

1 KATIE TOWNSEND (SBN 254321)  
ktownsend@rcfp.org  
2 THE REPORTERS COMMITTEE FOR  
3 FREEDOM OF THE PRESS  
4 1100 Wilson Blvd., Suite 1101  
Arlington, Virginia 20009

5 *Counsel for Petitioners*  
6 THE REPORTERS COMMITTEE FOR  
7 FREEDOM OF THE PRESS and  
STEPHEN G. BLOOM

8  
9  
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. \_\_\_\_\_

**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:**

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21  
22  
23  
24 **INTRODUCTION**

25  
26 1. The Reporters Committee for Freedom of the Press (“Reporters Committee” or  
27 “RCFP”) and Stephen G. Bloom (“Professor Bloom”) (collectively, “Petitioners”) petition this  
28 court for a writ of mandate directed to The Regents of the University of California





1 11. The Commission was chaired by retired admiral William H. Standley, the former  
2 chief of U.S. Naval operations and U.S. Ambassador to the U.S.S.R., and is sometimes referred  
3 to as the Standley Commission. Former Los Angeles County District Attorney Warren Olney,  
4 III, was appointed to administer the Commission. FBI agent Harold G. Robinson was the  
5 Commission's chief investigator. Industrialist William Jeffers, retired Major General Kenyon  
6 Joyce, financier Harvey Mudd, and attorney Gerald Hager were members of the Commission.  
7

8 12. The Standley Commission was active for thirty-two months and produced four  
9 reports. On or about November 15, 1950, the Commission issued a final 58-page report  
10 detailing various aspects of statewide crime.

11 13. On or about October 8, 1951, the Commission was convened for a second time, and  
12 chaired by retired Marine Corps. General LeRoy P. Hunt. The Hunt Commission had the full  
13 support of the then newly elected Attorney General and future governor of California, Edmund  
14 G. Brown. It issued its final report on or about May 11, 1953.

15  
16 The Bancroft Library at the University of California, Berkeley

17 14. The Bancroft Library at the University of California, Berkeley, houses, among other  
18 historical records, the Earl Warren Oral History Project, an invaluable collection of hundreds  
19 of interviews. The collection is one of the most sought-after repositories of California and U.S.  
20 history available to scholars and the public alike. Its existence has amplified and deepened  
21 public understanding of Governor Warren's role in state and national history.  
22

23 15. Among records contained in the Earl Warren Oral History Project are extensive  
24 interviews with former Governor Edmund G. Brown, a contemporary of Governor Warren.  
25 Governor Brown consented to a far-ranging interview with Professor Bloom in 1993, three  
26 years prior to the Governor's death, about the Special Crime Study Commission on Organized  
27 Crime.  
28

The Commission Records

1  
2           16. Thirty cartons of records of the Commission are currently in the possession of the  
3 University's Bancroft Library, and are identified within OskiCat—the University's Library  
4 Catalog—as call number BANC MSS 80/43 c. A true and correct copy of the OskiCat entry  
5 relating to the Commission Records is attached hereto as **Exhibit A**.

6  
7           17. Among other things, the summary of the OskiCat entry for the Commission Records  
8 states that it includes “correspondence, subject files, investigation files, and printed reports,”  
9 and that “[m]ost materials date from the 1940s and 1950s.”

10           18. The OskiCat entry for the Commission Records further states that they are “[c]losed  
11 for research use until 2028.”

12           19. On information and belief, an individual whose identity is unknown to Petitioners  
13 gave the Commission Records to the University instead of transmitting them to the California  
14 State Archives, the primary repository for California government records.

Petitioners' Inquiries Regarding Access to the Commission Records

15  
16  
17           20. On or about October 6, 2014, Adam Marshall, an employee of the Reporters  
18 Committee, called the University's Bancroft Library and requested information concerning  
19 whether the Commission Records were open to the public. Mr. Marshall was informed by a  
20 reference librarian at the Bancroft Library that the Commission Records were closed to the  
21 public until 2028.

22  
23           21. Later that same day, Corliss Lee, a librarian at the Bancroft Library, sent an email to  
24 Mr. Marshall stating that access to the Commission Records was restricted due to  
25 confidentiality concerns. A true and correct copy of that email is attached hereto as **Exhibit B**.





