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Per local Rule, This case is assigned to
Judge Fannin, Jill C, for all purposes.

Attorneys for Petitioner
ANTIOCH POLICE OFFICERS' ASSOCIATION

SUMMONS ISSUED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

ANTIOCH POLICE OFFICERS'
ASSOCIATION,

Petitioner and Plaintiff,

v.

CITY OF ANTIOCH,

Respondent and Defendant,

CASE NO. N23-1629

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

1. This is an action to obtain public records under the California Public Records Act ("CPRA"). The CITY OF ANTIOCH ("City" or "Respondent") is unlawfully withholding public records in its entirety without justification and in violation of the CPRA. On April 3, 2023, Petitioner and Plaintiff ANTIOCH POLICE OFFICERS' ASSOCIATION ("POA" or "Petitioner"), through its General Counsel, submitted a request for public records to Respondent for records reflecting telephone calls, emails, and text messages sent or received by City of Antioch Mayor Lamar Thorpe concerning the initiation of a non-criminal

1 recognized organization for CITY OF ANTIOCH employees in the classification of Police
2 Officer and Police Sergeant and its members in negotiations with Respondent and Defendant
3 CITY OF ANTIOCH with regard to wages, hours, and working conditions pursuant to the
4 Meyers-Milias-Brown Act, and is authorized to maintain this action both in its capacity on
5 behalf of itself and in its representative capacity on behalf of its members, and is a member of
6 the public within the meaning of the CPRA. (Govt. Code §§ 7920-515-7920-520.)

7 6. Respondent and Defendant CITY OF ANTIOCH is a local public agency within
8 the meaning of the CPRA. (Govt. Code §§ 7920.510, 7920.515(a).)

9 **FACTUAL ALLEGATIONS**

10 **Petitioner’s Request for Public Records**

11 7. On April 3, 2023, Petitioner’s general counsel, attorney Michael L. Rains
12 (“Rains”) of the law firm of Rains Lucia Stern St. Phalle & Silver, PC (“RLS”) submitted a
13 written request to Respondent for the following records “concerning official business of the
14 City of Antioch and which relate to public statements made by Antioch Mayor Lamar Thorpe
15 at a public news conference held on Thursday, March 30, 2023”:

16 [R]ecords of telephone calls, emails sent and/or received, text
17 messages sent and/or received by Antioch Mayor Lamar Thorpe
18 on a personally-owned and/or City issued cellular telephone
19 between the dates of March 20, 2023 and March 31, 2023, which
20 relate or concern, by title, language or content, the initiation of an
21 administrative (non-criminal) investigation of officers employed
22 by the City of Antioch Police Department for misconduct, in the
23 form of transmission of text messages and/or email messages
containing alleged graphic references to issues regarding race,
ethnicity or national origin, or sexual preference and/or sexual
identification, described in recent media accounts as ‘racist
and/or homophobic.’

24 A true and correct copy of this request is attached to this Petition as Exhibit A.

25 8. By letter dated April 14, 2023, Respondent, through the person of Assistant
26 City Attorney Rachel Hundley (“Hundley”) acknowledged receipt of the request, and
27 responded that “it is necessary for the City to take a 14-day extension pursuant to Government
28 Code section 7922.535” to make a determination, on the ground that “unusual circumstances,

1 including the need to search for and collect potentially responsive records that are stored off-
2 site or at different facilities; and the need to consult with another agency or to consult among
3 multiple component of an agency that has a substantial interest in the determination of this
4 request.” A true and correct copy of Respondent’s April 14, 2023, letter from Hundley to Rains
5 is attached hereto as Exhibit B.

6 9. By letter dated May 1, 2023, Respondent, through Hundley, responded, deeming
7 its letter the City’s response pursuant to California Government Code section 7922.535, and
8 stating the following:

9 “In reviewing your request, the following has been determined at
10 this time:

11 The City has conducted a reasonable search and found no
12 responsive records to your request.

13 The Public Records Act requires the City to notify a requester in
14 writing when a public records request under the Act is denied, in
15 whole or in part, and to provide the name and title of the party
16 responsible for the determination (Gov. Code § 7922.540). To the
17 extent this letter constitutes a denial, Assistant City Attorney
18 Rachel Hundley, in consultation with the applicable departments
19 and custodians has made this determination.

