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10 **FEE EXEMPT—Gov. Code § 6103**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 ROXANE WAGNER-HOLLIER; RACHAEL)
14 NICOLAISEN and her children AN, RN, UN; and)
15 CHILDREN’S HEALTH DEFENSE, a California)
16 Nonprofit Corporation.,)

17 Petitioners,

18 vs.

19 CITY OF LOS ANGELES; KAREN BASS,)
20 mayor of the CITY OF LOS ANGELES, in her)
21 official capacity; TED ROSS, general manager of)
22 the INFORMATION TECHNOLOGY AGENCY,)
23 in his official capacity; MIGUEL SANGALANG,)
24 general manager of the BUREAU OF STREET)
25 LIGHTING, in his official capacity; BEATRICE)
26 HSU, president of LOS ANGELES WORLD)
27 AIRPORTS, in her official capacity; KEITH)
28 MOZEE, general manager of the BUREAU OF)
OF ENGINEERING, in his official capacity;)
DANIEL RANDOLPH, chief of staff for the LOS)
ANGELES POLICE DEPARTMENT, in his)
official capacity)

Respondents.

CASE NO. 23STCP02601

[Department 86,
Honorable Mitchell L Beckloff]

**RESPONDENTS’ OPPOSITION TO
PETITIONERS’ OPENING BRIEF**

Trial: March 15, 2024
Time: 9:30 a.m.
Dept: 86

1 Respondents CITY OF LOS ANGELES; KAREN BASS, Mayor of the CITY OF LOS
2 ANGELES, in her official capacity; TED ROSS, general manager of the INFORMATION
3 TECHNOLOGY AGENCY, in his official capacity; MIGUEL SANGALANG, general manager of the
4 BUREAU OF STREET LIGHTING, in his official capacity; BEATRICE HSU, president of LOS
5 ANGELES WORLD AIRPORTS, in her official capacity; KEITH MOZEE, general manager of the
6 BUREAU OF STREET SERVICES, in his official capacity; TED ALLEN, executive director for the
7 BUREAU OF ENGINEERING, in his official capacity; DANIEL RANDOLPH, chief of staff for the
8 LOS ANGELES POLICE DEPARTMENT, in his official capacity (collectively “Respondents”) hereby
9 submit the following Memorandum of Points and Authorities, Declaration of Bethelwel Wilson and
10 Exhibits (“Ex.”) 1 through 13 in support thereof, in Opposition to Petitioners ROXANE WAGNER-
11 HOLLIER; RACHAEL NICOLAISEN and her children AN, RN, UN; and CHILDREN’S HEALTH
12 DEFENSE, a California Nonprofit Corporation (collectively “Petitioners”) Opening Brief (“Pet. Br.”) in
13 support of their Verified Petition for Writ of Mandate (“Petition”) seeking relief under the California
14 Public Records Act (“CPRA”).

15
16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **INTRODUCTION**

18 This litigation is about the City’s obligations to comply with the CPRA. City acknowledges it
19 has dropped the ball on a few occasions in processing requests by Petitioner, some of which are patently
20 overbroad in scope. Before and since the filing of this writ, City has worked diligently to respond to
21 Petitioner’s multiple multi-pronged requests by conducting diligent searches and supplementing its
22 productions where Petitioner has identified deficiencies. Petitioner, throughout this litigation, has made
23 unfounded arguments about the public, particularly the youth, not being able to opt out of “corporate
24 surveillance” by City and its vendors. Petitioner developed its notion of “corporate surveillance” based
25 off a strategy document posted online rather than concrete evidence City was collecting the type of
26 information the public has the right to opt of based on the California Consumer Privacy Act. It is
27 undeniable that there is a significant public interest in understanding how City intends to implement the
28 roll out of its smart technology strategy, as its implementation will impact public safety, transportation,

1 energy, and other community infrastructure. Petitioner’s allegations regarding opt-out rights and City
2 violating privacy laws in executing its smart strategy, while perhaps worthy of investigation in some
3 other lawsuit, are irrelevant and outside the scope of relief that this mandamus action is designed to
4 afford, which is ensuring City meets its obligations under the CPRA to produce records to which
5 Petitioner is entitled.