1 by any state or local agency regardless of physical form or characteristics.” (Gov’t Code §  
2 6252, subd. (e).)

3 32. For purposes of the PRA, “state agency” “means every state office, officer,  
4 department, division, bureau, board, and commission or other state body or agency, except  
5 those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the  
6 California Constitution.” (Gov’t Code § 6252, subd. (f).)

7  
8 33. The PRA prohibits state and local agencies from “allow[ing] another party to control  
9 the disclosure of information that is otherwise subject to disclosure” under the PRA. (Gov’t  
10 Code, § 6253.3.)

11 **SPECIFIC CAUSES OF ACTION**

12 **Count 1: Violation of Article I, § 3 of the California Constitution**

13 34. Petitioners repeat and re-allege paragraphs 1–32 above.

14  
15 35. The California Constitution states that “[t]he people have the right of access to  
16 information concerning the conduct of the people’s business, and, therefore, the meetings of  
17 public bodies and the writings of public officials and agencies shall be open to public  
18 scrutiny.” (Cal. Const. art 1, § 3(b)(1).)

19 36. The Commission Records concern the conduct of the people’s business, and consist  
20 of the writings of public officials and/or agencies.

21 37. The Commission Records are within the custody and control of Respondent.

22 38. Respondent has denied, and continues to deny, Petitioners access to inspect the  
23 Commission Records.

24 39. Respondent’s actions violate Article 1, Section 3 of the California Constitution.

25 **Count 2: Violation of the California Public Records Act**

26 40. Petitioners repeat and re-allege paragraphs 1–32 above.  
27  
28



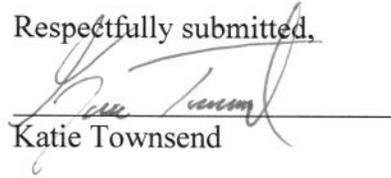
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3. Award Petitioners costs and reasonable attorneys' fees incurred in bringing this action, pursuant to Gov't Code § 6259(d);

4. Grant such other and further relief as the Court deems just and proper.

Dated: December 9, 2014

Respectfully submitted,



Katie Townsend

*Counsel for Petitioners*

VERIFICATION

I, Stephen G. Bloom, declare:

1. I am a journalist, author, and academic scholar. I am currently a tenured full professor of journalism at the University of Iowa.
2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT. The facts stated in the Petition 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.
3. This verification was executed on December 5, 2014, in Johnson Co., Iowa. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
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**VERIFICATION**

I, Bruce D. Brown, declare:

4. I am the Executive Director of the Reporters Committee for Freedom of the Press.

5. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT.

The facts stated in the Petition 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.

6. This verification was executed on December 5<sup>th</sup>, 2014, in Arlington, Virginia. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

B. D. B.

# **EXHIBIT A**



Quick Search    Advanced Keyword Search    Find Articles    Course Reserves    Renew Items  
 Questions?

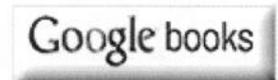
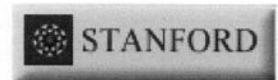
**START OVER**    **ADD TO MY LISTS**    **SAVE RECORDS**    **MARC DISPLAY**    **ANOTHER SEARCH**

Record no. ▼   
 Entire Collection ▼   
 Limit to items not checked out

**Title**    **Special crime study commission on organized crime in California.**

ALSO LOOK IN

<b>Location</b>	<a href="#">Bancroft (NRLF)</a>
<b>Call No.</b>	BANC MSS 80/43 c
<b>Library Has</b>	CARTON 1-CARTON 29
<a href="#">View volumes</a>	



**Description** 30 cartons.

**Access** COLLECTION STORED OFF-SITE.  
 RESTRICTED COLLECTION : Closed for research use until 2028.

**Summary** Includes correspondence, subject files, investigation files, and printed reports. Most materials date from the 1940s and 1950s. Subjects include: abortion, black market, gambling, horse racing, organized crime, slot machines, and tax evasion.

