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8 Attorneys for Petitioner and Plaintiff,  
9 Laura Ferguson

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

13 **Laura Ferguson, an individual;**  
14  
15 Petitioner and Plaintiff

16 vs.

17 **City of San Clemente; Gene James, in his**  
18 **official capacity; Kathleen Ward, in her**  
19 **official capacity; Chris Hamm, in his**  
20 **official capacity; Erik Sund, in his official**  
21 **capacity; and DOES 1 through 250, inclusive;**

22 Respondents and Defendants.

Case No.: 30-2021-01221022-CU-WM-CJC  
Judge: Assigned for All Purposes  
Dept: Judge John C. Gastelum

UNLIMITED JURISDICTION

**Verified Petition for Writ of Mandate;**  
**Complaint for Declaratory &**  
**Injunctive Relief**  
[Gov. Code §§ 6250 et seq.]

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Petitioner and Plaintiff Laura Ferguson, (“Ferguson”), alleges as follows:

1. In this action, Ferguson seeks to enforce her right to obtain public records pursuant to the California Public Records Act, Government Code<sup>1</sup> section 6250 *et seq.* (“CPRA”). Ferguson is a resident of the City of San Clemente (“City”) and is a duly elected member of the City’s City Council.

2. On November 29, 2020, Ferguson submitted CPRA requests (“PRA Requests”) to Respondent City of San Clemente. Each of the Requests dealt with various aspects of the November 23, 2020 censure of Petitioner by a majority of the then constituted City Council.

<sup>1</sup> All undesignated code references are to the Government Code.

1           3. A true and correct copy of Petitioner's November 29, 2020 Public Records Act request  
2 and Respondent's December 1, 2020 and December 2, 2020 responses (via Annie Loo, Esq. of  
3 the law firm of Best, Best & Krieger) are attached hereto as Exhibit A. The redacted portion of  
4 Exhibit A is done to protect attorney client communications. Contained in City's counsel's  
5 December 1, 2020 response was a statement to Petitioner that her request would be sent to an  
6 outside counsel to opine on the issue of the scope of the attorney client privilege. Exhibit A, page  
7 one.

8           4. On December 3, 2020 Petitioner's attorney Brad Malamud requested City maintain and  
9 not destroy / discard any and all documents related in any way to the censure of Petitioner.

10           5. A true and correct copy of an e-mail exchange between Petitioner's counsel Brad  
11 Malamud and Respondents' Counsel Annie Loo dated between December 6, 2020 and January  
12 29, 2021 is attached hereto as Exhibit B. On December 6, 2020 Petitioner's counsel notified City  
13 and its counsel that Petitioner's November 29, 2020 document request was to be under the  
14 California Public Records Act which City's counsel acknowledged. Exhibit B, page 4.

15           6. A true and correct copy of Respondent's recused counsel Scott Smith's July 12, 2020 e-  
16 mail to Petitioner on the third party legal opinion is attached hereto as Exhibit C. The redacted  
17 portions are to protect attorney client communications on other matters.

18           7. Despite the City Attorney's recusal regarding the censure of Petitioner (see paragraph 33  
19 below) and Petitioner's objections to Best, Best & Krieger's handling of City's response to  
20 Petitioner's November 29, 2020 CPRA request (and other CPRA requests not at issue in this  
21 Petition), City continued to have Best, Best & Krieger handle all aspects of Petitioner's CPRA  
22 request to conclusion.

23           8. City issued some documents to Petitioner but also withheld responsive documents on  
24 claims of exemptions and privilege. Agency violated Petitioner's right to obtain public records  
25 by not adequately responding to her PRA requests.

26           9. On information and belief, City issues some of its employees and / or elected officials  
27 City owned cellular telephones.

28

**PARTIES**

10. Petitioner and Plaintiff Laura Ferguson is an individual who is a resident of City and a duly elected member of City’s City Council.

11. Respondent and Defendant City of San Clemente is a public entity and it is a local agency as defined by the CPRA.

12. Respondent and Defendant Gene James (“James”) is an individual and a duly elected member of the City Council of City and has a ministerial duty to comply with the CPRA on City’s behalf. James is named herein in his official capacity only.

13. Respondent and Defendant Kathleen Ward (“Ward”) is an individual and a duly elected member of the City Council of City and has a ministerial duty to comply with the CPRA on City’s behalf. Ward is named herein in her official capacity only.

