Hearing Date: 06/25/2021
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LOS ANGELES TIMES COMMUNICATIONS LLC v. COUNTY OF LOS ANGELES

Case Number: 20STCP02106

Hearing Date: June 25, 2021

[Tentative] ORDER GRANTING PETITION FOR WRIT OF MANDATE

Petitioner, Los Angeles Times Communications LLC, requests a writ of mandate pursuant to Code of Civil Procedure section 1085, subdivision (a) and the California Public Records Act (CPRA) (Government Code sections 6250, *et seq*.). In this action, Petitioner seeks to compel Respondent, the County of Los Angeles, to produce documents withheld by the Los Angeles County Sheriff's Department (LASD) responsive to its CPRA request within three months.

The County opposes the petition.

The Petition is granted.

Based on the remaining dispute between the parties, the court grants Petitioner's request for judicial notice (RJN) as follows: Exhibits QQ, RR, SS and TT only.

The County's RJN is granted in its entirety.

STATEMENT OF THE CASE

Originally at issue were three categories of documents sought by Petitioner from LASD through a CPRA request: (1) documents producible pursuant to Senate Bill 1421 (SB 1421);

(2) documents related to Scott Budnick and two attorneys and allegations of retaliation; and

(3) documents related to the Kobe Bryant helicopter crash.

After Petitioner filed this action, the parties resolved all disputes except as to the documents producible pursuant to SB 1421. As to those documents, however, the dispute is not about such documents being available to a requester under the CPRA. Instead, the dispute centers around the timing of production—Petitioner claims LASD has not promptly provided the documents requested.

By way of background, in 2018, the Governor Brown signed SB 1421 amending Penal Code section 832.7, the statute providing for the confidentiality of peace officer personnel records. SB 1421 deems peace officer records related to four categories of incidents as non-confidential:

- the discharge of a firearm at a person by a peace officer;
- the use of force by a peace officer against a person, resulting in death or great bodily injury;
- sustained findings that an officer engaged in the sexual assault of a member of the public; and
- sustained findings of dishonesty by an officer relating to the reporting, investigation, or prosecution of a crime, or the investigation of misconduct by another officer including, but not limited to, any sustained finding of perjury, false statements, filing false reports, and the destruction, falsifying, or concealing of evidence. (Pen. Code § 832.7, subd. (b).)[1]

On January 1, 2019, pursuant to the CPRA, Petitioner requested certain records from the County. Petitioner sought all letters of discipline for all LASD personnel (including 325 Deputy Sheriffs) for all four SB 1421 categories. (Pet., Exs. B, D and F.) Petitioner also sought the LASD's "*Brady* list" and related letters. (Pet., Ex. E.) Petitioner later narrowed the scope of its request to records from 2014 through 2019. (See Pet., Ex. K at 5.)

Eventually, after disputes concerning the County's production and attendant delays, Petitioner brought its petition against the County.

STANDARD OF REVIEW

Code of Civil Procedure section 1085, subdivision (a) provides in relevant part:

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party

to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person."

"There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty." (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy . . . ." (*Pomona Police Officers' Ass'n v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-84.)

"When there is review of an administrative decision pursuant to Code of Civil Procedure section 1085, courts apply the following standard of review: '[J]udicial review is limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow the procedure and give the notices required by law.' [Citations.]" (*Pomona Police Officers' Ass'n v. City of Pomona*, *supra*, 58 Cal.App.4th at 584)

Pursuant to the CPRA, individual citizens have a right to access government records. The California Legislature declared through the CPRA that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code § 6250; see also *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57, 63.) Government Code section 6253 states in part:

"Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so." (Gov. Code § 6253, subd. (b).)

ANALYSIS

Petitioner contends the LASD's "rolling production" of requested records constitutes a failure by the LASD to "promptly" disclose records as required by the CPRA. At this time, the dispute is not about the substance of the records LASD is producing; it is about timing.

Petitioner seeks an order requiring the LASD to comply with its request—made 30 months ago—within 90 days. Petitioner argues its proposed deadline is consistent with orders made by other courts concerning similar records. (Opening Brief 13:9-13, Exs. RR [Carlsbad 10 years of records within 54 days] and SS [Oakland given 6 months for outstanding records].) Petitioner also requests the court issue a judicial declaration that the LASD has not promptly complied with its CPRA request.

