BRIGGS LAW CORPORATION [FILE: 1593.28]
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Attorneys for Plaintiff and Petitioner San Diegans for Open Government

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO--CENTRAL DIVISION

SAN DIEGANS FOR OPEN GOVERNMENT, Plaintiff and Petitioner, vs. JAN I. GOLDSMITH; CITY OF SAN DIEGO; and DOES 1 through 100, Defendants and Respondents.	CASE NO. 37-2014-00000217-CU-MC-CTL **VERIFIED FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT, CODE OF CIVIL PROCEDURE SECTION 526a, AND OTHER LAWS** [filed by right per CODE OF CIV. PROC. § 472]

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

Introductory Statement

1. SDOG brings this lawsuit under the California Public Records Act ("CPRA"), as well as the California Constitution and the San Diego City Charter. San Diego City Attorney JAN I. GOLDSMITH is using "jgsandiego@yahoo.com"--his personal e-mail account and the same e-mail account he used for his political campaign when running for election to the office--to conduct official business of the City of San Diego, but he won't let average citizens see what business he's truly conducting. He does this deliberately and for a purely political (but legally indefensible) reason: namely, to create an artificial barrier that shield's those e-mail communications from public scrutiny. By using his personal e-mail account, GOLDSMITH creates an environment in which his subordinates and indeed every other public official and employee of the City can plausibly claim that "the City has

no control over the e-mail account and thus those e-mail communications are not 'public records'"--"plausible," that is, because only GOLDSMITH holds the password to his personal e-mail account. The reality is that GOLDSMITH does produce e-mail communications about official City business sent to and from his personal e-mail account, but he does so ***selectively***, as ***a way to propagandize*** his official conduct in a way that he believes is most favorable to him but that is not fully transparent. In recent months, for example, GOLDSMITH has released numerous e-mails to and from his personal e-mail account to some members of the media in response to the media's own CPRA requests. When SDOG asked for e-mails concerning City business sent to or from his personal e-mail account, however, GOLDSMITH refused to produce a single e-mail--not even one that had already been released to the media. That, of course, is what proves his violation of the CPRA; either the personal e-mail communications were not "public records" when requested by the media but became "public records" when they were disclosed to the media through official City instruments and agents (and thus remained "public records" when requested by SDOG), or they were "public records" even when first requested by the media and remained "public records" when requested by SDOG. Whichever one it is, the refusal of GOLDSMITH to tell one member of the public what he is more than happy to share with his favored media outlets is a violation of SDOG's and its members' "right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." *See* CAL. CONST., art. 14, § 3(b)(1); SAN DIEGO CITY CHARTER § 216(b)(1). If the media can see GOLDSMITH's personal e-mail communications concerning official City business, SDOG and every other member of the public can too.

2. GOLDSMITH is not a rouge elected official in this regard. Since he was first elected as City Attorney (if not before), every member of the San Diego City Council and every mayor has used his or her personal e-mail account to conduct official City business without relinquishing control over what is disclosed as a "public record" if requested under the CPRA. Several City Council members have publicly bragged that they use their personal e-mail accounts to conduct official City business while at the same time preventing their communications from becoming part of the City's official records "unless and until" the members are ready for their communication to be disclosed.

GOLDSMITH and some of the other elected City officials have actually agreed explicitly that the City Attorney's office would respond to certain "undesirables" or "gadflies" trying to gain disclosure of personal e-mail communications dealing with official City business in the manner used in this case. As GOLDSMITH reportedly told one of his elected colleagues in the context of limiting access to such personal e-mail communications: "I'll scratch your back if you'll scratch mine."

Parties

3. SDOG is a non-profit organization formed and operating under the laws of the State of California. One of its primary roles as a government "watchdog" is ensuring that public agencies comply with all applicable laws aimed at promoting transparency and accountability in government. At least one member of SDOG lives in, and pays taxes in and to, the City of San Diego.

4. Defendant and Respondent JAN I. GOLDSMITH ("GOLDSMITH") is the City Attorney for Defendant and Respondent CITY OF SAN DIEGO ("CITY"). CITY is a local agency under Section 6252(a) of the CPRA. CITY is a "city," and GOLDSMITH is an "officer thereof," under Code of Civil Procedure Section 526a.

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

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

Jurisdiction and Venue

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

8. Venue in this Court is proper because the obligations, liabilities, and violations of law alleged in this pleading occurred in the City of San Diego in the State of California.

FIRST CAUSE OF ACTION:
Violation of the California Public Records Act, California Constitution, and City Charter
(Against All Defendants/Respondents)

9. Paragraphs 1 through 8 are fully incorporated into this paragraph.

10. On January 15, 2014, SDOG caused to be submitted to CITY (via e-mail) a request for any and all e-mail communications sent to or from "jgsandiego@yahoo.com" during certain periods of time and that pertain in any way to CITY's official business ("SDOG Request"). A true and correct copy of the request is attached to this pleading as Exhibit "A."

11. On January 24, 2014, the Office of the City Attorney responded to the SDOG request (via e-mail) and refused to produce any responsive e-mail communications. Approximately five minutes after receiving the response, SDOG's counsel asked a clarifying question: "So you are not turning over a single responsive record?" On January 27, 2014, the Office of the City Attorney provided its follow-up response and confirmed that it would not be producing any responsive records. A true and correct copy of the exchange is attached to this pleading as Exhibit "B."

