



Peckar & Abramson

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VIA EMAIL & FACSIMILE

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September 6, 2017

City of Anaheim
Custodian of Records
Office of the City Clerk
200 S. Anaheim Blvd., Suite 217
Anaheim, CA 92805

Re: California Gov. Code §6250 Public Records Act Request

Dear Custodian of Records:

This law firm represents Turner Construction Company (“Turner”), the Design-Builder for the Anaheim Convention Center Betterment VII Project (the “Project”). This correspondence constitutes *Turner's second formal request under the California Public Records Act* (the “CPRA”, Government Code Section 6250 et seq.) for copies of documents relating to the Project.

Turner's prior request was memorialized in a letter dated July 18, 2016 to the City's Custodian of Records. (Copy of letter attached). The city, in a letter dated October 17, 2016 (also attached), objected to producing the documents requested in items No. 1 and 3, i.e., the scoring sheets for Turner's and Clark's responses to the City's RFP. In the City's October 17 letter, the City advised it was withholding the scoring sheets pursuant to Government Code Section 6255 – a catch-all qualified exemption to the CPRA that includes the so-called "deliberative process" exemption. The City stated in its letter that the requested scoring sheets "clearly fall within this privilege and therefore were withheld from production." Turner disagrees with the City's bare conclusion and requests that the City produce the requested scoring sheets.

It is undisputed that the CPRA was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies and embodies a strong policy in favor of disclosure of public records. (*California State University Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 831; *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1392–1393.) Disclosure of public records is the default, nondisclosure is defensible only if the records “come within a specific disclosure exemption,” and these exemptions “are construed narrowly.” (*Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1275.) The government agency opposing

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Miami, FL
Chicago, IL
River Edge, NJ
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International Alliances

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Santiago
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disclosure bears the burden of proving that one or more of the exemptions apply in a particular case. (*County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57.) Hence, all public records are subject to disclosure unless the Legislature has expressly provided to the contrary. (*Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1418.)

It is also true that not every disclosure which implicates or hampers the deliberative process implicates the deliberative process privilege. (*Citizens for Open Government v. City of Lodi*, (2012) 205 Cal.App.4th 296, 306.) In *Lodi*, the court refused to apply the deliberative process privilege, pointing out that the defendant had not met its burden to show the public interest in nondisclosure outweighed the public interest in disclosure of documents pertaining to an environmental impact report. (*Id.* at 307.) A government agency that opposes disclosure has the burden of proving that one or more exemptions apply in a particular case. Government Code Section 6255(a); *Ardon v City of Los Angeles*, (2016) 62 Cal.4th 1176; *League of Cal. Cities v. Superior Court* (2015) 241 CA4th 976, 986–987.

Here, the request is not for the "mental process by which a given decision was reached," but for the quantitative and underlying factual scoring sheets for the Turner and Clark proposals. That those scoring sheets may have been part of the "mental process" by which a City decision was made does not automatically shield them from disclosure as the City asserts. The fact that a part of a requested document falls within the general terms of an exemption does not provide justification for withholding the entire document. When nonexempt materials are not inextricably intertwined with exempt materials and are reasonably separable, segregation is required and the segregable portion of a record must be produced after deletion of the portions that are exempt by law. (See Government Code Section 6253(a); *Pasadena Police Officers Ass'n v. Superior Court*, (2015) 240 Cal.App.4th 268, 291.)

Accordingly, Turner renews its request for documents to previous requests No. 1 and No. 3 repeated below. To the extent the City withholds communications, memoranda or any other documents related to the scoring sheets under any exemption to the CPRA, please so advise.

Prior Request No. 1: The Scoring Results (including all scoring sheets and memoranda related thereto) by the City on the Turner/Populous November 2013 Technical Proposal for the Project;

Prior Request No. 3: The Scoring Results (including all scoring sheets and memoranda related thereto) by the City on Clark Construction's 2013 Technical Proposal for the Project;

In addition, and notwithstanding any continued objection the City may have to the above request and independent of said request, pursuant to the CPRA Turner hereby requests that the City promptly produce the following documents:

1. The Requests for Proposals ("RFP") and any Addenda related thereto issued by the City for Construction Management Services for the Project.

