

Filed OCT 6 2006
ROSA JUNQUEIRO, CLERK

By GRACE HEALY
DEPUTY

Space above for use of Court only

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

MARY GRUNDMAN, ANDREW GRUNDMAN,
JANET LIGHTFOOT, JAMES AMESTOY AND
BRUNO MORI

Plaintiffs,

v.

CALIFORNIA RECLAMATION DISTRICT NO. 348,
ALLEN BARONI, ALECK DAMBACHER, WILLIAM
STOKES, in their official capacities as
Trustees of California Reclamation
District 348

Defendants.

CASE NO. CV030243

Dept. 13

CERTIFICATE OF MAILING

I, the undersigned, declare that I am a Deputy Clerk of the County of San Joaquin, State of California, and not a party to the action, and that on OCT 6 2006, I deposited in the United States Post Office at Stockton, California, a true and correct copy of the DECISION ON PETITION FOR DECLARATORY RELIEF UNDER THE PUBLIC RECORDS ACT, of which a printed copy is attached and made a part hereof, one copy of which being addressed to the following named person(s) at the following named address(es):

CYNTHIA J LARSEN ESQ
JOHN M MURRAY ESQ
ORRICK HERRINGTON & SUTCLIFFE LLP
400 CAPITOL MALL STE 3000
SACRAMENTO CA 95814 4497

JOHN B RUDQUIST ESQ
GEIGER COON & KEEN LLP
311 EAST MAIN ST STE 400
STOCKTON CA 95202

I further declare that each of said copies so mailed and addressed was enclosed in a separate envelope, sealed, with the postage thereon fully paid.

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

Executed at Stockton on the above date

GRACE HEALY

Deputy Court Clerk

1 counsel for the District. All responses are similar, stating that the District cannot comply with
2 the requests because they are overly broad, do not reasonably describe the documents sought,
3 may involve attorney-client or attorney work product privileges, and that on balance, in this
4 specific case, the public interest by not disclosing the records outweighs the public interest
5 served by disclosure. The District also suggested in the response letters that the requests
6 appeared to demonstrate a "...burdensome and oppressive intent..." by Petitioners and their
7 attorneys.

8 ANALYSIS

9 As a starting point, the Court notes the strong public policy embodied in the CPRA,
10 which favors disclosure of public records, and which requires that exemptions from disclosure
11 are to be narrowly construed (California State University v. Superior Court (2001) 90
12 Cal.App.4th 810). The CPRA provides two circumstances in which refusal to disclose may be
13 appropriate; express exemptions, such as those found in Sec. 6254 (e.g., employees' medical
14 information or pending litigation files) and the "catch-all" provision of Sec. 6255 which allows
15 non-disclosure based on the particular facts in a specific case. This latter provision requires a
16 weighing of the public's interests in disclosure versus non-disclosure, and must be applied
17 narrowly. The burden is on the public agency to show good reason why the records should not
18 be disclosed (California First Amendment Coalition v. Superior Court (1998) 67 Cal.App.4th
19 159).

20 With this presumption in favor of disclosure, it is thus incumbent on Respondents to
21 show why the documents shouldn't be provided. A final determination of the issues will
22 therefore turn on whether the justification for the exemptions claimed in Respondents'
23 Opposition is sufficient.

24 A. Unclean hands

25 Respondents' first stated basis for refusal to provide the documents for inspection
26 alleges that Petitioners have unclean hands. On this point, Respondents contend that Petitioners
27 are merely "malcontents" living in the District who have acted in bad faith, and seek the
28 voluminous production merely to harass the District and its directors. There is little supporting

1
2 evidence in the record for this claim, and even if true, it would appear irrelevant.

3 While the file contains clear indications of a history of contentiousness between some or
4 all the Petitioners and the District, that does not appear to justify denial of inspection of public
5 records. The motive of a person seeking inspection of public records is not relevant. It has been
6 observed by appellate courts that "...all public records may be examined by any member of the
7 public, often the press, but conceivably any person *with no greater interest than idle curiosity*"
8 (Marylander v. Superior Court (2000) 81 Cal.App.4th 439) [emphasis supplied]. This strongly
9 suggests that enmity between the parties would be immaterial as to the issue of whether the
10 documents should be produced.