The County contends Petitioner is entitled to no relief here. The County argues the CPRA does not allow such relief because (1) the LASD has acted "promptly" in addressing Petitioner's request, and (2) the CPRA does not provide for the relief sought.

The LASD Failed to Act Promptly with Petitioner's CPRA Request:

Petitioner made its CPRA request on January 1, 2019, the effective date of SB 1421. Petitioner contends it has been waiting for the County to fully respond for nearly two-and-a-half years.

Petitioner argues *Marken v. Santa Monica-Malibu USD* (2012) 202 Cal.App.4th 1250 supports its claim the County's delay is and has been unreasonable. (See e.g., *id.* at 1268 n.14 [dictum suggesting month-long delay may not comply with Government Code section 6253, subdivision (b).)[2]

The County provides its perspective on the two-and-a-half-year delay for production.

First, the County argues "when [Petitioner] served its CPRA request, there was a question about whether SB 1421 applied retroactively. *See, e.g., Ventura Cty. Deputy Sheriffs' Ass'n v. County of Ventura,* 61 Cal.App.5th 585 (2021)(reviewing and reversing permanent injunction against application of Penal Code § 832.7 to records of conduct and incidents occurring before January 1, 2019)." (Opposition 15:11-15.) Therefore, according to the County, "LASD needed to wait until that issue was resolved before it could start producing SB 1421 records dated before January 1, 2019, because the County could face substantial criminal and civil liability if it improperly disclosed deputy personnel records. *See* Cal. Penal Code § 832.7(a)." (Opposition 15:15-17.)

The County's claim the alleged question concerning the retroactive effect of SB1421 prevented it from complying with Petitioner's request rings hollow for two reasons.[3] First, as noted by Petitioner, on February 20, 2019, this court rejected a request by the Association for Los Angeles Deputy Sheriffs (ALADS) to enjoin the County—who took no position on the matter—from disclosing personnel records

predating the effective date of SB1421.[4] This court's order became final on July 24, 2019 when ALADS dismissed its petition and pending appeal.[5] As of March 6, 2019 (and without question by July 24, 2019), ALADS attempts to preclude the LASD from releasing records predating SB1421 had failed. Thus, no retroactivity issue actually existed.

Moreover, the County began releasing records pursuant to Petitioner's request in November 2020. (Tokoro Decl., ¶ 11.) The Court of Appeal did not file its decision in *Ventura Cty. Deputy Sheriffs' Ass'n v. County of Ventura, supra,* 61 Cal.App.5th at 585 until March 3, 2021, and the Court did not issue its remittitur until May 10, 2021. If the County actually had concerns about the retroactivity issue (despite having taken no position on it in ALADS' action and ALADS having dismissed its appeal), the LASD would not have begun production to Petitioner in November 2020.

The County also contends the LASD has been working diligently to complete Petitioner's CPRA request. As of May 26, 2021, the LASD had produced 113 files to Petitioner totaling over 6,300 pages of documents. The County argues its arduous process for disclosure justifies the pace of its disclosure and demonstrates its action has been reasonable.

The County submits evidence as to the burdensome nature of the production: In response to the various SB 1421 requests by various requesters under the CPRA, LASD must identify potentially responsive records, run searches in the Performance Reporting and Monitoring System (PRMS) (which currently contains files for approximately 112,850 incidents),[6] manually review each record to determine if it is subject to disclosure under SB 1421, notify the deputy or deputies involved, manually redact information that is exempt under the CPRA, conduct a second level review and then produce the record.

The LASD has identified the following number of potentially responsive records remaining for each of the four SB 1421 categories within the timeframe of Petitioner's request: (1) discharge of a firearm – 148 records; (2) use of force – 5,823 records; (3) sexual assault – 49 records; and (4) dishonesty – 143 records. (See Morsi Decl., ¶¶ 38, 44-45, 48, 54, 59-60, 63, 68, 70-71, 73, 76, 78-82, 90-92.) To comply with the CPRA request, the ASD engages in the above-described process for each file, and the files generally contain hundreds of pages that need to be reviewed and redacted. (*Id.*) The average review of a file takes LASD staff 96 hours. (Morsi Decl., ¶ 42.)

