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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

PEOPLES HOMELESS TASK FORCE ORANGE COUNTY,

Petitioner/Plaintiff,

v.

CITY OF ANAHEIM,

Respondent/Defendant.

SRB MANAGEMENT COMPANY, LLC

Real Party In Interest.

Case No.: 30-2020 01135406-CU-WM-CJC (Consolidated with Case No. 30-2020-01174133-CU-WM-CJC)

Assigned to: Hon. David A. Hoffer
Dept.: C42

RESPONDENT CITY OF ANAHEIM'S BRIEF IN OPPOSITION TO MOTION FOR WRIT OF MANDATE AND DECLARATORY RELIEF

[Filed concurrently with: Declarations in Support of Opposition and Objections to Evidence]

Date: September 24, 2021
Time: 9:30 a.m.
Dept.: C42

Action Filed: 2/28/2020

Respondent City of Anaheim (the "City") hereby opposes Petitioner's Motion for Writ of Mandate and Declaratory Relief (the "Motion"). This opposition is based on the following memorandum of points and authorities, the concurrently filed declarations in support of the opposition and objections to Petitioner's evidence, the pleadings on file with this Court, and such further evidence and argument as the Court may choose to consider.

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I. INTRODUCTION

On January 19, 2020, Petitioner submitted an extensive request for public records to Anaheim (the "CPRA Request"). The City receives and responds to over 900 CPRA requests annually, and has well-established procedures for complying with public records law. The City followed those procedures with respect to Petitioner's request, and ultimately over 75 employees were involved in reviewing it, searching for records, and gathering them for production. Petitioner does not dispute that the process led to the City's timely production of over 2400 pages of responsive records. Nevertheless, Petitioner now alleges that the City should have conducted its search for records differently, and offers speculation and conjecture regarding hypothetical additional responsive documents while failing to establish that any such documents actually exist. The Motion should be denied.

II. THE CITY CONDUCTED A REASONABLE AND THOROUGH SEARCH FOR RECORDS.

Contrary to the Motion's unsupported arguments, the City complied with its obligation to search for records reasonably identified by the CPRA Request. Petitioner's reliance on speculation and conjecture regarding the alleged existence of unproduced responsive documents is insufficient to establish that the City's search was inadequate.

A. The CPRA Requires the City to Search for Records Reasonably Identified.

Government Code Section 6253 compels an agency to provide a copy of nonexempt records upon a request "that reasonably describes an identifiable record or records." Moreover, a request for disclosure of public records under the CPRA must be "focused and specific," so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies. See, *Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1088; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481. Similarly, a request under the CPRA which compels the production of a

huge volume of material may be objectionable as unduly burdensome. See, e.g., *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.

In this matter, Petitioner's CPRA Request – which was among over 900 CPRA requests that the City receives annually [Declaration of Jennifer Hall ("Hall Decl."), ¶ 2] – was neither focused nor specific. Rather, it called for production of *all* communications occurring over a 14 month time period concerning any aspect of the "Stadium Site," as well as other communications to or from numerous individuals and entities *regardless of subject matter*. While the Motion offers a mere summary of the actual CPRA Request, its full scope is relevant here:

"<u>California Public Records Act Request</u>

In order for the public to have the information it needs to participate in any further discussions about the Stadium Site, my client would like copies of the following records pursuant to the California Public Records Act:

1. Any and all communications, including but not limited to, emails, letters, text messages, voicemails, letters, memos, from November 2018 to present, to or from any City Council Member, former City Council Member, the City Attorney, City Manager, or any City official, employee, consultant, or contractor, including any communications that exist on personal device:

    a. Regarding the Stadium Site, lease negotiations, sale negotiations, the Negotiating Team, the appraisal or valuation of the Stadium Site;

2. Any and all communications, including but not limited to, emails, letters, text messages, voicemails, letters, memos, from November 2018 to present, to or from the following individuals or groups, or any employee, representative, attorney, consultant, or contractor of the following individuals or groups:

    a. SRB Management Company, LLC
    b. Angels Baseball
    c. Arte Moreno
    d. John Carpino
    e. FSB Core Strategies
    f. Jeff Flint
    g. ANAHEI'M FIRST
    h. Ernesto Medrano
    i. Visit Anaheim
    j. Brooks Street
    k. Lucas, Austin, and Alexander LLC

l. Pacific Terra Holdings, Inc.
m. LT Global Investment
n. GreyComm Public Policy & Communications
o. The Anaheim Chamber of Commerce
p. Any lobbyist regarding the Stadium Site or negotiations regarding the Stadium Site
q. Any trade group regarding the Stadium Site or negotiations regarding the Stadium Site

3. Any and all communications, including but not limited to, emails, letters, text messages, voicemails, letters, memos, from November 2018 to present, that were sent to or received by a majority of members of the City Council.

