

1 BRIGGS LAW CORPORATION [FILE: 1593.59]
Cory J. Briggs (State Bar no. 176284)
2 Anthony N. Kim (State Bar no. 283353)
99 East "C" Street, Suite 111
3 Upland, CA 91786
Telephone: 909-949-7115

4 Attorneys for Plaintiff and Petitioner San Diegans
5 for Open Government

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/01/2018 at 12:13:15 PM
Clerk of the Superior Court
By Chelsea Martinez, Deputy Clerk

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – HALL OF JUSTICE

10 SAN DIEGANS FOR OPEN GOVERNMENT; and
11 DOES 1 through 10,
12 Plaintiffs and Petitioners,
13 vs.
14 SAN DIEGO UNIFIED SCHOOL DISTRICT; and
15 DOES 11 through 100,
16 Defendants and Respondents.

CASE NO. 37-2018-00027282-CU-MC-CTL

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDATE UNDER THE CALIFORNIA
PUBLIC RECORDS ACT AND OTHER
LAWS**

17 Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT ("SDOG") alleges as
18 follows:

19 **Introductory Statement**

20 1. SDOG brings this lawsuit under the California Public Records Act ("CPRA"), as well
21 as the California Constitution, the common law, the Education Code, the California Code of
22 Regulations, and other applicable legal authorities – for two primary reasons. First, SDOG made a
23 lawful request for public records to Defendants/Respondents, but they have illegally failed to respond
24 to the requests and produce responsive public records. Second, and perhaps most importantly,
25 Defendants/Respondents have twice adopted a policy designed to destroy official records before the
26 retention deadline set by law, once last year and again earlier this year. They backed down last year
27 after SDOG threatened to file suit. This year, after they announced the policy again and SDOG
28 threatened to sue, they essentially said: bring it on.

1 **Parties**

2 2. SDOG is a non-profit organization formed and operating under the laws of the State of
3 California. One of its primary roles as a government “watchdog” is ensuring that public agencies
4 comply with all applicable laws aimed at promoting transparency and accountability in government.

5 3. Defendant and Respondent SAN DIEGO SCHOOL DISTRICT (“SDUSD”) is a “local
6 agency” within the meaning of Government Code Section 6252 and a “district” within the meaning of
7 Section 16020 *et seq.* of Title 5 of the California Code of Regulations. SDUSD is a “public office,”
8 and each of its agents is an “officer” and holds a “public office” within the meaning of Government
9 Code Section 6200.

10 4. The true names and capacities of the Defendants/Respondents identified as DOES 1
11 through 100 are unknown to SDOG, who will seek the Court’s permission to amend this pleading in
12 order to allege the true names and capacities as soon as they are ascertained. SDOG is informed and
13 believes and on that basis alleges that each of the fictitiously named Defendants/Respondents 11
14 through 100 has jurisdiction by law over one or more aspects of the public records that are the subject
15 of this lawsuit or has some other cognizable interest in the public records.

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

22 **Jurisdiction and Venue**

23 6. The Court has jurisdiction over this lawsuit pursuant to Government Code Sections 6258
24 and 6259; Code of Civil Procedure Sections 526a, 1060 *et seq.*, and 1084 *et seq.*; the California
25 Constitution; the common law; the Education Code; and the California Code of Regulations, among
26 other provisions of law.

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

**FIRST CAUSE OF ACTION:
Violation of Open-Government Laws
(Against All Defendants/Respondents)**

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

9. On or about March 2, 2018, SDUSD announced an "Email Policy Update" stating that effective June 1, 2018, SDUSD "email accounts will no longer retain items older than one year (365 days)." The Update listed multiple items other than email messages that will "be automatically deleted." A true and correct copy of the Update is attached hereto as Exhibit "A."

10. On or about May 16, 2018, SDOG caused to be submitted to SDUSD a request for certain public records including, in category 1b of the request, records set to be destroyed "prior to the third July 1st after the date of your last 'audit' as defined by Section 16026 of Title 5 of the California Code of Regulations" ("CPRA Request"). A true and correct copy of the CPRA Request is attached to this pleading as Exhibit "B."

