SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

19STCP05135 March 23, 2021
ADRIAN RISKIN vs THE ACCELERATED SCHOOLS 9:30 AM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N DiGiambattista
Courtroom Assistant: R Monterroso

CSR: Janet Cho/CSR 14359
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Robert D Skeels (Telephonic) (x)

For Respondent(s): Jeffrey Lee Anderson (x) (Telephonic)

NATURE OF PROCEEDINGS: HEARING ON PETITION FOR WRIT OF MANDATE

Matter comes on for hearing and is argued.

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The court adopts its tentative ruling as the order of the court and is set forth in this minute order.

In this action pursuant to the California Public Records Act ("CPRA"), Petitioner Adrian Riskin ("Petitioner") petitions for a writ of mandate directing Respondent The Accelerated Schools ("Respondent" or "ACS") "to provide Petitioner with all requested non-exempt records; a declaration that Respondent's conduct, policies, and pattern and practice of denying access to public records violates the CPRA; a permanent injunction enjoining Respondent, its agents, employees, officers, and representatives from continuing its existing pattern and practice of violating the statutory requirements of the CPRA; and for Petitioner to be awarded reasonable attorney's fees and costs incurred in bringing this action, as provided in Government Code Section 6259." (Opening Brief (OB) 2.)

Judicial Notice

Respondent's Reply RJN Exhibits A, B – Granted.

Petitioner's Evidentiary Objections to Exhibit G of Anderson Decl.

Petitioner's objections to Exhibit G are OVERRULED. Exhibit G is relevant to Respondent's opposition to arguments made in Petitioner's opening brief that the public interest in disclosure of the requested records "is extremely high," as evidenced by alleged public use and reception of Petitioner's website. (See OB 9-10.) For a bench trial under the CPRA, Exhibit G is not unduly prejudicial and is not likely to confuse or mislead the trier of fact.

Respondent's Objections to Reply Evidence

Respondent's objections to Exhibits AA, BB, and CC submitted with Petitioner's reply are OVERRULED. These exhibits were properly submitted as rebuttal to Respondent's arguments that the deliberate process exemption applies to certain records. (See Oppo. 10-19; Reply 4-5.) Respondent has the burden of proof on the exemption, and Petitioner could not be expected to anticipate in his opening brief all of Respondent's arguments to support the exemption.

Background

Respondent Charter School is Subject to the CPRA

According to the opposition brief, Respondent "is a twenty five year old public charter school, pursuant to Education Code section 47600 et seq., that is serving over 1,800 predominately low income minority students within the boundaries of the Los Angeles Unified school District." (Oppo. 5.)

Pursuant to statute, Respondent is subject to the CPRA. (Educ. Code § 47604.1(b)(2)(A).)

Petitioner's CPRA Requests

On January 19, 2019, Petitioner submitted a CPRA request to Respondent for "emails along with their attachments if any from 12/1/18 through 1/19/19 which are to or from board members or executive staff of TAS which contain any of the following search terms: 1. UTLA 2. Strike 3. Monat 4. Yee 5. Benefits 6. Union 7. United 8. Bui 9. Goldstein" in their native electronic formats. (Riskin Decl. ¶ 10; Pet. ¶ 8, Exh. A.)

On January 24, 2019, Petitioner submitted a CPRA request to Respondent for emails along with attachments "from 12/1/18 through 1/24/19 which are to or from board members or executive staff of TAS which are to or from any email address at lausd.net or lacity.org" in their native electronic formats. (Riskin Decl. ¶ 11; Pet. ¶ 15, Exh. B.)

On March 24, 2019, Petitioner submitted a CPRA request to Respondent "to inspect, possibly to obtain copies of, records that will reveal the annual compensation, i.e. salary + benefits, of every employee of The Accelerated Schools as well as Board members if they are compensated. [¶] If any members of the administrative staff have employment contracts I would like to see copies of those as well." (Riskin Decl. ¶ 12; Pet. ¶ 22, Exh. C.)

On April 5, 2019, Petitioner submitted a CPRA request to Respondent stating: "I am seeking to

inspect/obtain copies of all emails present in the following two accounts from January 1, 2014 through April 5, 2019 that are to/from/cc/bcc any email address at tribunemedia.com. [¶] jwilliams@accelerated.org [¶] amarshall@accelerated.org" in their native electronic formats. (Riskin Decl. ¶ 13; Pet. ¶ 36, Exh. D.)

On April 5, 2019, Petitioner submitted a CPRA request to Respondent stating: "I am seeking to inspect/obtain copies of all emails present in the accounts jwilliams@accelerated.org or marshall@accelerated.org from January 1, 2018 through April 5, 2019 that are to/from/ cc/bcc: [¶] 1. any email address at ccsa.org [¶] 2. any member of the board of trustees" in their native electronic formats. (Riskin Decl. ¶ 14; Pet. ¶ 45, Exh. E.)