**Local Note** BANC; BANC MSS 80/43 c: Card file boxes housed in cartons 23-29.

**Subject** [Crime -- California.](#)  
[Organized crime -- California.](#)  
[Criminal investigation -- California.](#)  
[Abortion -- Law and legislation -- California.](#)  
[Gambling -- California.](#)  
[Gambling -- California -- History.](#)

**Direct Link** <http://oskicat.berkeley.edu/record=b11237838~S1>

# EXHIBIT B

## restricted collection at the Bancroft Library

**From:** Corliss LEE <clee@library.berkeley.edu>  
**To:** amarshall@rcfp.org  
**Subject:** restricted collection at the Bancroft Library  
**Date:** Monday, October 06, 2014 2:55 PM  
**Size:** 4 KB

---

re this collection:

<http://oskicat.berkeley.edu/record=b11237838~S1>

I asked one of the archivists to look at this, and she says:

It looks like the files were restricted by us due to confidentiality concerns. The 2028 date is 75 years after the last date of record creation, a fairly standard figure used for such closures within the archival community (usually covers the lifetime of those involved).

I presume this means that individuals are named in the files.

Good luck with your research

Corliss Lee

# EXHIBIT C

# REPORTERS COMMITTEE

**FOR FREEDOM OF THE PRESS**

1101 Wilson Blvd., Suite 1100  
Arlington, Va. 22209-2211  
(703) 807-2100  
www.rcfp.org

Bruce D. Brown  
Executive Director  
bbrown@rcfp.org  
(703) 807-2101

---

## STEERING COMMITTEE

SCOTT APPLEWHITE  
*The Associated Press*

WOLF BLITZER  
*CNN*

DAVID BOARDMAN  
*Temple University*

CHIP BOK  
*Creators Syndicate*

JAN CRAWFORD  
*CBS News*

MICHAEL DUFFY  
*Time*

RICHARD S. DUNHAM  
*Tsinghua University, Beijing*

ASHLEA EBELING  
*Forbes Magazine*

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*National Geographic*

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*Founding Member*

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*Freelance*

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*United Media Newspaper Syndicate*

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*Slate*

TONY MAURO  
*National Law Journal*

JANE MAYER  
*The New Yorker*

DAVID McCUMBER  
*Hearst Newspapers*

JOHN McKINNON  
*The Wall Street Journal*

DOYLE MCMANUS  
*Los Angeles Times*

ANDREA MITCHELL  
*NBC News*

MAGGIE MULVIHILL  
*Boston University*

BILL NICHOLS  
*Politico*

JEFFREY ROSEN  
*The New Republic*

CAROL ROSENBERG  
*The Miami Herald*

THOMAS C. RUBIN  
*Seattle, Wash.*

ERIC SCHMITT  
*The New York Times*

ALICIA SHEPARD  
*Freelance*

MARGARET LOW SMITH  
*The Atlantic*

JENNIFER SONDAG  
*Bloomberg News*

PAUL STEIGER  
*Pro Publica*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*USA Today*

JUDY WOODRUFF  
*PBS/The NewsHour*

*Affiliations appear only  
for purposes of identification.*

Adam Marshall  
Jack Nelson Legal Fellow  
Reporters Committee for Freedom of the Press  
1101 Wilson Blvd., Suite 1100  
Arlington, VA 22209  
(571) 481-9324  
amarshall@rcfp.org

Professor Stephen G. Bloom  
School of Journalism and Mass Communication  
University of Iowa  
Iowa City, Iowa 52242  
(319) 335-3368  
stephen-g-bloom@uiowa.edu

Public Records Coordinator  
Office of Ethics, Risk and Compliance Services  
University of California, Berkeley  
200 California Hall, MC #1500  
Berkeley, CA 94720-1500  
pra@berkeley.edu

October 8, 2014

## **PUBLIC RECORDS REQUEST**

Dear Public Records Coordinator:

This letter constitutes a request under the California Public Records Act, Cal. Gov't Code, § 6250, *et seq.* ("PRA"), and is submitted on behalf of the Reporters Committee for Freedom of the Press ("RCFP" or the "Reporters Committee") and Professor Stephen G. Bloom, a professor of journalism at the University of Iowa School of Journalism and Mass Communication. By this request, RCFP and Professor Bloom seek access to historical files of the Special Crime Study Commission on Organized Crime in California, which we understand were transferred to the University of California, Berkeley in or around 1980, and are in the possession of the Bancroft Library.

### I. Background

The Reporters Committee is a nonprofit association of news reporters and editors. Founded in 1970, RCFP is dedicated to preserving the freedom of the press guaranteed by the First Amendment. In its more than 40-year history, it has represented numerous members of the news media as parties, and has intervened as both a member of the public and an advocate for the press in matters presenting important issues that affect the public's right to be informed,

through the media, of the activities of their government and elected representatives.