11. On or about May 29, 2018, SDUSD provided its "initial and final response" to the CPRA Request by identifying internet links to some of the requested public records. However, with respect to category 1b of the CPRA Request, SDUSD stated: "There are no responsive documents to this request because we are not deleting records that are required to be retained by the [California Public Records] Act. Therefore this portion of your request will be closed as of today's date and our records updated accordingly." A true and correct copy of the response is attached to this pleading as Exhibit "C."

12. Five minutes after SDUSD sent its response to the CPRA Request, SDOG's legal counsel responded thereto by pointing out that SDUSD had made a mistake with respect to category 1b. Counsel asked: "Are you standing on your response below as 'final,' or would you like to revise it?" SDUSD never answered. A true and correct copy of SDOG's response to SDUSD is attached hereto as Exhibit "D."

13. SDUSD has violated the controlling legal authorities in multiple ways. By way of example and not limitation (including alternative theories of liability):

A. At least one public record responsive to the CPRA Request exists but was not turned over by SDUSD.

1 B. To the extent SDUSD believed that it needed additional information and/or
2 clarification from SDOG in order to fully respond to the CPRA request, SDUSD made no effort to seek
3 such information and/or clarification.

4 C. SDUSD has never provided SDOG with any affidavit or other evidence like that
5 described in *City of San Jose v. Superior Court*, 2 Cal.5th 608 (2017), to satisfactorily establish that
6 each SDUSD-affiliated agent using a personal account and/or device has thoroughly searched for and
7 produced all responsive public records in and/or on the agent's personal account and/or device.

8 14. SDOG and other members of the public have been harmed as a result of
9 Defendants'/Respondents' failure to produce all public records responsive to the CPRA Request. By
10 way of example and not limitation, the legal rights of SDOG and its members to access information
11 concerning the conduct of the people's business is being violated and continues to be violated.

12 **SECOND CAUSE OF ACTION:**
13 **Premature Destruction of Public/Official Records**
(Against All Defendants/Respondents)

14 15. The preceding allegations in this pleading are fully incorporated into this paragraph.

15 16. Within Title 5 of the California Code of Regulations, and at all times relevant to this
16 lawsuit:

17 A. Section 16020(a) has provided as follows: "records' means all records, maps,
18 books, papers, and documents of a school district required by law to be prepared or retained or which
19 are prepared or retained as necessary or convenient to the discharge of official duty."

20 B. Section 16023 has, among other things, defined certain "Class 1" records and
21 designated them as "permanent."

22 C. Section 16024 has, among other things, defined certain "Class 2" records,
23 designated them as "option," and required that they be retained until reclassified by the district as
24 "Class 3" records.

25 D. Section 16025 has, among other things, defined "[a]ll records" other than Class
26 1 or 2 records as "Class 3" records and designated them as "disposable."

27 E. Section 16026 has provided as follows: "A Class 3 -Disposable record shall not
28 be destroyed until after the third July 1 succeeding the completion of the audit required by Education

1 Code Section 41020 or of any other legally required audit, or after the ending date of any retention
2 period required by any agency other than the State of California, whichever date is later. A continuing
3 record shall not be destroyed until the fourth year after it has been classified as Class 3 -Disposable.”

4 17. At all times relevant to this lawsuit, Government Code Section 6200 has provided as
5 follows: Every officer having the custody of any record, map, or book, or of any paper or proceeding
6 of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is
7 punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two,
8 three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the
9 officer willfully does or permits any other person to do any of the following: (a) Steal, remove, or
10 secrete. (b) Destroy, mutilate, or deface. (c) Alter or falsify.”

11 18. The “[i]tems to be automatically deleted” on June 1, 2018, under the Email Policy
12 Update include (i) at least one Class 1, 2, and/or 3 records pursuant to Section 16020 *et seq.* of Title
13 5 of the California Code of Regulations, but the minimum retention period prescribed by law will have
14 not yet expired; and (ii) at least one “record, map, or book, or of any paper or proceeding of any court,
15 filed or deposited in any public office, or placed in [a public officer’s] hands for any purpose” pursuant
16 to Government Code Section 6200.