6 **FACTUAL BACKGROUND**

7 Petitioner has filed several CPRA requests with various City of Los Angeles departments
8 seeking emails to and from certain employees during 2019 through 2023 containing the word “smart.”
9 These departments include the Mayor’s Office (Mayor), Information Technology Agency (ITA), Bureau
10 of Street Lighting (BSL), Los Angeles World Airports (LAWA), Bureau of Streets Services (BSS),
11 Bureau of Engineering (BOE), and Los Angeles Police Department (LAPD).

12 **1. Mayor Request – April 20, 2023**

13 On April 20, 2023, Petitioner submitted a three-prong request seeking: a) emails to or from
14 certain Mayoral employees containing the word “smart;” b) email to or from the Mayor’s Office
15 referencing certain state laws related to electronic privacy, and c) emails to or from Erin Bromaghim
16 containing the terms “Olympic,” “Olympics,” or “LA28”. On January 19, 2024, City responded to
17 counsel for Petitioner as follows:

18 a) Produced, based off a search of Google Vault (Vault)¹, 26 pdfs totaling 34,172 pages along
19 with a folder of twenty-six attachments in native format. Some responsive records were
20 withheld because they fall under the attorney-client (Evid. C. § 954), attorney work product
21 (C.C.P. § 2018.030), and deliberative process privileges (Gov. C. § 7922.00). Under protest,
22 City provided a privilege log to Petitioner.

23 b) Upon searching the privacy laws by name and section number in Vault, City determined it
24 possesses no responsive records. The law names and section numbers searched independently
25

26 _____
27 ¹ Google Vault is an information governance and eDiscovery tool where all City gmail messages are retained. Gmail
28 messages can be extracted from Google Vault through Boolean searches using search terms. As long as a gmail message
contains the operative search term it will be extracted and appear in a search result.

1 generated records unrelated to the privacy laws cited in the request; therefore, the records
2 were non-responsive.

- 3 c) Produced 883 folders of responsive records totaling approximately several thousand pdf
4 pages. Some responsive records were withheld because they fall under the attorney-client
5 (Evid. C. § 954), attorney work product (C.C.P. § 2018.030), and deliberative process
6 privileges (Gov. C. § 7922.00). Under protest, City provided a privilege log to Petitioner.

7 **2. ITA – Request No. 23-3968**

8 On April 20, 2023, Petitioner submitted a two-prong request to ITA seeking: a) emails of fifteen
9 identified ITA employees containing the term “smart;” and b) email correspondence between ITA and
10 three identified city council members. On January 17, 2024 and February 2, 2024, respectively, City
11 responded to counsel for Petitioner as follows:

- 12 a) Produced an 8400-page pdf of responsive records along with a folder containing seven
13 attachments in native format. Some responsive records were withheld because they fall under
14 the deliberative process privilege. (Gov. C. § 7922.00). Under protest, City provided a
15 privilege log to Petitioner. On February 12, 2024, Petitioner submit a meet and confer letter
16 to counsel for City alleging deficiencies in the production. City will investigate the alleged
17 deficiencies and supplement its original production as needed.
- 18 b) A Vault search using email addresses of ITA employees and the those of the three referenced
19 council members yielded no results.

20 **3. BSL – Request No. 23-3982**

21 On April 21, 2023, Petitioner submitted to BSL a request seeking emails sent to or from three
22 identified BSL employees containing the term “smart.” City responded to counsel for Petitioner as
23 follows:

- 24 a) Produced, on a rolling basis, approximately 8,300 responsive records, including emails and
25 attachments generated by a Vault search. On January 8, 2024, counsel for City informed
26 Petitioner that his request for BSL was complete and represented, based on BSL’s
27 representation to counsel, that were no withholdings. On February 6, 2024, counsel for
28 Petitioner sent City a meet and confer letter alleging the production omitted certain

1 attachments. The letter refers to certain emails containing legal advice from a City Attorney
2 to BSL employees. City asks that Petitioner delete or redact, if possible, attorney-client
3 privileged emails inadvertently produced in this action. That City has alleged the attorney-
4 client privilege with respect to other withheld emails in this action shows it did not intend to
5 waive the privilege applicable to this inadvertent disclosure. Out of an abundance of caution,
6 City has redacted Petitioner’s letter alluding the legal advice. City agrees to produce the
7 alleged missing attachments unless of course they are determined to be privileged. Under
8 protest, City will either produce a privilege log or redacted copies of any withholdings.

