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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 **THE REPORTERS COMMITTEE FOR**  
16 **FREEDOM OF THE PRESS**, an  
unincorporated nonprofit association, and  
17 **STEPHEN G. BLOOM**, an individual,

18 *Petitioners,*

19 v.  
20

21 **THE REGENTS OF THE UNIVERSITY OF**  
**CALIFORNIA,**

22 *Respondent.*  
23  
24  
25  
26

Case No. RG-14-4750683

Hon. Evelio Grillo, Dep't 14

**PETITIONERS' OPPOSITION TO  
RESPONDENT'S DEMURRER**

[Declaration of Katie Townsend and Petitioners'  
Request for Judicial Notice Filed Concurrently  
Herewith]

Hearing Date: February 24, 2015

Hearing Time: 1:30 p.m.

Hearing Location: Dep't 14

Reservation No.: R-1589598

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1 **INTRODUCTION**

2 This case concerns the inexplicable refusal of Respondent the Regents of the University  
3 of California (the “Regents”) to permit public access to historical government records held by the  
4 Bancroft Library at the University of California at Berkeley, a world-renowned public education  
5 and research institution. Petitioners the Reporters Committee for Freedom of the Press  
6 (“Reporters Committee” or “RCFP”) and Professor Stephen G. Bloom (“Professor Bloom”), a  
7 journalist, author, and academic scholar at the University of Iowa, seek access to the records of  
8 the Special Crime Study Commission on Organized Crime in California (the “Commission”)—a  
9 public entity created by an executive order issued by then-governor Earl Warren in 1947—under  
10 the California Public Records Act, Gov’t Code, § 6250, *et seq.* (the “PRA”). Respondent denied  
11 Petitioners access to any portion of the thirty cartons of the Commission’s files in its custody  
12 (hereinafter, the “Commission Records”), arbitrarily asserting that they will be closed to the  
13 public until 2028. Petitioners were left with no choice but to file this action to vindicate the  
14 public’s right to inspect these historically important government documents.

15 Respondent’s refusal to permit access to the Commission Records and its Demurrer are  
16 based primarily—indeed, almost entirely—on its facially erroneous claim that the records of  
17 another government entity that are in its custody are not “public records” within the meaning of  
18 the PRA. Not only does this argument ignore the PRA’s plain language, it is premised on a  
19 fundamental misunderstanding of the PRA’s purpose, which is to ensure access to information  
20 about the activities of government to the broadest extent possible. (*See* Gov’t Code § 6250.) The  
21 notion that the Commission Records, which were created by a government entity for the public’s  
22 benefit at taxpayer expense, are not “public records” because they purportedly do not pertain to  
23 *the Regents’* business is belied by the clear definition of a “public record” set forth in the PRA and  
24 common sense, and should be summarily rejected by this Court.



## BACKGROUND

1  
2 On October 8, 2014, the Reporters Committee and Professor Bloom submitted a  
3 written request to the University under the PRA seeking access to certain records of the  
4 Commission that are currently in the possession of the Bancroft Library. (Pet., ¶ 2.) The  
5 Commission is a historically important state government entity. It was first created pursuant to  
6 an executive order issued by then-Governor and future Chief Justice of the United States  
7 Supreme Court Earl Warren in November of 1947. (*Id.*, ¶ 10; Declaration of Katie Townsend  
8 (“Townsend Decl.”), Ex. A.) The Commission was charged with exploring organized crime in  
9 California, particularly crimes involving gambling, bribery of public officials, racketeering,  
10 horseracing, narcotics, illegal liquor sales, and prostitution. (Pet., ¶ 10.) At the time, it was the  
11 most ambitious investigation into organized crime ever undertaken in the State. Chaired by  
12 retired U.S. Navy Admiral William H. Standley, the first incarnation of the Commission—  
13 sometimes referred to as the Standley Commission—issued its final report in November of  
14 1950. (*Id.*, ¶¶ 10–12.) Approximately one year later, in October of 1951, the Commission was  
15 convened for a second time, and chaired by retired Marine Corps. General LeRoy P. Hunt.  
16 The Hunt Commission issued its final report on or about May 11, 1953. (*Id.*, ¶ 13.)