14. Respondent and Defendant Chris Hamm (“Hamm”) is an individual and at all times relevant herein was duly elected member of the City Council of City and has a ministerial duty to comply with the CPRA on City’s behalf. Hamm is named herein in his former official capacity only.

15. Respondent and Defendant Erik Sund (“Sund”) is an individual and at all times relevant herein was the acting City Manager of City and has a ministerial duty to comply with the CPRA on City’s behalf. Sund is named herein in his official capacity only.

16. The true names of Respondent and Defendant DOES 1 through 100, inclusive are unknown to Petitioner who therefore brings this Petition and Complaint against DOES 1 through 100, inclusive by such fictitious names, and will seek leave of this Petition, Writ and Complaint to show their true names, identities, and capacities when they have been determined.

17. DOES 1 through 100 include City officials, employees, contractors, and other agents who have public records relating to Agency business in their possession.

18. Each Respondent and Defendant, including the DOE Respondents and Defendants, are each other’s agents and at all relevant times were acting as each other’s agents. Together, all Respondents and Defendants are the “Respondents.”

1 **JURISDICTION**

2 19. Pursuant to Government Code section 6258, “any person may institute  
3 proceedings for injunctive or declarative relief or writ of mandate in any court of competent  
4 jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class  
5 of public records under [the CPRA].”

6 20. Petitioner is a person, as defined by the code, and is suing to enforce her right to  
7 receive public records. Petitioner has standing to bring this action. (§§ 6250, 6252.5, 6252.7,  
8 6258, 6259 and *Connell v. Super. Ct. (Intersource, Inc.)* (1997) 56 CA4th 601, 611).

9 21. The Orange County Superior Court is the proper venue because the acts  
10 complained of which are the subject of this Petition, Writ and Complaint, have all occurred or  
11 will all occur in the County of Orange, State of California. The relief sought in this Petition, Writ  
12 and Complaint is within the jurisdiction of this Court.

13 **SUMMARY OF PERTINENT CALIFORNIA PUBLIC RECORDS ACT PROVISIONS**

14 22. In enacting the CPRA, the Legislature declared that “access to information  
15 concerning the conduct of the people’s business is a fundamental and necessary right of every  
16 person in this state.” (§ 6250)

17 23. The CPRA requires that a local agency respond to a request for public records  
18 within 10 days to inform the requestor whether it possesses disclosable public records that are  
19 responsive to the request (§ 6253(c).) A local agency is permitted one fourteen-day extension  
20 only if one of four specified “unusual circumstances” exists. (§ 6253(c)(1)-(4).) Responsive  
21 records must be disclosed “promptly.” (§ 6253(b).)

22 24. A local agency has a duty to assist the requestor in formulating a focused and  
23 effective request. (§ 6253.1)

24 25. When an agency withholds responsive records on the basis of Government Code  
25 section 6255, the agency denying disclosure bears the burden of proof by a “clear overbalance”  
26 that the documents should remain confidential (non-disclosable). § 6255(a).; *Bakersfield City*  
27 *Sch. Dist. v. Superior Court* (2204) 118 Cal. App. 4<sup>th</sup> 1041, 1045 and *California State University*  
28 *v. Superior Court* (2001) 90 Cal. App. 4<sup>th</sup>, 810, 831.

1           26.           An agency may not charge a requestor of responsive documents for the act of  
2 searching for those documents or for review and redaction of any portion of a responsive  
3 document where the agency is claiming it is subject to an exemption or privilege. *National*  
4 *Lawyers Guild v. City of Hayward, et al* (2020) 9 Cal. 5th 488.

5           27.           A local agency must, upon request, provide information in an electronic format (§  
6 6253.9(a).)

7           28.           When being applied to grant access to information, the CPRA must be interpreted  
8 broadly, and when being applied to deny access to information, CPRA exemptions must be  
9 interpreted narrowly (Cal. Const., art. I, § 3).

10          29.           When public officials conduct the people’s business on private devices and  
11 accounts such as texting on privately owned cell phones or sending email using privately held  
12 electronic mail accounts, these records are subject to disclosure under the CPRA as if they were  
13 created on agency-owned devices. (*City of San Jose v. Superior Court (Smith)* (2017) 2 Cal. 5th  
14 608.).

15          30.           Notwithstanding the definition of “member of the public” in section 6252, an  
16 elected member or officer of any state or local agency is entitled to access to public records of  
17 that agency on the same basis as any other person. Nothing in this section shall limit the ability  
18 of elected members or officers to access public records permitted by law in the administration of  
19 their duties. This section does not constitute a change in, but is declaratory of, existing law. (§  
20 6252.5).