Professor Bloom is a journalist, author, and academic scholar. He is professor of journalism at the University of Iowa School of Journalism and Mass Communication. In connection with his research, Professor Bloom seeks access to historical files of the now defunct Special Crime Study Commission on Organized Crime in California (“the Commission Files”). The Commission Files—which consist of material from the 1940s and 1950s—are public records within the meaning of the PRA. The Bancroft Library, however, has listed the Commission Files as “closed for research use until 2028,”<sup>1</sup> and inquiries made by Professor Bloom and RCFP concerning access to those records have been denied.

## II. Records requested

Pursuant to the PRA, Professor Bloom and the Reporters Committee request access to the Commission Files. The Commission Files are currently in the possession of the University of California, Berkeley Bancroft Library, at the Northern Regional Library Facility.<sup>2</sup> The call number is “BANC MSS 80/43 c”.<sup>3</sup> The Commission Files total 30 cartons of material.<sup>4</sup>

Professor Bloom and the Reporters Committee seek access and access alone to inspect these records under the PRA.<sup>5</sup>

## III. Conclusion

If this request is denied in whole or part, we ask that you justify such determination by reference to specific exemptions of the PRA. If you have any questions regarding this request, please do not hesitate to contact Adam Marshall by phone (571-481-9324) or email (amarshall@rcfp.org). Please respond to this request within seven (7) business days. Thank you in advance for your assistance in this matter.

Sincerely,

Adam Marshall  
Jack Nelson Legal Fellow  
Reporters Committee for Freedom of the Press

Professor Stephen G. Bloom  
School of Journalism and Mass Communication  
University of Iowa

---

<sup>1</sup> *Special crime study commission on organized crime in California*, OskiCat, <http://oskicat.berkeley.edu/record=11237838-s6> (last accessed Oct. 6, 2014). A true and correct copy of a printout of this record is enclosed herewith.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Cal. Gov’t Code § 6253.



Quick Search    Advanced Keyword Search    Find Articles    Course Reserves    Renew Items  
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Record no.

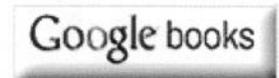
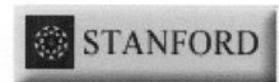
Entire Collection

Limit to items not checked out

**Title**    **Special crime study commission on organized crime in California.**

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[Criminal investigation -- California.](#)  
[Abortion -- Law and legislation -- California.](#)  
[Gambling -- California.](#)  
[Gambling -- California -- History.](#)

**Direct Link** <http://oskiat.berkeley.edu/record=b11237838~S1>

# EXHIBIT D

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Date: 10/15/2014 10:51:51 PM

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Sender: PRA - UC Berkeley <pra@berkeley.edu>

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Recipient: <amarshall.54158@mail.ifoia.org>

---

Attachments: RCFP & Professor Bloom PRA Request to UC-Berkeley.pdf,

---

Subject: Fwd: Public Records Act Request

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Mr. Marshall,

Please allow this message to serve as an acknowledgement of your attached request, under the California Public Records Act (CPRA), for access to certain records.

Because of the unusual circumstances -- namely, our need to consult with multiple University components having substantial subject matter interest herein -- regarding your request, the University must extend, by 14 days, its determination of whether the records you seek are subject to release under CPRA. California Government Code section 6253(c).

To be clear, this message is not a determination that the records you have requested are necessarily exempt from disclosure. Once we have more information, we will provide you with a more definite determination.

Lastly, please bear in mind that CPRA allows agencies to make copies of records available "upon payment of fees covering the direct costs of duplication." Government Code section 6253(b). The University reserves its right to recoup copy costs for the records responsive to your request. The charge is \$0.20 per page for copies, and payment is required before release of the records.

Sincerely,  
LeVale Simpson

\*\*\*\*\*

University of California, Berkeley  
Office of Ethics, Risk and Compliance Services  
200 California Hall, MC #1500  
Berkeley, CA 94720-1500  
Phone: (510) 664-4615

----- Forwarded message -----

From: **Adam Marshall via iFOIA.org** <amarshall.54158@mail.ifoia.org>  
Date: Wed, Oct 8, 2014 at 12:14 PM  
Subject: Public Records Act Request  
To: Public Records Coordinator <pra@berkeley.edu>

Reply ABOVE THIS LINE

---

Dear Public Records Coordinator:

Attached is a formal request for public records. Please feel free to contact me at this email address or at

571-481-9324 with any questions.