17 19. On or about May 21, 2018, SDOG caused a Notice of Intent to Sue over the Email
18 Policy Update to be served on SDUSD. A true and correct copy of the notice is attached hereto as
19 Exhibit “E.”

20 20. On or about May 25, 2018, SDUSD caused its outside legal counsel to respond to
21 SDOG’s Notice of Intent to Sue. The response did not indicate that SDUSD would take any corrective
22 action to avoid this lawsuit and instead represented that outside counsel was authorized to accept
23 service of process. A true and correct copy of outside counsel’s response is attached hereto as Exhibit
24 “F.”

25 21. The Email Policy Update violates the controlling legal authorities in multiple ways. By
26 way of example and not limitation (including alternative theories of liability):

27 A. It authorizes the termination of retention and the destruction of Class 1, 2, and/or
28 3 records prior to the expiration of the minimum retention period prescribed by law.

1 Date: May 31, 2018.

Respectfully submitted,

2 BRIGGS LAW CORPORATION

3
4 By: Cory J. Briggs

5 Attorneys for Plaintiff San Diegans for Open
6 Government

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "A"

From: SDUSD IT Department
Sent: Friday, March 02, 2018 4:34 PM
Subject: IT Bulletin: Email Policy Update

Dear Colleagues:

Effective June 1, 2018 district email accounts will no longer retain items older than one year (365 days). The district's email servers will begin automatically deleting the items once they have reached one year in age on a perpetual basis. This includes all items stored within a mailbox with the exceptions noted below. All district email accounts will be subject to the retention policy including individual employee accounts, school site accounts, departmental accounts, shared accounts and email accounts for any other purpose hosted on the district's servers.

Items exempted from automatic deletion	Items to be automatically deleted
<ul style="list-style-type: none">• Contacts• Tasks• Notes	<ul style="list-style-type: none">• Email messages (both sent and received)• Calendar Items• Voicemail messages• Instant Messages• Deleted Items• File Attachments• RSS Feeds• All other items not specifically listed as exempt

Employees who wish to retain a specific item longer than one year must archive that item on to their local hard drive. As outlined in Board Policy 3580 employees are expected to archive only those items that are essential to the employee's ongoing work. In addition, items that are classified as a District record according to Board Policy 3580 must be stored in a safe location outside of an email mailbox.

For more information, please visit [this webpage](#).

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "B"

BRIGGS LAW CORPORATION

*San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110*

*Telephone: 619-497-0021
Facsimile: 909-949-7121*

Please respond to: San Diego Office

*Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786*

*Telephone: 909-949-7115
Facsimile: 909-949-7121*

BLC File(s): 1593.99

16 May 2018

Cindy Marten, Superintendent
San Diego Unified School District
4100 Normal Street
San Diego, CA 92103

Via Fax Only to 619-291-7182

Re: Request to Inspect and Obtain Copies of Public Records, Public Information, and Other Matters

Dear Superintendent Marten:

On behalf of San Diegans for Open Government and pursuant to the California Constitution (Article I, Section 3), the California Public Records Act (GOV'T CODE § 6250 *et seq.*), the common law, *Smith v. City of San Jose*, 2 Cal.5th 608 (2017), and your agency's own local rules and regulations, I am writing to request an opportunity to first inspect and then obtain copies of the "public records" (as that term, including public information and other matters, is defined under the foregoing authorities) listed on *Attachment 1: Categories of Requested Public Records* to this request, regardless of whether the responsive public records are maintained on public or private devices and/or in public or private accounts.

I ask that you make a determination on this request within 10 days of your receiving it, or even sooner if you can do so without having to review the responsive records. If you believe that any of these records is exempt from disclosure, I urge you to note in your reply whether the exemption is discretionary and, if so, whether you are required to exercise your discretion to withhold the record in this particular case. If you determine that any portion of the responsive records is exempt from disclosure and that you intend to withhold that portion, I ask that you redact that portion for the time being and make the other portion available as requested. In any event, please respond with a signed notification citing the legal authorities on which you rely if you determine that any portion of the responsive records, if not all of them, is exempt and will not be disclosed.

