

1 researcher?

2 A. 2008.

3 Q. So and would this training have been done
4 shortly after that?

5 A. Yes.

6 Q. So it was conducted in 2008?

7 A. Yes.

8 Q. And the one-on-one training that you received,
9 what did you learn about the California Public Records
10 Act during that training, if anything?

11 A. That I will be handling them, you know. There
12 will be time -- it's part of my job and how to go about
13 searching in our computers for the different policies
14 and procedures when they are asked of us and just showed
15 me about our library, our PRD library and how manually
16 to search for any documents that might be there and not
17 on the computer.

18 Q. Did you receive any other training at that time
19 relevant to searching for documents in response to a
20 Public Records Act request?

21 A. No.

22 Q. And am I right that once you became a
23 supervisor in the Planning and Research department there
24 was additional training that you received?

25 A. Yes.

1 Q. And -- well, first, when did you become a
2 supervisor?

3 A. I was already a supervisor. I just took
4 another spot inside in the administration --
5 administrative building at PRD. First I was supervisor
6 in patrol but I took an interview and was picked to
7 actually work for PRD.

8 Q. So when you were a staff researcher you were
9 still a supervisor in that role?

10 A. Yes. I just didn't have anyone to supervise,
11 but I kept, you know, my rank.

12 Q. Gotcha.

13 A. Yeah.

14 Q. And so then there came a time when you sort of
15 became an actual supervisor in PRD where you would
16 actually have people under you to supervise?

17 A. Yes.

18 Q. And at that time did you receive additional
19 training?

20 A. No.

21 Q. So the only training that you have received
22 with respect to the California Public Records Act is
23 what you just described when you became a staff
24 researcher?

25 A. Yes.

1 Q. And so just to drill down a little bit more on
2 that training, am I right that you learned that you'll
3 actually be doing California Public Records Act work to
4 respond to requests and you were told how to search the
5 computers and the hard copy files in Planning and
6 Research?

7 A. Yes.

8 Q. Was there anything else as part of that
9 training or does that capture everything you learned?

10 A. It's a hands-on training and I mean it's an
11 ongoing -- you search the different -- and you try to
12 get everything. There is nothing, you know, standard or
13 written, you know what I mean?

14 Q. So there wasn't any sort of guideline or manual
15 or --

16 A. No.

17 Q. -- nothing like that provided?

18 A. No.

19 Q. How long did the hands-on training last?

20 A. I think I'm always learning, you know. So
21 yeah, I couldn't tell you. It's not a, you know, a
22 date. But at the time I had a supervisor, so when I was
23 handling any kind of project, whether CPRA or anything
24 else, I had a supervisor reviewing my work and then
25 another supervisor reviewing his work and we have a

1 captain. You know, there is multiple levels of
2 supervision, so if we miss anything somebody will catch
3 it, you know, that kind of thing.

4 Q. So by on-the-job training you basically mean
5 what you learned from your supervisors as you did your
6 job?

7 A. Yes.

8 Q. Was any training ever offered about the
9 California Public Records Act, you know, that maybe you
10 didn't take but that's available within the department?

11 A. No.

12 Q. So we touched on this just a little bit but I'd
13 like to hear more about what you actually do in your job
14 with the Planning and Research Division.

15 A. I'm an officer in charge of a unit that's
16 called the Special Research Unit. I have four police
17 officers that work for me. My unit does research for
18 our division. We handle e-mails from outside agencies.
19 We handle discovery requests, whether it's California
20 Public Records or subpoena duces tecums. We handle
21 product evaluations where we're the liaisons between the
22 subject matter experts in our department and different
23 entities to -- in order to get a new product regarding
24 uniform or equipment for the department, and we also
25 handle very small notices, directives for the division.

1 researcher?

2 A. We have a database, it's a project tracking
3 system where I put in their name and it's -- they get
4 notified by e-mail that they have a new project, plus
5 you have the manual project sheet with the actual
6 correspondence and I actually hand them or put it in
7 their inbox if they are out.

8 Q. And how do you decide which of your four
9 researchers to assign a CPRA request?

10 A. Just they are in turn. Basically I just check
11 who's next on the line, you know. I try to be fair so
12 not one person handling too many and one nothing, you
13 know.

14 Q. So you don't assign it based on the person's
15 experience or expertise or knowledge?

16 A. No.

17 Q. Just based on oh, they've got room in their
18 schedule to take this?

19 A. Yes. They've all been trained the same.

20 Q. And what sort of training do they receive?

21 A. Just what I told them and how to go about
22 searching for documents.

23 Q. Is that the same sort of training that you
24 received when you were a staff researcher?

25 A. Yes.

1 Q. And so what in particular have you told your
2 staff about searching for records?

3 A. Well, first thing I tell them is once you get a
4 project is to call the requester. So if I may, I
5 would -- you know, there is always a phone number with
6 the correspondence to call that person and make sure --
7 due date is very important because these actually, they
8 come in within -- you know, you don't have too much
9 time, usually a week turnaround. So we try to make sure
10 we have the due date and anything else, and we just get
11 clarifications. We get requests very broad sometimes
12 and we try to get clar- -- if they can, you know, from
13 Legal Affairs Division.

14 After they do that -- well, they've got to
15 create the folder with a chrono so they can keep -- you
16 know, when they got the project they start chronological
17 order of what they did. I've told them, you know, first
18 thing to look -- there is a database called the
19 automated directives database, ADTS it's called,
20 automated directives tracking system. So I tell them to
21 search there. Anything that was actually published
22 that's actually -- you know, whether it's a policy or
23 procedure for the department should be there. So if you
24 put in a keyword in the search engine you should get.

25 Now, sometimes it tells you go to PRD library

1 to find it if it, you know, it was just never scanned
2 into the database and we're lucky enough that it's --
3 you know, we just walk to the back and find it manually
4 if it's not actually scanned into that database.

5 Now, after they do that I ask them to check --
6 again, the same local area network computer there is a
7 reference library to the left of the screen where they
8 can go through all the notices, different special orders
9 or training bulletins in that, you know, whatever we get
10 is there. So just to do their, you know, extra search
11 so they don't, you know, miss anything.

12 Q. So am I right that you would always -- you
13 would expect your staff to in addition to querying the
14 computer system, to also check the hard copy files to
15 make sure that they didn't miss stuff that might not
16 have been scanned in?

17 A. Usually you should get -- you'll get a hit, it
18 might not be scanned in but they'll tell you go back.

19 Q. Oh, I see. So there are situations in which
20 you would -- there would be a document that's indicated
21 in the system that's not actually -- you can't actually
22 use the system to click --

23 A. Right.

24 Q. -- on that document and see it in the system?

25 A. Yes.

1 Q. Are there ever situations in which, you know, a
2 document exists in the paper files but it's not in the
3 electronic system, so you would need to actually check
4 the paper files to find that document, or actually to
5 find out that that document exists?

6 A. Just by looking at reference library or by just
7 searching the computer different ways, you just get kind
8 of ideas from different -- from that computer system,
9 just to look different places, whether it's at the
10 division -- depending really on the subject matter where
11 to look.

12 But you really have to get some sort of clue
13 from the computer first, otherwise the library is -- you
14 know, we got years and years of directives and manuals
15 back there. So short of going, you know, piece by
16 piece -- you know, paper -- that would never happen. I
17 mean you're talking it will take forever. So you have
18 to have some sort of knowledge that something's back
19 there manually to go look for it.

20 Q. And you get that from the computer?

21 A. Yes.

22 Q. Are all of Planning and Research Division's
23 hard copy documents inventoried in the computer system?

24 A. No.

25 Q. And what documents are not inventoried in the

1 computer system? Or let me rephrase the question.

2 Are there certain categories of documents that
3 are not inventoried in the system, or are there certain
4 date ranges of documents that are not inventoried, or it
5 could just be anything that's not inventoried?

6 A. I probably misunderstood. Everything is in the
7 computer as far as existing but it's not scanned, I
8 think that's -- yeah. So you will find it -- if you put
9 in the right keyword you will find it exists, but you
10 won't find -- you can't click on it maybe, that would be
11 you would have to manually search for.

12 Q. And when you search with keywords what are you
13 searching? Like, what do those keywords relate to? Is
14 that, like, a document title? Are you searching the
15 contents of a document? What are those keywords looking
16 for?

17 A. It could be the subject or the actual content,
18 but different -- like, you'll have to do separate
19 different keywords.

20 Q. And how do you train your staff, if at all, to
21 search using keywords?

22 A. Just by looking at the actual request and I,
23 you know, tell them, you know, you got to search for
24 this, not for that, don't put the whole -- let's say
25 it's a whole line of things they want, you can't put the

1 whole subject. So just one word at a time so we don't
2 miss anything.

3 Q. Because if you put a whole phrase in and that
4 phrase isn't, you know, exactly the same -- let me
5 rephrase.

6 Am I right in understanding that you tell your
7 staff don't put in an entire phrase because if you do
8 that and the phrase doesn't appear in exactly that way
9 in the document you won't get a hit?

10 A. Yes or no, because yes -- but I'd rather
11 have -- sometimes even the request comes in not knowing
12 what they are requesting for, so I try to help them out
13 that much where, you know, it could be called something
14 else, you know. So when it's something "community"
15 something, just putting "community" you'll get a lot
16 of -- that way you'll have to go through one by one,
17 make sure we didn't miss anything.

18 So yes, if you do the whole line you might get
19 one or two documents, but if you search different keys
20 you might find something else that pertains to the same
21 subject basically.

22 Q. So drilling down on that example, so you were
23 relating to community mapping when you said "community"?

24 A. Yes.

25 Q. So am I right that you would train your staff

1 don't just search "community mapping," search
2 "community," you know, do one search for "community" and
3 do another search for "mapping" and look at the
4 individual results you get?

5 A. Yes.

6 Q. And you do that to make sure that you -- that
7 your staff is finding all of the records that are
8 responsive to a request for community mapping, for
9 instance?

10 A. Yes.

11 Q. And actually let me back up. Earlier you
12 mentioned that one of the first things you'll do is
13 you'll call the requester?

14 A. Uh-huh.

15 Q. By requester do you mean the sender of a CPRA
16 request or do you mean the internal department requester
17 that sends you the 15.2?

18 A. The internal, you know.

19 Q. So you won't -- you know, if John Doe sends the
20 LAPD a CPRA request and it's then sent from, I guess,
21 Legal Affairs to you, you wouldn't call John Doe, you
22 would call Legal Affairs?

23 A. Yes.

24 Q. And what do you train your staff to do in terms
25 of getting information from the forwarding entity within

1 the automated directive database; is that right?

2 A. Yes.

3 Q. And how will you know -- and am I right that
4 that's the only database that the Planning and Research
5 Division has available to it?

6 A. No. We have our project tracking system and
7 there is the -- it's still called PRD, I think, a
8 project -- it's just for opening a project number and,
9 you know, putting in the subject, what it is and who is
10 assigned. Plus we have, you know, like, the reference
11 library, you know, where the manual is and the different
12 notices. So I don't know if that's a database.

13 Q. So for instance, does the Planning and Research
14 Division have a P drive?

15 A. Yes.

16 Q. And do you ever -- and is that separate from
17 the automated directive database?

18 A. Yes.

19 Q. What sort of documents are stored in the P drive?

20 A. Different correspondence, different folders of
21 researchers, like, projects that we're actually working
22 on, like I said before, the notices or special order to
23 change -- if there is an open project, so -- so the
24 researcher will open a folder in the P drive and all the
25 documents are in there, so if we have to make any

1 changes and they are not there we have access to them.

2 Q. And are your staff trained to search the P
3 drive in response to a CPRA request?

4 A. No.

5 Q. Why not?

6 A. Because CPRAs are what -- for our purposes is
7 what's already policies and -- they are asking for a
8 policy or procedure, not for an open project, if that
9 makes sense.

10 Q. So you've never searched the P drive in
11 response to a CPRA request?

12 A. No.

13 Q. Do you have any way of knowing what search
14 terms your staff have put into the automated directive
15 database in searching for documents in response to a
16 CPRA request?

17 A. Do I know what they search for?

18 Q. Right.

19 A. I hope so. It's what the request is.

20 Q. So I -- going back to the chrono, if I
21 understand your testimony correctly, they sort of --
22 your staff documents, you know, whether they forwarded
23 the request to you or whether it's been kicked back and
24 that sort of thing but they don't actually put in what
25 they've done to search?

1 A. Correct.

2 Q. And so am I right that they are trained to use
3 keywords to search within the automated directive
4 database; right?

5 A. Yes.

6 Q. And so how do you know what term it -- well,
7 let me -- let me first ask, do you know what terms your
8 staff has used in searching for documents within the
9 automated directive database?

10 A. No.

11 Q. So you don't have any assurance that they have
12 used appropriate terms?

13 A. The assurance is what I do. I double check, so
14 I do my own search after them.

15 Q. For every single request?

16 A. Yes.

17 Q. So why do you assign it to them in the first
18 place?

19 A. Because that's the way -- they are supposed to
20 do the work and I'm supposed to, you know, review their
21 work, that's just the way our division or my unit works.

22 Q. So I guess am I right in understanding that
23 they'll -- they are supposed to do keyword searches
24 within the automated directive database; right?

25 A. Yes.

1 Q. And then am I right that you will then
2 independently do all of the searches that you felt that
3 they should have done?

4 A. Yes.

5 Q. It seems a little duplicative.

6 A. Yes. But be mindful, if the ADTS, the
7 automated directives tracking system is -- it will tell
8 you all the hits, like, all the -- what's supposed to be
9 there. So I'm not going actually and doing manually.
10 So you'll get the list, and if it's a lot of response,
11 let's say they found 200 pages of documents, they
12 actually have to do a matrix of what's submitted. So
13 I -- you know, it is simple. It's not that -- it's not
14 a big deal. So you could actually see the titles and
15 check, okay, everything's there.

16 Q. I see. So what you're really relying on your
17 staff to do is to go ahead and pull all of the documents
18 that are returned by the automated directive database?

19 A. Yes.

20 Q. And they'll do that by either printing them
21 from the database itself or by going into the file room
22 and pulling the hard copy?

23 A. Yes.

24 Q. When there are a lot of results in response to
25 a key term do you -- well, first, what was the matrix

1 you mentioned? Is that something they would do if there
2 were a lot of results?

3 A. Yes.

4 Q. What is that matrix?

5 A. It's just a list of the different documents.

6 Let's say they found a notice, it will say subject and
7 which bureau or entity it came from, and the year of the
8 actual document. It's just a list, you know, an Excel
9 spreadsheet of what they found, and it totals all the
10 pages at the end because we have -- you know, we write
11 here's -- you know, we found 200 relevant material and
12 it will be a matrix to explain what it was, because
13 we're not going to attach 200 -- sometimes we -- you
14 know, it could be 500 pages. We won't attach it.
15 Everything will be e-mailed back to Legal Affairs
16 Division.

17 Q. So the matrix that the staff would put
18 together, that's a list of the responsive documents that
19 they ultimately identified?

20 A. Yes.

21 Q. So say that you run a search for a term and you
22 get 200 results. Am I right that would be a lot of
23 results?

24 A. Yes.

25 Q. So you've got 200 results and the staff member

1 is going to have to cull those somehow; right?

2 A. Call?

3 Q. Is going to have to look at them and say okay,
4 some of these are responsive and some of them aren't;
5 right?

6 A. Oh. Yes.

7 Q. And so how -- how is the staff member trained
8 to do that?

9 A. If, like, the keyword, if they are asking
10 for -- usually specific subjects, they click on it and
11 see if it's, you know, is it actually regarding that
12 subject.

13 Q. And so how, if at all, does the staff member
14 document that process? Let me rephrase.

15 How, if at all, is the staff member trained to
16 document that process?

17 A. I guess it's not documented.

18 Q. So by the time it gets to you -- say that the
19 original search produced 200 hits and the staff member
20 went through and culled, you know, what the staff member
21 says to you are responsive documents, how would you know
22 that the staff member didn't miss a few things when they
23 are culling?

24 A. Like I said before, I do my own research, so --

25 Q. So will you go through each of those 200

1 entries yourself?

2 A. The -- the -- no. The matrix, is that what you
3 mean?

4 Q. Well, am I right that the matrix wouldn't
5 have -- would just list the things that the staff member
6 thinks are responsive; right?

7 A. Right.

8 Q. So, you know, if the staff member determined
9 that some of those 200 results were not responsive to
10 the request, those wouldn't -- those nonresponsive items
11 wouldn't be in the matrix; right?

12 A. Yes, but I'm doing my own research.

13 Q. And so that's what I'm trying to understand.
14 So you would do the search, right, your own search, and
15 you would find results -- would you go -- and say you
16 got 200 results. Would you go through each of those 200
17 results and create your own matrix?

18 A. No.

19 Q. So what would you do?

20 A. Okay. I don't think we get 200 results. I
21 think you're -- 200 pages. You know, the results --
22 let's say we get 50 documents --

23 Q. Okay.

24 A. -- resulting in 200 pages; right? So I go
25 through -- I have the matrix in front of me and I have

1 the search engine in front of me, so I'm searching and
2 every time I find, you know, a document that pops out
3 and see if the -- you know, it's in the matrix or not,
4 you know. Let's say they missed one, I just write it on
5 a piece of paper and then do the search myself to see
6 if, you know, were they correct not to include this, yes
7 or no.

8 Q. And so how would you know whether they were
9 correct? What would you do to determine whether they
10 were correct?

11 A. I have to read the actual, you know, findings,
12 whether it's a notice or a policy of some sort or a
13 manual change, whatever the document is, and see if it
14 actually applies to the request.

15 Q. So if you're looking -- so after you've run
16 your own search you'll compare your own search results
17 to the matrix and if you see a document in the search
18 results, in your search results that isn't in the matrix
19 you'll actually look at that document yourself to
20 determine whether it should be in the matrix?

21 A. Yes.

22 Q. So am I right that to compare your search
23 results to the matrix you would have to do basically the
24 same keyword search as was done to produce the matrix?

25 A. Yes.

1 Q. And if the keywords aren't in the chrono how do
2 you know what keywords were used to search?

3 A. It's in the request usually. I mean, we both
4 are reading the same request. They are not making up
5 keywords. It should be there.

6 Q. Well, so you mentioned earlier that your staff
7 member is trained to break up a phrase into individual
8 words in order to run keyword searches; right?

9 A. Yes.

10 Q. So if -- and am I right that oftentimes CPRA
11 requests come in and they will ask you to search for,
12 you know, basically a phrase, a subject matter that's
13 identified with a phrase?

14 A. Yes.

15 Q. And if the -- let me rephrase.

16 The staff member is trained to break up that
17 phrase into words but isn't necessarily going to write
18 down which words they searched in the chrono; right?

19 A. Yes.

20 Q. So how would you know exactly what words they
21 had used to break up that phrase?

22 A. I wouldn't, I guess.

23 Q. So how would you know that the search that
24 you're running to check their work is the same search
25 that they ran?

1 A. It should be because that's what I've taught
2 them, I mean. You know -- I don't know, actually. They
3 should have. I mean it should be there in the request.

4 Q. So if they've done their job correctly, the
5 search terms they use should be the same search terms
6 you use; right?

7 A. Yes.

8 Q. But you don't have any specific assurance of
9 that?

10 A. Just my own work, I guess.

11 Q. And what do you mean by that?

12 A. Remember, I do the search myself, so, you know,
13 I trust myself to do the right thing, so, I guess, if
14 that makes sense.

15 Q. So at the end of the day the only search you
16 really trust is your search?

17 MR. JOHANSEN: Objection. That misstates the
18 witness's testimony.

19 You can answer the question.

20 THE WITNESS: No. I'm double checking. We
21 just want to give, you know, everything, in good faith
22 and give, you know, all the documents we can find. Now,
23 do we miss something? We might. You know, but we -- I
24 am just double checking the work. Even my job -- I mean
25 my work is double checked. It's just not about trust or

1 not trust. It's just, you know, more trying to be as
2 much -- you know, giving the requester what they need or
3 what they -- we're not trying to hide anything, you
4 know.

