

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - November 13, 2020

EVENT DATE: 11/20/2020 EVENT TIME: 09:30:00 AM DEPT.: C-66

JUDICIAL OFFICER: Kenneth J Medel

CASE NO.: 37-2018-00018104-CU-WM-CTL

CASE TITLE: PETITION OF BEALER [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition

CAUSAL DOCUMENT/DATE FILED: Petition for Writ of Mandate, 04/12/2018

This is an action to enforce the California Public Records Act ("CPRA") against the District Attorney's Office and the Sheriff's Department for the County of San Diego. Petitioner Antwoine Bealer requested public records related to his 2004 arrest and resultant 2005 conviction in San Diego County (Case Number SCE244421).

The moving papers and supporting declarations discuss petitioner's on-going attempts to obtain records related to his criminal case since the trial. While the information provided is background explaining petitioner's motivation for the records, the issue presented here is requests made under the California Public Records Act. The Court also does not find that descriptions of petitioner as a "convicted felon" significant to the analysis, which turns on an interpretation and application of the California Public Records Act.

Specifically, petitioner submitted two identical requests to the District Attorney's Office and the Sheriff on October 28, 2016. The requests asked for "records created by or in the possession of this agency related to Case No. [S]CE244421 (2005)." Tucker Decl. Exhs. A-B. Petitioner requested a number of specific types of records, as well as any "paper records related to Mr. Bealer" and any "electronic records related to Mr. Bealer." *Id.*

The DA and the Sheriff each provided Petitioner with their record retention and destruction policies, both refused to provide Petitioner with any other records. The DA claimed that all records Petitioner requested were exempt as investigatory records under § 6254(f). Tucker Decl. Exh. C. The Sheriff initially stated that it had no records responsive to the request because "if such records existed [they] would have been purged by this time." Tucker Decl. Exh. D.

Pursuant to the CPRA, members of the public have a right to access government records. § 6250, et seq. To facilitate the public's access to this information, the CPRA mandates, *inter alia*, that "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." § 6253(b). An agency that receives a request must also "assist the member of the public [to] make a focused and effective request that reasonably describes an identifiable record or records." § 6253.1(a). An agency must conduct a search for records that is "reasonably calculated to locate responsive documents." *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 627. The law requires that agencies make nonexempt public records available to requesters "promptly." § 6253(b). It is unlawful for an agency "to delay or obstruct the inspection of public records." § 6253(d).

There is a "statutory presumption that all governmental records are available to any person." *ACLU v. Superior Court* (2011) 202 Cal.App.4th 55, 85. Importantly, the agency bears the burden of justifying nondisclosure of any requested records. § 6255(a). In determining whether exemptions apply, courts must follow the California Constitution's directive that the applicability of exemptions must be construed narrowly and that the people's right of access must be construed broadly. Cal. Constitution, Art. I, § 3(b)(2); *see also City of San Jose*, 2 Cal.5th at 617.

Even if portions of a document are exempt from disclosure, the agency must disclose the remainder of the document. § 6253(a). The California Supreme Court has found that agencies must use "the equivalent of a surgical scalpel to separate" those reasonably segregable "portions of a record subject to disclosure from privileged portions." *Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 292 ("LACBOS").

In opposing this petition, Respondent County of San Diego contends that petitioner did not request "any" and "all" records from his case. However, the requests are sufficiently clear: petitioner plainly requested all paper and electronic records related to himself and his criminal case in Respondent's possession. A requester is only required to make a request that "reasonably describes an identifiable record or records." § 6253(b). As written, the requests reasonably describe identifiable records that Petitioner wished to receive: those paper or electronic records in the County's possession related to himself and his case.

Respondent also relies on the so-called "investigatory exception" in Govt Code 6254(f). Govt Code 6254(f) provides that records of complaints and investigations are exempt from disclosure. However, consistent with the general "scalpel" obligations for agencies covered by CPRA, there are exceptions to the exemption set forth in subdivision (f) and subdivisions (f)(1)-(2)(A). The substance of what exactly needs to be produced is not disputed in this case. Respondent County makes arguments that the exceptions to the investigatory exception do not apply at all.