On April 6, 2019, Petitioner submitted a CPRA request to Respondent seeking "all emails related to TAS business possessed by J. Williams in any account from January 1, 2018 through April 6, 2019 that are to/from/cc/bcc Kevin Sved at any email address" in their native electronic formats. (Riskin Decl. ¶ 15; Pet. ¶ 56, Exh. F.)

These six requests are hereafter referred to as the "CPRA Requests."

After Substantial Delay, Respondent Produces 55,000 Pages of Documents in Response to all Six CPRA Requests

In his declaration, Petitioner declares: "I made repeated attempts to get TAS to follow the CPRA for each of my requests. I emailed TAS to reading them of statutory deadlines. I sent them passages from the CPRA to aid with compliance. I sent TAS relevant findings from case law. I continually extended my own deadlines for considering TAS' lack of production a refusal and filing a lawsuit. I further extended my deadlines in an attempt to allow the new TAS leadership to comply with the CPRA." (Riskin Decl. ¶ 16.)

On December 3, 2019, Petitioner filed his verified petition for writ of mandate. On January 31, 2020, Respondent filed a general denial.

Communications between Petitioner, Petitioner's counsel, and Respondent's counsel continued after Petitioner filed his writ petition. (Skeels Decl. ¶¶ 2-18, Exh. A-N.)

After some extensions of time to respond, Respondent produced 55,000 pages of records in response to the CPRA Requests on or about October 30, 2020. Vincent Shih, the Chief Financial Officer of Respondent, declares: "In December of 2019, After TAS was served with the Petition and Complaint herein, TAS immediately contacted Young, Minney & Corr LLP. Shortly

thereafter, with the guidance of legal counsel, TAS tasked their IT staff to search all emails, servers, laptops etc. for all key words included in Petitioner's six requests. This resulted in hundreds of thousands of records. The TAS and legal review of these documents for confidential/exempt information took months. But the end result was providing Young, Minney & Corr LLP with tens of thousands of pages of records for their review that ultimately resulted in the law firm producing over 55,000 pages of records to Petitioner on or about October 30, 2020." (Shih Decl. ¶ 16; see also Riskin Decl. ¶ 20.) Respondent does not otherwise submit a declaration from a custodian of records or other knowledgeable person who supervised this search and exemption process.

Writ Briefing

On January 22, 2021, Petitioner filed his opening brief in support of the petition. The court has received Respondent's opposition and Petitioner's reply.

Summary of Applicable Law

Pursuant to the CPRA (Gov. Code § 6250, et seq.), individual citizens have a right to access government records. In enacting the CPRA, the California Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code, § 6250; see also County of Los Angeles v. Superior Court (2012) 211 Cal.App.4th 57, 63.) To facilitate the public's access to this information, the CPRA mandates, in part, that:

[E]ach 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 . . ." (Gov. Code § 6253(b).)

The CPRA defines "public records" submit to its provisions as follows:

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975. (Gov. Code § 6252(e).)

"The definition is broad and intended to cover every conceivable kind of record that is involved in the governmental process." (Community Youth Athletic Center v. City of National City

(2013) 220 Cal.App.4th 1385, 1418.) "Records requests … inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort." (Id. at 1425.)

Generally, the petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (California Correctional Peace Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4th 1133, 1154.) However, while the CPRA provides express exemptions to its disclosure requirements, these exemptions must be narrowly construed and the agency bears the burden of showing that a specific exemption applies. (Sacramento County Employees' Retirement System v. Superior Court (2013) 195 Cal.App.4th 440, 453.)

The CPRA "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure." (Gov. Code § 6257.5.) While an agency may withhold records for which a statutory exemption applies, the requestor's purpose in seeking the records is irrelevant. (See County of Los Angeles v. Sup.Ct. (2000) 82 Cal.App.4th 819, 826.)

Under the CPRA, the court has discretion to order the agency to prepare a list of responsive records for which it claims exemptions, and the specific exemptions claimed for each record. (See Haynie v. Sup. Ct. (2001) 26 Cal.4th 1061, 1072-1072.) "The purpose of a 'privilege log' is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production." (Hernandez v. Sup.Ct. (2003) 112 Cal.App.4th 285, 292.) "The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege." (Ibid.)

Analysis

At Present, Respondent Has Provided Insufficient Evidence to Support Withholding Any Records Based on CPRA Exemptions

Petitioner contends that Respondent has not provided sufficient information to justify its withholding of records based on "blanket exemptions." (Reply 9-10; OB 10-12.) The court agrees.

