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Center for American Liberty

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE

Center for American Liberty,
a Virginia Not for Profit corporation;

Petitioner and Plaintiff

vs.

California Health and Human Services
Agency, a department of the State of
California, Mark A. Ghaly, M.D., in his
official capacity as Secretary; and DOES 1
through 250, inclusive;

Respondents and Defendants.

Case No.: 34-2020-80003512
Judge: Steven M. Gevercer
Dept: 27

UNLIMITED JURISDICTION

First Amended Verified Petition for Writ of
Mandate;
Complaint for Declaratory &
Injunctive Relief
[Gov. Code §§ 6250 et seq.]

Petitioner and Plaintiff Center for American Liberty, (“CAL”), alleges as follows:

1. In this action, CAL seeks to enforce its right to obtain public records pursuant to the California Public Records Act, Government Code¹ section 6250 *et seq.* (“CPRA”).

2. On May 30, 2020, CAL submitted a CPRA request to Respondent California Health and Human Services Agency (“Agency” or “CHHS”). The May 30, 2020 requests sought each set of data including but not limited to “scientific studies,” “peer reviews,” “medical studies,” “health care statistics,” “memorandum,” “correspondence,” “directives,” etc. “upon which the State of

¹ All undesignated code references are to the Government Code.

1 California and/or the CHHS based its decision to issue any and all “Shelter in Place”, “Face
2 Covering” and “Cancel Mass Gathering” orders from October 1, 2019 to the present date (May
3 30, 2020) regarding the COVID-19 pandemic;” as Request I, Number 1. Request I, Number 2
4 sought “Each set of data and/or correspondence, ... regarding each renewal or modification of
5 any Order; ...” Request I, Number 3 sought “A copy of any and all requests for similar records
6 ...” Request Number II sought the basis for the CHHS charges for direct costs for photocopying,
7 as required under California law if a governmental agency charges for photocopying. This was a
8 separate request from Request I, Numbers 1 – 3. A true and correct copy of Petitioner’s May 30,
9 2020 Public Records Act (“PRA 1”) is attached hereto as Exhibit A.

10 3. On June 9, 2020, CHHS send a letter via email response to CAL c/o Craig Alexander,
11 Esq. acknowledging receipt of the Request for Documents dated May 30, 2020. The letter
12 restated Request Number I, Requests Number 1 – 3, but failed to respond to Request Number II
13 regarding photocopy costs other than to restate the request on the top of page 2, instead of
14 providing responsive documents or asserting any privilege(s). The letter states: “Please be aware
15 that it is CHHS’s practice to provide responses to the Public Record Act requests electronically
16 and cost free.” While this explains that the CHHS does not charge for electronic records, it is not
17 responsive to how it determines costs for any copies. More to the point, the CHHS failed to state
18 there were any, or no, responsive documents – in violation of its duty under the CPRA. Two
19 non-privileged documents responsive to Request I, No. 1 were provided. Six non-privileged
20 documents responsive to Request I, No. 3 were provided. No responsive documents to Request
21 I, No. 2 or Request II were provided. The email further states that a COVID-19 website
22 provides the public “extensive information ... including extensive data sets ...” A true and
23 correct copy of Respondents June 9, 2020 email is attached hereto as Exhibit B.

24 4. Agency violated CAL’s right to obtain public records by not adequately responding to
25 CAL’s PRA 1 requests.

26 5. On June 9, 2020, CAL sent a letter via email to CHHS responding to CHHS’s June 9,
27 2020 letter. The letter explained CAL’s understanding that CHHS had invoked the “Deliberative
28 Process” exemption which CAL asserted is not absolute and that the government had the burden

1 to establish that the public interest in non-disclosure outweighs the public's right to disclosure.
2 The letter contained an explanation of the burden and then stated: "The Department [Agency]
3 simply has invoked the "exemption" without giving any justification for that withholding which
4 the Court in *Citizens for Open Gov't v. City of Lodi*, (2012) 205 Cal. App. 4th 296, 306 ruled
5 was insufficient." The email acknowledged that no privilege log or "Vaughn Index" (*Vaughn v.*
6 *Rosen* (9th Cir. 1973) 484 F. 2d 820, 828 cert. denied, 415 U.S. 977 (1974)) is required to be
7 provide by CHHS, but sought a discussion/dialogue and suggested CHHS waive exemption on
8 all documents in the interest of transparency. A true and correct copy of Petitioner's June 9,
9 2020 letter is attached hereto as Exhibit C

10 6. On June 12, 2020, CHHS sent a letter via email to Craig Alexander, Esq., in response to
11 his June 9, 2020 letter. "CHHS has worked to be transparent ..." citing a website
12 <https://update.covid19.ca.gov/#top> and two other websites. It also cited "dozens of public press
13 conferences ..." The email then went on to allege that the application of public interest in non-
14 disclosure overrode the public's interest in disclosure – in other words, why it isn't being
15 transparent. "That [the CPRA] request, on its face, seeks to probe the decisionmaking process of
16 CHHS and its leadership. As framed, the requested information is exempt from disclosure
17 because disclosing it would significantly chill, and thus hamper, the decision making process."
18 This is unsupported by any explanation of how disclosure of data or studies including already
19 published studies, would chill decision making and/or whether CHHS balanced the government's
20 needs versus the public's need for transparency. In other words, misdirection. The letter
21 concludes without support of any type: "California law does not require or support further
22 disclosure than the extensive information CHHS has already chosen to make transparent." This
23 is a clear admission that rather than respond to the CPRA requests, CHHS believes (yet hides)
24 that instead of providing responsive documents, it can instead cite websites that may have some
25 documents that may or may not contain responsive documents. CHHS offers no support for the
26 novel theory that instead of properly providing responsive documents, it can cite to websites.
27 Nor is there any evidence any of the "extensive" documents being provided or even included on
28 governmental websites (if such is even allowed as a substitute for responding with documents to

1 a CPRA request(s)). A true and correct copy of Respondent's, June 12, 2020 letter is attached
2 hereto as Exhibit D.

3 7. On July 16, 2020, CAL submitted a CPRA request to Respondent California Health and
4 Human Services Agency. This email acknowledges receipt of CHHS's June 12, 2020 letter. The
5 July 16, 2020 CPRA sets forth "NEW PUBLIC RECORDS ACT REQUESTS." These CPRA
6 requests sought documents upon which the State of California or CHHS based its Shelter in
7 Place, Face Covering, Cancel Church (and/or Worship) Gatherings, and Cancel Mass Gathering
8 orders during the corona virus (COVID-19) pandemic. A true and correct copy of Petitioner's
9 July 16, 2020 Public Records Act ("PRA 2") is attached hereto as Exhibit E.

10 8. On July 27, 2020, CHHS sent Craig Alexander, Esq., a letter via email acknowledging
11 receipt of the July 16, 2020 CPRA/letter and repeating the request(s). CHHS determined it
12 possesses responsive documents, but did not state how many or to which Request the documents
13 were responsive. CHHS stated the documents would be provided, if non-privileged, no later than
14 August 14, 2020. This letter stated succinctly, "... some records, may be exempt from
15 production based upon applicable privileges." No other details were provided on which requests
16 were being referred to, the number of documents that were being withheld, or which privileges
17 applied. A true and correct copy of Respondent's July 27, 2020 letter is attached hereto as
18 Exhibit F.

19 9. CHHS disclosed some documents in response to CAL's July 27, 2020 CPRA request
20 with a cover letter dated August 5, 2020. CHHS repeated its alleged exemptions / privileges
21 from its June 9, 2020 letter in its letter of August 5, 2020. A true and correct copy of
22 Respondent's August 5, 2020 letter is attached hereto as Exhibit G.

23 10. Agency violated CAL's right to obtain public records by not adequately
24 responding to CAL's PRA 2 requests.

25 11. On or about October 29, 2020 CAL caused Respondents to be served with its
26 original Petition for Writ of Mandate in this case.

27 12. On November 17, 2020, CAL submitted a CPRA request to Respondent
28 California Health and Human Services Agency. A true and correct copy of CAL's letter of

November 17, 2020 (“PRA 3”) is attached hereto as Exhibit H. CAL’s November 17, 2020 CPRA request, with some minor variations, was for documents dated between July 17, 2020 and November 17, 2020.

13. On November 19, 2020 CHHS issued its response to CAL’s Exhibit G in the form of a letter dated November 19, 2020 that included notice that CHHS was withholding responsive documents under claims of essentially the same exemptions and privileges as those claimed in response to CAL’s May 30, 2020 CPRA request (Exhibit A) and CAL’s July 16, 2020 request (Exhibit E). A true and correct copy of CHHS’s “closing letter” of November 19, 2020 is attached hereto as Exhibit I.

14. As part of CHHS’s response to PRA 3 on November 19, 2020, it submitted numerous documents including, but not limited to, responsive documents such as electronic mail messages dated May 7, 2020 electronic mail entitled “CHCF/IPSOS tracking poll of Californians May 8”, May 15, 2020 electronic mail entitled “5/19 webinar re COVID impact on hospitals” and May 22, 2020 electronic mail entitled “Budget matters”.

15. Agency violated CAL’s right to obtain public records by not adequately responding to CAL’s PRA 2 requests.

PARTIES

16. Petitioner and Plaintiff Center for American Liberty, (Petitioner or CAL) is a nonprofit public benefit corporation organized under the laws of Virginia.

17. Respondent and Defendant California Health and Human Services Agency is a division / department of the State of California (“Respondent” or “Agency”) is the public entity and it is a local agency as defined by the CPRA. On information and belief, the California Health and Human Services Agency is a part of, and an agency of, the State of California.

18. Respondent and Defendant Mark A. Ghaly M.D. (“Ghaly”) is the Secretary of the California Health and Human Services Agency. Ghaly has a ministerial duty to comply with the CPRA on Agency’s behalf.

19. The true names of Respondent and Defendant DOES 1 through 250, inclusive are unknown to Petitioner who therefore brings this Petition and Complaint against DOES 1 through

1 250, inclusive by such fictitious names, and will seek leave of this Petition, Writ and Complaint
2 to show their true names, identities, and capacities when they have been determined.

3 20. DOES 1 through 250 include the State of California and its department the
4 California Health and Human Services Agency officials, employees, contractors, and other
5 agents who have public records relating to Agency business in their possession.

6 21. Each Respondent and Defendant, including the DOE Respondents and
7 Defendants, are each other's agents and at all relevant times were acting as each other's agents.
8 Together, all Respondents and Defendants are the "Respondents."

9 **JURISDICTION**

10 22. Pursuant to Government Code section 6258, "any person may institute
11 proceedings for injunctive or declarative relief or writ of mandate in any court of competent
12 jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class
13 of public records under [the CPRA]."

14 23. Petitioner is a person, as defined by the code, and is suing to enforce its right to
15 receive public records. Petitioner has standing to bring this action. *Connell v. Super. Ct.*
16 (*Intersource, Inc.*) (1997) 56 CA4th 601, 611.

17 24. The Sacramento County Superior Court is the proper venue because the acts
18 complained of which are the subject of this Petition, Writ and Complaint, have all occurred or
19 will all occur in the County of Sacramento, State of California. The relief sought in this Petition,
20 Writ and Complaint is within the jurisdiction of this Court.

21 **SUMMARY OF PERTINENT CALIFORNIA PUBLIC RECORDS ACT PROVISIONS**

22 25. In enacting the CPRA, the Legislature declared that "access to information
23 concerning the conduct of the people's business is a fundamental and necessary right of every
24 person in this state." (§ 6250)

25 26. The CPRA requires that a local agency respond to a request for public records
26 within 10 days to inform the requestor whether it possess disclosable public records that are
27 responsive to the request (§ 6253(c).) A local agency is permitted one fourteen-day extension
28

only if one of four specified “unusual circumstances” exists. (§ 6253(c)(1)-(4).) Responsive records must be disclosed “promptly.” (§ 6253(b).)