Thank you for your assistance.

Sincerely,

Adam Marshall

This message was sent via iFOIA.org. If you have questions about iFOIA, please refer to the [About page](#) or email [ifoia-help@rcfp.org](mailto:ifoia-help@rcfp.org).

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*This message was sent via [iFOIA.org](#).*

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# **EXHIBIT E**

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Date: 10/16/2014 9:18:05 PM

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Sender: <amarshall.54158@mail.ifoia.org>

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Recipient: PRA - UC Berkeley <pra@berkeley.edu>

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Attachments: RCFP Letter to LeVale Simpson.pdf, RCFP & Professor Bloom PRA Request to UC-Berkeley.pdf,

---

Subject: **Re: Fwd: Public Records Act Request**

---

Reply ABOVE THIS LINE

---

Dear Mr. Simpson,

Please find attached a letter from the Reporters Committee regarding your October 15, 2014 letter.

Sincerely,

Adam Marshall

Jack Nelson Legal Fellow

Reporters Committee for Freedom of the Press

---

On 10/15/2014 PRA - UC Berkeley <pra@berkeley.edu>  
Mr. Marshall,

Please allow this message to serve as an acknowledgement of your attached request, under the California Public Records Act (CPRA), for access to certain records.

Because of the unusual circumstances -- namely, our need to consult with multiple University components having substantial subject matter interest herein -- regarding your request, the University must extend, by 14 days, its determination of whether the records you seek are subject to release under CPRA. California Government Code section 6253(c).

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Sincerely,  
LeVale Simpson

\*\*\*\*\*

University of California, Berkeley  
Office of Ethics, Risk and Compliance Services  
200 California Hall, MC #1500

Berkeley, CA 94720-1500  
Phone: (510) 664-4615

----- Forwarded message -----

From: **Adam Marshall via iFOIA.org** <[amarshall.54158@mail.ifoia.org](mailto:amarshall.54158@mail.ifoia.org)>

Date: Wed, Oct 8, 2014 at 12:14 PM

Subject: Public Records Act Request

To: Public Records Coordinator <[pra@berkeley.edu](mailto:pra@berkeley.edu)>

Reply ABOVE THIS LINE

---

Dear Public Records Coordinator:

Attached is a formal request for public records. Please feel free to contact me at this email address or at 571-481-9324 with any questions.

Thank you for your assistance.

Sincerely,

Adam Marshall

This message was sent via iFOIA.org. If you have questions about iFOIA, please refer to the [About page](#) or email [ifoia-help@rcfp.org](mailto:ifoia-help@rcfp.org).

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*This message was sent via [iFOIA.org](#).*

---

wrote:

---

*This message was sent via [iFOIA.org](#).*

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# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1101 Wilson Blvd., Suite 1100  
Arlington, Va. 22209-2211  
(703) 807-2100  
www.rcfp.org