5 BY MR. CHARNEY:

6 Q. Sure. But in double checking the staff
7 member's work you assume that the search terms you are
8 using are the same search terms they use; right?

9 A. Yes.

10 Q. But you don't know that for sure?

11 A. Yes.

12 Q. Are there any -- and I'm sorry if this is a
13 little duplicative, but just to confirm, are there any
14 written protocols or any guidance that you provide to
15 your staff about how to search in response to a CPRA
16 request?

17 A. No.

18 Q. And there is no documentation that's, you know,
19 more generally available within the department for your
20 staff to tell them what to do in response to a CPRA
21 request; right?

22 A. No.

23 MR. JOHANSEN: So Brendan, it's close to 11:30.
24 Is this a good time for a short break?

25 MR. CHARNEY: Sure. Let's go off the record.

1 Q. So they'll sort of just update you on what they
2 are working on?

3 A. Yes.

4 Q. When did you become a terrorism liaison
5 officer?

6 A. After coming to PRD, but I'm not sure exactly
7 when. Within maybe -- if I have to guess, it was 2011,
8 maybe, 2010.

9 MR. CHARNEY: Want to go off the record?

10 MR. JOHANSEN: Sure.

11 * * *

12 (LUNCHEON RECESS)

13 * * *

14 BY MR. CHARNEY:

15 Q. Sergeant Moussa, do you understand that you're
16 still under oath?

17 A. Yes.

18 Q. So I want to go back to the process for
19 searching and how you train your officers. The process
20 that you've described, is that the same process that's
21 been used over time or has it changed since -- well,
22 since you've become an officer in charge in the
23 division?

24 A. No. It's the same.

25 Q. So the training and the process that your staff

1 is trained to use, what you've described, would apply
2 going back to 2008 when you first started?

3 A. Yes. That's how I was trained.

4 Q. And you previously testified that all of the
5 division's paper files are inventoried within the
6 computer system; is that right?

7 A. Yes.

8 Q. And by inventoried you mean that they are
9 listed within the computer system even if they are not
10 actually scanned within that system?

11 A. Yes.

12 Q. And what is listed in that computer system,
13 like, what information -- assuming that -- putting aside
14 stuff that's actually scanned in, like, what information
15 appears for each item that's in that system?

16 A. All the directives are in the system,
17 directives as in notices, special orders, operations
18 orders, or administrative orders. And what's in there,
19 you'll get a title and a date and the bureau or division
20 that it came out of.

21 Q. Is there a summary?

22 A. No.

23 Q. What about tags for subject matter?

24 A. Tags?

25 Q. Sure. So is there an indicator that says this

1 order relates to this subject matter?

2 A. No, no, there isn't. You have to click on it
3 and open it and read through it.

4 Q. And how do you know that all of the paper
5 documents are inventoried in the computer system?

6 A. Well, Planning and Research actually, you know,
7 updates that. So I just trust they did the right thing,
8 our Forms Unit, but how do I know? I'm not sure how to
9 answer that.

10 Q. Well, I mean, so what's your basis for
11 believing that everything's inventoried? Did somebody
12 tell you that it's supposed to be done that way? Have
13 you seen them scanning? Has somebody told you we've
14 checked and everything's in there? I mean why would you
15 think that everything's in there?

16 A. Oh, I'm sure at one point they told me that it
17 was all inventoried and it's in there, because our
18 library, you know, if you go to our, you know, actual
19 manual library, there are folders and they are, you
20 know, dated from -- yearly and what's in there, there is
21 a table of contents. So somebody was in charge way
22 before me and did, you know, did the work, so I trust
23 that, but yeah, that's...

24 Q. And what do you mean, "did the work"?

25 A. The inventory part, I mean it wasn't me but,

1 yeah, I'm assuming the Forms Unit did it. They are in
2 charge of that tracking system.

3 MR. CHARNEY: You know, can we go off the
4 record for just a minute?

5 MR. JOHANSEN: Sure.

6 (Discussion off the record)

7 BY MR. CHARNEY:

8 Q. Back on the record.

9 So was the Forms Unit the one that told you
10 that everything was supposed to be inventoried within
11 the computer system?

12 A. No.

13 Q. So who told you that?

14 A. I think it was my supervisor. I don't
15 remember.

16 Q. And is that Lieutenant -- your supervisor who
17 you think may have told you that, is that Lieutenant --

18 A. No.

19 Q. No?

20 A. Because Lortz is recent. I've had way more
21 before that. From when I first got there it was
22 Sergeant Mark Kelly who was my immediate supervisor in
23 the Special Projects Section, or Unit, so I'm assuming
24 he told me, but, you know, I can't remember.

25 Q. So you don't have a specific recollection of

1 being told that?

2 A. No, but I was -- you know, when I did my own
3 CPRA when I was staff researcher that was one of the
4 databases that I looked at.

5 Q. Do you know if anybody since 2008 has actually
6 checked to make sure that the paper records are all
7 inventoried in the computer system?

8 A. No.

9 Q. And when new things come in, new directives or,
10 you know, any document that should be filed, how do you
11 know that those new documents are being inventoried in
12 the computer system?

13 A. We have a unit, again, the Forms Unit, they are
14 in charge of publishing all the directives on the LAN or
15 in the officers' training, so they do that, that's their
16 job. I don't get involved in what they do.

17 Q. And how do you -- and how do you know that
18 that's their job?

19 A. They are in charge of all the forms, our
20 publishing.

21 Q. So I guess, for instance, has anybody from the
22 Forms Unit ever told you, oh, we scan this stuff in and
23 make sure that it's in the -- inventoried in the
24 database?

25 A. Yes.

1 Q. And who told you that?

2 A. Jack Ng is the last name, he's a supervisor.

3 Q. And when did he tell you that?

4 A. You want exact date? I don't know.

5 Q. Was it within the last year? Was it when you
6 first started, for instance?

7 A. A while back, yeah, from -- yeah, I don't know.
8 But yeah, a while back. He's been there forever.

9 Q. And so you trust the Forms Unit to actually
10 maintain that inventory?

11 A. Yes.

12 Q. And when you're actually searching documents
13 within the database, or if your staff is doing that
14 you're able to search the title, I assume, of the
15 document that's reflected in the database?

16 A. Yes.

17 Q. And are you also able to search the contents of
18 a document that's in the database if that's been --
19 document has been scanned in?

20 A. I assume it is. I actually don't know.

21 Q. What kind of a database is it? Like, do you
22 know the type of software or the platform that it's run
23 on?

24 A. No, I'm not familiar, no.

25 Q. When a document -- so say you get a hit for,

1 you know, Document No. 1, and there is a scanned
2 Document No. 1 in the database, how is that accessed
3 within the database? I mean does it -- is there a
4 hyperlink? Does it just come up in a window? How is
5 that connected? How is the scanned document connected
6 to the database?

7 A. It's a link. So you get a bunch of hits, let's
8 say, you can click on it and it opens. If you can't
9 click on it it will tell you go to PRD library,
10 reference library, and find it that way, and it will
11 have the phone number for PRD. But, you know, it's us,
12 so... But otherwise you can click on it.

13 Q. And when you click on it does it -- I assume --
14 is it a PDF document?

15 A. Yes.

16 Q. Does it open in a separate viewer?

17 A. Yes, I guess.

18 Q. It doesn't open within the database; correct?

19 A. No. No. Yes, separate.

20 Q. And do you know if the document that's linked
21 to is stored separately from the database?

22 A. I don't know. I don't think so. I'm not sure
23 actually.

24 Q. Okay. So you don't know one way or another
25 whether or not when you search in the database that

1 search term is applied to the content of a document
2 that's linked to from the database?

3 A. I think it is.

4 Q. And why -- I'm sorry.

5 A. Go ahead.

6 Q. No, I didn't mean to cut you off.

7 A. I think it is.

8 Q. And why do you think it is?

9 A. Because when I search for the keywords you get
10 all the documents usually.

11 Q. And how do you know that those documents aren't
12 returned because of the title as opposed to the
13 contents?

14 A. Right. It's probably the title, if I have to
15 guess, I think it's the title, not the contents.

16 Q. So based on your experience working with this
17 database you think it's more likely that the database is
18 searching only the title of the document in the
19 inventory as opposed to contents of that document?

20 A. Yes.

21 Q. Is there a -- are there any inventories of
22 documents that are organized by subject matter?

23 A. Well, the manual, you know, the department
24 manual, you could -- when you search the different
25 volumes under the reference library, you search a

1 Q. Okay. So it sounds like the main difference is
2 time, that the automated directive database has stuff
3 from before 2009?

4 A. Yes.

5 Q. Okay. And there might be some types of records
6 in the automated directive database that aren't in the
7 reference library but you're not exactly sure what those
8 are?

9 A. Yes.

10 Q. Okay.

11 A. It's the Office of Constitutional. Just got
12 it. "O" for office. There you go.

13 Q. Thanks very much.

14 A. Sorry about that.

15 Q. No problem.

16 So the broader directive database, that
17 doesn't -- am I right that that's not organized by
18 bureau?

19 A. No.

20 Q. So you can't -- if you wanted to pull up
21 directives from prior to 2009 that relate to a
22 particular bureau, is there any way to do that?

23 A. That are not in the database? Yes, we could
24 search manually if it exists in our library.

25 Q. And how would you search it manually?

1 A. We just go to the folders, they are all, you
2 know, by yearly, they are in the library in the
3 cabinets. You just look up whatever year you're looking
4 for. If you already know what year -- whatever incident
5 or policy happened, you just look at those folders and
6 you go through and you'll find what bureau and then, you
7 know, manually open the folder and see if there is
8 anything related to the subject you're looking for.

9 Q. So after being -- so they are organized by
10 year; right?

11 A. Uh-huh.

12 Q. And are they also organized by bureau?

13 A. Well, each folder might have more than one, and
14 it will, you know.

15 Q. So if you wanted to, say, find all of the
16 directives that relate to a particular bureau from
17 2009 -- well, I guess first, how large is the file for
18 2009? What are we talking about?

19 A. The manual file?

20 Q. Yeah.

21 A. It's pretty thick. Some years they have two
22 actually, depending how much they wrote, I guess, that
23 year, so you'll find a couple of folders sometimes for
24 one year and maybe one for another. It depends.

25 Q. And you said manual. Did you mean the

1 department manual or did you mean a hard copy file that
2 you search manually?

3 A. A hard copy.

4 Q. So the hard copy file for directives could be
5 one folder or it could be two folders for a particular
6 year?

7 A. Yes.

8 Q. And how large are the folders?

9 A. They are large. How many pages, you're asking?

10 Q. Well, so are we talking is this the sort of
11 kind of -- I'm imagining an accordion-style file folder
12 that's sort of enclosed on all sides except for the top,
13 is that what we're talking about?

14 A. No. It's just a white binder that has -- they
15 have, you know, tabs for the different -- whether it's
16 divisional or bureau.

17 Q. Oh, so it's a three-ring binder?

18 A. Yeah.

19 Q. Okay. And so there might be one three-ring
20 binder or two three-ring binders for each year?

21 A. Right, but it's a pretty big one, like a --
22 it's a thick binder.

23 Q. And is it organized into tabs?

24 A. Yes.

25 Q. And what are the tabs? What categories do the

1 tabs correspond to?

2 A. The different bureaus.

3 Q. So you could just flip to a tab that has a
4 particular bureau --

5 A. Yes.

6 Q. -- for a particular year, and you'll see all of
7 the directives that relate to that bureau for that year?

8 A. Yes.

9 Q. Is there any other way by which the hard copy
10 directives and other documents in Planning and
11 Research's custody are organized or inventoried by
12 subject matter or category or anything else like that?

13 A. I don't understand.

14 Q. Sure. I'm happy to rephrase.

15 So you testified that the directives are
16 organized into binders and then sub-organized into
17 bureaus, and so one way in which they are organized is
18 by bureau. Is there any other way in which you could
19 find directives that relate to a particular subject
20 matter or category other than bureaus?

21 A. Could be divisional, like, our division, we
22 have correspondence by -- we used to be called the --
23 like, Planning and Research Division that might be, or
24 we used to be under another bureau, so it could be by
25 divisions. Depends.

1 Q. And how would you search by division or find
2 documents that were --

3 A. It's the tab. Sorry. It's a tab.

4 Q. Is that sort of a like one step above bureau in
5 terms of organization in the sense that, you know, each
6 division has certain bureaus within it?

7 A. So you get the bureaus and you get the
8 divisions. They are under a bureau, not over a bureau.

9 Q. So divisions are within bureaus?

10 A. Yes.

11 Q. Oh, okay.

12 And so other than divisions and bureaus, is
13 there any organization of directives by subject matter,
14 whether or not it's within a binder, or maybe it's a
15 separate inventory or index by subject matter?

16 A. No.

17 Q. So if you wanted to find all directives
18 relating to programs related to, say, domestic violence,
19 is there a way to do that?

20 A. Just the ADTS to look up domestic violence, the
21 subject.

22 Q. And that's the directive -- the automated
23 directive database?

24 A. Yes.

25 Q. And if domestic violence didn't appear in the

1 Q. And so if you've got a due date coming up on a
2 CPRA request and you're also busy with other things,
3 what, if anything, do you do to make time for that CPRA
4 request?

5 A. I handle it. I mean I, you know, I stop -- I
6 mean, like, product evaluations are not -- you know,
7 they take time and they are not hot projects, what we
8 call hot, you know. So we got months and months to do
9 them, where CPRAs I know they are very -- you know, the
10 due dates -- kind of headed by due dates. So I know the
11 timeline is, you know, short. So I keep an eye on
12 those. So if research is done -- and I'm always
13 checking with them, you know, so I -- I stop anything
14 else, I have to do the CPRAs first.

15 Q. Have you seen a -- let me back up.

16 I'm going to ask you to take a look at the
17 document marked as Exhibit 2.

18 A. Okay.

19 Q. So I know you reviewed this in advance of your
20 deposition, but before reviewing it in advance of your
21 deposition today when was the first time you saw this?

22 A. I'm assuming back in 2013.

23 Q. And do you remember seeing it then or is that
24 just based on the date of this document?

25 A. I refreshed my memory, I remembered, yeah, I

1 mean -- I'm not sure I remember because of that or
2 because I've looked at this, so I can't -- if that makes
3 sense.

4 Q. So you don't have a specific memory of seeing
5 this but you're pretty sure that you saw it around
6 December --

7 A. Yes.

8 Q. -- 20th, 2013, based on the date?

9 A. Yes. Plus, there is a chrono.

10 Q. Right. So looking at the second and third
11 pages in this set of documents, which is the actual
12 request from Muslim Advocates, did you participate in
13 searching the LAPD's records for documents responsive to
14 this request?

15 A. If you mean the PRD records, yes.

16 Q. And what do you mean by PRD records?

17 A. Our -- it's what's at our division. I cannot
18 be responsible for other divisions and what they have.

19 Q. Sure. So you searched Planning and Research
20 Division's records --

21 A. Yes.

22 Q. -- for records responsive to this.

23 And can you just walk me through the process
24 of -- well, let me back up.

25 How did you participate in searching for

1 records responsive to this request?

2 A. How did I participate. After the researcher
3 was done she gave me the project and then I go through
4 my research, like I said before, you know, go through
5 the database, the automated directives, and then going
6 through the reference library, also checking our
7 department manual for, you know, keywords in here, just,
8 you know, going through to find anything regarding the
9 subject.

10 Q. And so I'm just backing up a little bit. Am I
11 right that the -- did you participate in selecting a
12 staff member to do the first initial search?

13 A. Yes.

14 Q. And was that the first thing you did with
15 respect to this request?

16 A. I read it and then I, you know, assigned it to
17 a researcher.

18 Q. So when you say you read it, did you read just
19 the first page, which is the Intradepartmental
20 Correspondence, or did you read the entire request?

21 A. I'm assuming the entire. I'm not sure we had
22 this at the time, so I couldn't tell you if this was
23 attached.

24 Q. Okay. So you don't have a specific
25 recollection of reviewing the actual request?

1 A. Right.

2 Q. But you do believe that you reviewed the cover
3 sheet, the 15.2 cover sheet?

4 A. Yes.

5 Q. And so after reviewing the cover sheet or the
6 request if you had it, you assigned a researcher;
7 correct?

8 A. Yes.

9 Q. And which researcher did you assign?

10 A. It's Officer Tabitha Coronado.

11 Q. And why did you assign her?

12 A. She's probably, you know, next in line. I
13 don't know.

14 Q. Sure. Do you know what she did as part of her
15 search for records?

16 A. She did the search the way I've taught her, you
17 know, again, automated, you know, going through the ADTS
18 and going through the reference library and through the
19 manual, looking through keywords.

20 Q. Do you know which keywords she entered into
21 ADTS?

22 A. No.

23 Q. Did you ever ask her?

24 A. No.

25 Q. Why not?

1 A. Because it is what it is. It's in the request,
2 so I assume she does what's requested.

3 Q. Do you know what keywords she put into the
4 reference library?

5 A. No.

6 Q. And why not -- or excuse me. Did you ask her?

7 A. No, I didn't.

8 Q. And why not?

9 A. Because I don't. That's just not something I
10 do.

11 Q. Do you know if Ms. Coronado, or Officer
12 Coronado, excuse me, searched any of the binders to find
13 the records of particular -- excuse me.

14 Do you know if Officer Coronado searched any of
15 the binders which are organized by bureau to find the
16 directives relating to certain bureaus that might have
17 worked on the Community Mapping Program?

18 A. I know she manually searched for a document
19 because, you know, when I did it the notice didn't --
20 there was no link to the notice so you had actually to
21 go and actually get it manually. So she must have done
22 that.

23 Q. And is this a notice that was responsive to
24 this request?

25 A. Yes.

1 Q. And let me actually back up a little bit about
2 the request. So as you can see looking at Exhibit 2,
3 Page 2, there are five items here in the request. At
4 the time of the request do you -- excuse me. At the
5 time that Officer Coronado was searching for records
6 responsive to the request do you know if Officer
7 Coronado was aware of the separate five items or if she
8 was just aware of the content on the first page, the
9 15.2?

10 A. I couldn't tell you. I don't know.

11 Q. So it's possible that she might have been
12 searching only for -- and I'm looking at the first page
13 now, quote, "records pertaining to policies or practices
14 based upon individuals or communities that are Muslim,
15 or of Arab, South Asian or Middle Eastern descent"?

16 A. Yes.

17 Q. She might not have known to search for
18 community mapping?

19 A. Yes. Yeah. I don't know exactly. Like I
20 said, I don't know if this document was attached or not.

21 Q. And so just to drill down a little bit on that,
22 you don't know if a search was ever done for, in
23 particular, items responsive to Item No. 2 in the
24 request for records reflecting or relating to the
25 Community Mapping Program as described in the Senate

1 Statement?

2 A. I think that's -- that was searched.

3 Q. And why do you think that was searched?

4 A. Because we got a notice about it. That was
5 part of the response back, so...

6 Q. So you're saying you provided a document about
7 community mapping in response to this request?

8 A. Yes. Tabitha did, I mean us.

9 Q. And which document is that?

10 A. That's the notice.

11 Q. Is that in the documents that you prepared --
12 excuse me -- that you reviewed in preparing for your
13 deposition today?

14 A. It should be in here.

15 Q. If you want to take a moment to locate that,
16 please do.

17 A. This one. I'm referring to the Muslim
18 Community Forum.

19 MR. JOHANSEN: So could you identify which
20 exhibit that is?

21 THE WITNESS: Five.

22 BY MR. CHARNEY:

23 Q. So and just to be -- so are you referring to
24 the April 28th, 2009, document?

25 A. Yes.

1 Q. And that's a document that's inviting all
2 civilian and sworn commanding officers to attend the
3 upcoming Muslim Community Forum hosted by the Community
4 Relations Section?