12. An article published by the San Diego Union-Tribune, LLC, on June 17, 2011, included the following statement attributed to GOLDSMITH: "'I cannot stop people from sending emails for city business to my personal account,' Goldsmith said. 'A lot of people have that address. I suspect that happens to everyone in public office from time to time, whether it be Twitter, Facebook or emails. My practice when I receive an email in my personal account for city business is to forward it to the city email either with my response or, after forwarding it, respond through the city email.'" A true and correct copy of the article is attached to this pleading as Exhibit "C."

13. There is at least one "public record" that is responsive to the SDOG Request and had been disclosed by Defendants/Respondents to other members of the public under the CPRA prior to the SDOG Request but that was not disclosed to SDOG in response to the SDOG Request.

14. After this lawsuit was filed, Defendants/Respondents purported to produce some of the public records that are responsive to the SDOG Request. In general, the produced public records consisted of e-mail communications between GOLDSMITH (and/or members of his staff) and journalists employed by *U-T San Diego*. However, the produced public records were substantially redacted. Even though Defendants/Respondents did not redact the portions of the public records containing the communications from the journalists, they did redact the communications from GOLDSMITH (and/or members of his staff). The production of these public records was not accompanied by any explanation for why the communications from the journalists were not redacted but the communications to the journalists were redacted. The redacted communications are not subject to any exemption from disclosure, even if they were any such exemption was waived when the communications were transmitted to the journalists, and in any event the redactions did not exist when the communications were made to the journalists (*i.e.*, they saw the full extent of the communications that were redacted when produced to SDOG). Furthermore, these public records were always reasonably available to Defendants'/Respondents' without having to gain access to any individual's private e-mail account because, as these records show, they were sent to or from persons using their official "@sandiego.gov" e-mail accounts--in addition to being sent to or from "jgsandiego@yahoo.com"--and were available to Nancy Shapiro for printing; she is employed as an investigator in the San Diego City Attorney's Office, and her name appears at the top of the redacted communications as the person whose computer was used to print them out. A true and correct copy of the redacted public records produced after this lawsuit was filed is attached to this pleading as Exhibit "D."

15. SDOG and other members of the public have been harmed as a result of Defendants'/Respondents' failure to produce the disclosable public records responsive to the SDOG Request. By way of example and not limitation, the state- and local-level constitutional and statutory

rights of SDOG and its members to access "information concerning the conduct of the people's business" is being violated and continues to be violated.

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

16. Paragraphs 1 through 15 are fully incorporated into this paragraph.

17. SDOG is informed and believes and on that basis alleges that an actual controversy exists between SDOG, on the one hand, and Defendants/Respondents, on the other hand, concerning their respective rights and duties under the CPRA, the California Constitution, and the San Diego City Charter. As alleged in this pleading, SDOG contends that the records responsive to the SDOG Request are "public records" under the CPRA and that Defendants/Respondents are required by law to produce them; whereas SDOG is informed and believes and on that basis alleges that Defendants/Respondents dispute SDOG's contention.

18. SDOG desires a judicial determination and declaration as to whether disclosable public records were unlawfully withheld by Defendants/Respondents and whether they were required by law to produce such records in a timely manner.

THIRD CAUSE OF ACTION:
Taxpayer Waste
(Against All Defendants/Respondents)

19. Paragraphs 1 through 18 are fully incorporated into this paragraph.

20. With CITY being a "city" and GOLDSMITH being an "officer thereof" under Code of Civil Procedure Section 526a, GOLDSMITH is wasting taxpayer money and other CITY assets in at least four ways, SDOG is informed and believes. In particular, (*i*) he is actively and purposefully using one or more of his personal e-mail accounts to conduct his personal/political affairs during working hours on CITY premises/property; (*ii*) he is actively and purposefully advising CITY officials and employees to use their personal e-mail accounts to conduct official CITY business that they do not want disclosed to the public, in knowing violation of the plain language of the California Constitution and the San Diego City Charter; (*iii*) he is actively and purposefully spending a substantial amount of his time during official business hours communicating with the media even though, in his view, the City Charter does not authorize or even allow the City Attorney to engage in such communications; and (*iv*)

he is actively and purposefully establishing and enforcing a policy under which CITY automatically denies requests for e-mail communications concerning official CITY business sent to or from a CITY official's or employee's personal e-mail account without searching for the responsive public records on CITY's computer system even when the communications have also been sent to an "@sandiego.gov" e-mail account and can be found on CITY's computer system with the exercise of reasonable effort.

21. As a direct and proximate result of Defendants'/Respondents' illegal conduct, SDOG and its members have suffered and will continue to suffer irreparable harm.

Prayer

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

A. *On the First Cause of Action*:

1. A writ of mandate ordering Defendants/Respondents to promptly comply with the CPRA, the California Constitution, and the San Diego City Charter with regard to the SDOG Request; and

2. Preliminary and permanent injunctive relief directing Defendants/Respondents to respond to the SDOG Request and to permit SDOG to inspect and obtain copies of the responsive public records.

