

# LAW OFFICES OF KELLY AVILES

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April 12, 2013

Claire Bartels  
Chief Deputy Controller  
Office of the Controller  
City of Los Angeles  
200 North Main Street, Suite 300  
Los Angeles, CA 90012

*(Via US Mail and email to [claire.bartels@lacity.org](mailto:claire.bartels@lacity.org))*

**Re: Public Records Request by Los Cerritos Community Newspaper Group**

Dear Ms. Bartels:

I am in receipt of your correspondence dated April 4, 2013.

First, you have grossly mischaracterized the breadth of my client's requests. You state that my client "sent two letters with five separate and distinct public records requests, the contents of which were broken down into 28 separate sub-requests. Taken together, the letters require a review of thousands, perhaps tens of thousands, of records located within our office." This is a complete exaggeration. My client's first request, dated January 22<sup>nd</sup>, sought communications between Ms. Greuel and only three individuals, Brian D'Arcy, John Shallman, and Rose Kapolczynski, over a two-year period.

My client's second request, dated January 23<sup>rd</sup>, sought just two items. The first can be described as inter-office emails to or from Wendy Greuel, pertaining to Los Cerritos Community Newspaper, Cerritos Community Newspaper, Cerritos News, Brian Hews, Randy Economy, Kevin James, Lydia Grant, John Weaver, Jeff Corless, John Shallman, Rose Kapolczynski, Dave Jacobson, and Dan Loeterman. The second was for outside communications between Ms. Greuel and the same individuals. These searches, if done correctly, would take only a short time to run. The requests overlapped significantly and it is inaccurate to categorize them as "28 sub-requests." Los Cerritos Community Newspaper, Cerritos Community Newspaper, Cerritos News, Brian Hews, and Randy Economy are all associated with Los Cerritos Community Newspaper Group. Further, this request sought communications over a timespan of just 21 days.

Second, the law governing your response time and the production of responsive records is not as you state. First, while we agree that the law does not require production within 10 days, it does require a response within 10 days. Government Code 6253 governs that response, and requires that it contain a determination of whether the request seeks "disclosable" public records. The only way you could provide such a determination is if a search for and initial basic review of documents has already been completed. But as of the date of your letter, approximately 70 days after my client's request, you do not even suggest that a search has actually been completed. Since virtually all

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communications are generated electronically, a computer search of documents and emails to produce the vast amount of the responsive records could have been done in a matter of minutes. Had this actually been completed in the initial timeframe required by law, you could have then informed my client of a reasonable estimate of how long it would take your office to review and produce records, based on the number of documents that actually existed. Regardless of whether the delay is an intentional obstruction of the public's rights, or is simply a negligent dereliction of our state's transparency requirements, the law does not differentiate. Access delayed is access denied.

Further, the time for the above-described "determination" can only be extended under "unusual circumstances" set forth in Government Code 6253(c), which are limited to the following situation, none of which are present here:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

All of these requirements are qualified by Government Code section 6253(d), which states, "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records." All of the requirements in the public records act should be taken in the context in which it was intended: to provide the public and the press with access to records at a time when they are still relevant.

Further, my guess is that once if we are forced to file suit and seek discovery regarding exactly what was done in response to my client's request, your statement that "many employees in our office have been working diligently to produce the non-exempt responsive records" will prove to be inaccurate.

Although we believe the delay in providing records is unreasonable and does not comply with your duties under the law, we will wait to take further action until after April 19<sup>th</sup>. While your April 4<sup>th</sup> voicemail stated that you wanted to assure me that your office was working to deliver the documents...and that "on or before April 19<sup>th</sup>" my client and I would "absolutely have all of the records," those statements differ from your correspondence, which merely "estimates" the date of production on or before April 19<sup>th</sup>. Please be informed that further delays will not be tolerated. If

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we do not receive the records in our office by April 19<sup>th</sup> at 5 p.m., we will be filing suit on April 20<sup>th</sup>, with no further correspondence to follow.

For the Firm,



Kelly Aviles

cc: Wendy Greuel, Controller (via email to [controller.greuel@lacity.org](mailto:controller.greuel@lacity.org))

Mike Dundas, City Attorney's Office (via email to [mike.dundas@lacity.org](mailto:mike.dundas@lacity.org))