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Nevada Policy Research Institute

Superior Court of the State of California
for the County of Kern

Nevada Policy Research Institute, dba
Transparent California,

Petitioner,

v.

Yvette Mayfield, in her official capacity as City
Clerk, City of Taft; City of Taft; and DOES 1-5,
inclusive,

Respondents.

Case No.:

**Verified Petition for Writ of Mandate;
Complaint for Injunctive & Declaratory
Relief**

[Gov. Code §§ 6250 *et seq.*]

Petitioner alleges:

1. In this action, Petitioner seeks to enforce its right to receive public records pursuant to Government Code §§ 6250 *et seq.*,¹ the California Public Records Act (“CPRA”).

2. Petitioner requested records that would show the names and wages of individuals employed by Respondent City of Taft for the 2016 year.

3. Despite the fact that Petitioner did not specify the format or manner in which said names and wages were to be produced, Respondents denied Petitioner’s request, first claiming that the Respondents did not possess the records requested, and then claiming that the request was overly broad.

¹ Unless specified otherwise, all subsequent code references are to the Government Code.

4. The California Supreme Court has consistently held, as it did in its seminal *Williams v. Superior Court* decision, that unless the public records of a local agency are exempt from the provisions of the CPRA, they must be made available to the public. *Williams v. Superior Court*, 5 Cal. 4th 337, 346, 19 Cal. Rptr. 2d 882, 852 P. 2d 377 (1993).

5. The Supreme Court’s 1993 decision is consistent with the Attorney General’s long-standing position that “the name of every public officer and employee, as well as the amount of his salary, is a matter of public record.” (25 Ops.Cal.Atty.Gen. 90, 91 (1955).)

6. The names and wages of employees of City of Taft for 2016 are not exempt from the provisions of the CPRA. *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329 (*IFPTE*).

7. There is no reasonable basis for Respondents' refusal to disclose the public records
Petitioner requested.

PARTIES

8. Transparent California is operated by Nevada Policy Research Institute (“NPRI”), a Nevada nonprofit corporation having its principal place of business in Las Vegas, Nevada.

9. NPRI is a non-partisan think tank that focuses on, among other things, empowering citizens and elected officials with information they need to make informed public policy decisions. To fulfill this mission, NPRI operates Transparent California and Transparent Nevada at www.TransparentCalifornia.com and www.TransparentNevada.com respectively to provide comprehensive and easily searchable information on the compensation of public employees and retirees in California.

10. NPRI has members who reside in the State of California and operates Transparent California as a public service for the benefit of all Californians.

11. Respondent City of Taft (“City” or “Taft”) is a Local Agency as defined by the CPRA.

12. Respondent Yvette Mayfield (“Ms. Mayfield”) is sued in her official capacity as City Clerk of the City of Taft. In this capacity, Ms. Mayfield has a ministerial duty to comply

1 with the CPRA on the City's behalf.

2 13. The term Respondent is used interchangeably in the singular and plural form to
3 describe both the City and Ms. Mayfield who are, for the purpose of this lawsuit, one and the
4 same.

5 14. The true names of Respondent DOES 1 through 5, inclusive are unknown to
6 Petitioner, who therefore brings this Petition against DOES 1 through 5, inclusive by such
7 fictitious names and will seek leave of Court to show their true names, identities, and capacities
8 when they have been ascertained.

9 **JURISDICTION**

10 15. Pursuant to Government Code Section 6258, "any person may institute
11 proceedings for injunctive or declarative relief or writ of mandate in any court of competent
12 jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class
13 of public records under [the CPRA]." Petitioner is a person, as the term is defined in the CPRA (§
14 6252(c)) and is suing to enforce its right to receive public records.

15 16. The Kern County Superior Court is the proper venue because the acts complained
16 of which are the subject of this Petition have all occurred or will all occur in Taft, County of
17 Kern, State of California. The relief sought in this Petition is within the jurisdiction of this Court.

18 17. Pursuant to Local Rule 1.7.4 of the Kern County Superior Court, this action will
19 be venued according to its zip code: 93268.

20 **SUMMARY OF THE CALIFORNIA PUBLIC RECORDS ACT**

21 18. The people have the right of access to information concerning the conduct of the
22 people's business. (Cal. Const., art. I, § 3(b)(1).) This is a fundamental and necessary right of
23 every person in this state. (§ 6250.)

24 19. Under the CPRA, local agencies are required to promptly produce public records
25 in response to a request. (§ 6253(b).) This is a constitutional mandate. (Cal. Const., art I, §
26 3(b)(7).)

1 20. Local Agencies are required to assist requestors with locating records that are
2 responsive to the purpose of their request. (§ 6253.1.)