5 A. Yes.

6 Q. And so am I right that you believe that this
7 document is responsive to Item No. 2 of Muslim
8 Advocates's request seeking records relating to the
9 Community Mapping Program as described in the Senate
10 Statement?

11 A. Yes.

12 Q. At the time that you -- that the policy --
13 excuse me -- that the Planning and Research Division
14 received the request in 2013 did you read the Senate
15 Statement that was referenced in Muslim Advocates's
16 request?

17 A. I don't think so.

18 Q. So you didn't go to the URL that's in Footnote
19 2 and look at that statement?

20 A. I don't think we had this.

21 Q. Okay. And so -- sorry if it's duplicative, but
22 am I right that Officer Tabitha Coronado also would not
23 have read the Senate Statement at the time she was
24 searching for records in late 2013 or early 2014?

25 A. Yes.

1 Q. So at the time you were searching for records
2 is it right -- is it correct to say that you didn't --
3 let me back up.

4 At the time you were -- at the time Planning
5 and Research received the request in late 2013 or early
6 2014 did you know what the Community Mapping Program as
7 described in the Senate Statement was?

8 A. No.

9 Q. And is the same true for Officer Tabitha
10 Coronado?

11 A. Yes. I think. Maybe I should say that. I
12 mean she's not here.

13 Q. Right. As her supervisor --

14 A. Yes.

15 Q. -- though, you had no reason to believe that
16 she became aware of what the Community Mapping Program
17 as described in the Senate Statement was?

18 A. Right.

19 Q. And you didn't instruct her to read it, for
20 instance?

21 A. No.

22 Q. So you don't know if she put in the terms
23 "community mapping" either together or separately into
24 the ADTS database, do you?

25 A. Specifically, no, but I could assume she did.

1 Q. And why do you assume that she did?

2 A. Again, because of the response back, it has --
3 if you read, it says "Muslim community" in the title, in
4 the subject, so in order to get this you had to search
5 that keyword.

6 Q. Which keyword?

7 A. Whether Muslim, community, forum, you know,
8 different ways, community meeting, community something.

9 Q. So as you sit here today am I right that you
10 believe that the 2009 document regarding a community
11 forum is responsive to Muslim Advocates's request for
12 documents relating to the Community Mapping Program as
13 described in Deputy Chief Downing's Senate Statement?

14 A. Can you repeat that? I'm not sure.

15 Q. Sure. Sure. So am I right that as you sit
16 here today you believe that the 2009 document that is --
17 you know, let me just be very specific since there
18 aren't Bates numbers.

19 Am I right that as you sit here today you
20 believe that the April 28th, 2009, document bearing the
21 subject "Muslim Community Forum" is responsive to Item
22 No. 2 of Muslim Advocates's request seeking records
23 about the Community Mapping Program as described in the
24 Senate Statement by Deputy Chief Downing?

25 A. Am I sure? No, but it's -- you know, this is

1 all we found on the subject on -- you know, like I said
2 before, we've -- we put in different keywords but it's
3 really not my place to read into it and see if this
4 actually applies to that. We just give whatever we find
5 to Legal Affairs Division and it's really up to them to
6 figure out what the requester is asking.

7 Q. And you don't know what keywords Officer
8 Coronado used?

9 A. I'm assuming, like, whatever she had, you know,
10 from the requester.

11 Q. And that would have -- but you don't know if
12 she actually saw the request, the verbatim request sent
13 by Muslim Advocates; correct?

14 A. She probably did but, you know, I don't know
15 how -- she should have seen this. It should have been
16 attached to the request, but again, I can't really tell
17 you what she did.

18 Q. You don't know for sure?

19 A. No.

20 Q. And so it's possible that she was searching
21 simply based on the description of the 15.2 which
22 describes the records requested as pertaining to
23 policies or practices based upon individuals or
24 communities that are Muslim or of Arab, South Asian or
25 Middle Eastern descent; right?

1 A. Yes.

2 Q. So going back to a previous question, do you
3 know if -- other than having to retrieve the notice that
4 we just looked at, the April 28th, 2009, notice, other
5 than having to retrieve that from the binders because it
6 wasn't scanned into the system, do you know if Officer
7 Coronado looked in the binders sort of independently to
8 see if there were any responsive directives under any of
9 the tabs that are -- that indicate documents that relate
10 to certain bureaus?

11 A. She might have. I can't tell you for sure.

12 Q. You don't know one way or the other?

13 A. No. You really have to have a policy and a
14 date when it was established, but there was no policy of
15 any sort here, so it's just about a forum, so I would
16 doubt she went through -- even the document we found,
17 it's a notice about inviting people to attend a forum.
18 It's not necessarily any sort of directive, you know,
19 where it's policy or procedure for the department. So I
20 don't see her looking through to find something that's
21 not there.

22 Q. So just to -- am I right in understanding you
23 that you're saying that because the request didn't
24 request a specific directive or policy, that that's why
25 she wouldn't have looked?

1 A. We didn't get any hit, that's why she wouldn't.

2 Q. In the database you're saying?

3 A. Right. If Muslim mapping was a -- whether it
4 was a program or a policy that we had back then, we
5 would have gotten some sort of hit, some sort of
6 document about it.

7 Q. So am I right that you only get a -- as far as
8 you know you're only sure that you'll get a hit if there
9 is a -- if the keyword you're searching for appears in
10 the title of the document entered into the inventory?

11 A. Yes.

12 Q. So if you searched, for instance, Muslim, and
13 Muslim appears in the content of a directive but it's
14 not in the title of the directive as its entered into
15 the inventory, that document wouldn't pop up in response
16 to your search to the database, as far as you know?

17 A. Yes.

18 Q. And so given that limitation on the search
19 capability, did Officer Coronado look in the hard copy
20 files which are organized by bureau for any directives
21 that might relate to bureaus that would have worked on
22 the Community Mapping Program?

23 A. I don't -- I don't know. I'm not sure if I
24 understand what -- what you're asking.

25 Q. If you don't understand the question, I'm happy

1 to rephrase it.

2 A. Okay.

3 Q. So you understand -- am I right that we're on
4 the same page that the database only will -- let me
5 rephrase.

6 Am I right that you only get a hit in the
7 database if the term you're searching for appears in the
8 title?

9 A. Yes.

10 Q. As its entered into the inventory in the
11 database; right?

12 A. Yes.

13 Q. So and that title is fairly short; right? I
14 mean the title is going to be maybe a sentence long?

15 A. Yes.

16 Q. And so there are lots of words that might
17 appear in the content of a document that won't appear in
18 the title?

19 A. Yes.

20 MR. JOHANSEN: Objection. Lack of foundation.

21 You've already answered.

22 THE WITNESS: Yes.

23 BY MR. CHARNEY:

24 Q. In your experience working with the records in
25 your -- in the Planning and Research Division is it true

1 that there is often a lot more information in the
2 content of the document than there would be in the title
3 of the document as it's entered into the database?

4 A. Yes.

5 Q. And so it's possible that if you put in a
6 search for a certain keyword into the database, that's
7 not going to return all of the documents that contain
8 that term if those documents contain the term in the
9 content of the document as opposed to the title of the
10 document as it's entered into the database; is that
11 right?

12 A. Yes.

13 Q. And so am I right that you testified that your
14 staff is trained to only do a manual search if they are
15 looking for a document that's been -- that's been found
16 by the database based on the title of the document in
17 the database but that the actual document that
18 corresponds to that title isn't scanned into the
19 database?

20 A. Yes.

21 Q. So am I right that that search may be
22 under-inclusive in the sense that the database -- there
23 could be documents in the -- let me start that over
24 again.

25 Am I right that a search of the database can be

1 under-inclusive because it doesn't search the content of
2 documents?

3 MR. JOHANSEN: Objection. That calls for
4 speculation, and it's an improper hypothetical.

5 You can answer if you understand the question.

6 THE WITNESS: Well, that's where the different
7 keywords come in. You know, you're not just, you
8 know -- you could -- I mean you have to be putting in
9 different keywords, and then when you're not sure, you
10 get a hit, then you go back and search.

11 BY MR. CHARNEY:

12 Q. But am I right that no matter how many keywords
13 you put in, you'll still never be able to search the
14 content of the document in the database; right?

15 A. Correct.

16 Q. And so if there are keywords in the content of
17 the document that don't appear in the title, you'll
18 never find that document based on using those keywords
19 within the database?

20 A. Yes and no, because you have to think of it as
21 these -- these documents have to make sense. So we're
22 talking about policies and procedures, so although maybe
23 the word "Muslim" is not in the subject matter, it has
24 to -- you can't be reading some, you know, let's say H20
25 and then -- you know, a totally different subject has to

1 make sense to the document. I don't know if that makes
2 sense.

3 Q. Sure. Do directives -- well, who determines
4 the title for -- let me rephrase.

5 Who decides what title is going to be entered
6 into the database for each document?

7 A. The writer usually.

8 Q. And this is the person who drafts the actual
9 directive?

10 A. See, there are different directives. For
11 notices it depends what the subject is. So for a forum,
12 I mean, it better have a forum in the subject. I mean
13 you want to tell them -- you want to tell the reader
14 what, you know, do I need to bother even reading this
15 directive, you know.

16 But for special orders, which is manual
17 changes, usually the subject is basically in a nutshell
18 what you're trying to do in the whole, you know, the
19 directive. So let's say you're changing a name of an
20 organization, the subject would be this name dash
21 revised, or this deleted. So it will be right there for
22 you in the subject.

23 Q. Do special directives -- excuse me.

24 Do directives or special orders -- sometimes
25 they can be many pages; right?

1 A. Yes.

2 Q. And they might embrace more than one subject;
3 correct?

4 A. Yes.

5 Q. And the title is fairly short; right? A
6 sentence or less?

7 A. Yes.

8 Q. And so the title has to -- let me rephrase
9 that.

10 Am I right that there are documents in which
11 the title does not capture all of the -- let me rephrase
12 that.

13 Am I right that there are directives or special
14 orders for which the title of that document doesn't
15 include all of the subjects that are discussed within
16 that document?

17 A. Again, there are different directives. For
18 special orders anything to do with the department manual
19 changes you'll have a five-line subject actually. So if
20 you're changing five different things or adding, you'll
21 have all of that in the subject. So I have seen
22 directives their subject is like a paragraph because you
23 want to put everything that's revised or added or
24 deleted in the subject.

25 Q. Is there anything that -- is there a guideline

1 that requires that? I mean how do you -- how is that --
2 well, yeah, just is there a guideline that requires
3 that?

4 A. It's part of writing special orders, yes. I
5 mean you want to tell the reader what's in the -- you
6 know, on this ten-page directive, let's say. Yeah, it's
7 part of it. You have to tell them all the subject.

8 Q. And where is that -- where is that expressed?

9 A. I'm not sure if it's spelled out in a guide.
10 We have a PRD reference guide. I don't work that
11 section, but I know from best practices that's what we
12 do, like, it has to be there, the subject.

13 Q. So it would be a best practice to do it; right?

14 A. Possibly, or it could be in the reference
15 guide, but I really haven't reviewed -- I think it's
16 over a hundred pages.

17 Q. I'm sorry. What is over a hundred pages?

18 A. Our reference guide for our division only.

19 Q. So you don't know if the reference guide gives
20 specific guidance about, you know, you have to
21 include -- every subject matter in a special order
22 directive has to be indicated in the title of that
23 document?

24 A. I know from doing the work that it has to be.
25 I've done my own orders, you know, when I was a

1 researcher, and I've supervised, so I know the subject
2 has to have -- if you're changing anything in the manual
3 it needs to be in the subject, in the title.

4 Q. Are there directives that relate to things
5 other than changing something in the manual?

6 A. Yes. That's where the notices come in.

7 Q. And have you ever -- just to back up, have you
8 ever read Deputy Chief Downing's Senate Statement about
9 community mapping?

10 A. I think I skimmed through it.

11 Q. Do you understand what the Community Mapping
12 Program is or was?

13 A. I think it was an outreach forum type thing to
14 get just communications between the community and
15 understanding the different, you know, communities out
16 there.

17 Q. And so if there were a notice or directive
18 about community mapping would it have necessarily been a
19 change in the manual or could it have been some other
20 notice or directive?

21 A. It could have been a notice.

22 Q. And a mere notice, is that sort of just hey,
23 LAPD, here's something we're doing, is that sort of like
24 what it does?

25 A. Yes.

1 Q. And who would have written -- would that sort
2 of notice be written by your division, by Planning and
3 Research Division, or would it be written by the
4 division that was actually proposing the program?

5 A. No. It would be the division that was
6 proposing it.

7 Q. And do you know if their guidelines, if other
8 division's guidelines for drafting notices include a
9 requirement that you're supposed to put in the subject
10 heading of a notice all of the subject matters that
11 appear within the notice?

12 A. No, I don't know that.

13 Q. So it's possible that they don't have that
14 requirement?

15 A. Yes.

16 Q. Did Officer Coronado search -- and I'm sorry if
17 we've covered this a little bit but just to be clear,
18 did Officer Coronado search any of the hard copy binders
19 for directives or special orders that would have come
20 from -- let me back up.

21 Based on your understanding of the Community
22 Mapping Program do you know what bureau proposed it?

23 A. Yes.

24 Q. And what bureau is that?

25 A. Counter-Terrorism Bureau.

1 Q. Do you know if Officer Coronado searched the
2 binder from 2007 that contains a tab for the
3 Counter-Terrorism Bureau?

4 A. No.

5 Q. Do you know if she searched the binder that
6 contains -- the binder for 2008 that contains a tab for
7 the Counter-Terrorism Bureau for responsive records?

8 A. No, I don't know.

9 Q. Did you ever ask her?

10 A. No, I don't think so.

11 Q. Why not?

12 A. I didn't think of it.

13 Q. Okay. So other than searching the database for
14 key terms, do you know if Officer Coronado did anything
15 else to respond to the request from Muslim Advocates for
16 community mapping records?

17 A. Anything else as in --

18 Q. Did any other -- any other thing, talked to
19 people, looked other places, any other research,
20 anything.

21 A. No.

22 Q. Do you know if she ever spoke with Deputy Chief
23 Downing?

24 A. No. I doubt that.

25 Q. Do you know if she spoke with anybody in the

1 Counter-Terrorism Bureau?

2 A. No, and I don't expect her to do it. And I
3 wouldn't even do it. It's not our responsibility.

4 Q. And why not?

5 A. Because they can speak for themselves.

6 Q. So you wouldn't have -- you wouldn't have
7 trained or instructed your staff to ask somebody in the
8 Counter-Terrorism Bureau, hey, did you guys ever create
9 a directive with respect to anything about community
10 mapping?

11 A. No.

12 Q. And you didn't do that or have that done in
13 this case, did you?

14 A. I don't think so.

15 Q. Do you know what time period the -- do you know
16 what is the time period of the request from Muslim
17 Advocates for community mapping records?

18 A. No.

19 Q. And at the time that you received the request
20 in 2013 did you know?

21 A. No. I mean we got the notice in '09, the one
22 notice we found at the beginning, so I figured it's that
23 time period, but we don't really search for time
24 periods. It's keywords.

25 Q. Okay. So you didn't focus -- let me rephrase.

1 You didn't -- you don't know if Officer
2 Coronado focused her search on any particular time
3 period?

4 A. No.

5 Q. So after Officer Coronado did the search of the
6 database and -- what happened next?

7 A. After she was done, you mean, with the search?

8 Q. Sure.

9 A. She submitted the folder to me with what she
10 found and what you see here, or a draft of this.

11 Q. Are you referring to Exhibit 5?

12 A. Yes.

13 Q. And what did you do, if anything, after she
14 submitted this -- or a draft of Exhibit 5 to you?

15 A. I reviewed it, reviewed the request, the
16 original request, I reviewed what she got, and I did my
17 search.

18 Q. And when you say you reviewed the original
19 request, are you referring to the 15.2 that's Exhibit 2,
20 or are you referring to the actual request that's behind
21 the 15.2 that Muslim Advocates sent?

22 A. Should be the whole thing.

23 Q. But do you know for certain whether or not it
24 was just the cover page 15.2 or whether it was the
25 entire original request?

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1 A. I think so because I remember reading this
2 community mapping, Muslim mapping, but I couldn't tell
3 you for sure. It should have been attached to the
4 request.

5 Q. But you don't know for certain?

6 A. No, I wouldn't remember.

7 Q. Do you remember -- so what did you do, if
8 anything, to search for records responsive to the
9 request?

10 A. I searched ADTS for the different keywords, you
11 know, community, mapping, Muslim, different keywords.
12 Also, I searched the department manual and the reference
13 library, again, for keywords if it's mentioned in the
14 department manual, looked through notices, see if there
15 is anything else -- it seems we didn't find anything,
16 not the usual anyways. So I just did my search.

17 I also had the secretary check if we ever had
18 any kind of project on Muslim mapping or a Community
19 Mapping Program.

20 And I think at the time I also looked at MOAs,
21 although there is, you know -- just to look if there was
22 any sort of Community Mapping Program MOA, but, you
23 know, it's hard when you don't have who -- who are you
24 going to be -- a contract with who. MOAs are contract
25 Memorandums of Agreements between LAPD and somebody

1 else. So you can't have a contract with you and the
2 Muslim community. Who was that, you know, so -- but
3 yeah, I did all of those searches.

4 Q. Do you know what specific keywords -- let me
5 rephrase.

6 Do you have a specific recollection of which
7 keywords you used?

8 A. No.

9 Q. So your testimony that you searched "community"
10 and "mapping," is that based on reviewing the document
11 that's marked as Exhibit 2?

12 A. Yes.

13 Q. So as you sit here today you don't remember
14 exactly what keywords you used back in 2014?

15 A. I couldn't tell you for sure because, you know,
16 after that we did it again, so I -- you know, I don't
17 want to give you wrong information, but we've had this a
18 couple of times, so...

19 Q. Sure. I think you mentioned that -- so I think
20 you mentioned that you didn't find anything, not the
21 usual. What does that refer to? What would you usually
22 find?

23 A. If there was a procedural or a policy, I would
24 find, you know, documents. I would find a special order
25 or an admin order, or even operations order to tell us

1 the document to "C" for review, as you can see, that
2 tells me he checked and he's good and moved forward.

3 Q. And am I right that the documents provided are
4 the documents in Exhibit 5? These are the actual
5 documents that were provided?

6 A. Yes.

7 Q. Does Planning and Research ever receive
8 correspondence from entities outside of the LAPD?

9 A. Yes.

10 Q. And how is that correspondence stored, if at
11 all?

12 A. It depends. What are we talking about,
13 correspondence?

14 Q. Say that a citizen writes to Planning and
15 Research and says I have a problem with -- you know, I
16 have comments regarding an LAPD program.

17 A. You know, I don't know. I think it's stored
18 with the secretary. If there was no open -- like, if we
19 didn't open a project from that correspondence then it's
20 probably stored somewhere.

21 Q. Do you know where?

22 A. No, I don't.

23 Q. Did you search for any correspondence in -- let
24 me rephrase.

25 Do you know if Officer Coronado in searching

1 for community mapping records searched for any
2 correspondence sent to Planning and Research?

3 A. No, I don't think she did.

4 Q. And did you?

5 A. No.

6 Q. Why not?

7 A. I didn't think of it, I guess.

8 MR. CHARNEY: Do you want to go off the record?

9 MR. JOHANSEN: Yeah.

10 (Recess)

11 BY MR. CHARNEY:

12 Q. Sergeant Moussa, do you understand that you're
13 still under oath?

14 A. Yes.

15 Q. Is there any -- so you testified that you don't
16 remember specifically the search terms that you used
17 when you searched in response to -- excuse me -- for
18 records responsive to the request for community mapping
19 records. Is there anything you could consult to find
20 out what search terms you used?

