



February 5, 2024

VIA ELECTRONIC MAIL

Tuolumne County Board of Supervisors
2 S. Green St., Floor 4
Sonora, CA 95370

Email: bospublic@co.tuolumne.ca.us

Re: Repeal of Public Records Fee Ordinance

Dear Board Members:

We write on behalf of the First Amendment Coalition and the American Civil Liberties Union of Northern California to urge that the board vote to repeal Chapter 3.44 of the Tuolumne County Ordinance Code related to fees for California Public Records Act requests and to explain why that decision would uphold the public's constitutional right to know.

Our organizations both advocate for and depend on access to public records to fulfill our missions. As we [have documented](#), charging high fees for public records can amount to a transparency tax that hinders access to information and threatens to leave communities less informed about what the government is doing in their name.

As part of our work to protect the public's right to know, we submitted a public records request to the county in January. We sought to learn whether the county was enforcing a 2012 ordinance that purports to allow it to charge for the time spent by staff searching for, compiling, and delivering records in response to requests made under the California Public Records Act. County counsel's reply that the county had ceased charging such fees in 2019 was welcome news. We further appreciated county counsel's advisement that the office intended to recommend repealing the fee ordinance.

As county counsel correctly notes in the memo to the board recommending repeal, it is unlawful to impose fees on the public for staff time spent responding to requests. And while the ordinance has apparently not been enforced since 2019, we agree that repeal of Chapter 3.44 is in the public's interest, as it ensures no such unlawful fees could be assessed in the future. We believe the repeal is also in the county's best interest as it avoids the specter of liability that would arise if our organizations were forced to challenge the ordinance in court.

To help deepen your understanding of California's strong protections ensuring government transparency, we share the legal basis for our opposition to such fees. In *National Lawyers Guild v. City of Hayward* ("NLG") (2020) 9 Cal.5th 488, 493-94, the California Supreme Court

confirmed that the California Public Records Act does not authorize fees for locating, reviewing, and redacting records. (See *also* Gov. Code, §§ 7922.530, 7922.575.) As the Court noted, such fees “could well prove prohibitively expensive for some requesters, barring them from accessing records altogether.” (*NLG, supra*, 9 Cal.5th. at p. 507.) This same controlling case law is also set forth in county counsel’s memo.

We applaud county counsel for recommending the repeal of Chapter 3.44 of the county code and urge the board to vote in support of the repeal.

Thank you for your attention to this important matter and for respecting the people’s right to know.

Sincerely,



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cc: Sarah Carrillo, County Counsel
Heather D. Ryan, Board Clerk