

GLENN SPITZER
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 533-5800
FAX (619) 533-5856

Jan I. Goldsmith
CITY ATTORNEY

July 17, 2010

VIA U.S. mail and e-mail

Coast Law Group, LLP.
1140 South Coast Highway 101
Encinitas, CA 92024

Re: California Public Records Act Request – Multiple Departments;
Special Events Permits, Park Use Permits, and Fireworks Shows.

Dear Mr. Gonzales:

This responds to your July 8, 2010 Public Records Act (PRA) request. Below is a response to each discernable request organized by category.

Category 1: “Mayor’s Office”

“[A]ll Records and documents, including all electronic mail messages, to or from any City Staff in the Mayor’s office (including the Mayor himself) relating to fireworks or fireworks shows between January 1, 2010 and the date this letter [July 8, 2010] is received.”

The City’s obligation is to produce documents for inspection upon a request that “reasonably describes an identifiable record.” (Gov’t Code § 6253(b).) “The request to the agency must itself be focused and specific.” *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481. One litmus test for the reasonable-description-of-identical-records requirement is “whether the records can be located with reasonable efforts.” *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186.

Your request does not reasonably describe an identifiable record. Instead, it seeks any document including e-mail within the City relating in any way to fireworks or fireworks shows. The request is overly broad. Based on your broad definition of “City Staff,” the City would be required to research hundreds of City employee’s e-mails for the word “fireworks” in order to produce responsive documents. Moreover, we would be required to search for and review thousands of documents to determine whether they potentially relate to fireworks. As phrased,

the request is simply unmanageable. Accordingly, the City cannot provide responsive documents. If you would like certain documents related to fireworks, please provide a more focused and specific request. If you call me, I would be willing to assist you in narrowing the request.

Additionally, the request is objectionable because it is burdensome. Even a clearly framed request which requires an agency to search an enormous volume of data for a “needle in the haystack” or, conversely, a request which compels the production of a huge volume of material is objectionable as unduly burdensome. *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440; *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166. Thus, even assuming the request reasonably describes an identifiable record, it is still improper because it is unduly burdensome. A review of all documents and e-mails within the City is tantamount to a search for a needle in a haystack. Also, it is very likely that such a burdensome search would produce a huge volume of material.

Please know that the City has the ability to search e-mails if the following information is provided: (1) name of person; (2) time period; and (3) search terms. Your request does specify a time period for Alex Roth. The City intends to produce Mr. Roth’s e-mails after they have been reviewed for all applicable privileges and exemptions. Because of the unusual circumstances associated with your request,¹ the City has not yet determined whether Mr. Roth’s e-mails can be disclosed in whole or in part. The City will make this determination on or before July 30, 2010.

“[A]ll communications and documents used by the Mayor’s office to reach its opinion that CERF’s La Jolla Cove lawsuit is a “baseless attempt to collect attorney’s fees,” as attributed to the Mayor’s spokesman in an article available on the San Diego Union Tribune’s website (dated June 25, 2010): www.signonsandiego.com/news/2010/jun/25/attorney-sues-to-halt-la-jolla-fireworks .”

Again, the request does not reasonably describe an identifiable document. Instead, it seeks to know opinions and analysis performed by the Mayor’s office, which may involve opinions and analysis from the City Attorney’s Office. This is not a proper request under the PRA. If you believe otherwise, please provide legal authority. Additionally, the request as framed seeks information protected by the work product doctrine, the attorney client privilege, the deliberative process privilege, and potentially other privileges and exemptions. For these reasons, the City will not produce documents responsive to this request.

Category 2: “Individual Fireworks Shows”

“For the following list of fireworks shows, please provide all documents in the City’s possession relating in any way to event permitting, environmental review, and public health and safety: [...]

¹ (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

(i) La Jolla Country Club, (ii) Mira Mesa Community Park, (iii) Sea World/Fiesta Island, (iv) West Mission Bay/El Carmel Point, (v) La Jolla Cove, (vi) San Diego Bay, (vii) Ocean Beach, (viii) Lake Murray.”

The request does not reasonably describe an identifiable document. Instead, the request is overbroad and vague in that it seeks documents “relating in any way” to the event permitting, environmental review, and public health and safety. For these reasons, the request is also unduly burdensome.