9 **4. LAWA – Request No. 23-515**

10 On April 24, 2023, Petitioner submitted to LAWA a request seeking emails to or from five
11 identified LAWA employees. On January 19, 2024, City responded to counsel for Petitioner as follows:

- 12 a) Produced a single pdf containing 4,836 pages of responsive records followed by a second pdf
13 comprising 568 pages of responsive records. No records were withheld under any privileges.

14 **5. BSS – Request No. 23-3983**

15 Counsel for Petitioner has found BSS’s production satisfactory and has consequently agreed to
16 dismiss the writ action against BSS.

17 **6. BOE – Request No. 23-3980**

18 Counsel for Petitioner has found BOE’s production satisfactory and has consequently agreed to
19 dismiss the writ action against BOE.

20 **7. LAPD – Request No. 23-3986**

21 On April 21, 2023, Petitioner submitted to LAPD a request seeking emails to or from Monique
22 Turner containing “smart.” LAPD IT’s department searched for responsive records by using software
23 that allows it to retrieve all department emails from Outlook based on keywords, domain names, and
24 date range.

25 On May 18, 2023, LAPD sent a message requesting that Petitioner narrow the request because
26 LAPD’s system could not export the records results due to their size (5,625 records with a cumulative
27 size of 26 GB). On June 7, 2023 Petitioner agreed to focus the search parameters and proffered that
28 LAPD could process the request in yearly increments. LAPD responded, asking that Petitioner clarify

1 the scope of his request regarding the term “smart.” Even though Petitioner previously agreed to narrow
2 the scope of the request Petitioner informed LAPD he would no longer narrow the scope of the request.
3 Due to the technical difficulties, Petitioner’s initial acquiescence to narrow the scope of the request, and
4 the actual language in the request granting permission to exclude records unrelated to smart technology
5 containing the term “smart,”² LAPD decided to conduct a search using the terms “smart city” and
6 “smart cities,” the focal points of Petitioner’s request.

7 On December 8, 2023, LAPD produced responsive records containing the terms “smart city” and
8 smart cities.” On December 21, 2023, counsel for Petitioner sent counsel for City a meet and confer
9 letter objecting to LAPD producing records based on the narrowed search terms and missing records.
10 However, the responsive emails were produced with all attachments. On January 8, 2024, counsel for
11 City proposed a compromise to Petitioner – LAPD would expand the scope of the search terms to
12 include “smartla,” “smart technology,” “smart technologies,” and “smart infrastructure” – terms
13 referenced heavily in pdf link on which Petitioner’s request is based. Petitioner rejected this compromise
14 so City relented and agreed to produce a supplemental production based on the singular term “smart” as
15 Petitioner requested. As of today’s date, LAPD is reviewing the supplemental production and anticipates
16 production by or before the trial date.

17 **I. CPRA Category #2 (smart city emails, policies, contracts, and accounting records)**

18 Petitioner submitted follow-up requests to several city departments, including the Mayor, ITA,
19 and BSL, seeking specific smart city emails, identified contracts, and accounting records.