21          31.           Notwithstanding Section 6252.5 or any other provision of law, when the members  
22 of a legislative body of a local agency are authorized to access a writing of the body or of the  
23 agency as permitted by law in the administration of their duties, the local agency, as defined in  
24 Section 54951, shall not discriminate between or among any of those members as to which  
25 writing or portion thereof is made available or when it is made available. (§ 6252.7).

1 **NOVEMBER 23, 2020 CITY COUNCIL MEETING TO**

2 **CENSURE PETITIONER LAURA FERGUSON**

3 32. On November 23, 2020 the City Council of the City of San Clemente conducted a  
4 public meeting for the purpose of considering the censure of Petitioner Ferguson.

5 33. Near the start of that meeting, City Attorney Scott Smith of Best, Best & Krieger  
6 announced that he had to step aside (he recused himself) from representing anyone, including  
7 the City, as he has a conflict of interest.

8 **FERGUSON'S NOVEMBER 29, 2020 CPRA REQUEST<sup>2</sup>**

9 34. On November 29, 2020, Laura Ferguson sent a Councilmember request for  
10 records. [Exhibit A] The request was made pursuant to Government Code § 6252.7 which  
11 allows a councilmember to obtain records. (“CPRA Request”)

12 Dear Joanne, Scott and Christina,

13  
14 Please provide prior to noon on Tuesday (12/01/20) all communications regarding  
15 censure of Laura Ferguson dated from January 1, 2019 to November 29, 2020 among the  
16 individuals listed below. Please note I have included Scott Smith and Christina Talley  
17 because they have their own email systems and do not use the city email system but do  
18 communicate with us in their capacity as city officials. I am requesting these writings  
19 under Govt. Code 6252.7 - “...Authority of legislative body or local agency members to  
access a writing of the body or agency as permitted by law in the administration of their  
duties, the local agency as defined in section 54951 shall not discriminate between or  
among any of those members as to which writing or portion thereof is made available...”

20 Scott Smith  
21 Christina Talley  
22 James Makshanoff  
23 Erik Sund  
24 Bob Dunek  
25 Dan Bane  
26 Kathy Ward  
27 Chris Hamm  
Gene James

28 <sup>2</sup> There were other Public Records Act requests of Petitioner to City but none if them are at issue  
in this Petition.

1 Thank you so much for your prompt assistance.

2 Best,

3 Exhibit A, pages 3 & 4.

4 35. On December 1, 2020, 11:41 am, by email Ms. Loo stated:

5 Dear Ms. Ferguson,

6  
7 With respect to those communications that include attorneys Scott Smith and Christina  
8 (sic) Talley, we have some attorney-client privilege concerns. Evidence Code section  
9 952 defines a “confidential communication between the client and lawyer” as  
10 “information transmitted between a client and his or her lawyer in the course of that  
11 relationship and in confidence by a means which, so far as the client is aware, **discloses**  
12 **the information to no third persons other than those who are present to further the**  
13 **interest of the client in the consultation or those to whom disclosure is reasonably**  
14 **necessary for the transmission of the information or the accomplishment of the**  
15 **purpose for which the lawyer is consulted**, and includes a legal opinion formed and  
16 the advice given by the lawyer in the course of that relationship. (Emphasis added.)

17 Given the nature of the censure proceedings, there is an outstanding question as to  
18 whether disclosure here would further the interest of the City or disclosure is reasonably  
19 necessary for “the accomplishment of the purpose for which the lawyer is consulted.”  
20 We want to be sensitive to any potential waiver issues and recommend that the City  
21 obtain a third party legal opinion about the disclosure of these records.

22 [Exhibit A] [ Emphasis added]

23  
24 36. Soon thereafter, Petitioner’s request was converted to a CPRA request in an email from  
25 Brad Malamud, Petitioner’s attorney, to Annie Loo, Esq., Counsel for the City. [Exhibit B]

26  
27 37. The reason for the conversion of Councilmember request to PRA was not to avoid  
28 attorney-client communications, but to ensure that Laura Ferguson was permitted to disseminate  
all documents produced by the City of San Clemente to the public.

38. On December 2, 2020, 10:19:42 am, by email Ms. Loo stated:

Dear Ms. Ferguson.

