

August 18, 2005

VIA PERSONAL DELIVERY

Patricia Green, Executive Assistant
Fiscal Services
Santa Monica Community College
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RE: Request for Compliance with the California Public Records Act
Demand to Preserve Documents
Demand for Physical Inspection Under the California Public Records Act, et. al.

Dear Pat,

I am in receipt of your email dated August 17, 2005 and hereby respond to it as well as to our previous phone conversation earlier that day as well as our conversation later that afternoon as well as to our previous conversations and email correspondence, a copy of which is attached hereto as Exhibit "A" and made a part herein.

I have been extremely patient in my quest to view the public records of Santa Monica Community College (hereinafter, SMC) of which I am a currently enrolled student and, as such, have an interest in its governance and the legitimate disclosure of its records. When my friend and I first met you and Judy Fritz, on or about June 30, 2005, we asked for a copy of the current contract between SMC and eCollege, the third party vendor of online distance education courses. Even though I subsequently requested this document in writing on or about July 15, 2005, to date you have not only failed to produce a copy, but I have not been allowed to inspect this simple piece of paper.

On this same date, I had requested that I view the summary of all grants which is available in the SMC accounting office as referenced in several SMC Board of Trustee minutes. Despite the fact that you acknowledged that you had such a summary, I again have not been allowed to view it. In fact, no matter how many times I request to view these documents, regardless of whether these requests are in writing (see Exhibit "A") or orally during your normal business hours, I am met with the same mantra from your lips, "Now is not a good time." I have tried to make myself available during your entire work week during the entire scope of your business hours week after week, providing you with my voicemail number, my mailing address, and my email in an attempt to work within your schedule, yet I still have not, to date, been able to inspect one single document nor has any time at all, regardless of how limiting, has been set aside for me and the others who have also come along with me on each occasion.

Yesterday, on the phone, and again in person, you told me that I will now “never” be able to view any public documents which are retained in the normal course of business at SMC, either in your office and control or elsewhere on campus throughout all the other departments and satellite campuses. By this statement, and by your previous actions and words, it is apparent that I am being denied my legitimate rights to view the records of the school which I attend and that there is no legitimate reason provided for this denial.

You have tried to justify your written and oral denial of document inspection based on the fact that you have complied within the time limits allowed (please refer to your email comments from your email dated Aug. 17, 2005). I dispute this allegation on two counts as follows:

On my July 15, 2005 written request for public records, I sought examination of said records along with a copy which I agreed to pay reasonable costs to duplicate. At that time, I requested 23 distinct records which were mostly related to each other. I was willing to do the legwork to locate these records and to speak to others on campus who might have these said records in their custody to help alleviate the burden, even if minor, from you alone in order to expedite the examination process. Now it is over a month later and you have not allowed me to view these documents and files, although you have provided me with some copies.

Not only have you failed to comply with my written request for examination as set forth supra, but you have failed to provide me with the copies I requested in writing. There is no need to enumerate your failure to comply verbatim as it is set forth in specific painstaking detail in Exhibit “A”, in the section which quotes my email to you from August 9, 2005. You are considering this email request to comply as a “second request” which is a “new request.” This is not the case. For example, I received no documents whatsoever (sorry, but the Board of Trustees minutes I referenced does not count as compliance as this is only referential material to identify the document, not the actual document sought) from my July 15th requests number 1, 2, 4, 5, 6 and 7. As to Request for public records numbers 6 and 7, to wit, the Animatics contracts with SMC, you are arguing that an agreement is a contract. Regardless of the verbiage you wish to deploy, I have received absolutely nothing at all, not one single scrap of paper, even though more than a month has elapsed. Curiously, you provided me with the amended Animatics agreement/contract in my written request number 8, so I would assume you could readily locate the original contract as it would make logical sense that these files would be in close proximity to each other.

I am also at a loss why you pointed to documents on your desk which are supposedly documents you have pulled from your files and copied pursuant to my written requests, yet when I requested a moment to view them, I was not allowed to. If I am to receive these documents anyway and I am paying for them with my hard-earned money, why are you being so secretive about allowing me to examine them? Additionally, you informed me that you would be on vacation from August 19, 2005 through September 6, 2005, yet I am not allowed to examine these documents now and will have to wait another 3 weeks?

That would place the delay regarding the examination of public records for more than three months since I first sought to inspect records. Clearly, any reasonable person would construe this delay as willful and in total non-compliance with the California Public Records Act mandated prompt disclosure. Why am I, an innocent student, being so stonewalled from access to the school's records, especially since none of these records are privileged, personal, or exempt from disclosure?