The record is clear. Petitioner filed its petition more than 18 months after it made its CPRA request of the LASD. By that time, the LASD had produced no responsive documents to Petitioner. The record is also clear the scope of the request and any legal

impediments to providing the records was resolved as of early March 2019, about 15 months prior to Petitioner filing its petition.

While the County disputes Petitioner's characterization of the LASD as "sitting on its hands," (Opposition 6:23-24), the County does not provide any real explanation for failing to provide any documents to Petitioner in 2019 and only 18 files (including two addendum files) in 2020. The court finds it simply not credible that within a 24-month timespan, the LASD could produce only 18 relevant files. There is just no plausible explanation for the delay in the evidence provided. There is no evidence, for example, of what efforts, if any, the LAUSD made to produce files in 2019 or most of 2020. This alone demonstrates the County's lack of promptness here.

Telling is the County's position there is no authority in the law to require compliance with a CPRA request by a particular date despite the legislature's clear intent of prompt compliance by agencies with the CPRA. Also, telling is the County's—"we will get it done when we get it done"—approach to Petitioner's request. That the County has not committed to a target date for compliance given the LASD knows the universe of records it must review also speaks volumes.

The court appreciates the volume of Petitioner's request, the volume of other CPRA requests,[7] the size of the LASD, limited resources and the functions the LASD provides for the community it serves. Nonetheless, for whatever reason, it appears from the evidence the LASD has not promptly responded to Petitioner's CPRA request. The LASD has provided no explanation for an apparent complete lack of action on the request in 2019 and for over 80 percent of 2020. That alone demonstrates Petitioner's position—the LASD has not acted promptly with Petitioner's CPRA request.

The court finds on this record the County and the LASD have not acted promptly over the last 30 months with its CPRA compliance as to Petitioner's request.

Time for Compliance:

The CPRA states in part:

"except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person . . . ." (Gov. Code § 6253, subd. (b).)

Section 6253, subdivision (c), provides the

“agency, upon request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.” (Gov. Code § 6253, subd. (c).)

The agency may not “delay or obstruct” the production. (Gov. Code § 6253, subd. (d).)

As noted, the County contends the CPRA does not provide the court with the authority to impose time restrictions on the LASD’s compliance with the CPRA. Citing *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, the County reports “[a]n agency may not ‘delay access for purposes of inspecting public records.’ (§ 6256.2.) [But t]he Act provides no remedy for failure to timely comply with a request for records.” (*Id.* at 483.)

The County argues the exclusive remedies under the statute are set forth in Government Code sections 6258 and 6259. Such statutes provide for the following limited judicial remedies:

“If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, the court shall order the public official to make the record public. If the court determines that the public official was justified in refusing to make the record public, the court shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.” (Gov. Code, § 6259, subd. (b).)

The court finds the County’s argument of the court’s limited enforcement authority unpersuasive.

The statutory purpose and intent of CPRA is “to further ‘the fundamental right of every person in this state to have *prompt* access to information in the possession of public agencies.’ ” (*County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 130.) The right is enshrined in our state Constitution. The County’s position on enforcement would effectively deprive the court of any real enforcement power and render the rights to the public through the CPRA illusory. That is, a local agency could acknowledge its

obligation to disclosure government documents but avoid any judicial enforcement by indicating compliance at some future time—whenever that date might be. (See Civ. Code § 3523.)

The CPRA is modeled after the Freedom of Information Act (FOIA) (5 U.S.C. § 552) such that case authority on FOIA is persuasive in interpreting the CPRA. (*ACLU v. Deukmejian* (1982) 32 Cal.3d 440, 447 ["the judicial construction and legislative history of the federal act serve to illuminate the interpretation of its California counterpart"]; *Citizens for A Better Environment v. Dept. of Food & Agriculture* (1985) 171 Cal.App.3d 704, 712.)

In *Renegotiation Bd. v. Bannercraft Clothing Co., Inc.* (1974) 415 U.S. 1, the United States Supreme Court suggested—but did not decide—that the district court's equity powers were not limited to those specified in the FOIA and could extend to enjoining action by a public agency. (*Id.* at 18-25.) Thus, persuasive authority suggests the court is not strictly bound by and limited to the specific and precise remedies provided for by statute.

Based on the foregoing, the court construes its authority as to remedies for CPRA violations more broadly under Government Code section 6258, which provides for injunctive relief, than as the County argues. The court finds that it has the statutory authority to grant a writ on facts such as these and to fashion a reasonable date for return on the writ.