The City has completed its expedited review of the records you seek. The majority of the records are communications with attorneys Scott Smith and Christina (sic) Talley, and would be the subject of the third party legal opinion recommended below. Some of the records include communications between councilmembers and/or councilmembers and city staff inquiring about censure options. These records are privileged and would not be disclosed

1 internally or to the public. Under the PRA, they would be exempt under Government Code  
2 section 6255 and I am responsible for the claim of exemption.

3 Exhibit A

4 39. On January 6, 2021, 10:52 a.m., Ms. Loo sent an email to Brad Malamud stating  
5 in part with respect to Ms. Ferguson's PRA Request:

6 An email exchange between a councilmember and former City Manager James Makshanoff  
7 from April 2019 has been withheld under Government Code section 6255 because the public  
8 interest in councilmembers being able to test ideas and ask questions before a policy is  
9 formulated clearly outweighs the public interest in disclosure. An email exchange between  
10 two councilmembers from March 2020 has been withheld under the same theory. In  
11 addition, emails to or from attorneys Scott Smith and Cristina Talley with their advice,  
12 impressions, conclusions, opinions, or legal research or theories have been withheld.  
13 (citation omitted) Interim City Manager Erik Sund is responsible for the claims of  
14 exemption.

15 Exhibit B.

16 40. On July 12, 2021, City Attorney Scott Smith explained the reason the City  
17 decided not to seek a third party legal opinion regarding disclosing records that were being  
18 withheld.

19 Our [Best & Krieger] public records group is preparing a formal response to you with details,  
20 but there was no second opinion sought on the issue of providing attorney-client censure  
21 documents to you as a councilmember. Instead, Mr. Malamud agreed to re-submit the  
22 request as a conventional PRA request so that we would not need that opinion on the issue of  
23 privilege. With that approach, which would exclude attorney-client communications, there  
24 was no need for the opinion.

25 Exhibit C

26 41. The decision not to seek the legal opinion was not disclosed until almost 8 months  
27 after the request was converted into a CPRA request on December 3, 2020. Exhibits B and C.

28 42. As to the censure of Laura Ferguson, communications between recused City  
Attorney Scott Smith on the one hand and Ms. Talley, Ms. Ward, Mr. Hamm, and/or Mr. James  
on the other hand did not come within the attorney client privilege. Apparently for that reason,  
and that reason alone, the City sought a second opinion. The conversion of Petitioner's  
November 29, 2020 documents request to a PRA did not change that legal issue. If

1 communications did not come within the scope of the Evidence Code §952 definition, then the  
2 communication(s) were required to be produced, not withheld as is the case before this Court.

3 43. In addition, City withheld documents on the claim of exemption under  
4 Government Code section 6255 for which City bears the burden of proof to establish that the  
5 exemption is properly being applied to said document(s).

6 **FIRST CAUSE OF ACTION**  
7 (Writ of Mandate — Gov. Code § 6258)  
8 Against all Respondents

9 44. Petitioner incorporates by reference all prior allegations and all prior paragraphs.

10 45. Respondent, a public agency, is required to comply with Petitioner's CPRA  
11 requests. Respondents have a ministerial duty to comply with the CPRA by providing  
12 documents responsive to CPRA requests.

13 46. Petitioner requests that a Writ of Mandate issue to compel Respondents to search  
14 for and disclose the public records and documents that are responsive to Petitioner's CPRA  
15 requests described herein, including those improperly withheld on the basis of alleged  
16 exemptions and/or privileges and those located on City issued cellular telephones and / or on  
17 private electronic mail accounts and / or cellular telephones.

18 47. Petitioner's effort to obtain the records without litigation have been unsuccessful,  
19 and Petitioner has no further administrative remedies. Petitioner's attempt to, in effect, meet and  
20 confer with Respondent, has been unsuccessful. Therefore, there is no other adequate remedy in  
21 the ordinary course of law. Indeed, the CPRA specifically authorizes writ of mandate as a  
22 remedy for CPRA violations.

23 **SECOND CAUSE OF ACTION**  
24 (Declaratory Relief — Gov. Code § 6258)  
25 Against all Respondents

26 48. Petitioner incorporates by reference all prior allegations and all prior paragraphs.

27 49. There is an actual and justiciable controversy between the parties as to whether  
28 Respondents' actions have complied with the California Public Records Act.





1 accounts and personal electronic devices, such as cellular telephones, for records responsive to  
2 Petitioner's request.