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

25 On October 27, 2014, the University unlawfully denied Petitioners’ October 8 written  
26 request in its entirety, refusing to grant Petitioners access to any portion of the Commission  
27 Records in its possession. (Pet., Ex. F.) The University’s denial indicates that the Commission  
28

1 Records have not been “processed” or reviewed. (*Id.*) The University’s denial was based  
2 primarily on its position that the Commission Records are not public records because they “are  
3 not records that relate to the conduct of the University’s business.” (*Id.*; [“The Commission  
4 Files are not related to the conduct of the University’s business, and are therefore not subject to  
5 production under the CPRA.”])

## 6 ARGUMENT

### 7 **A. The Commission Records are “public records”; they relate to the conduct of the** 8 **public’s business and are retained by a state agency.**

9 “Public records” subject to the PRA “include[] any writing containing information  
10 relating to the conduct of *the public’s business* prepared, owned, used, or retained by any state  
11 or local agency regardless of physical form or characteristics.” (Gov’t Code, § 6252(e),  
12 emphasis added.) Thus, there are two requirements for a writing to be a public record: (1) it  
13 must relate to the public’s business, and (2) it must be prepared, owned, used, or retained by a  
14 state or local agency. (*Id.*; *see also Regents of Univ. of Cal. v. Superior Court* (2013) 222 Cal.  
15 App. 4th 383 (stating same two requirements).)

17 The California Supreme Court has explained that this broad definition of “public record”

18 is intended to cover every *conceivable kind of record that is involved in*  
19 *the governmental process* and will pertain to any new form of record-  
20 keeping instrument as it is developed. Only purely personal information  
21 unrelated to ‘the conduct of the public’s business’ could be considered  
22 exempt from this definition, i.e., the shopping list phoned from home, the  
letter to a public officer from a friend which is totally void of reference to  
governmental activities.’

23 (*Comm’n on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 288  
24 n. 3, emphasis added (citing Assem. Statewide Information Policy Com., Final Rep. (Mar.  
25 1970) 1 Assem. J. (1970 Reg. Sess.) appen. p. 9).)

26 Moreover, under the 2004 amendments to the California Constitution, a “statute,  
27 court rule, or other authority, including those in effect on the effective date of this subdivision,  
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1 shall be broadly construed if it furthers the people’s right of access, and narrowly construed if  
2 it limits the right of access.” (Cal. Const., art I, § 3(b)(2).) Accordingly, the PRA’s definition  
3 of “public record” must be interpreted broadly.

4 The records at issue in this case relate to the public’s business because they concern  
5 the activities of an official government body—the Commission—and they are retained by a  
6 state or local agency—Respondent. Indeed, it is impossible to imagine how a special  
7 commission created by an executive order issued by the Governor of California under explicit  
8 authorization from the legislature, and charged with exploring organized crime in California,  
9 including bribery of public officials, does not relate to the public’s business. (See Townsend  
10 Decl., Ex. A; Pet., ¶¶ 10–13.) The records of the Commission concern the public’s business  
11 not only because it was a government entity, but because it investigated failures of law  
12 enforcement, public corruption, and other crimes, which indisputably are certainly the public’s  
13 business. The Commission Records also satisfy the second prong of the PRA’s definition of a  
14 public record because they are retained by a public agency, namely, Respondent and its  
15 component the Bancroft Library. (See Pet., ¶¶ 6–7.) They are, without question, public  
16 records. (See Gov’t Code, § 6252(e).)

17  
18  
19 None of the cases relied upon by Respondent provide any support for the proposition  
20 that records retained by the Regents that relate to the public’s business—but not, Respondent  
21 argues, *the Regents’ business*—do not meet the PRA’s definition of public records. (See Resp.  
22 Mem. of Points and Authorities, at p. 6.)<sup>1</sup> Indeed, in all but one of the cases cited by  
23 Respondent, *Coronado Police Officers Association v. Carroll* (2003) 106 Cal.App.4th 1001  
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28 <sup>1</sup> Respondent’s narrow interpretation of the definition of a public record under the PRA is, as discussed herein,  
erroneous. Yet, as a research and educational institution whose purpose is to serve as a repository for many historical  
public records and documents concerning California political history, it is difficult to conceive how the records now  
inaccessible to the public at the Bancroft Library do not relate to *the Regent’s* business as well as the public’s business.