If public records responsive to this request are available in one or more non-paper formats (including but not limited to electronic, magnetic, or digital formats), make sure that your response to this request includes production of all responsive records in non-paper formats even if the records are also available in paper format. If there are no records responsive to a particular category listed on *Attachment 1*, please confirm in writing that such records do not exist; and if responsive records used to exist but have been lost, stolen, or destroyed, please (i) identify the date of loss, theft, or destruction and (ii) provide a copy of all available evidence of the loss, theft, or destruction.



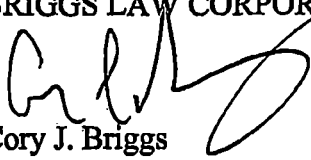
All responsive records must be produced for inspection before my client will pay for copies, unless I agree otherwise in writing after receiving your estimate of copying costs. Furthermore, my client reserves the right to make its own reproduction of the responsive records, at its own expense.

One final, important request: Please remind all agents of your agency that Government Code Section 6200 provides, *inter alia* and with my emphasis, that every public officer having custody of any record "filed or deposited in any public office, or *placed in his or her hands for any purpose*, is punishable by imprisonment [for up to four years] . . . if, *as to the whole or any part of the record* . . . the officer willfully does or permits any other person to do any of the following: (a) Steal, remove, or secrete. (b) Destroy, mutilate, or deface. (c) Alter or falsify." This punishment applies even when the officer maintains custody of such records outside your agency's office or on the officer's private property.

Thank you for your time and attention to this matter. If I can provide any clarification that will help you to expedite this request, please do not hesitate to contact me in writing. Because the law requires you to assist members of the public in making a focused and effective request that reasonably describes identifiable records, I will assume that you fully understand what public records are being sought unless I receive written correspondence from you to the contrary.

Sincerely,

BRIGGS LAW CORPORATION


Cory J. Briggs



Attachment 1: Categories of Requested Public Records

Page 1 of 1 (following request letter)

- 1a. Each and every **WRITING** that has been destroyed by your agency since May 16, 2015.
- 1b. Each and every **WRITING** that your agency may destroy (or allow to be destroyed) prior to the third July 1st after the date of your last "audit" as defined by Section 16026 of Title 5 of the California Code of Regulations.
- 2a. Each and every **WRITING** that specifies your agency's document-retention policy at any time since January 1, 2015, including but not limited to the retention of **ELECTRONICALLY STORED INFORMATION**.
- 2b. For each and every policy described in category 2a, each and every **WRITING** that constitutes your agency's approval of the policy.
- 3a. Each and every **WRITING** that specifies your agency's document-destruction policy at any time since January 1, 2015, including but not limited to the destruction of **ELECTRONICALLY STORED INFORMATION**.
- 3b. For each and every policy described in category 3a, each and every **WRITING** that constitutes your agency's approval of the policy.

As used above, "**WRITING**" has the same meaning that it has under California Evidence Code Section 250 and includes "**ELECTRONICALLY STORED INFORMATION**"; and "**ELECTRONICALLY STORED INFORMATION**" has the same meaning that it has under California Code of Civil Procedure Section 2016.020.

ELECTRONICALLY STORED INFORMATION described above shall be produced in its native format by CD, DVD, or portable USB drive. **ELECTRONICALLY STORED INFORMATION** shall also be produced, to the extent practical and at reasonable cost, in paper format.

Please note: E-mail communications produced in response to this request for public records should identify not only the named recipient(s) but any and all "cc" and/or "bcc" recipient(s). All attachments to e-mail communications should be produced along with the e-mail communications themselves. E-mail communications on public and private e-mail accounts must be disclosed.