3 As to the Second Cause of Action:

- 4 63. Enter a declaratory judgment that Respondents violated the CPRA by:
- 5 a) Failing to search for and disclose responsive public records, including to search  
6 for and disclose responsive public records that that City employees and officials  
7 possess in their personal files, email accounts, electronic devices; and / or their  
8 City issued cellular telephones; and
- 9 b) Failing to promptly disclose the records that are responsive to Petitioner's CPRA  
10 requests.

11 As to the Third Cause of Action:

12 64. Issue an order compelling Respondents to search the City issued cellular  
13 telephones and for Respondents to search their private email accounts, computers, and other  
14 electronic devices for public records that are responsive to Petitioner's request and disclose same  
15 to Petitioner;

16 65. Issue an order compelling City to search for and disclose to Petitioner all  
17 responsive records not subject to any proper claim of exemption or privilege; and

18 As to all Causes of Action:

19 66. Award Petitioner's attorneys' fees and costs reasonably incurred in this action;  
20 and

21 67. For such other and further relief as the Court deems proper.

23 Dated: September 13, 2021

23 Respectfully submitted,  
24 LAW OFFICE OF CRAIG P. ALEXANDER

25 By: /s/

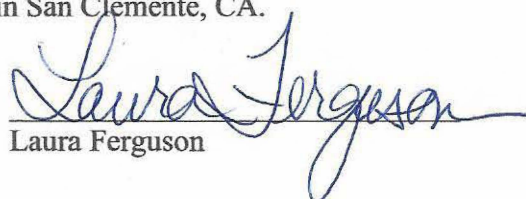
26 \_\_\_\_\_  
27 Craig P. Alexander  
28 Attorneys for Petitioner and Plaintiff  
Laura Ferguson

1  
2  
3 **VERIFICATION**

4 I, Laura Ferguson, declare that I am the Petitioner in the above-entitled action. I have read the  
5 foregoing VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND  
6 INJUNCTIVE RELIEF and know the contents thereof to be true of my own knowledge, except as to  
7 those statements made upon information and belief, and as to those I believe them to be true.

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

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11 Executed on September 13, 2021 in San Clemente, CA.

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Laura Ferguson

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**TABLE OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>	<b>Reference</b>
<b>A</b>	<b>Petitioner’s November 29, 2020 request and Respondents’ counsel’s December 1 &amp; 2, 2020 initial responses.</b>	<b>¶ 3</b>
<b>B</b>	<b>E-mail exchange between Petitioner’s counsel and Respondents’ counsel between December 6, 2020 and January 29, 2021</b>	<b>¶ 5</b>
<b>C</b>	<b>E-mail of recused City Attorney Scott Smith dated July 12, 2021</b>	<b>¶ 6</b>

# **EXHIBIT “A”**

REDACTED

**From:** Annie Loo <[Annie.Loo@bbklaw.com](mailto:Annie.Loo@bbklaw.com)>

**Date:** December 2, 2020 at 10:19:42 AM PST

**To:** "Ferguson, Laura" <[FergusonL@san-clemente.org](mailto:FergusonL@san-clemente.org)>

**Cc:** "Cristina Talley <[ctalley@talleylawyers.com](mailto:ctalley@talleylawyers.com)> ([ctalley@talleylawyers.com](mailto:ctalley@talleylawyers.com))"

<[ctalley@talleylawyers.com](mailto:ctalley@talleylawyers.com)>, "Baade, Joanne" <[BaadeJ@san-clemente.org](mailto:BaadeJ@san-clemente.org)>, "Sund, Erik" <[SundE@san-clemente.org](mailto:SundE@san-clemente.org)>, Brian Byun <[Brian.Byun@bbklaw.com](mailto:Brian.Byun@bbklaw.com)>, Scott Smith <[Scott.Smith@bbklaw.com](mailto:Scott.Smith@bbklaw.com)>,

"Ferencz, Veronica" <[FerenczV@san-clemente.org](mailto:FerenczV@san-clemente.org)>

**Subject: RE: Request for communications**

Dear Ms. Ferguson,

The City has completed its expedited review of the records you seek. The majority of the records are communications with attorneys Scott Smith and Christina Talley, and would be the subject of the third party legal opinion recommended below. Some of the records include communications between councilmembers and/or councilmembers and city staff inquiring about censure options. These records are privileged and would not be disclosed internally or to the public. Under the PRA, they would be exempt under Government Code section 6255 and I am responsible for the claim of exemption.

Please see the attached remaining records for your review. Thank you.



