Annie Cappetta
Legal Fellow
acappetta@firstamendmentcoalition.org

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VIA ELECTRONIC MAIL

Devora Navera Reed, General Counsel
Los Angeles Unified School District
Office of General Counsel
333 S. Beaudry Avenue, 20th Floor
Los Angeles, California 90017

Email: pra@lausd.net; devora.naverareed@lausd.net

Re: California Public Records Act Requests for Records Related to Employee Misconduct

Dear Devora Navera Reed:

The First Amendment Coalition ("FAC") is a nonprofit public interest organization dedicated to advancing free speech, open and accountable government, and public participation in civic affairs. I am writing on behalf of FAC to address your response to a California Public Records Act ("CPRA") request submitted by journalist Holly McDede for records related to misconduct alleged against current and former District employees.

The California Constitution and CPRA require state and local agencies to make any public record available for inspection or copying on request unless the record falls within a specific exemption. Cal. Const. art. I, § 3(b)(1); Gov't Code §§ 7922.000, 7922.525, 7922.530(a). This letter explains how the District is violating the CPRA by (1) charging unlawful fees, (2) asserting improper exemptions, and (3) delaying disclosure of non-exempt records. The District must disclose the requested records for no more than the direct costs of duplication at the earliest opportunity to avoid exposure to costly litigation.

On June 14, 2024, Ms. McDede requested "complaints specifically alleging sexual harassment or sexual assault by teachers against students, reported to the district either by students, parents, or school employees" ("Part One") and "all reports to the California Commission on Teacher Credentialing regarding formal complaints of misconduct regarding sexual harassment, sexual assault or sexual grooming behavior against teachers or other school employees" ("Part Two") from 2014 to the date of the request.

For 11 months, the District failed to determine whether disclosable records responsive to Ms. McDede's request existed or assert any exemptions. On May 13, 2025, the District ultimately assessed Ms. McDede $8,000 in fees to "investigate approximately 2,500 potentially responsive personnel files," on the theory that the preliminary search for records responsive to Part One of her request would "require data compilation, extraction and programming to produce the information."

In response to Part Two of Ms. McDede's request, the District asserted that the records requested "if [they] existed, would be exempt" pursuant to the exemption for "personnel, medical

or similar files," Gov't Code § 7927.700, as well as sections of the Education Code that govern disclosure of records by the Commission on Teacher Credentialing ("CTC").

Besides Ms. McDede, other members of the public have also requested employee-misconduct records and faced similar extended delays in receiving any substantive response from the District. This pattern of delaying and obstructing public oversight of District personnel misconduct, investigations, and discipline impairs trust in its schools and jeopardizes student safety. Immediate action toward disclosure for no more than the direct costs of duplication is necessary to avoid exposure to litigation over the District's troubling secrecy.

1. **Illegal fee assessment**

The CPRA limits what agencies can charge for copies of records. Unless a "statutory fee" applies, which is not at issue here, the CPRA limits fees to "direct costs of duplication," except for certain "cost[s] of programming and computer services" for electronic records in limited circumstances that do not apply here. Gov't Code §§ 7922.530(a), 7922.575(b).

The California Supreme Court has recognized "that increased public access to government information has costs" arising from the "need to locate and collect records, determine which records are responsive, determine whether any portions of responsive records are exempt from disclosure, convert the records into a reviewable format, and, if requested, create a copy of the record." *Nat'l Laws. Guild v. City of Hayward*, 9 Cal. 5th 488, 493 (2020). "To complete these tasks generally requires personnel time as well as the use of office equipment and supplies—all of which comes with a price tag. The PRA acknowledges as much and allocates certain costs to the requester, while others must be borne by the agency responding to the requests." *Id.*

With a limited exception for certain electronic records not at issue here, the CPRA allocates to the requester only "direct costs of duplication," which exclude charges for "staff time involved in searching the records, reviewing records for information exempt from disclosure under law, and deleting such exempt information." *Id.* at 493. Therefore, an agency "could not charge for time spent redacting a hard copy" or "recover the costs of searching through a filing cabinet." *Id.* at 501, 506.