20 A true and correct copy of Respondent’s May 1, 2023, letter from Hundley to Rains is
21 attached hereto as Exhibit C.

22 **City of Antioch’s Refusal to Respond to Petitioner’s Requests for Information and**
23 **Records Concerning Whether It Conducted a Reasonable Search for Records**

24 10. By letter dated May 19, 2023, Petitioner POA, through its General Counsel
25 firm RLS, wrote to Hundley, acknowledging receipt of her April 1, 2023, letter (Ex. B). In
26 addition, Petitioner acknowledged receipt of Hundley’s May 1, 2023, letter (Ex. C) which
27 stated that the City had determined it had no responsive records, and that Hundley made this
28 determination “in consultation with the applicable departments and custodians.” Petitioner’s
general counsel asked:

In light of your April 14 and May 1, 2023, responses, and so that
we may determine whether further action, including further

1 articulation or a subsequent request, is needed on our (or the
2 City's) part, would you please describe more specifically what
3 actions the City took in conducting the requisite reasonable
4 search and which led to its determination.

4 A true and correct copy of RLS's May 19, 2023, letter is attached hereto as Exhibit D.

5 11. Petitioner's request for what action the City took in purportedly conducting the
6 requisite reasonable search independently constitutes a request for public records.

7 12. The City did not respond to RLS's May 19, 2023, letter and request.

8 13. Because the City did not respond, by letter dated June 7, 2023, Petitioner's
9 general counsel, RLS, again wrote, noting Respondent's failure to respond to the previous
10 correspondence, and reiterating its request that Respondent provide information regarding
11 "what actions the City took in conducting the requisite reasonable search and which led to its
12 determination." A true and correct copy of RLS's June 7, 2023, letter is attached hereto as
13 Exhibit E.

14 14. RLS's June 7, 2023, letter also asked that Respondent provide the requested
15 further response within 14 calendar days and indicated that absent any response, RLS would
16 file this action. The June 7, 2023, letter was sent directly to Hundley via email. (Ex. E.)

17 15. Approximately thirty minutes later, Assistant City Attorney Hundley emailed
18 her reply on behalf of Respondent, providing:

19 This email is the response to your letters dated May 19 and June
20 7 of this year. As provided in the City's letter dated May 1, 2023,
21 the City has fulfilled its obligations under the California Public
22 Records Act[.]”

22 A true and correct copy of Ms. Hundley's June 7, 2023, email is attached hereto as
23 Exhibit F.

24 16. Petitioner is informed and believes and upon such information and belief
25 alleges that Respondent failed to conduct a reasonable search for information and records
26 responsive to Petitioner's request by failing to ask probing questions of city staff and
27 consultants, including Mayor Lamar Thorpe as well as city officials with whom he
28 communicated within the scope of the April 3, 2023, request, and further by claiming that it

1 did, knowing such had not been done.

2 17. In light of Antioch Mayor Lamar Thorpe’s public news conference held March
3 30, 2023, including but not limited to the focused subject matter and statements made by him
4 there, Petitioner is informed and believes and upon such information and belief alleges that
5 records responsive to Petitioner’s counsel’s April 3, 2023, request exist and that the City in
6 bad-faith denied any such responsive records were located, exist, and in further bad-faith and
7 because of same, denied Petitioner’s counsel’s request for information and records concerning
8 the purported reasonable search.

9 **Petition for Writ of Mandate and Request for Declaratory Relief**

10 18. Petitioner realleges and incorporates by reference allegations 1 through 17 as
11 through fully set forth herein.

12 19. “Records of telephone calls, emails sent and/or text message sent and/or
13 received” constitute writings within the meaning of the CPRA and are thus public records.
14 (Govt. Code §7922.525; *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.)

15 20. An agency is required to determine whether it has records under its control, and
16 is obliged to conduct a reasonable search for records based on criteria set forth in the search
17 request, and including by asking probing questions of city staff and consultants. (*Community*
18 *Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1417-1418; *Cal.*
19 *First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166; *City of San Jose,*
20 *supra*, 2 Cal.5th at 616-617, 629.)

21 21. A writing prepared by a public official or public employee conducted agency
22 business has been “prepared by” the agency within the meaning of the CPRA, even if the
23 writing is prepared using the official’s or employee’s personal device or account, and thus
24 constitutes a public record. (Govt. Code §7922.525; *City of San Jose, supra*, 2 Cal.5th at 621,
25 625.)

26 22. A writing retained by a public official or public employee conducting agency
27 business has been “retained by” the agency within the meaning of the CPRA, even if the
28 writing is retained in the official’s or employee’s personal account, and thus constitutes a

1 public record under constructive possession of the agency. (*City of San Jose, supra*, 2 Cal.5th at
2 p. 623, 625.)

3 23. The CPRA requires agencies to make non-exempt public records available to
4 requestors “promptly.” (Govt. Code §7922.530(a).) An agency may not “delay or obstruct the
5 inspection of public records.” (Govt. Code §7922.500.)