4. Any and all communications, including but not limited to, emails, letters, text messages, voicemails, letters, memos, from November 2018 to present, between the Negotiating Team.

5. Any appraisal of the property from January 1, 2019 to the present.

6. Any and all weekly reports, sometimes referred to as Friday Reports, Weekly Reports, Weekly Memos, or Weekly Updates, from the City Manager to the City Council from November 2018 to the present."

The City does not contend that the overly broad and burdensome nature of the CPRA Request relieved the City from responding to it, but the reasonableness of the City's compliance efforts should be viewed in context with these factors. Moreover, it is relevant that upon receipt of the request, the City requested clarification and/or reasonable limitation of the burdensome request, which were abruptly denied by Petitioner. Specifically, the City observed that the CPRA Request's initial category sought all communications regarding a broadly defined subject matter ("the Stadium Site, lease negotiations, sale negotiations, the Negotiating Team, the appraisal or valuation of the Stadium Site"), whereas category nos. 2, 3, 4 and 6 appeared to seek materials without any subject matter limitation.

For example, category number 2 encompassed communications with fifteen (15) specified individuals or entities *regarding any subject matter*. Similarly, the CPRA Request encompassed communications to/from a majority of the City Council or between the City's mayor, City Manager and City Attorney *on any subject matter*. In light of the vast scope and burdensome nature of the request, the City's Assistant City Clerk contacted Petitioner's

counsel seeking greater specificity or narrowing of the records sought, but that request was declined [Hall Decl., ¶¶ 10-11 and exh. C thereto]. Nevertheless, the City engaged in a wide-ranging and entirely reasonable search for records in a good faith attempt to comply with an extremely broad request.

B. The City's Compliance with its Search Protocols Constituted a Reasonable Effort.

The CPRA requires public entities to disclose all records that can be located "with reasonable effort." *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166. Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches. See *American Civil Liberties Union Foundation v. Deukmejian*, *supra*, 32 Cal.3d at 453; *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353, 371-372. Generally, the scope of a public entity's search for public records "need only be reasonably calculated to locate responsive documents." *American Civil Liberties Union of Northern Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 85.

The CPRA does not prescribe specific methods of searching for responsive documents, and public entities are permitted to develop their own internal policies for conducting searches. *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 627. Moreover, government agencies are entitled to a presumption that they have reasonably and in good faith complied with the obligation to disclose responsive information. See, *American Civil Liberties Union of Northern Cal. v. Superior Court*, *supra*, 202 Cal.App.4th at 85. See, also, Cal. Evidence Code § 664 ("It is presumed that official duty has been regularly performed.").

Here, the City gathered the responsive records pursuant to its established procedures for CPRA compliance. See, Hall Decl., ¶¶ 3-4 and exh. A thereto. The City's established procedures involve circulation of a CPRA request to the "records coordinators" for each City department that is likely to have responsive records. Upon receipt of a request for public records, the departmental records coordinators distribute the request to the employees who may have responsive records, and each such employee conducts a search of their physical files

and electronic records. For certain departments, the records coordinators themselves also search for responsive records. The City Clerk's office also conducts a search of its records to identify responsive materials. *Id.* at ¶ 4.

With respect to the subject CPRA Request, the City's Assistant City Clerk Jennifer Hall promptly reviewed the request and determined that, in addition to the City Clerk's Office, six (6) other City departments might be in possession of responsive records: City Administration, the City Attorney's Office, the Community and Economic Development Department, the Convention/Sports/Entertainment Department, the Planning and Building Department, and the Department of Public Works. Ms. Hall then prepared a memorandum to the records coordinators for each of those departments, and sent it to each of them with a copy of the CPRA Request and instructions to identify, gather and return responsive records to her [Hall Decl., ¶ 6 and exh. B thereto].

