2 identified not more than 10 to 24 days after the request is received and an estimated date for disclosure
3 be given, that responsive records be made available for inspection at all times during
4 Defendants'/Respondents' normal business hours, and that copies of responsive records be made
5 promptly available. It further violates the CPRA's prohibition against delay and obstruction in the
6 disclosure of responsive records.

7 B. Such lethargy violates the San Diego City Charter's requirement that all public
8 records be open to inspection at all reasonable times and that copies of records responsive to a request
9 be given to any person demanding them.

10 C. Such lethargy violates San Diego Administrative Regulation 95.21's mandate
11 that responsive public records be disclosed promptly after a reasonable search and review of the records
12 for any applicable exemptions.

13 22. PLAINTIFF, its members, and other members of the public are injured as a result of
14 Defendants'/Respondents' failure to promptly locate and disclose all responsive public records. Among
15 other things, they are unable to adequately monitor Defendants'/Respondents' conduct of public
16 business and are thus impaired in their ability to identify and correct improper governmental action.

17 **SECOND CAUSE OF ACTION:**
18 **Declaratory Relief under Code of Civil Procedure Section 1060 *et seq.***
 (Against All Defendants/Respondents)

19 23. The preceding allegations in this pleading are fully incorporated into this paragraph.

20 24. PLAINTIFF is informed and believes and on that basis alleges that an actual controversy
21 exists between PLAINTIFF and similarly situated persons, on the one hand, and
22 Defendants/Respondents, on the other hand, concerning their respective rights and duties under the
23 CPRA, the California Constitution, the San Diego City Charter, and other applicable public-records
24 laws. As alleged in this pleading, PLAINTIFF contends that Defendants/Respondents failed to comply
25 promptly and in full with each of the applicable public-records laws as set forth in the preceding causes
26 of action; whereas Defendants/Respondents dispute PLAINTIFF's contention.

27 25. PLAINTIFF desires a judicial determination and declaration as to whether Defendants/
28 Respondents are fully and promptly complying with all applicable public-records laws.

1 **Prayer**

2 FOR ALL THESE REASONS, PLAINTIFF respectfully prays for the following relief against
3 all Defendants/Respondents (and any and all other parties who may oppose PLAINTIFF in this lawsuit)
4 jointly and severally:

5 A. A judgment determining or declaring that Defendants/Respondents are not fully and
6 promptly complying with all applicable-public records laws.

7 B. A writ of mandate ordering Defendants/Respondents to fully and promptly comply with
8 all applicable public-records laws.

9 C. Preliminary and permanent injunctive relief directing Defendants/Respondents to fully
10 and promptly respond to all public-records requests that they receive to the extent they did not do so
11 prior to a determination on the merits of this lawsuit.

12 D. An order providing for the Court's continuing jurisdiction over this lawsuit in order to
13 ensure that Defendants/Respondents fully and promptly comply with all applicable public-records laws.

14 E. All attorney fees and other legal expenses incurred by PLAINTIFF in connection with
15 this lawsuit.

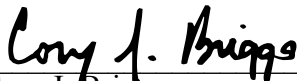
16 F. Any further relief that this Court may deem appropriate.

17 Dated: July 14, 2022.

Respectfully submitted,

18 BRIGGS LAW CORPORATION

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20 By:


Cory J. Briggs

21 Attorney for Plaintiff and Petitioner Project for
22 Open Government
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE etc. and know its contents.

☒ **CHECK APPLICABLE PARAGRAPH**

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am ☒ an Officer ☐ a partner _____ ☐ a _____ of _____

PROJECT FOR OPEN GOVERNMENT

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

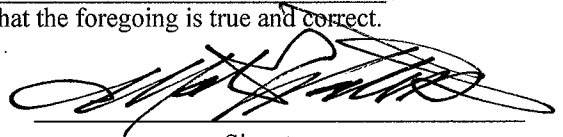
☐ I am one of the attorneys for _____
a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on July 14, 20 22, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mat Wahlstrom

Type or Print Name



Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is, _____

On _____, 20 _____, I served the foregoing document described as _____

☐ _____ on _____ in this action
by placing the true copies thereof enclosed in scaled envelopes addressed as stated on the attached mailing list:

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ **BY MAIL**

☐ * I deposited such envelope in the mail at _____, California.

The envelope was mailed with postage thereon fully prepaid.

☐ As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing.

Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 20 _____, at _____, California.

☐ ****(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 20 _____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I

☐ (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN
MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)