"Having both the burden of proof and all the evidence, the agency has the difficult task of justifying its withholding the documents without compromising that very act by revealing too much information. However, declarations supporting the agency's claims of exemption must be specific enough to give the requester a meaningful opportunity to contest the withholding of the

documents and the court to determine whether the exemption applies. [T]he agency must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information. Conclusory or boilerplate assertions that merely recite the statutory standards are not sufficient. A statement is 'conclusory' ... where no factual support is provided for an essential element of the claimed basis for withholding information." (Golden Door Properties, LLC v. Sup.Ct. (2020) 53 Cal.App.5th 733, 790 [citations omitted].)

Here, Respondent admittedly withheld some records based on various statutory exemptions. Specifically, in its October 30, 2020, letter producing documents in response to the CPRA Requests, Respondent stated:

The records provided represent all the public records responsive to Mr. Riskin's six requests in the possession of The Accelerated Schools known to the organization. Some records were not made available or were redacted based on the exemptions provided in Government Code Section 6254, subdivisions (a), (c), (k), the deliberative process privilege, and Government Code Section 6255. Government Code Section 6254(a) specifically provides exemption for records that are "preliminary drafts, notes, or interagency or intra-agency memorandum that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure." Government Code Section 6254(c) provides exemption for records that are "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Government Code Section 6254(k) specifically provides exemption for records, "the disclosure of which is exempted or prohibited under federal and state law, including but not limited to provisions of the evidence code relating to privilege."

Further, some records are exempt under the deliberative process privilege which provides that a local agency may withhold a public record if it can demonstrate that "on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." (Times Mirror Company v. Superior Court (1991) 53 Cal.3d 1325, 1338.)….[¶]

Please be advised that the name and title of the person responsible for the denial is: Grace Lee-Chang, Chief Executive Officer. (Skeels Decl. Exh. K.)

On November 13, 2020, Petitioner's counsel requested additional information related to Respondent's claimed exemptions, including a privilege log. (Id. Exh. L.) In response, Respondent's attorney stated: "The Accelerated Schools provided your client with over 55,000

pages of records based on six Public Records Act requests. Not surprisingly, there were some records that were properly exempted by The Accelerated Schools in compliance with the Public Records Act. As required, we provided your client with the legal authority for why a very small percentage of records were not provided to him." (Id. Exh. M [emphasis added].) Except for certain documents that Petitioner obtained from "collateral sources," see discussion infra, Respondent refused to provide additional information in support of the claimed exemptions. (Ibid.; see also Anderson Decl. ¶¶ 5-6, Exh. H.) Respondent also refused to produce a privilege log. (Skeels Decl. Exh. M.)

In his opposing declaration, Respondent's CFO declares that "with the guidance of legal counsel, TAS tasked their IT staff to search all emails, servers, laptops etc. for all key words included in Petitioner's six requests. This resulted in hundreds of thousands of records. The TAS and legal review of these documents for confidential/exempt information took months. But the end result was providing Young, Minney & Corr LLP with tens of thousands of pages of records for their review that ultimately resulted in the law firm producing over 55,000 pages of records to Petitioner on or about October 30, 2020." (Shih Decl. ¶ 16 [emphasis added].)

This description of the search results and Respondent's production suggests that a potentially large number of documents were withheld. However, except with regard to the 13 emails discussed below, Shih otherwise provides no information from which Petitioner or the court could determine how many documents were withheld based on CPRA exemptions or the facts and exemptions that supported the withholding. (Id. ¶ 17.)

In its opposition brief, Respondent argues at length that the deliberate process privilege applies to 13 emails that Petitioner obtained in CPRA requests from "collateral sources," i.e. other charter schools, and that Respondent did not produce in response to Petitioner's CPRA Requests. (Oppo. 10-19.) The court analyzes those arguments infra. However, those arguments are insufficient to establish that Respondent properly withheld other documents under any CPRA exemptions. Respondent purported to withhold documents based on exemptions other than deliberative process. (Skeels Decl. Exh. K.) Moreover, with its opposition, Respondent submits no evidence that it only withheld the 13 emails discussed below.

The agency bears the burden of showing that a specific exemption applies. (Sacramento County Employees' Retirement System v. Superior Court (2013) 195 Cal.App.4th 440, 453.) Based on the foregoing, Respondent has not provided the court with sufficient information to determine whether Respondent properly withheld responsive records, other than the 13 emails discussed below, based on the stated CPRA exemptions. In these circumstances, the court "should" afford Respondent "an opportunity to file supplemental declaration(s) in the superior court containing

information from which the court may make an informed decision on privilege and exemption claims." (Golden Door Properties, LLC v. Sup.Ct. (2020) 53 Cal.App.5th 733, 792.) The court may also order the agency to prepare a list of responsive records for which it claims exemptions, and the specific exemptions claimed for each record. (See Haynie v. Sup. Ct. (2001) 26 Cal.4th 1061, 1072-1072.)

