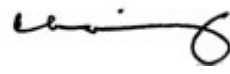


SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive Santa Ana, CA 92702	
SHORT TITLE: Peoples Homeless Task Force Orange County vs. City of Anaheim	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: 30-2020-01135406-CU-WM-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 09/27/21 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 9/27/21. Following standard court practice the mailing will occur at Sacramento, California on 9/28/21.

ANAHEIM CITY ATTORNEY'S OFFICE
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ANAHEIM, CA 92805

Clerk of the Court, by: , Deputy

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 09/27/21, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on September 27, 2021, at 9:02:15 AM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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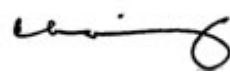
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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 09/27/2021

TIME: 08:52:00 AM

DEPT: C42

JUDICIAL OFFICER PRESIDING: David A. Hoffer

CLERK: Cora Bolisay

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Debra Checco

CASE NO: **30-2020-01135406-CU-WM-CJC** CASE INIT.DATE: 02/28/2020

CASE TITLE: **Peoples Homeless Task Force Orange County vs. City of Anaheim**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 73615469

EVENT TYPE: Under Submission Ruling

APPEARANCES

. Re: Petitioner's Motion for Writ of Mandate

Having taken the above-entitled matter under submission on 9/24/2021 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, the Court now rules as follows:

The Petition for Writ of Mandate and Declaratory Relief filed by petitioner People's Homeless Task Force ("Petitioner") against respondent City of Anaheim (the "City") is **GRANTED** in part and **DENIED** in part as discussed below. All evidentiary objections are **OVERRULED**.

In its motion, petitioner requests three orders from the court: (1) an order that the City perform a new search for public records; (2) an order that the City produce the records listed in the City's Index of Withheld and Redacted Documents (the "Index"); and (3) an order that the City provide more information about those withheld records. Subject to the conditions noted below, the court grants the first request and denies the other two.

New Search for Public Records

When it comes to a search for records under the California Public Records Act ("CPRA"), the watchword is reasonableness. An agency is required to undertake a search that is "reasonably calculated to uncover all relevant documents." (See *Weisberg v. DOJ* (D.C. Cir. 1983) 705 F.2d 1344; *Campbell v. United States* (D.C. Cir. 1998) 164 F.3d 20, 27 [noting an agency must search using methods which can be reasonably expected to produce the information requested]; *City of San Jose v. Sup. Ct.* (2017) 2 Cal.5th 608, 627 [agencies are obliged to disclose all records they can locate "with reasonable effort"]).

With regard to the burden of proving the city's search was reasonable, the parties agree there is no controlling authority on this point. The petitioner cites a federal district court case placing the burden on the agency, but this decision is not binding on this court. (See *Abramyan v. United States Department of*

Homeland Security (D.D.C. 2013) 6 F.Supp.3d 57, 62-63.) [“Where a plaintiff challenges the adequacy of a search . . . the agency must show beyond material doubt that it has conducted a search reasonably calculated to uncover all relevant documents.”] In response, the City cites the familiar presumption that “official duty has been regularly performed.” Evidence Code § 664.

On balance, the court finds that placing the burden of proof on the City is more consistent with the purposes of the CPRA and with the California Constitution’s emphasis on transparency. (See Government Code § 6250 [finding “access to information concerning the conduct of the people’s business” to be “a fundamental and necessary right of every person in this state”]; Cal. Const., Art. I, Section 3(b)(1) [“The people have the 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”]. Furthermore, such placement of the burden of proof for the reasonableness of the search would be consistent with a responding agency’s accepted burden to establish that a disclosure exemption applies (*ACLU of No. Cal. v. Sup. Ct.* (2011) 202 Cal.App.4th 55, 67 [“the agency opposing disclosure bears the burden of proving that an exemption applies”]). Finally, the public agency is in a far better position to sustain the burden of proof because it is the public agency, not the petitioner, who knows what records exist and what search was performed. Thus, in the present case, the City has the burden to prove the search was reasonable.

On the evidence before the court, the City fails to sustain this burden. In opposition to the motion, the city presents declarations from the Assistant City Clerk and the records custodians of six different City departments. The Assistant City Clerk states that she followed the City’s written policy and forwarded the records request to the six departments (in addition to performing a search in her own department). The records custodians state that they followed the City’s policy and forwarded the request to members of their departments, who actually performed the search. The declarations fall short, however, because they do not provide any information about how the *search itself* was performed or even as to how the searchers were instructed to perform it. This issue is of special concern when it comes to electronic searches. For such searches, the results will only be as good as the search terms utilized, and there is no information at all in the declarations about what search terms the persons performing the search utilized.

The City *does* provide additional information in its Supplemental Responses to Special Interrogatories, found in Exhibit 9 to the Declaration of Kelly Aviles attached to petitioner’s motion. In response to Interrogatory Number 2 about how the search was performed, the city notes that, although City employees could not recall what search terms they used, several employees could say that they followed their “practice” of using the words provided in the request. Importantly, however, none of these employees say that they have any memory or contemporaneous notes of performing the search, none of the employees state they searched for all entities listed in the request, and one of the employees asserts she only searched for “key words provided in the request.” (See Exhibit 9, Page 5). Furthermore, most of the employees mentioned in the response discussed only their own searches and not the instructions they provided to others to whom they forwarded the request, leaving the actual search terms used by most searchers completely unidentified. On the whole, the evidence does not show that the search was calculated to find all relevant documents, and the court must order the city to search once more.

Based on these findings, the court orders a further search. This search shall be limited to electronically stored documents *related to the stadium site*. As to the search terms themselves, the court orders the parties to meet and confer. Whatever terms are agreed upon must be utilized uniformly across all City departments (unless the parties stipulate to some other procedure).

Records Listed in Index

The petitioner further requests that the court order the City to disclose the allegedly exempt material listed in the Index. The City opposes this requests and suggests that, if the court needs additional

information, the court perform an in-camera review of the withheld material.

The court will perform an in-camera review of all items withheld on a basis other than the attorney/client privilege. The court orders the city to provide a copy of the withheld documents to the court within five days of the filing of this order. At the upcoming status conference, the court will set a future hearing date to hear argument (some of which may be received in-camera) regarding provision of the withheld records.

With regard to the documents withheld based on attorney/client privilege, although the petitioner argues that such material is not privileged based upon the city attorneys' participation on the negotiating team, the court finds the Declaration of Robert Fabela sufficient to establish a satisfactory basis for the privileged nature of this material and will not require the provision of this material for in camera review. (See Evidence Code § 915(a)).

Finally, with regard to redacted material, the city advises the court that these documents are redacted to remove personal identifying information. The court, therefore, will not review such material. However, any material substantively redacted (for reasons other than the attorney/client privilege) must be part of the court's in-camera review.

More Information on Withheld Records

Given the court's ruling on the in-camera review of withheld material, this request is denied as moot.

Court orders Clerk to give notice by e-service.