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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ALAMEDA**

12 **THE REPORTERS COMMITTEE FOR**
13 **FREEDOM OF THE PRESS**, an
unincorporated nonprofit association, and
14 **STEPHEN G. BLOOM**, an individual,

15 *Petitioners,*

16 v.

17 **THE REGENTS OF THE UNIVERSITY OF**
18 **CALIFORNIA,**

19 *Respondent.*

Case No. _____

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF
MANDATE ORDERING COMPLIANCE
WITH THE CALIFORNIA PUBLIC
RECORDS ACT**

[Gov't Code, § 6250, *et seq.*; Civ. Proc. Code §
1085, *et seq.*]

Hearing Date:
Hearing Time:
Department:

1 **I. INTRODUCTION**

2 This case involves the wholesale denial of public access by the University of
3 California – Berkeley (the “University”) to historic government records of a special
4 commission appointed by then-Governor Earl Warren to study crime throughout the State. The
5 records, which date back to the 1940s and 1950s, can shed light not only on the workings of
6 that special commission, but of other government agencies and officials at a key time in
7 California’s history. And notwithstanding their age, those records—like other government
8 records—are public records to which California’s constitutional and statutory rights of access
9 unquestionably apply.
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11 Yet despite the clear mandates of California’s Public Records Act, Gov’t Code, §
12 6250 *et seq.* (“PRA”), and the historical nature of the government records at issue, the
13 University denied a written request for access by the Reporters Committee for Freedom of the
14 Press (“RCFP” or “Reporters Committee”) and Professor Stephen G. Bloom (“Professor
15 Bloom”), in its entirety. Erroneously claiming that only records concerning *the University’s*
16 business are “public records” within the meaning of the PRA, the University is refusing to
17 allow *any* public access to *any* portion of the thirty cartons of government records at issue here.
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19 The University’s decision to deny Petitioners and the public access to these records is
20 as legally baseless as it is contrary to the purposes of an academic institution. For the reasons
21 set forth herein, this Court should issue a writ of mandate requiring the Regents of the
22 University of California (“Respondent”) to comply with their obligations under the PRA.
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24 **II. FACTUAL BACKGROUND**

25 On October 8, 2014, the Reporters Committee and Professor Bloom submitted a
26 written request to the University under the PRA seeking access to certain public records of an
27 historically important state government entity—the Special Crime Study Commission on
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1 Organized Crime in California (the “Commission”)—that are currently in the possession of the
2 University’s Bancroft Library (the “Commission Records”).

3 The Commission was first appointed by then-Governor and future Chief Justice of the
4 United States Supreme Court Earl Warren in November of 1947. The Commission was
5 charged with exploring organized crime in California, particularly crimes involving gambling,
6 bribery of public officials, racketeering, horseracing, narcotics, illegal liquor sales, and
7 prostitution. At the time, it was the most ambitious investigation into organized crime ever
8 undertaken in the State. Chaired by retired U.S. Navy Admiral William H. Standley, the first
9 incarnation of the Commission—sometimes referred to as the Standley Commission—issued
10 its final report in November of 1950. Approximately one year later, in October of 1951, the
11 Commission was convened for a second time, and chaired by retired Marine Corps. General
12 LeRoy P. Hunt. The Hunt Commission issued its final report on or about May 11, 1953.

13 The University’s Bancroft Library is currently in possession of thirty cartons of
14 records of the Commission. Petitioners are informed and believe that such records consist of,
15 *inter alia*, correspondence, subject files, investigation files, and printed reports dating from the
16 1940s and 1950s. (Pet., Ex. A.) According to the University, the Commission Records are
17 closed to the public, and will remain that way until 2028. (*Id.*)

18 On October 27, 2014, the University unlawfully denied Petitioners’ October 8 written
19 request in its entirety, refusing to grant Petitioners access to any portion of the Commission
20 Records in its possession. (Pet., Ex. F.) The University’s denial makes clear that the
21 Commission Records have not been “processed” or reviewed, and that public access is being
22 denied due to a “restriction” imposed by the individual who provided the records to the
23 University. (*Id.*) The University’s denial was based primarily on its position that the
24 Commission Records are not public records because they “are not records that relate to the
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1 conduct of the University’s business.” (*Id.*; [“The Commission Files are not related to the
2 conduct of the University’s business, and are therefore not subject to production under the
3 CPRA.”])