The court will grant such interim relief, as indicated below.

Did Respondent Properly Withhold 13 Emails Based on the Deliberative Process Privilege?

Petitioner contends that he "holds responsive records from collateral sources that were not present in TAS' October 30, 2020 production, 19 of which are attached as Exhibit A to Riskin Dec." (OB 13.) Petitioner disclosed two of these examples to Respondent in or about November 2020. (Skeels Decl. Exh. L.) 1 Petitioner contends that all of the documents are responsive to his April 5, 2019, CPRA request, and two are responsive to his January 19, 2019, CPRA request. Petitioner contends that Respondent's failure to produce these documents proves that Respondent failed to conduct a reasonable search. (OB 13.)

Respondent does not dispute that the 19 documents attached as Exhibit A to the Riskin declaration are responsive to his CPRA Requests, and that Respondent did not produce these documents in response to the requests. (See Oppo. 10-19; Shih Decl. ¶ 17.) Rather, Respondent contends that "[t]he 19 documents (that are actually 13 emails, as seven are a chain of one email) that the Petitioner claims TAS improperly withheld clearly fall into the deliberative process privilege." (Oppo. 13.)

As a preliminary matter, even if some or all of the 19 documents were properly withheld under the deliberative process privilege that would not, in itself, establish that Respondent conducted a reasonable search. Petitioner contends that Respondent's search was not reasonable for various other reasons, as discussed below. Moreover, as discussed below, Respondent does not prove that it properly withheld any of the 13 emails pursuant to the deliberative process privilege.

"Under the deliberative process privilege, senior officials of all three branches of government enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated." (Citizens for Open Government v. City of Lodi (2012) 205 Cal.App.4th 296, 305) The party claiming the privilege must show that on the facts of a particular case "the public interest in nondisclosure clearly

outweighs the public interest in disclosure." (Id. at 306; see also Times Mirror Co. v. Sup. Ct. (1991) 53 Cal.3d 1325, 1344, citing Gov. Code § 6255.)

In analyzing a claim of deliberative process privilege, "the key question in every case is 'whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.'" (Times Mirror Co. v. Sup. Ct. (1991) 53 Cal.3d 1325, 1342.) The privilege applies to documents: "Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is 'actually ... related to the process by which policies are formulated' or 'inextricably intertwined' with 'policy-making processes.'" (Ibid.)

For materials to be exempt under the deliberative process privilege, the withheld information must be "predecisional." "A document is predecisional if it was 'prepared in order to assist an agency decisionmaker in arriving at his decision,' rather than to support a decision already made.'" (ACLU v. Sup.Ct. (2011) 202 Cal.App.4th 55, 76 [discussing FOIA]; see also Labor & Workforce Development Agency v. Sup.Ct. (2018) 19 Cal.App.5th 12, 30-31 [disclosure of identities of third-parties involved in confidential, predecisional communications with agency was functional equivalent of revealing substance or director of agency's judgment and mental processes].)

Relatedly, Government Code section 6254(a) provides a CPRA exemption for "preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure."

Government Code section 6254.5 also provides in pertinent part that "if a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law."

March 21, 2018 Email

This is an email from Cassy Horton, Managing Director for Regional Advocacy for the California Charter Schools Association ("CCSA"), to multiple persons, including Jonathan Williams, the former CEO of Respondent. (Riskin Decl. Exh. A; Shih Decl. ¶ 4.) The email is labeled "confidential" and Horton asks the recipients to not share the email. In this email, Horton provided information about an upcoming meeting at CCSA's offices "focused on making student-centered updates to local charter authorizing and oversight policy…" The email

discusses "policy changes that benefit all students." The email goes on to state what the meeting will entail, including but not limited to, strategies to 1) encourage LAUSD to "restart a Charter Schools Collaborative", and 2) work on policies and District Required Language ("DRL") in upcoming charters.

Respondent does not submit a declaration of Jonathan Williams or any other charter school representative who received this email from CCSA. Rather, CFO Shih states the following in his declaration: "With regard to the thirteen emails that Petitioner attached to his Opening Brief and argues should have been included as non-exempt records in TAS's production, all of those emails consist of communications by and between TAS and the California Charter Schools Association ('CCSA') regarding legislative, legal, and advocacy support to TAS (and other charter schools). I have personal knowledge, resulting from my job as CFO of TAS, that in order for TAS to function effectively fulfilling its role as a public school, TAS must make political decisions on whether or not to support or oppose certain legislative bills and proposed polices by the LAUSD Board of Directors. TAS relies on CCSA to provide guidance and advocacy regarding legislation and LAUSD policies. The thirteen emails at issue are each intimately related to TAS's protected deliberative process. Thus, the thirteen emails attached as Exhibit A to Petitioner's MPAs are clearly critical to TAS's protected deliberations. In order to make political/critical decisions TAS must be able to confer with its statewide legislative and advocacy organization the CCSA and have those communications be protected by the deliberative process privilege." (Shih Decl. ¶ 17.)

