

1 **LOS ANGELES CENTER FOR**
2 **COMMUNITY LAW AND ACTION**
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6 **SUPERIOR COURT OF CALIFORNIA**
7 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

8
9 ADRIAN RISKIN,
10 Petitioner and Plaintiff.

Case No.: 21STCP02489

11 v.

12 CITY OF LOS ANGELES;
13 Respondent and Defendant.

**VERIFIED PETITION FOR WRIT OF
MANDATE ORDERING COMPLIANCE WITH
THE CALIFORNIA PUBLIC RECORDS ACT
AND COMPLAINT FOR INJUNCTIVE
RELIEF UNDER CODE CIV. PROC. § 526a**

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16 1. Petitioner seeks a writ of mandate requiring Respondent to immediately make available
17 code-compliant public records requested pursuant to the California Public Records Act
18 (“CPRA”), Government Code § 6250, *et seq.* Plaintiff also seeks injunctive relief as a taxpayer
19 under Code of Civil Procedure §526a ordering Respondent to cease dilatory and wasteful
20 practices in responding to CPRA requests, and implement standardized business practices that
21 use available technologies to respond to CPRA requests. Petitioner requests this Court grant
22 relief in the form of costs of suit, attorney’s fees, and other appropriate and just relief resulting
23 from Respondent’s unlawful conduct.

24 **PARTIES**

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26 2. Petitioner Dr. Adrian Riskin is a resident of Los Angeles, CA, a professor at a local
27 college, and an open records activist. Using CPRA requests to investigate and understand the
28 activities of the Los Angeles City government, Riskin makes all his findings freely available to

1 the public through blogging and community events. His collection of records has helped both
2 researchers and the public at large learn about the city’s response to the homelessness crisis,
3 including students at U.C. Berkeley School of Law’s Policy Advocacy Clinic, and documentary
4 filmmakers producing a film about the Greater West Hollywood Food Coalition. Records
5 obtained by Riskin have also been featured as part of an exhibit at the Los Angeles Poverty
6 Department – Skid Row History Museum. Moreover, Riskin has helped to empower the public
7 by publishing a guide to the practical use of the CPRA in the City of Los Angeles. Riskin is a
8 member of the public within the meaning of §§ 6252(b)-(c). Riskin is a taxpayer with standing
9 under the meaning of Code of Civ. Proc. § 526a.

10 3. Respondent the City of Los Angeles (“Respondent”) is a local public agency within the
11 meaning of Gov. Code §§ 6252(a), (d).

12 **JURISDICTION AND VENUE**

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14 4. This court has jurisdiction over this petition pursuant to Gov. Code §§ 6258 & 6259,
15 Code Civ. Proc. § 1085, and Article VI, Section 10 of the California Constitution.

16 5. Venue is proper in this Court. The records in question, or some portion of them, are
17 situated in the County of Los Angeles, Gov. Code § 6259; the acts or omissions complained of
18 occurred in the County of Los Angeles, Code Civ. Proc. § 393; and Respondent is located in the
19 County of Los Angeles, Code Civ. Proc. § 395.

20 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

21 **Respondent fails to produce complete, code-compliant responses to Petitioner’s CPRA**
22 **request.**

23
24 6. Amy Gebert (“Gebert”) is the Communications Deputy of the Joe Buscaino, the
25 Councilmember for Los Angeles’ Council District 15 (“CD15”).

26 7. On June 30, 2019, Plaintiff submitted a request to CD15 pursuant to the California Public
27 Records Act (“CPRA”) for electronic mail (“email”) communications from the first half of 2019,
28 containing certain keywords pertaining to the housing crisis and the unhoused population.

1 8. On July 24, 2019, Gebert denied the Petitioner's CPRA request, stating, "[b]ased on our
2 estimates this search would produce up to 20,000 records and take over 18 months to compile.
3 The staff time required to compile this request clearly outweighs the public interest served by
4 completing this request therefore under Gov Code Section 6255 the office is denying this
5 request." Gebert's response did not provide calculations supporting the claim that responding to
6 the request would take over 18 months of City staff time

7 9. That same day, Petitioner renewed and narrowed his CRPA request, limiting the request
8 to only the most recent records that could be compiled with approximately 40 hours of staff time,
9 given California case law affirming that such time spent was not overburdensome as to justify
10 denial of a CPRA request concerning a matter of public interest. *See Weaver v Superior Court*,
11 (2014) 224 Cal.App.4th 746.

12 10. On August 7, 2019, Gebert wrote to Petitioner, objecting to Petitioner's renewed request.
13 Petitioner's response did not cite to any exemptions under the CPRA justifying withholding of
14 documents, and instead objected to how Petitioner narrowed the original records request.

15 11. That same day, Petitioner replied and even further narrowed the records request.

16 12. On August 16, 2019, Gebert responded, again refusing to comply with the request and
17 stating, "A search for these terms still resulted in a voluminous number of records that would
18 require over a year to review. Based on these results, your request is too broad." Gebert's
19 response failed to cite any exemptions under the CPRA justifying withholding of documents or
20 estimate a date of production of documents. Gerbert's response also failed to provide any
21 justification for the claim that records would "require over a year to review."