27. A local agency has a duty to assist the requestor in formulating a focused and effective request. (§ 6253.1)

28. Local agencies may not charge more than the agency’s “direct costs of duplication” for copies of records. (§ 6253(b).) Direct costs of duplication are limited to the costs of making copies and do not include time spent searching for and reviewing records. (*North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144, 147.)

29. An agency may not charge a requestor of responsive documents for the act of searching for those documents or for review and redaction of any portion of a responsive document where the agency is claiming it is subject to an exemption or privilege. *National Lawyers Guild v. City of Hayward, et al* (2020) 9 Cal. 5th 488.

30. A local agency must, upon request, provide information in an electronic format (§ 6253.9(a).)

31. When being applied to grant access to information, the CPRA must be interpreted broadly, and when being applied to deny access to information, CPRA exemptions must be interpreted narrowly (Cal. Const., art. I, § 3).

32. When public officials conduct the people’s business on private devices and accounts such as texting on privately owned cell phones or sending email using privately held electronic mail accounts, these records are subject to disclosure under the CPRA as if they were created on agency-owned devices. (*City of San Jose v. Superior Court (Smith)* (2017) 2 Cal. 5th 608.)

CAL’S MAY 30, 2020 CPRA REQUEST (No. I)

33. On May 30, 2020, CAL requested public records from Agency. The written request was submitted by CAL’s Counsel, and sought two main separate categories of records. In Request No. I, the following was requested:

Pursuant to the California Public Records Act, Govt. Code §§ 6250-6276.48, Center for American Liberty (“Requestor”) respectfully requests

1 to inspect all public records in the possession or control of the California
2 Health and Human Services agency (“CHHS”) office for the following:

- 3 1. Each set of data (including but not limited to scientific studies, peer
4 reviews, medical studies, analysis, hospital data, public health studies,
5 health care statistics, memorandum, letters, correspondence, directives,
6 etc.) upon which the State of California and/or the CHHS based its
7 decision to issue any and all “Shelter in Place”, “Face Covering” and
8 “Cancel Mass Gathering” orders from October 1, 2019 to the present date
9 regarding the COVID-19 pandemic;
- 10 2. Each set of data and/or correspondence, including electronic
11 communication and in paper format, regarding each renewal or
12 modification of any Order; and
- 13 3. A copy of any and all requests for similar records under the California
14 Public Records Act received by the CHHS and all responses thereto.
15 These requests are for any and all writings and communications (including
16 but not limited to, letters, electronic communications, e-mails, text
17 messages, notes, memorandums, messages) whether or not those
18 communications are stored in the CHHS’s files and/or servers or on
19 personal devices / accounts such as private electronic mail accounts or
20 cellular telephones. *City of San Jose v. Superior Court (Smith)* (2017) 2
21 Cal. 5th 608.

22 Request I went on to state:

23 These requests are for any and all writings and communications (including but
24 not limited to, letters, electronic communications, e-mails, text messages,
25 notes, memorandums, messages) whether or not those communications are
26 stored in the CHHS’s files and/or servers or on personal devices / accounts
27 such as private electronic mail accounts or cellular telephones. *City of San Jose*
28 *v. Superior Court (Smith)* (2017) 2 Cal. 5th 608.

34. In addition, the May 30, 2020 PRA 1 request (Exhibit A) (as Request No. II)
sought records disclosing how the Agency arrives at its “direct” costs per page for photocopying
charges as allowed under Government Code § 6253 (b).

CHHS RESPONSE TO CAL’S MAY 30, 2020 CPRA REQUEST (No. 1)

35. On June 9, 2020 the Agency responded to CAL’s PRA I by referring CAL to the
Agency’s web site and alleged it was enclosing “all nonprivileged records that are responsive to
your request.” It cited the following exemptions to withhold records:

1 All remaining records are exempt from production based on one or more
2 of the following privileges:

3 • Government Code, § 6254, subdivision (k), and Evidence Code, § 954
4 (attorney-client privilege): Some of the records are exempt or prohibited
5 from disclosure pursuant to federal or state law. Some of the records are
6 confidential communications made within the scope of the attorney-client
7 relationship and protected by the attorney-client privilege.

8 • Government Code, § 6254, subdivision (k), and California Code of Civil
9 Procedure, §§ 2018.030 and 2018.020 (attorney work product doctrine):
10 Documents that attorneys prepare for CHHS, including documents
11 generated by others under the direction of CHHS's attorneys, reflecting
12 the attorney's impressions, conclusions, opinions, or legal research or
13 theories pertaining to the issues listed in your request are protected by the
14 attorney work product doctrine.

15 • Government Code, § 6255 (deliberative process): Records that reveal the
16 deliberative process of Secretary Ghaly or his staff (Gov. Code, § 6255;
17 *Cal. First Amend. Coalition v. Super. Ct.* (1998) 67 Cal.App.4th 159;
18 *Times Mirror Co. v. Super. Ct.* (1991) 53 Cal.3d 1325). Such records
19 include factual records. *Id.* at 1343. Your request for records on its face
20 seeks to probe the decision making process of the California Health and
21 Human Services Agency, and these records are, as a result, exempt from
22 disclosure.

23 36. The June 9, 2020 letter response concludes: "By providing you with this
24 information, CHHS considers your PRA request fulfilled." Considers is a far cry from a
25 statement that CHHS has complied fully with the CPRA. Documents, not information, are
26 required to be provided pursuant to a CPRA request. CHHS fails to cite any legal authority for
27 its conclusion that providing information fulfills CHHS's obligation(s) under the CPRA. In fact,
28 information is not a substitute for providing documents and on this basis alone, CHHS has failed
to comply with its obligations under the CPRA.

CAL's JUNE 9, 2020 LETTER

37. On June 9, 2020, Petitioner responded to CHHS's June 9, 2020 by letter via
email. As described in detail above, the letter questioned the CHHS's assertion and use of the
Deliberative Process Privilege to claim exemption from providing documents responsive to
CPRA requests. This letter asserts that the need to obtain these documents is "very high

1 considering the massive impact to California citizens' incomes freedoms, right to assembly
2 peacefully, etc. caused by these orders and modified orders." Clearly, in the case of Stay at
3 Home orders, required Face Coverings, and the Cancellation of Mass Gatherings including
4 Church/Temple/Mosque gatherings, the right of the public to obtain these documents is
5 paramount and likely in almost every case to exceed the government's right to withhold (as the
6 government is required to apply a balancing test which test must err on the side of disclosure).
7 The letter requested a voluntary discussion between the parties.

8 **CHHS RESPONSE TO CAL's JUNE 9, 2020 EMAIL**

9 38. On June 12, 2020, CHHS responded to Petitioner's June 9, 2020 CPRA
10 Request/Email. It stated in part:

11 "CHHS has worked to be transparent regarding the public health decisions
12 addressing COVID-19." Maybe so, but that appears to be unrelated to
13 transparency with respect to providing documents pursuant to Petitioner's CPRA
14 requests. Instead of providing documents, CHHS states: "For your reference, I
15 point you to examples of information (equally available to you) that CHHS, ...
16 have shared publicly: ..." The letter then provides 3 websites. Nowhere does
17 CHHS state any documents on those websites contain any documents responsive
18 to Petitioner's CPRA Requests. More critically here, CHHS then states Petitioner
19 could also find "examples," "among many other data sets [presumably meaning
20 web sites.]" In addition, CHHS states the Governor, Secretary Mark Ghaly, and
21 Sonia Angeli "have held dozens of public press conferences ..." There is no
22 statement that any of these conferences contain responsive documents, nor is there
23 any suggestion let alone support for the legal proposition that these press
24 conferences are a substitute for responding to CPRA Requests with relevant
25 documents. The final statement in the letter is critical to understanding CHHS's
26 failure to comply with its obligation to provide relevant documents and to balance
27 the public's right to documents against the government's right to withhold
28 documents. "California law does not require or support further disclosure than

1 the extensive information CHHS has already chosen to make transparent.” First,
2 no law is cited. Second, CHHS fails to explain what it means, or what documents
3 are included, in its “extensive information.” Third, CHHS fails to state that any
4 documents (instead it states information) were ever provided to anyone. Fourth,
5 CHHS fails to state what information it has chosen to make transparent, nor where
6 it made this information transparent. Fifth, there is no statement that within this
7 transparent information are ALL DOCUMENTS RESPONSIVE TO Petitioner’s
8 CPRA REQUESTS. In other words, this is misdirection and not relevant.
9 Clearly, CHHS has obfuscated and failed to provide any information that would
10 even lead Petitioners to find all or any documents (as opposed to information)
11 responsive to its CPRA Requests, as clearly required by the CPRA.
12 See Exhibit D.

13 **CAL’s JULY 16, 2020 CPRA REQUEST AND RESPONSE TO CHHS**

14 39. On July 16, 2020, Petitioners initiated a new CPRA Request and responded to
15 CHHS’s June 12, 2020 letter response. The letter clarified that reliance on a naked application of
16 exemptions is improper. A new CPRA Request was included in the letter for documents similar
17 to CAL’s May 30, 2020 CPRA requests but for documents dated May 25, 2020 to July 16, 2020.
18 See Exhibit E.

19 **CHHS RESPONSE TO CAL’s JULY 16, 2020 CPRA REQUEST**

20 40. On July 27, 2020, CHHS responded to the July 16, 2020 CPRA request and stated
21 that it possesses “documents responsive to your request. Those documents, disclosed on August
22 5, 2020 were approximately 21 documents including CPRA requests and CHHS responses
23 BhatKaranth (3 documents), California Globe (9 documents), Davis (3 documents), Porters (3
24 documents), Sacramento Bee (1 document), an April 14, 2020 data modeling - 24 pages (a
25 duplicate of the same document disclosed on June 9, 2020), a March 25, 2020 County modeling -
26 4 pages (a duplicate of the same document disclosed on June 9, 2020), , and a May 8, 2020 66
27 line spreadsheet (65 lines of data) of total deaths per months for several years.

28 41. CHHS’s letter went on to state:

1 All remaining records are exempt from production based on one or more of the
2 following privileges:

3 • Government Code, § 6254, subdivision (k), and Evidence Code, § 954
4 (attorney-client privilege): Some of the records are exempt or prohibited from
5 disclosure pursuant to federal or state law. Some of the records are confidential
6 communications made within the scope of the attorney-client relationship and
7 protected by the attorney-client privilege.

8 • Government Code, § 6254, subdivision (k), and California Code of Civil
9 Procedure, §§ 2018.030 and 2018.020 (attorney work product doctrine):
10 Documents that attorneys prepare for CHHS, including documents generated
11 by others under the direction of CHHS's attorneys, reflecting the attorney's
12 impressions, conclusions, opinions, or legal research or theories pertaining to
13 the issues listed in your request are protected by the attorney work product
14 doctrine.

15 • Government Code, § 6255 (deliberative process): Records that reveal the
16 deliberative process of Secretary Ghaly or his staff (Gov. Code, § 6255; *Cal.*
17 *First Amend. Coalition v. Super. Ct.* (1998) 67 Cal.App.4th 159; *Times Mirror*
18 *Co. v. Super. Ct.* (1991) 53 Cal.3d 1325). Such records include factual records.
19 *Id.* at 1343. Your request for records detailing the decision making process
20 underpinning the delineated COVID-19 related orders is targeted directly at the
21 deliberative process of the State's top health policy maker and head of the
22 California Health and Human Services Agency, and most of the records are, as
23 a result, exempt from disclosure.

24 **CAL's NOVEMBER 17, 2020 CPRA REQUEST**

25 42. On November 17, 2020, Petitioners initiated a new CPRA Request for documents
26 similar to CAL's May 30, 2020 & July 16, 2020 CPRA requests but for documents dated July
27 17, 2020 to November 17, 2020.