As to electronic records, the CPRA contains a narrow exception allocating to the requester "the cost to construct a record" when the "request would require data compilation, extraction, or programming to produce the record." Gov't Code § 7922.575(b). This exception covers "retrieving responsive data" not already compiled, such as "pulling demographic data for all state agency employees from a human resources database and producing the relevant data in a spreadsheet," but it does not "cover time spent searching for responsive records in an e-mail inbox or a computer's documents folder" or "the cost of redacting exempt data from otherwise producible electronic records." *Nat'l Laws. Guild,* 9 Cal. 5th at 506.

The exception permitting increased fees for electronic records "applies *only* when a PRA request requires a public agency to produce a record *that does not exist* without compiling data, extracting data or information from an existing record, or programing a computer or other electronic device to retrieve the data." *Id.* at 497 (cleaned up) (emphasis added). Therefore, regardless of whether electronic or hard copies are requested, the CPRA does not allow

agencies to charge for time spent locating, reviewing, or redacting records that already exist in a disclosable format.

That rule is reinforced by "California's constitutional directive to 'broadly construe[]' a statute 'if it furthers the people's right of access.'" *Id.* at 507 (quoting Cal. Const. art. I, § 3(b)(2)). Given that search, review, and "[r]edaction costs could well prove prohibitively expensive for some requesters, barring them from accessing records altogether," the California Supreme Court held "Article I, section 3 of the state Constitution favors an interpretation that avoids erecting such substantial financial barriers to access." *Id.* (disallowing charges of "more than $3,000" to redact "six hours of responsive video" concerning police treatment of protesters).

Here, Ms. McDede sought existing records of formal complaints of sexual harassment or sexual assault by teachers against students that had been investigated by the district. Searching for such records may involve reviewing existing personnel files and keyword searching emails among other tasks, but these are nonchargeable "document retrieval" activities, *Cal. Pub. Recs. Rsch., Inc. v. County of Stanislaus*, 246 Cal. App. 4th 1432, 1454 (2016), involving "time spent searching for responsive records in an e-mail inbox or a computer's documents folder," *Nat'l Laws. Guild*, 9 Cal. 5th at 506.

The District's $8,000 charge is so prohibitive that it effectively denies disclosure. To ensure the right to transparency does not depend on wealth, agencies may not charge search, review, or "redaction costs as a condition of gaining the access the PRA promises." *Id.* at 508. To avoid exposure to litigation, the District must search for and release any non-exempt records that exist in disclosable formats—pdfs, emails, Microsoft Word documents, letters, and the like—without charging fees greater than the direct cost of duplication.

If the District maintains that "data compilation, extraction and programming" are necessary to produce records responsive to Part One of Ms. McDede's request, it must detail to her the technical processes it would undertake to produce disclosable records or violate Government Code section 7922.600(a), which requires the District to assist requesters by describing "the information technology and physical location in which the records exist" and providing "suggestions for overcoming any practical basis for denying access to the records or information sought."

2. Records related to employee misconduct must be disclosed as specified in governing law

The personnel-records exemption is not a blanket shield against disclosure of records related to public-employee misconduct, as the District's response to Ms. McDede suggested. By its terms, the exemption requires balancing the employee's right to privacy against the public's interest in disclosure.[1] *Braun v. City of Taft*, 154 Cal. App. 3d 332, 345 (1984). "In weighing these

[1] In response to Ms. McDede's request, the District also cited Education Code sections 44230, 44438, and 44248(a) as bases to withhold the records. As a threshold matter, Education Code sections 44230 and 44248(a) do not impose any restriction on a school district releasing public records; they only prevent certain disclosures "by the commission [on teacher credentialing]"

competing interests, we must determine the extent to which disclosure of the requested item of information will shed light on the public agency's performance of its duty." *Associated Chino Tchrs. v. Chino Valley Unified Sch. Dist.*, 30 Cal. App. 5th 530, 539 (2018) (cleaned up).