Respondent contends that this email "reveal[s] the inner workings and protected deliberations of TAS and CCSA." (Oppo. 12.) Respondent contends that all of the 13 withheld emails "include discussions regarding legislation or political approaches to working with LAUSD - both major functions of TAS in operating multiple charter schools and educating almost 2,000 students." (Oppo. 13.)

To the extent the March 21, 2018, email might show the pre-decisional deliberative process of CCSA, a private organization, Respondent cites no authority that the privilege applies. The deliberative process privilege only shields pre-decisional communications or documents that would show the internal, pre-decisional mental processes of a government organization.

Respondent also submits insufficient evidence to prove that the March 21, 2018, email reflects pre-decisional deliberations of Respondent's decisionmakers, such as Jonathan Williams. Respondent has not submitted a declaration of Williams or any other executive that purported to rely on the March 21, 2018, email or other communications with CCSA in deliberations about a political or policy decision of the charter school. CFO Shih's declaration does not show personal

knowledge on whether any decisionmaker within Respondent's organization relied on the March 21, 2018, email or any other specific CCSA emails in deliberations regarding a policy decision. Nor does Shih provide any specific discussion of this email or other emails to explain how the contents of the emails reflect pre-decisional deliberations of Respondent.

To prove that the emails reflect pre-decisional deliberations, Respondent makes the following argument: "The clear rationale for why the deliberative process privilege is relevant to the thirteen emails at issue is highlighted by the fact that when Assembly Bill 1505 ('AB 1505') was first introduced in the California Legislature, it was considered to be "anti-charter school" by most in education. There was language making it much more difficult for charter schools to be renewed by chartering authorities and requirements uniquely aimed at charter schools to make operation of the schools much more complicated. The California Charter Schools Association assisted charter schools throughout California in making decisions regarding the legislation, eventually leading to a political compromise that reduced some of the negative impact on charter schools. Without the ability to have frank discussions with charter school officials, including executives at TAS, the effectiveness of the California Charter School Association and the ability of TAS to govern its public schools that serve approximately 2,000 students (of which nearly 96% are classified as low income) would be compromised." (Oppo. 12.)

This argument is unpersuasive. Respondent does not show that any of the withheld emails relate to AB 1505 or some decision made by Respondent. The mere possibility that the emails were used in or reflect pre-decisional deliberations of Respondent is insufficient to satisfy Respondent's burden of proof to withhold public records.

Even if Respondent had shown that the March 21, 2018, reflected the deliberative process of its charter school organization (which it has not), Respondent must then show that "the public interest in nondisclosure clearly outweighs the public interest in disclosure." (Citizens for Open Government v. City of Lodi (2012) 205 Cal.App.4th 296, 306 [emphasis added]) Here, all of the emails at issue were copied to numerous persons outside of CCSA. While the March 21 email was labeled "confidential," there is no evidence CCSA enforced a confidentiality policy with respect to the March 21, 2018, email or that other charter schools kept the email confidential. Indeed, Petitioner apparently obtained this and other CCSA emails pursuant to a CPRA request made on other charter school recipients of the emails. (See Riskin Decl. ¶ 20.) Respondent submits no evidence that Petitioner obtained the emails by improper means. While Respondent itself may not waive a privilege when other charter schools disclose shared materials publicly (see Gov. Code § 6254.5), there is no evidence to conclude that this and other CCSA emails have been maintained as confidential by the multiple other charter school recipients. In this factual context, Respondent fails to show that the public interest in nondisclosure clearly outweighs the

public interest in disclosure. Petitioner has identified a public interest in communications between publicly funded charter schools and the CCSA. (See OB 9-10.)

Based on the foregoing, Respondent does not show that it properly withheld the March 21, 2018, email based on the deliberative process privilege.

April 11-12, 2018 Emails

In these emails, staff members of the CCSA asked the charter school recipients to "help us kill SB 1326 in the Senate Education Committee." CCSA staff considers SB 1326 to be "the biggest legislative threat to charter schools this session" and that it has been "amended for the worse." The email includes discussion such as "…now is the right time for us to fight back" and that SB 1362 "would allow for politically-motivated charter denials of even high-performing charters." (Riskin Decl. Exh. A.)

For the same reasons stated above as to the March 21, 2018, email, Respondent does not meet its burden of proof to show that the April 11-12, 2018, emails, are protected by the deliberative process privilege. Notably, unlike the March 21 email, the April 11-12, emails are not even labeled confidential.