21 A. No. Just, I mean, just from -- if I look at
22 the request right now I could tell you, if that's what
23 you mean.

24 Q. But you didn't write it down anywhere --

25 A. No.

1 Q. -- for instance?

2 A. We don't write down what we do.

3 Q. And you didn't exchange any communications with
4 anybody inside of the department that would shed light
5 on which search terms you used?

6 A. No.

7 Q. The only thing -- so the only thing you could
8 do is to look at the request, is that what you just
9 said?

10 A. Yes.

11 Q. But even that doesn't give you a specific
12 recollection of what you actually searched; right?

13 A. No.

14 Q. I'd like you to look at Exhibit 4, which is the
15 Staff Research Control Form that's followed by a chrono
16 activity log. And in particular could you look at the
17 second line in the chrono, and this is Page 1 of the
18 chrono.

19 A. Yes.

20 Q. And so it says, "Research topic - Muslim PRD
21 related."

22 A. Uh-huh.

23 Q. First, do you know what PRD indicates?

24 A. That's Planning and Research Division.

25 Q. Okay. Do you know what this refers to,

1 "Research topic - Muslim PRD related"?

2 A. I'm assuming that she found out -- she called
3 and she found out it's regarding PRD -- if there was
4 anything related to us with the Muslim -- topic Muslim
5 mapping, this request, basically.

6 Q. And who would she have called?

7 A. The requester, Legal Affairs Division.

8 Q. So she would have called Legal Affairs Division
9 to ask if the Planning and Research Division had worked
10 on anything related to Muslim -- anything related to
11 Muslims?

12 A. No. She would have called them to get
13 clarification on what they want us to look for. So they
14 must have said Muslim or PRD related, if there was any
15 documents within PRD.

16 Q. I see. So am I right that one should read this
17 not as saying that she conducted research on a topic but
18 that she clarified what the research topic was?

19 A. Yes, and -- and she did the research. I mean
20 that's the topic.

21 Q. But this doesn't refer to actually looking in
22 Planning and Research Division's records?

23 A. No.

24 Q. This refers to -- I'm trying to figure out what
25 it is I'm supposed to be trying to find.

1 A. Right.

2 Q. Okay. I'd like to draw your attention now to
3 Exhibit 3, which is the collection of e-mails. Am I
4 right that Rollin Secrest was the adjutant at the time?

5 A. Yes.

6 Q. So he was sort of the ultimate supervisor for
7 the division?

8 A. Yes, I guess you can call him that.

9 Q. Who is Therese Manocchio, if I'm pronouncing
10 that correctly?

11 A. Manocchio, she used to be the captain's
12 secretary.

13 Q. So am I right she would have been cc'd on here
14 sort of for -- to help keep track -- let me back up.

15 Did she do anything to help search for records
16 responsive to the request?

17 A. No.

18 Q. So she's just on here sort of in an
19 administrative capacity as the adjutant's secretary?

20 A. She's the captain's secretary.

21 Q. Excuse me.

22 A. She would have been the person to open a
23 project, a CPRA project. So this sheet.

24 Q. Okay. Looking at the second page in this
25 collection of e-mails, the one that has a

1 BY MR. CHARNEY:

2 Q. Do you understand you're still under oath?

3 A. Yes.

4 Q. In addition to final directives or special
5 orders or manual policy changes, does Planning and
6 Research Division keep drafts of any documents that
7 might, once final, affect LAPD policy?

8 A. If it was a project at PRD, yes, it would be in
9 the folder.

10 Q. And which folder would that be?

11 A. The project folder.

12 Q. And how are these project folders maintained?

13 A. Well, we keep two years' worth at the division
14 and before that it would be record retention.

15 Q. And so these are folders that are stored in
16 some sort of a filing cabinet?

17 A. Yes.

18 Q. And after two years they are shipped off to
19 archives?

20 A. Yes.

21 Q. Do you know the retention period for those in
22 archives?

23 A. Ten years.

24 Q. What about draft directives, special orders or
25 other policy documents that other bureaus might create,

1 I guess -- well, first, are those ever sent -- are
2 drafts ever sent from other bureaus for Planning and
3 Research's input?

4 A. Yes.

5 Q. And how -- would that be sent by e-mail?

6 A. No. Hard copies usually.

7 Q. Are they ever sent by e-mail?

8 A. I don't think so, no.

9 Q. Is it possible that they could be?

10 A. It would be with command staff maybe.

11 Q. And if they were sent by hard copy would that
12 be, like, a 15.2?

13 A. Yes.

14 Q. Are those retained by -- so if Planning and
15 Research receives from another bureau, you know, a draft
16 directive or, you know, policy document of some sort
17 with, you know, a request for you to comment or provide
18 input, are those retained by Planning and Research in
19 any way?

20 A. No.

21 Q. What if you made -- well, how do you know that?

22 A. Because we don't -- if it's not a project of
23 ours we don't keep people's drafts. I mean we might
24 help them out whether in edits or if they told us, you
25 know, read this, proofread it for us, we do that

1 sometimes, but we wouldn't -- if it's not a project, we
2 don't keep it.

3 Q. And if you provided edits, would those
4 sometimes be in, like, Microsoft Word edits, like you
5 would actually go into the document and edit it and
6 maybe track your changes?

7 A. Usually we shouldn't find anything. If we do
8 it's minor, directly onto the document and we send it
9 back, unless if it was -- I mean if you're talking about
10 e-mails -- I mean Microsoft, that means we have an open
11 project at that point if we're -- if documents are
12 e-mailed back and forth, that means we opened a project,
13 I mean you're working on it, you should get some sort of
14 credit.

15 Q. Is it possible that a bureau might -- another
16 bureau might send Planning and Research a Microsoft Word
17 document and ask that you provide edits or comments in
18 the Microsoft Word document electronically?

19 A. So if it's -- I mean if they want an official
20 document back it's an open -- we open a project and it's
21 documented with a PRD number.

22 Q. And that PRD number would have to be created in
23 the situation I'm describing where they are e-mailing
24 you something and saying hey, can you just put your
25 changes in this document?

1 A. It would be like we handle actual directives
2 right now, it's from another -- it would be a 15.2
3 attached to this directive draft and it would say, you
4 know, what they were trying to do, and to get our input.
5 So we'd open a project and we'd review it, and there
6 would be multiple levels of review back and forth.

7 Q. And in that circumstance would the documents
8 that you work on as part of that project be stored on
9 the P drive for Planning and Research?

10 A. Yes.

11 Q. Am I right that the P drive is searchable?

12 A. If you -- yes.

13 Q. And am I right that the contents of documents
14 on the P drive are generally searchable if they were,
15 like, a Microsoft Word document at least?

16 A. Yes, but you have to go through one by one.
17 It's not like there is a keyword you could search for.

18 Q. Is the P drive in a Windows computer?

19 A. I think it's Access, yeah, Windows. I don't
20 know. It's public, but strictly to our division, so you
21 have to be assigned to our division to see it.

22 Q. But I guess what I mean is when you're looking
23 at it are you essentially looking at sort of the Windows
24 user interface that probably most of us are familiar
25 with?

1 A. Yes.

2 Q. So there are windows and sort of like a list of
3 documents within a window and that kind of thing?

4 A. There are lists of -- could be just the project
5 number there, or the research name, a folder, you know,
6 so you have to click on the name or the folder or the
7 PRD number if you know it, and then it opens up into the
8 different documents.

9 Q. And so are you aware whether or not in that
10 Windows environment you can search for keywords within
11 an entire folder?

12 A. I don't think you can.

13 Q. And have you ever tried to do that in searching
14 for records in response to a CPRA request?

15 A. No.

16 Q. Did you search the P drive in response to
17 Muslim Advocates's requests?

18 Let me back up. Did you search Planning and
19 Research's P drive in response to Muslim Advocates's
20 requests for community mapping records?

21 A. No.

22 Q. Did you search the e-mail of any of the members
23 of Planning and Research to see if they received from
24 another bureau any records relating to Community
25 Mapping?

1 A. I can't. I don't have access.

2 Q. Would it be the IT department that would have
3 to do that search?

4 A. Yes.

5 Q. And in order to have that search done would you
6 need to submit a request to ITD to have certain e-mail
7 accounts searched?

8 A. I would never ask for such request, actually.

9 Q. Why not?

10 A. It's not necessary. This is a weird question,
11 actually. I'm trying to understand why I would do that.

12 Q. Well, if you wanted to find out if, say,
13 somebody in the Counter-Terrorism Bureau had sent an
14 e-mail to somebody in Planning and Research asking them
15 to review a policy document, am I right that one way you
16 could find that out would be to search e-mail?

17 A. Yes, but I don't see that happening ever,
18 unless it's from command staff to command -- so we're
19 talking my captain and, let's say, Downing, but anybody
20 else -- like, a researcher wouldn't have, you know, back
21 and forth e-mails to edit a document off record thing,
22 no.

23 Q. In 2013 -- sorry. Can you remind me the name
24 of your captain in 2013?

25 A. Should be Captain Hayakawa.

1 Q. And did you ask Captain Hayakawa if he had ever
2 received any records relating to the Community Mapping
3 Program?

4 A. No.

5 Q. Do you know if he ever looked at the request
6 from Muslim Advocates for community mapping records?

7 A. Yes.

8 Q. And how do you know that?

9 A. He's the final reviewer before it goes back to
10 Legal Affairs Division.

11 Q. And do you know more specifically if he
12 actually looked at the specific request from Muslim
13 Advocates as opposed to the LAPD's cover page, the
14 15.2 -- so you know what, let's just be more specific.
15 So looking at Exhibit No. 2, there is the cover page
16 that we've talked about, you know, that we know that --
17 that you know that you reviewed, and that other people
18 in Planning and Research reviewed to respond to Muslim
19 Advocates's request, and then there is the actual
20 request behind it.

21 A. Right.

22 Q. Do you know if Captain Hayakawa actually
23 reviewed the request from Muslim Advocates that's behind
24 the cover page in January of 2014 or thereabouts?

25 A. I would be guessing, but yes, I would say yes.

1 Q. We don't want you to guess.

2 A. Well, I don't -- because the request has an
3 attachment. This should have been the attached document
4 to this. But I mean I couldn't tell you what my captain
5 looked at.

6 Q. So you don't know if he actually checked his
7 records to see if he had received communications from,
8 say, Deputy Chief Michael Downing about the -- about the
9 Community Mapping Program?

10 A. No, I wouldn't -- I don't know that.

11 MR. CHARNEY: Let's go off the record.

12 MR. JOHANSEN: Yes.

13 (Recess)

14 BY MR. CHARNEY:

15 Q. Sergeant Moussa, do you understand you're still
16 under oath?

17 A. Yes.

18 Q. Is there anything you could consult to find out
19 one way or the other whether the Muslim Advocates's
20 actual request was in fact attached to the cover page
21 that was provided to Planning and Research Division in
22 late December 2013 or early January 2014?

23 A. Can I consult? No. I mean, did we get this
24 from my project folder? Maybe that's the question to
25 ask.

1 A. Correct.

2 Q. Is there anything else?

3 A. Just seeing that, you know, the correspondence
4 says attachment, we would ask for the attachment.

5 Q. But you don't know what --

6 A. Again, it's not from my memory but just from
7 looking at the documents.

8 Q. I'd like to turn your attention back to
9 Exhibit 5, and in particular the second page, so I'd
10 like you to look at the second page which appears to be
11 the response from Planning and Research Division to
12 Legal Affairs Division; is that right?

13 A. Right.

14 Q. Looking at the second paragraph from the bottom
15 that begins "I would also recommend."

16 A. Yes.

17 Q. Do you know why Captain Hayakawa recommended
18 contacting Community Relations Section for any
19 additional documents?

20 A. Yes.

21 Q. And why is that?

22 A. Because if you look at the third page, which is
23 the notice, it would tell you who wrote that. "Should
24 you have" -- "your staff have questions, Community
25 Relations Section," right there, which tells me that's

1 where this document came. So they might have more
2 things. We always recommend, you know, if we don't --
3 you know, if it's not here, look elsewhere, where did it
4 come from.

5 Q. Did anyone at Planning -- let me rephrase that.

6 Do you know if Officer Coronado reached out to
7 Community Relations Section to find out if they had ever
8 forwarded anything to Planning and Research relating to
9 the Community Mapping Program?

10 A. No.

11 Q. Did you ever reach out to anybody at Community
12 Relations Section to find out if they had ever forwarded
13 anything to Planning and Research Division concerning
14 community mapping?

15 A. No, and I wouldn't.

16 Q. And why not?

17 A. Because we're telling them to look -- to go
18 reach out. We don't do that. We just respond what we
19 have in our division.

20 Q. And I guess what I'm getting at is in terms of
21 actually searching within your own division, as part of
22 that search did you interface with the Community
23 Relations Section to find out if you might have received
24 documents from that section?

25 A. If we receive it we should have it.

1 Q. And the way you would -- and you would rely on
2 the searches that you conducted in order to find those
3 records?

4 A. Yes.

5 MR. CHARNEY: I'd like to ask the court
6 reporter to mark for identification a document produced
7 by the LAPD in this action bearing Bates
8 Nos. LAPD RFP-2 00086 to 88. It's a Second Supplemental
9 Request from O'Melveny & Myers to the LAPD -- or rather,
10 from Muslim Advocates to the LAPD.

11 (Exhibit 11 marked)

12 BY MR. CHARNEY:

13 Q. I'd like you, Sergeant Moussa, to take a look
14 at this document and familiarize yourself with that.
15 It's a little dense and so I'll suggest that if you
16 focus your attention -- that you should focus your
17 attention on Item No. 1.

18 A. Okay.

19 Q. Have you ever seen this document before?

20 A. No.

21 Q. Have you ever seen a -- so did you have a
22 chance to review Item No. 1?

23 A. Yes.

24 Q. Have you ever received from the LAPD -- let me
25 rephrase that.

1 Have you ever seen a request from within the
2 LAPD for any of the items that are requested in Item
3 No. 1, specifically records of search terms used, the
4 databases those terms were run against for searches
5 conducted pursuant to Muslim Advocates's original
6 request for records?

7 A. Can you rephrase?

8 Q. Sure. Sure. Absolutely. That got a little
9 long.

10 So you see that Item No. 1 asks for all records
11 of search terms used and the databases those terms were
12 run against for searches conducted pursuant to Muslim
13 Advocates's original request?

14 A. Yes.

15 Q. And then there are some other things that are
16 asked for below that.

17 A. Yes.

18 Q. Did you ever see anything from the LAPD asking
19 Planning and Research to provide any of those records,
20 whether or not it was actually in the form of this
21 request?

22 A. No.

23 Q. So you never got a 15.2 that said, hey, give us
24 the records, you know, show us the search terms used and
25 the databases those terms were run against?

1 A. No.

2 Q. Do you know if anybody in Planning and Research
3 received such a request from anybody within the LAPD?

4 A. No, I don't know. I mean I would hope -- my
5 unit should have gotten it, if anything, because, we're
6 responsible for CPRAs.

7 Q. And so when a 15.2 -- let me rephrase.

8 When a CPRA request comes in am I right that a
9 15.2 is issued from the Discovery Section to your
10 section?

11 A. Yes.

12 Q. Is there any circumstance in which you would
13 not be the person within your section to receive that
14 15.2?

15 A. No. It should be me.

16 Q. Were you -- and I don't need to know the reason
17 if you were, but were you out on leave for any period
18 around August of 2014?

19 A. Shoot, I mean I could have been on vacation.
20 That would have been an excuse, I guess.

21 Q. So who would be the person responsible for
22 Public Records Act requests in your absence?

23 A. It would still be my unit but it could be just
24 lieutenant, researcher, you know, they'd skip a
25 supervisor.

1 Q. And if a -- if you were on vacation and CPRA
2 requests come in, do you know who they go to?

3 A. Just like before, they were assigned a project
4 number, they go to the lieutenant and he would assign
5 one of the researchers to do the research and then
6 submit back to the lieutenant, who reviews everything
7 and submits to the adjutant, to the commanding officer,
8 back to Legal Affairs Division.

9 Q. When you return from vacation or leave is there
10 generally a sort of a debrief process, you know, by
11 which you're informed of everything that's happened in
12 your absence?

13 A. If it's still happening, yes. If it's, like, a
14 product evaluation thing which, you know, it's still an
15 open project, yes, but something that was handled within
16 one day and done, no.

17 Q. Do you know as you sit here today whether or
18 not you took a vacation in August of 2014?

19 A. No. I can't remember.

20 Q. Do you know if you took a vacation at any other
21 point in that summer?

22 A. Possibly, yeah. I do take my vacations July,
23 August, so possibly.

24 Q. But as far as you know Planning and Research
25 Division never received or responded to this document

1 that we're looking at now Exhibit 11?

2 A. Correct.

3 Q. Is there any way you could find out if you were
4 on vacation?

5 A. Yes, I'm sure there is.

6 Q. And how would that be?

7 A. Just from our sign-in sheets or there is a --
8 there is a system, you know. I forget what it's called
9 but it's a system that, you know, tells me what I was
10 doing that month, that year.

11 Q. And there would also be a project -- am I right
12 that if this was provided to Planning and Research there
13 would be an entry in a project tracking system?

14 A. Yes.

15 Q. And that entry would show both that it was
16 received and what was done and, you know, whether any
17 records were provided back to the requesting entity?

18 A. Yes.

19 Q. And if those records don't exist that probably
20 indicates that this wasn't received?

21 A. Oh, you mean the record of a project.

22 Q. Right.

23 A. Right. Yes.

24 Q. Do you know whether any records that relate to
25 community mapping are stored on the P drive for Planning

1 and Research?

2 A. There shouldn't be.

3 Q. But do you know one way or the other?

4 A. No.

5 Q. And why do you think there shouldn't be?

6 A. It has nothing to do with PRD.

7 Q. And you say that based on the fact that you
8 didn't find any records as part of your other searches,
9 so believe that PRD never had anything to do with the
10 Community Mapping Program?

11 A. Correct.

12 Q. Is it also correct that you don't know one way
13 or the other whether or not there were community mapping
14 records on the P drive in or around early 2014 when the
15 request was received?

16 A. Can you repeat that?

17 Q. Sure. Basically the same question for early
18 2014. Do you know one way or the other whether or not
19 in early 2014 there were any records relating to
20 community mapping on Planning and Research's P drive?

21 A. There wasn't any.

22 Q. And how do you know that?

23 A. If it's in the P drive it's either an open
24 project or there was a researcher working on this
25 subject. It wouldn't just be there from somebody else.

1 So it would have to be a PRD project.

2 Q. And am I right that the reason that you think
3 that this wasn't a PRD project is based on your other
4 searches of the directive database --

5 A. Yes, and PRD database, project database, yeah,
6 we didn't find anything.

7 Q. But am I right you don't know if the words
8 "community mapping" were ever entered into the PRD
9 database?

10 A. Entered, what do you mean? I'm sorry.

11 Q. Were the search terms -- I believe you
12 testified earlier that you don't know exactly what
13 search terms your secretary used when searching the PRD
14 database; correct?

15 A. Yes.

16 Q. So you don't know if the term "community
17 mapping" was actually entered into the PRD database to
18 see if there was an open or closed out project relating
19 to that?

20 A. Right. I could assume it was because
21 "community" and "mapping," it's part of the request, so
22 she should have put in different keywords to find if
23 there was a project.

24 Q. But you don't know?

25 A. No.

1 Q. And do you know if you actually handed your
2 secretary the actual request from Muslim Advocates, the
3 second and third pages of Exhibit 2?

