



February 16, 2018

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Sent via Email and U.S. Mail

Dear Commander Miller:

On behalf of the First Amendment Coalition (FAC), I write to bring to your attention some deeply troubling aspects of the California Highway Patrol's (CHP's) actions in response to the California Public Records Act (CPRA) request(s) seeking information about the violent protests at the California State Capitol on June 26, 2016.

This letter also serves as a request for records pursuant to the CPRA. See section 3, below.

1. CHP's Improper Responses to Valid Public Records Requests

It appears that CHP voluntarily and unnecessarily took steps to disclose the identity of a public records requester to an individual with ties to a group the Southern Poverty Law Center has classified as a "hate group." Beyond that, CHP also improperly denied public access to the person who originally requested the records. Both of these actions are unsupportable under California law, as set forth below.

- a. CHP's Apparent Efforts to Unnecessarily and Voluntarily Disclose the Identity of a Public Records Requester Are Improper And Chill The Public's Rights of Access**

A transcript recently filed in Sacramento County Superior Court shows that CHP investigator Donovan Ayres affirmatively reached out to Doug McCormack, an associate of the Traditionalist Workers Party, specifically to inform him that a member of the public had requested documents under the CPRA that would reveal that McCormack's name:

Officer Ayers: Uhm.. so Mr. McCormick here's **another reason for my call.. is that there's been request for uhm..like public information request regarding the permit** and, which you'd be the main party on there.. when you coordinated with officer Nelson..uh.. to take the permit out uh.. you know your name goes on that and uh.. I know you guys talked about the rules for the permit and all that stuff you agreed to it.. so.. you know we don't have any issue with that, but **for the public record request..uh.. We don't have a reason to.. uh.. deny it..then..**

McCormick: Request from the public record?

Officer Ayres: Yeah, so they're gonna request a copy of the permit.. uh.. and that permit is gonna have your name on it.

McCormick: Who Antifa?

Officer Ayres: I don't know exactly.. and **if I did I would tell you.**

(Emphasis added.)

TWP describes itself as being in a “fight for the interests of White Americans.”¹ It has been classified as a “hate group” by the Southern Poverty Law Center.² And it has close ties to individuals who have engaged in violent attacks on those they disagree with.³

It is unclear if Officer Ayres ultimately disclosed the name of the records requester at issue. However, his steps to affirmatively ensure that TWP could identify that person are deeply troubling. When records requesters have reason to believe that their identities will be specifically and affirmatively relayed by the government to groups and individuals who could do them harm, their willingness and ability to exercise their rights under the CPRA and the California Constitution are intolerably chilled.

The right of the public to access information “concerning the conduct of the people's business” is “a fundamental and necessary aspect of citizenship.” (*New York Times Co.*

¹ See <https://www.tradworker.org/>

² <https://www.splcenter.org/fighting-hate/extremist-files/group/traditionalist-worker-party>

³ See, e.g., <http://www.kentucky.com/news/state/article147807329.html>

v. Superior Court (1990) 218 Cal.App.3d 1579, 1585. The right is so fundamental that California voters overwhelmingly approved an amendment to the California Constitution that protects “the right of access to information concerning the conduct of the people’s business.” (Cal. Const. art. I, sec. 3(b).) Accordingly, any efforts to obstruct -- or, as here, interfere with -- that right are of a constitutional magnitude, not to mention a violation of the CPRA’s mandate that agencies may not “delay or obstruct the inspection or copying of public records.” (Gov. Code section 6253(d).)

While any member of the public is entitled to seek and receive CPRA requests made by others, and while TWP’s rights to express itself are protected under the First Amendment, it is another matter entirely for a government agency to affirmatively alert a hate group with a history of involvement in violence that a member of the public has sought records relating to that group, and to do so with the suggestion that merely seeking records could do the TWP associate some harm.

I therefore respectfully request that CHP cease and desist from such behavior in the future and better train its personnel in the fundamental processes required under the CPRA, as well as the crucial role that law plays in the proper functioning of our democracy. (See, e.g., Gov. Code § 6250 [“access to information concerning the conduct of the public’s business is a fundamental and necessary right of every person in this state”].)

2. CHP’s Stated Bases For Denying Records Regarding the June 26, 2016 Violence Are Improper

On June 29, 2016, Dave Maass submitted a CPRA request to CHP, seeking 11 categories of records, including the permit application submitted to CHP by Mr. McCormack, as well as the final permit granted by CHP. CHP denied access to these records, citing only Government Code section 6254(f). This exemption is improper, as explained in some detail below in sections 2(a)-(b).