20 **1. Mayor Request No. 2 – May 9, 2023**

21 On May 9, 2023, Petitioner submitted a four-prong request to the Mayor’s Office seeking: a)
22 emails to or from Mayor’s staff containing various privacy-related terms; b) emails between the Mayor’s
23 Office and any email address ending in @gartner.com; c) all emails submitted between Mayor’s Office
24 and Kathy Carter containing the word “Olympic” or “LA28;” d) all emails to and from Mayor’s Office
25 and various identified Olympic directors. On January 19, 2024, counsel for City responded to Petitioner
26 as follows:

27 _____
28 ² Subsection D in Petitioner’s request states: The term “smart” below is in reference to technologies for a smart city program.
You are not required to omit, but you may omit, any references to “smart” that are unrelated to technology (i.e., an email
stating “We are meeting with Eric tomorrow. He’s a smart guy.”)

1 a) Produced 771, 1026, 355, and 200 pdf pages of Vault-generated responsive records,
2 respectively. There were no withholdings.

3 **2. ITA Request No. 23-4355**

4 On May 1, 2023, Petitioner submitted to ITA a request seeking: a) emails references identified
5 terms related to privacy; b) emails references identified electronic privacy-related state laws; c) City’s
6 Digital Code of Ethics; d) City’s Information Security Policy (ISP); and e) City’s Internet of Things
7 (IOT) Policy. On November 9, 2023, City responded as follows to the request:

- 8 a) Produced 271-page pdf containing Vault-generated emails with terms “privacy law,” “opts
9 out,” “eavesdrop,” “data breach notice,” “subcontaneous,” and “implantable.” While
10 Petitioner later objected that the production only contained emails from subscription services,
11 Petitioner failed to provide City with additional search terms that might yield different
12 results. However, to make sure an adequate search was done, ITA re-ran the five search
13 terms in Vault, which generated the same records previously produced to Petitioner.
- 14 b) Responded that a search yielded no responsive records. Petitioner objected to the response,
15 pointing that one attachment present in ITA’s overall production referenced one of the
16 privacy laws. Upon conducting a follow-up search in Vault, ITA was only able to locate the
17 sole attachment identified by Petitioner. The generic nature of the search terms and the fact
18 that the one of the laws only appeared in a *County* document attached to a single City email
19 makes it *less* likely than any follow-up searches without more specific terms would yield
20 different results. It also notable that a Vault search conducted by counsel to the Mayor’s
21 Office yielded no responsive records to this same request. However, in the interest of
22 compromise, counsel for City will agree to supervise an additional ITA search using the
23 names and section numbers of the privacy laws and will apprise of Petitioner of the outcome.
- 24 c) Was not addressed record since was previously produced.
- 25 d) Responded with a collection of policies constituting the City’s ISP. City originally withheld
26 these records under the balance test but found rescinded the privilege since the release of the
27 records does not appear to compromise the security of the City’s IT systems. Counsel for
28

1 City will confirm whether this the documents produced constitute the ISP based on
2 Petitioner's meet and confer letter dated February 12, 2024.

3 e) Was not addressed record since was previously produced.

4 **3. ITA Request No. 23-5963**

5 On June 6, 2023, Petitioner submitted to ITA a request seeking: a) all accounting records
6 reviewed by ITA; b) all contracts reviewed by ITA; c) all meeting minutes of, and all contracts reviewed
7 by the City's Smart Policy Committee; d) all meeting minutes of, and all contracts reviewed by the
8 Information Technology Policy Committee (ITPC); and e) all minutes of, and all contracts reviewed by,
9 the Information Technology Oversight Committee (ITOC) during January 1, 2019 to June 6, 2023. On
10 or about November 15, 2023, ITA responded to Petitioner as follows:

11 a.) Supplemented its original production of 577 pages of invoices relating to smart city with
12 additional accounting records relating to all of its contracts.

13 b.) Produced a spreadsheet of all ITA contracts contains contract number, vendor name, contract
14 dates, and contract description. City originally produced 45 contracts based on an ITA
15 analyst's knowledge of them relating to smart city. Petitioner objected as deficient, so ITA
16 supplemented its production with a list of all contracts even though it had determined the
17 original production was responsive. Petitioner has conflated with representation of goals laid
18 out in the City smart strategy document with actual implementation – the 45 contracts,
19 according to ITA, represent the real components of the strategy implemented, which is not
20 unusual in a large city where implementation may occur at a snail pace or not at all.
21 Moreover, ITA does not possess the totality of the contracts associated with smart city, as
22 some reside with BSL and the General Services Division.