April 24-25, 2018 Emails; and May 22, 2018 Email

These emails are included in Exhibit A to the Riskin declaration and are summarized at pages 15-18 of the opposition brief. Based on the court's review of these emails, and for the reasons stated above, the court reaches the same conclusion as stated above with respect to the March 21, and April 11-12, 2018, emails. Notably, these emails are not labeled confidential. 2

The April 24-25, 2018, emails relate to the scheduling of an Authorizing and Oversight Policy Working Group. (Riskin Decl. Exh. A.) Petitioner submits evidence that, in its response to the CPRA Requests, Respondent produced other emails that are all part of that same email chain discussing the "Authorizing and Oversight Policy Working Group Discussion." (Reply Riskin Decl. ¶ 6, Exh. AA.) Respondent's voluntary production of these related emails weakens the contention that the withheld emails included privileged deliberative materials or that there is a public interest in non-disclosure of the April 24-25, 2018, scheduling emails.

Based on the foregoing, Respondent does not show that it properly withheld the April 24-25, 2018, and May 22, 2018, emails based on the deliberative process privilege.

September 19 and 20, 2018 Emails

These emails from the CCSA asked charter schools, including Respondent, to review a draft letter from the Los Angeles charter community requesting the opportunity to collaborate with LAUSD to update charter renewal criteria policy. The first email from September 19th, asks for the recipients to provide feedback and edits. The second includes another draft of the letter for review and consideration.

With respect to the emails themselves, the court reaches the same conclusion as above. Respondent submits insufficient evidence that these emails reflect pre-decisional deliberations of Jonathan Williams or any other decisionmaker of Respondent's organization. These emails are not labeled confidential. Petitioner obtained copies from other charter school recipients. Respondent fails to show that the public interest in nondisclosure clearly outweighs the public interest in disclosure. Petitioner has identified a public interest in communications between publicly funded charter schools and the CCSA. (See OB 9-10.)

As with the April 24-25, 2018, emails, Respondent produced parts of the September 19 and 20, 2018, emails in its response to Petitioner's CPRA Requests. In fact, Respondent produced the entire September 19 email of Cassy Horton. (Reply Riskin Decl. ¶ 7, Exh. BB.) Respondent's voluntary production of this email waived any privilege. (Government Code § 6254.5.) It also weakens Respondent's claim of privilege for emails relating to the same subject matter.

Respondent contends that the September 19 and 20, 2018, emails include "drafts of a policy letter" that were properly withheld pursuant to Government Code section 6254(a). (Oppo. 16-17.) Government Code section 6254(a) provides a CPRA exemption for "preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure." The emails submitted by Petitioner as Exhibit A do not include the draft "LAAC-supported collective renewal criteria letter." Based on the record presented, the court lacks evidence to determine whether the draft letter is exempt under section 6254(a). For instance, Respondent does not submit a declaration or other evidence supporting a public interest in non-disclosure. However, in his writ briefs, Petitioner has not argued that Respondent should produce the draft letter. Counsel should address this issue at the hearing.

Based on the foregoing, Respondent does not show that it properly withheld the September 19 and 20, 2018, emails based on the deliberative process privilege. The court requires further argument from counsel with regard to the draft letter attached to these emails, including whether Petitioner seeks production of it.

December 6 and 11, 2018, and March 6, 2019 Emails

These emails were to invite members of the Los Angeles Advocacy Council ("LAAC") to a meeting. The emails are short invitations with date, time, and location of the meeting along with the "cc" list of all potential attendees.

Respondent submits insufficient evidence that these emails reflect pre-decisional deliberations of Jonathan Williams or any other decisionmaker of Respondent's organization. Contrary to Respondent's assertion (Oppo. 17), there is no evidence that disclosure of the names of this recipient list would divulge information about Respondent's pre-decisional deliberative process. Moreover, Petitioner submits evidence that Respondent's document production included a record with TAS Bates Stamp TAS33668 that discloses the list of LAAC members and their email addresses. (Reply Riskin Decl. Exh. CC.) Respondent's voluntary production of this information waived any privilege. (Government Code § 6254.5.) It also weakens Respondent's claim of privilege for emails relating to the same subject matter.

These emails are not labeled confidential. Petitioner obtained copies from other charter school recipients. Respondent fails to show that the public interest in nondisclosure clearly outweighs the public interest in disclosure. Petitioner has identified a public interest in communications between publicly funded charter schools and the CCSA. (See OB 9-10.)

Based on the foregoing, Respondent does not show that it properly withheld these emails based on the deliberative process privilege.

January 24-26, 2019 Emails

With respect to these emails, Respondent contends: "In early 2019, LAUSD was considering a proposed moratorium on any new charter schools in the District. Such a decision was a major policy shift by LAUSD and effected the charter community significantly. This email chain included considerable discussion surrounding the issue, including strategies to increase attendance at a rally and creation of a slogan." (Oppo. 18.)