First, Respondent argues that §§ 6254(f)(1)-(2)(A) applies only to the specific agency that effectuated an arrest or received a request for assistance. Respondent relies on language in Section 6254, subdivision (f)(1), that requires the disclosure of specified details about "every individual arrested by the agency" Section 6254, subdivision (f)(2)(A) requires an agency to disclose information related to "all complaints or requests for assistance received by the agency" According to Respondent, the Sheriff – not the D.A. – is the agency that arrested Petitioner and received the request for assistance regarding Petitioner's arrest. Thus, since the District Attorney's Office is not the arresting agency, the District Attorney is not required to provide the documents in the exception. (The Sheriff, as discussed separately below, takes the position that it has no records because they were purged.)

CPRA is to be interpreted broadly, in favor of access of information. The California Constitution requires CPRA "be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Constitution, Art. I, § 3(b)(2). Section 6254(f) describes which agencies must produce the information contained within §§ 6254(f)(1)-(2)(A), and it does not limit the statute to the arresting agency. The statute reads: "Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information. . . ." § 6254(f) (emphasis added). The statute refers to "agencies" in the plural. This makes clear that the disclosure requirement is not limited to only the arresting agency, but to state and local law enforcement agencies generally. The language that Respondent highlights—namely, that agencies must disclose "[t]he full name and occupation of every individual arrested by the agency" and "the time, substance, and location of all complaints or requests for assistance received by the agency," §§ 6254(f)(1)-(2)(A)—is used to describe and identify the information that must be disclosed to the public, not to limit what agencies must produce the information.

Further, the California Constitution requires interpreting statutory language broadly when furthering the people's right of access, and narrowly when limiting the right of access. Cal. Constitution, Art. I, § 3(b)(2). Interpreted broadly, the term "law enforcement agency" certainly includes prosecutors, who are part of the county's mechanism to enforce criminal laws. As such, here, both the DA and the Sheriff are "law enforcement agencies" required to disclose the information delineated in §§ 6254(f)(1)-(2)(A).

Respondent also argues that Petitioner did not request the "information" delineated in the exception of Section 6254(f)(1)-(2)(A). However, as set forth above, petitioner explicitly requested both "records" and

"information." Petitioner stated, "I request release of the non-exempt information 'reasonably segregable' from that which may be redacted due to arguments of exemption." Tucker Decl. Exhs. A-B.

Even assuming, arguendo, that Petitioner had not explicitly requested "information" within records, he would still be entitled to receive that information. Courts have recognized an agency's obligation to disclose information contained within records in instances where the request asked for records but did not explicitly ask for "information." See, e.g., Haynie v. Super. Ct. (2001) 26 Cal.4th 1061, 1065 (§§ 6254(f)(1)-(2)(A) information disclosed where requester asked for "any writings" concerning a particular incident); Williams, 5 Cal.4th at 341 (§§ 6254(f)(1)-(2)(A) information disclosed where requester asked for "[r]eports of disciplinary proceedings" and any "[r]ecommendations from a deputy chief's review board").

Based on the above, the Court finds that the District Attorney's Office must comply with Section 6254(f)(1)-(2)(A) in full.

Sheriff's Department

As set forth above, the Respondent indicates that the Sheriff does not have records because they were purged. The declaration of Rosline Larry-Frank indicates, on behalf of the Sheriff's Department the following:

"I have reviewed the Sheriff's Department's files for case number 04072875L. The records of radio logs related to case number 04072875L are out of archive. Communications Center electronic records and audio recordings are stored for 3 years to date. After that they are automatically recorded over. The files for Case No. 04072875L were purged years prior to the Sheriff's Department's receipt of the October 28, 2016, CPRA request referred to above. The Sheriff's Department therefore did not have any records related to case number 04072875L as of October 28, 2016, and it does not have any records related to case number 04072875L now."

Petitioner cites to a Sheriff response to a separate CPRA request on July 16, 2020. In that CPRA request by another party, the Sheriff produced a "Case Evidence Summary" for case number 04072875L, which identifies all the evidence involved in Petitioner's criminal case. Tucker Decl. Exh. J. However, the production of a "Case Evidence Summary" does not contradict the statement that files were purged.

Order

Based on the above, the Court orders the District Attorney's Office to comply with Section 6254(f)(1)-(2)(A). The Court will hear from the parties as to further proceedings to ensure compliance with this order.