4 III. ARGUMENT

5 **A. The Commission’s Records Are Public Records Within The Meaning Of The PRA**

6 In California, “access to information concerning the conduct of the people’s business
7 is a fundamental and necessary right” guaranteed by statute, Gov. Code, § 6250, and by
8 California’s Constitution, *see* Cal. Const., art. I, § 3 subd. (b). The PRA was enacted for “the
9 explicit purpose of ‘increasing freedom of information’ by giving the public ‘access to
10 information in possession of public agencies.’” (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651–
11 52 (“*Block*”).) Accordingly, under California law “[a]ll public records are subject to disclosure
12 unless the [PRA] expressly provides otherwise.” (*American Civil Liberties Union of Northern*
13 *California v. Superior Court* (2011) 202 Cal.App.4th 55, 67, citations omitted (“*ACLU*”).)
14 And any express limitation on the public’s right of access under the PRA must be “construed
15 narrowly.” (*Id.*; *see also* Cal. Const., art. I, § 3 subd. (b)(2).)¹ While government entities like
16 Respondent may adopt regulations regarding procedures for making records and information
17 available to the public, such regulations must be consistent with the PRA, and “reflect the
18 intention of the Legislature to make the records accessible to the public.” (Gov’t Code, § 6253,
19 subd. (a)–(b).)
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23 For purposes of the PRA, “public records” include “any writing containing
24 information relating to the conduct of the public’s business prepared, owned, used, or retained
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27 ¹ In 2004, California voters approved Proposition 59, enshrining the public’s right of access in California’s
28 Constitution, and mandating that the access to government information afforded under the PRA be construed “broadly.”
(*See* Cal. Const., art. I, § 3 subd. (b)(2).)

1 by any state or local agency regardless of physical form or characteristics.” (Gov’t Code §
2 6252, subd. (e).) The Commission’s Records plainly meet this broad definition.

3 The records at issue are those of a special commission that was appointed by the
4 State’s executive branch to study and make recommendations concerning how to address the
5 problem of organized crime in California. Thus, they unquestionably “contain information
6 relating to the conduct of the public’s business.” (*Id.*) Additionally, *both* the Commission that,
7 among other things, “prepared” those records *and* the Board of Regents that currently
8 “retain[s]” them, are state agencies for purposes of the PRA. (Gov’t Code § 6252, subd. (f).)
9 The primary argument asserted by the University as a basis for denying Petitioners’ request to
10 access the Commission Records—that they are “not subject to production under the [PRA]”
11 because they are “not related to the conduct of *the University’s* business” (Pet., Ex. F, emphasis
12 added)—is frivolous. As the statutory language makes clear, that the Commission Records
13 relate to the conduct of *the public’s* business make them public records subject to the PRA.
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16 That the Commission’s Records pre-date enactment of the PRA is irrelevant to
17 determining whether or not they are public records. (*See* Gov’t Code, § 6252, subd. (e); As the
18 California Secretary of State’s website concisely explains, the PRA “applies to all government
19 records, regardless of when they were created.”²
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21 Nor is it relevant that the Commission Records apparently fell into the hands of
22 someone who purported to “donate” them to Respondent. (*See* Pet., Ex. F.) A public record is
23 not transformed into private property merely because it passes through private hands. (*See*
24 Gov’t Code, § 6252, subd. (e); *see also* supra note 1 [“A government record that is not in
25 government custody is still a public record.”]) Indeed, California, like other states, has enacted
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27 ² “Recovering Public Records Through California’s Replevin Law,” website of California Secretary of State Debra
28 Bowen, <http://www.sos.ca.gov/archives/laws/replevin.htm> (last visited on Nov. 22, 2014).

1 a statutory replevin regime so that government files and other public records—like the
2 Commission Records at issue here—that have been stolen or otherwise ended up in the
3 possession of private individuals or entities can be recovered, and made accessible to the public
4 in compliance with the PRA. (*See id.*; Gov’t Code, § 6204, *et seq.*)³

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6 Put simply, because the Commission Records are records “containing information
7 relating to the conduct of the public’s business prepared, owned, used, or retained by any state
8 or local agency” (Gov’t Code § 6252, subd. (e)), they are public records subject to the PRA.

9 **B. Respondent’s Denial Of Access To The Commission Records Violates The PRA**

10 Respondent’s obligations under the PRA could not be clearer. Respondent is required
11 by law to make the Commission Records available for inspection by any person. (Gov’t Code,
12 § 6253, subd. (a).) To the extent that Respondent asserts that certain of the Commission
13 Records are exempt from disclosure by an express provision of law, Respondent is required (1)
14 to justify that determination by demonstrating, with reference to express provisions of the
15 PRA, why the specific documents it has identified are exempt (Gov’t Code, § 6255, subd. (a)),
16 and (2) to make “[a]ny reasonably segregable portion” available for inspection after removing
17 “the portions that are exempted by law.” (Gov’t Code, § 6253, subd. (a).) Respondent has
18 failed to satisfy any of these requirements.