Assistant City Clerk Hall also personally conducted a search for responsive public records in the possession of the Anaheim City Clerk's office, which included searching the department's shared drive and Laserfiche electronic document management system for any responsive materials, using a key word search delimited by the time frame of the request [Hall Decl., ¶ 12]. Upon completion of all departmental searches by the City's employees, the gathered records were evaluated for applicable exemptions and, subject to withholding or redactions pursuant to exemptions, the records were then made available for production [Hall Decl., ¶ 13].

As detailed in the declarations submitted by the City with this opposition, and in the City's Supplemental Responses to Petitioner's Special Interrogatories [Exh. 9 to the Aviles Decl. in support of the Motion], the departmental records coordinators circulated the CPRA Request to a large number of employees, each of whom performed individual searches of physical and/or electronic records under their control.

City Administration records coordinator Maggie Solorio evaluated the CPRA Request and forwarded it to eight (8) employees who proceeded to search for responsive records [Declaration of Maggie Solorio ("Solorio Decl."), ¶¶ 3-5]. Ms. Solorio also sent the request to

Anaheim's City Council Services Coordinator, who searched for records and conveyed the request for records to the Mayor, City Council members and their staffs, whose responses and gathered documents were tracked by Ms. Solorio who later provided the department's gathered documents to the City Clerk's Office [Solorio Decl., ¶¶ 6-8].

In the City Attorney's Office, records coordinator Melissa Merrill circulated the CPRA Request to three (3) employees with instructions to search for records, and later sent the responsive gathered records to the City Clerk's Office [Declaration of Melissa Merrill, ¶¶ 2-6].

The records coordinator for the Community and Economic Development Department, Candy Morris search the e-mails of the department's Director for responsive materials, and facilitated the gathering of responsive records by the Director himself and another departmental manager [Declaration of Candy Morris, ¶¶ 2-6].

In the Convention/Sports/Entertainment Department, records coordinator Tarisa Calato searched emails and other files and folders, and together with fellow coordinator Amanda Sudduth facilitated searches for responsive records by other departmental employees before sending the department's gathered records to Ms. Hall [Declaration of Tarisa Calato, ¶¶ 2-7].

The Planning and Building Department's records coordinator, Maggie Zaragoza, evaluated the CPRA Request and distributed it to eight (8) other departmental employees who searched for responsive records and placed them in a shared drive for conveyance to the City Clerk's Office [Declaration of Maggie Zaragoza, ¶¶ 2-6].

In the Public Works Department, records coordinator Emmerline Kim reviewed the CPRA Request and distributed it to twelve (12) departmental employees with instructions to send her responsive records and to forward the request to any other employees who may have records [Declaration of Emmerline Kim ("Kim Decl."), ¶¶ 2-4]. Pursuant to those directions, the CPRA Request was distributed to an additional eleven (11) departmental employees, and after all searches were completed the responsive documents were conveyed to the City Clerk's Office [Kim Decl., ¶ 5].

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C. Petitioner's Conjecture Fails to Establish that the City's Search was Deficient.

Despite Petitioner's full opportunity to conduct discovery during the pendency of this lawsuit, the Motion fails to identify any specific responsive documents that were not produced, much less responsive records that should have been located by a reasonable search but were not. Speculation and guesswork about responsive records is insufficient to support Petitioner's claims in this action. Moreover, it should not be the City's burden to prove the non-existence of records. Rather, given the established presumption of a public entity's CPRA compliance, it is Petitioner's burden to show that a responsive document was not produced, and it has failed to do so.

Especially given the extremely broad scope of the CPRA Request, it was entirely reasonable for the City to follow its standard practice of distributing it to all relevant City departments and, through their respective records coordinators, to each of the employees who might have responsive records. As set forth in concurrently filed declarations and verified interrogatory responses, at least 75 City employees considered the request and searched for responsive records. Although the Motion attempts to find fault in the inability of some employees to provide certain details, more than eighteen months after they searched for records, regarding their respective searches, but what they do recall sufficiently establishes the reasonableness of the City's efforts to locate records.

The Motion speculates at length regarding the hypothetical existence of additional responsive records. For example, Petitioner relies on various hearsay statements describing alleged in-person meetings or conversations about the Stadium Site, and asserts that no corresponding records were produced. Of course, Petitioner presents no evidence that actual public records ever existed relating to these in-person events, and pure speculation that they might exist is insufficient.

