

LAW OFFICES OF KELLY AVILES

September 4, 2013

Jorge Rifa
City Attorney
City of Commerce
2535 Commerce Way
Commerce, CA 90040

(via U.S. mail and email to jorger@ci.commerce.ca.us)

Re: Outstanding Public Records Requests

Dear Mr. Rifa:

My office represents Mike Alvarado and Richard Robles in their attempts to obtain public records from the City. In that regard, please direct all further communications regarding this matter to my office.

Mr. Alvarado and Mr. Robles have both contacted my office with concerns about unlawful delays in obtaining public records, as well as wrongful denials of records requests. For your reference, attached is a log describing the requests made, as well as the current status of the request.

As you can see, both Mr. Alvarado and Mr. Robles are still waiting for documents responsive to requests dating back more than two months. While I understand that it has been the City's contention that it is understaffed and busy, I believe that you will find that all public agencies suffer the same difficulties. However, that is not an excusable reason for failure to comply with the City's important legal obligation to provide the public with records that have been requested.

Further, the City has improperly denied requests for information related to legal expenses, and has provided a summary of records responsive to a request for information regarding city owned vehicles, instead of providing the actual records.

FAILURE TO RESPOND AND FAILURE TO PRODUCE RECORDS

The California Public Records Act ("CPRA," Gov. Code § 6250 *et seq.*) requires that an agency respond to a request for records 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 time for

the “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.

The only way an agency can provide such a determination is if a search for and initial basic review of documents has already been completed. Since virtually all of the requested documents are likely to be stored in an electronic format, 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.

Section 6253(b) states, “each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records **promptly** available...” In *Marken v. Santa Monica-Malibu USD* (2012) 202 Cal.App.4th 1250, 1268 n.14, the appellate court noted that it had “serious questions” regarding whether just a one-month delay complied with the Acts’ requirements relating to providing records promptly.

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 with access to records at a time when they are still relevant.

The City has not responded to a number of requests, as set forth in the attached log, or has delayed providing responsive records well outside the time which would be allowed under the CPRA. Therefore, please immediately respond to all outstanding requests and provide my clients with the copies of the records they have been waiting for.

ATTORNEY BILLING INFORMATION

On July 23rd, Angie Verdin notified my client that the City was declining to produce records sought relating to the City's legal expenses, including information about the payment of fees to outside and in-house attorneys, as well as Mr. Olivo's billing invoices.

The question of whether a public agency must disclose billing statements has already been answered in *County of Los Angeles v. Superior Court (Anderson-Barker)* (2012) 211 Cal.App.4th 57. The Court ordered that records related to the billing by and subsequent payment to the County's attorney, were disclosable public records, subject to redaction of portions of the records which would be considered attorney work product, such as the attorneys' impressions, conclusions, opinions, or legal research or theories. However, non-work product information, such as hours worked, by whom, and amounts charged, must be disclosed.

Similarly, a federal appellate court has observed that "the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected." *Clarke v. American Commerce National Bank* (9th Cir. 1992) 974 F.2d 127.

Therefore, please provide copies of the requested legal billing and payment records immediately.

EMAILS BETWEEN THE CITY COUNCIL AND THE CITY ATTORNEY

One of the requests at issue was for e-mails sent and received by council members, the city administrator, and the city attorney on July 15th and 16th. Over a month after the request was made, the City responded, notifying my client that a number of documents were available. The City also notified my client that some of the records were being withheld on the basis of attorney/client privilege. However, the City has failed to provide any information regarding the communications that would allow the person reviewing the response to determine whether those documents were properly withheld. For example, the city has not even provided information about how many documents have been withheld.

Therefore, please provide additional information regarding the communications withheld on the basis of attorney/client privilege.

TRANSPORTATION LOGS

One of the public records requests at issue related to vehicle maintenance records. In response, the City provided a summary of the records.

My client would like copies of the documentation used to create the summary for each vehicle, including:

1. The Current Mileage
2. The miles driven per year,
3. Records regarding the gas consumption,
4. Maintenance,
5. Body work or repairs
6. Logs of who used each vehicle and when

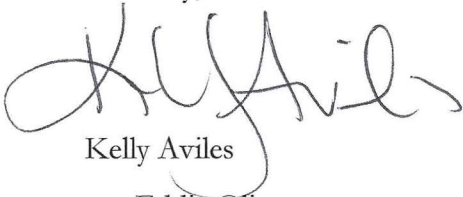
Please provide these records immediately.

CONCLUSION

While my clients' certainly hope to avoid litigation, should the City fail or refuse to comply as demanded, such action will lead my clients to seek a court order compelling the City to release the records, as well as an award of court costs and attorney fees incurred as a result of any litigation.

If you have any questions, or would like to discuss this further, please feel free to contact my office.

Sincerely,

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

Kelly Aviles

cc: Eddie Olivo

Richard Robles

Mike Alvarado