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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10 RONALD AUSTIN,
11 Petitioner and Plaintiff,
12 vs.
13 CITY OF SANTA CLARA; and DOES 1
14 through 10, inclusive,
15 Respondents and Defendants.

Case No. 20CV370943

**VERIFIED PETITION FOR WRIT OF
MANDATE PURUSANT TO
CALIFORNIA PUBLIC RECORDS ACT
AND COMPLAINT FOR
DECLARATORY RELIEF
[Gov't Code § 6259]**

18 1. Petitioner and Plaintiff Ronald Austin, pursuant to Code of Civil Procedure
19 § 1085, Government Code § 6258 (the California Public Records Act ("CPRA")), and Article I
20 Section 3 of the California Constitution alleges, as follows:

21 **I.**
22 **PARTIES**

23 2. Petitioner and Plaintiff RONALD AUSTIN (hereinafter "AUSTIN") is a resident
24 of the State of California, County of San Bernardino.

25 3. Respondent and Defendant CITY OF SANTA CLARA (hereinafter "CITY") is a
26 municipal entity organized under the laws of the State of California. Respondent CITY is an
27 agency covered under the California Public Records Act. (*See* Gov. Code, § 6252, subd. (a).)
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1 not a legally sufficient response to a public records request, nor is anything else short of citing
2 the law that bars or excuses the agency from providing access.

3 9. Government Code § 6254(f) states in pertinent part:

4 **Notwithstanding any other provision of this subdivision**, state and local
5 law enforcement agencies **shall make public** the following information,
6 except to the extent that disclosure of a particular item of information would
7 endanger the safety of a person involved in an investigation or would
8 endanger the successful completion of the investigation or a related
9 investigation:

10 (1) The full name and occupation of every individual arrested by
11 the agency, the individual's physical description including date of
12 birth, color of eyes and hair, sex, height and weight, the time and
13 date of arrest, the time and date of booking, the location of the
14 arrest, the factual circumstances surrounding the arrest, the amount
15 of bail set, the time and manner of release or the location where the
16 individual is currently being held, and all charges the individual is
17 being held upon, including any outstanding warrants from other
18 jurisdictions and parole or probation holds.

19 10. The request need not be in writing. Case law holds that the inquiry need not be in
20 writing and may be made orally and by telephone. As observed by the California Court of
21 Appeal, "It is clear from the requirements for writings in the same and other provisions of the
22 Act that when the Legislature intended to require a writing, it did so explicitly. The California
23 Public Records act plainly does not require a written request." (*Los Angeles Times v. Alameda*
24 *Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392.)

25 11. The request need not state the requestor's purpose. Demanding to know the
26 purpose of the request or the intended use of the information is, again, not something the agency
27 may do. The CPRA states, in Government Code § 6257.5: "This chapter does not allow
28 limitations on access to a public record based upon the purpose for which the record is being

1 requested, if the record is otherwise subject to disclosure.” Respondents and Defendants, and
2 each of them, and their employees have repeatedly stated that it is their department policy to
3 determine the purpose of a records request, alluding to vague safety or privacy concerns, which
4 is in clear violation of the CPRA.

5 12. Even if a record is exempt from disclosure under the CPRA, an agency waives
6 any exemption once it discloses information to any member of the public. The record then
7 becomes public regardless of any exemption and the agency must disclose it to any other person
8 who requests a copy:

9 “Notwithstanding any other provisions of law, whenever a state or
10 local agency discloses a public record which is otherwise exempt
11 from this chapter, to any member of the public, this disclosure shall
12 constitute a waiver of the exemptions specified in Section 6254,
13 6254.7, or other similar provisions of law. For purposes of this
14 section, “agency” includes a member, agent, officer, or employee
15 of the agency acting within the scope of his or her membership,
16 agency, office, or employment.” (Govt. Code 6254.5)

17 13. Respondents and Defendants, and each of them, and their employees have
18 hindered the Petitioner’s exercise of his rights under the CPRA by, *inter alia*, falsely stating that
19 public information as explicitly defined in Govt. Code §6254(f) is not public.

20 IV.

21 GENERAL ALLEGATIONS

22 14. Petitioner and Plaintiff is informed, and believes, and therefore alleges that CITY
23 has engaged in a pattern and practice of violating the CPRA, including:

- 24 a. Withholding information public information;
- 25 b. Failing to make a proper written determination of the alleged basis for
26 withholding public documents in a response to CPRA requests;
- 27 c. Failing to respond to CPRA requests without production of documents, or
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1 without sufficient and requisite production of disclosable information within
2 documents;

3 15. On September 14, 2020, AUSTIN emailed a public records request to CITY for
4 the names of all persons arrested by CITY's police department for DUI in June 2020.