B. *On the Second Cause of Action*:

1. An order determining and declaring that the failure of Defendants/Respondents to disclose all public records responsive to the SDOG Request and to permit SDOG to inspect and obtain copies of the responsive public records does not comply with the CPRA, the California Constitution, and the San Diego City Charter; and

2. Preliminary and permanent injunctive relief directing Defendants/Respondents to disclose all public records responsive to the SDOG Request and to permit SDOG to inspect and obtain copies of the responsive public records.

C. *On the Third Cause of Action*:

1. An order determining and declaring that the alleged actions and omissions of Defendants/Respondents constitute illegal waste under Code of Civil Procedure Section 526a;

2. Preliminary and permanent injunctive relief directing Defendants/Respondents to refrain from committing further illegal waste under Section 526a; and

3. A judgment against GOLDSMITH in favor of CITY in an amount that fully compensates CITY for the monetary and/or other economic value of the illegal waste that he has committed under Section 526a.

D. *On All Causes of Action*:

1. An order providing for the Court's continuing jurisdiction over this lawsuit in order to ensure that Defendants/Respondents comply with the CPRA, the California Constitution, the San Diego City Charter, and all other applicable laws;

2. All attorney fees and other legal expenses incurred by SDOG in connection with this lawsuit; and

3. Any further relief that this Court may deem appropriate.

Date: March 25, 2014.

Respectfully submitted,

BRIGGS LAW CORPORATION

By: Cory Briggs
Cory J. Briggs

Attorneys for Plaintiff and Petitioner San Diegans for Open Government

Exhibit "A"

Cory Briggs

From: Cory Briggs
Sent: Wednesday, January 15, 2014 4:11 PM
To: 'cityclerk@sandiego.gov'
Cc: 'emaland@sandiego.gov'
Subject: Request for Public Records
Attachments: CPRA_2014-01-15.pdf

JournalPM: J

Dear City Clerk:

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

Cory Briggs

Cory J. Briggs
Briggs Law Corporation
San Diego County: 814 Morena Boulevard, Suite 107, San Diego, CA 92110
Inland Empire: 99 East "C" Street, Suite 111, Upland, CA 91786
Telephone: 619-221-9280 (San Diego), 909-949-7115 (Inland Empire)
Facsimile: 619-515-6410 (San Diego), 909-949-7121 (Inland Empire)
E-mail: cory@briggslawcorp.com

Please consider the environment before printing this e-mail, and print double-sided whenever possible.

BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 619-515-6410

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

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

Please respond to: Inland Empire Office

BLC File(s): 1593.99

15 January 2014

City Clerk Elizabeth Maland
City of San Diego
202 "C" Street, 2nd Floor
San Diego, CA 92101

Re: Request to Inspect and Obtain Copies of Public Records

Dear Ms. Maland:

On behalf of San Diegans for Open Government and pursuant to the California Public Records Act (GOV'T CODE § 6250 *et seq.*), I am writing to request an opportunity to first inspect and then obtain copies of the "public records" (as that term is defined under the Act) listed on *Attachment 1: Categories of Requested Public Records* to this request.

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.

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.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

Attachment 1: Categories of Requested Public Records
Page 1 of 1 (following request letter)

1a. Any and all e-mails sent to "jgsandiego@yahoo.com" (regardless of the number or identity of other recipients) between January 1 and December 31, 2008, and that pertain in any way to the official business of the City of San Diego.

1b. Any and all e-mails sent to "jgsandiego@yahoo.com" (regardless of the number or identity of other recipients) between January 1 and December 31, 2009, and that pertain in any way to the official business of the City of San Diego.

1c. Any and all e-mails sent to "jgsandiego@yahoo.com" (regardless of the number or identity of other recipients) between January 1 and December 31, 2010, and that pertain in any way to the official business of the City of San Diego.

1d. Any and all e-mails sent to "jgsandiego@yahoo.com" (regardless of the number or identity of other recipients) between January 1 and December 31, 2011, and that pertain in any way to the official business of the City of San Diego.

1e. Any and all e-mails sent to "jgsandiego@yahoo.com" (regardless of the number or identity of other recipients) between January 1 and December 31, 2012, and that pertain in any way to the official business of the City of San Diego.

1f. Any and all e-mails sent to "jgsandiego@yahoo.com" (regardless of the number or identity of other recipients) between January 1 and December 31, 2013, and that pertain in any way to the official business of the City of San Diego.

2a. Any and all e-mails sent from "jgsandiego@yahoo.com" between January 1 and December 31, 2008, and that pertain in any way to the official business of the City of San Diego.

2b. Any and all e-mails sent from "jgsandiego@yahoo.com" between January 1 and December 31, 2009, and that pertain in any way to the official business of the City of San Diego.

2c. Any and all e-mails sent from "jgsandiego@yahoo.com" between January 1 and December 31, 2010, and that pertain in any way to the official business of the City of San Diego.

2d. Any and all e-mails sent from "jgsandiego@yahoo.com" between January 1 and December 31, 2011, and that pertain in any way to the official business of the City of San Diego.

2e. Any and all e-mails sent from "jgsandiego@yahoo.com" between January 1 and December 31, 2012, and that pertain in any way to the official business of the City of San Diego.

2f. Any and all e-mails sent from "jgsandiego@yahoo.com" between January 1 and December 31, 2013, and that pertain in any way to the official business of the City of San Diego.