3 21. Local Agencies may not charge requestors more than the direct costs of
4 duplication in order to access public records. (§ 6253(b).)

5 22. When being applied to grant access to information, the CPRA must broadly be
6 construed; when being applied to deny access to information, the CPRA must be narrowly
7 construed. (Cal. Const., art. I, § 3, subd. (b)(2).)

8 23. Responding agencies have the burden of proving that requested records are exempt
9 from disclosure. (*New York Times v. Superior Court* (1990) 218 Cal.App.3d 1579, 1583-1584;
10 see also § 6255.)

11 **BACKGROUND**

12 24. NPRI started Transparent Nevada in 2008. The site has earned over 21 million
13 page views and is credited for helping uncover a major sick-leave scandal in the Clark County
14 Fire Department.

15 25. In 2014, inspired by the success of Transparent Nevada, NPRI launched
16 Transparent California. Since then, NPRI has been working to obtain data from every agency in
17 the State of California.

18 26. Transparent California has published information on more than 2.4 million public
19 employees from over 2,000 California public agencies, big and small.

20 27. Print, television, radio, and online journalists from outlets of all sizes regularly rely
21 on data from Transparent California. Outlets relying on Transparent California data range from
22 local sources like the Bakersfield Californian to national sources such as TIME, Washington Post,
23 or New York Times.

24 28. A search of Google News articles shows more than 1,200 stories referencing
25 Transparent California with headlines ranging from “Fire OT scrutinized as county cuts
26 costs” to “Uncredentialed school administrator earning six-figure salary.”
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1 29. After operating for more than four (4) years, Transparent California regularly
2 receives data from most of the state’s agencies, big and small. While the state’s larger agencies
3 have regularly complied with Transparent California’s requests for several years, Respondent is
4 one of a diminishing number of smaller agencies that has always ignored Transparent California’s
5 annual request.

6 30. In this lawsuit, Transparent California seeks, for the benefit of its members as well
7 as the general public, to further its effort at obtaining data for every county, city, school and
8 special district in the state, big and small, as is its right under the California Constitution and the
9 CPRA.

10 **PETITIONER’S CPRA REQUESTS**

11 31. Attached as **Exhibits “A” and “B”** to this Petition are copies of correspondence
12 between Petitioner and Respondents that occurred between July 24, 2017 and August 2, 2017
13 relating to two (2) separate CPRA Requests. Exhibits “A” and “B” are true and correct copies of
14 the described correspondence, but Exhibit “A” also includes redactions of other emails that are
15 not disclosable pursuant to the attorney-client privilege.

16 32. On July 24, 2017, Petitioner requested public records from Respondents consisting
17 of records documenting the names and wages of Taft employees for the year 2016. The request
18 was sent by Robert Fellner (“Fellner”), Transparent California’s Research Director to Respondent
19 Yvette Mayfield by email at or about 4:56 p.m. (Exhibit. A, pp. 3-5.)

20 33. In his request, Fellner noted that most California agencies find that it is easiest to
21 respond to his request by providing a working copy of the salary report that the City submits to
22 the State Controller’s Office (SCO Report) “that includes employees names” as well as wages,
23 but that the City could provide a copy of the working SCO report, or “any other combination of
24 records” that contains the compensation data found on the SCO report alongside the
25 corresponding employee name. (Exhibit A, p. 4.) It is important to understand that the City’s
26 creation of the SCO report — which documents the compensation received by each individual
27 employee, but by job title only and not name — is indisputable proof that the City **must** be in
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1 possession of records responsive to the purpose of this request. While the SCO report itself does
2 not call for the inclusion of employee names, obviously all the compensation fields reported —
3 salary, overtime pay, retirement and health insurance payments made by the City on behalf of
4 individual employees — are made, stored, processed and otherwise identified by unique
5 employee name, not job title. Said differently, the City could **only** create the SCO report by
6 possessing records responsive to the purpose of Fellner’s request.

7 34. Fellner further reminded Attorney Epperson of the City’s duty to assist in locating
8 records that are responsive to the purpose of the request, and provided additional examples of
9 records the City possesses which would contain the information Petitioner sought. (Exhibit A. pp.
10 2-3; see also § 6253.1.)

11 35. In his request, Fellner also noted that per §6253.9(a), the requested records could
12 be provided in an Excel spreadsheet format, but that “[i]n the event that Taft is not in possession
13 of a record of that nature, we request copies of **any record** that contains information responsive
14 to the purpose of this request.” [emphasis supplied] (Exhibit A, p. 4.)