The Motion also argues that the City erred by failing to ask third parties, i.e., its "contractors and experts," to produce responsive records. This argument ignores that the CPRA defines "public record" as "any writing containing information relating to the conduct

of the public's business **prepared, owned, used, or retained by** any state or local agency." Cal. Gov. Code § 6252(e)(emphasis added). Similarly, the law requires responding public entities to identify "public records **in the possession of the agency**." Cal. Gov. Code § 6253(c)(emphasis added).

Here, there is no evidence that the City possessed or controlled responsive records in the possession of third parties. Even if one embraces the Motion's speculation that such materials might exist, Petitioner fails to prove that City had an obligation to obtain such third party material in response to the CPRA Request. See, *Anderson-Barker v. Superior Court* (2019) 31 Cal.App.5th 528, 538-39, 541 (City's ability to access electronically stored data did not equate to possession for purposes of CPRA response).

With respect to one specific consultant, the Motion asserts (at page 13) that "almost no records" about the hiring of consultant Larry Kosmont were provided. This claim is controverted by the City's production of its contract for services with Kosmont & Associates, Inc., as well as a contractual amendment and related records [Exh. 11 to the Aviles Decl., at pp. 859-83].

Petitioner disingenuously complains about not receiving any internal communications about the "development of the website" related to the sale of the Stadium Site (Motion, p. 11). However, the CPRA Request does not reasonably appear to request website development records, and it was Petitioner's obligation to identify the documents it sought with reasonable specificity. See, Cal. Gov. Code §6253(b). A broad request for all documents concerning the Stadium Site does not reasonably notify the City that Petitioner is requesting communications regarding website development.

Similarly, the Motion notes the City's failure to produce "proposals" submitted to the City by appraisal companies. The CPRA Request sought documents concerning "the appraisal," and it was reasonable for the City to interpret that as the actual appraisal that occurred. Petitioner does not dispute that the City produced responsive records relating to the actual appraisal, and the failure to submit a "focused and specific" request seeking appraisal proposals rests with Petitioner.

Lastly, the City is compelled to address the Motion's unsupported allegation, comprised of three lines at page 15, regarding an alleged policy of "illegally destroying all emails in violation of Section 34090 … and 6200." At this juncture, it should be sufficient to note this claim is beyond the scope of Petitioner's current claims in this action, and the City vigorously disputes that its email retention policies are legally deficient.

III. THE CITY'S ASSERTED EXEMPTIONS ARE MERITORIOUS.

In response to the CPRA Request, the City redacted or withheld from production a limited number of records subject to one or more statutory exemptions. The City thereafter voluntarily provided an index of the withheld and redacted materials (the "*Vaughn* index") to Petitioner's counsel [Exh. 1 to the Aviles Decl.]. For the following reasons, the claims of exemption are meritorious.

A. Attorney-client Privilege

The attorney-client privilege, set forth in Evidence Code section 954, confers a privilege on the client "to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer. . . ." The fundamental purpose of the privilege "is to safeguard the confidential relationship between clients and their attorneys so as to promote full and open discussion of the facts and tactics surrounding legal matters." *Costco Wholesale Corp. v. Superior Court* (hereinafter "*Costco*") (2009) 47 Cal.4th 725, 732.

The Motion, without specifically addressing any of the documents set forth in the *Vaughn* index, asks the Court to negate the City's attorney-client privilege. Petitioner argues that because the Anaheim City Attorney, Robert Fabela, was a member of the City's negotiating team, he was not functioning as an attorney when he interacted with his clients or evaluated legal issues related to the Stadium Site transaction. This claim is contrary to established facts and law.

Petitioner cites *Costco* for the proposition that City Attorney Fabela's inclusion on the City's negotiating team eradicates the attorney-client privilege. However, *Costco* does not

support this assertion. In fact, *Costco* makes clear that the critical factor in determining whether a communication is privileged is whether there is an attorney-client relationship between the lawyer and the client. If such a relationship exists, the communications are absolutely privileged, irrespective of their content. If "the communications were made during the course of an attorney-client relationship, the communications, including any reports of factual material, would be privileged …." *Costco, supra*, 47 Cal.4th at 740. Here, there is no question that there is an attorney-client relationship between Mr. Fabela and the City, and his communications are accordingly privileged.