1 (“*Carroll*”), the records at issue *were found* to be public records under the PRA because they  
2 met the two requirements set forth in Section 6252(e). (*Id.*, pp. 2–6.) And Respondent’s  
3 reliance on the inapposite *Carroll* is unavailing.

4 In *Carroll*, the Court of Appeal found that records of a public defender’s office were  
5 not public records because the information therein was the result of “private functions to which  
6 the Public Defender is entitled to maintain a level of independence equivalent to a private  
7 attorney.” (*Carroll, supra*, 106 Cal.App.4th at 1009.) The court’s analysis in that case  
8 centered on the importance of indigent clients having access to competent representation;  
9 lawyers in the public defender’s office used the database of records at issue “in order to  
10 prepare legal theories and plan strategy” in cases in which they were representing individual  
11 clients. (*Id.* at p. 1009.) For that reason, the court concluded that the purpose of assembling  
12 and storing the database was the “defense of existing and future clients, a private function not  
13 relating to the conduct of the public’s business.” (*Id.*) The facts and reasoning of *Carroll*  
14 simply have no application here. The Commission Records at issue are the records of a  
15 government entity created by an executive order to engage in a public activity (the study of  
16 crime throughout the State) designed to benefit the Department of Corrections and the public  
17 as a whole. (*See Townsend Decl., Ex. A; Pet.*, ¶¶ 10–13.) The Commission Records are not  
18 remotely analogous to the files of lawyers engaged in the representation of private persons.  
19  
20

21 Respondent’s reliance on *Braun v. City of Taft* (“*Braun*”) for its argument that a  
22 record “only becomes a ‘public record’ when it ‘is kept by an officer because it is necessary or  
23 convenient to the discharge of his official duty’” is similarly misplaced. (Resp. Mem. of Points  
24 and Authorities, pp. 2–3 (citing *Braun* (1984) 154 Cal.App.3d 332, 340.) The Court of Appeal  
25 in *Braun* said no such thing. The *Braun* decision simply states that “if a record is kept by an  
26 officer because it is necessary or convenient to the discharge of his official duty, it is a public  
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28

1 record.” (*Id.* (emphasis added).) *Braun* does not state that a record is public under the PRA  
2 *only* under those circumstances. Such a narrowing of the PRA’s broad definition of “public  
3 record” finds no such support in *Braun*. Respondent’s misleading attempt to use the *Braun*  
4 decision to impose a new restriction on the PRA’s broad definition of a “public record” is  
5 baseless, and should be rejected by this Court.

6           Were Respondent’s narrow interpretation of “public records” to be accepted, it would  
7 represent a fundamental departure from both the language and the purpose of the PRA. Under  
8 Respondent’s theory of what constitutes a “public record,” any state agency could avoid its  
9 obligations under the PRA by simply transferring its records to another agency to retain. If, for  
10 example, a police department wanted to shield its records from public scrutiny, all it would  
11 have to do is ship them off to a public library, at which point—under Respondent’s theory—  
12 they would no longer be public records subject to the PRA. Such an interpretation defies logic  
13 and is antithetical to the goal of the PRA, which was enacted to broadly affirm that “access to  
14 information concerning the conduct of the people’s business is a fundamental and necessary  
15 right . . . .” (Gov’t Code, § 6250.)

