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Fee Exempt - Gov. Code § 6103  
2015 JAN 8 PM 3:51  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

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

15 Petitioners,

16 v.

17 THE REGENTS OF THE UNIVERSITY  
18 OF CALIFORNIA,

19 Respondent.

CASE NO. RG14750683

ASSIGNED FOR ALL PURPOSES TO  
JUDGE Evelio Grillo  
DEPARTMENT 14

NOTICE OF DEMURRER AND DEMURRER  
BY RESPONDENT THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA TO  
VERIFIED PETITION FOR WRIT OF  
MANDATE ORDERING COMPLIANCE  
WITH THE CALIFORNIA PUBLIC  
RECORDS ACT BY PETITIONERS THE  
REPORTERS COMMITTEE FOR FREEDOM  
OF THE PRESS AND STEPHEN G. BLOOM;  
MEMORANDUM OF POINTS AND  
AUTHORITIES

Date: February 24, 2015  
Time: 1:30 p.m.  
Dept: 14  
Judge: Hon. Evelio Grillo  
Reservation No.: R-1589598

BY FAX

1 **TO PETITIONERS AND TO THEIR ATTORNEY OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 1:30 p.m. on February 24, 2015, or as soon thereafter  
3 as the matter can be heard, in Department 14 of this Court, located at 1221 Oak Street, Oakland,  
4 California 94612, a hearing will be held on the Demurrer by Respondent The Regents of the  
5 University of California to the Verified Petition for Writ of Mandate Ordering Compliance With  
6 the California Public Records Act by petitioners The Reporters Committee for Freedom of the  
7 Press and Stephen G. Bloom.

8  
9 Dated: January 8, 2015

10 UNIVERSITY OF CALIFORNIA  
11 OFFICE OF THE GENERAL COUNSEL

12  
13 By: 

14 Michael R. Goldstein

15 Attorneys for Respondent  
16 THE REGENTS OF THE UNIVERSITY OF  
17 CALIFORNIA

1 **DEMURRER TO PETITION**

2 Pursuant to section 430.10 of the Code of Civil Procedure, Respondent The Regents of the  
3 University of California demurs to the Verified Petition for Writ of Mandate Ordering  
4 Compliance With the California Public Records Act by petitioners The Reporters Committee for  
5 Freedom of the Press and Stephen G. Bloom in this action. The demurrer is based on this Notice  
6 of Demurrer and Demurrer, and on the attached Memorandum of Points and Authorities.

7 Demurrer to First Cause of Action ("Count 1")

- 8 1. The First Cause of Action does not state facts sufficient to constitute a cause of  
9 action because the requested records are not "public records" and, even if they  
10 were, they are exempt under section 6254(j) of the Government Code. (Code Civ.  
11 Proc., § 430.10, subd. (e).)

12 Demurrer to Second Cause of Action ("Count 2")

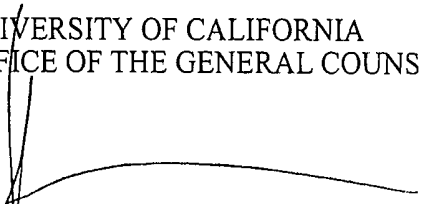
- 13 2. The Second Cause of Action does not state facts sufficient to constitute a cause of  
14 action because the requested records are not "public records" and, even if they  
15 were, they are exempt under section 6254(j) of the Government Code. (Code Civ.  
16 Proc., § 430.10, subd. (e).)
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**WHEREFORE**, Respondent prays this Court to sustain the Demurrer without leave to amend.

Dated: January 8, 2015

UNIVERSITY OF CALIFORNIA  
OFFICE OF THE GENERAL COUNSEL

By:   
\_\_\_\_\_  
Michael R. Goldstein

Attorneys for Respondent  
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

MEMORANDUM OF POINTS AND AUTHORITIES

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1 The records were a gift to The Regents. (*Id.*, ¶ 19.)

2 **ARGUMENT**

3 The Petition fails to state a claim for three reasons. First, the requested records are not  
4 “public records” because they do not “contain[] information relating to the conduct of the public’s  
5 business.” (*See* Gov. Code, § 6252(e).) Second, they are not “public records” because they were  
6 “in the custody of, or maintained by, the Governor’s office” and prepared before January 6, 1975.  
7 (*See ibid.*) Third, even if they were “public records,” they are exempt from disclosure as “library  
8 . . . materials . . . acquired and presented solely for reference or exhibition purposes.” (*See* Gov.  
9 Code, § 6254(j).) None of these defects can be cured. Accordingly, the Demurrer should be  
10 sustained without leave to amend.

