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10   **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11   **FOR THE COUNTY OF LOS ANGELES**

12

13 ADRIAN RISKIN,   ) Case No.: 19STCP05266
)
14   Petitioner and Plaintiff,   ) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
15   vs.   ) **PETITION FOR WRIT OF MANDATE**
)
16 CITY OF LOS ANGELES,   ) **DATE: November 11, 2020**
) **TIME: 1:30 p.m.**
17   Respondent and Defendant.   ) **DEPT: 85**
) **JUDGE: HON. JAMES C. CHALFANT**
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I. INTRODUCTION

This is a case under the California Public Records Act ("CPRA") that concerns a narrow issue: under Cal. Gov. Code § 6253.9,[1] is Petitioner entitled to obtain email records from the City in a format of his choosing such as MBOX or EML or, rather, is the City entitled to restrict access to emails in PDF format only.

The distinction has serious impacts on the quality of access and useability of email records. MBOX and EML formats[2] preserve the record in what is substantially the original format: like the emails in your inbox, emails are accessible as individual records, all metadata is preserved, the emails remain text-searchable, organized, and in order, the text is not distorted, and attachments remain in their original formats. By contrast, the City's PDF productions change email records significantly and resemble something like your entire inbox printed onto sheets of paper and collected, out of order, into a single three ring binder. The City's PDFs collect hundreds of emails into a single PDF file, all metadata is destroyed, the emails are not text searchable, the emails are not in chronological order and replies are not grouped together with underlying messages, text is arbitrarily distorted, attachments such as excel spreadsheets and image files are also converted to PDF and can be distorted or rendered useless, and the same emails are re-printed dozens of times as responses in long email threads. The differences in quality of access and useability are stark.

Here, after Petitioner filed this litigation, the City produced responsive records. Despite Petitioner requesting this information in MBOX format, the City insists that its preference for redacting records in PDF format authorizes it to deny all access to MBOX format where it redacts even one responsive email in a large production. The City's position is without merit. Under the CPRA, a requestor can elect to receive an electronic record in "any electronic format" in which the agency holds the information. § 6253.9. There is no dispute that the City is able to produce emails in MBOX format. The City's preference for redacting emails in PDF format does not allow it to

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[1] Unless otherwise stated, all statutory references are to the Government Code
[2] An MBOX file is akin to a file resembling an email inbox, while EML files are individual emails which can be extracted from or collected into an MBOX file. For ease, Petitioner uses the term MBOX to be inclusive of both MBOX and EML files.

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restrict access to emails records to PDF format only, particularly where PDF production destroys

information and renders large email sets nearly unusable.

Petitioner respectfully asks this court to order the City to produce the responsive emails in

MBOX format and to issue a declaration that the City cannot deny CPRA access to MBOX format

even where it makes redactions to the production.

II. FACTUAL SUMMARY

A. Whereas this case began as a dispute about non-production, it has become a dispute about the *format* of production.

At its start, this case was about the City's total failure to produce records in response to the

requests at issue in the Petition. The Petition seeks enforcement of four requests: the "Huizar

Request" (first submitted in November 2018 and denied as overly burdensome); the "Forms

Request" (first submitted in February 2019 and denied as overly burdensome); the "Garcetti

Request" (first submitted in February 2016 and left unfulfilled by the City despite Petitioner's

multiple follow-up communications); and the "Williams-Westall Request (first submitted in August

3, 2018 and left unfulfilled by the City despite Petitioner's multiple follow-up communications).

(Riskin Decl. ¶¶ 2-6; Ex. A-D.) Petitioner filed the instant lawsuit on December 10, 2019 and

served process on the City on December 13, 2019.

In the following months, the City produced records in response to each of the four requests.[3]

Except for the Forms Request – which did not call for email records – the City's production took

the form of large PDFs collecting numerous emails into single documents. (Riskin Decl. ¶ 8.) First,

the City produced the "Williams-Westall" emails and attachments in a single 1,115 page PDF on

January 17, 2020.[4] (Cisneros Decl. ¶ 2.) On January 27, 2020, Petitioner, via counsel, requested that

the City produce the records in MBOX format as originally requested. (Cisneros Decl. Ex. A.) The

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[3] The City's production contained various withholdings and redactions which Petitioner believes
would not survive legal scrutiny and Petitioner does not concede the City's production was legally
adequate. However, Petitioner's priority is for the Court to determine the issue of format and, in the
interest of judicial economy, Petitioner is limiting his request for relief to that issue.

[4] In the interest of keeping the Court record a manageable size, Petitioner is not including the
entirety of the City's production in this matter as exhibits. However, Petitioner is happy to make the
City's production available to the Court for inspection if the Court believes it would be helpful to its
determination.

City responded that day and indicated that "[g]enerally speaking, [the City is] unable to since we are unable to provide redacted documents in this format." (*Id*.) On February 13, the City reiterated that it would only produce emails in PDF format. (*Id*.)