28 **CHHS RESPONSE TO CAL's NOVEMBER 17, 2020 CPRA REQUEST**

43. On November 19, 2020 CHHS responded to the November 17, 2020 request
(PRA 3) and stated "Enclosed please find all nonprivileged records that are responsive to your
request." It went on to direct CAL to various web sites to go look for other responsive
documents. And CHHS then stated:

All remaining records are exempt from production based on one or more of the
following privileges:

1 • Government Code, § 6254, subdivision (k), and Evidence Code, § 954 (attorney-
2 client privilege): Some of the records are exempt or prohibited from disclosure
3 pursuant to federal or state law. Some of the records are confidential
4 communications made within the scope of the attorney-client relationship and
5 protected by the attorney-client privilege;

6 • Government Code, § 6254, subdivision (k), and California Code of Civil
7 Procedure, §§ 2018.030 and 2018.020 (attorney work product doctrine):
8 Documents that attorneys prepare for CHHS, including documents generated by
9 others under the direction of CHHS's attorneys, reflecting the attorney's
10 impressions, conclusions, opinions, or legal research or theories pertaining to the
11 issues listed in your request are protected by the attorney work product doctrine.

12 • Government Code, § 6255 (deliberative process): Records that reveal the
13 deliberative process of Secretary Ghaly or his staff (Gov. Code, § 6255; *Cal. First*
14 *Amend. Coalition v. Super. Ct.* (1998) 67 Cal.App.4th 159; *Times Mirror Co. v.*
15 *Super. Ct.* (1991) 53 Cal.3d 1325). Such records include factual records. *Id.* at
16 1343. Your request for records detailing the decision making process
17 underpinning the delineated COVID-19 related orders is targeted directly at the
18 deliberative process of the State's top health policy maker and head of the
19 California Health and Human Services Agency, and most of the records are, as a
20 result, exempt from disclosure.

21 44. At no time have any of the CHHS responses to any of CAL's CPRA requests
22 (Exhibits A, E and H) included a statement that any officials have searched their private cellular
23 telephone or electronic mail accounts for responsive documents.²

24 **ATTORNEY CLIENT, ATTORNEY WORK PRODUCE, AND DELIBERATIVE**
25 **PROCESS PRIVILEGES NOT PROPERLY APPLIED**

26 45. CHHS's June 9, 2020 letter is clear; "All remaining records are exempt from
27 production on one or more of the following privileges." The June 9, 2020 letter contains the
28 following pertinent statements:

First, regarding Attorney-client privilege:

"Some of the records are confidential communications ..."

² Petitioner assumes Respondent conducted or will conduct in response to this Court's order; a proper search of all CHHS issued cellular telephones and CHHS electronic mail accounts.

1 Second, regarding Attorney Work Product privilege:

2 “Documents that attorneys prepare for CHHS, ... reflecting the attorney’s
3 impressions, conclusions, opinions, or legal research or theories pertaining to
4 the issues listed in our request are protected ...”

5
6 Third, regarding Deliberative Process privilege:

7 “Records that reveal the deliberative process of Secretary Ghaly or his staff ...
8 Such records include factual records.”

9 46. It is not clear if CHHS is claiming all three privileges / exemptions are being
10 claimed to all withheld documents. In essence, CHHS is responding to the various CPRA
11 requests by simply stating California law allows it to avoid complying and disclosure by
12 claiming that somehow one of these three exemptions must apply. Yet, oddly, CHHS fails to
13 indicate there is a single responsive document being withheld or that that or any other document
14 was provided to CHHS by its attorney(s), or that any decision maker might, let alone would,
15 have future decisions chilled if the documents regarding data or science were to be disclosed.

16 47. CHHS’s virtual blanket denial of document disclosure does not state the specific
17 reason that disclosure would chill future deliberations which is necessary under the deliberative
18 process privilege.

19 48. There is no statement any attorney was involved, let alone that any science or data
20 documents were even involved in attorney-client or attorney-work produce privileges. No legal
21 analysis is discussed or cited. Nor is there any indication that the documents sought under
22 CAL’s CPRA requests were generated, reviewed, discussed with clients, or related in any way to
23 the attorney-related privileged.

24 49. Based on CHHS explanations and statements, “Records that reveal the
25 deliberative process ...” were withheld based on the Deliberative Process exemption.

26 50. The CHHS fails to provide any facts, let alone conjecture, of when, where, or that
27 Secretary Ghaly, his staff, or any CHHS employees present or future deliberating regarding data
28 or science would be chilled if the CPRA requested documents were produced. In addition,

1 CHHS's letters failed to state that any, let alone all of the withheld documents were the subject
2 of deliberation.

3 51. Even if CHHS employees in fact deliberated regarding details of data or scientific
4 studies (Request I, No. 1), the release of any such scientific studies or data is not likely to inform
5 the public as to the nature of any CHHS deliberation then or in the future. For example, knowing
6 the number of COVID-19 deaths during a single month statewide cannot lead anyone to do more
7 than speculate how an unknown employee at CHHS might deliberate regarding those statistics.
8 Was 2,000+ deaths per months excessive or acceptable? The mere number of deaths does not,
9 and cannot, provide any analysis how anyone deliberated.

10 52. Even if it did (as to Request I, No. 2 records), the documents here do not relate to
11 the Governor's calendars (affecting his safety), the Governor's appointments to political or
12 judicial posts, or the private, personal information for individuals. Rather it relates to the State's
13 public orders to lockdown or partially lockdown (and how to lockdown) the State's social and
14 economic life in the State of California. In other words in applying the balancing test under the
15 Deliberative Process exemption (Government Code section 6255) to this set of facts / situation,
16 the interest of the public in disclosure (given the impact of these orders) is overwhelming, while
17 the public's interest in non-disclosure is non-existent.

18 53. A basic outline of California policy on CPRA required document disclosure
19 demonstrates that the deliberative process privilege / exemption is narrowly applied. A summary
20 of key aspects of the limitations on application of the deliberative process exemption, which
21 unlike attorney related privileges is not absolute but instead involves balancing rights, indicates
22 that the deliberative process exemption is limited and the governmental agency attempting to
23 utilize the exemption must provide support and an explanation of the basis for finding facts that
24 support application of this limited exemption. A summary is provided in *Dixon v. Superior*
25 *Court* (2009) 170 Cal.App.4th 1271, 1275-1276.

26 The CPRA is designed to hold government accountable while still protecting
27 individual privacy. (§ 6250; [*Rackauckas v. Superior Court* \(2002\) 104](#)
28 [*Cal.App.4th* 169, 173 \[128 Cal.Rptr.2d 234\] \(*Rackauckas*\); *California State*](#)
[*University, Fresno Assn., Inc. v. Superior Court* \(2001\) 90 Cal.App.4th 810, 831](#)

1 [108 Cal.Rptr.2d 870] (California State University). The CPRA embodies a
2 strong policy in favor of disclosing public records. (California State University,
3 supra, 90 Cal.App.4th at p. 831; Rogers v. Superior Court (1993) 19 Cal.App.4th
4 469, 476 [23 Cal.Rptr.2d 412].) Such records must be disclosed unless they come
5 within a specific disclosure exemption. (*California State University*, at p. 831;
6 *Rogers*, at p. 469.) These exemptions are construed narrowly. (*California State*
7 *University*, at p. 831; *Rogers*, at p. 469; *City of San Jose v. Superior Court (1999)*
8 74 Cal.App.4th 1008, 1018 [88 Cal.Rptr.2d 552] (*City of San Jose*); Cal. Const.,
9 art. I, § 3, subd. (b)(2).)

10 *Dixon, supra* at 1275-1276.

11 54. Under the CPRA, a document must be disclosed unless the withheld document
12 comes within a specific, not one of three possible exemptions.

13 55. Every privilege or exemption is required to be narrowly construed. Upon
14 information and belief, CHHS has instead asserted a blanket grouping of exemptions / privileges
15 without an explanation of which specific exemption applies to a document with the effect of
16 avoiding disclosure without complying with the narrow nature of exemptions in general.

17 56. *Times Mirror Company v. Superior Court* (1991) 53 Cal. 3d 1325, 1338 clarifies
18 that the Deliberative Process exemption is based on the facts of each case.

19 57. No facts are provided by CHHS to suggest, let alone provide, that CHHS can
20 impose a blanket application of the Deliberative Process exemption to any let alone all withheld
21 documents. Quite to the contrary, a local agency may withhold a public record only if it can
22 demonstrate that “on the facts of a particular case the public interest served by not making the
23 record public clearly outweighs the public interest served by disclosure of the record.” *Times*
24 *Mirror*, *supra* at p. 1338.

25 58. In the present case, CHHS has failed to state or prove that the public interest
26 served by non-disclosure outweighs disclosure to the public; something required to be proved
27 under the holding of *Times Mirror*. As noted above in paragraph 43 above, it is doubtful that the
28 State can meet this heavy burden under the facts of this case. Further the *Times Mirror* case
carved out a narrow and limited exemption which some governmental agencies have expanded
into blanket withholding of any documents under the guise of a chilling effect on future
discussions, regardless of whether such an assertion is true or has even been considered on a
document by document basis, or meets the requirements of the balancing test, as required.

1 59. An Internet search demonstrates that CHHS does not fear disclosure of scientific
2 and other data or that disclosure would chill future deliberations. CHHS discloses data and
3 studies at its public presentations to justify its decisions – rather than chill future decisions.

4 60. CHHS Secretary Dr. Ghaly disclosed and commented upon his reliance on data.
5 This proves the CHHS does not hide reviewed data from the public, except when the data is
6 requested pursuant to CAL’s and other parties CPRA requests. For example, on October 7,
7 2020, KESQ News Channel 3 reported:

8 "We have not seen a connection between transmission and school
9 reopening or in-person learning,"

10 That was the statement Tuesday from California's top health official Dr.
11 Mark Ghaly, while speaking during a news conference updating the
12 state's latest efforts aimed at stopping the spread of Covid-19.

13 While Dr. Ghaly says that conclusion could change once more data
14 comes in, the assessment does not sit well with some people.

15 61. Apparently, Dr. Ghaly is not concerned with disclosing data or studies even if his
16 assessment does not sit well with some observers. Dr. Ghaly asserts, instead, that he may change
17 his conclusion once future data is available. Dr. Ghaly fails to express any fear of a chill
18 regarding his decision making if the public knows that he will be consulting data on COVID-19
19 transmission. Here, [https://www.westport-news.com/news/article/California-eases-more-virus-](https://www.westport-news.com/news/article/California-eases-more-virus-restrictions-opens-15607369.php)
20 [restrictions-opens-15607369.php](https://www.westport-news.com/news/article/California-eases-more-virus-restrictions-opens-15607369.php) demonstrates beyond any doubt that Dr. Ghaly not only relies
21 on data and studies, but provides that data willingly at his press conference(s). The article by
22 Adam Beam, Associated Press, September 29, 2020 is instructive as it includes a picture of Dr.
23 Ghaly on April 1, 2020 pointing to a data document titled: “Impact of Stay at Home Efforts in
24 CA.”³ When it serves his purpose, Dr. Ghaly provides the exact data he analyzed in making his

25 ³ The description states:

26 FILE - In this April 1, 2020, file photo Dr. Mark Ghaly, secretary of the California Health and Human Services,
27 gestures to a chart showing the impact of the mandatory stay-at-home orders, during a news conference in Rancho
28 Cordova, Calif. California public health officials say it's OK for public playgrounds to open across the state. The
new guidelines require face coverings for everyone 2 and older and physical distancing between people who don't
live in the same household. On Tuesday, Sept. 29, 2020, state public health officials officially loosened restrictions
in 11 counties, allowing more businesses to reopen.

1 decisions. When it does not serve his purpose, his attorneys argue that disclosure would cloud
2 his decision making. A true and correct copy of the article is attached hereto as Exhibit J.

3 62. CHHS cannot have it both ways. Disclosure of data and science does not chill
4 deliberations. CHHS must provide support for its assertion of a chilling effect of disclosure
5 before it can assert the deliberative process exemption. To date, CHHS has failed to support that
6 decision making will be chilled if data and science documents are disclosed to CAL.