15 36. Mr. Fellner’s request was forwarded to City Attorney Epperson for response. In
16 his July 27, 2017 reply, Attorney Epperson utterly ignored Feller’s request for any record or
17 combination of records that contained the names and wages of the City’s employees in 2016, and
18 inexplicitly advised Fellner that he was “requesting information that does not exist in the format
19 or manner you are requesting,” and indicated that Taft is “not obligated to create records to
20 comply with a request.” (Exhibit A, p. 3.)

21 37. Thereafter on July 28, 2017, Fellner responded to Attorney Epperson making clear
22 that he was not requesting information in any particular format, but that he was simply seeking
23 any record or combination of records “documenting the names and wages of City employees for
24 the 2016 year.” (Exhibit A, pp. 2-3.)

25 38. Nevertheless, Attorney Epperson again denied Fellner’s request, while continuing
26 to disregard the substance thereof, and on August 2, 2017, wrote Fellner indicating that the City
27 does not keep the requested information in an electronic format matching Fellner’s (non-existent)
28 specifications, and that “to create hard copies of **all** such documents would be burdensome and

1 oppressive.” [emphasis supplied] (Exhibit B, pp 1-2.)

2 39. Attorney Epperson went on in his August 2, 2017 correspondence to state that
3 Fellner’s “broad” request “would potentially encompass thousands of documents,” and would
4 take a “substantial amount of City resources to locate and produce said documents.” (Exhibit B,
5 pp. 1-2.)

6 40. From the exchange Fellner had with Attorney Epperson, it was clear that Attorney
7 Epperson had made his final determination about disclosure under the CPRA on behalf of the
8 City, insisting that the City had no records responsive to Fellner’s request, and then that said
9 request was so overly broad that it would unduly burden the City to comply with the request.

10 41. Discussions related to this CPRA request ended with the receipt of Attorney
11 Epperson’s August 2, 2017 correspondence as it was made clear that the City had no intention of
12 complying with Fellner’s request.

13 **First Cause of Action**

14 Writ of Mandate (Gov. Code § 6258; CCP § 1085)

15 42. Plaintiff incorporates by reference each preceding paragraph.

16 43. As a Local Agency, the City is required to comply with the CPRA. Respondent
17 Yvette Mayfield has a ministerial duty to comply with the CPRA on the City’s behalf.

18 44. As described above, Petitioner requested public records from Respondents and
19 Respondents failed and refused to provide any records, and Petitioner has exhausted its
20 administrative remedies.

21 45. Petitioner is beneficially interested in obtaining the records it requested.

22 46. A Writ of Mandate is specifically authorized as a remedy for CPRA violations.

23 47. There is no other plain, speedy, or adequate remedy in the ordinary course of law
24 that will result in disclosure of the public records Petitioner requested.

25 48. Petitioner requests a Writ of Mandate to compel disclosure of the public records it
26 requested.

27 **Second Cause of Action**

Declaratory Relief (Gov. Code § 6258; CCP § 1060)

49. Petitioner incorporates by reference each preceding paragraph.

50. There is an actual controversy between the parties as to whether Respondent satisfied all its CPRA obligations.

51. Declaratory relief is necessary to resolve this controversy and determine whether Respondent violated the CPRA.

52. Declaratory relief is specifically authorized as a remedy for CPRA violations.

53. Petitioner alleges the following CPRA violations:

- a. Failure to disclose nonexempt public records in response to Petitioner's July 24, 2017 request;
- b. Failure to assist Petitioner in locating records that are responsive to the purpose of his July 24, 2017 request; and
- c. Failure to promptly produce public records in response to Petitioner's July 24, 2017 request.

PRAYER FOR RELIEF

Petitioner prays that the Court:

1. Issue a Peremptory Writ of Mandate compelling Respondents to disclose the public records they improperly withheld from Petitioner and/or issue an Alternative Writ of Mandate and Order to Show Cause why they have not done so;

2. Enter a Declaratory Judgment that Respondents violated the California Public Records Act by (a) failing to promptly disclose records responsive to Petitioners requests, and (b) failing to assist Petitioner in locating records responsive to the purpose of its request;

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- 1 3. Award Petitioner its attorneys' fees and costs of suit incurred herein; and
2 4. Award Petitioner such other and further relief as the Court may deem just and
3 proper.

4 Dated: August 28, 2017

Respectfully submitted,

CLARK HILL PLLC

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VERIFICATION

I, Robert Fellner, declare that I am Research Director for Transparent California, a project of Nevada Policy Research Institute, the Petitioner in the above-entitled action. I have read the foregoing **Verified Petition for Writ of Mandate; Complaint for Injunctive & Declaratory Relief** and know the contents thereof to be true to my own knowledge, except as to those statements made upon information and belief, and as to them, I believe them to be true.

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

Executed on _____ in Las Vegas, NV.

Robert Fellner