4 A. No. If anything, she would hand it -- she
5 would hand me. It goes to her before me, so...

6 Q. So you don't know one way or the other whether
7 she saw Pages 2 or 3 of Exhibit 2?

8 A. No.

9 Q. And do you know one way or the other whether or
10 not any records relating to community mapping would have
11 been stored in the e-mail of Planning and Research
12 Division personnel between 2007 and 2008?

13 A. Oh, you lost me. I don't know.

14 Q. Sure. Do you know one way or the other whether
15 any records relating to community mapping could be found
16 in the e-mail accounts of any Planning and Research
17 personnel in 2007 or 2008?

18 A. There shouldn't be any.

19 Q. But you don't know one way or the other?

20 A. No, I don't know.

21 Q. Because you never asked for a search?

22 A. No, I have not.

23 Q. Did you ever send out an e-mail to the
24 personnel in Planning and Research asking if anybody had
25 ever worked on a community mapping project?

1 A. No.

2 Q. And am I right that nobody else in the Planning
3 and Research Division, to your knowledge, sent out such
4 an e-mail?

5 A. Correct.

6 MR. CHARNEY: I'm going to ask the court
7 reporter to mark for identification a verification page
8 by the witness in response to production of document
9 requests in this case.

10 (Exhibit 12 marked)

11 BY MR. CHARNEY:

12 Q. Sergeant Moussa, if you want to just take a
13 moment to familiarize yourself with this.

14 A. Okay.

15 Q. Have you seen this document before?

16 A. Yes.

17 Q. And am I right that that's your signature on
18 the bottom?

19 A. Yes.

20 Q. You searched for documents in response to
21 Muslim Advocates's request for documents in this
22 litigation; correct?

23 A. Yes.

24 Q. And what did you do to search for those
25 documents?

1 Q. And these all relate to MOU's between the LAPD
2 and USC relating to policing of USC's campus?

3 A. Yes.

4 Q. When was the first time you ran a search in the
5 MOU, MOA database in response to Muslim Advocates's
6 request for community mapping records?

7 A. The first time?

8 Q. Yes.

9 A. 2014, I would say.

10 Q. And at that time did you search for the
11 University of Southern California?

12 A. No.

13 Q. Why not?

14 A. I did not know they were involved. That was
15 not requested of me.

16 Q. And at the time that you searched the MOA
17 database did you or anyone under your supervision reach
18 out to Michael Downing to ask him about the identity of
19 the academic institution referenced in his Senate
20 Statement?

21 A. No.

22 Q. Why not?

23 A. It's not my -- my place.

24 Q. What do you mean?

25 A. He was asked for his documents. I don't ask

1 for his documents, I think I said that before.

2 Q. But aren't the MOAs maintained, stored by
3 Planning and Research?

4 A. Yes.

5 Q. So Planning and Research would be the one to
6 have the MOA, not Deputy Chief Downing; correct?

7 A. Yes.

8 Q. And so in order to find out the entity of the
9 MOA -- excuse me.

10 In order to find out the identity of the
11 contracting party in the MOA you could have -- you might
12 need to ask Deputy Chief Downing for information; is
13 that correct?

14 A. Correct.

15 Q. But he wouldn't be the one to actually have
16 that MOA; right?

17 A. He should. He should have a copy.

18 Q. But am I right that Planning and Research has
19 the institutional responsibility for maintaining custody
20 of all of the LAPD's MOAs?

21 A. Yes.

22 Q. And as far as you're aware Deputy Chief Downing
23 isn't subject to a requirement that he maintain custody
24 of MOAs for the department?

25 A. He's not.

1 Q. And when I've said MOA do you understand me to
2 sort of use that term interchangeably with MOU?

3 A. Yes.

4 MR. CHARNEY: Let's go off the record for just
5 a second.

6 (Recess)

7 BY MR. CHARNEY:

8 Q. Do you understand you're still under oath,
9 Sergeant Moussa?

10 A. Yes.

11 Q. Did you do anything to find out if there might
12 be records created by the Planning and Research Division
13 about community mapping that are stored outside of
14 Planning and Research's physical location in the LAPD,
15 such as at the home of a personnel or on their personal
16 device or something like that?

17 A. No.

18 Q. Do you know if Planning and Research personnel
19 are permitted to take, you know, things that they are
20 working on home with them?

21 A. Sometimes, yes.

22 Q. And are they permitted to use their personal
23 devices, you know, to receive or view documents they may
24 be working on?

25 A. Yes.


Raymona Moussa
May 10, 2017

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DECLARATION UNDER PENALTY OF PERJURY

I, Raymona Moussa, hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on May 10, 2017; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this 21st day of June 2017, at Los Angeles, California.


Raymona Moussa

1 STATE OF CALIFORNIA)
) SS
2 COUNTY OF LOS ANGELES)

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I, Jean F. Holliday, a Certified Shorthand Reporter, do hereby certify:

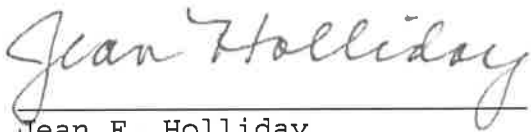
That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth, and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, nor in anywise interested in the outcome thereof.

In witness whereof, I have hereunto subscribed my name.

Dated: May 18, 2017



Jean F. Holliday
CSR No. 4535, RPR, CRR

EXHIBIT JJ

Luann Pannell, Ph.D.
May 17, 2017

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MUSLIM ADVOCATES,
Petitioner,

vs.

Case No. BS163755

THE CITY OF LOS ANGELES; THE LOS
ANGELES POLICE DEPARTMENT; DOES
1-10, INCLUSIVE,
Respondents.

DEPOSITION OF LUANN PANNELL, PH.D.

Wednesday, May 17, 2017

1:15 p.m. - 6:42 p.m.

865 South Figueroa Street, Suite 2400

Los Angeles, California

REPORTED BY:

Jean F. Holliday

CSR No. 4535, RPR, CRR

1 program referred to as a "Community Mapping Program"
2 with respect to the Planning and Research Division?

3 A. No.

4 Q. And I think it also may be called the Policies
5 and Procedures Division?

6 A. Right. They change the names slightly every
7 few years.

8 Q. Would your answer be the same if I said the
9 Policies and Procedures?

10 A. Yes.

11 Q. In 2006 did you create -- or did anyone under
12 your supervision create a training program for Planning
13 and Research or Policies and Procedures?

14 A. No, not -- again, it's a very broad question
15 because they get general training as well, but nothing
16 for them specifically.

17 Q. And what about in 2007?

18 A. No.

19 Q. Do you have a role in responding to California
20 Public Records Act requests?

21 A. Well, yes, every time there is a discovery
22 request for training documents we respond to that.

23 Q. And are you personally involved in that or do
24 you delegate responsibility for that to somebody else?

25 A. Typically I end up being personally revolved --

1 involved at the review stage of the request that comes
2 in.

3 Q. So am I right that at earlier stages it would
4 be delegated to somebody else?

5 A. There aren't earlier stages. When the 15.2
6 comes to my attention, then I go meet with the people
7 that I delegate the responsibility to.

8 Q. Oh, so by review you mean review of the initial
9 request?

10 A. Yes.

11 Q. Okay. So have you received any training that
12 involves -- let me rephrase.

13 Have you received any training with respect to
14 how to retrieve records in response to a California
15 Public Records Act request?

16 A. It's the same way we retrieve records for any
17 other request.

18 Q. So is that a yes or a no?

19 A. I guess I don't know why you'd need specific
20 training on how to find the records, but no.

21 Q. And so am I correct in understanding that when
22 you said that it's the same training or it's the same
23 way that we retrieve records for any other request, were
24 you referring to the training that you had received as
25 part of the command training that touched on how to

1 retrieve records?

2 A. No. I'm referring to in my position we get
3 requests for training documents all the time, so we
4 regularly have to look for and retrieve records.

5 Q. And have you ever received any training about
6 the obligations that the LAPD has under the CPRA -- I'm
7 sorry, the California Public Records Act?

8 A. Specific training on that, I don't believe so.

9 Q. Have you ever received any guidance in maybe a
10 more informal context?

11 A. Of course.

12 Q. And what was that guidance?

13 A. Again, we have those discussions around risk
14 management issues in our command development course, but
15 I meet regularly with Risk Management and when these
16 requests come in I'm talking to the commanding officers
17 about both the requirements, what is needed, and what is
18 needed to meet the request. So there are some regular
19 conversations about that.

20 Q. What's Risk Management?

21 A. It's another division in our department.

22 Q. I guess what does it mean? I'm not familiar
23 with that.

24 A. With Risk Management?

25 Q. With that division.

1 A. So they are responsible for helping our
2 department manage and minimize risk.

3 Q. And so how does -- what information did Risk
4 Management give you about the California Public Records
5 Act?

6 A. I'm sorry. I misspoke. I said Risk Management
7 but Legal -- Legal Affairs Division is the one that
8 I'm -- in my mind I'm thinking about Legal Affairs
9 Division. Sorry. They work closely with each other.

10 So it's usually in the requests, they remind us
11 of the ten-day requirement and the need to respond to
12 the request as thoroughly as possible.

13 Q. And do they give you any specific information
14 about how to respond to a request?

15 A. In the same way as we are here, this is a legal
16 proceeding, and when legal proceedings -- as thoroughly
17 as possible, and to answer the scope of the request.

18 Q. Are there any -- is there any practical
19 guidance for how to respond thoroughly, here are things
20 you should do?

21 A. No. I'm just trying to -- I'm really trying
22 to -- I don't -- you know, it's kind of do you have the
23 lesson plans or not; do you have this or not. It's not
24 really I need -- we either have it or we don't have it.

25 Q. So they don't provide any practical guidance;

1 is that accurate?

2 A. No. I mean, if I had a question about it they
3 would answer it.

4 Q. But in terms of training you might receive
5 before you get a request, I'm just trying to figure out
6 what is that training, as opposed to you can ask a
7 question later.

8 A. I'm sorry. It just feels like a yes-and-no
9 question. Do you have training on these items, yes or
10 no? And if we have them then we release them, and if we
11 don't, then we have nothing to release. So I don't know
12 what -- it's a yes-or-no question. It's not a training
13 need. I don't know what guidance I need on a yes-or-no
14 question.

15 Q. Because -- so am I right in understanding that
16 no training is given on how to practically search for
17 records because either you have the records or you
18 don't?

19 A. No training is given because it's a yes-or-no
20 question and I can answer "yes" or "no."

21 Q. And when you say "yes-or-no question" are you
22 referring to the idea that you either have the records
23 or you don't?

24 A. Correct.

25 Q. And moving beyond any training that you may

1 have received, do you know if the people in your
2 department who are charged with responding to --
3 actually, let me back up.

4 You mentioned that when you have -- if you had
5 a question about where to search you might be able to go
6 to Legal Affairs and ask them a question. Have you ever
7 done that?

8 A. Yes.

9 Q. And without disclosing the specific contents of
10 the communication you may have had with an attorney,
11 were those questions about how to locate records or were
12 they on another topic?

13 A. Again, I've been doing this job for some time,
14 so there's been many conversations, but if we
15 specifically look at the e-mails here, when the request
16 first came through we said, "No, we don't have any
17 records. We don't have a program like that and we have
18 never done training on that, so we have nothing to give
19 you."

20 They came back and said, "Could you modify that
21 search?" And so then we did, and that resulted in the
22 documents you have in front of you.

23 Q. Has that happened -- has that sort of thing
24 happened before?

25 A. Yes.

1 Q. Where Training Division said, "We don't have
2 any records," and another entity came back and said,
3 "Can you search again"?

4 A. I can't say specifically that question. Every
5 time a request comes through we try to as accurately as
6 possible meet the needs of the request and when people
7 outside of Police Department Training are asking for
8 records, sometimes they don't know what they are asking
9 for. So for example, do you want the use of force
10 training for one officer or for everyone who's a police
11 officer or everyone who's a police officer, sergeant and
12 lieutenant? So depending on -- sometimes they'll say,
13 "We want all your use of force records," but actually
14 what they want are records for that one officer. So
15 sometimes we have to go back and clarify the request.

16 Q. And putting aside having to -- in addition to
17 having to clarify a request with a requester, have you
18 ever sought clarity from within the department about
19 best practices for searching for records? For instance,
20 like how to search an electronic database, how to search
21 through a hard copy file, how to search an index or
22 something like that?

23 A. I'm sorry. You want to know if -- if I've
24 talked to somebody about that?

25 Q. Sure. Received any information from others

1 within the department.

2 A. It usually comes up if there is difficulty in a
3 search, then we would ask for that assistance.

4 Q. And in what circumstances have you asked for
5 that assistance?

6 A. Well, specific to this request I think you
7 already are aware that we had a hard time retrieving
8 information from an old database and so I requested
9 assistance from IT to help me with that.

10 Q. I guess what I'm going a little bit more
11 broader than just this one request. I'm more interested
12 in the training that you had received prior to that
13 request which, you know, defining training broadly,
14 could include conversations with people in the
15 department or more informal information you had
16 received.

17 A. I'm sorry. So when they make a -- you want --

18 Q. I see you're making a bit of a face, so I'm
19 very sorry if I'm not being clear.

20 A. So when the request comes for me for training
21 information, then we search for training information and
22 we submit training information.

23 Q. Right.

24 A. So you kind of went off on a tangent there, at
25 least that was my experience of the question.

1 Q. Sure. And I'm sorry about that.

2 What I'm trying to do is understand what you've
3 been told by others in the department, whether through
4 formal classroom training or more informal on-the-job
5 training or informal discussions that you've had with
6 others within the department about what you're supposed
7 to do in searching for and retrieving records in
8 response to a CPRA request. And so I think you
9 mentioned that if there is difficulty in a search, you
10 would ask for assistance and try to figure out how to
11 find records. And so I'm asking you in what
12 circumstances have you asked for that information?

13 A. Again, more specifically, it was with an old
14 database. But with other searches, again, that was for
15 a tracking system versus training documents. So I know
16 where our training documents are.

17 Q. So you don't need any help with respect to how
18 to search for your training documents?

19 A. Correct.

20 Q. Okay. And so no training is provided because
21 you don't need it?

22 A. No training is provided because we are
23 responsible for storing and tracking it and identifying
24 where it is, and so I have immediate access to the
25 people who store, track, retrieve and archive department

1 training. So -- and those requests for department
2 training come through us, so to that extent my people
3 are the department experts on that.

4 Q. Okay. So and am I right that at least in 2013
5 and 2014 the people you're referring to would have been
6 Alex Nuño and --

7 A. Roy Ortiz.

8 Q. -- and Roy Ortiz?

9 A. Correct.

10 Q. Who supervises you, if anybody, with respect to
11 responding to CPRA requests?

12 A. I have a deputy chief, currently that's John
13 Peters.

14 Q. And does Deputy Chief Peters actively supervise
15 you with respect to CPRA requests? Does he actually
16 look at your work and give you feedback, or is he a
17 supervisor in the sense that he is one level above you
18 in the hierarchy?

19 A. He is one level above me in the hierarchy and
20 he certainly would know if there is a problem with us
21 not responding or getting -- completing a CPRA request.

22 Q. And how would he know?

23 A. In our department we have a hierarchy and if
24 there was a problem and now Legal Affairs Division has
25 not been able to meet a requirement, it's very likely

1 they would reach up to the next level.

2 Q. And when you say "meet a requirement," what do
3 you mean?

4 A. If we didn't meet our ten-day requirement or we
5 didn't respond adequately to Legal Affairs Division with
6 what they needed, probably first they would come talk to
7 me, but if they still didn't get that response that they
8 needed, certainly going above me to my deputy chief
9 would be something that we do in the police department.

10 Q. Does Legal Affairs -- let me rephrase.

11 Do you ever seek guidance from Legal Affairs
12 about where to search within your division in response
13 to a CPRA request?

14 A. I seek guidance related to the request itself.

15 Q. And by that do you mean Legal Affairs's
16 interpretation of what the request is seeking?

17 A. Correct, the scope and -- the scope of the
18 request.

19 Q. And in terms of the actual search for records
20 does Legal Affairs sort of supervise or audit the places
21 that you actually search within your division?

22 A. No.

23 Q. So how would -- if the response was
24 inadequate -- so let me back up.

25 I believe you testified that if Legal Affairs

1 able to respond.

2 Q. So when you actually, you know, find somebody
3 to delegate within a unit to search for records, it
4 could be any one of those people?

5 A. Correct.

6 Q. There isn't one person who is sort of more
7 knowledgeable than the others about where records are
8 stored?

9 A. I mean, they access those records daily, so any
10 one of them should be comfortable in searching the same
11 database for the information that's needed.

12 Q. Okay. When an individual is tasked within a
13 unit to search that unit's records, are they able to
14 consult any protocols or guidance or anything like that
15 to guide their search?

16 A. Probably before they submit it back to my team
17 they would put it by their supervisor.

18 Q. But in terms of, like, a written protocol or
19 guidance, you know, here's what you should do to look in
20 response to a CPRA request, is there anything like that?

21 A. No.

22 Q. Is any training offered to the people within
23 your division who are actually searching for records on
24 how to conduct that search?

25 A. When they are new to the unit they probably get

1 shadowed by somebody there until they are functional at
2 being able to search records. Again, because it's
3 something that they will be doing on a daily basis they
4 become proficient at it quickly.

5 Q. When you say "probably" what do you mean?

6 A. I probably shouldn't have said that. Because
7 when somebody new comes into the unit it's the
8 supervisor's responsibility to make sure that person is
9 shadowed and trained up and gets proficient at all
10 the -- at the different either databases or systems that
11 they use.

12 Q. How long -- is there a standard period for that
13 shadowing?

14 A. No, because it's very -- we're a small
15 division, so each unit has four people and two
16 supervisors, so they work very closely together. So I
17 think you work with each individual until they are
18 proficient.

19 Q. So the shadowing lasts until the supervisor
20 feels that the person being shadowed doesn't need it
21 anymore?

22 A. Correct.

23 Q. Do you know if every person in the department
24 has been shadowed during a search for records in
25 response to a CPRA request?

1 A. Do I know if every department employee has?

2 No.

3 Q. No. I'm sorry. Within your -- I'm sorry. I
4 said department but I meant your division.

5 A. Within my division, it's not a formalized
6 training on requests. It's a formalized training -- or
7 sorry -- it's a shadow process on using the systems and
8 becoming proficient on the systems in their unit.

9 Q. And so do you know if every person while being
10 shadowed has had to deal with a CPRA request during the
11 period that they were being shadowed?

12 A. I don't know.

13 Q. So it's possible that somebody while they were
14 shadowed never had to deal with a CPRA request?

15 A. They would have had to deal with a search
16 request.

17 Q. Which could be like a subpoena, for instance?

18 A. Could be anything.

19 Q. And so is that one of the sort of the
20 requirements for shadowing is that the shadowing period
21 won't end until the person has had to, you know, be
22 shadowed while they did a search for some sort of
23 request, whether it be CPRA or subpoena or something
24 like that?

25 A. It's a little bit more that we continue to give

1 them those opportunities to demonstrate their skill
2 until they are proficient, so whatever the search is.
3 But again, searching for documents is a regular part of
4 their activities.

5 Q. Are employees within your division given
6 training on how to conduct term-based computers in
7 electronic databases?

8 A. Say that again.

9 Q. Sure. Are personnel within your division given
10 any sort of instruction, whether during the shadowing
11 process or otherwise, on how to conduct searches of
12 electronic databases using search terms?

13 A. Oh, yes.

14 Q. And what is that instruction? I mean what does
15 that look like?

16 A. I don't supervise that in the sense that I'm
17 not standing over them watching that entail, but each
18 supervisor would want their people to be proficient in
19 that and would ensure that they can conduct a search.

20 Q. Do you know what in particular the personnel
21 are told about how to conduct searches using, you know,
22 search terms in a computer database?