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18       **B. The Commission Records are not exempt from disclosure under Section 6252(e).**

19           **1. The Commission Records are not in the custody of, or maintained by the**  
20           **Governor’s office and, thus, are “public records” regardless of their age.**

21           The PRA’s definition of “public records” states, in part, that “[p]ublic records’ *in the*  
22 *custody of, or maintained by, the Governor’s office means any writing prepared on or after*  
23 *January 6, 1975.”* (Gov’t Code, § 6252(e), emphasis added.) Thus, Respondent correctly  
24 states that “documents prepared in the 1940s or 1950s *and in the custody [of], or maintained*  
25 *by, the Governor’s office, are not ‘public records.’”* (Resp. Mem. of Points and Authorities, p.  
26 7, emphasis added.) The Petition does not allege, however, and Respondent does not seriously  
27 contend that the records at issue here are in the custody of, or maintained by, the Governor’s  
28

1 office. They are, as alleged in the Petition, in the custody of, and maintained by, Respondent.  
2 (Pet., ¶¶ 2, 7, 9, 16, 37, 43.)

3 Respondent's attempt to re-write (and markedly expand) this narrow exception to the  
4 PRA's broad definition of "public records" by arguing that Section 6252(e) also applies to  
5 public records that "*were* 'in the custody of, or maintained by, the Governor's office'" at one  
6 time, fails on its face. (Resp. Mem. of Points and Authorities, p. 7, emphasis added.) Nowhere  
7 in the PRA does it say that documents that *once were* in the custody of, or maintained by, the  
8 Governor's office are exempt from the PRA, regardless of their age. The PRA clearly and  
9 unambiguously states that writings "*in*" the custody of, or maintained by the Governor's office  
10 are public records if created after January 6, 1975. (Gov't Code, § 6252(e), emphasis added.)  
11 Respondent's argument must be rejected on that basis alone.  
12

13 **2. In any event, the Commission Records are not now, and never were, records of**  
14 **the Governor's office.**

15 *Even if* Section 6252(e) provided an exemption for records that once "*were* 'in the  
16 custody of, or maintained by, the Governor's office'"—which it does not—the Commission  
17 Records would still not fall within that exemption. (*See* Resp. Mem. of Points and Authorities,  
18 pp. 6–7.) Just because a commission is created by an executive order and/or its members are  
19 appointed by the governor does not mean that its records are "in the custody of, or maintained  
20 by the Governor's office" for purposes of the PRA. (Gov't Code, § 6252(e).) The  
21 Government Code clearly recognizes the difference between the Governor's office and such  
22 commissions. The "Governor's office" has a specific meaning. Under Government Code,  
23 section 12001, for example, the Governor is allowed to "appoint and fix the salaries of such  
24 assistants and other personnel as he deems necessary for his office." And other governmental  
25 entities are also expressly established by the Legislature as belonging to the Governor's office.  
26 (*See, e.g.*, Gov't Code, § 12092.2 ("The Governor's Office of Business and Economic  
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1 Development . . . is hereby established in state government within the Governor’s office.”); *see*  
2 *also Picayune Rancheria of Chukchansi Indians v. Brown* (2014) 229 Cal.App.4th 1416, 1423–  
3 25 (distinguishing, for purposes of interpreting provisions of the California Environmental  
4 Quality Act, Pub. Resources Code, § 21000, *et seq.*, “governmental *bodies*,” including “any  
5 state agency, board, or commission,” from “governmental *officials* like the Governor” and  
6 “*government offices*,” like the Governor’s office (italics in original)).

7  
8 “Commissions,” on the other hand, are expressly included within the definition of  
9 “state agencies” subject to the PRA. According to Section 6252(f), the definition of state  
10 agency includes “every state . . . commission . . .” except for specific exempted commissions  
11 located in Articles IV and VI of the California Constitution.<sup>2</sup> For example, the records of the  
12 Commission on Judicial Appointments are exempt from the PRA. (*See* Gov’t Code, § 6252(f);  
13 Cal. Const., art 6, § 7.) Conversely, the records of the California Student Aid Commission are  
14 public records. (*See* 67 Ops. Cal. Atty. Gen. 414.)

15  
16 Creation of the Special Crime Study Commission on Organized Crime in California,  
17 the commission at issue in this case, was authorized under a provision of the Penal Code. (*See*  
18 Pen. Code, § 6028; Townsend Decl., Ex. A.) Its purpose, as defined by statute, was to “assist  
19 the Board of Corrections in the study of crime,” (Pen. Code, § 6028). There is no factual or  
20 legal basis for the Regents to argue that the Commission or its records were ever part of the  
21 Governor’s office.