Annie Loo  
PRA Services and E-Discovery Attorney  
[annie.loo@bbklaw.com](mailto:annie.loo@bbklaw.com)  
T: (949) 263-2602 C: (714) 606-1866  
[www.BBKlaw.com](http://www.BBKlaw.com)  

***Stay at home and public health orders issued in multiple counties across the U.S. require our offices to be physically closed. Because all staff are working remotely, all documents (including correspondence, pleadings, and discovery) will be served via e-mail until further notice. Because we may not receive regular mail or other deliveries during this period of time, please e-mail copies of anything you send by regular mail or delivery. Send all e-served documents in your case to the e-mail addresses for any Best Best & Krieger LLP attorney who has appeared in your case, or who has communicated with you by e-mail on your matter.***

---

**From:** Annie Loo

**Sent:** Tuesday, December 1, 2020 11:41 AM

**To:** 'FergusonL@san-clemente.org' <FergusonL@san-clemente.org>

**Cc:** 'Cristina Talley <ctalley@talleylawyers.com> (ctalley@talleylawyers.com)' <ctalley@talleylawyers.com>; Joanne Baade (BaadeJ@san-clemente.org) <BaadeJ@san-clemente.org>; Erik Sund (SundE@san-clemente.org) <SundE@san-clemente.org>; Brian Byun <Brian.Byun@bbklaw.com>; Scott Smith <Scott.Smith@bbklaw.com>; 'FerenczV@san-clemente.org' <FerenczV@san-clemente.org>

**Subject:** RE: Request for communications

Dear Ms. Ferguson,

The City is working with all due haste to get you the records you requested. We hope to get you some records this afternoon.

With respect to those communications that include attorneys Scott Smith and Christina Talley, we have some attorney-client privileged concerns. Evidence Code section 952 defines a "confidential communication between client and lawyer" as "information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship." (Emphasis added.)

Given the nature of the censure proceedings, there is an outstanding question as to whether disclosure here would further the interest of the City or disclosure is reasonably necessary for "the accomplishment of the purpose for which the lawyer is consulted." We want to be sensitive to any potential waiver issues and recommend that the City obtain a third party legal opinion about the disclosure of these records.

The City hopes to have the remainder of the records available to you shortly. We'll be in touch soon.

Annie Loo

PRA Services and E-Discovery Attorney

Best Best & Krieger LLP

[annie.loo@bbklaw.com](mailto:annie.loo@bbklaw.com)

T: (949) 263-2602 C: (714) 606-1866

[www.bbklaw.com](http://www.bbklaw.com)

-----Original Message-----

-----Original Message-----

From: Ferguson, Laura <[FergusonL@san-clemente.org](mailto:FergusonL@san-clemente.org)>

Sent: Sunday, November 29, 2020 10:06 PM

To: Baade, Joanne <[BaadeJ@san-clemente.org](mailto:BaadeJ@san-clemente.org)>; Scott Smith <[Scott.Smith@bbklaw.com](mailto:Scott.Smith@bbklaw.com)>;  
[CTalley@talleylawyers.com](mailto:CTalley@talleylawyers.com)

Cc: Ferencz, Veronica <[FerenczV@san-clemente.org](mailto:FerenczV@san-clemente.org)>

Subject: Request for communications

CAUTION - EXTERNAL SENDER.

Dear Joanne, Scott and Christina,

Please provide prior to noon on Tuesday (12/01/20) all communications regarding censure of Laura Ferguson dated from January 1, 2019 to November 29, 2020 among the individuals listed below. Please note I have included Scott Smith and Christina Talley because they have their own email systems and do not use the city email system but do communicate with us in their capacity as city officials. I am requesting these writings under Govt. Code 6252.7 - "...Authority of legislative body or local agency members to access a writing of the body or agency as permitted by law in the administration of their duties, the local agency as defined in section 54951 shall not discriminate between or among any of those members as to which writing or portion thereof is made available..."

Scott Smith

Christina Talley

James Makshanoff

Erik Sund

Bob Dunek

Dan Bane

Kathy Ward

Chris Hamm

Gene James

Thank you so much for your prompt assistance.

Best,

Laura Ferguson

Mayor Pro Tem

(949) 606-4537

Sent from my iPhone

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

**EXHIBIT ‘B’**

**From:** Annie Loo </O=BBK/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ANNIE LOO912>  
**To:** 'brad@malamuds.com'  
**Sent:** 1/29/2021 11:36:03 AM  
**Subject:** Malamud PRA Requests Status  
**Attachments:** RE\_ Ferguson PRA Request

Dear Mr. Malamud, Below is the status of your Public Records Act requests, listed by the date on the request.