Bruce D. Brown  
Executive Director  
bbrown@rcfp.org  
(703) 807-2101

---

## STEERING COMMITTEE

SCOTT APPLEWHITE  
*The Associated Press*

WOLF BLITZER  
*CNN*

DAVID BOARDMAN  
*Temple University*

CHIP BOK  
*Creators Syndicate*

JAN CRAWFORD  
*CBS News*

MICHAEL DUFFY  
*Time*

RICHARD S. DUNHAM  
*Tsinghua University, Beijing*

ASHLEA EBELING  
*Forbes Magazine*

SUSAN GOLDBERG  
*National Geographic*

FRED GRAHAM  
*Founding Member*

JOHN C. HENRY  
*Freelance*

NAT HENTOFF  
*United Media Newspaper Syndicate*

JEFF LEEN  
*The Washington Post*

DAHLIA LITHWICK  
*Slate*

TONY MAURO  
*National Law Journal*

JANE MAYER  
*The New Yorker*

DAVID McCUMBER  
*Hearst Newspapers*

JOHN McKINNON  
*The Wall Street Journal*

DOYLE MCMANUS  
*Los Angeles Times*

ANDREA MITCHELL  
*NBC News*

MAGGIE MULVIHILL  
*Boston University*

BILL NICHOLS  
*Politico*

JEFFREY ROSEN  
*The New Republic*

CAROL ROSENBERG  
*The Miami Herald*

THOMAS C. RUBIN  
*Seattle, Wash*

ERIC SCHMITT  
*The New York Times*

ALICIA SHEPARD  
*Freelance*

MARGARET LOW SMITH  
*The Atlantic*

JENNIFER SONDRAG  
*Bloomberg News*

PAUL STEIGER  
*Pro Publica*

PIERRE THOMAS  
*ABC News*

SAUNDRA TORRY  
*USA Today*

JUDY WOODRUFF  
*PBS/The NewsHour*

*Affiliations appear only  
for purposes of identification.*

Adam Marshall

Reporters Committee for Freedom of the Press

1101 Wilson Blvd., Suite 1100

Arlington, VA 22209

(571) 481-9324

amarshall@rcfp.org

LeVale Simpson

Office of Ethics, Risk and Compliance Services

University of California, Berkeley

200 California Hall, MC #1500

Berkeley, CA 94720-1500

pra@berkeley.edu

October 16, 2014

Dear Mr. Simpson,

We are in receipt of your letter dated October 15, 2014 regarding the California Public Records Act (Gov't Code, § 6250, *et seq.* ("PRA")) request submitted by the Reporters Committee for Freedom of the Press ("RCFP" or the "Reporters Committee") and Professor Stephen Bloom on October 8, 2014.

Your letter indicates that the University of California, Berkeley (the "University") "must extend, by 14 days, its determination of whether the records [sought] are subject to release" under the PRA. However, the provision cited in your letter authorizing such an extension of time does not apply to our request to inspect the Commission Files (call number BANC MSS 80/43 c) currently in the possession of the Bancroft Library. The provision you cite, on its face, applies only where there has been "a request for a copy of records. . . ." (Gov't Code, § 6253(c).) The request submitted under the PRA expressly seeks "access and access alone to inspect these records under the PRA." Accordingly, it falls under Government Code section 6253, subdivision (a), which states:

Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

Both the Reporters Committee and Professor Bloom have been informed by the Bancroft Library that no portion of the Commission Files are open for public inspection, as they have been "closed for research use until 2028".

If the University is going to continue to deny public access to these records in whole or in part, please justify that denial forthwith by citing what you contend to be the applicable exemption(s) set forth in the PRA. (*See Gov't Code, § 6255.*) In addition, please ensure that any such denial includes the "names and titles or positions of each person responsible for the denial," as required by Government Code section 6253, subdivision (d). If it is not the University's position that these records are exempt, please inform the Bancroft Library that these records are to be made available immediately for public inspection.

In addition, your letter states that "[t]he University reserves its right to recoup copy costs for the records responsive to your request." Again, the request submitted by the Reporters Committee and Professor Bloom seeks "access and access alone to inspect these records under the PRA." Your reference to "copy costs" is, thus, superfluous. And, to be clear, no fees may be charged for access. (*See Gov't Code, § 6253.*)

The Reporters Committee and Professor Bloom ask that the University provide a response to its written request for access under the PRA immediately, and no later than October 23, 2014, which is seven calendar days from today, and fifteen days since the request was submitted. As you are aware, the PRA allows any person to institute proceedings for injunctive or declarative relief in order to enforce their right to inspect public records under the PRA. (*Gov't Code, § 6258.*) The Reporters Committee and Professor Bloom reserve all rights.

Sincerely,

Adam Marshall  
Jack Nelson Legal Fellow  
Reporters Committee for Freedom of the Press

cc:  
Professor Stephen G. Bloom  
School of Journalism and Mass Communication

Katie Townsend  
Litigation Director  
Reporters Committee for Freedom of the Press

# **EXHIBIT F**

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Date: 10/28/2014 12:43:14 AM

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Sender: PRA - UC Berkeley <pra@berkeley.edu>

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Recipient: <amarshall.54158@mail.ifoia.org>

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Attachments: RCFP Letter to LeVale Simpson.pdf, RCFP & Professor Bloom PRA Request to UC-Berkeley.pdf,

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Subject: **Fwd: Fwd: Public Records Act Request**

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Mr. Marshall:

This letter is in response to your October 8, 2014 request for access to historical files of the Special Crime Study Commission on Organized Crime in California ("the Commission Files" or "the Files"), as well as your follow-up letter dated October 16, 2014. Both pieces of correspondence are attached.