23 A. I'd be speculating.

24 Q. Okay. I don't want you to speculate.

25 So you don't know if they are given

1 Q. And those are file cabinets for the most part?

2 A. Yes. Most things are electronic these days but
3 our older documents might be hard copy. Generally we've
4 scanned them so that we can access them electronically.
5 Even the older documents, that's what I'm trying to say.

6 Q. In terms of the documents that are maintained
7 in hard copy are there indices or inventories of those
8 hard copy documents?

9 A. I'm sorry. Say that again. Is there --

10 Q. Is there an index or indices of those hard copy
11 documents?

12 A. Generally that occurs when we have archived
13 documents to go to Iron Mountain.

14 Q. Is Iron Mountain an off-site record storage?

15 A. Yes.

16 Q. So is that the only circumstance in which there
17 would be an index or an inventory of records?

18 A. It's expected that final documents are going to
19 be scanned and kept through Special Projects in the
20 front office, so I don't know.

21 Q. You don't know if there are other indices or
22 inventories with respect to hard copy documents?

23 A. Correct.

24 Q. Is there anything you could do to find out?

25 A. You're talking about at the unit level, ask

1 them about an index of their file cabinet?

2 Q. Sure. Or at any level within the division.

3 A. Yeah, I mean the final versions are kept in my
4 office, so that's where the index would be of our
5 information.

6 Q. And when you say "final versions" are you
7 talking about project documents?

8 A. I'm talking about things that leave my division
9 and our department approved. The -- anything else
10 that's kept in a file cabinet wouldn't be considered
11 department approved.

12 Q. But in terms of other things that may be in the
13 filing cabinet for use by folks within your division, am
14 I right that you don't know whether or not there is an
15 index or inventory of those records in the filing
16 cabinet?

17 A. Correct.

18 Q. And do you know whether or not the folks in
19 your department who would search those records are given
20 instruction as to whether or not there is an index or
21 inventory of those hard copy records?

22 A. That's not where we would search. We would
23 search for things on the computer.

24 Q. So in response to a CPRA request your personnel
25 within your division wouldn't search hard copy records

1 particular wouldn't be implemented, you testified that
2 there was one communication about that in the general or
3 senior staff meeting in which it was conveyed to you by,
4 am I right, the Chief of Police?

5 A. I'm not sure because sometimes different -- it
6 was -- but I am very confident anyone in command staff
7 knew that there was not going to be a community mapping
8 program.

9 Q. But am I right that there was at least one
10 specific communication at that general or senior staff
11 meeting by a high ranking --

12 A. Uh-huh.

13 Q. -- LAPD personnel that, okay, there is not
14 going to be a community mapping program?

15 A. Uh-huh.

16 Q. That was one communication; right?

17 A. Uh-huh.

18 Q. Is that a yes?

19 MR. JOHANSEN: Could you answer yes or no?

20 THE WITNESS: Oh, sorry. Yes. Yes. Yes and
21 yes.

22 BY MR. CHARNEY:

23 Q. No problem. It happens, it really happens to
24 the best of us, so don't worry.

25 So other than that one communication at the

1 general or senior staff meeting, were there any other
2 communications that you received specifically about the
3 idea that the community mapping would not be
4 implemented, putting aside the other community forums?

5 A. No, because once -- once it was determined we
6 are not doing a community mapping program, then we
7 turned our focus and attention to bridge building and
8 trying to -- to respond to the community's concerns
9 openly and to partner with them in -- I mean that's the
10 whole purpose of a community forum is to partner with
11 the community, so -- and to partner with them in an
12 outreach effort.

13 Q. When you say "respond to the community's
14 concerns" what are you referring to, what concerns?

15 A. Again, after the Senate Statement, while I
16 think all the paragraphs leading up to the community
17 mapping program really reflected our department's
18 commitment and mission to partner with the community,
19 but certainly the community mapping component at the end
20 of that had a significant response in the community, and
21 I think that's why we're here.

22 So I'm sorry. I'm lost in -- what is your
23 question again?

24 Q. So I think you answered it. It sounds like the
25 concerns that you were referring to were the concerns

1 about the community mapping program?

2 A. Yes. So that was well known. So once it was
3 determined that we're not doing a community mapping
4 program, the question still is we still have significant
5 communities to serve; how are we going to serve that
6 knowing that there is something there that we also have
7 to repair in terms of their response to whether it
8 was -- as well intentioned as it may have been, it
9 didn't fit with our community. So we had to go back to
10 our community stakeholders and, again, forge
11 partnerships.

12 Q. So when you said that you turned your focus and
13 attention to bridge building and trying to respond to
14 the community's concerns about the community mapping
15 program, what form did that take? Like, were those
16 discussions -- were those discussions in meetings? Were
17 those e-mail, you know, exchanges? What form did that
18 focus take?

19 A. So I did not receive any communications about
20 community mapping because it was already stopped before
21 it ever got to training. The questions that come to me
22 are what are we doing on -- so nothing would have
23 referenced community mapping. It would have been we
24 have a community forum coming up; what can we contribute
25 to convey the progress that we've made in training, the

1 way that we're training now. We have done, you know, a
2 complete redesign of our academy and hardly anybody
3 knows about it. So I think we have a really good story
4 to tell in our efforts on community policing, and
5 whenever I get the opportunity I say yes, I'll be at
6 your community forum because I want to share best
7 practices in training. We're doing really positive
8 things, so...

9 Q. And going back to how you were turning your
10 focus and attention to responding to the community's
11 concerns about community mapping, am I correct in
12 understanding that in responding to those concerns the
13 words "community mapping" were never referenced?

14 A. Correct.

15 Q. What was discussed in those -- well, let me
16 back up.

17 What form did those -- did any interface or
18 discussions about turning focus and attention to bridge
19 building and responding to the community's concerns
20 about community mapping, what form did that take?
21 In-person meetings? E-mail exchanges? Teleconferences?

22 A. Yeah, I think mostly in-person meetings.

23 Q. And were any of those -- were those, like, kind
24 of more -- were those ad hoc meetings where you just run
25 into somebody, or were they scheduled meetings?

1 A. I can't recall, because I do both regularly,
2 and sometimes the Tenth Floor, where all the command
3 staff are, you know, I regularly walk into somebody's
4 office and brainstorm with them about how to address
5 their needs. It's kind of how I stay current on what is
6 happening in all the things you've referenced; why do I
7 think people would give me a call, because I regularly
8 go through and talk to them.

9 So I never received a project on it. It's
10 something I very much care about, community
11 collaboration and community policing, and so -- and I'm
12 passionate about it, so that's a regular conversation I
13 would have, whether you're in detective bureau and we're
14 talking about the mental evaluation unit or homelessness
15 or, for example, Chief Downing and the Muslim community.

16 Q. Is it possible that any of these meetings were
17 scheduled meetings?

18 A. It's possible.

19 Q. Are agendas commonly prepared for a scheduled
20 meeting?

21 A. No.

22 Q. Are they ever prepared?

23 A. Yes.

24 Q. Is it possible that any agendas were prepared
25 for any of these scheduled meetings to address the

1 community's concerns about bridge building and community
2 mapping?

3 A. I don't recall ever receiving one.

4 Q. So you don't recall one way or the other?

5 A. I would say no.

6 Q. And is that based on a specific recollection or
7 a belief?

8 A. It's out of working with Chief Downing, I don't
9 recall ever receiving an agenda for any of his meetings,
10 ever, on anything.

11 Q. And so am I correct in understanding that all
12 of the meetings that you're talking about in terms of,
13 you know, refocusing on bridge building and addressing
14 the community's concerns regarding community mapping,
15 were all of those meetings involving Deputy Chief
16 Downing?

17 A. Many of them would have been.

18 Q. And with respect to those that weren't, is it
19 possible that an agenda could have been prepared for
20 those meetings that didn't involve Deputy Chief Downing?

21 A. Even less likely.

22 Q. And why is that?

23 A. Because his staff followed suit, you know, you
24 kind of -- so -- but the other part is in my role in the
25 department so often I help people brainstorm or think of

1 where do we have existing training that would help maybe
2 your officers do better or -- I mean so I brainstorm
3 with people a lot, so -- and especially if -- so again,
4 it wouldn't -- also, I outrank them, so they are less
5 likely to give me an agenda about their agenda. It's
6 more of a discussion in a brainstorming session.

7 Q. Did you ever provide an agenda in any of these
8 meetings?

9 A. No.

10 Q. And so am I correct in understanding from you
11 referring to Deputy Chief Downing's staff, that all of
12 these meetings were with either Deputy Chief Downing or
13 his staff in the CTSOB?

14 A. I'm pausing because again, it's now quite a
15 while ago and I -- you know, is it possible one of his
16 captains was in there? Yes, it's possible. Every -- I
17 mean all of us, part of our mission is to respond to the
18 community. So community conversations are very common,
19 and I don't have a distinct recollection of who was in
20 the room or if it was just his people or not, because
21 again, community outreach applies to almost every aspect
22 of the department.

23 Q. Did you take any notes in any of these
24 meetings?

25 A. I have no recollection. It's possible, but I

1 don't keep them.

2 Q. When would these meetings have taken place? Is
3 it fair to say in, you know, shortly after Deputy Chief
4 Downing's Senate Statement?

5 A. I don't recall. They would have been certainly
6 before the Muslim Community Forum but that looks like
7 that could be almost a two-year window.

8 Q. So and just to be clear, you pointed to one of
9 the documents.

10 A. Yes.

11 Q. And which document are you pointing to?

12 A. Within the e-mails, "On Thursday, May 28, 2009,
13 there was a Muslim Community Forum, agenda item No. IV
14 was 'Best Practices in Training,' presented by myself.

15 Q. So the window during which these meetings would
16 have taken place would have been from October 2007 to --
17 I'm sorry --

18 A. May 28th, 2009.

19 Q. May 28th, 2009.

20 Is it possible that you kept notes -- so let me
21 back up.

22 You testified you may have taken notes in some
23 of these meetings; correct?

24 A. Correct.

25 Q. And you don't think that -- let me rephrase.

1 Do you know -- do you have a specific
2 recollection about throwing any of these notes away?

3 A. No, but I have no specific recollection of
4 where they are now. What I'm saying is that -- so a
5 couple things. If there was planning for the Muslim
6 Community Forum, which there probably was, his team was
7 responsible for it. My role clearly was to identify
8 best practices in training and to share that component.

9 So if I had a note it would probably be: Pull
10 the PowerPoint on best practices in training. I would
11 have no need to keep that because I already delivered on
12 it.

13 Q. In any of these meetings about how to refocus
14 on building bridges with the communities -- excuse me,
15 on building bridges with the community and addressing
16 their concerns with respect to community mapping, was
17 there a discussion of what the concerns were with
18 community mapping?

19 A. I'm sure that was captured in there somewhere.
20 I don't have a specific recollection. That wasn't
21 really what I was -- okay. Sorry.

22 Q. So yes?

23 A. Yes, I think there would be.

24 Q. Was there any discussion of the process that
25 led the department to propose a community mapping

1 program in the Senate Statement?

2 A. No.

3 Q. Was there any discussion of what the community
4 mapping program involved or would have involved?

5 A. I don't know if I have awareness of that from
6 those meetings. I know that they were -- members of the
7 CTSOB went over to England and discussed community
8 mapping in their country and that it had some
9 positive -- at least it was experienced more positively,
10 certainly, than it was here.

11 So I think they were -- I think they were
12 trying to adapt best practices that had worked somewhere
13 else. It didn't work. So it didn't evolve.

14 Q. And how do you know about the genesis from
15 England?

16 A. I don't know, to be honest. I can't say it was
17 in that meeting for the community forum. I'm in and
18 around a lot of different meetings, so I really can't
19 say.

20 Q. In any of these meetings about refocusing on
21 the community's concerns did anybody else take notes
22 other than yourself?

23 A. I have no idea.

24 Q. So it's possible?

25 A. It's possible people take notes, particularly

1 about planning a community forum, but there was no
2 discussion of community mapping, so there was no -- it
3 was about what we need to do in the community forum.

4 Q. Was it that there was no discussion about
5 community mapping or you don't have a specific
6 recollection of a discussion about community mapping?

7 A. I don't have a specific recollection about that
8 discussion.

9 Q. So it's possible it could have come up?

10 A. I would say only as a reference to what do we
11 do now.

12 Q. Right.

13 A. It certainly wasn't a focus in any way other
14 than trying to repair and reach out and create a better
15 trust response with the community.

16 Q. So going back to your search for records in
17 late December 2013 or early January 2014, am I right
18 that you never identified a set of documents that might
19 be responsive to the request for records concerning
20 community mapping?

21 A. There were no records on community mapping, so
22 no.

23 Q. And you didn't search for any records on
24 community mapping because of your belief that there were
25 none; right?

1 mapping. I have clear awareness that I have no
2 documents related to community mapping and so I -- it's
3 like looking for documents that don't exist.

4 Q. So am I correct your answer would be the same
5 for your reports and PowerPoints, that you didn't search
6 them because you don't believe you have any documents?

7 A. I know -- it's not that I don't believe it, I
8 know that I have not created, designed or implemented
9 any documents related to community mapping.

10 Q. Did you look for -- let me rephrase.

11 Did you search your notes to find if any of the
12 notes you took at any meetings referred to the community
13 mapping program?

14 A. No.

15 Q. Why not?

16 A. Because in the CPRA requirements we have ten
17 days to turn things around and they are for things that
18 are relevant and not -- to the request. I know that we
19 have done nothing. We don't have a community mapping
20 program. I know that I -- if I had seen anything I
21 would have stopped it, and I could have shared that with
22 you, but no requests came to me. No requests were --
23 nothing was implemented, designed or developed around
24 community mapping, so I didn't -- I didn't need to take
25 notes that the chief -- or whomever high ranking said

1 we're not doing this program, it was very clear.

2 And so again, back into the CPRA requirements
3 is that it's supposed to be a request that doesn't cause
4 also undue hardship and undue burden. If we have done a
5 just response and looked for -- and we even submitted
6 things that were well after the community mapping
7 project in an effort to be -- you know, and here is
8 something from a community forum; I don't think it's
9 relevant, but we'll submit it, because we're trying to
10 respond to this request.

11 So no, I didn't go looking for a possible note
12 on it because I'm very clear on the directions from
13 above, and by the time this request came to me that was
14 already, what, 2007 or '8, till 2013. I can't keep
15 every note from every senior staff meeting, and I don't.

16 Q. So just to be clear, you didn't check your
17 notes?

18 A. I did not check my notes.

19 Q. And you didn't check your notes because you
20 felt that it would be an undue burden to do so?

21 MS. NGUYEN: Objection. Mischaracterizes
22 witness's testimony.

23 THE WITNESS: No. Because I felt we had
24 sufficiently answered and searched for a relevant
25 response to the request and that my potential notes on a

1 would take anywhere for multiple department meetings.

2 MS. NGUYEN: Brendan, I'd just like to note
3 that it's about 5 -- almost 5:20 right now. Do you
4 anticipate much more? Do we need to continue?

5 MR. CHARNEY: Why don't we go off the record
6 for a second.

7 MS. NGUYEN: Okay.

8 (Recess)

9 MR. CHARNEY: After a discussion with counsel
10 during the break the City Attorney's office has
11 stipulated that the LAPD nor the City of Los Angeles
12 will assert an undue burden defense with respect to
13 search or disclosure of Dr. Pannell's notes, and on that
14 basis I will terminate the line of questioning that we
15 had been following before the break.

16 MS. NGUYEN: So stipulated.

17 BY MR. CHARNEY:

18 Q. Dr. Pannell, do you understand that you're
19 still oath?

20 A. I do.

21 Q. Turning your attention back to Exhibit 2, do
22 you recall if at the time you received this in 2013 or
23 early 2014 whether or not the Senate Statement
24 referenced in Item 1 and 2 and noted in Footnote 2 was
25 provided to you?

1 Q. -- communication he would have; correct?

2 A. Correct.

3 Q. Or she?

4 A. I'm trying to remember which one it was.

5 Q. Is there a records retention representative
6 charged with inventorying Training Division's records?

7 A. Training Division or PT and E? I'm Police
8 Training and Education. So generally what happens is
9 both of our entities will have somebody responsible for
10 records retention when it comes to storing and if it
11 goes into long-term storage over at Iron Mountain.
12 So -- but generally that's done through the front office
13 staff.

14 Q. And do you know who that person is who's in
15 charge of doing that?

16 A. For Training Division or for my unit?

17 Q. For your unit.

18 A. For my entity? Well, yes, currently now. I'm
19 just trying to think of who had it at that time.
20 Generally it's somebody in our front office. I'm just
21 trying -- you want 2007 or 2013?

22 Q. 2013, or early 2014. But that period where you
23 were searching in response to the request.

24 A. It's just not in my mind right now. One of our
25 front office staff will get that assignment, and

1 depending, it can be frequent or infrequent, just
2 depending on what we're working on.

3 Q. Did you, Roy Ortiz, or Alex Nuño consult with
4 that person, whoever it may be, the records retention
5 representative, about Muslim Advocates's requests for
6 records concerning community mapping?

7 A. No.

8 Q. Did you, Mr. Ortiz, or Mr. Nuño consult any
9 inventories of off-site records that might have been
10 created by the records retention representative?

11 A. No.

12 Q. Did you consult any inventories of other
13 records on-site, or records stored anywhere, that might
14 have been created by the records retention
15 representative in connection with Muslim Advocates's
16 request?

17 A. No.

18 Q. Has the Training Division ever collaborated
19 with any entities outside of the LAPD?

20 A. Yes.

21 Q. What kind of entities?

22 A. The Autism -- Los Angeles Autism Support -- is
23 it Network? Association. So there is Autism Support or
24 Department of Mental Health.

25 Q. Does it ever consult with any academic

1 Q. I think it might be helpful if you spell it.

2 A. E-t-h-e-l-d-a. Zari is Z-a-r-i.

3 She replaced Alex Nuño.

4 Q. Do you know why the tracking sheet or chrono
5 log was placed into the process?

6 A. To assist us as we -- again, searching for
7 documents is a regular thing in our division and then
8 also turnover of staff and things like that. So it's
9 difficult when people retire or move on or get a
10 promotion, we want to be able to be sure we can find the
11 information that's needed.

12 Q. And what information is that in the context of
13 a tracking sheet?

14 A. Generally it's more of a chrono, right?

15 Q. So what information would you want to gather
16 from the chrono, you know, after it's been done?

17 A. Just that we have the documentation of when
18 something comes in, the discussions that were had about
19 it, and the responsiveness of the people that you worked
20 with in the search.

21 Q. And so you create the chrono so that you have a
22 record of all that information?

23 A. Uh-huh. Yes.

24 MR. CHARNEY: I'm going to ask the court
25 reporter to mark for identification an August 1st, 2014,

1 letter from O'Melveny & Myers to the Discovery Section
2 of the LAPD, which is produced by the LAPD and bears
3 Bates Nos. LAPD RFP-2 00086 to 00088.

4 (Exhibit 7 marked)

5 BY MR. CHARNEY:

6 Q. Dr. Pannell, I'm going to ask you to take a
7 look at this document and briefly familiarize yourself
8 with it and in particular I'll suggest you focus your
9 attention on Item No. 1 on the first page.

10 A. Okay.

11 Q. Have you ever seen this document before?

12 A. I don't think so.

13 Q. Have you ever received a document in another
14 form that contains any of the content in Item No. 1?

15 A. I do not recall any other document coming to
16 me.

17 Q. And to be a little bit more specific, have you
18 ever seen a 15.2 or other intradepartmental
19 correspondence from the LAPD that contains a second
20 supplemental request for records of search terms used
21 and the databases those terms were run against for
22 searches conducted pursuant to Muslim Advocates's
23 request for records?