Exhibit "B"

Cory Briggs

From: Gersten, William <WGersten@sandiego.gov>
Sent: Monday, January 27, 2014 2:49 PM
To: Cory Briggs
Subject: RE: Public Records Act request 2014-0032

JournalPM: J

Mr. Briggs:

As the City's response stated, the documents you seek are not public records within the meaning of California Government Code section 6252(e). The City does not own or use such documents, nor has it or could it prepare or retain any such documents. The City simply has no such documents in which to provide you. The City neither has the ability nor the responsibility to seek solely private emails from an individual or the individual's email service provider.

Regards,

Bill Gersten
Deputy City Attorney
1200 Third Avenue, Ste. 1620
San Diego, CA 92101
(619) 533-5876
(619) 236-7215 (fax)

-----Original Message-----
From: Cory Briggs [mailto:cory@briggslawcorp.com]
Sent: Friday, January 24, 2014 4:45 PM
To: Gersten, William
Subject: Re: Public Records Act request 2014-0032

So you are not turning over a single responsive record?

Cory

Sent from my iPhone. Please forgive my typos.

> On Jan 24, 2014, at 4:40 PM, "Gersten, William" <WGersten@sandiego.gov> wrote:
>
> Mr. Briggs:
>
> The City's response to your Public Records Act request is attached.

>
> Bill Gersten
> Deputy City Attorney
> 1200 Third Avenue, Ste. 1620
> San Diego, CA 92101
> (619) 533-5876
> (619) 236-7215 (fax)
> CONFIDENTIAL COMMUNICATION
> This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.
>
>
> -----Original Message-----
> From: sharpcopier@sandiego.gov [mailto:sharpcopier@sandiego.gov] On Behalf Of sharpcopier@
> Sent: Friday, January 24, 2014 4:45 PM
> To: Gersten, William
> Subject: Scanned image from City of San Diego ID # 5710008037
>
> Reply to: sharpcopier@sandiego.gov <sharpcopier@sandiego.gov> Device Name: City of San Diego ID# 5710007036 Device Model: MX-M850
> Location: City of San Diego ID# 5710007036
>
> File Format: PDF MMR(G4)
> Resolution: 300dpi x 300dpi
>
> Attached file is scanned image in PDF format.
> Use Acrobat(R)Reader4.0 or later version, or Adobe(R)Reader(TM) of Adobe Systems Incorporated to view the document.
> Acrobat(R)Reader4.0 or later version, or Adobe(R)Reader(TM) can be downloaded from the following URL:
> Adobe, the Adobe logo, Acrobat, the Adobe PDF logo, and Reader are registered trademarks or trademarks of Adobe Systems Incorporated in the United States and other countries.
>
> http://www.adobe.com/
> <sharpcopier@sandiego.gov_20140124_164517.pdf>

MARY JO LANZAFAME
ASSISTANT CITY ATTORNEY

WILLIAM GERSTEN
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

JAN I. GOLDSMITH
CITY ATTORNEY

CIVIL ADVISORY DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

January 24, 2014

Cory J. Briggs
Briggs Law Corporation
814 Morena Boulevard, Suite 107
San Diego, CA 92110
cory@briggslawcorp.com

Public Records Act Request (PRA) 2014-0032 Briggs

Dear Mr. Briggs:

Your Public Records Act request dated January 15, 2014 was forwarded to me for response. Your request seeks "any and all emails sent to 'jgsandiego@yahoo.com" and "any and all emails sent from 'jgsandiego@uahoo.com' that "pertain in any way to the official business of the City of San Diego". Your request encompasses the time period from January 1, 2008 through December 31, 2013.

Responding to your request, and as you likely are aware, the email address jgsandiego@yahoo.com is not a City email address, nor does the City have access to such an individual's personal email account. Consequently, any emails contained within that personal account are neither owned, used, prepared or retained by the City and thus are not *public records* within the meaning of California Government Code section 6252(e).

If you are in possession of any authority to the contrary, please provide it and we will consider it. In the unlikely event that any such authority exists, the City reserves the right to interpose all exemptions and privileges that otherwise be applicable to City *public records*.

Sincerely yours,

JAN I. GOLDSMITH, City Attorney

By William Gersten
William Gersten
Deputy City Attorney

WG:hm
Attachment

Document Number: 710662

Exhibit "C"

Gray area: Public officials on private emails

Some see it as more personal, although the law likely requires Palin-esque release

By Jeff McDonald (/staff/jeff-mcdonald/) 7:47 p.m. June 17, 2011

San Diego City Attorney Jan Goldsmith has done it. So has Chula Vista Councilwoman Pamela Bensoussan, Encinitas Councilwoman Kristin Gaspar and Bill Horn, chairman of the county Board of Supervisors.

There's no telling how many elected officials use Gmail or Yahoo or other private email accounts for government matters, a ubiquitous tool that may or may not allow the transparency intended under the California Public Records Act.

Former Alaska Gov. Sarah Palin relied so much on personal email to conduct public business that some news organizations spent years trying to secure copies of the letters.

This month her successor released more than 24,000 pages of state-related emails Palin sent or received on her personal account in the two-plus years she served as Alaska's chief executive.