The Files you seek access to are not "public records" as defined by the California Public Records Act ("CPRA"). The term "public records" is defined in California Government Code Section 6252(e) as records that contain "information relating to the conduct of the public's business." The Commission Files are not related to the conduct of the University's business, and are therefore not subject to production under the CPRA.

The Commission Files are property owned by The Regents, but are not records that relate to the conduct of the University's business. "Unless the writing is related 'to the conduct of the public's business' and is 'prepared, owned, used or retained by' a public entity, it is not a public record under the CPRA and its disclosure would not be governed by the Act." *The Regents of the University of California v. Superior Court* (2013) 222 Cal. App.4<sup>th</sup> 383, 399 (emphasis in original).

Public records include "any record required by law to be kept..." *City of Santa Monica v. Superior Court*, 204 Cal. App. 2d 68, 73 (1962). While the mere custody of a record by a public agency does not make it a public record, if a record is kept by an officer because it is "necessary or convenient to the discharge of his official duty it is a public record." *California State University v. Superior Court*, 90 Cal. App. 4th 810, 825 (2001). There, the court found that documents subject to a CPRA request related to the public's business because they relate to "operation of ...a public facility on land owned by a public university...[and] financed, in part, by public funds..." *California State University*, 90 Cal. App. 4<sup>th</sup> at 825. See also, *Commission on Peace Officer Standards and Training v. Superior Court*, 42 Cal.4th 278 (2007) (documents relate to the public's business, because the Commission uses them to monitor [compliance]...which is a requirement for eligibility for...state funding[.]).

Here, the Commission Files do not relate to the conduct of the University's business, for purposes of the CPRA. The Files are not used to monitor compliance or to operate the University. The Files are not required by law to be kept, nor are they records necessary to the discharge of official University duties. Disclosure of these Files would not shine any light on the workings of the

University, which is the fundamental purpose of the CPRA. Rather, those archival materials are merely property gifted to the University for eventual use in its educational and research activities. The requested files are simply not "public records" subject to the provisions of the Public Records Act.

Even if the Commission Files were deemed to be public records, they would be exempt from disclosure under the CPRA. While the purpose of the CPRA is to ensure accountability in government, "[t]he people's right to know . . . is not absolute." *Regents of the University of California v. Superior Court*, 222 Cal. App.4th at 400. The numerous exemptions written into the statute demonstrate the Legislature's measured purpose of "providing the public with access to public records while recognizing that the access has some limits." *Id.* One of those exemptions is the exemption of Gov't. Code 6255, under which a record may be withheld if "...on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." The courts conduct a balancing test on a case-by-case basis to determine whether this exemption applies. *City of San Jose v. Superior Court* (1999) 74 Cal. App.4th 1008, 1017.

As a threshold matter, in order for there to be *any* public interest in disclosure, a record must relate to "the people's business." "...[T]he critical question is whether the information contained therein relates to the conduct of the 'public's business.'" *Coronado Police Officers Assoc. v. Carroll*, 106 Cal. App.4th 1001,1006. As discussed above, the Commission Files do not relate to the University's business in any way and thus do not meet this threshold requirement. In addition, there is a strong public interest in withholding the records in this case. The Files you seek consist of unprocessed papers and apparently contain unsubstantiated claims regarding various individuals' involvement in organized crime. Because those papers were considered to contain potentially damaging statements that were not verified, the gift deed contains a restriction that the papers not be reviewed or examined by anyone without the permission of the donor until his death, and after that point, only with the permission of The Bancroft Library Director. Disclosure could result in defamation or invasion of the privacy of individuals identified in the records, and would be contrary to the desires of the donor. Thus, the balance of interests weighs in favor of not producing the Files. *Cal. Gov. Code 6255.*

The Commission Files are also exempt from disclosure under Gov't. Code 6254(k). The CPRA does not require the disclosure of records exempted or prohibited pursuant to federal or state law. The Commission Files contain information that could cause an unwarranted invasion of the personal privacy of a living individual. Under federal law, such records may be withheld for 75 years after the event, and that is the standard practice for Special Collection archivists. *36 CFR 1256.56.* With respect to this collection, Bancroft has long followed that practice and has not granted access to any third parties. Furthermore, as a matter of California Constitutional law, all people have a right of privacy in information pertaining to them. *California Constitution Article 1, section 1; Civil Code 1798.1.* Thus, disclosure of the Files would violate federal and state law.