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20 Relying first and foremost on its meritless claim that the Commission Records are not
21 “public records” subject to the PRA, Respondent has denied Petitioners access to all thirty
22 cartons of those records in their entirety. Respondent made no effort to identify and segregate
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25 ³ There have been a number of cases where historical public records— including the 1849 California Constitutional
26 Convention delegates register and draft signature page—were improperly removed from government custody and/or
27 sold to private parties. (*See supra* note 1.) In one particularly well-known example, Tennessee government officials
28 utilized that State’s replevin law to recover the marriage license of famed frontiersman and politician Davy Crockett.
(*See* “Davy Crockett’s Marriage License Returned to Jefferson County, with Assistance from the State Library and
Archives,” website of Tennessee Secretary of State, <http://tnsos.org/Press/story.php?item=138> (published Apr. 19, 2010,
last visited Nov. 22, 2014).)

1 material that, in its view, is exempt from disclosure under the PRA from material that is not
2 exempt and thus subject to immediate disclosure. In fact, it appears that Respondent made no
3 effort, whatsoever, to even *review* the Commission Records prior to denying Petitioners'
4 request. (*See, e.g.*, Pet., Ex. F [asserting, *inter alia*, that the Commission Records “consist of
5 unprocessed papers”].) Respondent’s blanket refusal to treat the Commission Records as
6 public records under the PRA *alone* warrants the relief sought by Petitioners.
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8 Respondent’s effort to pad its wholesale denial of public access with a laundry list of
9 general reasons why it believes that the Commission Records would also be “exempt from
10 disclosure under the CPRA” (Pet., Ex. F) is likewise improper, and should not be countenanced
11 by this Court. As an initial matter, the purported “exemptions” asserted by Respondent are
12 frivolous. Respondent claims, for example, that privacy and reputational interests of
13 individuals identified in the Commission Records would make their disclosure a “violat[ion]”
14 of “federal and state law.” (Pet., Ex. F; *see also, id.* [“Disclosure could result in defamation or
15 invasion of the privacy of individuals identified in the records, and would be contrary to the
16 desires of the donor.”].) As supposed support for that erroneous proposition, Respondent cites
17 a federal regulation concerning practices of the National Archives and Records Administration
18 (“NARA”) that has no application, whatsoever, to Respondent, or its obligations under the
19 PRA. (*Id.*, citing 36 C.F.R. 1256.56.) And, even assuming that the assertion of a general
20 privacy concern was sufficient to justify withholding public records, which it is not,⁴
21 Respondent simply ignores the fact that the Commission Records at issue date back to the
22 1940s and 1950s. As Respondent itself acknowledges, records identifying individuals who are
23 no longer living do not implicate privacy rights. (See Pet., Ex. F [citing concern over “the
24 personal privacy of a living individual”]; *see also Lugosi v. Universal Pictures* (1979) 25
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28 ⁴ See Gov’t Code, § 6254(c); *Braun v. City of Taft* (1984) 154 Cal.App.3d 332.

1 Cal.3d 813 [stating that it is “well settled that the right of privacy is purely a personal one” and
2 “does not survive but dies with the person”].)

3 In any event, Respondent cannot, as it attempts to do, evade the requirements of the
4 PRA by generally asserting myriad purported exemptions from disclosure without reference to
5 any specific record or records (or, indeed, without reviewing the records at issue to determine
6 whether any exemptions actually apply). Respondent is obligated by the PRA to make the
7 Commission Records available for inspection by Petitioners and other members of the public.
8 In the event Respondent reviews the Commission Records and determines that there are
9 specific records or portions thereof that it legitimately believes are exempt from disclosure
10 under the PRA, it is obligated to justify the withholding of that material, and to make the
11 remaining non-exempt material available for inspection. A writ of mandate should issue to
12 require Respondent to fulfill those straightforward obligations.
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15 IV. CONCLUSION

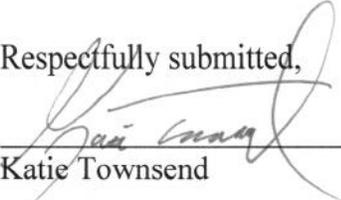
16 The Commission Records have much to tell the public about the conduct of
17 California government agencies and officials at an important time in the State’s history. Indeed,
18 Professor Bloom—a journalist, author, and academic scholar who has written extensively on
19 issues relating to California’s past—seeks access to the Commission Records for precisely that
20 reason. The historical nature of the Commission Records does not lessen the need to ensure that
21 the public has access to these important government records. For the reasons set forth herein,
22 and in the concurrently filed Petition, this Court should issue a writ of mandate compelling
23 Respondent to comply with the PRA and to make the Commission Records available for
24 inspection.
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Dated: December 9, 2014

Respectfully submitted,

Katie Townsend
Counsel for Petitioners