

Indian Wells
(760) 568-2611

Irvine
(949) 263-2600

Los Angeles
(213) 617-8100

Ontario
(909) 989-8584



BEST BEST & KRIEGER
ATTORNEYS AT LAW

1230 Rosecrans Avenue, Suite 110, Manhattan Beach, CA 90266
Phone: (310) 643-8448 | Fax: (310) 643-8441 | www.bbklaw.com

Riverside
(951) 686-1450

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

June 11, 2019

VIA EMAIL

Anthony Higgins
2705 Morningside Drive,
Hermosa Beach, CA 90254
Email: Tony.Higgins123@Gmail.com

Dear Mr. Higgins:

This letter is in response to an email you sent to numerous individuals, including the City Council, on June 2, 2019 regarding the City's production of records relating to your April 8, 2019 Public Records Act request. Your email's claims are inaccurate and misleading, and you improperly apply selected pieces of the Public Records Act ("PRA").

(1) The City Properly Produced Responsive Records

Your PRA request was for one category of records, which stated:

Any emails, documents or meeting notes that explain why Herondo truck-route pictured below was selected for the Hermosa Avenue pavement project.

Your request then provided the City with an overwhelming number of suggested search terms and parameters. In fact, your instructions sought records from all City domains, within the last two years, and provided approximately 45 broad search terms. This is not a reasonable PRA request. See *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166 (stating that a local agency is not required to undergo a search that will produce a large volume of material or search an enormous volume of data in response to the request.) Despite this, the City used your search terms and parameters, as a courtesy, to collect records related to your request. Unsurprisingly, the search terms identified thousands of pages of documents. The City then reviewed these records to determine which documents were responsive to your request. Those records determined as responsive were then reviewed for privileges and exemptions. Ultimately, only those records determined to be non-privileged or exempted and responsive to your specific request were produced.

Contrary to your claims, the City was accommodating and generous in its attempts to help you find responsive records. Your email states that you received "only 7 responsive-records" related to this request. This is untrue—the City produced 103 pages in response to your request. The City ultimately provided you with all of the non-exempted responsive documents to your request.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

June 11, 2019

Page 2

The fact that certain documents do not exist, but which you want to exist, is not something the City can cure. Your email fails to identify what specific documents you believe should exist that were not produced.

Your email suggests that every document identified in response to your search terms is a responsive record that must be produced. This is not true and your email improperly interprets how the PRA functions as an instrument for the public to inspect and obtain public records. Search terms are simply a tool used to find potentially responsive records to the actual PRA request. Documents found in response to search terms are not the definitive responsive documents themselves. Said another way, just because a record falls within a search parameter, does not mean it is responsive to the specific PRA request. Ultimately, the City only needs to produce records which are responsive, and not exempt, to your request.

Your demand in your email that the City must produce all documents identified by your search terms is not a proper request as it fails to describe an identifiable record, which is required by the PRA. See Gov. Code § 6253(b). In fact, a request must be focused, specific, and reasonably clear, so that the City can decipher what identifiable records are being sought. See *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481; *Cal. First Amend. Coalition*, 67 Cal.App.4th at 166. Search terms are not an identifiable record. Your demand is unreasonable and practically eliminates the PRA's requirement that the requester submit a request that seeks identifiable records. Ultimately, a demand for all records relating to your search terms leaves the City guessing as to what public records you are actually seeking and would subject the City to searching, collecting, and reviewing an unreasonably voluminous amount of records. Additionally, your demand would necessarily require the City produce non-responsive records. The City is not obligated to produce records deemed non-responsive to a request.

Producing all documents collected in response to your search terms is also overly burdensome for the City. As stated above, the City is not required to undergo a search that will produce a large volume of material or search an enormous volume of data in response to the request. Using overly broad search terms, such as what happened with your request, ultimately requires the City to review an unreasonable amount of records. The City has already accommodated your PRA request by reviewing this massive volume of records to produce to you the responsive records. By demanding the non-responsive records, your demand unreasonably requires that the City, again, review thousands of pages of documents to determine if they are exempt or privileged, or if they are even public records. This necessarily requires the City to duplicate its search and review of records for each PRA request you submit. This is not reasonable and is extremely costly for the City.

The City is not obligated to continuously review voluminous pools of documents guessing what specific records you are seeking. The City has already reviewed the records collected in response to your search terms and produced those records responsive to your request. Contrary to your



BEST BEST & KRIEGER
ATTORNEYS AT LAW

June 11, 2019

Page 3

assertions, the City is not hiding anything from the public, nor from you. Your apparent frustration that certain documents do not exist is not a problem the City is obligated to solve. If there are specific and identifiable records you are looking for, but have not been produced, the City will work with you to obtain those records, if they exist. But, you must inform the City of what specific and identifiable records you are seeking and not just search terms. Note that the City is not required to perform a "needle in a haystack" search to locate records sought by any request. See *Cal. First Amend. Coalition*, 67 Cal.App.4th at 166.

(2) The City Did Not Withhold "99.8%" Of Responsive Records

Your email claims that "the city withheld 99.8% of the 2,211 records my PRR search yielded," which is not accurate and is misleading. Your email incorrectly supposes that if a document was not produced it was "withheld." A document can only be withheld if it is responsive. Responsive records will only be "withheld" from production if they fall under a privilege or exemption. Thus, the non-responsive records were not "withheld" because the City is under no obligation to produce non-responsive records to a PRA request (producing non-responsive records would understandably defeat the purpose of the requestor's request). As you were informed by the City's Public Records Act department, the few responsive records that were withheld were done so due to the fact that they were communications subject to the attorney-client privilege. Therefore, the "99.8%" of records that were not produced were not "withheld" as you improperly allege, but were not responsive to your request.

(3) Conclusion

The City properly responded to your PRA request and produced to you the responsive and non-exempted records. Despite your demand, the City will not blanket produce all of the records that were collected in response to your search terms because this is not a proper request and is overly burdensome for the City. Again, the City is not obligated to produce non-responsive records to a PRA request. However, should you provide the City with the specific and identifiable records that you seek, then the City will work with you to obtain those records, if they exist.

Sincerely,

A handwritten signature in blue ink that reads "John M. Natalizio".

John M. Natalizio
Assistant City Attorney
City of Hermosa Beach