BRIGGS LAW CORPORATION

San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 909-949-7121

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

FACSIMILE COVER SHEET

Recipient: Cindy Marten, Superintendent

Recipient's fax number: 619-291-7182

Date: 16 May 2018 BLC File: 1593.99

Total Pages (including cover sheet): 4

Sender: Cory J. Briggs

Sender's fax number: ___ 619-515-6410 909-949-7121

Message: Please see the attached request for public records. Thank you.

Original Document to Follow? ___ Yes No

CONFIDENTIALITY

The document accompanying this facsimile transmission contains information that may be either confidential, legally privileged, or both. The information is intended only for the use of the recipient(s) named on this cover sheet. If not done by or at the direction of the recipient(s), disclosure, copying, distribution, or reliance on any of the contents of this transmission is strictly prohibited. If you have received this facsimile transmission in error, please notify us immediately by telephone so that we can arrange for its return at no cost to you.

Be Good to the Earth: Reduce, Reuse, Recycle



TRANSMISSION VERIFICATION REPORT

TIME : 05/16/2018 02:12PM
NAME :
FAX :
TEL :
SER. # : U63088K2N278525

DATE, TIME	05/16 02:11PM
FAX NO./NAME	16192917182
DURATION	00:00:51
PAGE(S)	04
RESULT	OK
MODE	STANDARD ECM

BRIGGS LAW CORPORATION

San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 909-949-7121

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

FACSIMILE COVER SHEET

Recipient: Cindy Marten, Superintendent

Recipient's fax number: 619-291-7182

Date: 16 May 2018 BLC File: 1593.99

Total Pages (including cover sheet): 4

Sender: Cory J. Briggs

Sender's fax number: 619-515-6410 909-949-7121

Message: Please see the attached request for public records. Thank you.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "C"

Cory Briggs

From: Day Jeffrey <jday1@sandi.net>
Sent: Tuesday, May 29, 2018 4:30 PM
To: Cory Briggs
Subject: Public Records Act Request FY20172018.147

Mr. Briggs,

In regards to Your Public Records Act Request - FY20172018.147. This letter shall constitute the District's initial and final response under the California Public Records Act.

Generally Applicable Response to Request for Records

Pursuant to the Act, we will make non-exempt responsive documents in our possession available as soon as they are identified and compiled. We will be exercising our discretion to withhold exempt records. Specifically, we will not be providing the following:

- To the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible.

In response to your requests, the District responds as follows:

Initial Request 1a: "Each and every WRITING that has been destroyed by your agency since May 16, 2015."

Initial Response 1a: There are no responsive documents to this request. Therefore this portion of your request will be closed as of today's date and our records updated accordingly.

Initial Request 1b: "Each and every WRITING that your agency may destroy (or allow to be destroyed) prior to the third July 1st after the date of your last "audit" as defined by Section 16026 of Title 5 of the California Code of Regulations."

Initial Response 1b: There are no responsive documents to this request because we are not deleting records that are required to be retained by the Act. Therefore this portion of your request will be closed as of today's date and our records updated accordingly.

Initial Request 2a: "Each and every WRITING that specifies your agency's document-retention policy at any time since January 1, 2015, including but not limited to the retention of ELECTRONICALLY STORED INFORMATION."

Initial Response 2a: As stated above to the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible. All the San Diego Unified School District policies are available on our website.

Initial Request 2b: "For each and every policy described in category 2a, each and every WRITING that constitutes your agency's approval of the policy."

Initial Response 2b: As stated above to the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours

per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible. All the San Diego Unified School District Board Resolutions are available on our website.

Initial Request 3a: "Each and every WRITING that specifies your agency's document-destruction policy at any time since January 1, 2015, including but not limited to the destruction of ELECTRONICALLY STORED INFORMATION."

Initial Response 3a: As stated above to the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible. All the San Diego Unified School District policies are available on our website.

Initial Request 3b: "For each and every policy described in category 3a, each and every WRITING that constitutes your agency's approval of the policy."

Initial Response 3b: As stated above to the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible. All the San Diego Unified School District Board Resolutions are available on our website.