The request is narrowed within some of the subcategories and can reasonably be interpreted to seek the following documents related to the eight specified events: (1) permit applications; (2) the permits themselves; and (3) any file maintained that specifically relates to one of the eight events. Unless privileged or exempt under the Government Code, the City will produce these three categories of documents.

Because of the unusual circumstances associated with this request,² the City has not yet determined whether all the documents can be disclosed in whole or in part. For example, the files may contain certain exempt records and the applications may contain exempt information. The City will make this determination on or before July 30, 2010.

“All communication by and between City Staff relating to each firework show”

The request does not reasonably describe an identifiable document. Instead, the request is overbroad and vague in that it seeks communications relating to the eight firework shows. This does not require reasonable efforts by the City because it requires a review of the files and determination of who was involved in the show, then a further search of those persons other files and e-mails. The request is unduly burdensome for the same reason.

As set forth above, the City is making certain records available for review and copying. After you have had an opportunity to review these files, you should be able to provide a more focused request. Until such time, the request is unmanageable and the City will not respond.

“[A]ll communication by and between City Staff relating to any other activity associated with the 4th of July 2010 event at the same location as the fireworks show and put on the by the same entity (e.g. the concert at the La Jolla Cove, the Musical Festival at Lake Murray). This request includes all communications by and between staff and any member of the public as well. CERF desires every document in the City’s possession relating to each of these events.”

The request does not reasonably describe an identifiable document. Instead, the request is overbroad and vague in that it seeks all communications relating to certain other events. Moreover, even assuming this request were sufficiently narrow, it requires significant efforts and

² (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

guesswork on the part of the City to first determine the other activities, whether those activities are associated with the 4th of July event, whether they are at the same location (it also depends on the definition of location), and a determination of what entity put on what event (sometimes applicants are not the ones “putting on” the event). This does not require reasonable efforts by the City. The request is unduly burdensome for the same reason.

As set forth above, the City is making certain records available for review and copying. After you have had an opportunity to review the records, you should be able to provide a more focused request. Until such time, the request is unmanageable and the City will not respond.

“Application Materials for all City-issued permits for each show (including but not limited to, Park Use Permits, Special Events Permits (whether [sic] “Citywide” or other designated “special event” permit), Fire Rescue Department “Application for Single Event Permit”.

The City will make the following documents available related to the eight specified events: (1) permit applications; (2) the permits themselves; and (3) any file maintained that specifically relates to one of the eight events.

Because of the unusual circumstances associated with this request,³ the City has not yet determined whether all the documents can be disclosed in whole or in part. For example, the files may contain certain exempt records and the applications may contain exempt information. The City will make this determination on or before July 30, 2010.

“If records are only kept electronically, they should be printed out and made available for inspection and copying.”

To the extent any responsive record is kept in an electronic format, the City will make the record available in that format. If you instead would like the information printed, the City would need payment for those costs up front. The cost is \$.25 per page. The City will let you know the total cost before printing.

“Issued permits for each show.”

The City will make the following documents available related to the eight specified events: (1) permit applications; (2) the permits themselves; and (3) any file maintained that specifically relates to one of the eight events.

³ (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

Because of the unusual circumstances associated with this request,⁴ the City has not yet determined whether all the documents can be disclosed in whole or in part. For example, the files may contain certain exempt records and the applications may contain exempt information. The City will make this determination on or before July 30, 2010.

“[A]ll documents related to pre-event and day-of event road closure planning are specifically requested.”

This request fails to “reasonably describe an identifiable record” and therefore City requests that you narrow this request. As framed, the request broadly seeks documents related to “road closure planning.” This vague term needs definition. Also, the terms “pre-event” and “day-of event” terms need further definition. Until the request is further focused, the City cannot respond.