Experts say public-records laws may not be keeping up with the explosion in new means of communication.

Most correspondence by elected officials and executive staff is required to be preserved — and disclosed upon request — when it involves an issue affecting the public.

Enforcing public-records laws can be difficult if news agencies, watchdog groups and everyday citizens have no access to a politician's personal emails, tweets, text messages or other communications, experts say.

"When a public official becomes a public official, they give up a certain amount of privacy," said Peter Scheer of the First Amendment Coalition, a Northern California public-interest nonprofit. "It's part of the deal. The public has the right to know quite a bit about what they do in the way of government business."

Encinitas City Councilwoman Kristin Gaspar regularly uses a personal email account to communicate with city staff, reporters and others. She said she expects more privacy there than on a city account, even if the subject is city business.

"There aren't rules that govern personal email accounts," Gaspar said. "The rules cover, of course, the city email account. But there is some allowance for me to be a private person as well. If a constituent emails me at my personal address, that's their right to do so. They have certain protections, too."

Some public officials post their personal email addresses on the website of the agency they govern.

Three members of the Chula Vista Elementary School District board solicit constituent communication through Gmail accounts on the district site.

Last year, officials released copies of emails requested by The San Diego Union-Tribune, although they included a caveat saying they were doing it only as a courtesy, that they were not required to release any of the contents of a personal account.

Goldsmith, a state assemblyman and Superior Court judge before winning the City Attorney's Office in 2008, said his policy is not to do city business on his personal account — although U-T reporters tend to use it, he said.

"I cannot stop people from sending emails for city business to my personal account," Goldsmith said. "A lot of people have that address. I suspect that happens to everyone in public office from time to time, whether it be Twitter, Facebook or emails. My practice when I receive an email in my personal account for city business is to forward it to the city email either with my response or, after forwarding it, respond through the city email."

That practice ensures the communication is subject to disclosure under public-records law.

Weeks before his re-election bid last year, county Supervisor Bill Horn used a Ymail account to answer U-T questions about a grant he approved for a group that promotes a "biblically based" curriculum.

The $20,000 county grant to Life Perspectives was later revoked.

In a statement, Horn said the email was political — not county business — because the grant had been discussed by political opponents at a public meeting.

"When it comes to using county resources, it is my policy to always err on the side of caution and since this was clearly a campaign matter the response was sent via the campaign Ymail account," Horn said.

Scheer said the law generally doesn't distinguish between public and personal email accounts; the main factor in determining whether an email is disclosable is whether it concerns the people's interests.

"The law is clear enough," he said. "The public is entitled to any public records about the public's business whatever technology is used, from pencil and paper to text messages and email."

San Diego Councilman Carl DeMaio uses a campaign account for all his email, he said, and he routinely searches it to release emails on given subjects in response to public-records requests.

He said he has proposed a city law to mandate that city business discussed on non-city email accounts is subject to public-records law, but has met resistance from other politicians.

"It gives people transparency," DeMaio said.

Jeff McDonald: (619) 542-4585; jeff.mcdonald@uniontrib.com

Exhibit "D"

Shapiro, Nancy

From: [redacted]
Sent: Tuesday, December 10, 2013 12:45 PM
To: [redacted]
Cc:
Subject: [redacted]

[redacted]

[redacted]
Office of the City Attorney
City of San Diego
[redacted]

From: [redacted]
Sent: Tuesday, December 10, 2013 12:40 PM
To: [redacted]
Cc: [redacted]
Subject: [redacted]

[redacted]

From: jeff.mcdonald@utsandiego.com [mailto:jeff.mcdonald@utsandiego.com]
Sent: Tuesday, December 10, 2013 12:01 PM
To: [redacted] Goldsmith, Jan; [redacted]
Cc: [redacted]a; trent.seibert@utsandiego.com; ricky.young@utsandiego.com
Subject: RE: media request/ UT San Diego

Hi,
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All best,

Jeff

Jeff McDonald | Reporter
O: 619-293-1708
jeff.mcdonald@utsandiego.com
UTSanDiego.com
350 Camino de la Reina, San Diego, CA 92108

From: [redacted]
Sent: Tuesday, December 10, 2013 12:00 PM
To: [redacted]
Cc: [redacted]
Subject: [redacted]

[redacted]

[redacted]y
1200 Third Avenue | Suite 1600
San Diego | California | 92101
p[redacted] | f 619.236-7215

From: jeff.mcdonald@utsandiego.com [mailto:jeff.mcdonald@utsandiego.com]
Sent: Tuesday, December 10, 2013 10:06 AM
To: Goldsmith, Jan; Cooper, Paul; Keach, Katie
Cc: Roth, Alex; Fields-Bernard, Lea; trent.seibert@utsandiego.com; ricky.young@utsandiego.com
Subject: media request/ UT San Diego
Importance: High

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Shapiro, Nancy

Subject: FW: [redacted]

[redacted]

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Sent: Tuesday, December 10, 2013 12:01 PM
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Subject: [redacted]

[redacted]

[redacted]

[redacted]