There is no question that the City can produce records in MBOX format and, in fact, the official form it requested that Petitioner submit with his request states, in red block letters, "NOTE: THE SYSTEM CAN ONLY PROVIDE SEARCH RESULTS IN MBOX FORMAT." (Riskin Decl. Ex. C.) Further, as will be shown, redacted emails can also be produced in MBOX format.

On May 15, 2020, in advance of the June 25 trial setting conference in this matter, Petitioner again reiterated that he is requesting emails in MBOX format. (Cisneros Decl. Ex. B.) In this email, Petitioner, via counsel, cited the appropriate legal authority (Cal Gov. Code § 6253.9), stated some of the practical problems with PDF format, and indicated that if the parties could not agree on MBOX production that Petitioner would likely seek a court date at the upcoming TSC. (*Id*.)

Despite meeting and conferring on the issue, the parties remain at loggerheads. (Cisneros Decl. ¶ 5.) On July 29, 2020, the City produced emails in response to the Garcetti Request and Huizar Request. (Cisneros Decl. ¶ 6.) The Garcetti production consisted of 3,201 pages of emails and attachments spread over two PDFs. The Huizar production consisted of 6,498 pages of emails and attachments spread over three PDFs. (*Id*.). [5]

B. The City's PDF production diminishes the quality of the email records, destroys information from emails and attachments, and makes the production difficult to review, analyze, reproduce, and/or publish.

As compared to production in MBOX format, the City's insistence on PDF production causes various changes to the records and results in record with less information that are more difficult to review, analyze, reproduce, and publish to the public.

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[5] The number of pages contained in the PDFs do not reflect the total number of emails produced, and many pages reflect the same emails being printed and re-printed as down-chain email threads. In fact, the City produced far fewer emails than it originally estimated existed and conceded that its ITA department overestimated the total number of responsive emails that existed. (*Id*.)

Lack of embedded text

By converting the email records to PDF format, the City destroys the embedded text contained in the records. (Riskin Decl. ¶ 10.) As a result, the City's PDFs are not text searchable. This causes several problems. Individual emails cannot be located via keyword search, by date, or by sender or recipient, which makes locating individual emails extremely difficult. (*Id*.) The lack of searchability makes it onerous to conduct analysis of the records, for example, by examining just those emails that contain a certain term of interest, those sent between certain individuals, or those sent during a certain time period. (*Id.*) Further, the lack of text searchability means any emails published online may not accurately or reliably appear in search engine results, which means that PRA requestors have a more difficult time publishing the public records to the public at large. (*Id*.) The lack of embedded text makes it more difficult to locate individual emails, to conduct analysis of email production, and to effectively publish the emails. (*Id*.)

Destruction of metadata

Conversion to PDF destroy all metadata contained with the email. (Riskin Decl. ¶ 11.) Each email record normally contains metadata which details information such as the sender and all recipients (including, importantly, bcc recipients), and the date and time of sending. (*Id*.) An email's metadata is as much a part of an email as other content but, when the City produces in PDF, that information is destroyed. (*Id*.) Producing an email in PDF format is similar to producing a business letter via a copy machine that cuts off the top of the page containing the letterhead, date, and addressee, along with the footer and page number. Without metadata, an email is incomplete.

Information contained in metadata sometimes appears in the headers of emails printed in PDF format, but not always. (Riskin Decl. ¶ 12.) For example: "bcc" senders and recipients can be omitted from email headers in PDF printouts of emails; PDF printouts often contain the *names* of recipients in place of their email address; where there are multiple email recipients the list of recipients is often truncated in PDF printouts; and, at times, an email (particularly when it is lower in a thread of emails) will not contain any header information at all. (*Id*.)

As with the lack of embedded text, the lack of metadata makes it more difficult to locate individual emails, to conduct analysis of email production, and to effectively publish the emails.

<u>Lack of organization arising from haphazard combination into a single PDF</u>

Another problem with the City's PDF production arises from combining hundreds of emails into a single PDF file. The City collects the emails into PDFs in no discernable order. (Riskin Decl. ¶ 8.) The emails are not ordered chronologically, nor by sender, nor are they collected into "threads" of emails and replies. (*Id.*) The emails in the City's PDFs cannot be automatically separated back out into individual files. (Riskin Decl. ¶ 14.) If Petitioner wishes to restore the emails to individual files for publication, he must do so manually, which is time intensive. (*Id.*) By collecting these emails into a single PDF file, the City takes hundreds of well-organized and discreet records and turns them into a single jumbled mess: imagine a case file with hundreds of filings compiled into a single pdf, but in no discernable order. That hypothetical case file record would not be very useful, and neither are the City's PDFs.