23 c.) Was not addressed, but ITA previously responded it was unable to locate minutes for the
24 Smart Policy Committee, the TTPC, and ITOC revealed. On November 27, 2023, Petitioner
25 objected to the adequacy of the search. On February 15, 2024, counsel for City learned from
26 ITA that it conducted a Vault search for the records but located no records. However, it was
27 able to obtain minute minutes from the Smart City Coordinator from whose files the minutes
28 originate. Due to the lateness of the notice, counsel for City has not had the chance to review

1 the minutes for responsiveness but it will include them as exhibits hereto as a courtesy to
2 Petitioner, subject to a follow-up meet and confer.

3 **4. BSL Request No. 23-5795**

4 On June 6, 2023, Petitioner submitted to BSL a request seeking all BSL accounting records and
5 contracts falling within the timeframe January 1, 2019 to June 6, 2023. On June 20, 2023, BSL sent
6 Petitioner a message asking whether the broad request could be narrowed. On same date, Petitioner
7 responded to BSL's request. On October 29, 2023, BSL provided accounting records and an excel
8 spreadsheet with information to search for contracts on the City Clerk's website. On February 6, 2024,
9 Petitioner sent a meet and confer letter to the City identifying responsive contracts on the City Clerk's
10 website he could not locate. City is in the process of investigating the alleged deficiencies and plan to
11 cure them as soon as possible.

12 **LEGAL STANDARD**

13 The CPRA expressly provides that "access to information concerning the conduct of the people's
14 business is a fundamental and necessary right of every person in this state." Govt. C. § 6250. The
15 purpose is to "give the public access to information that enables them to monitor the functioning of their
16 government." *See CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651; *Times Mirror Co. v. Superior Court*
17 (1991) 53 Cal.3d 1325, 1350. All records that are prepared, owned, used, or retained by any public
18 agency and that are not subject to the CPRA's statutory exemptions to disclosure must be made publicly
19 available for inspection and copying upon request. (Govt. C. § 7920.510, 7920.510) There is a "statutory
20 presumption that all governmental records are available to any person" unless the agency demonstrates
21 that nondisclosure is statutorily warranted. *See ACLU v. Superior Court* (2011) 202 Cal.App.4th 55, 85.
22 Since disclosure of public records is favored, all exemptions from disclosure under the CPRA are
23 narrowly construed. *See Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1321.

24 In response to the multiple requests at issue, City has produced tens of thousands of responsive
25 records while withholding a comparably small fraction of records with which Petitioner has taken issue.
26 Hence, the privileges have been wielded economically in compliance with the CPRA mandate to
27 produce records liberally. The exemptions at issue here justifying withholdings and/or partial redactions
28

1 of responsive records are the attorney-client, work product, deliberative process, and balancing test
2 privileges.

3 **A. Attorney-Client and Work Product Privileges**

4 Under California law, communications between a lawyer and client which are intended to be
5 confidential generally are protected from disclosure. *See Himmelfarb v. U.S.* (1949) 175 F.2d 924, 939;
6 Ev. C. § 954. The heartland of privilege only protects those communications that bear some relationship
7 to attorney's provision of legal consultation. *See LA County v. Superior Court* (2016) 2 Cal.5th 282,
8 294. In general, the court cannot require disclosure for in camera review of materials assertedly
9 protected by attorney-client privilege. *See Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 897.

10 The attorney work product makes non-discoverable an attorney's impressions, conclusions,
11 opinions, legal research and theories." (C.C.P. § 2018.030) When a writing is found to be protected
12 under the absolute attorney work product privilege, the inquiry ends and courts may not invade upon the
13 attorney's thought processes by evaluating the content of the writing. *See Rico v. Mitsubishi Motors*
14 *Corp.* (2007) 42 Cal.4th 807, 820.