Jeffrey Day
Legal Specialist
(619) 725-5630



Please consider the environment before printing this e-mail.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "D"

Cory Briggs

From: Cory Briggs
Sent: Tuesday, May 29, 2018 4:35 PM
To: Day Jeffrey
Subject: Re: Public Records Act Request FY20172018.147

Mr. Day:

You have misinterpreted request 1b. It does not include any reference to "the Act." Your response imposes a limitation in scope that the request does not contain.

Are you standing on your response below as "final," or would you like to revise it?

Cory

Sent from my iPhone. Please forgive any typos.

On May 29, 2018, at 4:29 PM, Day Jeffrey <jday1@sandi.net> wrote:

Mr. Briggs,

In regards to Your Public Records Act Request - FY20172018.147. This letter shall constitute the District's initial and final response under the California Public Records Act.

Generally Applicable Response to Request for Records

Pursuant to the Act, we will make non-exempt responsive documents in our possession available as soon as they are identified and compiled. We will be exercising our discretion to withhold exempt records. Specifically, we will not be providing the following:

- To the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible.

In response to your requests, the District responds as follows:

Initial Request 1a: "Each and every WRITING that has been destroyed by your agency since May 16, 2015."

Initial Response 1a: There are no responsive documents to this request. Therefore this portion of your request will be closed as of today's date and our records updated accordingly.

Initial Request 1b: "Each and every WRITING that your agency may destroy (or allow to be destroyed) prior to the third July 1st after the date of your last "audit" as defined by Section 16026 of Title 5 of the California Code of Regulations."

Initial Response 1b: There are no responsive documents to this request because we are not deleting records that are required to be retained by the Act. Therefore this portion of your request will be closed as of today's date and our records updated accordingly.

Initial Request 2a: "Each and every WRITING that specifies your agency's document-retention policy at any time since January 1, 2015, including but not limited to the retention of ELECTRONICALLY STORED INFORMATION."

Initial Response 2a: As stated above to the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible. All the San Diego Unified School District policies are available on our website.

Initial Request 2b: "For each and every policy described in category 2a, each and every WRITING that constitutes your agency's approval of the policy."

Initial Response 2b: As stated above to the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible. All the San Diego Unified School District Board Resolutions are available on our website.

Initial Request 3a: "Each and every WRITING that specifies your agency's document-destruction policy at any time since January 1, 2015, including but not limited to the destruction of ELECTRONICALLY STORED INFORMATION."

Initial Response 3a: As stated above to the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible. All the San Diego Unified School District policies are available on our website.

Initial Request 3b: "For each and every policy described in category 3a, each and every WRITING that constitutes your agency's approval of the policy."

Initial Response 3b: As stated above to the extent that any of the records you seek can be found via our District website (www.sandiegounified.org) we will not provide copies of those documents as they are available to the public 24 hours per day, 7 days per week. We will endeavor to provide you with links to such records whenever possible. All the San Diego Unified School District Board Resolutions are available on our website.

Jeffrey Day
Legal Specialist
(619) 725-5630
<image001.jpg>

Please consider the environment before printing this e-mail.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "E"

BRIGGS LAW CORPORATION

San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 909-949-7121

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1593.99

21 May 2018

Cindy Marten, Superintendent
San Diego Unified School District
4100 Normal Street
San Diego, CA 92103

Via E-Mail Only to cmarten@sandi.net

Re: Notice of Intent to Sue

Dear Superintendent Marten:

On behalf of San Diegans for Open Government, I am writing to notify you of my client's intent to file a lawsuit against the San Diego Unified School District.

Last year I notified you that my client intended to sue because the governing board had approved policies and regulations that appear to violate state laws that require school district's to retain every record – including electronic records – for at least three years after being deemed a “disposable record.” *See, e.g., CAL. CODE OF REGS., tit. 5, § 16020 et seq.; cf. GOV'T CODE § 6200* (criminalizing public officer's adverse treatment of public agency's records). Shortly after I sent that letter, board member Richard Barrera contacted me to let me know that the board would be taking action to undo that policy, which my client understands was accomplished.

