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February 3, 2021

Steven Escobar
Office of Administrative Law
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Sacramento, CA
95814-4339
steven.escobar@oal.ca.gov

Re: California Public Records Act Request

Dear Mr. Escobar:

I write in response to your [January 22, 2021 email response](#) to my California Public Records Act (“PRA”) request for electronic copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the “CCR”).

We understand from your response that you possess the documents and information that we’ve requested, but that you are refusing to produce them. In so doing, the PRA places the burden on you to prove that disclosure is not warranted – either through a statutory exemption, or based on the public interest. *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 914 (2020), review denied (May 13, 2020); *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 70 (2014); *County of Los Angeles v. Superior Court*, 211 Cal.App.4th 57, 63 (2012); § 6255. Your letter did neither.

Instead, your letter ignores the PRA and offers to provide paper copies or scanned PDFs of paper copies. Neither option satisfies your duties under the PRA.

First, your letter states that the CCR is available online at <https://govt.westlaw.com/calregs/Index>. This does not satisfy your duty to provide electronic copies in every electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. *Cal. Gov. Code* §§ 6253.9(a)(1) (“The agency shall make the information available in any electronic format in which it holds the information.”), (a)(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.”). When a request is made, “the agency may charge the cost to construct a record,” but it must produce a compliant electronic copy to the requestor. *Cty. of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1336 (2009). Your letter identifies no authority to the contrary. And indeed, none exists.

Moreover, the CCR version on the website you provided is not “publicly available” within the meaning of the PRA. This version is not “publicly available” because it imposes “end user restrictions” that “are incompatible with the purposes and operation of the CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1334. For instance, it is constrained by terms of use that restrict users’ activity (<https://legal.thomsonreuters.com/en/legal-notices/terms-of-use>) a privacy policy governing the use of personal information (<https://www.thomsonreuters.com/en/privacy-statement.html>), and a cookie policy requiring users to enable first-party and third-party cookies to access the CCR (<https://www.thomsonreuters.com/en/privacy-statement.html#cookies>).

Second, paper copies and scanned PDFs are insufficient. The PRA clearly states that you must produce electronic copies in the electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. *Cal. Gov. Code* §§ 6253.9(a)(1)–(2). Your letter does not state that you only possess paper copies of the CCR. Nor does your letter state that you do not possess copies in the file types that I requested:

“structured, machine-readable digital formats, such as XML or PDF files.” To be sure, a scanned PDF of a paper document is not a “structured, machine-readable digital format.” Thus, your response is inconsistent with your obligations to provide the information in an electronic format in which you hold it (or which you use to provide the CCR to other agencies) and fails to respond to my request for the information in a structured, machine-readable format. If your office possesses other electronic formats of the CCR—which I am convinced that you do—then the PRA mandates that you disclose those records to me in each of those electronic formats.

Please provide copies of Titles 1 through 5, 7 through 23, and 25 through 28 in every electronic format in your possession—including (without limitation) structured, machine-readable formats, such as XML files—by February 17. If you withhold any materials, please identify them and state the basis for your decision to withhold them, as required by Government Code § 6253(c). In the event we do not satisfactorily resolve this issue by February 26, I will authorize my attorneys to initiate writ proceedings to challenge the OAL’s refusal to provide me with these public records.

With best regards,

DocuSigned by:
Carl Malamud
E80A36AEC6462...
Carl Malamud, President
Public Resource



cc: Matthew Caplan, Cooley LLP
Joseph D. Mornin, Cooley LLP
Ryan T. O'Hollaren, Cooley LLP
David Halperin, Of Counsel, Public Resource