24 A. I don't recall. I don't -- I feel like we have
25 been responsive to every request that comes to us. If I

1 get a 15.2 I'm going to respond to it. So I don't
2 recall receiving something supplemental at this time.

3 Q. And so am I right that you never provided a
4 response to any sort of request like the one that's
5 indicated in Item No. 1?

6 A. Honestly, I would want to go back and search
7 our records. I know that -- so I don't -- I want to be
8 fully responsive to this request.

9 In all honesty, my husband was dying from
10 cancer at this time, so my memories around things around
11 specific dates and things around this time I'd want to
12 go back and check records.

13 Q. I'm so sorry to hear that.

14 A. Thank you.

15 MR. CHARNEY: Why don't we take a break.

16 (Recess)

17 BY MR. CHARNEY:

18 Q. Dr. Pannell, do you understand you're still
19 under oath?

20 A. I do. May I make a comment to this?

21 Q. Of course.

22 A. Again, after looking it over --

23 Q. And actually, could you just -- what are you
24 referring to?

25 A. Looking over Exhibit 7 and kind of collecting

1 my thoughts, I -- this is my -- to my best recollection
2 this is the first time I've seen this document and I
3 haven't responded to anything supplemental or was
4 requested to do so.

5 Q. And so just to be clear, you never searched
6 for -- and never provided records of search terms used
7 and the databases those terms were run against?

8 A. Correct.

9 Q. I believe you testified earlier that the
10 Instructional Design Unit and the Field Training
11 Services Unit each conducted some search of their
12 respective databases?

13 A. That is their practice.

14 Q. Okay.

15 A. That is what Roy should have asked. I can't
16 say for 100 percent certainty what the terms were and
17 how it was done or who did it.

18 Q. And am I correct that you also don't know how
19 long each search -- how much time was spent on each
20 search --

21 A. No.

22 Q. -- if the search was conducted?

23 A. No.

24 Q. Does Police Training and Education have a P drive?

25 A. Yes.

Luann Pannell, Ph.D.
May 17, 2017

DECLARATION UNDER PENALTY OF PERJURY

I, Luann Pannell, Ph.D., hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on May 17, 2017; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this 29th day of June, 2017, at
Los Angeles, California.



Luann Pannell, Ph.D.

DEPOSITION ERRATA SHEET

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Page No. 42 Line No. 12
Change: JON PETERS ~~NOT~~ JB

Reason for change: NOT JOHN

Page No. 81 Line No. 6
Change: conduct term based searches

Reason for change: NOT "conduct term-based computers"

Page No. 101 Line No. 5
Change: that level supervisor

Reason for change: NOT "that little supervisor"

Page No. 117 Line No. 22
Change: "what we are doing in training"

Reason for change: clarification

Page No. 149 Line No. 7
Change: should read "community mapping program was presented by Chief Downing in 2007 to the Senate"

Reason for change: clarification

Page No. 159 Line No. 16
Change: should read "No"

Reason for change: clarification

Page No. ~~179~~ Line No. ~~85~~
Change: NO CHANGE

Reason for change: _____

Luann Pannell, Ph.D. 06.29.17
Luann Pannell, Ph.D. Dated

May 17, 2017

1 STATE OF CALIFORNIA)
) SS
2 COUNTY OF LOS ANGELES)

3

4 I, Jean F. Holliday, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in the
7 foregoing proceedings was by me duly sworn to testify to
8 the truth, the whole truth, and nothing but the truth;

9 That said proceedings were taken before me at the
10 time and place therein set forth, and were taken down by
11 me in shorthand and thereafter transcribed into
12 typewriting under my direction and supervision;

13 I further certify that I am neither counsel for,
14 nor related to, any party to said proceedings, nor in
15 anywise interested in the outcome thereof.

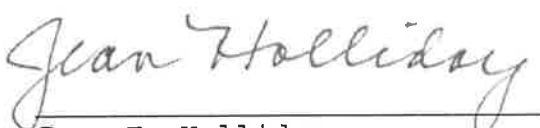
16 In witness whereof, I have hereunto subscribed my
17 name.

18

19 Dated: May 25, 2017

20

21


22 Jean F. Holliday
CSR No. 4535, RPR, CRR

23

24

25

EXHIBIT KK

Michael Downing Volume I
May 31, 2017

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CERTIFIED COPY

MUSLIM ADVOCATES,
Petitioner,

vs.

Case No. BS163755

THE CITY OF LOS ANGELES; THE LOS
ANGELES POLICE DEPARTMENT; DOES
1-10, INCLUSIVE,
Respondents.

DEPOSITION OF MICHAEL DOWNING

VOLUME I

Wednesday, May 31, 2017

10:03 a.m. - 4:48 p.m.

865 South Figueroa Street, Suite 2400

Los Angeles, California

REPORTED BY:

Jean F. Holliday

CSR No. 4535, RPR, CRR

U.S. LEGAL SUPPORT
(800) 993-4464

1 Q. And having had a chance to review the
2 documents, are these the documents that you reviewed to
3 prepare for your deposition today?

4 A. Yes.

5 Q. Did you review any documents other than these
6 documents to prepare for your deposition today?

7 A. No.

8 Q. So starting with the document that's been
9 marked as Exhibit 2, your statement before the
10 U.S. Senate on October 30th, 2007, did this document
11 help you prepare for your deposition today?

12 A. Yes.

13 Q. And how did it help you prepare?

14 A. It refreshed my recollection of what I wrote in
15 preparation for the Congressional testimony, Senate
16 testimony.

17 Q. So am I right that all of the words in this
18 Exhibit 2 were written by you?

19 A. Yes.

20 Q. And you spoke all these words before the
21 U.S. Senate?

22 A. No.

23 Q. Did you convey the content of this to the
24 U.S. Senate?

25 A. Yes.

1 Q. But was it conveyed -- was any of the content
2 of this conveyed orally before the U.S. Senate?

3 A. Yes.

4 Q. Were there portions of this that you omitted
5 from your testimony before the U.S. Senate?

6 A. I didn't read it word for word.

7 Q. So this was more of a guide?

8 A. Yes.

9 Q. Are there any particular phrases in this
10 document that you left out when you spoke before the
11 U.S. Senate?

12 A. I'm sure there were many words that I left out.
13 I summarized the document.

14 Q. Was your testimony substantially the same as
15 what's in Exhibit 2?

16 A. Thematically, yes.

17 Q. Was your testimony given on October 30th, 2007?

18 A. I believe so.

19 Q. And were you under oath at that time?

20 A. Yes.

21 Q. Did this document help you prepare in any other
22 way other than reminding you of what you wrote in this
23 document to prepare for your testimony?

24 A. I don't understand the question.

25 Q. Sure. I believe that you testified that this

1 MR. JOHANSEN: Stipulation?

2 MR. CHARNEY: Yes. After a brief discussion
3 with counsel, the City Attorney's office and counsel for
4 petitioner have stipulated that the documents marked as
5 Exhibits 2 through 7 are the City's business records and
6 are admissible on that basis for all purposes in this
7 action.

8 MR. JOHANSEN: So stipulated.

9 MR. CHARNEY: Thank you, Kjehl.

10 I'm going to ask the court reporter to mark for
11 identification a document that I'll represent was
12 printed from the Los Angeles Police Department's website
13 and appears to be a biography of Michael Downing.

14 (Exhibit 8 marked)

15 BY MR. CHARNEY:

16 Q. Mr. Downing, if you could take a look at this
17 document and let me know when you've had a chance to
18 familiarize yourself.

19 Mr. Downing, does this -- let me ask, have you
20 had a chance to review this document?

21 A. Yes.

22 Q. And does Exhibit 8 accurately summarize your
23 educational background?

24 A. I can't -- the first page is deleted, the
25 sentence there, so I don't know what that talks about.

1 Q. Do you remember how it came up?

2 A. In passing that he was working on it.

3 Q. Did he -- and what did he say in passing?

4 A. I don't recall. Just that he was working on
5 it.

6 Q. Did he ever ask you for any information
7 relating to -- actually, let me back up.

8 So I'd like to focus your attention on Page 2
9 of this document and in particular Item No. 2 which asks
10 for all records reflecting or relating to the community
11 mapping program as described in the Senate Statement,
12 which is defined in Item No. 1 as being your Senate
13 Statement --

14 A. Uh-huh.

15 Q. -- before the U.S. Senate.

16 Did Mike Seguin ever ask you about that
17 request?

18 A. Yes.

19 Q. And what did he ask you?

20 A. Do you recall any records relative to that.

21 Q. Do you know when he asked you that?

22 A. No, I don't.

23 Q. Can you approximate when he might have asked
24 you about it?

25 A. I can't.

1 Q. Do you remember where you were when he asked
2 you about it?

3 A. In my office. Well, not in my office. In the
4 outer office where his desk and cubicle was.

5 Q. And this is the facility where CTSOB's offices
6 are located?

7 A. Yes.

8 Q. I know this is a tough question because we're
9 in Southern California, but do you remember the time of
10 year?

11 A. No.

12 MR. JOHANSEN: I'm assuming that refers to our
13 lack of four seasons.

14 BY MR. CHARNEY:

15 Q. What, if anything, did you tell Mike Seguin
16 when he asked you about this request?

17 A. There were no records that I knew of. Only
18 that -- my Senate testimony.

19 Q. And when you say there were no records that you
20 knew of, did you mean that at the time Mike Seguin asked
21 you that question you were not aware of any records in
22 existence at that time, or were you saying that there
23 had never been any records?

24 A. There had never been any records.

25 Q. And what was the basis for that?

1 A. The basis was that this was a conceptual idea
2 that was only talked about and there were no plans or
3 formal initiatives or anything. This was an overt
4 concept that was discussed with the Muslim Public
5 Affairs Council and University of Southern California.

6 Q. How do you know that?

7 MR. JOHANSEN: Do you understand the question?

8 THE WITNESS: Not really. Can you repeat the
9 question or maybe form a better question?

10 BY MR. CHARNEY:

11 Q. So I believe that you testified that there was
12 no -- there were no records regarding the community
13 mapping program because it was a conceptual idea that
14 was only talked about and there were no plans or formal
15 initiatives, and that it was discussed with Muslim
16 Public Affairs Council and the University of Southern
17 California. And I'm asking you how you know that. Do
18 you know that personally? Did you hear it from others?
19 Did you find out later? I mean how do you know that?

20 A. I know it personally. It was my idea. I was
21 the one that had talked about it to Salam Al-Mariati,
22 the executive director of the Muslim Public Affairs
23 Council.

24 MR. JOHANSEN: Could you spell that to the best
25 of your ability?

1 THE WITNESS: S-a-l-a-m, and then last name is
2 capital A-l dash M-a-r-i-a-t-i, I believe. Close.

3 BY MR. CHARNEY:

4 Q. You are the only person that had any
5 discussions about the community mapping program within
6 the LAPD?

7 A. Yes.

8 Q. And how do you know that?

9 A. Because I did it. It was my idea.

10 Q. When did you come up with the idea?

11 A. Maybe a month before the Senate testimony.

12 Q. And that's the October 30th, 2007, testimony
13 that's contained in your Senate Statement?

14 A. Yes.

15 Q. Which I believe is Exhibit 2.

16 A. Uh-huh.

17 Q. When you came up with it did you share the idea
18 for it with anybody in the LAPD prior to your testimony
19 on October 30th?

20 A. Yes. Chief of Police.

21 Q. And how did you share it with the Chief of
22 Police?

23 A. I explained that this was not a
24 Counter-Terrorism strategy. This was a community
25 policing strategy, similar to what the Orthodox Jews did

1 in the community to help educate the police officers
2 where they were located for the Sabbath and that
3 having -- because we had what I believed was more of an
4 invisible Muslim community or Muslim communities,
5 disparate, isolated, feeling oppressed, discontent. The
6 idea was to locate the diaspora communities and provide
7 services to underserved communities, to give access to
8 government, to give a voice, to raise the ethical
9 stature of communities, to improve the quality of life
10 of communities so that they would not be a target for
11 those that wanted to recruit.

12 And so we were trying to infuse social services
13 and it wasn't a detect and identify type of initiative.
14 It was to strengthen the resiliency of communities, and
15 it was done overtly. It was going to be done overtly,
16 if we did it. It was not a covert type of initiative.

17 Q. And did you provide that information to the
18 chief orally or in writing?

19 A. The chief read my testimony before I gave it,
20 as did the mayor's office.

21 Q. And so the explanation that you just -- so I
22 believe that you just testified that you explained the
23 program to the chief. Was that explanation you just
24 described separate from providing your testimony, the
25 written version of your testimony that's in Exhibit 2,

1 Q. So you didn't know one way or another whether
2 those calendar entries concerned community mapping; is
3 that right?

4 A. Correct.

5 Q. I'd like you to turn your attention to
6 Exhibit 2, which is your Senate Statement on
7 October 30th, 2007. And in particular I'd like you to
8 turn your attention to Section V, which appears on the
9 page that has a page number of Page 7 and ID No. ID 14.
10 I imagine you're familiar with this but if you want to
11 take a moment to refamiliarize yourself, please do, and
12 let me know when you've done so.

13 A. Okay.

14 Q. The Section V, Community Mapping, do you
15 remember giving testimony to the U.S. Senate about this
16 topic?

17 A. Yes.

18 Q. And do you know if your testimony -- do you
19 remember if your testimony to the U.S. Senate was
20 substantially the same as what's indicated in these four
21 paragraphs on Page 7?

22 A. Thematically I believe it was close.

23 Q. And when you say "thematically" what do you
24 mean?

25 A. I mean the whole intent of this in terms of --

1 that this was an overt community policing type of
2 initiative that we were doing in partnership with an
3 academic institution to offer the science behind it and
4 a community group to offer the legitimacy for it.

5 Q. At the time you -- when you say "thematically"
6 does that differ in any way from "substantially"?

7 A. I didn't read it word for word. I summarized
8 the intent of it, as I did with the whole testimony.

9 Q. So is it accurate to say that your testimony
10 before the U.S. Senate was -- contained all of the
11 themes and substance of these four paragraphs, although
12 certain words might be different?

13 A. I don't know if I could say each of the four
14 paragraphs, but generally speaking it was a summary of
15 that Section V.

16 Q. At the time that you gave your testimony what
17 was the status of community mapping within the LAPD?

18 A. There was nothing done. It was all conceptual,
19 just talk. It was really a conversation between me,
20 Salam Al-Mariati and the doctor at USC.

21 Q. Did you use the words "recently launched"
22 before the Senate?

23 A. I may have. I don't know specifically, but I
24 could have, in launching meaning the start of the
25 conversation.

1 Q. So when it says "recently launched" in this
2 document, does that refer to the start of a
3 conversation?

4 A. Well, if you look at the paragraph below that
5 it says, "Community mapping is the start of a
6 conversation, not just data sets." So we had no data
7 sets; we just had the start of a conversation.

8 Q. And so just to be clear, when you said that
9 "the LAPD recently launched an initiative with an
10 academic institution to conduct an extensive community
11 mapping program," you were referring to the start of a
12 conversation?

13 A. That's correct.

14 Q. And those were the conversations you had with
15 Mr. Al-Mariati and the German doctor?

16 A. Yes.

17 Q. Was the academic the CREATE Center at USC?

18 I'm sorry. Was the academic institution the
19 CREATE Center at USC?

20 A. Yes.

21 Q. Were there any other academic institutions?

22 A. No.

23 Q. And in terms of your dealings with that
24 academic institution, was that just you, or did anyone
25 else at the LAPD have any contact with that academic

1 trying to create a learning environment for our command
2 staff.

3 Q. And the LAPD's outreach and grassroots
4 dialogue, it's helped the command observe, learn, engage
5 and listen, that was part of your testimony about
6 community mapping; correct?

7 A. No. That was what kind of lead up -- we were
8 at this point where we thought that we had to do more
9 and that we had done 18 months of engagement and
10 outreach and the next -- and maybe we weren't
11 outreaching to the right areas. You know, we were
12 outreaching and engaging with people that we knew and
13 come to know, but there were a lot of people that were
14 still disaffected and we felt were isolated, and so
15 that's where the mapping concept came from.

16 Q. So the mapping concept was sort of an outgrowth
17 or the next step after these community engagement
18 efforts?

19 A. Well, you can't say it's one thing or the
20 other. We saw what happened in the Orthodox Jewish
21 community with the Sabbath and the need to sensitize
22 officers to the culture and tradition of that community.
23 We saw what happened in London with the Pakistani
24 communities and the isolation, the fact that they didn't
25 feel British. And so then we did 18 months of dialogue

1 outreach here, and so the next logical -- in my mind the
2 next logical step to improve our services was the
3 mapping initiative.

4 Q. So the idea for the mapping initiative was
5 based at least in part on your experience doing outreach
6 in L.A. for 18 months?

7 MR. JOHANSEN: Objection. I think that
8 misstates the witness's testimony.

9 You may answer the question.

10 THE WITNESS: I've been doing outreach
11 engagement for most of my career. The reason Bratton,
12 Chief Bratton put me in Counter-Terrorism and Special
13 Operations Bureau is because of my work in Hollywood,
14 mobilizing communities that were very diverse, rich,
15 poor, ethnic, gay, bisexual, transgender, Q, not that we
16 always agreed but we developed goals and objectives to
17 create peace and clean environments. And while you
18 always need, you know, the operational capability side
19 of a Counter-Terrorism unit, the bigger side is building
20 community and building resiliency in communities, and
21 that was my strength. That was what I was known for on
22 the department.

23 BY MR. CHARNEY:

24 Q. And so going back to how the outreach and
25 grassroots dialogue over 18 months fits into the section

1 of your testimony concerning community mapping, you
2 testified that part of the idea for community mapping
3 was drawn from lessons from other countries where
4 certain groups might have not felt -- certain groups in
5 Brittain might have not felt British; right?

6 A. That was one aspect of it. There were many.
7 There were a multitude of dimensions to it.

8 Q. And did you -- in the 18 months of outreach and
9 grassroots dialogue, was part of that process trying to
10 figure out if any of those circumstances that you had
11 identified in other parts of the world applied here in
12 L.A.?

13 A. It was to bring visibility to what had been an
14 invisible community to us. Before 9/11 there was really
15 no interaction with Muslim communities. And it was
16 invisible to most command staff. There was -- there was
17 mystery and uncertainty with our officers and our
18 command staff, and so part of our job was to orient the
19 command staff to a big part of our community and
20 incorporate that part of the community into their
21 community police advisory boards, into the neighborhood
22 watch systems, into the chambers of commerce so that it
23 was part of a natural system, and that's why we always
24 use the word "integration" versus "assimilation." We
25 wanted the communities to keep their tradition and their

1 culture and their faith and their fashion but find a way
2 to integrate so the rest of the community can appreciate
3 it, and certainly the officers as well, because it was
4 all about building partnerships and leveraging community
5 resources.

6 Q. And how did -- how, if at all, did the
7 18 months of outreach and grassroots dialogue give you
8 information about whether or not the circumstances in
9 other parts of the world that inspired the community
10 mapping program were present in L.A. or not?

11 A. Well, like I said, that was only one aspect of
12 this, what was happening in the UK, to help inform this,
13 but the other aspect was our experience with the Jewish
14 community, with the Orthodox Jewish community, a
15 community that was kind of isolated, that was a bit
16 Balkanized, that was to themselves, that the officers
17 didn't really have an appreciation for what the Sabbath
18 meant in following laws and rules, et cetera. So
19 that -- in that case the community came to us and kind
20 of gave them -- gave us their dimensions of where they
21 were and where we could experience people walking during
22 the Sabbath and whatnot, going to their shul.

23 So that was another aspect that informed this
24 opinion. So it's not just one, you know, orientation to
25 what's happening overseas. It's kind of the totality of

1 circumstances that existed and the feeling that we
2 weren't doing enough to build resiliency into the
3 communities.

