



City Attorney

April 3, 2014

Sent via Email and
U.S Mail

Ray Lutz
1010 Old Chase Ave.
El Cajon, CA 92020
raylutz@citizenoversight.org

RE: Public Records Act request received on March 10, 2014

Dear Mr. Lutz:

This letter is in response to your request made pursuant to the California Public Records Act ("CPRA"), California Government Code section 6250 et seq., for copies of the following records:

- 1) All communications (emails, written correspondence, meeting reports) with or regarding ECPAC and any potential renting/leasing/operating organizations, including the Rock Church since January 1, 2010.
- 2) History of any use of the theater by any non-city entities, organizations or individual since January 1, 2010 (list of entities, rental agreements, etc.).

In accordance with California Government Code §6253(c), we have determined that your request seeks copies of public records that are in the City's possession; however, some of the records are exempt from disclosure and/or privileged, and therefore will not be released or disclosed to you for your inspection. Additionally, some of the records contain confidential information that will be redacted prior to release, pursuant to applicable law. The justification for withholding and redacting any records is discussed in detail below. This determination was made by the undersigned.

Official Information Privilege

California Government Code §6254(k), exempts records from disclosure, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, laws related to privilege. Pursuant to California Evidence Code §1040, official information is exempt from disclosure. "Official Information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made. The official information privilege allows a public official to withhold information given to him or her in confidence until it has been

expressly used in the making of a decision. Further, pursuant to California Evidence Code §1040(b)(1) and (2), a public entity has a privilege to refuse to disclose official information if “disclosure is forbidden by an act of the Congress of the United States or a statute of this state” and/or “disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.”

The City has determined that some records are subject to the “official information privilege” and recognized as exempt under California Government Code §6254(k). The City has found that disclosure of the information requested is against the public interest because there is a need to protect the process that a public entity uses to conduct its business in a competitive manner, as well as a need to preserve the confidentiality of the information that outweighs the need for disclosure in the interest of justice.

Deliberative Process Privilege

After a review of all records responsive to your request, we have determined that certain documents are subject to the “deliberative process” common law privilege, recognized under the “public interest” exemption of Government Code §6255. (See *Times Mirror Company v. State of California* (1991) 53 Cal. 3d 1325, 1339, wherein the court recognized the existence of the “deliberative process” privilege to exclude certain information from the CPRA’s mandatory disclosure requirements in order to protect government entities’ decision-making processes; see also Government Code §6254(k), which makes exempt from disclosure records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, laws related to privilege.) For this reason, and for those reasons described below, the City will not be releasing any records in response to your request that it has determined are covered under this privilege.

The City has invoked this privilege because it has determined the release of these materials would expose the deliberative process of the City in such a way that it would affect the quality of its decision-making by exposing it to premature public scrutiny. Moreover, in this instance the City has invoked this privilege for the following reasons: (1) by not subjecting this information to public scrutiny, the City is protecting the internal investigation processes and consideration of alternatives by its staff and management, thereby improving the quality of decision-making; (2) the nondisclosure of this information would protect the public from the confusion resulting from premature exposure to discussions occurring before the policies affecting it have actually been settled upon by the City; and (3) it would protect the integrity of

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the decision-making process itself by confirming that staff and council members be judged by what they decided, not for matters they considered before making up their minds. For the above reasons, City is invoking this privilege and has determined that the public interest in non-disclosure of the requested records and information clearly outweighs the public interest in disclosure.

Attorney-Client Privilege; Attorney Work Product

California Evidence Code §950 *et seq.* maintains a privilege for confidential communications between a lawyer and client during the course of the attorney-client relationship. Pursuant to California Evidence Code §§954 and 955, the claim of attorney-client privilege is being asserted on behalf of the client by the undersigned. Therefore, any records consisting of attorney-client privilege will be withheld.

In addition to the attorney-client privilege under California Evidence Code §950 *et seq.*, some of the records are exempt from disclosure as consisting of attorney work product, which (for reasons of public policy) are not discoverable under California Code of Civil Procedure §2018.030. Therefore, these records will be withheld.

Redacted Information; Personal Information

Due to personal privacy interests protected by provisions of the California Constitution and the U.S. Constitution, the constitutional right to and fundamental interest in privacy recognized in the California Public Records Act, and public policy concerns regarding the dissemination of personal information, all personal phone numbers, addresses, and email addresses of persons contained in the records will be redacted. (Cal. Const., art. I, §1; U.S. Const. amend. XIV; GC §§ 6254(c) and (k)).

Additionally, records containing private cell phone numbers, private addresses, and other confidential information will be redacted, pursuant to GC §6255, because the public interest in non-disclosure outweighs the public interest in disclosing this information. Disclosure of such records could have the effect of subjecting City of El Cajon personnel and private citizens to unwarranted public scrutiny and harassment, and could present a security risk for the City, as well as citizens of El Cajon if the information was released to the public.

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As previously mentioned, in accordance with Government Code §6253(c), we have determined that your request seeks copies of non-exempt public records, and non-exempt portions of public records, that are in the City's possession. Subject to the above exemption, these records will be made available to you in both hardcopy and on a CD. We currently have the first group of documents, all in hardcopy, ready for you to pick up from this office upon payment of \$12.56 for the cost of copies. If you wish to have the copies mailed, there will be an additional charge for postage. Please see the attached invoice.

The remainder of the responsive, non-exempt documents will be made available to you within a reasonable period of time, on a CD (for non-redacted documents), and in related hard copy documents (for records having redactions). The charge for the CD and hard copies will be \$15.00 for the cost of making the CD and the copies; payable at or before the time you pick up the CD and copies. These charges are in addition to those identified in the paragraph above for the first set of documents. There will be an additional charge for postage if you wish to have the CD and hardcopies mailed. An invoice for the CD is also attached.

Thank you for your patience in this matter. Please contact our office if you have any questions.

Sincerely,



Barbara C. Luck
Staff Attorney

cc: Douglas Williford, City Manager
Morgan L. Foley, City Attorney
Belinda Hawley, City Clerk

CITY OF EL CAJON



CITY ATTORNEY'S OFFICE

----- INVOICE -----

April 2, 2014

Ray Lutz
1010 Old Chase Avenue
El Cajon, CA 92020
raylutz@citizenoversight.org

Re: Request for Public Records received March 10, 2014

Copies \$.04 each (314 pages) (no postage if picked up)	\$12.56
TOTAL	<hr/> \$12.56
BALANCE DUE	<hr/> \$12.56

Make Check Payable To: City of El Cajon

Please remit to: City Attorney's Office
Attn: Holly Savage
200 Civic Center Way
El Cajon, CA 92020

CITY OF EL CAJON



CITY ATTORNEY'S OFFICE

-----INVOICE-----

April 2, 2014

Ray Lutz
1010 Old Chase Avenue
El Cajon, CA 92020
raylutz@citizenoversight.org

Re: Request for Public Records received March 10, 2014

CD (1 @ \$15 each) (emails)	<u>\$15.00</u>
TOTAL	<u>\$15.00</u>
<u>BALANCE DUE</u>	<u>\$15.00</u>

Make Check Payable To: City of El Cajon

Please remit to:
City Attorney's Office
Attn: Holly Savage
200 Civic Center Way
El Cajon, CA 92020