6 24. Conducting a reasonable search is required to uphold the fundamental purpose
7 of the CPRA, which is to “provide access to information.” (Govt. Code §7922.500.) Failure to
8 conduct such a reasonable search constitutes a violation of the CPRA. (*National City, supra*,
9 220 Cal.App.4th at 1424.)

10 25. Respondent violated its duty under the CPRA by failing to locate and provide
11 responsive records and information in its actual or constructive possession, and by failing to
12 conduct a reasonable search for same.

13 26. Respondent similarly violated Petitioner’s right of access to public records by
14 failing to disclose upon request what actions it purportedly took, if at all, in conducting the
15 requisite reasonable search, and in doing so has created a specter of secrecy by refusing to
16 disclose what efforts, if any, it took to conduct the required reasonable search.

17 27. Respondent has used delay and obstruction through a lack of transparency to
18 deny access to public records.

19 28. The California Constitution provides an independent right of access to
20 government records, providing: “The people have the right of access to information concerning
21 the conduct of the people’s business, and, therefore, the meetings of public bodies and the
22 writing of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. 1,
23 §3(b)(1).) This provision was adopted by the voters in 2004 because, as the ballot argument
24 supporting the measure states, when Californians asked questions of their government, they
25 increasingly found ““that answers are hard to get.”” This provision is intended to reverse that
26 trend.

27 29. Respondent’s failure to identify or provide any disclosable records requested in
28 Petitioner’s general counsel’s April 3, 2023, request and further follow up requests in its letters

1 dated May 19 and June 7, 2023, violates section 3(b) of Article 1, of the California
2 Constitution.

3 30. Whenever it is made to appear by verified petition to the Superior Court of the
4 county where the record or some part thereof are situated that certain public records are being
5 improperly withheld from a member of the public, the Court shall order the officer or person
6 charged with withholding the records to disclose the public record or show cause by he or she
7 should not do so. (Govt. Code §7923.100.) If the Court finds the agency has not justified its
8 failure to disclose, the Court shall order the public official to make the record public. (*Ibid.*)

9 31. Petitioner is entitled to seek a writ of mandate and declaratory relief in response
10 to a violation of the CPRA and to enforce it and the public's rights thereunder. (Cal. Govt.
11 Code §7923.000).

12 32. Petitioner has no plain, speedy, adequate remedy in the ordinary course of law
13 other than the relief sought herein. (Cal. Civ. Proc. §1086.)

14 33. Respondent has a clear, present, ministerial duty to comply with the California
15 Constitution and California Public Records Act at Govt. Code section 7921.000 et seq.

16 34. Respondent has acted and continues to act in violation of the CPRA by denying
17 access to public information through its refusal to promptly disclose public records subject to
18 Petitioner's request and its refusal to disclose records related to its purported efforts to conduct
19 a reasonable search for the requested records. (Cal. Govt. Code §7922.530(a), 7922.500.

20 35. Petitioner has performed all conditions precedent to the filing of this petition;
21 there are no administrative remedies to exhaust and to the extent any such exist, Petitioner has
22 exhausted them.

23 36. An actual controversy exists between the parties concerning whether
24 Respondent engaged in conduct violating the statutory requirement of the CPRA and California
25 Constitution. A judicial determination to resolve this actual controversy is necessary and
26 appropriate.

27 WHEREFORE, Petitioner prays:

28 1. That the Court grant the petition and issue a writ of mandate commanding

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Respondent to provide all records responsive to Petitioner’s April 3, 2023,
request and information and records responsive to Petitioner’s June 7, 2023,
request;

- 2. For a declaration of the parties’ respective rights;
- 3. For Petitioner's cost of suit incurred herein;
- 4. For Petitioner's attorney fees in accordance with law; and
- 5. For such other and further relief as the Court may deem just, necessary and

proper.

Dated: August 4, 2023

Respectfully submitted,

**RAINS LUCIA STERN
ST. PHALLE & SILVER, PC**



Michael A. Morguess
Attorneys for Petitioner
ANTIOCH POLICE OFFICERS’
ASSOCIATION

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA,

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE [and know its contents.

/X/ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

/_/ I am /_/ an Officer /_/ a partner of the ****, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe that the matters stated in the foregoing document are true.

/_/ I am one of the attorneys for *** a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe, and on that ground allege that the matters stated in the foregoing document are true.

Executed on August 1, 2023 at Antioch, California.
City

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Loren Bledsoe, Vice President
Antioch Police Officers' Association
Petitioner