

December 20, 2021

VIA ELECTRONIC MAIL

Brian Hews
Cerritos Community Newspaper
Hews Media Group
brianhews@cerritosnews.net

Re: Public Records Act Request Received December 9, 2021

Dear Mr. Hews:

Rutan & Tucker, LLP serves as the City Attorney's Office for the City of Cerritos ("City"). This letter is being sent in response to your Public Records Act ("PRA") request received on December 9, 2021, seeking "the texts of MPT Chuong Vo, from Nov [sic] 2020 to the present. Also requesting emails from his personal email account(s), from nov [sic] 2019 to the present" ("Request").

The City has reviewed your Request and has determined that it is overly broad, vague, extremely burdensome, and request items not related to City business. Your request is unprecedented and seeks potentially tens of thousands of text message and email records, creating a burden – measured by consumption of staff time, consumption of legal resources, and overall cost burden to be imposed on the City – that far exceeds the burden imposed by any typical PRA request. The gathering and review process for the volume of material requested is extremely time consuming and an unfortunate and unnecessary consumption of City resources. The courts have long recognized that at some point the burden of providing a response to an open-ended request outweighs the policy favoring disclosure.

The City places a high value on transparency and public accountability, and it scrupulously follows the requirements of the Public Records Act. But the public plays an important role in that process: those seeking public records have typically narrowed their request(s) in a reasonable manner, so that the subject matter they seek can be produced without undue waste. In this regard, your request is unprecedented in Cerritos. The information sought is not limited by subject matter, by specific participants to a conversation, or in any other useful way.

California law requires that a public records request reasonably describe an identifiable record or records, and be focused, specific, and reasonably clear so that the local agency can decipher what records are being sought. (Gov. Code § 6253(b); *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481.) A request that is so open-ended that it amounts to asking for all of a department's files is not reasonable. Overly broad requests impose financial burdens on the City

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and inhibit it from performing other vital agency functions, including responding to records requests from other requesters in a timely manner.

Contributing an additional layer of burden, your request is focused on communications involving a City Council member. The privilege issues implicated in those communications are extensive, thereby requiring a more thorough review process than might otherwise occur. Council members and the City’s executive management team are frequently engaged in deliberative and legislative processes that create exemptions from disclosure. They are also participants in attorney client, attorney work-product, personnel, and other confidential communications. Ensuring that those privileges are respected would require a detailed review of tens of thousands of documents (amounting to potentially hundreds of thousands of pages of materials). Ultimately, as discussed below, where requests are unduly burdensome, the City does not have the resources and is not required to respond to such requests.

Courts have long held that Public Records Act requests that require “an agency to search an enormous volume of data for a ‘needle in the haystack’ or which ‘compel the production of a huge volume of material may be objectionable as unduly burdensome” whether they are “overly aggressive, unfocused, and poorly drafted” or “clearly framed.” (*California First Amendment Coalition* (1998) 67 Cal.App.4th 159, 166.) “Indeed, under the Public Records Act, a governmental agency is only obliged to disclose public records that can be located with *reasonable* effort and cannot be subjected to a ‘limitless’ disclosure obligation. (*Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353, 372.)

As the California Supreme Court observed in *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, “[t]he breadth of a request may affect the balancing of interests required by section 6255. The public interest in nondisclosure may be less where the request is carefully focused and confined to a few documents.” (*Id.* at p. 1345.) The Court held that:

[W]hatever merit disclosure [of public records] might otherwise warrant in principle is simply crushed under the massive weight of the Times’s request in this case: the newspaper seeks almost five years of the Governor’s calendars and schedules, covering undoubtedly thousands of meetings, conferences and engagements of every conceivable nature. We are not persuaded that any identifiable public interest supports such a wholesale production of documents. Accordingly, on the present record, we conclude that the public interest in nondisclosure clearly outweighs the public interest in disclosure.

(*Id.*; see also *Bertoli*, 233 Cal.App.4th at pp. 356-361, 371-372 [holding PRA request and petition to compel disclosure which would require the city and 34 private individuals to “hand over” the hard drives on at least 109 computers, laptops and PDA’s were overly broad and burdensome where city alleged it would take “hundreds of hours” to sort through all of the potentially

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responsive documents that would be identified by various computer searches in order to extract privileged material].)

In *Rogers v. Superior Court*, a petitioner “requested the wholesale production of all City-reimbursed telephone records of all city council members over a one-year period.” (19 Cal.App.4th at p. 480.) The *Rogers* court held that the one-year period involved in this case was not conceptually different from the five-year period involved in *Times Mirror Co.* Were the court to conclude otherwise, such conclusion would permit the petitioner to make sequential annual requests. As such, the court held that “[i]t is the nonspecific and unfocused nature of the request which is dispositive, not its time period.” (*Id.*) (emphasis added.) Therefore, the petitioner “should have presented a specific and focused request to the City, with which they then would have an opportunity to comply. It makes no sense to permit an individual to make a general, unfocused request for records to the public agency which will then be compelled to deny it, thereby ensuring litigation. The request to the agency must itself be focused and specific.” (*Id.* at p. 481.)

With these concerns in mind, the City is simply unable to devote unlimited time and resources to comply with your request. Nevertheless, the City offering to assist you in reasonably narrowing and tailoring your request, such that the City can appropriately designate the necessary resources to locate and produce the responsive documents.

As such, **please narrow the scope of your request by informing us of the topic(s) of records you are seeking and provide examples of key terms the City may use to search for responsive records by January 4, 2022.** Without such information, the City is unable to respond to your request.

Very truly yours,

RUTAN & TUCKER, LLP



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