In an attempt to invoke *Costco's* notation that someone who acts "merely as a negotiator for the client or is providing business advice" [*Id.* at 735] may not invoke the privilege, Petitioner contends, without any evidence whatsoever, that Mr. Fabela was acting as a business negotiator, not as the City Attorney of the City, in his work on the Stadium Site transaction. However, as set forth in Mr. Fabela's concurrently-filed declaration, his function as a member of the City's negotiating team was in his role as City Attorney and he acted as a legal advisor on the myriad legal issues surrounding the potential transfer of the Stadium Site [Declaration of Robert Fabela ("Fabela Decl."), ¶¶ 2-3]. Mr. Fabela was not the person formulating the City's negotiating position or the person presenting or bargaining that position [*Id.*]. His role on the team was to provide advice on legal issues surrounding the transaction, participate in drafting agreements and other legal documents involved in the transaction, and interacted with outside counsel retained by the City to assist with the transaction [Fabela Decl., ¶ 3]. Put simply, as the City Attorney, Mr. Fabela is the chief legal advisor to the City, and he functioned in that capacity with respect to the Stadium Site transaction.

Like the plaintiff in *Costco,* Petitioner raises several irrelevant points in an attempt to obfuscate the issues surrounding the attorney-client privilege. For example, Petitioner notes that pre-existing materials do not become privileged simply by being given to the attorney (when there is no evidence that this occurred here and the City's *Vaughn* index indicates to the contrary), and that the privilege does not apply to factual matters or non-legal conclusions in an attorney-client communication (which is expressly contradicted by *Costco* when the

communication occurs in the course of an attorney-client relationship). Petitioner also cites *2002 Ranch L.L.C. v. Sup. Ct.* (2003) 113 Cal.App.4th 1377, 1390, for the proposition that the court should look at the predominate purpose of the communication to determine if the privilege applies, which *Costco, supra,* 47 Cal.4th at 739-740, expressly rejected, holding that the issue is the dominant purpose of the *relationship*, which here is clearly one of attorney and client.

Moreover, in *Costco* the California Supreme Court held that a trial court could not order *in camera* review of an attorney opinion letter alleged to be protected by the attorney-client privilege because, according to the court, the privilege was "absolute," precluding even review by a court of law in order to determine the applicability of the privilege. *Costco*, *supra*, 47 Cal.4th at 730, 732-734. Notably, this ruling is consistent with Evidence Code section 915(a), which expressly prohibits a court from ordering "*in camera* review of information claimed to be [attorney-client] privileged…for the purpose of making an initial determination that a communication is privileged."

B. Other Exempt Records Appropriate for In Camera Review

The City submits that the Motion, by failing to address any of the specific records set forth in the City's *Vaughn* index, fails to controvert any of the exemptions asserted in response to the CPRA Request. With respect to exemptions other than attorney-client, the Court may elect to augment the information provided in the *Vaughn* index with an in camera review of the subject records. The evidence will establish that each document withheld is protected by one or more exemptions.

1. Attorney Work Product

The Motion briefly mentions but otherwise does not address the City's assertion that attorney work-product materials are exempt under Government Code § 6254(k). This exemption applies with equal force to protected materials created by Anaheim's City Attorney

and materials created by its retained outside counsel for the Stadium Site transaction, the law firm Husch Blackwell [See Fabela Decl., ¶ 4].

The attorney work-product doctrine serves the policy goals of "preserv[ing] the rights of attorneys to . . . investigate not only the favorable but [also] the unfavorable aspects" of cases and to "[p]revent attorneys from taking undue advantage of their adversary's industry and efforts." Code Civ. Proc., § 2018.020, subds. (a) & (b). "'The work product rule in California creates for the attorney a qualified privilege against discovery of general work product and an absolute privilege against disclosure of writings containing the attorney's impressions, conclusions, opinions or legal theories.'" *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 120; Code Civ. Proc., § 2018.030. An attorney's work product that is subject to a qualified privilege is not discoverable unless a court determines that denial of discovery would unfairly prejudice the party seeking discovery or result in an injustice. Code Civ. Proc., § 2018.030(b).

2. Public Interest

Government Code Section 6255 establishes a "catchall" or "public interest" exemption for records when "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." The scope of the public interest exemption is not limited to specific categories of information or established exemptions or privileges. Each request for records must be considered on the facts of the particular case in light of the competing public interests. *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338.