7 63. The article further states: “He expressed faith in the state's “slow and stringent”
8 system of reopening, saying it takes into account those trends.” Trends should be based on data
9 and science. Reopening is the right to gather in public, and thus part of the CPRA requests
10 herein.

11 64. The Deliberative Process exemption is not a shield to be used any time disclosure
12 may not benefit the agency, but instead is only available after proof that it is truly a pre-
13 decisional process document and a balancing test is applied, which on information and belief did
14 not occur here. Application in this case, where the CHHS Secretary uses this same data to
15 demonstrate to the public that his decision making is based on the data (science) proves or
16 demonstrates Dr. Ghaly, for one, and the CHHS, are not concerned that future deliberations (in
17 private) will be “chilled” by allowing the public to view the data that is relied upon by Dr. Ghaly
18 and others at CHHS in determining Stay at Home Orders, and restrictions on Gatherings, etc.

19 65. On information and belief, the study disclosed to the public was not disclosed to
20 CAL.

21 **FIRST CAUSE OF ACTION**
22 (Writ of Mandate — Gov. Code § 6258)
23 Against all Respondents

24 66. Petitioner incorporates by reference all prior allegations and all prior paragraphs.

25 67. Respondent, a State of California agency, is required to comply with Petitioner’s
26 CPRA requests. Respondents have a ministerial duty to comply with the CPRA by providing
27 documents responsive to CPRA requests.

28 68. Petitioner requests that a Writ of Mandate issue to compel Respondents to search
for and disclose the public records and documents that are responsive to Petitioner’s CPRA

1 requests described herein, including those improperly withheld on the basis of general alleged
2 exemptions and/or privileges.

3 69. Petitioner's effort to obtain the records without litigation have been unsuccessful,
4 and Petitioner has no further administrative remedies. Petitioner's attempt to, in effect, meet and
5 confer with Respondent, has been unsuccessful. Therefore, there is no other adequate remedy in
6 the ordinary course of law. Indeed, the CPRA specifically authorizes writ of mandate as a
7 remedy for CPRA violations.

8
9 **SECOND CAUSE OF ACTION**
(Declaratory Relief — Gov. Code § 6258)
10 Against all Respondents

11 70. Petitioner incorporates by reference all prior allegations and all prior paragraphs.

12 71. There is an actual and justiciable controversy between the parties as to whether
13 Respondents' actions have complied with the California Public Records Act.

14 72. Petitioner alleges that Respondents have committed the following CPRA
15 violations:

- 16 a. On information and belief, failure to conduct a proper and complete search for responsive
17 records response to CAL's CPRA requests.
 - 18 b. Failure to make a sufficient written determination as to whether CHHS possesses
19 disclosable public documents/records including e-mails, studies, research, data, text
20 messages, or other documents responsive to Petitioner's requests after more than the
21 maximum 10 days (plus any 14-day extension) allowed under Government Code §
22 6253(a);
 - 23 c. Failure to disclose records and documents responsive to CAL's CPRA requests at all;
 - 24 d. Failure to disclose records and documents responsive to CAL's CPRA requests that are
25 not properly subject to an exemption under the California Public Records Act;
 - 26 e. Failure to disclose records that are in its possession and/or constructive possession; and
 - 27 f. Failure to "promptly" disclose responsive public records as required by the CPRA.
- 28

1 73. There is an actual controversy with respect to these violations because
2 Respondents dispute the factual basis for the violation and/or whether the actions described
3 violate the CPRA.

4 74. Declaratory relief is necessary to resolve these controversies and determine
5 whether Respondents have violated the CPRA as described above.

6 75. The CPRA specifically authorizes declaratory relief.

7 **THIRD CAUSE OF ACTION**
8 (Injunctive Relief — Gov. Code § 6258)
9 Against all Respondents

10 76. Petitioner incorporates by reference all prior allegations and all prior paragraphs.

11 77. The CPRA specifically authorizes injunctive relief as a remedy for CPRA
12 violations.

13 78. Respondents have failed to respond with any documents responsive to the request
14 for documents related to how CHHS determined the costs it can or will charge for providing
15 photocopies of responsive documents/information.

16 79. Respondents have used misdirection to infer that it has complied with CPRA by
17 citing Petitioner to three or more websites so that Petitioner could determine if those web sites
18 contain responsive documents. Even then, Respondent has never indicated or shown where these
19 cites contain responsive documents.

20 80. Respondents have stated they are in compliance with CPRA requests based on
21 public speeches by public officials, without indicating in any manner how simply stating such
22 speeches have occurred could possibly comply with the CPRA requirement to provide actual
23 documents to Petitioner.

24 81. Respondents have stated they have complied with the CPRA based on three cited
25 exemptions / privileges including attorney-client, attorney work product, and deliberative process
26 privileges, without 1) indicating which exemption or privilege applied to any or specific
27 documents, 2) suggesting let alone stating that CHHS applied the required balancing between the
28 government's right to privately deliberate and avoid the chilling effect of disclosure against the
publics' right to disclosure of the documents, and 3) studies, research, data, and similar

1 compilations and scientific information is necessarily or actually protected from disclosure here,
2 and 4) that the persons who actually deliberated on the issues raised in the CPRA requests,
3 actually reviewed, discussed, deliberated upon, each such document and that even if they did,
4 that disclosure would in any way chill future decision making if disclosure of one or more of
5 those documents is disclosed to the public.

6 82. The CPRA requires disclosure of public records regardless of whether the records
7 are in the responding agency's actual possession. Records in the possession of an agency's
8 employees or elected officials are public records even if the records are not under the agency's
9 immediate control.

10 83. Charging improper and/or excessive fees frustrates the purpose of the CPRA and
11 serves to discourage members of the public from requesting public records and participating in
12 activities related to their constitutional right of public oversight.

13 84. Petitioner seeks injunctive relief to:

- 14 a. Compel Respondents to disclose all public records responsive to CAL's CPRA request
15 that are in Respondents possession; and
16 b. Compel Respondents to disclose all responsive records not properly subject to an
17 exemption or privilege.
18 c. Prohibit CHHS from charging improper and/or excessive fees before disclosing public
19 records;
20

21 85. There is no monetary compensation that could adequately compensate Petitioner
22 or any other affected party for the infringement of this right.

23 86. Injunctive relief is necessary to prevent ongoing and future infringement of the
24 public's right to receive public records from Respondents in a timely fashion. and, on
25 information and belief, as a consequence of Respondents' demand for excessive duplication fees.
26 Petitioner requests injunctive relief to ensure Respondents' compliance with the CPRA.

27 **PRAYER FOR RELIEF**

28 Wherefore, Petitioner prays that this court:

1 As to the First Cause of Action:

2 87. Issue Peremptory and/or Alternative Writ of Mandate ordering Respondents to
3 promptly conduct a proper search for responsive records and to disclose to Petitioner all
4 improperly withheld records.

5 88. Issue a Peremptory and/or Alternative Writ of Mandate to (a) order Respondents
6 to ensure that its employees search their personal email accounts and electronic devices for
7 records responsive to Petitioner's request; and (b) order each individually named Respondent(s)
8 to search his or her personal email accounts and electronic devices for records responsive to
9 Petitioner's request;

10 89. Issue a Peremptory and/or Alternative Writ of Mandate to (a) order Respondent
11 **Ghaly** to search all his personal email accounts and electronic devices for records responsive to
12 Petitioner's request and to disclose them to Petitioner.

13 As to the Second Cause of Action:

14 90. Enter a declaratory judgment that Respondents violated the CPRA by:

- 15 a) Failing to search for and disclose responsive public records-that that CHHS
16 employees and officials possess in CHHS's physical and electronic files;
17 b) Failing to search for and disclose responsive public records that that CHHS
18 employees and officials possess in their personal files, email accounts, and
19 electronic devices; and
20 c) Failing to promptly disclose the records that are responsive to Petitioner's CPRA
21 requests.

22 As to the Third Cause of Action:

23 91. Issue an order compelling Respondents to search their private email accounts,
24 computers, and other electronic devices for public records that are responsive to Petitioner's
25 request and disclose same to Petitioner;

26 92. Issue an order compelling City to search for and disclose to Petitioner all
27 responsive records not subject to any proper claim of exemption or privilege; and
28

1 **VERIFICATION**

2

3 I, Mark Trammell, declare that I am Executive Director of Center for American Liberty, the

4 Petitioner in the above-entitled action. I have read the foregoing FIRST AMENDED VERIFIED

5 PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and

6 know the contents thereof to be true of my own knowledge, except as to those statements made

7 upon information and belief, and as to those I believe them to be true.

8

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is

10 true and correct.

11

12 Executed on December 9, 2020 in Frederick, MD.

13 

14 _____
Mark Trammell

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TABLE OF EXHIBITS

Exhibit	Description	Reference
A	CAL's May 30, 2020 CPRA Request	¶ 2
B	CHHS's June 9, 2020 Response to CAL's CPRA Request	¶ 3
C	CAL's June 9, 2020 Response to CHHS's Response	¶ 5
D	CHHS's June 12, 2020 Response to CAL's Response	¶ 6
E	CAL's July 16, 2020 CPRA Request and Response to CHHS's June 12, 2020 Response	¶ 7
F	CHHS's July 27, 2020 Response to CAL's July 16, 2020 CPRA Request	¶ 8
G	CHHS's August 5, 2020 Response to CAL's July 16, 2020 CPRA Request	¶ 9
H	CAL's November 17, 2020 CPRA Request to CHHS	¶ 12
I	CHHS's November 19, 2020 Response to CAL's November 17, 2020 CPRA Request	¶ 13
J	Adam Beam, Associated Press, September 29, 2020	¶ 61

EXHIBIT “A”

Law Offices of Craig P. Alexander

24681 La Plaza, Suite 250

Dana Point, CA 92629

Office: 949-481-6400 Facsimile: 949-242-2545

E-mail: craig@craigalexanderlaw.com

VIA ELECTRONIC (CHHSMail@chhs.ca.gov) MAIL ONLY

May 30, 2020

California Health & Human Services

Atten: PRA Request

1600 9th Street, Room 460

Sacramento, CA 95814

RE: California Public Records Act Request in re Corona Virus Pandemic / COVID-19 – Public Health orders regarding “Shelter in Place”, “Face Covering” and “Cancel Mass Gathering” orders.

Dear Public Health Services:

This letter is being sent on behalf of the Center for American Liberty. I request you direct this letter to the responsible personnel to respond to my client’s CPRA requests.

PUBLIC RECORDS ACT REQUEST NO. I

Documents upon which the State of California and/or the California Health and Human Services agency based its “Shelter in Place”, “Face Covering” and “Cancel Mass Gathering” orders during the corona virus (COVID-19) pandemic.

Pursuant to the California Public Records Act, Govt. Code §§ 6250-6276.48, Center for American Liberty (“Requestor”) respectfully requests to inspect all public records in the possession or control of the California Health and Human Services agency (“CHHS”) office for the following::

1. Each set of data (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision to issue any and all “Shelter in Place”, “Face Covering” and “Cancel Mass Gathering” orders from October 1, 2019 to the present date regarding the COVID-19 pandemic;
2. Each set of data and/or correspondence, including electronic communication and in paper format, regarding each renewal or modification of any Order; and
3. A copy of any and all requests for similar records under the California Public Records Act received by the CHHS and all responses thereto.

These requests are for any and all writings and communications (including but not limited to, letters, electronic communications, e-mails, text messages, notes, memorandums, messages) whether or not those communications are stored in the CHHS's files and/or servers or on personal devices / accounts such as private electronic mail accounts or cellular telephones. *City of San Jose v. Superior Court (Smith)* (2017) 2 Cal. 5th 608.

The time frame for these Requests are October 1st, 2019 and the date of this letter (May 30, 2020).

PUBLIC RECORDS ACT REQUEST NO. II
FOR DOCUMENTS RELATED TO THE CHHS' FINDINGS OF ITS
ALLOWED "DIRECT" COSTS PER GOVERNMENT
CODE SECTION 6253 (B).