As applied to allegations of misconduct against public employees, "where the charges are found true, or discipline is imposed, the strong public policy against disclosure" of private matters "vanishes; this is true even where the sanction is a private reproval. In such cases a member of the public is entitled to information about the complaint, the discipline, and the information upon which it was based." *Am. Fed'n of State, Cnty. & Mun. Emps. v. Regents of Univ. of Cal.*, 80 Cal. App. 3d 913, 918 (1978) (cleaned up).

Even without a finding that a complaint is true, "if the information in the agency's files is reliable and, based on that information, the court can determine the complaint is well founded and substantial, it must be disclosed." *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 1275 (2012) (upholding disclosure of records related to reprimand of teacher for violating district's sexual harassment policy).

With respect to high-ranking public employees, such as a school district superintendent, courts apply "a lesser standard of reliability," requiring disclosure of allegations and related investigations unless "the allegations were so unreliable the accusations could not be anything but false," because the public has a compelling interest in understanding how the agency conducted its investigation and whether it improperly exonerated a high official or made a "sweetheart deal" with the official. *BRV, Inc. v. Superior Ct.*, 143 Cal. App. 4th 742, 759 (2006).

The District must carefully balance these public interests to determine whether disclosable records exist in response to both parts of Ms. McDede's request. It is simply not credible that the District never found an allegation of misconduct to be true, imposed discipline in response to such an allegation, or received a well-founded and substantial allegation of misconduct responsive to Ms. McDede's request. Indeed, the request covers records from 2014 to the present, and the Los Angeles Times reported in October 2015 that the District's "Student Safety Investigation Team," assembled in 2014, had already "opened 219 investigations, … and completed 180. … Of those, 30 resulted in dismissal proceedings," according to the District.[2]

FAC therefore requests that the District apply this governing law in searching for and review of records responsive to Part One of Ms. McDede request, as well as re-review records responsive to Part Two of her request to the extent the District incorrectly asserted inapplicable exemptions or failed to appropriately balance the public interest in disclosure against any privacy interests

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and any "State Department of Education employee." Education Code section 44438 prevents school districts from disclosing a written "private admonition" issued to their employees *by the CTC* but does not prevent disclosure of the districts' *reports to the CTC.* Ms. McDede requested only the latter reports.

[2] Howard Blume & Shelby Grad, *Amid acclaimed teacher's firing, LAUSD faces test over how it handles misconduct allegations*, L.A. Times (Oct. 15, 2015, 8:11 AM), https://www.latimes.com/local/lanow/la-me-ln-a-famous-teacher-faces-misconduct-allegations-lausd-faces-test-20151015-story.html.

under controlling precedent. Failure to do so risks litigation for improperly applying the exemption.

3. Duty to respond promptly to CPRA requests

An agency's unreasonable delay in disclosing non-exempt records is also actionable under the CPRA. Gov't Code § 7923.000 ("Any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right under this division to inspect or receive a copy of any public record or class of public records.") The CPRA requires a California court to compel disclosure, or order the government to show cause as to why it should not compel disclosure, whenever "certain public records are being *improperly withheld* from a member of the public." Gov't Code § 7923.100 (emphasis added).

An agency does not need to formally deny a request to improperly withhold documents; it is actionable when agency merely holds back or refrains from producing the records within a reasonable time or without claiming a specific exemption. *See id.; Friends of Oceano Dunes v. Dep't of Parks & Recreation*, No. 34-2020-80003496, 2021 Cal. Super. LEXIS 110202, *10–11 (noting that the appellate cases that "mention timeliness seem to acknowledge that an agency acts properly so long as it … produces all requested records in a 'reasonably timely' or 'reasonably prompt' manner given the breadth of the particular request. The touchstone thus appears to be reasonableness.") (first citing *Pac. Merch. Shipping Ass'n v. Bd. of Pilot Comm'rs*, 242 Cal. App. 4th 1043,1059 (2015); then citing *Rogers v. Superior Ct.*, 19 Cal. App. 4th 469, 483 (1993); and then citing *Humane Soc'y v. Superior Ct.*, 214 Cal. App. 4th 1233, 1239, n.6 (2013)). As the Court of Appeal has said, "the *effect* of" a local agency's "inability or unwillingness to locate and produce these documents until court-ordered discovery ensued … , is tantamount to withholding requested information from a PRA request." *Sukumar v. City of San Diego*, 14 Cal. App. 5th 451, 466 (2017) (emphasis original).