12/2 – Completed  
12/3 – Next response due 2/23  
12/4 – completed  
12/7 – Next response due 2/9  
12/8 - Completed  
12/9 - Next response due 2/9

Councilmember Ferguson's one PRA request is considered completed. (See attached.) We have no requests from Mr. Winsten since November 1, 2020.

 <http://clients.bb>  
**Annie Loo**  
PRA Services and E-Discovery Attorney  
annie.loo@bbklaw.com  
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***Stay at home and public health orders issued in multiple counties across the U.S. require our offices to be physically closed. Because all staff are working remotely, all documents (including correspondence, pleadings, and discovery) will be served via e-mail until further notice. Because we may not receive regular mail or other deliveries during this period of time, please e-mail copies of anything you send by regular mail or delivery. Send all e-served documents in your case to the e-mail addresses for any Best Best & Krieger LLP attorney who has appeared in your case, or who has communicated with you by e-mail on your matter.***

**From:** Brad Malamud <brad@malamuds.com>  
**Sent:** Thursday, January 28, 2021 3:59 PM  
**To:** Annie Loo <Annie.Loo@bbklaw.com>; Scott Smith <Scott.Smith@bbklaw.com>; Mike Winsten <mike@winsten.com>; Ferguson, Laura <FergusonL@san-clemente.org>  
**Subject:** CpRa

CAUTION - EXTERNAL SENDER.

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Please confirm which CPRA requests from me, ms. Ferguson, and mr. Winsten since November 1 have been fully and finally responded to by the city and which remain outstanding.

Your serial responses of delay have left me unable to determine the status of each CPRA.

Thank you.

Get [Outlook for iOS](#)

**From:** Annie Loo </O=BBK/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ANNIE LOO912>  
**To:** 'brad@malamuds.com'  
**Sent:** 1/28/2021 12:06:39 PM  
**Subject:** RE: Ferguson PRA Request

Dear Mr. Malamud, The City has completed its search and has no additional responsive records. The City considers this request complete.



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**From:** Annie Loo  
**Sent:** Wednesday, January 6, 2021 10:52 AM  
**To:** 'brad@malamuds.com'  
**Subject:** RE: Ferguson PRA Request

Dear Mr. Malamud,

Please see the link below with records responsive to Ms. Ferguson's PRA request.

<https://www.imanageshare.com/pd/4siLjwsGxua>

An email exchange between a councilmember and former City Manager James Makshanoff from April 2019 has been withheld under Government Code section 6255 because the public interest in councilmembers being able to test ideas and ask questions before a policy is formulated clearly outweighs the public interest in disclosure. An email exchange between two councilmembers from March 2020 has been withheld under the same theory. In addition, emails to or from attorneys Scott Smith and Cristina Talley with their advice, impressions, conclusions, opinions, or legal research or theories have been withheld. (See Gov't Code, § 6254, subd. (k); Evid. Code §§ 952, 954; Code Civ. Proc., § 2018.010 et seq.) Interim City Manager Erik Sund is responsible for the claims of exemption.

We are still searching for responsive records and will provide another update on or before Thursday, January 28, 2021.



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**From:** Annie Loo  
**Sent:** Wednesday, December 23, 2020 11:27 AM  
**To:** 'brad@malamuds.com' <[brad@malamuds.com](mailto:brad@malamuds.com)>  
**Subject:** RE: Ferguson PRA Request

Dear Mr. Malamud, The City will be closed until January 4, 2021 so we need to push this production out to January 8, 2021. Thank you.



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From: Annie Loo

Sent: Friday, December 18, 2020 4:49 PM

To: 'brad@malamuds.com' <[brad@malamuds.com](mailto:brad@malamuds.com)>

Subject: RE: Ferguson PRA Request

Dear Mr. Malamud, Please see the below production in response to your client Laura Ferguson's PRA request.

<https://spaces.hightail.com/receive/ISyCRcBMPQ>

Access code - !BBKLAW20201218!

Certain residents' email addresses and cell phone numbers have been redacted and a private conference call telephone line has been redacted, per Government Code section 6255. Interim City Manager Erik Sund is responsible for these claims of exemption.

The City anticipates its next round of production will be on or before 5 p.m. on December 30, 2020.