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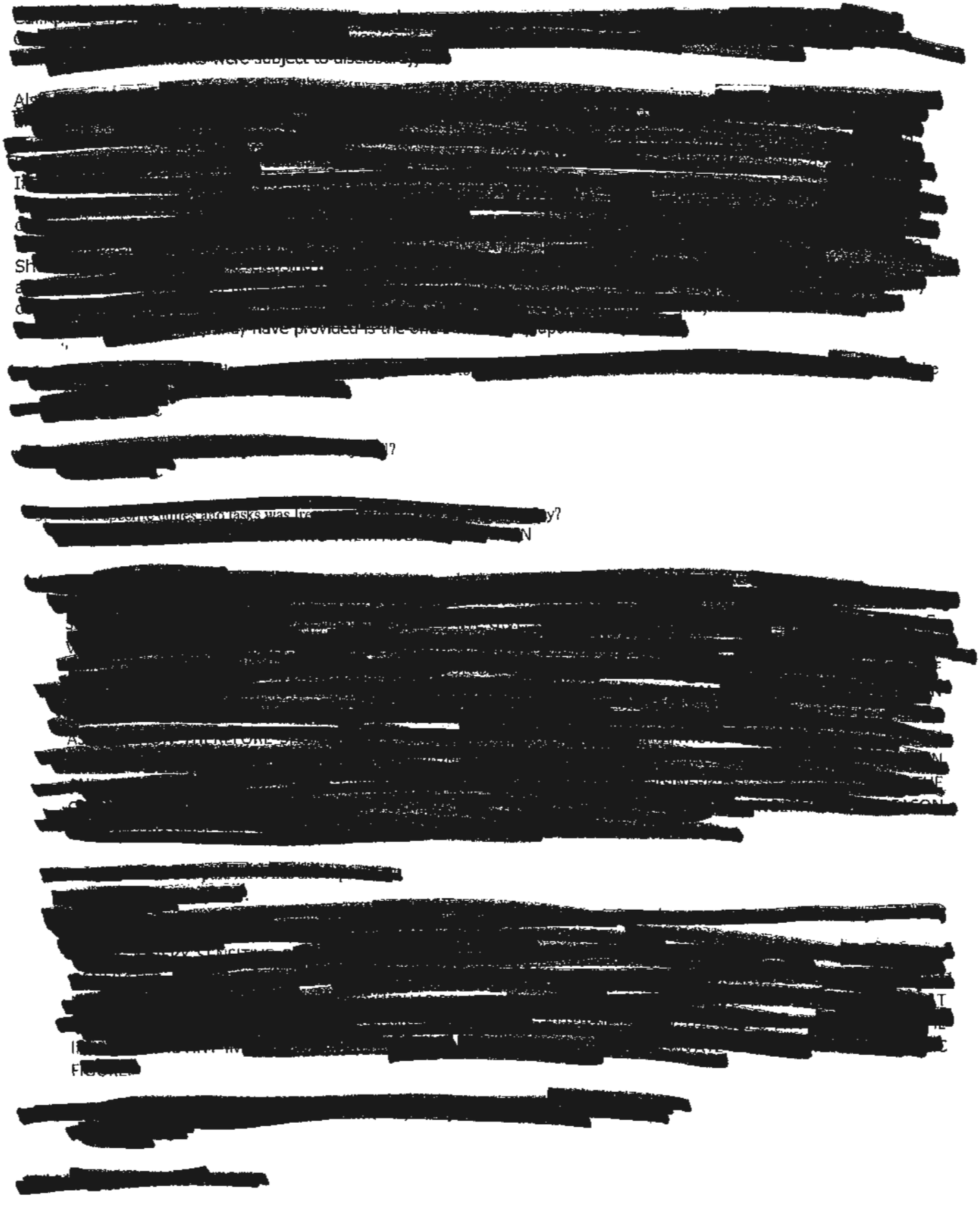
Shapiro, Nancy

From: [redacted]
Sent: Tuesday, December 10, 2013 2:18 PM
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted]

[redacted]



[redacted]
San Diego City Attorney's Office
1200 Third Ave., Suite 1100
San Diego, CA 92101

phone: [redacted]
facsimile: 619-533-5856

From: G[redacted]an
Sent: Tuesday, December 10, 2013 12:40 PM
To: C[redacted]
Cc: Z[redacted]
Subject: F[redacted]o

[redacted]

From: jeff.mcdonald@utsandiego.com [mailto:jeff.mcdonald@utsandiego.com]
Sent: Tuesday, December 10, 2013 12:01 PM
To: [redacted]; Goldsmith, Jan; [redacted]
Cc: [redacted]; trent.seibert@utsandiego.com; ricky.young@utsandiego.com
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From: [redacted]
Sent: Tuesday, December 10, 2013 12:00 PM
To: M[redacted]
Cc: [redacted]
Subject: RE: [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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From: jeff.mcdonald@utsandiego.com [mailto:jeff.mcdonald@utsandiego.com]
Sent: Tuesday, December 10, 2013 10:06 AM
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Subject: [redacted]
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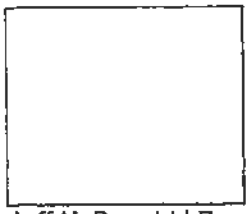

Jeff McDonald | Reporter
O: 619-293-1708
jeff.mcdonald@utsandiego.com
UTSanDiego.com

350 Camino de la Reina, San Diego, CA 92108

Shapiro, Nancy

From: Goldsmith, Jan
Sent: Tuesday, December 10, 2013 8:46 PM
To: jeff.mcdonald@utsandiego.com; ricky.young@utsandiego.com
Cc: trent.seibert@utsandiego.com; Cooper, Paul
Subject: RE: first sentence of article
Attachments: utsdlogo_2012.gif

Yes, thanks! I appreciate the clarification.