CITY OF HEMET, Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; PRESS-ENTERPRISE COMPANY, Real Party in Interest. (37 Cal.App.4th 1411) completely supports a person's access to information via the CPRA as follows:

“In considering the arguments of the parties, we are mindful of the legislative declaration that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) (2) The adoption of CPRA reflected a "background of legislative impatience with secrecy in government" (San Gabriel Tribune v. Superior Court (1983) 143 Cal.App.3d 762, 771-772 [192 Cal.Rptr. 415], quoting 53 Ops.Cal.Atty.Gen. 136, 143 (1970)) and courts must be careful to respect the purpose of the CPRA. We must give due regard to the primary purpose of CPRA, or what the United States Supreme Court has described as the "core purpose" of the analogous federal act: to " 'contribute significantly to public understanding of the operations or activities of the government' " and to let citizens know " 'what their government is up to.' " (U.S. Dept. of Justice v. Reporters Committee (1989) 489 U.S. 749, 773, 775 [103 L.Ed.2d 774, 795, 797, 109 S.Ct. 1468].) [FN6] As our own Supreme Court has stated, "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." (CBS, Inc. v. Block (1986) 42 Cal.3d 646, 651 [230 Cal.Rptr. 362, 725 P.2d 470].) [FN7].”

Government Code, Sections 6253 and 6253.1, explains that if there are any public records that you seek to withhold, you must state the reasons for such withholding. To date, you have not stated any reasons whatsoever. Furthermore, you claimed in your August 17, 2005 email that my “knowledge of the requested documents is limited.” Well, how could they be otherwise when you have not provided me with any guidance or assistance in enlightening me on what is available and, as I stated to you, all I have to work with is the short blurbs granting these consulting contracts and district, state, and federal grants as set forth in the Board of Trustee minutes and agendas. As I told you in writing and in person, allowing me to examine these files (remember the two cardboard boxes you pointed to that one day which you told me you pulled for me or which Angela pulled?), the process of compliance would have been expedited, making both our lives infinitely easier.

Secondly, the public is not under obligation to possess the knowledge of an administrator into the inner workings of a public entity. As stated in the Government Code, supra, it is your obligation, as a guardian of these sacred public documents, to assist the requester in identifying these public records and information responsive to his or her requests as well

as your obligation to “[p]rovide suggestions for overcoming any practical basis for denying access to the records and information sought.” I have done my best to attempt to describe the documents sought in particularity and have been more than willing to work with you in this regard, but my attempts have been deflected again and again.

I quote from the following regarding SMC’s policy on access of District Records:

<http://www.smc.edu/admin/trustees/meetings/2004/BP20001streading.pdf>

Santa Monica Community College District
BOARD OF TRUSTEES POLICY
Section 2000: General District

ARTICLE 2100 ADMINISTRATIVE OPERATIONS

BP 2170 Records Management (new)

The Superintendent/President shall ensure that the District maintains a records management program for the appropriate retention and destruction of all District records, including but not limited to student records, employment records and financial records, that comply with Title 5 and other relevant laws.

BP 2175 District Records

Records of the District shall be accessible to the public during normal hours of business. When access to District records is granted, examination thereof will be made in the presence of the record custodian regularly responsible for maintenance of files or designee.

If requested, copies of records of the District shall be provided at a reasonable cost per copy to be paid in advance as determined by the District.

If requested, records of the District shall be provided in appropriate alternative formats at a reasonable rate as determined by the District so as to be accessible to persons with a disability.

Reference: Education Code Sections 72000, 72121
Government Code Section 54954.3, 54957.5
California Public Records Act Sections 6253.5, 6254, 6254.7

The California Public Records Act only reinforces SMC’s own internal policies as set forth in a nutshell below:

A GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT

THE BASICS

The Public Records Act ([GOVT. CODE §§ 6250 - 6276.48](#)) is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as...provided, [and to receive] an exact copy [of] an identifiable record" unless impracticable. (§ 6253).

WHAT MUST HAPPEN

- **Access is immediate** and allowed at all times during business hours. (§ 6253(a)). Staff need not disrupt operations to allow immediate access, but a decision on whether to grant access must be prompt. An agency may not adopt rules that limit the hours records are open for viewing and inspection. (§§ 6253(d); 6253.4(b))
- **The agency must provide assistance** by helping to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (§ 6253.1)
- **An agency has 10 days to decide if copies will be provided.** In "unusual" cases (request is "voluminous," seeks records held off-site, OR requires consultation with other agencies), the agency may upon written notice to the requestors give itself an additional 14 days to respond. (§6253(c)) These time periods may not be used solely to delay access to the records. (§ 6253(d))
- **The agency may never make records available only in electronic form.** (§ 6253.9(e))
- **Access is always free.** Fees for "inspection" or "processing" are prohibited. (§ 6253)
- **Copy costs are limited to "statutory fees"** set by the Legislature (*not* by local ordinance) or the "direct cost of duplication", typically 10-25 cents per page. Charges for search, review or deletion are not allowed. (§ 6253(b)); *North County Parents v. DOE*, 23 Cal.App.4th 144 (1994). If a request for electronic records either (1) is for a record normally issued only periodically, or (2) requires data compilation, extraction, or programming, copying costs may include the cost of the programming. (§ 6253.9(a),(b))
- **The agency must justify the withholding of any record** by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. (§6255)