Indeed, in the transcript excerpt above, Investigator Ayres notes--correctly--that CHP lacked “any reason to deny” Mr. Maass’ request for the permit application. And yet CHP did so. Given the context, there is a strong inference that CHP did so in order to “protect” Mr. McCormack. However, the only valid reason for withholding records under the CPRA is if the records are specifically exempt under California law. (See *Williams v. Superior Court* (1993) 5 Cal.4th 337, 346 [“All public records are subject to disclosure unless the Legislature has expressly provided to the contrary”]; see also *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045 [“Any refusal

to disclose public information must be based on a specific narrowly construed exception to” California’s “strong policy in favor of disclosure of public records”].)

As set forth immediately below, the exemption cited by CHP does not apply and the permit application and final permit thus must be released.

a. The “Investigative Records” Exemption to the CPRA Does Not Justify CHP’s Refusal to Disclose the Permit Application and Final Permit

As noted, in denying access to Mr. Maass to the permit application and final permit, CHP cited Government Code section 6254(f) (“Section 6254(f)”). This exemption applies to “[r]ecords of ... investigations conducted by ... any state or local police agency, or any investigatory or security files compiled by any other state or local police agency....” However, both the demonstration permit application and the final demonstration permit were created before any criminal investigation began or could have begun. An agency cannot “shield a record from public disclosure, regardless of its nature, simply by placing it in a file labelled ‘investigatory.’” (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1069.) Accordingly, the records should be disclosed.

In any event, the investigation at issue has concluded, as CHP publicly announced on March 8, 2017. Accordingly, the policy basis for the investigative records exemption -- to protect the integrity of ongoing criminal investigations -- has vanished. CHP should disclose the requested records.

b. CHP Improperly Denied Access to Records Relating to “Calls for Service, Incident Reports, and Arrest Reports”

Mr. Maass requested “calls for service, incident reports, and arrest reports related to the demonstration and property damage.” CHP responded that it has “identified Computer Aided Dispatch (CAD) logs that are responsive to your request.” It further noted that “[t]he Department’s criminal investigation, however, is still ongoing,” and that “[t]o avoid endangering the successful completion of this investigation, the Department is withholding all information from these logs on these times.” As justification, CHP cited only Section 6254(f).

As CHP publicly announced on March 8, 2017, the investigation is complete. Thus, the department’s stated basis for withholding the CAD logs has disappeared and it should disclose those records.

In any event, Section 6254(f) does not permit withholding of all the records sought by Mr. Maass relating to “calls for service, incident reports, and arrest reports.” Indeed, Section 6254(f)(1)-(3) specifically requires the disclosure of:

(1) The full name and occupation of every individual arrested by the agency, the individual’s physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3

(Gov. Code § 6254(f)(1)-(3).)

Accordingly, CHP must release the information set forth in Section 6254(f)(1)-(3). To the extent that information is contained in documents that also contain information properly subject to withholding, CHP has an obligation to redact the exempt information and provide the rest. (Gov. Code § 6253(a).)

3. Request for Records Pursuant to CPRA

FAC hereby request the records set forth below. This request is submitted pursuant to the CPRA; the California Constitution, Article I, section 3; and FAC's rights of access under California common law.

FAC requests the following records:

- (1) All communications and internal documentation relating to Dave Maass' request for public records submitted to CHP on June 29, 2016, and the follow-up request submitted by Mr. Maass on March 20, 2017;**
- (2) The permit application for the Traditionalist Worker Party demonstration that occurred at the California State Capitol on June 26, 2016;**
- (3) The permit ultimately granted for the same demonstration;**
- (4) Calls for service and arrest reports related to the same demonstration.**

As to requests (2) and (3), as explained above, Section 6254(f) provides no basis to withhold these records. As to request (4), to the extent any of the records sought are legitimately subject to withholding under Section 6254(f), the information set forth in Section 6254(f)(1)-(3) must be disclosed, as explained above.

If any portion of the records requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) requires segregation and redaction of that material in order that the remainder of the information may be released.

If you believe that any express provision of law exists to exempt from disclosure all or a portion of the records FAC has requested, you must notify FAC of the reasons for the determination not later than 10 days from your receipt of this request letter. (Cal. Gov't. Code § 6253(c).) Any response to this request that includes a determination that the request is denied, in whole or in part, must be in writing. (Cal. Gov't. Code § 6255(b).)

Government Code section 6253(d) prohibits the use of the 10-day period, or any provisions of the CPRA or any other law, "to delay access for purposes of inspecting public records."

In addressing this request, please keep in mind that the California Constitution expressly requires you to broadly construe all provisions that further the public's right of access, and to apply any limitations on access as narrowly as possible. (Cal. Const.,

Art. 1, sec. 3(b)(2).) The CPRA recognizes “no limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.” (Gov. Code § 6257.5.)

Please send all responses to my email address below. Please contact me to obtain my consent before incurring copying costs, chargeable to FAC, in excess of \$100. Thank you for your timely attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Snyder', with a stylized flourish at the end.

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