From: jeff.mcdonald@utsandiego.com [jeff.mcdonald@utsandiego.com]
Sent: Tuesday, December 10, 2013 7:22 PM
To: ricky.young@utsandiego.com
Cc: Goldsmith, Jan; trent.seibert@utsandiego.com; [redacted]
Subject: Re: first sentence of article

Very good. Thanks all.

Sent from my iPhone

On Dec 10, 2013, at 7:14 PM, "Young, Ricky"
<ricky.young@utsandiego.com<mailto:ricky.young@utsandiego.com>> wrote:

I understood what Jeff was saying, but to avoid confusion for the reader, I have bifurcated as follows:

Irene McCormack Jackson, the first woman to publicly accuse former Mayor Bob Filner of sexual harassment, left her job at San Diego City Hall more than three months ago, city officials acknowledged on Tuesday.

Her attorney said she remains in treatment for abuse she suffered before leaving.

[UT_SD logo]<http://www.utsandiego.com/> Jeff McDonald | Reporter
O: 619-293-1708
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UTSanDiego.com<http://www.utsandiego.com/>

350 Camino de la Reina, San Diego, CA
92108<http://maps.google.com/maps?q=350+Camino+de+la+Reina,+San+Diego,+CA+92108&hl=en&sll=32.715329,-117.157255&sspn=1.043344,1.172791&vpsrc=0&hnear=350+Camino+De+La+Reina,+San+Diego,+California+92108&t=h&z=17>

From: McDonald, Jeff
Sent: Tuesday, December 10, 2013 7:00 PM
To: Goldsmith, Jan
Cc: Seibert, Trent; Cooper, Paul; Young, Ricky
Subject: Re: first sentence of article

Hi,

I wrote that because the lead contains two elements, one provided by your office and the other by Ms. Allred. Both elements were newsworthy but I couldn't attribute both elements to either one.

I've copied Ricky here so he is aware of your concern an can change if he sees fit.

Thanks for your help today,

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On Dec 10, 2013, at 6:55 PM, "Goldsmith, Jan" <JGoldsmith@sandiego.gov<mailto:JGoldsmith@sandiego.gov>> wrote:

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Shapiro, Nancy

From: jeff.mcdonald@utsandiego.com
Sent: Tuesday, December 10, 2013 7:22 PM
To: [redacted]icky.young@utsandiego.com
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U-T San Diego

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Shapiro, Nancy

From: [redacted]
Sent: Tuesday, December 10, 2013 12:20 PM
To: [redacted]
Cc: [redacted]
Subject: [redacted]

[redacted]

[redacted]

Disclosure: This email is public information. Correspondence to and from this email address is recorded and may be viewed by third parties and the public upon request.

From: [redacted]
Sent: Tuesday, December 10, 2013 12:00 PM
To: [redacted]
Cc: [redacted]
Subject: [redacted]

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***This email may contain confidential information, exempt from disclosure. Receipt by unintended recipients does not constitute waiver of any privilege, including ATTORNEY-CLIENT and ATTORNEY WORK PRODUCT. If you received this email in error, please notify sender and delete all contents

---

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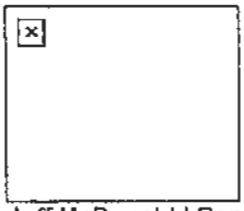

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UTSanDiego.com

350 Camino de la Reina, San Diego, CA 92108

Shapiro, Nancy

From: [redacted]
Sent: Tuesday, October 15, 2013 12:50 PM
To: [redacted]
Subject: RE: [redacted]

[redacted]

[redacted]

[redacted]

From: [redacted]
Sent: Tuesday, October 15, 2013 12:26 PM
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted]

[redacted]

From: [redacted]
Sent: Tuesday, October 15, 2013 11:46 AM
To: [redacted]
Cc: [redacted]
Subject: FW: [redacted]

[redacted]

[redacted]

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1200 Third Avenue
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San Diego, CA 92101
T [redacted]
F (619) 236-7215
[redacted]

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From: ricky.young@utsandiego.com [mailto:ricky.young@utsandiego.com]
Sent: Tuesday, October 15, 2013 11:44 AM
To: [redacted]a
Cc: jgsandiego@yahoo.com
Subject: Re: Statement from City Attorney Jan Goldsmith

does it hurt the city's position in the civil case, for him to have admitted guilt?

On Oct 15, 2013, at 11:35 AM, "Coburn, Gina" <GCoburn@sandiego.gov> wrote:

> Please see statement from City Attorney Jan Goldsmith:
>
> "Today's action underscores the importance of Mr. Filner's removal from office and will further help our City and the victims put this behind us." said City Attorney Jan Goldsmith.