11 **I. STANDARDS FOR DEMURRER**

12 A demurrer may be sustained on the ground that “[t]he pleading does not state facts  
13 sufficient to constitute a cause of action.” (Code Civ. Proc., § 430.10.) In deciding a demurrer,  
14 the Court must accept as true all allegations of fact, but it should *not* accept “contentions,  
15 deductions, or conclusions of . . . law.” (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Where the  
16 petitioner cannot demonstrate that defects in the petition are curable, it is proper to sustain a  
17 demurrer without leave to amend. (*See Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

18 **II. THE RECORDS PETITIONERS HAVE REQUESTED ARE NOT  
19 “PUBLIC RECORDS”**

20 **A. The Requested Records Do Not “Contain[] Information Relating To  
21 The Conduct Of The Public’s Business”**

22 Not all records in the possession of a public entity are “public records.” “The mere  
23 custody of a writing by a public agency does not make it a public record.” (*Braun v. City of Taft*  
24 (1984) 154 Cal.App.3d 332, 340.) It must be related to the conduct of the public’s business:  
25 “Unless the writing is related ‘to the conduct of the public’s business’ *and* is ‘prepared, owned,  
26 used or retained by’ a public entity, it is not a public record under the CPRA and its disclosure  
27 would not be governed by the Act.” (*Regents of University of California v. Superior Court*  
28 (2013) 222 Cal.App.4th 383, 399.)

It only becomes a “public record” when it “is kept by an officer because it is necessary or

1 convenient to the discharge of his official duty.” (*Braun v. City of Taft, supra*, 154 Cal.App.3d at  
2 p. 340.) After all, the Act was passed “to ensure public access to vital information about the  
3 government’s conduct of its business.” (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 656.) “Implicit  
4 in the democratic process is the notion that government should be accountable for its actions. In  
5 order to verify accountability, individuals must have access to government files. Such access  
6 permits checks against the arbitrary exercise of official power and secrecy in the political  
7 process.” (*Id.* at p. 651.)

8 As section 6250 expressly states, “In enacting this chapter, the Legislature, mindful of the  
9 right of individuals to privacy, finds and declares that access to information concerning the  
10 conduct of the people’s business is a fundamental and necessary right of every person in this  
11 state.” (*See Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001, 1006 [“The  
12 critical question is whether the information contained therein relates to the conduct of the  
13 ‘public’s business.’ ”].) The Act was intended “to safeguard the accountability of government to  
14 the public.” (*Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1141.) Its guiding principle  
15 was that “secrecy is antithetical to a democratic system of ‘government of the people, by the  
16 people [and] for the people[.]’ and ‘was enacted against a ‘background of legislative impatience  
17 with secrecy in government.’ ” (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d  
18 762, 771-772.) (Citations omitted.)

19 This purpose has been manifested repeatedly in numerous cases applying the Act. In *CBS*  
20 *Inc. v. Block, supra*, 42 Cal.3d 646, CBS requested “applications submitted to and licenses issued  
21 by the Los Angeles County Sheriff authorizing the possession of concealed weapons. CBS  
22 sought the information in connection with an investigation of possible abuses by officials in the  
23 exercise of their statutorily delegated discretion to issue licenses for concealed weapons.” (*Id.* at  
24 p. 649.) In ordering the disclosure of the records, the court tied the relevance of the records to the  
25 function of the Sheriff:

26 “Disclosure statutes such as the PRA and the federal Freedom of  
27 Information Act were passed to ensure public access to vital  
28 information about the government’s conduct of its business. If the

1 press and the public are precluded from learning the names of  
2 concealed weapons' licensees and the reasons claimed in support of  
3 the licenses, there will be no method by which the public can  
4 ascertain whether the law is being properly applied or carried out  
5 in an evenhanded manner.” (*Id.* at p. 646.)

6 Similarly, in *California State University, Fresno Assn., Inc. v. Superior Court* (2001)  
7 90 Cal.App.4th 810, the court found that documents sought in a Public Records Act request  
8 related to the public’s business because they concerned the “operation of the Save Mart Center, a  
9 public facility on land owned by a public university. Further, the arena was financed, in part, by  
10 public funds to the tune of at least \$ 8 million.” (*Id.* at p. 825.)

11 In *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, information was requested from  
12 the State Controller about warrants the Controller had issued to state vendors which were unpaid.  
13 (*Id.* at p. 605.) The records were ordered disclosed on the grounds that the public had an interest  
14 in records pertaining to the government’s conduct in managing public revenues. (*Id.* at pp. 616-  
15 617.)