Unfortunately, my client recently learned that the District flip-flopped and has again adopted a policy to delete various electronic communications that are less than one year old. Such a policy is illegal, and it establishes the existence of a dispute between the District and my client that should be resolved in court. (A copy of the policy accompanies this letter.)

Therefore, please be advised that my client intends to file suit against the District to prevent the destruction of the electronic communications unless the District (1) unequivocally withdraws the policy and (2) notifies my office of the withdrawal no later than 12:00 p.m. on May 25, 2018.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

cc: Richard Barrera

Be Good to the Earth: Reduce, Reuse, Recycle



**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "F"



101 WEST BROADWAY, NINTH FLOOR - SAN DIEGO, CALIFORNIA 92101-8285
PHONE 619-237-5200 | FAX 619-615-0700 | PAULPLEVIN.COM

FACSIMILE TRANSMITTAL

May 25, 2018

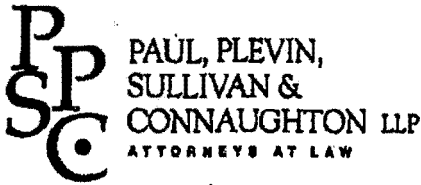
NAME/COMPANY	TELEPHONE	FACSIMILE
Cory J. Briggs Briggs Law Corporation	909-949-7115	909-949-7121

FROM: Michael C. Sullivan
 RE: San Diegans for Open Government/SDUSD
 PAGES: 2 (including cover page)
 MESSAGE:

If You Do Not Receive All Pages, Please Call Deborah Baranowski at 619-237-5200, Ext. 635

CONFIDENTIALITY NOTICE

THIS FACSIMILE TRANSMISSION CONTAINS CONFIDENTIAL INFORMATION FROM THIS FIRM. THIS INFORMATION IS INTENDED SOLELY FOR THE PERSON OR ENTITY NAMED AS A RECIPIENT. IF YOU ARE NOT THE INTENDED RECIPIENT, ANY DISCLOSURE, COPYING, DISTRIBUTION, OR USE OF THIS INFORMATION IS PROHIBITED. IF YOU RECEIVE THIS TRANSMISSION BY ERROR, PLEASE NOTIFY US BY TELEPHONE IMMEDIATELY SO THAT WE MAY ARRANGE TO RETRIEVE THIS INFORMATION AT NO COST TO YOU.



101 WEST BROADWAY, NINTH FLOOR · SAN DIEGO, CALIFORNIA 92101-8285
PHONE 619-237-5200 | FAX 619-615-0700 | PAULPLEVIN.COM

MICHAEL C. SULLIVAN

619-744-3655
msullivan@paulplevin.com

May 25, 2018

Via Facsimile and U.S. Mail

Cory J. Briggs
Briggs Law Corporation
99 East C Street, Suite 111
Upland, CA 91786
Facsimile: 909-949-7121

Re: *San Diegans for Open Government/San Diego Unified School District*

Dear Mr. Briggs:

Our firm has been retained to represent San Diego Unified School District in the litigation you have stated that you intend to file regarding the District's email retention policy. We are authorized to accept service of your complaint, so please send it to me when it is filed.

I am unfamiliar with your client, San Diegans for Open Government. Accordingly, please identify the members of this organization so that we can understand the basis for any assertion of standing.

I look forward to working with you on this matter so that we can obtain an efficient resolution of this issue.

Sincerely,

PAUL, PLEVIN, SULLIVAN
& CONNAUGHTON LLP

By:


Michael C. Sullivan

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE 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.

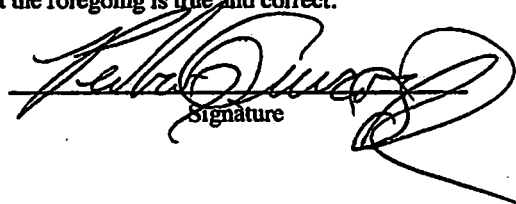
I am an Officer a partner a _____ of San Diegans for Open Government

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 May 31, 20 18, 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.

Pedro Quiroz, Jr.
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 sealed 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)