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26 <sup>2</sup> As the California Supreme Court has recognized, under “the familiar rule of construction, *expressio unius est exclusio*  
27 *alterius*, where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed.”  
28 (*Wildlife Alive v. Chickering*, (1976) 18 Cal. 3d 190, 195.) Unless the Legislature expressly excludes a commission  
from the PRA, it must be considered a state agency whose records are public records. As the Commission in this case  
was not excluded from the PRA nor part of the Governor’s office, its records are public records.

1           **C. The Commission Records are not exempt under Section 6254(j).**

2           Section 6254(j) states, in pertinent part, that the government need not disclose  
3           “library and museum materials made or acquired *and presented* solely for reference or  
4           exhibition purposes” under the PRA.<sup>3</sup> (Emphasis added.) The Regents’ contention that the  
5           Commission Records fall within this exemption fails for at least two obvious reasons.

6           *First*, the Regents once again attempt to ignore the express language of the statute,  
7           which makes plain that the exemption applies only to materials that are “presented” by a  
8           library or museum. Here, the Commission Records are not currently being *presented* to the  
9           public at all, for any reason, let alone for reference or exhibition purposes. Instead, they have  
10          been “restricted” and “closed” to the public and scholars by Respondent for the next 13 years,  
11          which is why Petitioners have brought this case. (See Pet., ¶ 18; *id.*, Ex. A.) As the  
12          Commission Records are not being presented to the public, Respondent cannot avail itself of  
13          this exemption to avoid its obligation under the PRA.

14          *Second*, even putting aside the fact that the Commission Records are not being  
15          “presented,” they were also not acquired “solely for reference or exhibition purposes.” (Gov’t  
16          Code, § 6254(j).) The Commission Records do not meet the Bancroft Library’s definition of  
17          “reference” material,<sup>4</sup> they are not classified as reference material, (*see* Pet., Ex. A.), and they  
18          are not available in the Bancroft Library’s reference collection, (*id.*). Nor are the Commission  
19          Files, which are not open to the public, part of any Bancroft Library exhibit. (*Id.*; Townsend  
20  
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24          <sup>3</sup> Exemptions to the PRA are permissive, not mandatory, unless otherwise stated.

25          <sup>4</sup> Such material, as defined on the Bancroft Library’s website, includes items such as catalogues for works stored  
26          elsewhere within the library, atlases, dictionaries, and encyclopedias. (*See* Townsend Decl., Ex. B (Rare Book  
27          Collections, The Bancroft Library, <http://bancroft.berkeley.edu/collections/rarebooks.html> (last visited Feb. 9, 2015));  
28          *id.*, Ex. C (Latin Americana Reference Works in the Bancroft Reading Room, The Bancroft Library,  
<http://bancroft.berkeley.edu/collections/latinamericana/reference.html> (last visited Feb. 9, 2015)).) The Bancroft  
Library’s reference collection is housed in its reading room. (*See* Townsend Decl., Ex. D (Frequently Asked Questions,  
The Bancroft Library, <http://bancroft.berkeley.edu/info/faq.html> (last visited Feb. 9, 2015)).)

1 Decl., Ex. E (Currently on Exhibit, The Bancroft Library, <http://perma.cc/9TZU-67EJ> (last  
2 accessed Feb. 9, 2015)).)

3 **D. In the event the Court sustains the Demurrer, Petitioners should be given leave to**  
4 **amend.**

5 For the reasons set forth herein, Respondent's Demurrer should be overruled. In the  
6 event, however, that this Court finds that the allegations in the Petition are insufficient,  
7 Petitioners respectfully request that they be given leave to amend. (*See* Civ. Proc. Code, §§  
8 472(a) and 473; *Scott v. Indian Wells*, (1972) 6 Cal. 3d 541, 549 (stating that leave to amend  
9 shall be liberally granted).)

10 **CONCLUSION**

11 For all the reasons stated herein, this Court should overrule Respondent's Demurrer.

12  
13 Dated: February 10, 2015

14  
15   
Thomas R. Burke  
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16  
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18  
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