16 In *Commission on Peace Officer Standards & Training v. Superior Court* (2007)  
17 42 Cal.4th 278, the court found that documents requested under the Public Records Act “relate to  
18 the public’s business, because the Commission uses them to monitor the compliance of  
19 participating departments with Commission regulations, which is a requirement for eligibility for  
20 the services and state funding provided by the Commission.” (*Id.* at p. 288, fn. 3.)

21 *Braun v. City of Taft, supra*, 154 Cal.App.3d 332, involved a request for the salary card  
22 and appointment letters for a transit administrator in an effort to investigate a possible irregularity  
23 of the appointment. The documents “clearly related to the conduct of the City’s business” and  
24 therefore were “public records.” (*Id.* at p. 340.)

25 In *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, the San Gabriel  
26 Tribune sought the City of West Covina’s financial statements used to evaluate a rate increase  
27 that the City granted a waste disposal company. The court found the financial data to be public  
28 records because they related to a trash collection agreement between the City and the vendor for

1 the provision of services to the community:

2 “The City has a contractual relationship with the Disposal  
3 Company. The City delegated its duty of trash collection to the  
4 Disposal Company but still retained the power and duty to monitor  
5 the Disposal Company’s performance of its delegated duties, under  
6 the express terms of the contract. There is no question that the  
7 Disposal Company is providing a service to the residents of the  
8 City, by way of a contract made between it and the City.” (*Id.* at  
9 p. 775.)

10 Finally, in *Regents of University of California v. Superior Court*, *supra*, 222 Cal.App.4th  
11 383, the requested records related to the conduct of the public’s business because they concerned  
12 private equity fund information for investments made by The Regents (although they were not  
13 “public records” because they were not “prepared, owned, used, or retained” by The Regents).  
14 (*Id.* at pp. 387-388.)

15 The distinction between records that relate to the conduct of the public’s business and  
16 those that do not was expressly elucidated in *Coronado Police Officers Assn. v. Carroll*, *supra*,  
17 106 Cal.App.4th 1001, where the court treated two categories of records – both of which were in  
18 a public entity’s possession – differently on the grounds that one related to the conduct of the  
19 public’s business but the other did not. Police officers associations sought access to a database  
20 created by the county public defender which contained client files. The court of appeal found that  
21 the database was not a “public record” because “its core function, the representation of indigent  
22 criminal defendants, is a private function.” (*Id.* at p. 1006.) Not all of the Public Defender’s  
23 records, however, were considered private:

24 “This decision does not imply that all documents possessed by the  
25 Public Defender regarding the database are private rather than  
26 public records. Records containing information concerning the  
27 administrative decision to compile the database, the cost of  
28 maintaining the database or rules applying to its access and use are

1 policy decisions made by the Public Defender in its capacity as the  
2 administrator of a public office. A court could properly conclude  
3 that such documents are public records because they relate to the  
4 public's business and not the representation of clients. (*Id.* at  
5 p. 1009.)

6 Petitioners have not alleged – and cannot allege – that the requested records relate to the  
7 conduct by The Regents of the public's business. Instead, petitioners allege, the records relate to  
8 the work of the State's Special Crime Study Commission on Organized Crime in California, a  
9 body constituted by the Governor's Office, not The Regents. As petitioners admit, the only  
10 relationship between The Regents and the records is that The Regents has custody of them. That,  
11 without more, is insufficient to make them "public records."

12 And arguing that documents may be "public records" even if they are "prepared, owned,  
13 used, or retained" *by one* state or local agency while "relating to the conduct of the public's  
14 business" *by another* state or local agency renders meaningless the requirement that "[u]nless the  
15 writing is related 'to the conduct of the public's business' and is 'prepared, owned, used or  
16 retained by' a public entity, it is not a public record under the CPRA and its disclosure would not  
17 be governed by the Act." (*Regents of University of California v. Superior Court, supra*,  
18 222 Cal.App.4th at p. 399.)<sup>1</sup>

19 **B. The Requested Records Were "In The Custody Of, Or Maintained**  
20 **By, The Governor's Office" And Prepared Before January 6, 1975**

21 In 1975, the definition of "public records" was expanded to include documents "in the  
22 custody of, or maintained by, the Governor's office." Before the statute was amended, all such  
23 documents were excluded from the definition:

24 "Prior to 1975, the Act exempted from disclosure *all* records '[i]n  
25 the custody of or maintained by the Governor or employees of the  
26 Governor's office employed directly in his office . . . .'

27 <sup>1</sup> Although petitioners have pled a separate cause of action under article I, section 3 of the California Constitution, the  
28 analysis is no different from an analysis under the Public Records Act. (*See Regents of University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 399.)

1 (Stats.1970, ch. 1295, § 1.5, p. 2397.) In 1975, this exemption was  
2 amended to limit the exemption to *correspondence* of or to the  
3 Governor and his staff. (Stats.1975, ch. 1246, § 3, p. 3209.)”  
4 (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325,  
5 1337.)