Since the Public Records Request Act allows the CHHS to only charge its "direct" costs for photocopying, please disclose how (including backup costs information or studies **not** just the CHHS's formal policy on photocopy charges) the CHHS arrives at its "direct" cost per page for photocopying charges. Please consider this request to be a separate Public Records Act Request.

REQUEST FOR INFORMATION IN ELECTRONIC FORMAT PURSUANT TO
GOVERNMENT CODE SECTION 6253.9 (A) (2) & (E).

My client is seeking these records in any and all electronic formats your office keeps them in. Under the Public Records Act, the CHHS's office is required to deliver the information in whatever electronic format it is in no matter whether it is Excel, Word, WordPerfect or some other program or programs. Government Code section 6253.9 (a) (2) & (e). **My client's request extends to receipt of this information in the electronic format your office maintains these records in.** Delivery of this information to me by electronic mail (craig@craigalexanderlaw.com) or via a thumb drive or via a disk is fine. I can supply the CHHS with a thumb drive if needed. *Please advise what electronic format these records are kept in.*

In addition, if there are documents that satisfy this request that are in **both** electronic and paper formats, my client offers to receive the electronic version of those records and forgo inspection and potential photocopying of those paper copies. It is hoped that this will save the CHHS and my client's time, trouble and expense.

If you anticipate that data compilation, extraction, or programming will be required to satisfy a request (per Section 6253.9(b)), please provide a written estimate and justification for same. Given the high profile of this matter with the public and the recentness of the date of any responsive records (October 1, 2019 to May 30, 2020), a compilation, extraction or programming should not be required to obtain responsive documents. In addition on May 28, 2020 the California Supreme Court ruled that an agency may not charge a requestor of responsive documents for the act of searching for

those documents or for review and redaction of any portion of a responsive document where the agency is claiming it is subject to an exemption or privilege. *National Lawyers Guild v. City of Hayward, et al* (2020) 2020 WL 2761057 (Case No. S252445) _____ Cal. 5th _____.

REQUEST FOR INSPECTION OF DOCUMENTS

For any records not delivered electronically, once my client's agent and/or I have had an opportunity to inspect these records, we will designate which documents we will wish to obtain copies from your office and its agents, employees, consultants, etc. If a document exists in both electronic and paper formats, my client selects to receive a copy of the electronic version of the document. This should save both your office time and funds in duplication time and costs and my client duplication costs.

The California Public Records Act requires the CHHS's office to "reveal the general nature of the documents withheld," and to "set forth the names and titles or positions of each person responsible for the denial." Cal. Govt. Code Section 6253 (d). I emphasize my client's request for a specific response and all applicable exemptions to the request. A blanket list of exemptions that may or may not apply to the request coupled with a failure to indicate the existence of documents responsive to the request denies us the ability to evaluate whether the CHHS has justifiably withheld responsive documents. Denying my client her opportunity frustrates the Legislature's primary purpose in enacting the California Public Records Act, which is to "maximize public access to agency records."

We agree that after our inspection of documents made available, to pay the direct cost of duplicating any and all responsive writings we request to have copied in accordance with Section 6253(b). However we will not pay for any charges related to searching, reviewing or redacting documents or portions thereof. Cal. Govt. Code Section 6253(b).

There is no question that your office is a public entity subject to the Public Records Act pursuant to Government Code section 6252 and it must comply with the Request as set forth under the Act.

Terms utilized that are defined by the California Public Records Act should be given their full meaning. Thus, for example, a request for any "writing" includes a request for "any handwriting, typewriting, printing, Photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. Cal. Govt Code section 6252 (g). In keeping with the provisions of the California Public Records Act, "writing" includes any preliminary drafts, notes or interagency or intra-agency memoranda" unless such draft items are "not retained...in the ordinary course of business" and "the public interest in withholding clearly outweighs the public interest in disclosure."

Additionally, certain common terms should be given broad interpretation. For example, “relating to” means, in addition to the usual and customary meaning, depict or depicting, discuss or discussing, refer to or referring, reflect or reflecting, support or supporting, refute or refuting, address or addressing, evidence or evidencing, or record or recording.

For the purposes of this letter, a reference to an entity or body, such as the CHHS’s office includes any and all representatives of the entity or body.

**THE CHHS’S RESPONSE TO
OUR REQUESTS ARE DUE WITHIN TEN DAYS**

In accordance with Section 6253 (c), please contact me within ten (10) days of your receipt of this request and notify me whether this request seeks copies of dis-closable public records in the CHHS’s possession, and, if not, the reasons for such determination. We will wish to make an appointment with you to review the dis-closable records at your office.

Thank you in advance for your courtesy and cooperation in this matter.

Very truly yours,

//s//

Craig P. Alexander

EXHIBIT “B”

State of California HEALTH AND HUMAN SERVICES AGENCY

GAVIN NEWSOM
GOVERNOR



MARK A. GHALY MD, MPH
SECRETARY

Aging

Child Support
Services

Community Services
and Development

Developmental
Services

Emergency Medical
Services Authority

Health Care Services

Managed Health Care

Office of Health Information
Integrity

Office of Innovation

Office of Law Enforcement
Support

Office of Patient Advocate

Office of Surgeon General

Office of Systems Integration

Public Health

Rehabilitation

Social Services

State Hospitals

Statewide Health
Planning and
Development

June 9, 2020

SENT VIA EMAIL ONLY

Craig Alexander, Esq.
Law Offices of Craig P. Alexander
24681 La Plaza, Ste. 250
Dana Point, CA 92629
Email: Craig@CraigAlexanderLaw.com

RE: **Public Records Act Request**

Dear Mr. Alexander,

The California Health and Human Services Agency (CHHS) received your request for documents on May 30, 2020. You requested the following documents, from October 1, 2019 through May 30, 2020:

- “Documents upon which the State of California and/or the California Health and Human Services agency based its ‘Shelter in Place’, ‘Face Covering’ and ‘Cancel Mass Gathering’ orders during the corona virus (COVID-19) pandemic.”

You indicated this request encompassed a request for the following:

- “Each set of data (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision to issue any and all ‘Shelter in Place’, ‘Face Covering’ and ‘Cancel Mass Gathering’ orders from October 1, 2019 to the present date regarding the COVID-19 pandemic”;
- “Each set of data and/or correspondence, including electronic communication and in paper format, regarding each renewal or modification of any Order”; and
- “A copy of any and all requests for similar records under the California Public Records Act received by the CHHS and all responses thereto.”

Enclosed please find all nonprivileged records that are responsive to your request. Additionally, a [COVID-19](#) website has been established which provides the public with extensive information regarding the State’s effort to combat this unprecedented pandemic, including extensive data sets that are part of the information that you requested. Other state agencies may also possess additional documentation responsive to your request.

You also request that CHHS “disclose how (including backup costs information or studies **not** just the CHHS’s formal policy on photocopy charges) the CHHS arrives at its ‘direct’ cost per page for photocopying charges.” (Bold in original.)

Please be aware that it is CHHS’s practice to provide responses to Public Record Act requests electronically and cost free.

All remaining records are exempt from production based on one or more of the following privileges:

- Government Code, § 6254, subdivision (k), and Evidence Code, § 954 (attorney-client privilege): Some of the records are exempt or prohibited from disclosure pursuant to federal or state law. Some of the records are confidential communications made within the scope of the attorney-client relationship and protected by the attorney-client privilege.
- Government Code, § 6254, subdivision (k), and California Code of Civil Procedure, §§ 2018.030 and 2018.020 (attorney work product doctrine): Documents that attorneys prepare for CHHS, including documents generated by others under the direction of CHHS’s attorneys, reflecting the attorney’s impressions, conclusions, opinions, or legal research or theories pertaining to the issues listed in your request are protected by the attorney work product doctrine.
- Government Code, § 6255 (deliberative process): Records that reveal the deliberative process of Secretary Ghaly or his staff (Gov. Code, § 6255; *Cal. First Amend. Coalition v. Super. Ct.* (1998) 67 Cal.App.4th 159; *Times Mirror Co. v. Super. Ct.* (1991) 53 Cal.3d 1325). Such records include factual records. *Id.* at 1343. Your request for records on its face seeks to probe the decisionmaking process of the California Health and Human Services Agency, and these records are, as a result, exempt from disclosure.

By providing you with this information, CHHS considers your PRA request fulfilled. Thank you for contacting CHHS with your request.

Sincerely,



Michael Palmisano
Attorney
Office of the Agency General Counsel
California Health and Human Services Agency

EXHIBIT “C”

Law Offices of Craig P. Alexander

24681 La Plaza, Suite 250

Dana Point, CA 92629

Office: 949-481-6400 Facsimile: 949-242-2545

E-mail: craig@craigalexanderlaw.com

VIA ELECTRONIC (MICHAEL.PALMISANO@CHHS.CA.GOV) MAIL ONLY

June 9, 2020

Mr. Michael Palmisano
California Health & Human Services
Atten: PRA Request
1600 9th Street, Room 460
Sacramento, CA 95814

RE: California Public Records Act Request in re Corona Virus Pandemic / COVID-19 – Public Health orders regarding “Shelter in Place”, “Face Covering” and “Cancel Mass Gathering” orders.

Dear Mr. Palmisano

Thank you for your letter of June 9, 2020 in response to my client’s May 30, 2020 CRPA requests.

Apparently regarding items 1 and 2 of Request No. I, the Department invoked the “Deliberative Process” exemption under Govt. Code section 6255. As I am sure you are aware, the “Deliberative Process” exemption is not absolute and since it arises under section 6255, it is the government’s burden to establish that the public interest in non-disclosure outweigh the public’s interest in disclosure.

We should note here that the materials requested are the “data” (or the “science”) upon which the Department issued its various orders and extended / modified orders regarding the COVID-19 pandemic. We are not requesting documents regarding an appointment by the Governor to a Supervisor’s seat or a judicial nomination. I would ask the Department to consider that the public’s right to disclosure regarding the science behind the decisions to issue “Stay At Home”, “Face Covering” and “Cancel Mass Gathering” orders is very high especially considering the massive impact to California citizens’ incomes, freedoms, right to assembly peacefully, etc. caused by these orders and modified orders.

You cited correctly the *California First* case regarding the Deliberative Process “exemption” – the *Court in Citizen’s for Open Gov’t v. City of Lodi* quoted with approval the ruling from *California First* and then ruled that the City of Lodi had failed to meet its

burden of proof to justify withholding records under the CPRA. Here are two sections of the Citizen's decision that are very germane here:

This court has explained the showing that must be made by the one **468 claiming the deliberative process privilege: **“Not every disclosure which hampers the deliberative process implicates the deliberative process privilege. Only if the public interest in nondisclosure clearly outweighs the public interest in disclosure does the deliberative process privilege spring into existence. The burden is on the [one claiming the privilege] to establish the conditions for creation of the privilege. The trial court's determination is subject to de novo review by this court, although we defer to any express or implied factual findings of the superior court.”** (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172–173, 78 Cal.Rptr.2d 847.)

Citizens for Open Gov't v. City of Lodi, 205 Cal. App. 4th 296, 306, 140 Cal. Rptr. 3d 459, 467–68 (2012)

Lodi First is correct the city never established the conditions for creation of the privilege. The city's explanation in the trial court of why the privilege applies, i.e., to “foster candid dialogue and a testing and challenging of the approaches to be taken,” was simply a policy statement about why the privilege in general is necessary. Indeed, the city's explanation was similar to one of the policy reasons for the deliberative process privilege enunciated by this court: the privilege **“ ‘protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions.’ ”** (*California First Amendment Coalition v. Superior Court*, *supra*, 67 Cal.App.4th at p. 170, 78 Cal.Rptr.2d 847.) While the policy behind the privilege makes sense, invoking the policy is not sufficient to explain the public's specific interest in nondisclosure of the documents in this case. That policy could apply to almost any decisionmaking process. The city therefore failed to carry its burden to explain what the public's specific interest in nondisclosure was *in this case*.³ **469 (*California First Amendment Coalition v. Superior Court*, *supra*, 67 Cal.App.4th at p. 172, 78 Cal.Rptr.2d 847.) The city also failed to carry its burden to explain why the public's interest in nondisclosure in this case “clearly outweigh[ed]” the public interest in disclosure. (*Ibid.*) Because the city failed to carry its burden, the court erred in excluding 22 e-mails from the administrative record based on the deliberative process privilege.