As with the other withheld emails, Respondent submits insufficient evidence that these emails reflect pre-decisional deliberations of Jonathan Williams or any other decisionmaker of Respondent's organization. These emails are not labeled confidential. Petitioner obtained copies from other charter school recipients. Respondent fails to show that the public interest in nondisclosure clearly outweighs the public interest in disclosure. Petitioner has identified a

public interest in communications between publicly funded charter schools and the CCSA. (See OB 9-10.)

Based on the foregoing, Respondent does not show that it properly withheld the emails submitted as Exhibit A to the Riskin declaration based on the deliberative process privilege. Because Petitioner already has copies of these emails, there is no need for the court to issue a writ compelling disclosure. However, Respondent's failure to produce 13 responsive emails has some relevance to the reasonableness of Respondent's search, discussed below, and the court's decision that Respondent must produce additional information with respect to its withholding of records based on CPRA exemptions.

Reasonableness of Respondent's Search

"Records requests … inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort." (Community Youth Athletic Center v. City of National City (2013) 220 Cal.App.4th 1385, 1425.) Petitioner contends that, for various reasons, the evidence shows that Respondent did not conduct a reasonable search for records in response to his CPRA Requests. (OB 2-7, 12-14; Reply 1-8.) While Respondent has the burden of proof with respect to CPRA exemptions, Petitioner appears to have the burden to show that Respondent conducted an inadequate search. Petitioner cites no authority to the contrary.

Withholding of 13 Emails Submitted as Exhibit A to Riskin Declaration

As discussed above, Respondent improperly withheld the 13 emails submitted as Exhibit A. It is possible that Respondent failed to conduct an adequate search for these records, or, alternatively, that Respondent found the records but improperly concluded that the emails were privileged. Respondent does not submit a declaration from a knowledgeable custodian of records that could establish that the emails were actually withheld based on privilege.

Petitioner submits evidence relevant to 2 of the 13 withheld emails. In response to an email from Petitioner's attorney, Respondent claimed that it could not find the March 6, 2019, email from Luis Figueroa. (See OB 4; Skeels Decl. Exh. M.) Respondent found a copy of the September 19, 2018, email from Cassy Horton and did not claim it was privileged. (Ibid.) This evidence suggests that Respondent may not have conducted an adequate search for these two emails prior to its initial production in October 2020.

However, despite a request to do so, Petitioner did not present any of the other 13 emails to

Respondent. (Anderson Decl. ¶ 6.) There is insufficient evidence Respondent failed to produce the remaining mails as a result of an inadequate search.

Respondent's Delayed Production of 55,000 Pages of Records

Petitioner submitted his CPRA requests to Respondent between January and April 2019. (Riskin Decl. ¶¶ 10-15.) Petitioner filed his writ petition in December 2019. Although extensions of time were granted, Respondent did not produce responsive records until October 2020. (Id. ¶¶ 16-20.) Notwithstanding statements made in the Shih declaration, the weight of the evidence supports that Respondent should have understood Petitioner to be making CPRA requests when the requests were submitted. (Shih Decl. ¶¶ 3-16; see Riskin Decl. ¶¶ 9-16; Pet. Exh. A-F.) In any event, Respondent acknowledged and actually knew of the CPRA requests by May 2019 at the latest. Respondent then obtained counsel to assist in its response. (Shih Decl. ¶¶ 5-15, Exh. A-F.) Respondent produced a voluminous amount of records – 55,000 pages – on October 30, 2020. (Ibid.)

The long delay in Respondent producing records, as well as the substantial volume of records produced, neither proves nor disproves that Respondent conducted an adequate search. Respondent does not submit a declaration from a knowledgeable custodian of records about the scope of the search. On the other hand, Petitioner has not submitted discovery responses or deposition testimony that would prove that Respondent's search was inadequate.

Petitioner's Contention that Respondent Provided Conflicting Accounts of How Many Records It Exempted

In reply, Petitioner contends that Respondent has given conflicting accounts of how many records it exempted, and that this proves its search was inadequate. (Reply 5.) Respondent's December 10, 2020 letter states "[a]s required, we provided your client with the legal authority for why a very small percentage of records were not provided to him." (Skeels Decl. Exh. M.) In his declaration, CFO Shih declares that Respondent's search "resulted in hundreds of thousands of records," and that Respondent produced 55,000 pages after exempt records were omitted. (Shih Decl. ¶ 16.) Based in part on these statements, the court concluded above that Respondent has not shown that it properly withheld records based on exemption and must provide additional information on that issue. However, Respondent's statements do not prove that it conducted an inadequate search.