The City withheld approximately five documents pursuant to this exemption, each of which was a draft containing information for which confidentiality is in the public interest given the context of Stadium Site financial negotiations. Moreover, although not addressed by the Motion, the City also redacted private phone numbers and email addresses from a number of additional documents pursuant to the Public Interest exemption, and provided a "Redaction Log" to Petitioner's counsel describing these. The City is amenable to in camera review of

both the withheld documents listed in its *Vaughn* index and/or the documents set forth in its Redaction Log, to the extent the Court deems either appropriate in this action.

3. Deliberative Process

The City also justifiably withheld certain records on the basis of the deliberative process privilege. The deliberative process privilege is a recognized exemption under the CPRA, applying under the public interest exemption of Section 6255. *Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at 1336, 1339-1340, 1344-1345; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1142 ("Section 6255 exempts from disclosure documents which are protected by the deliberative process privilege").

"Under the deliberative process privilege, senior officials of all three branches of government enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, ***but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated***." (*Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 540 (emphasis added)(superseded by statute on another point as recognized in *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 915).

In assessing the applicability of the privilege, "[t]he key question . . . is whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." *Wilson*, *supra*, 51 Cal.App.4th at 1142 (quoting *Times Mirror Co.*, *supra*, 53 Cal.3d at 1342)(internal quotations omitted). In addition, although the privilege is primarily "designed to protect materials reflecting deliberative or policymaking processes, and not 'purely factual, investigative matters,'" ***it also "protect[s] factual information which 'comprises the deliberative process," including 'predecisional' documents, that is, documents which are prepared to assist an agency decision-maker in making a decision.***" *Wilson*, *supra*, 51 Cal.App.4th at 1142 (quoting *Environmental Protection Agency v. Mink*

(1973) 410 U.S. 73, 89)(emphasis added); *Times Mirror Co.*, *supra*, 53 Cal.3d at 1342 ("Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually ... related to the process by which policies are formulated . . . or inextricably intertwined with policy-making processes.")(quotations and internal citations omitted).

Under these parameters, in *Times Mirror Co.*, the California Supreme Court held that the privilege prevented the disclosure of the Governor's schedules and appointment calendars, even without conducting *in camera* review of the materials. *Times Mirror Co.*, *supra*, 53 Cal.3d at 1329, 1345, 1346-1347. Although the court fully acknowledged that the material was factual in nature, it nevertheless held that "its essence is deliberative." *Id.* at 1344. The Court explained as follows:

> Disclosing the identity of persons with whom the Governor has met and consulted is the functional equivalent of revealing the substance or direction of the Governor's judgment and mental processes; such information would indicate which interests or individuals he deemed to be of significance with respect to critical issues of the moment. The intrusion into the deliberative process is patent.

(*Id.* at 1343.)

Similarly, the Court of Appeal has applied the deliberative process privilege to prevent the disclosure of materials submitted to the Governor by applicants for an empty county board seat, despite the essentially factual nature of the materials and the information therein. *Wilson*, *supra*, 51 Cal.App.4th at 1139, 1143. The court held that "[t]he applications are predecisional documents whose sole purpose is to aid the Governor in selecting gubernatorial appointees, a process which depends upon comparison of the qualifications of the candidates as shown in the applications and confidential, candid discussion of the candidates' professional competence, political views and private conduct." I*d.*

In another case, the Court of Appeal held that the privilege prevented the disclosure of the telephone numbers of persons contacted by city councilmembers, because "[d]isclosing the telephone numbers of persons with whom a City Council member has spoken discloses the identity of such persons and is 'the functional equivalent of revealing the substance or direction' of the judgment and mental processes of the City Council member." *Rogers v.*

Superior Court, *supra*, 19 Cal.App.4th at 479 (quoting *Times Mirror Co.*, *supra*, 53 Cal.3d at 1343).

With respect to all of the documents withheld by the City of Anaheim under this exemption, the primary interest favoring non-disclosure is the impact disclosure would have on the City's ability to have frank internal discussions that will not be revealed to the opposing party in ongoing negotiations. On the other side of the equation, there is no compelling public interest in disclosure, as the information in the records is largely preliminary and sometimes even speculative in nature, and does not contain any improper considerations or discussions, or otherwise reveal information that would further the public interest to reveal. Thus, when the relevant factors are balanced, the public interest in the protection of the deliberative process clearly favors non-disclosure here.