15 Here, the City has claimed the attorney-client privilege, and by extension, the attorney work
16 product privilege over various documents where the City Attorney's office was rendering legal advice to
17 its clients. Prominent examples from the privilege log in Exhibit 1 include the Mayor's Office being
18 counseled by the City contract attorneys negotiating terms negotiations agreements related to the
19 Olympic Games, procurement, and other contract amendments. Should the court grant Petitioner's
20 request for an in camera review, these records should be in camera review. In the meantime, counsel for
21 City will heed Petitioner's request for a re-review withheld to ensure that the attorney-client privilege
22 has not been improperly applied to attorney-client communications unrelated to the provision of legal
23 services.

24 **B. Deliberative Process Privilege**

25 Deliberative process privilege protects mental processes by which a given decision was reached,
26 and the substance of conversations, discussions, debates, deliberations and like materials reflecting
27 advice, opinions, and recommendations by which government policy is processed and formulated. *See*
28 *ACLU v. Superior Court* (2011) 202 Cal.App.4th 55, 76. The key question in every case is "whether the

1 disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage
2 candid discussion within the agency and thereby undermine the agency's ability to perform its functions.
3 Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is
4 actually related to the process by which policies are formulated or inextricably intertwined with policy-
5 making processes.” See *Times Mirror Co. v. Superior Court*. (1991) 53 Cal.3d 1325, 1342. The privilege
6 protects communications to the decisionmaker prior to a decision is made; communications made after
7 the decision and designed to explain a decision are not protected. *Id.* at 1341.

8 Certain communications, because they involve city employees exchanging ideas about
9 approaches should take regarding a specific matter, have been withheld in this litigation. Throughout the
10 privilege log there are examples of department employees debating contract provisions, red-lining
11 MOUs, and editorializing on other draft records. These types of communications should be disclosed
12 from public review because disclosure would have a chilling effect on the candor needed for the creation
13 of effective policy. Petitioner has raised concerns that City may have improperly withheld records that
14 could have been produced with redactions to deliberative substance. Counsel for City has agreed to re-
15 view the production and provide redacted records where appropriate and, in some instances, waive the
16 privilege where the chilling effect from disclosure is negligible.

17 **C. Catch-All Privilege (“Balancing Test”)**

18 A public record may be withheld where, on the facts of the particular case, the public interest
19 served by not making the record public clearly outweighs the public interest served by disclosure of the
20 record. Govt. C. 7922.000. The catchall exemption that contemplates a case-by-case balancing process,
21 with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the
22 side of confidentiality. See *San Diego v. Superior Court* 196 (2011) Cal.App.4th 1228, 1236.

23 Certain redactions have been made in the productions to protect personal identifying information
24 such as private cell phone numbers and unpublished direct phone lines. The interest in protecting
25 employees from harassment and other unsolicited contact evinces a clear overbalance on the side of
26 non-disclosure.

27 ///

28 ///

1 **D. Sufficiency of Searches**

2 Local agencies must make a reasonable effort to search for and locate requested records,
3 including by asking probing questions of city staff and consultants. *Community Youth Athletic Center v.*
4 *National City* (2013) 220 Cal.App.4th 1385, 1417-1418; A local agency is not required to perform a
5 “needle in a haystack” search to locate the record or records sought by the requester. *Cal. First Amend.*
6 *Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166. Based on FOIA jurisprudence, an agency
7 only needs to show it how that “us[ed] methods which can be reasonably expected to produce the
8 information requested.” A search need not be exhaustive, and the adequacy of a search is not determined
9 by its results, but by the method of the search. An agency's failure to find a particular document does not
10 necessarily indicate that its search was inadequate. *Tunchez v. DOJ* (2010) 715 F.Supp.2d 49, 53-54.