I quote from the following in order to help you identify the documents which I have tried to describe with particularity as explained in your own internal document found online:

SMC 2004 ACCREDITATION SELF-SURVEY STANDARD III

<http://www.smc.edu/policies/pdf/Accreditation%202004%20Self-Study%20Standard%20III.pdf>

Description—IIID.2(d)

Ultimate fiscal responsibility for the College rests with the Board of Trustees, which reviews quarterly budget reports, as well as reports on financial aid, auxiliary services, and the Foundation. All grants and externally funded programs must be accepted by the Board and contractual relationships approved. Creating budgets for grants and other externally funded projects, issuing purchase orders, and payments to contractors and vendors are dependent upon Board approval and evidence that college fiscal procedures have been followed. For example, no contract will be paid without a purchase order, an invoice, and certification that the goods or services have been delivered. All of these steps provide checks and balances to ensure appropriate oversight of finances.

Business Services establishes and maintains internal control procedures that support financial integrity and ensure that financial resources are being used for institutional programs and services. An independent CPA firm conducts a complete audit of all financial records and internal controls annually, and its findings are addressed and implemented in a timely manner.

In addition, internal self-audits are conducted regularly, both formally and informally, within Business Services offices and by programs and departments through the review of monthly budget reports. Financial aid is subject to ongoing internal review, due to regular drawdowns of funds for students. All financial aid cash requisitions must be reviewed and approved by Business Services. Grants are audited by the vice president in whose area of responsibility the grant lies and are also reviewed at the time reports are prepared for submission to the granting agency.

IIID.2(e) All financial resources, including those from auxiliary activities, fund-raising efforts, and grants are used with integrity in a manner consistent with the mission and goals of the institution.

Description—IIID.2(e)

All special funds are audited or reviewed by the funding agency and consistently demonstrate the integrity of financial management practices. These audits and reviews are independent of the annual college audit. Prior to submittal, grant applications are reviewed to ensure that the intent of the grant meets institutional goals and that the budget is both sufficient to meet the plan and appropriately allocated.

Use of auxiliary funds is determined by the department or program raising the funds and is assumed to be consistent with departmental/program goals, which, in turn, have been set to meet institutional goals. Funds donated to the Foundation, both restricted and unrestricted, are solicited with the institutional mission and specific college or program goals in mind.

By copy of this certified written notification, I am requesting that you **cease and desist all document destruction and/or modification** and that any and all intended document destruction and/or document modification proceedings be suspended. I further request that you and your agents and employees retain and preserve hard-copy documents (including calendars and appointment books), electronic files, emails, voice mails, data compilations and/or tangible objects pertaining to the relevant time frame and relevant events or issues: to wit, all documents, grants, contracts, consultant contracts, courses, notes, bills, invoices, proposals, minutes, agendas, logfiles, etc. relating to eCollege, the Academy of Entertainment and Technology, SMC Distance Education, and Santa Monica College, et. al., for the period between January 1, 1995 to the present. I further request that you maintain any and all electronic data whether on the network, desktop, hard-drive, laptop, blackberry, PDA, diskette, and/or CD-ROM or DVD-ROM and whether at home or at work. I further request that you cease and desist modification of relevant documents, whether in hard-copy or electronic format.

The laws under 18 U.S.C. Section 1519 provide in part that "whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States ... or in relation to or contemplation of any such matter" has committed a federal felony punishable by imprisonment of up to 20 years.

I additionally request that you comply with the California Public Records Act and provide me forthwith with the copies of documents you have already prepared pursuant to my request and which were sitting on your desk yesterday afternoon. I further request that you comply with my written demands for inspection of public records, as set forth in my original requests of July 15th and as reiterated and clarified in my August 9th email to you and forthwith allow me to inspect these records during your normal business hours without any further excuses or delaying tactics. I you plan to go on vacation for three weeks during this time, that you direct me to another custodian of records and/or

employee at Santa Monica College who will aid us in compliance. I further request that you provide me with a written invoice of the amount due for the records you have recently finished copying as well as for the records which I have already paid for via domestic postal money order in the amount of \$50.60, made payable to Santa Monica College.

Do not hesitate to contact me if I can be of assistance of any kind. Thank you for your prompt attention regarding this matter.

Very Truly Yours,

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cc: Lin D. Caldwell, Administrative Assistant IV, Superintendent/President