Citizens for Open Gov't v. City of Lodi, 205 Cal. App. 4th 296, 307, 140 Cal. Rptr. 3d 459, 468–69 (2012) [Emphasis in original]

The Department simply has invoked the “exemption” without giving any justification for that withholding which the Court in *Citizen’s* ruled was insufficient.

I am aware that an agency is not obligated to give a requestor a “privilege log” or a “Vaughn Index” of withheld documents prior to the requestor filing a Petition for Writ of Mandate with the Court. However, to the extent the Department is willing to engage with me on this matter, I am hopeful we can avoid litigation.

Towards that end would you be willing to discuss these things with me? Some things that will help would be answering questions like:

1. How many responsive documents for items 1 and 2 for Request No. I were found?
2. Of those, how many were “data” or scientific studies, analysis, etc. which formed the basis for the orders and extended / modified orders versus simply e-mails (for example between Department employees discussing the potential for extending an order)?
3. How many of the studies, data, etc. were from sources from outside the Department?

Overall I suggest the Department also consider waiving any potential exemptions like “Deliberative Process” in the interest of transparency and openness. The Governor has been quick to say often that he and the State are following the “science” in the issuance of these orders. This is the opportunity for your Department to show the “science” the Governor is talking about.

Please let me know if you will discuss these matters with me.

Thank you in advance for your courtesy and cooperation in this matter.

Very truly yours,

//s//

Craig P. Alexander

EXHIBIT “D”

State of California HEALTH AND HUMAN SERVICES AGENCY

GAVIN NEWSOM
GOVERNOR



June 12, 2020

SENT VIA EMAIL ONLY

Craig Alexander, Esq.
Law Offices of Craig P. Alexander
Email: Craig@CraigAlexanderLaw.com

MARK A. GHALY MD, MPH
SECRETARY

RE: June 9, 2020 Correspondence re PRA Request

Aging

Dear Mr. Alexander:

Child Support
Services

Thank you for your letter in response to my communication of June 9, 2020.

Community Services
and Development

CHHS has worked to be transparent regarding the public health decisions addressing COVID-19. For your reference, I point you to examples of information (equally available to you) that CHHS, its agencies, and the Administration have shared publicly: state- and county-wide data that are updated on a daily basis, available at <https://update.covid19.ca.gov/#top>, data specific to Skilled Nursing Facilities, https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/SNFsCOVID_19.aspx, race and ethnicity data, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Race-Ethnicity.aspx>, among many other data sets. Additionally, the Governor, Secretary Mark Ghaly, and the State Public Health Officer Sonia Angell have held dozens of public press conferences since the state of emergency was proclaimed.

Developmental
Services

Emergency Medical
Services Authority

Health Care Services

Managed Health Care

Office of Health Information
Integrity

Office of Innovation

Office of Law Enforcement
Support

Office of Patient Advocate

Office of Surgeon General

Office of Systems Integration

Public Health

Rehabilitation

Social Services

State Hospitals

Statewide Health
Planning and
Development

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///

As the California Supreme Court and other courts have repeatedly recognized, the public interest in permitting governmental decision makers to candidly study, discuss, and debate the appropriate course of action outweighs the public interest in having access to such communications. *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Labor & Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12. This balance is particularly pertinent to CHHS's work leading the State's response to this global pandemic. Notably, as courts have repeatedly recognized, and as I indicated in my prior communication, the deliberative process privilege extends to factual information relied upon by the decisionmaker. See, e.g., *California First Amendment Coalition v. Superior Court*, 67 Cal.App.4th 159, 171 (1998) ("The disclosure of records containing only factual matters can impair the deliberative process by revealing the thought processes of the government decision maker").

Your request seeks the information upon which the State relied for its major public health decisions regarding this crisis. That request, on its face, seeks to probe the decisionmaking process of CHHS and its leadership. As framed, the requested information is exempt from disclosure because disclosing it would significantly chill, and thus hamper, the decisionmaking process. California law does not require or support further disclosure than the extensive information CHHS has already chosen to make transparent.

Sincerely,



Michael Palmisano
Attorney
Office of the Agency General Counsel
California Health and Human Services Agency

EXHIBIT ‘E’

Law Offices of Craig P. Alexander

24681 La Plaza, Suite 250

Dana Point, CA 92629

Office: 949-481-6400 Facsimile: 949-242-2545

E-mail: craig@craigalexanderlaw.com

VIA ELECTRONIC (MICHAEL.PALMISANO@CHHS.CA.GOV) MAIL ONLY

July 16, 2020

Mr. Michael Palmisano
California Health & Human Services
Atten: PRA Request
1600 9th Street, Room 460
Sacramento, CA 95814

RE: California Public Records Act Request in re Corona Virus Pandemic / COVID-19 –
Public Health orders regarding “Shelter in Place”, “Face Covering” and “Cancel
Mass Gathering” orders.

New Public Records Request and response to June 12, 2020 letter

Dear Mr. Palmisano

RESPONSE TO YOUR JUNE 12, 2020 CORRESPONDENCE:

Thank you for your letter of June 12, 2020 in response to my meet and confer letter of June 9, 2020 regarding my client’s PRA requests. In your letter you stated that your department will not be disclosing further documentation requested and is relying on exemptions such as the deliberative process “exemption” to withhold responsive records. As you know, my client’s position is that the Department’s reliance upon these exemptions is improper. My client and I will decide shortly if we will file a Petition for Writ of Mandate against your Department with the Superior Court.

In light of this please advise if you are authorized to accept service of process for your department and Secretary Mark Ghaly and if so via electronic mail or does your department require a physical service?

NEW PUBLIC RECORDS ACT REQUESTS:

Documents upon which the State of California and/or the California Health and Human Services agency based its “Shelter in Place”, “Face Covering”, “Cancel Mass Gathering” and “Cancel Church (and/or Worship) Gatherings” orders during the corona virus (COVID-19) pandemic.

Pursuant to the California Public Records Act, Govt. Code §§ 6250-6276.48, Center for American Liberty (“Requestor”) respectfully requests to inspect all public records in the possession or control of the California Health and Human Services agency (“CHHS”) office for the following::

1. Each set of data and/or correspondence, including electronic communications (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision to issue, renew, re-issue or modify any and all “Shelter in Place”, “Face Covering”, “Cancel Mass Gathering” and “Cancel Church (and/or Worship) Gatherings” orders from May 25, 2020¹ to the present date regarding the COVID-19 pandemic;
2. Each set of data and/or correspondence, including electronic communication and in paper format, regarding each re-issuance, renewal or modification of any Order;
3. Each set of data and/or correspondence, including electronic communication and in paper format (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision regarding any issuance, renewal, re-issuance or modification of any Order regarding the COVID-19 pandemic specifically regarding *any public or private protests*² of any type or kind from May 25, 2020 to the present date regarding the COVID-19 pandemic; and
4. A copy of any and all requests for similar records under the California Public Records Act received by the CHHS and all responses thereto.

These requests are for any and all writings and communications (including but not limited to, letters, electronic communications, e-mails, text messages, notes, memorandums, messages) whether or not those communications are stored in the CHHS’s files and/or servers or on personal devices / accounts such as private electronic mail accounts or cellular telephones. *City of San Jose v. Superior Court (Smith)* (2017) 2 Cal. 5th 608.

The time frame for these Requests is from May 25, 2020 to the present date.

**REQUEST FOR INFORMATION IN ELECTRONIC FORMAT PURSUANT TO
GOVERNMENT CODE SECTION 6253.9 (A) (2) & (E).**

¹ The date of the unfortunate death of George Floyd.

² Protest shall generally mean: A solemn declaration of opinion and usually of dissent: such as the act of objecting or a gesture of disapproval specially: a usually organized public demonstration of disapproval or a complaint, objection, or display of unwillingness usually to an idea or a course of action or an objection made to an official or a governing body.

My client is seeking these records in any and all electronic formats your office keeps them in. Under the Public Records Act, the CHHS's office is required to deliver the information in whatever electronic format it is in no matter whether it is Excel, Word, WordPerfect or some other program or programs. Government Code section 6253.9 (a) (2) & (e). **My client's request extends to receipt of this information in the electronic format your office maintains these records in.** Delivery of this information to me by electronic mail (craig@craigalexanderlaw.com) or via a thumb drive or via a disk is fine. I can supply the CHHS with a thumb drive if needed. *Please advise what electronic format these records are kept in.*

In addition, if there are documents that satisfy this request that are in **both** electronic and paper formats, my client offers to receive the electronic version of those records and forgo inspection and potential photocopying of those paper copies. It is hoped that this will save the CHHS and my client's time, trouble and expense.

If you anticipate that data compilation, extraction, or programming will be required to satisfy a request (per Section 6253.9(b)), please provide a written estimate and justification for same. Given the high profile of this matter with the public and the recentness of the date of any responsive records (May 25, 2020 to July 16, 2020), a compilation, extraction or programming should not be required to obtain responsive documents. In addition on May 28, 2020 the California Supreme Court ruled that an agency may not charge a requestor of responsive documents for the act of searching for those documents or for review and redaction of any portion of a responsive document where the agency is claiming it is subject to an exemption or privilege. *National Lawyers Guild v. City of Hayward, et al* (2020) 9 Cal. 5th 488.

If you or anyone else at your Department wishes to discuss my client's requests, please feel free to contact me by e-mail or telephone.

I look forward to hearing from the Department within 10 days.

Very truly yours,

//s//

Craig P. Alexander

EXHIBIT “F”

State of California HEALTH AND HUMAN SERVICES AGENCY

GAVIN NEWSOM
GOVERNOR



MARK A. GHALY MD, MPH
SECRETARY

July 27, 2020

SENT VIA EMAIL ONLY

Craig Alexander, Esq.
Law Offices of Craig P. Alexander
24681 La Plaza, Ste. 250
Dana Point, CA 92629
Email: Craig@CraigAlexanderLaw.com

Aging

Child Support
Services

Community Services
and Development

Developmental
Services

Emergency Medical
Services Authority

Health Care Services

Managed Health Care

Office of Health Information
Integrity

Office of Innovation

Office of Law Enforcement
Support

Office of Patient Advocate

Office of Surgeon General

Office of Systems Integration

Public Health

Rehabilitation

Social Services

State Hospitals

Statewide Health
Planning and
Development

RE: Public Records Act Request

Dear Mr. Alexander

The California Health and Human Services Agency (CHHS) received your request for documents on July 16, 2020. You requested copies of, "Documents upon which the State of California and/or the California Health and Human Services agency based its 'Shelter in Place', 'Face Covering', 'Cancel Mass Gathering' and 'Cancel Church (and/or Worship) Gatherings' orders during the corona virus (COVID-19) pandemic." You further indicated that your request encompassed a request for:

- Each set of data and/or correspondence, including electronic communications (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision to issue, renew, re-issue or modify any and all "Shelter in Place", "Face Covering", "Cancel Mass Gathering" and "Cancel Church (and/or Worship) Gatherings" orders from May 25, 2020 to the present date regarding the COVID-19 pandemic;
- Each set of data and/or correspondence, including electronic communication and in paper format, regarding each re-issuance, renewal or modification of any Order;
- Each set of data and/or correspondence, including electronic communication and in paper format (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision regarding any issuance, renewal, re-issuance or modification of any Order regarding the COVID-19 pandemic specifically regarding any public or private protests[] of any type or kind from May 25, 2020 to the present date regarding the COVID-19 pandemic; and
- A copy of any and all requests for similar records under the California Public Records Act received by the CHHS and all responses thereto.