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2. STV's Proposal in response to the RFP including all back-up documentation in support of the STV Proposal.
3. All modifications, revisions and change orders (if any) to the City's contract with STV regarding Construction Management Services for the Project.
4. All documents, including "writings" as that term is defined in California Evidence Code Section 250, which reflect communications between STV on the one hand, and the City on the other, relating to the Project, between July 1, 2016 and September 1, 2017.
5. All email/text messages/SMS communications between Michael McAlpine of STV and Caster Williams relating to the Project between July 1, 2016 and September 1, 2017.
6. All email/text messages/SMS communications between Michael McAlpine of STV and Robert Luciano relating to the Project between July 1, 2016 and September 1, 2017.
7. All email/text messages/SMS communications between Michael McAlpine of STV and Rudi Emami relating to the Project between July 1, 2016 and September 1, 2017.
8. All email/text messages/SMS communications between Michael McAlpine of STV and William Grigsby relating to the Project between July 1, 2016 and September 1, 2017.
9. All email/text messages/SMS communications between Michael McAlpine of STV and Keith Linker relating to the Project between July 1, 2016 and September 1, 2017.
10. All email/text messages/SMS communications between Michael McAlpine of STV and Kimberly Tran relating to the Project between July 1, 2016 and September 1, 2017.
11. All email/text messages/SMS communications between Michael McAlpine of STV and Stewart Noble relating to the Project between July 1, 2016 and September 1, 2017.
12. All email/text messages/SMS communications between Gary Chubb of Griffin Holdings and Caster Williams relating to the Project between July 1, 2016 and September 1, 2017.
13. All email/text messages/SMS communications between Gary Chubb of Griffin Holdings and Robert Luciano relating to the Project between July 1, 2016 and September 1, 2017.
14. All email/text messages/SMS communications between Gary Chubb of Griffin Holdings and Rudi Emami relating to the Project between July 1, 2016 and September 1, 2017.
15. All email/text messages/SMS communications between Gary Chubb of Griffin Holdings and William Grigsby relating to the Project between July 1, 2016 and September 1, 2017.
16. All email/text messages/SMS communications between Gary Chubb of Griffin Holdings

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and Keith Linker relating to the Project between July 1, 2016 and September 1, 2017.

17. All email/text messages/SMS communications between Gary Chubb of Griffin Holdings and Kimberly Tran relating to the Project between July 1, 2016 and September 1, 2017.

18. All email/text messages/SMS communications between Gary Chubb of Griffin Holdings and Stewart Noble relating to the Project between July 1, 2016 and September 1, 2017.

19. All documents, including “writings” as that term is defined in California Evidence Code Section 250, which reflect communications between the Orange County Sanitation District (“OCSD”) on the one hand, and the City on the other, relating to the Project between May 1, 2014 and September 1, 2017.

20. All email/text messages/SMS communications between OCSD and William Grigsby relating to the Project between May 1, 2014 and September 1, 2017.

21. All email/text messages/SMS communications between OCSD and Caster Williams relating to the Project between May 1, 2014 and September 1, 2017.

22. All email/text messages/SMS communications between OCSD and Rudi Emami relating to the Project between May 1, 2014 and September 1, 2017.

23. All email/text messages/SMS communications between OCSD and Robert Luciano relating to the Project between May 1, 2014 and September 1, 2017.

24. All documents, including “writings” as that term is defined in California Evidence Code Section 250, which reflect communications between the City of Anaheim Building Department on the one hand, and the City Project staff on the other, relating to the OCSD fee for the Project.

If for any reason the City asserts that any document or category of requested documents is exempt from disclosure, please:

- (a) Specify the exemption claimed by the City and cite its applicable Government Code statutory section;
- (b) Provide redacted copies of all non-exempt portions of such records, and
- (c) Provide a written, signed response citing the legal authority on which the City is relying in support of any determination that particular documents or information contained within those documents are exempt and will not be disclosed.

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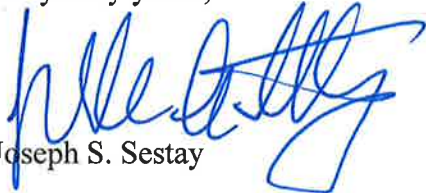
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Thank you for your anticipated cooperation.

Very truly yours,



Joseph S. Sestay

cc: Mary Salamone, via email

Jennifer L. Hall

Subject: California Gov. Code Section 6250 Public Records Act Request
Attachments: Ltr to Custodian of Records at City of Anaheim.pdf

From: Burnett, Rita
Sent: Wednesday, September 06, 2017 4:41 PM
To: Linda Andal <landal@anaheim.net>
Cc: Sestay, Joseph S.
Subject: California Gov. Code Section 6250 Public Records Act Request

To Whom It May Concern,

Please see attached correspondence sent on behalf of Joseph Sestay, in connection with the above-referenced matter.



Rita Burnett, CCLS
California Certified Legal Secretary

Peckar & Abramson, P.C.

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