Category 3: “Other Special Events, Park Use Permits, and Denied Permits”

“Copies of Applications for each and every event for which a Park Use Permit or Special Event Permit was issued for which a CEQA Initial Study was conducted or CEQA exemption granted since January 1, 2005”

This request seeks documents going back five and a half years—making the breadth of the request potentially unmanageable. The City Attorney’s Office is in the process of coordinating with all the various departments relevant to all the requests within your July 8 letter. With respect to this particular request, we are still investigating to determine approximately how many documents are responsive to the request. It is not an easy task. Potentially responsive documents are in different locations throughout the City. Because of the unusual circumstances associated with this request,⁵ the City has not yet determined whether all the documents can be disclosed in whole or in part. The City will make this determination on or before July 30, 2010.

The City reserves its rights to object to this request on any ground. If a response proves unmanageable because of its breadth, the City will object on the basis that the request fails to “reasonably describe an identifiable record” because the documents cannot be “located with reasonable efforts.” *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186. If unmanageable, the City will also object that the request is unduly burdensome. At such time, the City will provide suggestions about how to make the request more focused and specific in order to make it more manageable.

⁴ (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

⁵ (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

“Copies of all application materials and associated permits issued for any event for which a “Citywide Special Event Permit” has been issued since January 1, 2005.”

This request fails to “reasonably describe an identifiable record” because the request is not “focused and specific.” *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481. The documents cannot be “located with reasonable efforts.” *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186. Furthermore, the request is unduly burdensome.

An initial investigation has revealed that there is an estimated several thousand Citywide Special Event Permits that have been issued in the last five and a half years. Your request requires first that we locate and gather all the application materials related to these several thousand permits, and then further make a subjective determination as to what permits are “associated” with the Citywide Special Event Permits, and then locate and gather all those permits as well from various departments throughout the City.

If CERF is willing to fund time for two additional staff members who can spend approximately three months gathering the information related to this request, this would relieve much of the burden from the City. Please let me your willingness to fund staff time. Unless we can come to some arrangement to relieve some of the City’s burden, the City will not respond to this request.

“Copies of all application materials and associated permits issued for any special event for which City staff considered the San Diego Municipal Code “Special Events Ordinance” (§§ 22.4001 *et seq.*) to apply since January 1, 2005. (If the list contains more than 10 events per year, please provide a list of such events and we will provide further direction regarding specific event documents desired.)”

Because the City’s Special Events Ordinance applies to all Citywide Special Event Permits, the City’s response is identical to the above response. Moreover, this request is vague and ambiguous. Also, because the PRA does not obligate the City to provide any of the lists you request in your letter, the City will not provide any requested lists. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.

“Copies of all application materials and associated permits issued for every event permitted in the City since January 1, 2005 that meets all of the following criteria: The event took place on, or impacted, City owned land or facilities such that a permit was required from any City Department; and, the event took place on a Saturday or Sunday’ and;the event application indicated an attendance of at least 10,000 people (and such was reflected on the City’s online Special Events Calendar).”

This request fails to “reasonably describe an identifiable record” because the request is not “focused and specific.” *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481. The documents cannot be “located with reasonable efforts.” *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186. Furthermore, the request is unduly burdensome.

An initial investigation has revealed that, as an initial step, the City would be required to provide a careful review of several thousands of Park and Recreation permits at 56 locations to determine whether all three criteria are met. The review would require a determination of whether the event took place on City owned land, which in and of itself may not be a simple determination. The request also requires a determination of whether the event “impacted” City owned land, which is a far more subjective criterion. Also, the permit likely would not indicate on its face whether an event occurred on a Saturday or Sunday, which would require City staff to cross-reference the dates against a calendar. Thereafter, the City would need to determine whether there are any “associated permits” at other locations throughout the City. Then, the City would need to review all potentially associated permits for the same criteria.

If CERF is willing to fund time for two additional staff members who can spend approximately three to six months gathering the information related to this request, this would relieve much of the burden from the City. Please let me your willingness to fund staff time. Unless we can come to some arrangement to relieve some of the City’s burden, the City will not respond to this request.

“Copies of all application materials for events that were deemed to require Citywide Special Events Permits since January 1, 2005, but were denied the same for any reason. Please include all documents indicating the City’s reasons for denial of such permit requests.”