<u>Converting attachments to PDF format destroys information and impairs access</u>

Along with the emails themselves, the City also converts *attachments* to emails into PDF format. (Riskin Decl. ¶ 15.) This causes problems with access to those attachments. The example of Excel spreadsheets is illustrative. A spreadsheet contains information beyond what appears in the cells (for example, the formulas used to calculate the values in those cells). (*Id.*) However, that sort of information is destroyed when a spreadsheet is produced in PDF format because a PDF version of an Excel spreadsheet is, effectively, a picture of that record, nothing more. (*Id.*) Additionally, when an Excel spreadsheet has more columns than fit on a single sheet of paper the spreadsheet is broken up over several pages, resulting in rows of data removed from identifying column and row headings. (Riskin Decl. Ex. E) The pages are rendered unintelligible without knowing where they fit in the broader spreadsheet. (*Id.*)

Image files such as JPGs are also distorted by conversion to PDF, particularly when small images are expanded to full page size which leaves them distorted and degraded. (Riskin Decl. ¶ 16; Ex. F.) Whereas production in native format allows requestors to accurately view, duplicate, and publish image files, production in PDF prevents these uses. (*Id.*)

Finally, some file types, such as winmail.dat files – which can appear attached to emails as calendar invites – do not convert to PDF and are destroyed altogether by the City' production.

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<u>MBOX format remedies these problems</u>

MBOX format provides access to emails without the deficiencies associated with PDF production. (Riskin Decl. ¶ 17.) MBOX format retains the embedded text and individual emails can be located by keyword search and, if published online, can be reliably and accurately located by search engines. (*Id*.) MBOX format records retain all metadata. (*Id*.) Records provided in MBOX format can be easily viewed as individual files and the relationship between emails and their replies are preserved. (*Id*.) Finally, MBOX format preserves attachments in their native formats. (*Id*.) Simply put, MBOX production is akin to receiving emails in the format that email users are accustomed to when dealing with their own email clients, such as GMAIL or Outlook: emails can be located by recipient or date or keyword, individual emails can be opened and all senders/recipients can be identified, and any attachments can be opened and worked with as needed. (*Id*.) In terms of quality of access to sets of email records – and completeness of access to those records – MBOX is adequate where PDF is not.

C. It is technologically feasible to redact email records in MBOX format

The City claims that it can only redact emails in PDF format, but this is not the case. Gmail records can be edited (i.e. redacted) without converting the files to PDF and there are many methods to do so. (Haeberli Decl. ¶¶ 10, 11.) For example, one method is as follows: first, an entity such as the City can export identified emails from Gmail to MBOX format by collecting responsive emails into a folder using Gmail "labels" and archiving that folder into an MBOX (for example, by using google "takeout") (Haeberli Decl. ¶¶ 6, 7); then the entire MBOX can be reviewed and edited (to make redaction) with any text editor or, for convenience, the MBOX can be split into separate EML files using a widely available tool and those individual EML files can be reviewed and edited in any text editor. (Haeberli Decl. ¶¶ 8, 19, 12.) Then, the EML files can either be provided individually or collected back into a MBOX file. (Haeberli Decl. ¶ 12.) Additionally, if there are specific words or phrases the City wishes to redact from all emails within an MBOX (such as a specific email addresses or social security numbers) it can use a "rules based" MBOX redactor to find and replace the specified text, very similar to how a word processor's "find and replace" function operates. (Haeberli Decl. ¶ 13.) Thus, the City's claim that making redactions to emails *requires* conversion

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to PDF format is inaccurate. The City can redact email records and still provide them in MBOX format. Instead of doing so, it chooses to convert emails to PDF, and, in the process, destroys information and degrades the quality of access.

III.   ARGUMENT

Under § 6253.9, a requestor is entitled to obtain access to an electronic record in "any format" in which the agency holds the record. The choice of format belongs to the requestor, not to the agency. The need to redact a record does not nullify this choice, particularly where the agency's redaction method degrades or interferes with access. The City's insistence on a redaction method that destroys non-exempt information and interferes with the quality of access to records violates the CPRA, including § 6253(a) and § 6253(d).

A. General principles of the California Public Records Act

The CPRA establishes a right of public access to government records and is predicated on the principle that "openness in government is essential to the functioning of a democracy." *Int'l Fed. Of Professional and Technical Engineers, Local 21, AFL-CIO v. Super. Ct.*, (2007) 42 Cal.4th 319, 328-39. In enacting the CPRA in 1968, the Legislature declared the right of access to be " a fundamental and necessary right of every person in this state" (§ 6250) – a declaration ratified by voters who amended the California Constitution in 2004 to secure a "right of access to information concerning the conduct of the people's business." Cal. Const., art. I, § 3, subd. (b); see also *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 492 ("*NLG*"). The Constitution now provides that the CPRA must be broadly construed if it furthers the right of access and narrowly construed if it limtis the right of access. Cal. Const., art. I, § 3, subd. (b)(2).