CHHS has determined that it possesses documents responsive to your request. CHHS anticipates providing you with all nonprivileged responsive records no later than August 14, 2020. Notwithstanding this determination, please be aware that some records, and portions of some records, may be exempt from production based upon applicable privileges.

Thank you for contacting CHHS with your request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Palmisano', is positioned above the printed name.

Michael Palmisano
Attorney
Office of the Agency General Counsel
California Health and Human Services

EXHIBIT “G”

State of California

HEALTH AND HUMAN SERVICES AGENCY

GAVIN NEWSOM
GOVERNOR



MARK A. GHALY MD, MPH
SECRETARY

Aging

Child Support
Services

Community Services
and Development

Developmental
Services

Emergency Medical
Services Authority

Health Care Services

Managed Health Care

Office of Health Information
Integrity

Office of Innovation

Office of Law Enforcement
Support

Office of Patient Advocate

Office of Surgeon General

Office of Systems Integration

Public Health

Rehabilitation

Social Services

State Hospitals

Statewide Health
Planning and
Development

August 5, 2020

SENT VIA EMAIL ONLY

Craig Alexander, Esq.
Law Offices of Craig P. Alexander
24681 La Plaza, Ste. 250
Dana Point, CA 92629
Email: Craig@CraigAlexanderLaw.com

RE: **Public Records Act Request**

Dear Mr. Alexander

The California Health and Human Services Agency (CHHS) received your request for documents on July 16, 2020. You requested copies of, "Documents upon which the State of California and/or the California Health and Human Services agency based its 'Shelter in Place', 'Face Covering', 'Cancel Mass Gathering' and 'Cancel Church (and/or Worship) Gatherings' orders during the corona virus (COVID-19) pandemic." You further indicated that your request encompassed a request for:

- Each set of data and/or correspondence, including electronic communications (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision to issue, renew, re-issue or modify any and all "Shelter in Place", "Face Covering", "Cancel Mass Gathering" and "Cancel Church (and/or Worship) Gatherings" orders from May 25, 2020 to the present date regarding the COVID-19 pandemic;
- Each set of data and/or correspondence, including electronic communication and in paper format, regarding each re-issuance, renewal or modification of any Order;
- Each set of data and/or correspondence, including electronic communication and in paper format (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision regarding any issuance, renewal, re-issuance or modification of any Order regarding the COVID-19 pandemic specifically regarding any public or private protests[] of any type or kind from May 25, 2020 to the present date regarding the COVID-19 pandemic; and
- A copy of any and all requests for similar records under the California Public Records Act received by the CHHS and all responses thereto.

Enclosed please find all nonprivileged records that are responsive to your request.

Additionally, please be aware that, consistent with CHHS's commitment to transparency, a [COVID-19](#) website has been established that provides the public with extensive information regarding the State's effort to combat this unprecedented pandemic, including extensive [data sets](#) that may include some of the information that you seek, including county level data. Additionally, a [website](#) with extensive information on COVID-19 modeling has been established. CDPH has also established a [public website](#) with extensive data sets. Public websites with COVID-19 related information specific to [skilled nursing facilities](#), and with data sorted by [demographics](#), are also available. Finally, other state agencies may possess additional documentation responsive to your request.

All remaining records are exempt from production based on one or more of the following privileges:

- Government Code, § 6254, subdivision (k), and Evidence Code, § 954 (attorney-client privilege): Some of the records are exempt or prohibited from disclosure pursuant to federal or state law. Some of the records are confidential communications made within the scope of the attorney-client relationship and protected by the attorney-client privilege.
- Government Code, § 6254, subdivision (k), and California Code of Civil Procedure, §§ 2018.030 and 2018.020 (attorney work product doctrine): Documents that attorneys prepare for CHHS, including documents generated by others under the direction of CHHS's attorneys, reflecting the attorney's impressions, conclusions, opinions, or legal research or theories pertaining to the issues listed in your request are protected by the attorney work product doctrine.
- Government Code, § 6255 (deliberative process): Records that reveal the deliberative process of Secretary Ghaly or his staff (Gov. Code, § 6255; *Cal. First Amend. Coalition v. Super. Ct.* (1998) 67 Cal.App.4th 159; *Times Mirror Co. v. Super. Ct.* (1991) 53 Cal.3d 1325). Such records include factual records. *Id.* at 1343. Your request for records detailing the decision making process underpinning the delineated COVID-19 related orders is targeted directly at the deliberative process of the State's top health policy maker and head of the California Health and Human Services Agency, and most of the records are, as a result, exempt from disclosure.

Thank you for contacting CHHS with your request.

Sincerely,



Michael Palmisano
Attorney
Office of the Agency General Counsel
California Health and Human Services

EXHIBIT “H”

Law Offices of Craig P. Alexander

24681 La Plaza, Suite 250

Dana Point, CA 92629

Office: 949-481-6400 Facsimile: 949-242-2545

E-mail: craig@craigalexanderlaw.com

VIA ELECTRONIC (MICHAEL.PALMISANO@CHHS.CA.GOV) MAIL ONLY

November 17, 2020

Mr. Michael Palmisano
California Health & Human Services
Atten: PRA Request
1600 9th Street, Room 460
Sacramento, CA 95814

RE: California Public Records Act Request in re Corona Virus Pandemic / COVID-19 –
Public Health orders regarding “Shelter in Place”, “Face Covering” and “Cancel
Mass Gathering” and similar orders.
New Public Records Request

Dear Mr. Palmisano

NEW PUBLIC RECORDS ACT REQUESTS:

Documents upon which the State of California and/or the California Health and Human Services agency based its “Shelter in Place”, “Face Covering”, “Cancel Mass Gathering” and “Cancel Church (and/or Worship) Gatherings” and similar orders during the corona virus (COVID-19) pandemic.

Pursuant to the California Public Records Act, Govt. Code §§ 6250-6276.48, Center for American Liberty (“Requestor”) respectfully requests to inspect all public records in the possession or control of the California Health and Human Services agency (“CHHS”) office for the following::

1. Each set of data and/or correspondence, including electronic communications (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision to issue, renew, re-issue or modify any and all “Shelter in Place”, “Face Covering”, “Cancel Mass Gathering” and “Cancel Church (and/or Worship) Gatherings” and similar orders from July 16, 2020 to the present date regarding the COVID-19 pandemic;
2. Each set of data and/or correspondence, including electronic communication and in paper format, regarding each re-issuance, renewal or modification of any Order

- including, but not limited to, the implementation of the colored coded tier categories for the COVID-19 pandemic response and orders by the State of California;
3. Each set of data and/or correspondence, including electronic communication and in paper format (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision regarding any issuance, renewal, re-issuance or modification of any Order regarding the COVID-19 pandemic, including but not limited to, *any public or private protests¹ of any type or kind* from July 16, 2020 to the present date regarding the COVID-19 pandemic; and
 4. A copy of any and all requests for similar records under the California Public Records Act received by the CHHS and all responses thereto.

These requests are for any and all writings and communications (including but not limited to, letters, electronic communications, e-mails, text messages, notes, memorandums, messages) whether or not those communications are stored in the CHHS's files and/or servers or on personal devices / accounts such as private electronic mail accounts or cellular telephones. *City of San Jose v. Superior Court (Smith)* (2017) 2 Cal. 5th 608.

The time frame for these Requests is from July 17, 2020 to the present date.

**REQUEST FOR INFORMATION IN ELECTRONIC FORMAT PURSUANT TO
GOVERNMENT CODE SECTION 6253.9 (A) (2) & (E).**

My client is seeking these records in any and all electronic formats your office keeps them in. Under the Public Records Act, the CHHS's office is required to deliver the information in whatever electronic format it is in no matter whether it is Excel, Word, WordPerfect or some other program or programs. Government Code section 6253.9 (a) (2) & (e). **My client's request extends to receipt of this information in the electronic format your office maintains these records in.** Delivery of this information to me by electronic mail (craig@craigalexanderlaw.com) or via a thumb drive or via a disk is fine. I can supply the CHHS with a thumb drive if needed. *Please advise what electronic format these records are kept in.*

In addition, if there are documents that satisfy this request that are in **both** electronic and paper formats, my client offers to receive the electronic version of those records and

¹ Protest shall generally mean: A solemn declaration of opinion and usually of dissent: such as the act of objecting or a gesture of disapproval specially: a usually organized public demonstration of disapproval or a complaint, objection, or display of unwillingness usually to an idea or a course of action or an objection made to an official or a governing body.

forgo inspection and potential photocopying of those paper copies. It is hoped that this will save the CHHS and my client's time, trouble and expense.

If you anticipate that data compilation, extraction, or programming will be required to satisfy a request (per Section 6253.9(b)), please provide a written estimate and justification for same. Given the high profile of this matter with the public and the recentness of the date of any responsive records (July 16, 2020 to November 17, 2020), a compilation, extraction or programming should not be required to obtain responsive documents. In addition on May 28, 2020 the California Supreme Court ruled that an agency may not charge a requestor of responsive documents for the act of searching for those documents or for review and redaction of any portion of a responsive document where the agency is claiming it is subject to an exemption or privilege. *National Lawyers Guild v. City of Hayward, et al* (2020) 9 Cal. 5th 488.

If you or anyone else at your Department wishes to discuss my client's requests, please feel free to contact me by e-mail or telephone.

I look forward to hearing from the Department within 10 days pursuant to Government Code section 6253.

Very truly yours,

//s//

Craig P. Alexander

EXHIBIT “I”

State of California

HEALTH AND HUMAN SERVICES AGENCY

GAVIN NEWSOM
GOVERNOR



MARK A. GHALY MD, MPH
SECRETARY

Aging

Child Support
Services

Community Services
and Development

Developmental
Services

Emergency Medical
Services Authority

Health Care Services

Managed Health Care

Office of Health Information
Integrity

Office of Innovation

Office of Law Enforcement
Support

Office of Patient Advocate

Office of Surgeon General

Office of Systems Integration

Public Health

Rehabilitation

Social Services

State Hospitals

Statewide Health
Planning and
Development

November 19, 2020

SENT VIA EMAIL ONLY

Craig Alexander, Esq.
Law Offices of Craig P. Alexander
Email: Craig@CraigAlexanderLaw.com

RE: Public Records Act Request

Dear Mr. Alexander:

The California Health and Human Services Agency (CHHS) received your request for documents, submitted on behalf of your client, the Center for American Liberty, on November 17, 2020. You requested copies of "Documents upon which the State of California and/or the California Health and Human Services agency based its 'Shelter in Place', 'Face Covering', 'Cancel Mass Gathering' and 'Cancel Church (and/or Worship) Gatherings' and similar orders during the corona virus (COVID-19) pandemic." You further indicated that your request encompassed a request for:

- "Each set of data and/or correspondence, including electronic communications (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision to issue, renew, re-issue or modify any and all 'Shelter in Place', 'Face Covering', 'Cancel Mass Gathering' and 'Cancel Church (and/or Worship) Gatherings and similar orders from July 16, 2020 to the present date regarding the COVID-19 pandemic";
- "Each set of data and/or correspondence, including electronic communication and in paper format, regarding each re-issuance, renewal or modification of any Order including, but not limited to, the implementation of the colored coded tier categories for the COVID-19 pandemic response and orders by the State of California";
- "Each set of data and/or correspondence, including electronic communication and in paper format (including but not limited to scientific studies, peer reviews, medical studies, analysis, hospital data, public health studies, health care statistics, memorandum, letters, correspondence, directives, etc.) upon which the State of California and/or the CHHS based its decision regarding any issuance, renewal, re-issuance or modification of any Order regarding the COVID-19 pandemic, including but not limited to, any public or private protests¹ of any type or kind from July 16, 2020 to the present date regarding the COVID-19 pandemic"; and
- "A copy of any and all requests for similar records under the California Public Records Act received by the CHHS and all responses thereto."