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From: Annie Loo

Sent: Friday, December 11, 2020 3:02 PM

To: 'brad@malamuds.com' <[brad@malamuds.com](mailto:brad@malamuds.com)>

Subject: RE: Ferguson PRA Request

Dear Mr. Malamud, The City does not have records ready to produce today. We will need another week to prepare the records. We hope to produce to you on or before 5 p.m. Friday, December 18, 2020.



Annie Loo  
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**documents in your case to the e-mail addresses for any Best Best & Krieger LLP attorney who has appeared in your case, or who has communicated with you by e-mail on your matter.**

From: Annie Loo  
Sent: Monday, December 7, 2020 8:11 AM  
To: 'brad@malamuds.com' <[brad@malamuds.com](mailto:brad@malamuds.com)>  
Subject: Ferguson PRA Request

Dear Mr. Malamud,

Thank you for clarifying that Mayor Pro Tem Laura Ferguson's request on November 29, 2020 is a California Public Records Act ("PRA") request. The City was treating her request as an internal, councilmember request for documents, but will now analyze the request under the PRA.

Therefore, pursuant to the PRA, the City has determined that Ms. Ferguson's request, in whole or in part, seeks copies of disclosable public records in the possession of the City. (See Gov't Code, § 6253, subd. (c).) Please see the attached non-exempt, responsive records.

The City will need additional time to analyze whether the remaining responsive records are subject to a PRA exemption. The City anticipates that it will produce additional non-exempt, responsive records on or before noon on December 11, 2020.



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From: Brad Malamud <[brad@malamuds.com](mailto:brad@malamuds.com)>  
Sent: Sunday, December 6, 2020 12:26 PM  
To: Annie Loo <[Annie.Loo@bbklaw.com](mailto:Annie.Loo@bbklaw.com)>; Scott Smith <[Scott.Smith@bbklaw.com](mailto:Scott.Smith@bbklaw.com)>; [ctalley@talleylawyers.com](mailto:ctalley@talleylawyers.com); Ferguson, Laura <[FergusonL@san-clemente.org](mailto:FergusonL@san-clemente.org)>; [Knoblocks@san-clemente.org](mailto:Knoblocks@san-clemente.org); Ward, Kathy <[wardk@san-clemente.org](mailto:wardk@san-clemente.org)>; James, Gene <[JamesG@san-clemente.org](mailto:JamesG@san-clemente.org)>; [duncanc@san-clemente.org](mailto:duncanc@san-clemente.org); Brad Malamud <[brad@malamuds.com](mailto:brad@malamuds.com)>  
Cc: 'Shawn Raymundo' <[sraymundo@picketfencemedia.com](mailto:sraymundo@picketfencemedia.com)>  
Subject: Demand to Provide CPRA requested Documents 12/6/2020

CAUTION - EXTERNAL SENDER.

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Please see attached letter.

Please respond to all questions included in the letter.

My client, Laura Ferguson, is entitled under the CPRA to all documents to/from Cristina Talley and to/from staff and/or Councilmembers that were requested.

Your failure to provide those documents by two short emails that failed to provide required details on the basis for withholding demands cure.

Brad Malamud  
12/6/2020

## **EXHIBIT “C”**

REDACTED

**From:** Scott Smith <[Scott.Smith@bbklaw.com](mailto:Scott.Smith@bbklaw.com)>  
**Date:** July 12, 2021 at 4:34:47 PM PDT  
**Subject:** RE: Agenda report 9F by city attorney

Good afternoon Laura:

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REDACTED

Our public records group is preparing a formal response to you with details, but there was no second opinion sought on the issue of providing attorney-client censure documents to you as a councilmember. Instead, Mr. Malamud agreed to re-submit the request as a conventional PRA request so that we would not need

that opinion on the issue of privilege. With that approach, which would exclude attorney-client communications, there was no need for the opinion.

Please let me know if you need anything else of this,

SCOTT

**From:** Ferguson, Laura <[FergusonL@san-clemente.org](mailto:FergusonL@san-clemente.org)>

**Sent:** Sunday, July 11, 2021 7:27 PM

**To:** Scott Smith <[Scott.Smith@bbklaw.com](mailto:Scott.Smith@bbklaw.com)>

**Subject:** Re: Agenda report 9F by city attorney

CAUTION - EXTERNAL SENDER.

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Dear City Attorney Smith,

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REDACTED

Where is the second opinion in my CPRA issue that Annie Loo advised was being sought?

Thank you.

Best,

Laura Ferguson

Councilwoman

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REDACTED