Upon request, an agency must make all public records promptly available, except for those records exempt from disclosure by express provisions of law. § 6253(b) Even if portions of a record are exempt, the agency must disclose any reasonably segregable portion of the record. § 6253(a). The agency bears the burden of justifying nondisclosure. § 6255(a). Nothing in the CPRA shall be construed to permit an agency to delay or obstruct access to public records. § 6253(d).

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B. Petitioner has a right under § 6253.9 to obtain email records in MBOX format and the City has no right to restrict access to PDF format.

Here, Petitioner is attempting to obtain email records in MBOX format while the City is insisting on providing email records in PDF format. Under the CPRA, a requestor is permitted to choose the format in which they receive electronic records and, so long as the format is one in which the agency holds the records, or the format has been used by the agency to create copies, the agency must provide electronic records in the format of a requestor's choosing.

The applicable section of the CPRA is Cal. Gov. Code § 6253.9. That provision states that

> (a): Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:
>
> > (1) The agency shall make the information available in any electronic format in which it holds the information
> >
> > (2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format

Here, § 6253.9 applies to entitle Petitioner to obtain email records in MBOX, rather than PDF format. The City holds Gmail emails in MBOX format to the same degree it holds them in PDF format. Further, the City uses MBOX format and its email request form specifies that the system produces records in MBOX format. (Riskin Decl. Ex. C.) Under the express terms of § 6253.9, Petitioner is entitled to obtain records in MBOX format.

The City's preference to redact emails in PDF format does not give it the right to refuse to provide email records in MBOX format. There is nothing in the CPRA which explicitly authorizes an agency to restrict access to certain formats or to withhold non-exempt information based on its preferred redaction method. Were that the case, agencies could attempt to obstruct public access by adopting redaction methods that destroy information and provide records in formats that are difficult to use, reproduce, analyze, or publish. Those practices would violate the CPRA's

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requirement than an agency provide all non-exempt information (§ 6253(a)) and that an agency not obstruct access to public records. § 6253(d).

As one hypothetical, imagine an agency that refuses to stock black felt pens ("sharpies") to redact words or lines of text from paper records. Instead, the agency redacts by applying black paint using a 5-inch-wide paintbrush, or by applying duct tape, before making a copy of the record. Of course, such methods would result in not only the exempt text being obscured, but all of the text around it being obscured as well. Such a practice would be illegal and it would be no defense for the agency to claim that such methods are only used when redaction is necessary.

In another hypothetical, imagine this agency ceases to stock black paint and duct tape and now claims that it has no way to provide redacted paper copies. Accordingly, when the agency makes even a single redaction to one record within a responsive set, the agency provides the record as follows: first, the City lays out the records, 5 pages at a time, on a table, and places common office bric-a-brac (staplers, pen holders, paperweights, etc.) over any text it claims is exempt (which also obscures surrounding non-exempt text); then, the City takes a polaroid photograph of the table; the City repeats the process until all pages of the record have been photographed, and then the City "produces" the record by mailing all of the polaroid photographs to the requestor. This practice, which would result in non-exempt information being withheld, and would provide the records in a form that is difficult to use, reproduce, analyze, or publish, would also be illegal.

Just as in the hypotheticals above, here the City's practice is also illegal. The City's choice to exclusively redact emails in PDF format results in non-exempt metadata and attachment data being unlawfully withheld in violation of § 6253(a). Further, it obstructs access by producing records which are unnecessarily difficult to organize, review, and publish in violation of § 6253(d).

Further, because the City denies access to MBOX when it makes even one redaction to one email among a set of hundreds, the practice encourages the City to make dubious redactions in order to justify providing PDF records which are more difficult for the public to review, understand, and reproduce.

In conclusion, the City is obligated to produce records in the format of the requestor's choosing, and nothing in the CPRA authorizes the City to refuse to provide emails in MBOX

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format, even where the City makes redactions to responsive emails. Further, the City's practice of only producing emails in PDF format results in destruction of non-exempt information and obstructs access to public records, in violation of the CPRA.

IV.   CONCLUSION

The City is illegally refusing to provide email records in MBOX format. Petitioner's insistence on MBOX format is not insistence for insistence's sake. There are stark practical differences between obtaining email records in MBOX format and the large PDFs that the City produces. The CPRA requires the City to provide electronic records in the format of the requestor's choosing and nothing in the CPRA allows an agency to select a redaction method that destroys non-exempt information and obstructs access by making records unnecessarily difficult to review and analyze and impossible to accurately reproduce and publish. The City is perfectly capable of providing email records in MBOX format, even where it makes redactions. Petitioner respectfully asks that this Court order the City to provide responsive email records in MBOX format.

Dated: October 13, 2020   Respectfully submitted,

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