

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 10/03/2014

TIME: 02:14:00 PM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: Richard E. L. Strauss

CLERK: Tipin Johnson

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: Paul Darvin

CASE NO: **37-2013-00056051-CU-MC-CTL** CASE INIT.DATE: 07/03/2013

CASE TITLE: **San Diegans for Open Government vs. CITY OF SAN DIEGO [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

The Court, having taken the above-entitled matter under submission on September 19, 2014 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

On September 19, 2014, the Court heard oral argument on plaintiff/petitioner San Diegans for Open Government's Petition for a Writ of Mandate. The Court vacates the tentative ruling of September 18, 2014, and enters the following order:

Plaintiff/petitioner San Diegans for Open Government's petition for a writ of mandate is granted, in part. On August 29, 2014, defendant/respondent City of San Diego lodged an unredacted transcript of the June 18, 2013 closed city council meeting. The Court has reviewed the entire unredacted transcript. The Court finds that all of the redacted sections were very narrow and appropriately involved attorney-client privilege. The City did not waive its attorney-client privilege. Notwithstanding that the City Clerk published the incorrectly closed session docket together with the correctly dated open session docket for June 17-18, 2013, this error was minor, and does not mandate production of the entire transcript.

However, the Court grant's petitioner's July 3, 2013 request for records. City argues that there were no transcripts of the various closed sessions, and had any transcriptions been made, these transcriptions would be part of the minute book, and are generally not subject to disclosure. (Ex. F, G.) City relies on County of Los Angeles v. Superior Court (2005) 130 Cal.App.4th 1099, where the Court held there was an attorney client privilege to the minute book and the privilege includes "discussions that are not covered by the closed agenda schedule." (Id. at 1105.) City urges the Court's in camera review would be for the limited purpose of allowing the Court to determine whether a Brown Act violation has occurred. (Id. at 1106.) As in that case, no violation of the Brown Act has been alleged.

DATE: 10/03/2014

MINUTE ORDER

DEPT: C-75

Page 1
Calendar No.

However, the trend in the law is to provide access to the public of non-privileged information. As set forth by the Fourth District Court of Appeal, Division One, in *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1425, the entity must do more than just say "no" even if the request is vague and involves information from a third party:

However, the courts need not take literally a request's language to deem it clearly excessive, but instead should construe the request reasonably, in light of its clear purposes: "Feigned confusion based on a literal interpretation of the request is not grounds for denial." []

Certainly, there was confusion here, some genuine and perhaps some that was feigned. The City is not claiming that the requested information was exempt from disclosure, but instead that it could not reasonably have been expected to locate it or produce it, either because the requests were confusing, its consultant was to blame, or the crime data was incomprehensible. The effect of the City's inability or unwillingness to locate the records had the same effect as withholding requested information from the public.

The Court found that National City should have pursued the agent's records:

The City gave up too soon and did not press the matter sufficiently, to a reasonable extent, at a time when most of the field surveys, which it owned, still existed.

We are mindful of the press of business of public agencies, particularly in these difficult fiscal times, and do not hold the City to an impossible standard, merely a reasonable one. The City is not justified in arguing that it did everything it could or should have to do, nor that all the fault lay with its contractor RSG. Moreover, since 2008 (after the requests in this case were made), Government Code section 6253.3 has provided that a public agency "may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter," showing the trend in the law is toward promoting such disclosure. (See fn. 21, ante.) (Id. at 1428-29.)

When combined with San Diego Municipal Code Rule 84 which requires that "all closed sessions shall be transcribed by a court certified reporter" and retained, the Court orders the City to produce the redacted transcripts upon tender by petitioner of the estimated fees.

City's objections are overruled.

The Court declines to grant City's request for sanctions.



Judge Richard E. L. Strauss

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO


Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: San Diegans for Dpen Government vs. CITY OF SAN DIEGO [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2013-00056051-CU-MC-CTL

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 10/03/2014.

Clerk of the Court, by: , Deputy
T. Johnson

CORY J BRIGGS
BRIGGS LAW CORPORATION
814 MORENA BOULEVARD # 107
SAN DIEGO, CA 92110

DONALD R WORLEY
OFFICE OF THE CITY ATTORNEY
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CA 92101-4100

Additional names and address attached.