11 A question also arose during oral arguments as to whether the equitable defense of
12 unclean hands may be asserted in a statutory cause of action as found in the CPRA. Research
13 has revealed no case on point, but intuitively, it would not seem likely. Historically, equity is
14 invoked only when law fails. The CPRA is a comprehensive statute, addressing in detail the
15 scope of its reach. The only "defenses" (i.e., bases for failure to disclose records) are those
16 found in Sections 6254 and 6255.

17 B. Attorney-client or attorney work product exemptions

18 Respondent takes the position that the requests could be read as calling for privileged
19 information exempted from disclosure under Section 6254(b) and 6254(k). There may be some
20 legitimacy to this argument, but that will require further inquiry by the Court.

21 Section 6254(b) provides an exemption for records pertaining to "...pending litigation to
22 which the public agency is a party... until the pending litigation has been finally adjudicated or
23 otherwise settled..." Any litigation files no longer deemed "pending" would thus appear to be
24 subject to inspection. Respondent should find it easy to determine which files are "pending" and
25 which are not. As to those portions of a litigation file which reflect the attorneys' legal
26 opinions, research, impressions, etc., these may well fall into the category of attorney work-
27 product. An in-camera inspection would be required to determine if the exemption applied
28 (County of Los Angeles v. Superior Court [Axelrad] (2000) 82 Cal.App.4th 819, 831). It is

1 further noted the language of Section 6254(b) indicates that while the privilege against
2 disclosure of litigation files would seem to end when the litigation is finalized, the attorney
3 work product privilege may continue.

4 It will be necessary for Respondent to provide for in-camera inspection any files in
5 which the above litigation or attorney work product exemptions are claimed.

6 C. Overbroad/vague requests for documents

7 According to counsel, the District has been in existence for more than one hundred
8 years. It is a relatively small agency, with no full time administrative employees and no
9 permanent office. All records (approximately 60 bankers' boxes, according to Declaration) are
10 retained at the law offices of the firm representing the District.

11 While the practical limitations of a small public agency may make it more difficult to
12 comply with requests under the CPRA than those directed to larger agencies with full-time
13 clerical staffs, that situation does not excuse compliance with CPRA. Even smaller agencies
14 owe the public they serve all reasonable efforts to keep the people informed.

15 Respondents claim that full responses to the requests would be burdensome because of
16 the manner in which the records are retained, although it is not clear what manner of
17 organization is used. That is not, *per se*, a valid excuse for non-disclosure. As pointed out by
18 Petitioners, it is presumed that some burden on the agency will occur in responding to such
19 requests, but this will only excuse non-disclosure when the burden is clearly so onerous as to
20 outweigh the public interest in disclosure (State Board of Equalization v. Superior Court (1992)
21 10 Cal.App.4th 1177).

22 Government agencies have a responsibility to maintain their records in such a manner as
23 to facilitate locating records requested under the CPRA. This duty cannot be avoided by
24 claiming records are not organized in a fashion allowing easy compliance with inspection or
25 production requests. No satisfactory explanation was presented by the District of exactly how it
26 maintains its records (e.g., chronologically, by project, by parcel, etc.), but 60 boxes of
27 documents doesn't appear an overwhelming volume to comb in order to respond to specific
28 requests. If an agency can't even supply for inspection a copy of its own internal policies for

1 such things as how meetings are to be held, something appears wrong with the way in which
2 records are kept.

3 On the issues of over-breadth and vagueness, it appears necessary to address the
4 requests individually, since some categories of documents requested clearly are overbroad, and
5 if interpreted strictly, would require production of virtually all the documents in the District's
6 possession. For example, in Exhibit "A", the undated letter from Mary Grundman, Request #2
7 asks for "... [a]ny and all documents which depict, reflect or related to receipts for expenses
8 paid..." This request ostensibly calls for every document in the possession of the District which
9 reflects *any* expenditure, whether for salaries, supplies or contract payments, for a period of up
10 to one hundred years.