4. Drafts & Notes

The deliberative process privilege closely correlates with another established CPRA exemption for drafts and notes. The CPRA exempts from disclosure "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure." Cal. Gov. Code § 6254(a). The exemption is based on the policy of protecting the decision making processes of government agencies, and the frank discussion of legal or policy matters that might be inhibited if subjected to public scrutiny. See, *Times Mirror Co. v. Superior Court, supra*, 53 Cal.3d at 1339–1340. As with the other exemptions in this section, the City is amendable to in camera review of the documents withheld as drafts if the Court deems it appropriate.

IV. THE CITY'S RESPONSE TO THE CPRA REQUEST COMPLIES WITH THE LAW.

The Motion's final argument is a somewhat vague assertion that the City's February, 2020, response to the CPRA request was deficient with respect to the description of exempt

materials. Petitioner appears to contend that agencies are obligated to provide a contemporaneous legal justification for each record withheld under claim of exemption, but that is not what the law requires. Moreover, there is no dispute in this case that Petitioner's counsel was in fact provided with a *Vaughn* index in November, 2020 [Exh. 1 to the Aviles Decl., ¶ 2 and exh. 1 thereto]. Accordingly, the Motion's request for declaratory relief regarding this issue is meritless.

To support this argument, Petitioner relies on *American Civil Liberties Union of Northern Cal. v. Superior Court*, *supra*, 202 Cal.App.4th 55. However, the Motion truncates a quotation from the case to obscure it's observation that an agency's "affidavits" (as opposed to its initial response to a CPRA request) must contain specificity regarding exempt records. See *Id.* at 83. The *ACLU* court was plainly discussing the level of specificity necessary for judicial review, not what is required at the time of the agency's time-limited response to the request for records. Notably, the case also observes that in California courts "'an adequate factual basis may be established, depending on the circumstances of the case, through affidavits, a *Vaughn* Index, *in camera* review, *or* through a combination of these methods.'" *Id.*, quoting *Miccosukee Tribe of Indians of Florida v. United States* (11th Cir.2008) 516 F.3d 1235, 1258. Thus, read in context, the cited authority does not support the Motion's argument.

The Motion's argument also ignores well-established law that the CPRA does not require local agencies to create a "privilege log" or *Vaughn* index that identifies the specific records being withheld. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061. See *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1193 ("The Public Records Act does not, like the FOIA, require the maintenance of an index of records available for public inspection and copying.") Rather, an agency's response only needs to identify the legal grounds for nondisclosure, which the City did in its February 14, 2020 response to the CPRA Request.

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V. CONCLUSION

Petitioner disagrees with the City's decision to sell Angel Stadium, and seeks to delay it by any available means. Despite the burdensome and unfocused nature of the CPRA Request, and Petitioner's adamant refusal to reasonably narrow it in any respect, the City complied with its obligations under the law by engaging in a reasonable search for responsive records and timely providing over 2400 pages of documents to Petitioner. Moreover, each of the exemptions asserted by the City to withhold or redact a responsive record is meritorious, as confirmed by the *Vaughn* index, Redaction Log and, if appropriate, the Court's in camera review. Accordingly, the Motion should be denied in all respects.

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Assistant City Attorney
Attorneys for Defendant
City of Anaheim

#143555

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 200 S. Anaheim Boulevard, Suite 356, Anaheim, California 92805.

On September 14, 2021, I served the foregoing document described as:

REPONDENT CITY OF ANAHEIM'S BRIEF IN OPPOSITION TO MOTION FOR WRIT OF MANDATE AND DECLARATORY RELIEF

on interested parties in this action by placing the original/a true copy thereof enclosed in sealed envelope(s) addressed as follows:

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☐ BY MAIL: As follows: I am readily familiar with the City's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice correspondence is deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Anaheim, California in the ordinary course of business. The correspondence described above was placed for deposit at 200 S. Anaheim Boulevard, Anaheim, California 92805, on the date set forth above.

☒ BY ELECTRONIC MAIL TRANSMISSION: By electronic mail submission by transmitting a PDF format copy of such document(s) to each such person at the email address listed above/by their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

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☐ BY METHOD OF OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered via Express Mail or other method of delivery providing for overnight delivery to the addressee(s) designated.

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I declare under penalty of perjury that the above is true and correct.

Executed at Anaheim, California.

/s/ *Desiree Maese*
Desiree Maese

#135343