11 Here, the City used email retention software such as Vault to conduct meaningful searches using
12 generic terms proffered by Petitioner: “smart,” “opts out,” and “privacy laws” are a few glaring
13 examples. That these terms showed up in abundance in newsletters was predictable given the terms are
14 not tethered to a concrete subject matter. The numerosity of the documents produced also vindicates the
15 thoroughness of the searches conducted by City custodians, and while some records may have been
16 inadvertently omitted (which is not unusual for overbroad requests involving multiple city departments),
17 the failure of City to provide a specific document does not mean the searches were inadequate.
18 Moreover, City has supplemented and will continue to supplement its production where it falls short. As
19 courts have recognized, requesters are entitled to reasonable searches expected to production the
20 information requested, not air-tight productions that perfectly conform to their expectations of what
21 should be produced.

22 **E. Petitioner is not Entitled to a Privilege Log Absent a Court Order**

23 Although the CPRA describes its procedures and exceptions in exceptional detail, it contains no
24 equivalent provision describing an agency’s duty to create a privilege. The California Supreme Court
25 has noted that “[r]equiring a public agency to provide a list of all records in its possession that may be
26 responsive to a CPRA request has the potential for imposing significant costs on the agency.” *Haynie v.*
27 *Superior Court* (2001) 26 Cal.4th 1061, 1074. It further reasoned: “to require each public agency to
28 catalog the responsive documents for each of the requests it receives—even when the agency could

1 legitimately claim that all responsive documents are exempt from disclosure would be burdensome and
2 of scant public benefit.” *Id.* at 75. Petitioner’s attempt to use *Am. Civil Liberties Union Found* to
3 distinguish *Haynie* falls flat because the court in the former was concerned with limiting the
4 applicability of investigative exemption to bulk data gathered by law enforcement unrelated to
5 individualized criminal investigations. (See *Am. Civil Liberties Union Found. v. Superior Court* (2017) 3
6 Cal.5th 1032, 1040-1042) The court was completely silent regarding privilege logs. On the other hand, an
7 agency can be ordered by the court to produce a list of documents – at the requester’s expense – to assist
8 the requester in narrowing its request by eliminating unwanted records. See *State Board of Equalization*
9 *v. Superior Court* (1992) 10 Cal.App.4th 1177, 1181.

10 Contrary to Petitioner’s position, the state supreme court has made clear agencies such as the
11 City are under no obligation due to the burdens associated with producing such list. However, this court
12 does have the authority to order City to produce a list at Petitioner’s expense if a list would assist
13 Petitioner in narrowing its request to specific records.

14 **F. Meet and Confer**

15 Compliance continues to be a moving target in the action, as the parties continue to meet and
16 confer during briefing. Counsel for City will continue to meet and confer and remedy deficiencies
17 identified by Petitioner so that the scope of the issues the court must address before trial are narrowed.

18 **CONCLUSION**

19 For these reasons, the Court should deny the Petition and issue an order confirming
20 RESPONDENTS have met their obligations under the CPRA.

21
22 HYDEE FELDSTEIN SOTO City Attorney
23 VALERIE L. FLORES, Chief Asst. City Attorney
24 BETHELWEL WILSON, Deputy City Attorney

25 Dated: February 15, 2024

26 By: *Bethelwel Wilson*
27 BETHELWEL WILSON
28

**PROOF OF SERVICE -- (VIA VARIOUS METHODS)
CASE NO. 23STCP02601**

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 North Main Street, Suite 800, Los Angeles, California 90012.

On, February 15, 2024, I served the foregoing documents described as: **RESPONDENTS' OPPOSITION TO PETITIONERS' OPENING BRIEF** on all interested parties in this action by emailing a PDF copy as follows:

Gregory J. Glaser, Esq.
4399 Buckboard Dr., Box 423
Copperopolis, CA 95228
greg@gregglaser.com

Ray L. Flores II, Esq.
11622 El Camino Real, Suite 100
San Diego, CA 92130
rayfloreslaw@gmail.com

BY MAIL - I deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/ or

BY PERSONAL SERVICE – I delivered by hand, or I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

BY OVERNIGHT COURIER - I deposited such envelope in a regularly maintained overnight courier parcel receptacle prior to the time listed thereon for pick-up. Hand delivery was guaranteed by the next business day.

BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct. Executed on February 15, 2024, at Los Angeles, California.

- Cheryl Lewis
CHERYL LEWIS