22 13. After Petitioner reached out to Gebert again for a status update on his records request,
23 Gebert replied on August 23, 2019: "My apologies for the delay. We are currently still at
24 10,000+ pages of records for this broad search which given my estimates will take our office
25 until April 2021 to complete because we expect numerous records to exempt in whole or in part
26 under the exemptions set forth in the government code which will require additional review.
27 Again, we recommend narrowing your request based on any of the examples I have outlined."
28

1 14. Through the remainder of 2019 and early 2020, Petitioner asked Gebert for multiple
2 status updates concerning his CPRA request. During this time, Gebert, if she replied at all,
3 merely indicated that the request was still being processed. At no time did Gebert provide an
4 estimated date of production. To date, the Respondent has failed to produce a complete response
5 to the CPRA request.

6 **Respondent unlawfully refuses to produce documents in electronic format, and insists**
7 **on dilatory means that waste taxpayer funds.**

8 15. On March 2, 2020, Gebert finally informed Petitioner that some records responsive to his
9 CPRA request were ready, and that the Respondent “must print responsive records for redaction
10 purposes.” Gebert did not respond to Petitioner’s subsequent request that those printed
11 documents be scanned and sent to him.

12 16. Four months later, on August 4, 2020, Gebert finally produced portable document format
13 (“PDF”) scans of some printed emails, purportedly responsive to the Petitioner’s CRPA request.

14 17. That same day, Petitioner requested that the Respondent produce emails in electronic
15 mail (“EML”) or mailbox (“MBOX”) format.

16 18. On August 7, 2020, Gebert responded to Petitioner stating that the Respondent’s “our
17 office does not have the technology or the staff with the level of technical expertise needed to
18 produce/redact in MBOX format.” Petitioner replied that the Information Technology Agency is
19 available to the Respondent to process the instant CPRA request.

20 **Respondent ignores available technology and opts instead to waste public funds,**
21 **including payment for city employee time, to delay responding to CPRA requests.**

22 19. The Respondent’s Information Technology Agency (“ITA”) describes itself as
23 “comprised of 442 [information technology (“IT”)] professionals organized into 18 divisions
24 with an annual operating budget of \$90 million. Unlike the ‘traditional’ government IT
25 department, the ITA is responsible for a broad spectrum of services. Our 18 divisions deliver 366
26 different technology services to both internal and external customers. These range from classic
27 IT services, such as computer support, enterprise applications, data networks, and a 24/7 data
28

1 center to progressive digital services...and more.” <https://ita.lacity.org/about/ita> (accessed July
2 28, 2021).

3 20. In Los Angeles, the ITA serves 18 elected officials, 48,000 City employees, and 41 City
4 departments. *Id.*

5 21. The ITA maintains the capacity to produce email records in response to CPRA requests
6 in MBOX format. The ITA has done exactly this in response to other CRPA requests through
7 using NextRequest, an online portal used by several of Respondent’s departments and agencies,
8 including certain Council Districts. *e.g.* <https://lacity.nextrequest.com/requests/20-5250>
9 (accessed July 28, 2021; displaying confirmation that ITA produced MBOX format emails in
10 response to a CPRA request to the Bureau of Public Works).

11 22. The Respondent pays not only for annual subscriptions to NextRequest, but also pays
12 more fees for special features in NextRequest that facilitate redaction of documents.

13 23. In November 2019, Gebert exchanged several emails with NextRequest representatives to
14 discuss the use of the platform and trainings for CD15 staff.

15 24. After Petitioner replied to Gebert on August 7, 2020, reminding her that ITA was
16 available to support the Respondent in responding to his CPRA request, Gebert did not reply.

17 25. To date, neither Gebert nor any other representative of the Respondent has provided a
18 complete response to the Petitioner’s request.

19 **The Respondent’s behavior violates multiple provisions of the CPRA**

20 26. CD15 violated several provisions in delaying and, in effect refusing, to produce
21 documents in response to Petitioner’s request:

22 27. Government Code § 6253.9(a) explicitly provides, “any agency that has information that
23 constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that
24 is in an electronic format shall make that information available in an electronic format when
25 requested by any person...” Respondent failed to provide code-compliant responses to
26 Petitioner’s request by failing to provide responsive documents in EML or MBOX formats.

27 28. The agency’s actual production of documents must be swift: the law requires that
28 agencies make non-exempt public records available to requestors “promptly.” Gov. Code §

1 6253(b). It is unlawful for an agency “to delay or obstruct the inspection or copying of public
2 records.” Gov. Code § 6253(d). Further, the Respondent is obligated to produce “all” records that
3 are responsive to the request. *City of San Jose v. Sup.Ct.* (2017) 2 Cal.5th 608, 627. Respondent
4 has failed to produce responsive documents within reasonable time, and has also failed to
5 produce complete documents.

6 29. The code also provides that, should disclosable records be determined responsive, the
7 Respondent must also state “the estimated date and time when the records will be made
8 available.” Gov. Code § 6253(c). The Respondent has failed to do so.