This request seeks documents going back five and a half years—making the breadth of the request potentially unmanageable. The City Attorney’s Office is in the process of coordinating with all the various departments relevant to all the requests within your July 8 letter. With respect to this particular request, we are still investigating to determine approximately how many documents are responsive to this request. It is not an easy task. Because of the unusual circumstances associated with this request,⁶ the City has not yet determined whether all the documents can be disclosed in whole or in part. The City will make this determination on or before July 30, 2010.

The City reserves its rights to object to this request on any ground. If a response proves unmanageable because of its breadth, the City will object on the basis that the request fails to “reasonably describe an identifiable record” because the documents cannot be “located with reasonable efforts.” *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186. If unmanageable, the City will also object that the request is unduly burdensome. At such time, the City will provide suggestions about how to make the request more focused and specific in order to make it more manageable.

⁶ (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

Category 4: “Administrative Documents”

“[A]ll documents and records that describe how permitting decisions are made within the Office of Special Events and the Department of Parks and Recreation. Such documents and records would include, but not be limited to, flow charts, decision trees, reference lists, guidance memoranda, etc.”

The City is in the process of gathering the responsive documents. At present, it appears the City will make these documents available in whole. Because the City has not yet completed its investigation, due to the unusual circumstances associated with your request,⁷ the City reserves its right to object to the production of privileged or exempt documents that are responsive to the request. The City will make this determination on or before July 30, 2010.

“[C]opies of each and every valid permit application form used by the Park and Recreation Department.”

With the assumption that you seek copies of all permit application forms *presently* used by Park and Recreation, the City will make these records available in whole. Most, if not all, of these records are on the City’s public website. Please confirm that you would like copies of the applications. If so, the City will provide the copies but seek payment before doing so.

“[C]opies of all park use permit applications, and any documents or records that describe or otherwise inform how decisions are made as to which is the appropriate application form.”

The City is in the process of gathering the responsive documents. At present, it appears the City will make these documents available in whole. Because the City has not yet completed its investigation, due to the unusual circumstances associated with your request,⁸ the City reserves its right to object to the production of privileged or exempt documents that are responsive to the request. The City will make this determination on or before July 30, 2010. Please confirm that you would like copies of the records. If so, the City will provide the copies but seek payment before doing so.

“[A]ny manuals or other administrative documents or records that provide instruction to staff reviewing such applications as to how decisions and mitigation measure are to be made regarding impacts from events.”

⁷ (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

⁸ (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

July 17, 2010

This request is objectionable⁹ in that it could reasonably be interpreted to request all manuals and other administrative documents related to CEQA determinations generally. The City will respond to the request with the assumption that you seek documents related specifically to the Parks and Recreation department.

The City is in the process of gathering the responsive documents. At present, it appears the City will make these documents available in whole. Because the City has not yet completed its investigation, due to the unusual circumstances associated with your request,¹⁰ the City reserves its right to object to the production of privileged or exempt documents that are responsive to the request. The City will make this determination on or before July 30, 2010.

“[D]ocuments that detail how the Parks and Recreation department decides whether to permit amplified music despite admonitions to the contrary on all application forms.”

The City is in the process of gathering records “that detail how the Parks and Recreation department decides whether to permit amplified music.” At present, it appears the City will make these documents available in whole. Because the City has not yet completed its investigation, due to the unusual circumstances associated with your request,¹¹ the City reserves its right to object to the production of privileged or exempt documents that are responsive to the request. The City will make this determination on or before July 30, 2010.

The phrase “despite admonitions to the contrary on all application forms” is argumentative, vague and ambiguous. It renders the entire request objectionable. Notwithstanding, the City will provide documents responsive to the request as if this phrase had not been included. If the elimination of the latter phrase changes the request, please call me to discuss.

“[A] log of all exempted information so that the public interest justification mandated by the act for nondisclosure may be made.”

There is no requirement within the PRA to create a privilege log. If you have legal authority to the contrary, please let me know.

⁹ The request is vague, ambiguous, overbroad, unduly burdensome, and does not “reasonably describe an identifiable record.”

¹⁰ (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

¹¹ (i.e., the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; and the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.)

Please call me if you have questions regarding this response.

Sincerely,

JAN I. GOLDSMITH, City Attorney

By

A handwritten signature in black ink, appearing to read "G. Spitzer", written over the typed name and title.

Glenn Spitzer
Deputy City Attorney