11 On the other hand, some of the District's objections are not well taken, such as its claim
12 that the definitions of "District", "you" and "your" included in the request are overly broad. The
13 definitions stated in the requests appear similar to those regularly used in discovery requests
14 conducted as part of ordinary civil litigation. No case was cited, and the Court found none, in
15 which these terms were deemed overbroad. Since it has been represented that the District has no
16 full-time administrative employees, it would appear to be fairly simple to determine names of
17 board members, field employees and agents acting on behalf of the District, even for a period of
18 1980 to present.

19 D. Exemption under Section 6255 (Balancing of interests in disclosure vs. non-
20 disclosure)

21 District asserts that the burden of producing the requested documents outweighs the
22 public interest to be served by disclosure, relying on Gov. Code Section 6255(a) which states:

23 The agency shall justify withholding any record by demonstrating that
24 the record in question is exempt under the express provisions of this
25 Chapter, or that on the facts in a particular case the public interest
26 served by not disclosing the record clearly outweighs the public
27 interest served by disclosure of the record.

27 In support, District cites Times Mirror v. Superior Court (1991) 53 Cal.3d 1325 for the
28 proposition that in balancing the two competing interests, the nature and scope of the request

1 should be considered. The Times Mirror case provides no support for Respondents' position. In
2 that matter, the documents sought were the Governor's personal appointment calendars, and the
3 considerations militating against disclosure were (1) the Governor's personal safety, and (2)
4 possible infringement on the executive decision making process. No such interests are involved
5 here.

6 The burden to which District refers appears to be the time it would take to go through (at
7 most) 60 boxes of documents. The District has made no demonstration *at all* of the time it
8 would take to examine all the records. Even presuming that Respondent might have to assign
9 the task of going through the 60 boxes to a temporary clerical worker, it doesn't seem likely
10 that would require more than a few hundred dollars in labor costs. Based on the efficiency of
11 District's methods of record keeping, it could well be less.

12 E. District's obligation to assist in making a focused request (Gov. Code Section 6253.1)

13 Govt. Code Section 6353.1 places upon agencies subject to the CPRA the obligation to
14 assist members of the public to the extent reasonable in making a "...focused and effective
15 request that reasonably describes an identifiable record..." Although not directly raised in
16 Petitioners' Points and Authorities, the statute was cited by Respondents in their Opposition and
17 argued at hearing.

18 The impression left with the Court is that neither side really wanted to focus or pare
19 down the requests. The inspection requests appear intentionally broad (e.g., "any and all
20 documents between the District and any other governmental agency concerning levee
21 maintenance or rehabilitation from 1980 to present") and it may be suspected that Petitioners
22 didn't want Respondents' help in determining what documents they would inspect.

23 Respondents never produced anything, even though some of the requests were clear and
24 straightforward (e.g., all correspondence and documents from 1980 to present involving
25 contracts between the District and Ford Construction Co.).

26 It is concluded that any assistance offered by the District to Petitioners would have
27 likely been futile in resolving the disputes between the parties.

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

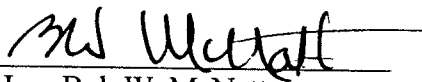
CONCLUSION

To try to sort out the intricacies of the documents and time frames requested in the 54 categories contained in the requests presents a Gordian Knot. Trying to decide if a document “relates to” another document would require undue effort. However, sixty boxes of documents is a small Gordian Knot to cut.

Within 20 days, Respondent shall produce and make available for copying by a licensed attorney-services or duplicating company all documents in District’s possession covering the period from 1990 to present (sixteen years of documents). To the extent the requests seek any documents earlier than that, they are deemed overbroad. Costs of having the actual copying done by the outside company shall be borne by Petitioners, with no further charges by the District. A representative of the District may be present during any such copying and inspection.

Respondents shall, before making the documents available for inspection and copying, inspect and remove all documents subject to the pending litigation, attorney-client or attorney work product privilege. These shall be enumerated in a privilege log, and subject to in-camera inspection.

Dated: 10/3/06


Hon. Bob W. McNatt
Judge of Superior Court