9 **The Respondent’s unlawful behavior constitutes a waste of taxpayer funds**

10 30. Respondent refuses to provide responsive documents in EML or MBOX formats, despite
11 not only having the technological capacity to do so, but also the capacity to enlist the
12 Information Technology Agency to facilitate production.

13 31. Respondent instead opts to have employees spend time and physical resources printing
14 countless reams of documents to review by hand and redact. Respondent then further spends
15 employee time scanning all those documents into PDF formats to be produced electronically.

16 32. In contrast, producing responsive documents in EML or MBOX formats would require
17 the Respondent to merely download and electronically send responsive files, using far less time
18 and materials to process Petitioner’s records request.

19 33. Respondent however uses its wasteful practices as grounds to delay or prevent
20 responding to Petitioner’s records request.

21 34. Beyond the funds spend on paper, ink, and maintenance of printing machines, the funds
22 spent on paying employees to engage in needlessly inefficient behavior constitute a waste of
23 taxpayer funds.

24 **PETITION FOR WRIT OF MANDATE AND RELIEF PURSUANT TO THE**
25 **CALIFORNIA PUBLIC RECORDS ACT, GOV. CODE §§ 6250, et seq.**

26 35. Petitioner incorporates herein by reference the allegations of paragraphs 1 through 34
27 above, as if set forth in full.

1 36. Petitioner is entitled to seek a writ of mandate and declaratory relief in response to
2 violation of the CPRA. Gov. Code § 6258. Petitioner has no plain, speedy, adequate remedy in
3 the ordinary course of law, other than the relief sought in this petition. Code Civ. Proc. §
4 1086.31.

5 37. Respondent has a clear, present, ministerial duty to comply with Gov. Code §§ 6250, *et*
6 *seq.* Respondent has repeatedly acted and continues to act in violation of the CPRA by denying
7 access to public records and information through its failure to timely respond to requests, its
8 failure to produce all documents within a reasonable time, and its failure to produce code-
9 compliant documents in requested electronic formats. Gov. Code §§ 6253(b)-(d), 6253.9(a)

10 38. Petitioner has performed all conditions precedent to filing this petition. There are no
11 administrative exhaustion requirements under Gov. Code §§ 6250, *et seq.*

12 39. An actual controversy exists between the parties concerning whether Respondent has
13 engaged in conduct that violates the statutory requirements of the CPRA. A judicial
14 determination to resolve this actual controversy is necessary and appropriate at this time.

15 **CAUSE OF ACTION FOR WASTEFUL EXPENDITURE OF PUBLIC FUNDS, CODE**
16 **CIV. PROC. § 526a**

17 40. Plaintiffs incorporate herein by reference the allegations in paragraphs 1 to 34 as if set
18 forth in full.

19 41. Code of Civil Procedure section 526a provides that a taxpayer has standing to sue to
20 prevent a public official from the waste or illegal expenditure of public funds.

21 42. Plaintiff seeks injunctive relief as a taxpayer under Code of Civil Procedure §526a
22 ordering Respondent to cease dilatory and wasteful practices in responding to CPRA requests,
23 and implement standardized business practices that use available technologies to respond to
24 CPRA requests

25 43. Defendant has wasted public funds by needlessly paying for employee time and physical
26 materials to engage in technologically primitive practices for processing responses to CPRA
27 requests.
28

1 44. As a direct and proximate consequence of the Defendant's wasteful expenditure of public
2 funds, Plaintiff taxpayer is entitled to permanent injunctive and declaratory relief, as previously
3 alleged herein.

4 **PRAYER FOR RELIEF**

5 45. WHEREFORE, Petitioner respectfully requests judgement as follows:

6 46. That the Court issue a peremptory writ of mandate directing Respondent to make all
7 requested documents available for inspection and provide a quote for direct costs of
8 duplication of the records within 10 days of the Court's order;

9 47. That the Court enjoin the Respondent to cease dilatory and wasteful practices in
10 responding to CPRA requests, and implement standardized business practices that use
11 available technologies to respond to CPRA requests;

12 48. That the Court enter an order awarding Petitioner its costs of suit and reasonable
13 attorney's fees and costs incurred in bringing this litigation;

14 49. For such other relief as this Court deems just and proper.

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16 Dated: July 27, 2021

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18 Respectfully submitted,

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20 LA CENTER FOR COMMUNITY LAW AND ACTION

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23 By:  _____

24 Gina Hong, Esq.

25 *Attorneys for Petitioner*

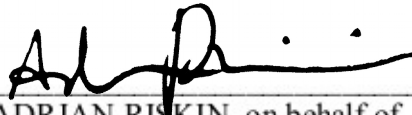
VERIFICATION

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I, Adrian Riskin, have read the foregoing Petition for Writ of Mandate and know the contents thereof. The same is true of my own knowledge, except as to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29TH day of JULY in STAUNTON, VA.

by:



ADRIAN RISKIN, on behalf of
LOS ANGELES SUNSHINE COALITION
Petitioner