Identification of Records Responsive to Specific CPRA Requests

In the "Introduction" section of his brief, but not his "Argument" section, Petitioner contends that he "has no way of determining which of the over 55,000 records were intended to be responsive to [each] specific request." (See e.g. OB 5.) It is unclear what legal argument Petitioner is asserting.

Since Respondent produced records for all six requests at the same time, it was not necessarily required to differentiate which records were responsive to which requests. If Petitioner desired such clarification, he should have made such request after Respondent produced the records. Petitioner also could have conducted discovery to obtain clarification. He apparently did not do so. Respondent's failure to identify the responsiveness of records to each of the six CPRA requests does not prove Respondent conducted an inadequate search. Petitioner does not show he is entitled to a writ compelling Respondent to provide such clarification at the writ trial, after discovery has closed.

Based on the foregoing, the court is unable to conclude on this record that Respondent did not conduct an adequate search in response to the CPRA Requests. Respondent produced voluminous records in October 2020, and Petitioner has had access to them and the opportunity to present arguments supporting Petitioner's belief Respondent's search was inadequate. However, because Respondent must produce additional evidence related to its withholding of records based on CPRA exemptions, the court will defer a final ruling on the adequacy of Respondent's search until the evidentiary record is complete.

In Camera Review

Petitioner contends that "after reviewing the disputed records in camera, [the court] should order Respondent to disclose all requested responsive public records that are not properly exempted under the CPRA." (OB 12.)

"To determine a claim of exemption from the CPRA's disclosure provisions, the court may but is not required to examine the disputed records in camera." (Register Div. of Freedom Newspapers, Inc. v. County of Orange (1984) 158 Cal.App.3d 893, 901, citing Gov. Code § 6259(a); accord Times Mirror Company v. Superior Court (1991) 53 Cal.3d 1325, 1346-1347, n. 15.) In camera review may be justified where the evidentiary record is insufficient for the court to determine whether records fall within a statutory exemption. (See Register, supra at 904, 908 [holding that trial court abused its discretion in failing to hold in camera review with respect to certain statutory exemptions].) However, the California Supreme Court has "never construed [Section 6259(a)] to compel an in camera review where—as here—such review is unnecessary to the court's decision." (Times Mirror Company v. Superior Court, supra, 53 Cal.3d at pp. 1346-1347,

n. 15.)

Petitioner does not show that in camera review is justified. The appropriate remedy is for Respondent to produce a log of the withheld documents identifying the exemption which pertains to each, and supplemental declarations supporting the basis for the claim exemptions.

Petitioner's Pattern and Practice Claim; and Request for Declaratory and Injunctive Relief

In his notice page and prayer, Petitioner requests "a declaration that Respondent's conduct, policies, and pattern and practice of denying access to public records violates the CPRA; [and] a permanent injunction enjoining Respondent, its agents, employees, officers, and representatives from continuing its existing pattern and practice of violating the statutory requirements of the CPRA." (OB 2.)

Petitioner has the burden of proof on such claims. He does not prove, with evidence, that Respondent has a pattern and practice of denying access to public records in violation of the CPRA. Petitioner's evidence only concerns the six CPRA Requests at issue. Accordingly, this request for relief DENIED.

Attorney's Fees

The court does not rule on a request for attorney's fees at this time, prior to final resolution of the writ petition or the filing of a fee motion.

Conclusion

The writ petition is continued to a date to be selected at the hearing. The court will order Respondent to produce supplemental declarations to support its assertion that it has withheld responsive records based on CPRA exemptions. The "declarations supporting the agency's claims of exemption must be specific enough to give the requester a meaningful opportunity to contest the withholding of the documents and the court to determine whether the exemption applies." (Golden Door Properties, LLC v. Sup.Ct. (2020) 53 Cal.App.5th 733, 790.)

In conjunction with supplemental declarations, Respondent must produce a privilege log of records for which it claims exemptions, and the specific exemptions claimed for each record. (See Haynie v. Sup. Ct. (2001) 26 Cal.4th 1061, 1072-1072.)

Petitioner's claims for declaratory and injunctive relief are DENIED.

FOOTNOTES:

1- Respondent's attorney requested information about other collateral sources in January 2021, and Petitioner's attorney apparently did not respond. (Anderson Decl. ¶ 6.) This fact has some bearing on the reasonableness of Respondent's search for records, as discussed below.
2- The May 22, 2018, email provides a link to a "Confidential Draft 2018 Oversight Survey." The survey responses are not part of the email, and Petitioner does not contend that they are responsive to his CPRA Requests.
Counsel for respondent is to produce the privilege log and supporting declaration by June 25, 2021.
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A status conference is scheduled for July 8, 2021, at 1:30 p.m. in Department 82.
.
Counsel for petitioner is to give notice.