6 As the amended provision clearly states, the expansion in 1975 was not retroactive:  
7 “ ‘Public records’ in the custody of, or maintained by, the Governor’s office means any writing  
8 prepared on or after January 6, 1975.” (Gov. Code, § 6252(e).) In other words, documents  
9 prepared in the 1940s or 1950s and in the custody or, or maintained by, the Governor’s office, are  
10 not “public records.”

11 As petitioners admit, the requested records date back to the 1940s and 1950s. (Petition,  
12 ¶ 2.) They are product of the Governor’s Special Crime Study Commission on Organized Crime  
13 in California and, therefore, before they were given to The Regents, they were “in the custody of,  
14 or maintained by, the Governor’s office.” Accordingly, they are not “public records.”

15 **III. EVEN IF THEY WERE “PUBLIC RECORDS,” THEY ARE EXEMPT**  
16 **UNDER GOV. CODE SECTION 6254(j)**

17 Section 6254(j) of the Government Code provides, in pertinent part:

18 “Except as provided in Sections 6254.7 and 6254.13, this chapter  
19 this chapter does not require the disclosure of any of the following  
20 records:

21 . . .

22 “(j) Library . . . materials . . . acquired and presented solely for  
23 reference or exhibition purposes.”

24 This statute expressly exempts from disclosure public records that consist of library  
25 reference materials. As petitioners admit, the Commission records are classified in the Bancroft  
26 Library’s Catalog as “research” records: “RESTRICTED COLLECTION: Closed for research  
27 use until 2028.” (*Id.*, ¶¶ 16 & 18 & *id.*, Exh. A.) Accordingly, they are exempt from disclosure  
28 under section 6254(j).

1 **IV. PETITIONERS SHOULD NOT BE GRANTED LEAVE TO AMEND**


2 "Leave to amend should be denied where the facts are not in dispute and the nature of the  
3 claim is clear but no liability exists under substantive law." (*Lawrence v. Bank of America* (1985)  
4 163 Cal.App.3d 431, 436.) It is a petitioner's burden to show in what manner the pleading can be  
5 amended to change its legal effect. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) For  
6 purposes of this Demurrer, there is no dispute about the facts in this case. What may be disputed  
7 are only the issues whether the requested records are "public records" or, even if they are,  
8 whether they are exempt under section 6254(j) of the Government Code. Those are purely legal  
9 issues which can be decided on the basis of the allegations in the Petition. Accordingly, the  
10 Demurrer should be sustained without leave to amend.

11 **CONCLUSION**

12 For the foregoing reasons, Respondent The Regents of the University of California  
13 respectfully requests that the Court sustain the Demurrer – without leave to amend, because  
14 petitioners' pleading cannot be corrected – and dismiss the Petition.

15 Dated: January 8, 2015

16 UNIVERSITY OF CALIFORNIA  
17 OFFICE OF THE GENERAL COUNSEL

18 By:   
19 Michael R. Goldstein

20 Attorneys for Respondent  
21 THE REGENTS OF THE UNIVERSITY OF  
22 CALIFORNIA

1 PROOF OF SERVICE BY MAIL  
2 (Code Civ. Proc., § 1013)

3 I, the undersigned, say: I am over 18 years of age, employed in Alameda County,  
4 California, in which county the within-mentioned collection by courier occurred, and not a party  
5 to the subject cause. My business address is Office of the General Counsel, 1111 Franklin Street,  
6 8th Floor, Oakland, California 94607-5200.

7 I served the attached:

- 8 • **NOTICE OF DEMURRER AND DEMURRER BY RESPONDENT THE**  
9 **REGENTS OF THE UNIVERSITY OF CALIFORNIA TO VERIFIED**  
10 **PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE**  
11 **WITH THE CALIFORNIA PUBLIC RECORDS ACT BY PETITIONERS**  
12 **THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND**  
13 **STEPHEN G. BLOOM; MEMORANDUM OF POINTS AND**  
14 **AUTHORITIES**

15 by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to  
16 each such addressee respectively as follows:

17 Katie Townsend, Esq.  
18 The Reporters Committee for Freedom  
19 of the Press  
20 1156 15<sup>th</sup> Street NW, Suite 1250  
21 Washington, D.C. 20005

22 *Attorney for Petitioners*

23 Following ordinary business practices, the envelope was sealed and placed for collection  
24 and mailing on this date, and would, in the ordinary course of business, be deposited with the  
25 United States Postal Service on January 8, 2015.

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

28 Executed on January 8, 2015, at Oakland, California.



Carrie Schmidt