Based on the evidence provided by the County, the LASD has an additional 6, 63 files to review in connection with Petitioner's CPRA request. The LASD has produced 113 files in 26 months (nine months in 2019 [April to December], 12 months in 2020 and 5 months in 2021). Thus, the LASD's average disclosure rate is 4.34 files per month. Assuming the court used 7 months as the time frame (November 2020 through May 2021), the LASD has produced 16.14 files per month. Even using the numbers most advantageous to the LASD, at its adopted rate of disclosure given the universe of documents, Petitioner will be waiting for decades to obtain the disclosure to which it is entitled if the LASD continues at its current pace.

Petitioner has requested an enforcement timeframe of 90 days. The County has made no suggestion about compliance and has offered no target date for compliance.

Based on all of the evidence before the court and the date Petitioner sought the records, in the absence of a realistic approach by the LASD, the court finds 90 days to be a reasonable date for return on the writ. To avoid a future enforcement action, the

court suggests the parties meet and confer after the hearing in an to attempt to create a timeframe workable for the parties. Any judgment may reflect a different return date to the extent the parties reach resolution of the issue.

CONCLUSION

Based on the foregoing, the petition is granted in part.[8] The court notes it has continuing jurisdiction to enforce its writ. (*California Lab. Federation v. Occupational Safety & Health Stds. Bd.* (1992) 5 Cal.App.4th 985, 989, fn. 1. ["A court issuing a writ of mandate has the inherent continuing power to make any orders necessary and proper for the complete enforcement of the writ."] See also Code Civ. Proc. §1097.)

IT IS SO ORDERED.

June 25, 2021

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Hon. Mitchell Beckloff

Judge of the Superior Court

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[1] Penal Code section 832.7, subdivision (b)(5) also provides that an agency responding to a record request "shall redact" disclosed records for the following purposes only: "[t]o remove personal data or information . . . other than the names and work-related information of the peace . . . officers"; "[t]o preserve the anonymity of complainants and witnesses"; "[t]o protect confidential medical, financial, or other information whose disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct . . . by peace officers"; and "[w]here there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, . . . or another person." (Pen. Code § 832.7; *Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 916.)

[2] The court notes—as argued by the County—the is case is distinguishable from the facts here.

[3] The County concedes lawsuits within the County addressing retroactivity were resolved by March 8, 2019. (Tokoro Decl., ¶ 6.)

[4] On its own motion, the court takes judicial notice of its own file in Case No. 19STCP00166, *Association of Los Angeles Deputy Sheriffs v. County of Los Angeles.*

[5] On its own motion, the court takes judicial notice of the Court of Appeal's docket in B295936, *Association of Los Angeles Deputy Sheriffs v. County of Los Angeles.* Division Eight denied ALADS request for a writ of supersedeas on March 1, 2019. The Supreme Court denied review of Division Eight's decision on March 6, 2019.

[6] The PRMS does not categorize files based on whether they are subject to SB 1421. (Morsi Decl., ¶ 34.)

[7] No doubt Petitioner's request is duplicative (at least in part) with that of other requesters. Thus, the LASD's ongoing disclosure efforts would seemingly become more streamlined as disclosures are made.

[8] All that remains of Petitioner's claims in the petition is a request for declaratory judgment stating "the public records requested by Petitioner are disclosable public records and that the County violated the CPRA by (1) failing to timely respond to Petitioner's CPRA requests and (2) improperly obstructing and denying the inspection and copying of public records responsive to Petitioner's CPRA requests." (Pet., Prayer ¶ 4.) The petition contains no other specific declaratory judgment relief nor does Petitioner raise the issue of declaratory relief in its Opening Brief. The Opposition contends such relief under the circumstances is inappropriate. (Opposition 13:3-13.) The court agrees with the opposition argument that such a declaration would merely address a past wrong. Moreover, "[t]he court may refuse to [grant declaratory relief] in any case where its declaration or determination is not necessary or proper at the time under all the circumstances." (Code Civ. Proc., § 1061.) Further, the court properly may refuse to grant relief where an appropriate procedure has been provided by special statute and the court believes that more effective relief can and should be obtained through that procedure." (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 433 [applied in a CPRA case].)