5 16. On September 15, 2020, CITY denied AUSTIN's request. (See Exhibit A).

6 17. The public information requested, clearly and explicitly required to be provided
7 to AUSTIN under Govt. Code § 6254(f) as set forth in Paragraph 9 hereinabove, has been
8 declined to be provided by CITY.

9 18. CITY either knows or should know the law with regard to a very simple records
10 request such as that presented by AUSTIN.

11 **FIRST CAUSE OF ACTION**

12 **Declaratory Relief**

13 **Violation of California Public Records Act - Govt. Code § 6250, et seq.**

14 **(Against All Defendants)**

15 19. Petitioner incorporates the allegations of the preceding paragraphs 1 through 18 as
16 though fully set forth herein.

17 20. Petitioner is a member of the public and is personally interested in the outcome of
18 these proceedings with a clear, present and substantial right to the relief sought herein. Petitioner
19 has no plain, speedy and adequate remedy at law other than that sought herein.

20 21. A member of the public who believes that public records are being improperly
21 withheld may bring suit for mandate to enforce the PRA. (See Govt. Code §§ 6258, 6259(a).) If
22 the Court finds that the public official's decision to refuse disclosure is not justified, the court
23 shall order the public official to make the records public under Government Code § 6259(b.)

24 22. It was, and is, Respondents' duty to disclose public records and to provide a
25 timely response to the request of public records pursuant to Gov. Code § 6253.

26 23. Respondents' failure to provide a proper response to Petitioner's Public Records
27 Act Request violates the California Public Records Act, which provides: "public records are
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1 open to inspection at all times during the office hours of the state or local agency and every
2 person has a right to inspect any public record." (Govt. Code 17 § 6253(a).)

3 24. An actual controversy has arisen and now exists between Plaintiff and Defendants
4 concerning their respective rights and duties in that Plaintiff contends Defendants have violated
5 the CPRA, whereas Defendants dispute these contentions and contend that they are not required
6 to provide the requested information.

7 25. A judicial declaration is necessary and appropriate at this time under the
8 circumstances in order that Plaintiff may ascertain his rights and duties.

9 **SECOND CAUSE OF ACTION**

10 **Writ of Mandate**

11 **(Against All Respondents)**

12 26. Petitioner incorporates the allegations of the preceding paragraphs 1 through 25 as
13 though fully set forth herein.

14 27. Respondents have a clear, present and sacrosanct duty to comply with the
15 Constitution of the State of California. (Govt. Code § 6250, et seq.)

16 28. Petitioner has performed all conditions precedent to filing this petition.

17 29. Petitioner, and the general public, have been and continue to be harmed by
18 Respondents' improper refusal to comply with the CPRA and to produce, and respond in full, to
19 requests pursuant to the CPRA.

20 30. The issuance of a writ of mandate pursuant to Gov. Code §§ 6528 and 6259 is
21 indispensable to the enforcement of Petitioner's, and the public's, rights in these matters.

22 31. Petitioner has no plain, speedy, and/or adequate remedy in the ordinary course of
23 law with respect to this matter. As such, he is entitled to issuance of a writ. Gov. Code § 6528
24 requires expedited handling of CPRA writ petitions.

25 32. Petitioner has no administrative remedies to exhaust under Government Code
26 § 6250, et seq.

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VERIFICATION

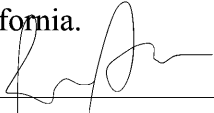
I, Ronald Austin, declare:

1. I am the Petitioner and Plaintiff in the above-entitled action.

2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE PURUSANT TO CALIFORNIA PUBLIC RECORDS ACT AND COMPLAINT FOR DECLARATORY RELIEF and know the contents thereof. The facts stated in the Petition and Complaint are either true and correct of my own personal knowledge, or I am informed and believe that such facts are true and correct and, on that basis, I allege them to be true and correct.

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

Executed on September 18, 2020 in Los Angeles, California.



Ronald Austin

Exhibit A



**City of
Santa Clara**
The Center of What's Possible

Police Department

September 15, 2020

Bruinsclassof85@gmail.com

Dear Requestor:

This letter is in response to your California Public Records Act request dated September 14th 2020, requesting any and all names of all persons arrested for DUI in June 2020. This information is local summary criminal history information and is confidential (California Penal Code Sections 13300, et seq.) as is the data underlying that summary (see 89 Ops. Cal. Atty. Gen. 204 [Opinion Number 06-203]).

If you have any questions about the information in this letter, please contact the Santa Clara Police Department Records Unit.

PATRICK NIKOLAI
CHIEF OF POLICE

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Cullen".

Jennifer Cullen
Police Records Supervisor