Finally, Gov't Code 6254(k) also exempts from disclosure records that are exempted or prohibited under provisions of the Evidence Code relating to privilege. Under Evidence Code 1040, official information may be withheld from disclosure. Evidence Code 1040 generally defines official information as information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public. As discussed above, the "necessity for preserving the confidentiality of the information...outweighs the necessity for disclosure." Cal. Evidence Code 1040(b)(2). If the University

were required to make archival records public immediately upon their donation to the University pursuant to CPRA, potential donors would likely decline to donate sensitive records to the University, thereby hindering the public mission of the University of teaching, research, and public service. Because the Files you seek contain "official information," that was only disclosed to the University on the condition that it be held in confidence, they are exempt from disclosure.

For all of the above reasons, the University will not grant access to the requested Files until the appropriate waiting period has passed. The Files are not "public records" under the CPRA, and even if they were public records, they would be exempt from disclosure in their entirety.

Sincerely,

LeVale Simpson

PRA Coordinator

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University of California, Berkeley  
Office of Ethics, Risk and Compliance Services  
200 California Hall, MC #1500  
Berkeley, CA 94720-1500  
Phone: (510) 664-4615

----- Forwarded message -----

From: <[amarshall.54158@mail.ifoia.org](mailto:amarshall.54158@mail.ifoia.org)>  
Date: Thu, Oct 16, 2014 at 2:18 PM  
Subject: Re: Fwd: Public Records Act Request  
To: PRA - UC Berkeley <[pra@berkeley.edu](mailto:pra@berkeley.edu)>

Reply ABOVE THIS LINE

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Dear Mr. Simpson,

Please find attached a letter from the Reporters Committee regarding your October 15, 2014 letter.

Sincerely,

Adam Marshall

Jack Nelson Legal Fellow

Reporters Committee for Freedom of the Press

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On 10/15/2014 PRA - UC Berkeley <[pra@berkeley.edu](mailto:pra@berkeley.edu)>  
Mr. Marshall,

Please allow this message to serve as an acknowledgement of your attached request, under the California Public Records Act (CPRA), for access to certain records.

Because of the unusual circumstances -- namely, our need to consult with multiple University components having substantial subject matter interest herein -- regarding your request, the University must extend, by 14 days, its determination of whether the records you seek are subject to release under CPRA. California Government Code section 6253(c).

To be clear, this message is not a determination that the records you have requested are necessarily exempt from disclosure. Once we have more information, we will provide you with a more definite determination.

Lastly, please bear in mind that CPRA allows agencies to make copies of records available "upon payment of fees covering the direct costs of duplication." Government Code section 6253(b). The University reserves its right to recoup copy costs for the records responsive to your request. The charge is \$0.20 per page for copies, and payment is required before release of the records.

Sincerely,  
LeVale Simpson

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University of California, Berkeley  
Office of Ethics, Risk and Compliance Services  
200 California Hall, MC #1500  
Berkeley, CA 94720-1500  
Phone: (510) 664-4615

----- Forwarded message -----

From: **Adam Marshall via iFOIA.org** <[amarshall.54158@mail.ifoia.org](mailto:amarshall.54158@mail.ifoia.org)>  
Date: Wed, Oct 8, 2014 at 12:14 PM  
Subject: Public Records Act Request  
To: Public Records Coordinator <[pra@berkeley.edu](mailto:pra@berkeley.edu)>

Reply ABOVE THIS LINE

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Dear Public Records Coordinator:

Attached is a formal request for public records. Please feel free to contact me at this email address or at 571-481-9324 with any questions.

Thank you for your assistance.

Sincerely,

Adam Marshall

This message was sent via iFOIA.org. If you have questions about iFOIA, please refer to the [About page](#) or email [ifoia-help@rcfp.org](mailto:ifoia-help@rcfp.org).

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*This message was sent via [iFOIA.org](http://iFOIA.org).*

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wrote:

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*This message was sent via [iFOIA.org](https://www.foia.org).*

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