Gina Coburn
Communications Director
Office of the City Attorney
1200 Third Avenue
Suite 1620
San Diego, CA 92101
T (619) 533-6181
F (619) 236-7215
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ricky.young@utsandiego.com
UTSanDiego.com
350 Camino de la Reina, San Diego, CA 92108

Shapiro, Nancy

From: [redacted]
Sent: Tuesday, October 15, 2013 12:33 PM
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted]

[redacted]

From: [redacted]
Sent: Tuesday, October 15, 2013 11:46 AM
To: [redacted]
Cc: [redacted]
Subject: [redacted]

[redacted]

[redacted]
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[redacted]
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From: ricky.young@utsandiego.com [mailto:ricky.young@utsandiego.com]
Sent: Tuesday, October 15, 2013 11:44 AM
To: [redacted]
Cc: jgsandiego@yahoo.com
Subject: Re: Statement from City Attorney Jan Goldsmith

does it hurt the city's position in the civil case, for him to have admitted guilt?

On Oct 15, 2013, at 11:35 AM, "Coburn, Gina" <GCoburn@sandiego.gov> wrote:

> Please see statement from City Attorney Jan Goldsmith:
>
> "Today's action underscores the importance of Mr. Filner's removal from office and will further help our City and the victims put this behind us." said City Attorney Jan Goldsmith.

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Shapiro, Nancy

From: [redacted]
Sent: Tuesday, October 15, 2013 12:26 PM
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted]

[redacted]

From: [redacted]
Sent: Tuesday, October 15, 2013 11:46 AM
To: [redacted]
Cc: [redacted]
Subject: [redacted]

[redacted]ise.

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Shapiro, Nancy

From: [redacted]
Sent: Tuesday, October 15, 2013 11:46 AM
To: [redacted]
Cc: [redacted]
Subject: FW: M[redacted]

[redacted]

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Shapiro, Nancy

From: jeff.mcdonald@utsandiego.com
Sent: Tuesday, January 22, 2013 11:45 AM
To: [redacted]
Cc: [redacted]; Goldsmith, Jan; ricky.young@utsandiego.com
Subject: media request/ UT San Diego

Hi,

We have received a tip from a reader that Det. Jeff Blackford was on duty at the time of his accident early on the morning of Dec. 7 and that two sergeants delayed the investigation for more than an hour in order to protect him. We are also told that Det. Blackford went to the hospital only to avoid being arrested that morning. We understand from the SDPD car policy that when detectives are issued city vehicles, it is because they are on the on duty/on call status, meaning there is a public record we are entitled to see. Please consider this a California Public Records Act for copies of department duty logs dated Dec. 6 and Dec. 7, for Det. Blackford's time sheets or time cards covering Dec. 6 and 7 and for any logs used to sign SDPD vehicles in and out, covering the month of December. Also, we are requesting a copy of the 41-page report completed by the department related to this incident and copies of the incident reports generated as a result of this police call.

I can be reached by email at jeff.mcdonald@utsandiego.com or by telephone at 619-293-1708 if you have any questions about this request for public records.

Thanks and all best,

Jeff

Jeff McDonald | Reporter
O: 619-293-1708
jeff.mcdonald@utsandiego.com
UTSanDiego.com

350 Camino de la Reina, San Diego, CA 92108

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Bernardino

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

[X] 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 he true.

[ ] I am [ ] an Officer [ ] a partner _____ [ ] a _____ of _____, 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.

[x] I am one of the attorneys for San Diegans for Open Government 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 March 25, 20 14, at Upland, California.

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

Cory J. Briggs
Type or Print Name

Cory Briggs
Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

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

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

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

_____

_____

_____ on _____ in this action

[ ] by placing the true copies thereof enclosed in scaled envelopes addressed as stated on the attached mailing list:

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

[ ] BY MAIL

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

The envelope was mailed with postage thereon fully prepaid.

[ ] As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

[ ] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offiees 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.

[ ] (Federal) 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.

_____
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)

PROOF OF SERVICE

1. My name is **Alison Greenlee**. I am over the age of eighteen. I am employed in the State of California, County of **San Diego**.

2. My ✓ business ___ residence address is **814 Morena Blvd. Suite 107, San Diego, CA 92110**.

3. On **March 26, 2014**, I served ___ an original copy ✓ a true and correct copy of the following documents: **Verified First Amended Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate Under the California Public Records Act, Code of Civil Procedure Section 526a, and Other Laws**

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

___ ***by personal service.*** I personally delivered the documents to the person(s) at the address(es) indicated on the list.

✓ ***by U.S. mail.*** I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

___ deposited the envelope/package with the U.S. Postal Service

✓ placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

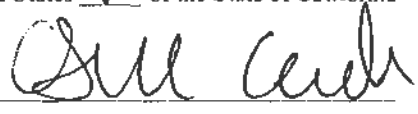
I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of **San Diego**, California.

___ ***by overnight delivery.*** I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

___ ***by facsimile transmission.*** Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

___ ***by e-mail delivery.*** Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

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

Date: **March 26, 2014** Signature: 

SERVICE LIST

San Diegans for Open Government v. Jan I. Goldsmith, et al.
San Diego County Superior Court Case No. 37-2014-00000217-CU-TT-CTL

Jan I. Goldsmith
Daniel Bamberg
David Karlin
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Attorneys for Defendants City of San Diego and Jan I. Goldsmith