Enclosed please find all nonprivileged records that are responsive to your request.

Additionally, please be aware that, consistent with CHHS's commitment to transparency, a [COVID-19](#) website has been established that provides the public with extensive information regarding the State's effort to combat this unprecedented pandemic, including extensive [data sets](#) that may include some of the information that you seek, including county level data. Additionally, a [website](#) with extensive information on COVID-19 modeling has been established. CDPH has also established a [public website](#) with extensive data sets. Public websites with COVID-19 related information specific to [skilled nursing facilities](#), and with data sorted by [demographics](#), are also available. Finally, other state agencies may possess additional documentation responsive to your request.

All remaining records are exempt from production based on one or more of the following privileges:

- Government Code, § 6254, subdivision (k), and Evidence Code, § 954 (attorney-client privilege): Some of the records are exempt or prohibited from disclosure pursuant to federal or state law. Some of the records are confidential communications made within the scope of the attorney-client relationship and protected by the attorney-client privilege;
- Government Code, § 6254, subdivision (k), and California Code of Civil Procedure, §§ 2018.030 and 2018.020 (attorney work product doctrine): Documents that attorneys prepare for CHHS, including documents generated by others under the direction of CHHS's attorneys, reflecting the attorney's impressions, conclusions, opinions, or legal research or theories pertaining to the issues listed in your request are protected by the attorney work product doctrine.
- Government Code, § 6255 (deliberative process): Records that reveal the deliberative process of Secretary Ghaly or his staff (Gov. Code, § 6255; *Cal. First Amend. Coalition v. Super. Ct.* (1998) 67 Cal.App.4th 159; *Times Mirror Co. v. Super. Ct.* (1991) 53 Cal.3d 1325). Such records include factual records. *Id.* at 1343. Your request for records detailing the decision making process underpinning the delineated COVID-19 related orders is targeted directly at the deliberative process of the State's top health policy maker and head of the California Health and Human Services Agency, and most of the records are, as a result, exempt from disclosure.

Thank you for contacting CHHS with your request.

Sincerely,



Michael Palmisano
Attorney
Office of the Agency General Counsel
California Health and Human Services Agency

EXHIBIT “J”

Westport News

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California eases more virus restrictions, opens playgrounds

Adam Beam, Associated Press Updated 7:26 pm EDT, Tuesday, September 29, 2020

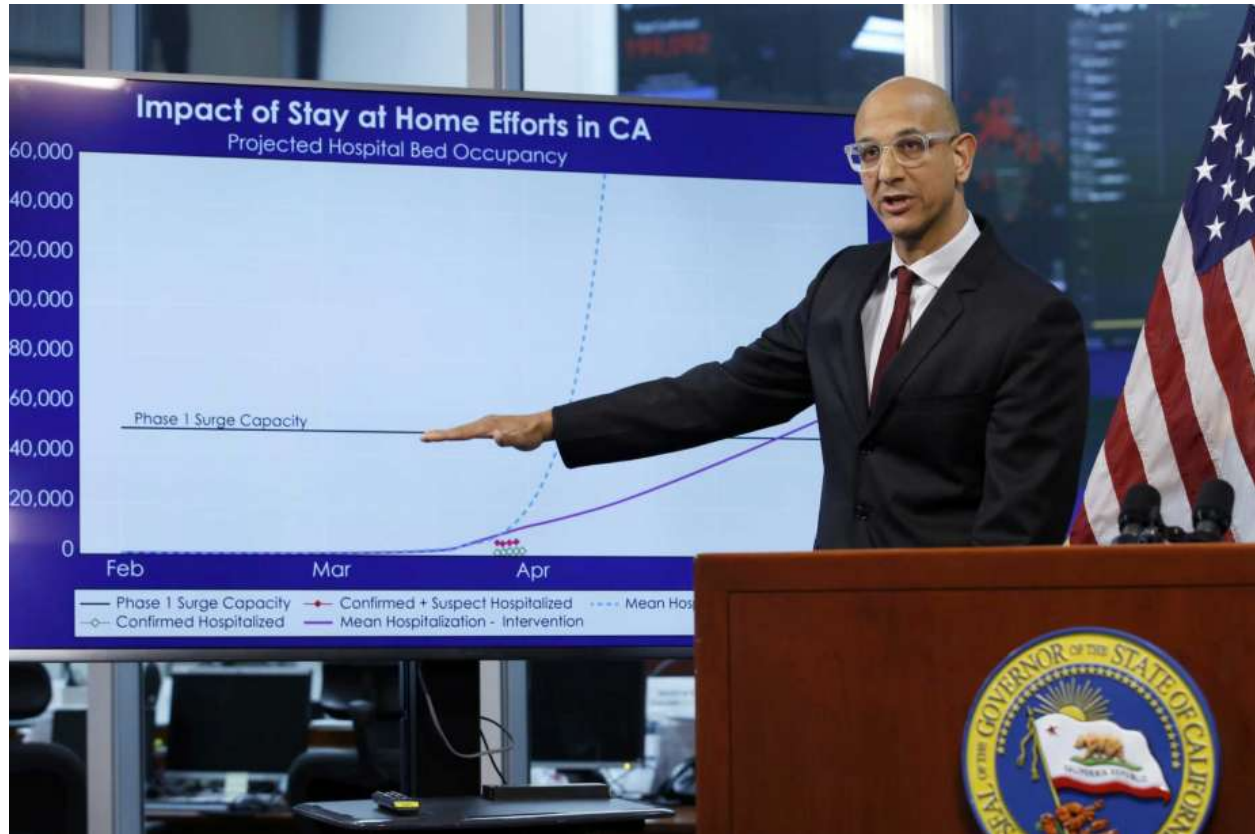


IMAGE 1 OF 4

FILE - In this April 1, 2020, file photo Dr. Mark Ghaly, secretary of the California Health and Human Services, gestures to a chart showing the impact of the mandatory stay-at-home orders, during a news ... [more](#)

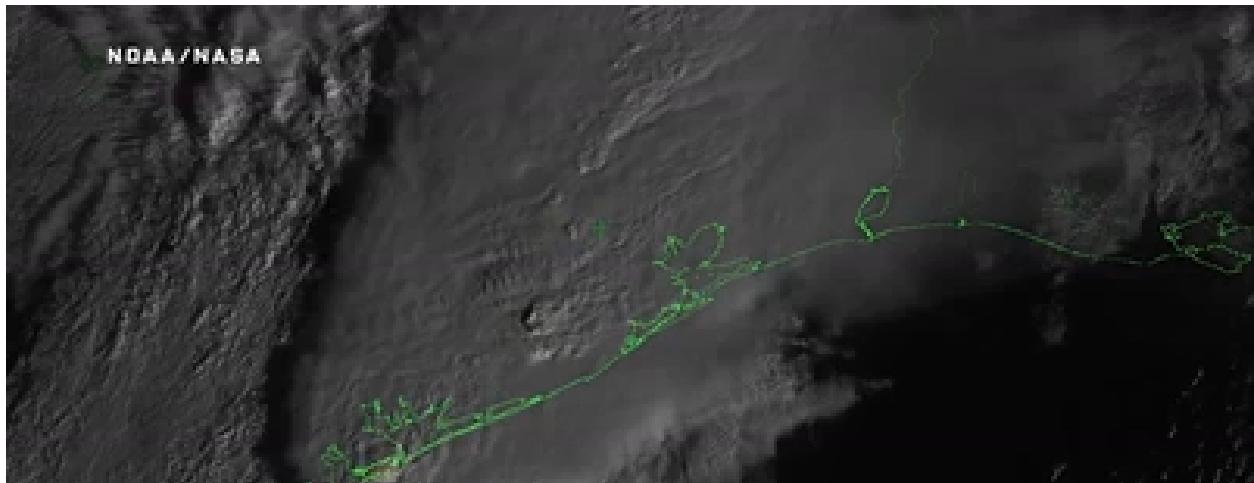
SACRAMENTO, Calif. (AP) — California has relaxed coronavirus restrictions in 40 of its 58 counties, including all but one in the San Francisco Bay Area where the illness first took hold in the state, even as signs emerge of a possible surge of new cases.

On Tuesday, state officials upgraded seven counties from its most restrictive rules, clearing the way for a return to indoor restaurant dining, worship services, gym workouts and movies in theaters — all with modifications to require face coverings and limit capacity to ensure physical distancing.

The state is moving more slowly than the reopening last spring that brought with it a dramatic spike in cases, hospitalizations and deaths. California leads the nation with 815,000 confirmed cases and its 5,730 deaths are the fourth-highest state total, according to data from Johns Hopkins University.

In the last two months hospitalizations have fallen to their lowest level since early April and the statewide rate of new cases among those tested is a record-low 2.8% over the last two weeks.

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But the state continues to move slowly on reopening. Disneyland and other amusement parks have urged the state to allow them to resume operations. The Walt Disney Co. announced Tuesday it is laying off 28,000 workers at its parks in California and Florida and blamed California's "unwillingness to lift restrictions " as a reason for its troubles.

For weeks, Gov. Gavin Newsom and other state officials have said they were close to establishing rules.

"We're working with those industries to put out something that's thoughtful, allows us to maintain the rest of our framework in a strong way, and really following those principles of slow and stringent to ensure those large activities are done responsibly," Dr. Mark Ghaly, California's top public health official, said at his weekly briefing that ended just as Disney made its announcement.

The state's more conservative approach to reopening was unveiled last month and is based on the percentage of positive tests and per capita new cases in each of the counties. The four tiers for reopening include ranges for those categories and a county must meet both for two consecutive weeks before advancing to a less-restrictive tier.

Local officials can choose to restrict activities even if the state allows them. San Francisco Mayor London Breed announced Tuesday the city will allow indoor dining and worship services for the first time since March. The city has met the state's criteria for weeks, but its leaders have only recently begun relaxing local rules.

San Francisco is the largest county to move ahead two tiers in the reopening process. All but one — Sonoma — of the nine counties in the San Francisco Bay area have now met state standards to leave the most restrictive level.

The state also lifted its most restrictive rules in Butte, Contra Costa, Fresno, Sacramento, San Joaquin, Santa Barbara and Yolo counties. Los Angeles County narrowly missed its chance to reopen more businesses, a setback for its 10 million residents.

Ghaly renewed his warning that a potential new surge of cases, driven partly by infections from the Labor Day holiday weekend that are only emerging now, could increase coronavirus-related hospitalizations by 89% in the next month.

He expressed faith in the state's "slow and stringent" system of reopening, saying it takes into account those trends.

"As we sound a bit of the early alarm it's really a reminder to be able to do more to reduce transmissions in our communities," Ghaly said.

For most people, the new coronavirus causes mild or moderate symptoms, such as fever and cough that clear up in two to three weeks. For some, especially older adults and people with existing health problems, it can cause more severe illness, including pneumonia and death.

The state issued guidelines late Monday for public playgrounds to reopen across the state. But the rules are strict, requiring everyone 2 and older to wear facemasks and mandating parents keep their children at least 6 feet (1.8 meters) away from others.

Officially, playgrounds have been closed during the pandemic. But in many parts of the state children have been playing on them for months as local officials shunned enforcement.

John Pope, a spokesman for the Orange County city of Newport Beach, said the city posted signs early in the pandemic indicating playgrounds were closed and roped off the equipment with caution tape. But the tape got taken down, and over time the signs would get damaged, he said.

"It was hard to actively enforce it," Pope said. "Our community has been asking for more definitive guidance on playgrounds."

The rules for kids playing on playgrounds differ from the ones governing youth sports, where kids aren't required to wear masks and only are allowed to practice with their teammates. Ghaly said that's because at a public playground, kids interact with different people every day while in sports they are limited to the same "cohort."

"We do put together these guidelines in order to ensure that we reduce risk as much as possible," Ghaly said.

Associated Press writer Amy Taxin contributed reporting from Orange County, California.

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