The CPRA also requires that "[n]othing in this division shall be construed to permit an agency to delay or obstruct the inspection or copying of public records" and that an agency "shall make the records promptly available." Gov't Code §§ 7922.500, 7922.530(a). The provisions prohibiting delay, mandating prompt disclosure, and authorizing suit for improper withholding must be read together. *City of San Jose v. Superior Ct.*, 2 Cal. 5th 608, 617 (2017) (holding that consideration of portions of a statute must be made in the context of the entire statutory scheme). Unreasonable delays in production violate these provisions because such delays would "permit an agency to delay or obstruct the inspection or copying of public records" indefinitely and without consequence. *See* Gov't Code §§ 7922.500, 7922.530(a).

Except where the statutes are materially different, California courts look to cases interpreting the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for guidance in interpreting the CPRA. *Citizens for A Better Env't v. Dep't of Food & Agric.*, 171 Cal. App. 3d 704, 712 (1985) (holding that FOIA may be used to interpret the CPRA). FOIA, like the CPRA, requires responsive records be produced "promptly" after an initial determination has been made by the responding agency. 5 USC § 552(a)(3)(A); *Citizens for Resp. & Ethics in Wash. v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013). Federal courts interpret "promptly" to "mean within days or a few weeks of a

'determination,' not months or years." *Citizens for Resp. & Ethics in Wash.*, 711 F.3d at 188; *see also Sierra Club v. U.S. EPA*, No.18-cv-03472, 2018 U.S. Dist. LEXIS 219383, at *14 (N.D. Cal. Dec. 26, 2018) (same) (quoting *Citizens for Resp. & Ethics in Wash.*, 711 F.3d at 188).

When an agency delays disclosure for months or years without justification, this "amounts as a practical matter in most cases to saying 'regardless of whether you are entitled to the documents, we will not give them to you.'" *Fiduccia v. U.S. DOJ*, 185 F.3d 1035, 1041 (9th Cir. 1999). As the D.C. Circuit said with respect to FOIA, "the statute does not allow agencies to keep FOIA requests bottled up for months or years on end while avoiding any judicial oversight." *Citizens for Resp. & Ethics in Wash.*, 711 F.3d at 190. The same is true for the CPRA.

The District has kept Ms. McDede's request bottled up for nearly a year, apparently without even searching for records responsive to Part One of her request or carefully reviewing records responsive to Part Two to determine whether the personnel records exemption or any other exemption correctly applies. Over six months after Ms. McDede submitted her request, the District even represented to Ms. McDede that it would be producing disclosable records, only to ultimately deny the request after four more months. *See* E-mail from Chris Harris, Senior Paralegal, L.A. Unified Sch. Dist. to Holly McDede (Jan. 7, 2025, 7:40 AM) ("The District has compiled responsive records, which have been sent to the Custodian(s) of Record for final review.").

The District has unlawfully delayed disclosure considering that it has apparently not even searched for records responsive to Part One of Ms. McDede's request in over 11 months since she submitted it. Even though the District has asserted the personnel-records exemption and may consider Part Two of the request closed, FAC considers it also delayed given the District's improper blanket application of the personnel-records exemption and citations to inapplicable sections of the Education Code.

These violations of the CPRA expose the District to litigation that would result in an order compelling disclosure under the CPRA and an award of substantial attorneys' fees and expenses. Gov't Code § 7923.115. I hope this matter may be resolved without litigation if possible, and we are glad to discuss it with the District's General Counsel or otherwise. Please let me know if the District will promptly disclose the records Ms. McDede requested and make it unnecessary to pursue legal action to vindicate the public's right to disclosure.

Sincerely,

FIRST AMENDMENT COALITION

Annie Cappetta
Legal Fellow