4 Q. And so how did the 18 months of outreach and
5 grassroots dialogue help you identify whether that
6 totality of circumstances that existed in these other
7 contexts that you've described, the UK and the Orthodox
8 Jewish community and these other contexts, whether or
9 not that -- those circumstances were present in L.A., or
10 how they were present?

11 A. Well, what it told us, what it informed us was
12 that we were outreaching to the same individuals time
13 and time again, to the same leaders time and time again,
14 whether it be -- at the time, whether it be the Muslim
15 Public Affairs Council, the Islamic Center of Southern
16 California board of directors and director, or at the
17 time even CAIR. It felt like we were missing thousands
18 and thousands and thousands of people that really had no
19 representation and nobody really spoke for those groups.
20 So that was part of our intent.

21 Q. So when you said CAIR, is that C-A-I-R?

22 A. C-A-I-R.

23 Q. And did you learn the conclusion that you
24 were -- conclusion or belief that you were missing
25 thousands and thousands of people that didn't have

1 representation and that you -- did that conclusion or
2 belief arise out of the 18 months of outreach and
3 grassroots dialogue?

4 A. Partly.

5 Q. And that conclusion or belief is part of what
6 led to the idea for community mapping?

7 A. A little part of it. Like I said, no one --
8 there was not one dimension of whether it's what's
9 happening overseas, or our experience with the Jewish
10 community, or the belief that there were isolated
11 communities in the L.A. area that needed social services
12 and/or a feeling that the government was behind them,
13 that supported them, that this was their home, and that
14 we're all American. So it was a totality of that.
15 There was not one specific dimension.

16 Q. What other dimensions -- let me rephrase.
17 What other significant dimensions were part of
18 that?

19 A. The idea that community policing was about
20 developing partnerships, was about problem solving and
21 was about prevention. And those three dynamics, in
22 terms of how we went about our work, was to build trust
23 so that we built deep, meaningful partnerships with the
24 community so that we understand the pressures that were
25 on communities and the idea of teaching problem-solving

1 A. No.

2 Q. This happened about ten years ago; right?

3 A. Yes.

4 Q. Do you have a detailed memory of the other
5 discussions you had during that time on other topics?

6 MR. JOHANSEN: Objection. Argumentative.

7 You can answer the question if you recall.

8 THE WITNESS: I don't.

9 MR. JOHANSEN: You can answer the question.

10 THE WITNESS: Restate the question, please.

11 BY MR. CHARNEY:

12 Q. Sure. Do you have a detailed memory of other
13 discussions that you had about ten years ago on other
14 topics?

15 A. You have to be more specific.

16 Q. Sure. So I assume that ten years ago the
17 discussions that you had about the concepts underlying
18 community mapping and community mapping with
19 Mr. Stainbrook and Ms. McNamara, those weren't the only
20 conversations you were having within the LAPD; correct?

21 A. I suppose you could say so.

22 Q. There were conversations with other people
23 about other things; right?

24 A. Well, I ran a command. I was part of the
25 command staff. We'd have discussions with the chief,

1 with other commanders. I really don't know what you're
2 asking of me.

3 Q. So I'm just -- my question is do you have a
4 detailed memory of the way you conducted those other
5 conversations with --

6 A. No.

7 Q. I'd like to turn back to Exhibit No. 2, I
8 believe, which we've been looking at, and in particular
9 the second paragraph in the community mapping section.
10 The second sentence of that second paragraph, "We are
11 also soliciting input of local Muslim groups, so the
12 process can be transparent and inclusive."

13 What did you mean by the word "transparent"?

14 A. So that it's overt and not covert. It's not
15 secret. It's not something we're doing without the
16 public's knowledge.

17 Q. And in soliciting input of local Muslim groups
18 did you share any information with them?

19 A. With the Muslim Public Affairs Council, Salam
20 Al-Mariati, yes.

21 Q. And did that consist of the conversations we've
22 already discussed?

23 A. It did.

24 Q. Did you provide any information or documents to
25 others within that group other than Mr. Al-Mariati?

1 Washington D.C.

2 Q. And are you referring to your trip to
3 Washington D.C. to provide the testimony --

4 A. Yes.

5 Q. -- that's in Exhibit 2?

6 A. That's correct.

7 Q. So other than Mr. Stainbrook and Ms. McNamara
8 and the two individuals outside of the LAPD that you
9 mentioned, did you speak with anybody else about the
10 community mapping program?

11 A. Not that I recall.

12 Q. At any time?

13 A. Not that I recall.

14 Q. When the program was terminated how was it
15 terminated?

16 A. It was terminated about a week after I got
17 back. That whole week we received nothing but praise.
18 In fact, one of the individuals setting in the back of
19 the room during the testimony I remember right -- she
20 was from the Muslim Public Affairs Council in
21 Washington D.C., she had lunch with me and Frank
22 Cilluffo, who was at George Washington University, just
23 as a friend, and they had nothing but positive comments,
24 you know, that we were getting involved in this.

25 And then a week after I returned, I believe it

1 was CAIR that started to stir the pot, and got a lot of
2 communities to kind of develop suspicion about it. And
3 Arif Alikhan, because he was from the Muslim community,
4 heard it firsthand and he advised myself and the chief
5 that it wasn't worth the effort, that we didn't have
6 enough trust built up in the community and that we
7 should kill it and shelve it.

8 And so that next week Chief Bratton had me
9 organize a meeting of probably 30 Muslim leaders
10 throughout the region. We had a meeting in his
11 conference room at the old Parker Center building on the
12 sixth floor, and he informed the Muslim leaders that it
13 wasn't worth it if we didn't have your support and trust
14 and we were going to shelve it.

15 Q. Was there an agenda for that meeting?

16 A. No. Single-purpose meeting.

17 Q. Did anyone take notes?

18 A. I don't think so.

19 Q. And I should ask, did anybody within the LAPD
20 take notes?

21 A. No.

22 Q. Do you know that for a fact, or you don't
23 recall seeing anyone taking notes?

24 A. I don't recall seeing anyone taking notes. It
25 was very direct. It was to the point. It was one issue

1 and that was that we're no longer going to pursue the
2 concept.

3 Q. How many people from the LAPD were present?

4 A. Maybe four.

5 Q. And who were those people?

6 A. Myself, Chief Bratton, I believe John Miller
7 was there, if I recall. No. John -- let's see, was
8 John Miller there? No. John Miller had left. He
9 wasn't there. And I think my adjutant. I don't know
10 who the fourth would have been. I recall seeing four
11 people there.

12 Q. And was your adjutant Mr. Stainbrook?

13 A. Yes.

14 Q. Did you ask Mr. Stainbrook if he took notes?

15 A. No, but he was sitting right next to me.

16 Q. And you didn't see him take notes?

17 A. No.

18 Q. Were you looking at him consistently?

19 A. He was sitting right next to me.

20 Q. So is that a yes? I mean I --

21 A. What's the question?

22 Q. I asked that not facetiously because sometimes,
23 you know, if you're focusing on something else you might
24 not be looking at the person next to you. So I'm just
25 asking were you looking at him?

1 A. Was I looking at him?

2 Q. Yes.

3 A. Partially I was, yeah.

4 Q. And so you saw that he wasn't taking notes?

5 A. Yes.

6 Q. And you don't know who the fourth person was?

7 A. I don't.

8 Q. Do you know, putting aside their name, do you
9 know their kind of institutional role within the LAPD?

10 A. I just have an image of another uniform in
11 there.

12 Q. And so I assume that you don't remember their
13 face?

14 A. I don't.

15 Q. Were you looking at them, that person, the
16 person who's name and face you don't remember?

17 A. I looked at them a few times throughout the
18 meeting, sure.

19 Q. Do you know if they took notes?

20 A. I don't.

21 Q. So it's possible that they took notes?

22 A. I don't know.

23 Q. Do you know if invitations were sent to the --
24 was it 30-odd people that --

25 A. I think it was probably 30 people.

1 lists of what people who directly report to the chief
2 were working on?

3 A. I don't know.

4 Q. So it's possible?

5 A. They weren't present when I was -- when I gave
6 him my updates.

7 Q. Do you know if it was the -- whether or not it
8 was the chief's practice to inform his executive officer
9 or adjutant about, you know, information he had received
10 from his direct reports or action items to follow up
11 with those direct reports on?

12 A. I don't know.

13 Q. You don't know one way or the other?

14 A. I don't know. I don't know.

15 Q. Did you correspond with anybody outside of the
16 LAPD about the community mapping program at any time
17 after it was terminated?

18 A. You'd have to clarify that question.

19 Q. Is there something -- I'm not -- is there
20 something about it that's unclear in particular?

21 A. I mean at what period of time are you talking
22 about? You're talking after it was shelved did I ever
23 talk about the community mapping initiative?

24 Q. Well, in particular correspond, send e-mails or
25 written communications.

1 MR. JOHANSEN: Objection to the extent that it
2 asks for information relating to conversations that
3 would be covered by the attorney-client privilege.

4 With that being noted, you may answer the
5 question.

6 BY MR. CHARNEY:

7 Q. That's fair. I'm not asking about your
8 conversations with the Deputy City Attorneys, nor do I
9 want the contents of any communication you've had with
10 an attorney.

11 A. Well, I mean the sub -- I don't believe that I
12 wrote any correspondence relative to this. There
13 were -- you know, there were -- I think this was
14 involved in some case studies and probably articles
15 about, you know, what happened to the mapping project,
16 the fact that, you know, we didn't have enough trust
17 built up in the community. Did I talk about it to
18 anybody in speeches to other command officers or
19 organizations? I would talk about, you know, this was a
20 bit of a failure in that it never got started and why it
21 failed and what we learned from it and that while it
22 created a crisis that brought danger and uncertainty, it
23 also brought a lot of opportunity to kind of reassert
24 our efforts and get back down to grassroots outreach
25 where we should have been probably in the first place.

1 in drafting or polishing speeches or testimony?

2 A. My staff, basically, and the chief.

3 Q. Was there a Public Information Office or Public
4 Affairs Office or something like that?

5 A. There was a Community Affairs Group and there
6 was a Press Relations Office.

7 Q. And did either of those -- did that group or
8 did the Community Relations Group or the Press Relations
9 Office offer services, like proofreading or editing,
10 things like that?

11 A. If I would have asked them I'm sure they would
12 have, but I never asked them.

13 Q. And with respect to your staff, what resources
14 did your staff provide you in terms of preparing
15 speeches or testimony?

16 A. Proofreading and editing.

17 Q. Did anyone help you with respect to the
18 prepared testimony that's contained in Exhibit 2?

19 A. Mark Stainbrook.

20 Q. And what did he do to help you prepare this?

21 A. He helped me -- I wrote it. He helped me proof
22 it, edit it, made comments. I don't remember exactly
23 what he added to it, but he helped polish it up for me.

24 Q. So just to drill down on how that worked, what
25 did you give him?

1 A. I gave him a hard copy and he would pen it, red
2 pen it.

3 Q. And how many -- did that just happen once or
4 did you kind of go back and forth?

5 A. Writing is rewriting. I'd give it to him; he'd
6 give it to me; I'd give it to him; we'd take a couple
7 passes at it.

8 Q. Is it accurate to say that all of those
9 revisions were done in red pen or some other color pen?

10 A. Yeah.

11 Q. On a hard copy?

12 A. Yes.

13 Q. So you would give him a -- the draft you gave
14 him, was it a typed draft printed?

15 A. Yes.

16 Q. And was it typed in Microsoft Word or another
17 word processing program?

18 A. I assume so, yeah.

19 Q. Did you type it?

20 A. I did.

21 Q. And do you use Microsoft Word?

22 A. Ten years ago, if Microsoft Word was there I
23 probably did use it, yeah.

24 Q. So you used whatever standard --

25 A. Whatever was on my computer.

1 Q. And so you used a word processing program on
2 your computer to type up the draft; you gave it to
3 Mr. Stainbrook?

4 A. Yeah.

5 Q. Mr. Stainbrook red-lined it, gave it back to
6 you; right?

7 A. Yes.

8 Q. Did you then input the changes into the
9 draft --

10 A. Yes.

11 Q. -- on the computer?

12 A. Yes.

13 Q. Did you save it as a new draft?

14 A. No.

15 Q. Just to clarify what I mean, did you save a new
16 version that would have been separate from the original
17 file?

18 A. No. Same.

19 Q. So you --

20 A. Same name, same extension.

21 Q. And is it accurate to say that -- so then is it
22 true that there were then additional kind of iterations
23 of that revision process where you would print out a new
24 copy, give it to Mark Stainbrook, Mr. Stainbrook, and
25 have him provide any additional edits?

1 A. There were a few passes at it. We spent, you
2 know, three or four days working it.

3 Q. Did you ever use Track Changes?

4 A. No.

5 Q. Do you know if Mr. Stainbrook ever used Track
6 Changes?

7 A. He only edited my hard copy.

8 Q. So he never had access to the Word version?

9 A. No.

10 Q. Did anyone else help you edit Exhibit 2?

11 A. My executive assistant may have. I don't --
12 you know, Mark and -- I think it was Becky at the time,
13 worked as a team, so I don't know if she did or not.
14 She would sometimes edit my documents for me as well,
15 but they would both work at it.

16 Q. Do you know if she saved any drafts as a new
17 version?

18 A. No. They only received the hard copies.

19 Q. So they wouldn't have had access --

20 A. No.

21 Q. -- to the Microsoft Word version?

22 A. I kept control of that.

23 Q. Or whatever word processing program was used.

24 A. (No audible response.)

25 Q. You shook your head?

1 A. What's the question?

2 Q. So they wouldn't have had access to the version
3 that was created with whatever word processing program
4 was used?

5 A. That's correct.

6 Q. Can you think of anybody else who might have
7 had access to the Word version?

8 A. No.

9 Q. Or the version created by any other word
10 processing program?

11 A. No.

12 Q. I'm sorry. I'm very Microsoft Word centric, I
13 guess.

14 Do you know if Mr. Stainbrook kept any of the
15 red-lined hard copies?

16 A. No, I don't believe he did because I used them
17 to work on my -- on the Word document.

18 Q. So in every case he gave it back to you?

19 A. Yes.

20 Q. Did you retain any versions -- excuse me.

21 Did you retain any copies of those red-lined
22 drafts?

23 A. No.

24 Q. How do you know?

25 A. Because I shredded them.

1 Q. Why did you shred them?

2 A. Because there were a few different iterations
3 of it; didn't want to get them confused, and there was
4 no reason to keep them.

5 Q. Is shredding a common practice for you in
6 dealing with your documents?

7 A. Yes.

8 Q. Why is that?

9 A. There is some documents that are working
10 documents that I just shred just to get it off my desk.

11 Q. Why shredding versus just tossing it in the
12 trash?

13 A. Security reasons.

14 Q. So you don't want a document that relates to
15 LAPD business to be accessible to other people?

16 A. To custodians and things, no.

17 Q. Your executive assistant at the time who was
18 either, I guess, Mark or Becky --

19 A. Mark was my adjutant. I believe Becky was my
20 executive assistant.

21 Q. Okay. So do you know if your executive
22 assistant retained any drafts of the Senate Statement?

23 A. No, she did not.

24 Q. How do you know that she didn't?

25 A. Because she and Mark gave me the documents that

1 they edited for my use as I changed it on the word
2 processor.

3 Q. Is it possible she kept copies for her own
4 purposes, for instance, so that she could confirm
5 that -- well, let me just rephrase that.

6 Is it possible that she kept any drafts for her
7 own purposes?

8 A. No.

9 Q. How do you know?

10 A. She would give them to me so I could make the
11 corrections.

12 Q. Have you ever -- when you were working with
13 Becky did you ever go to her at any time and say
14 something like, "Hey, I can't find this document. Did
15 you keep a copy of it"?

16 A. If the document had already been forwarded out
17 of our office she would keep a copy of it. She wouldn't
18 keep a copy of a working document.

19 Q. And you never asked her for a copy of a working
20 document?

21 A. No.

22 Q. I'll represent that it's a practice of some
23 support staff to maintain copies of documents containing
24 edits in order to later confirm that those edits were
25 made as indicated on the draft. Is that a practice that

1 you're --

2 A. Not in my office.

3 Q. Okay. It's never been a practice?

4 A. No.

5 Q. Am I right in understanding your testimony that
6 nobody would have had the ability to make Track Changes
7 to the Senate Statement other than perhaps you?

8 A. That's correct.

9 Q. And that you didn't use Track Changes?

10 A. No.

11 Q. I'd like to direct your attention to Page 7 of
12 the Exhibit 2; and in particular to the lines between
13 Paragraphs 1 and 2 -- excuse me -- the line between --
14 I'm going to just take that back.

15 I'd like to direct your attention to the space
16 between Paragraph 1 and 2, and the space between
17 Paragraph 2 and 3 in Section V, which both indicate on
18 the right side of the document what appears to be a
19 Track Change with a vertical line that corresponds to an
20 edit.

21 A. I have no idea what that means.

22 Q. So do you see the vertical lines on the
23 right-hand side of the page?

24 A. I do.

25 Q. And do you see that the vertical line on the --

1 that the first vertical line corresponds to what appears
2 to be an interlineated period on the left-hand side of
3 the document?

4 A. I see a mark on the page. I don't know what it
5 represents.

6 Q. And do you see that the second vertical line
7 corresponds to an "e" in "intelligence" that has an
8 underscore under it?

9 A. I see this, yes.

10 Q. Have you ever seen Track Changes in a word
11 processing document before?

12 A. I have.

13 Q. Do these appear to be Track Changes?

14 A. I don't know what -- I don't recognize what
15 they are.

16 Q. So as you look at these you don't recognize one
17 way or another whether this is Track Changes?

18 A. I don't.

19 Q. Does this refresh your recollection in any way
20 as to whether or not somebody may have had access to
21 this document in order to use Track Changes?

22 A. It doesn't.

23 Q. Does it refresh your recollection in any way as
24 to whether or not you may have used Track Changes in
25 working on the different versions of this document?

1 A. No.

2 Q. I believe you -- we discussed earlier
3 communications you might have had about community
4 mapping after the program was terminated, and I believe
5 you testified that you might have had some
6 communications regarding articles; is that correct?

7 A. Yes.

8 Q. Do you know to whom you would have -- with whom
9 you would have exchanged those communications?

10 A. Well, I know Harvard Kennedy School is one.
11 You know, I give speeches all over the country on
12 community policing, and whether it came up in a
13 question-and-answer period or I uttered it while I was
14 kind of giving an analogy to a community policing
15 practice, that was -- you know, that's something we
16 did -- I did for ten years.

17 Q. What about written communications?

18 A. I don't believe so.

19 Q. So you didn't exchange any e-mails with anybody
20 outside of the department about the community mapping
21 program after it was terminated?

22 A. Not that I recall.

23 Q. And am I right that you -- your testimony today
24 is based on a -- let me back up.

25 Do you have a good memory of the -- of whether

1 or not you created records with regard to community
2 mapping?

3 A. Whether or not I created what?

4 Q. Records with regard to community mapping,
5 written documents?

6 A. I do, I have a good memory of that.

7 Q. And based on that memory you don't believe that
8 you exchanged any communications with anybody -- written
9 communications with anybody after the community mapping
10 program was terminated?

11 A. I don't recall.

12 Q. So I believe you've testified that you didn't
13 retain any records from 2007 or 2008 regarding community
14 mapping; right?

15 A. Right.

16 Q. And that's based on your memory; correct?

17 A. Yes.

18 Q. Not based on a search you conducted of your
19 documents?

20 A. It's based on my memory.

21 MR. CHARNEY: I'd like to have the court
22 reporter mark for identification an e-mail from --
23 e-mail thread between Michael Downing and Samuel
24 Freedman of Columbia University dated March 5th, 2015.

25 (Exhibit 9 marked)

1 THE WITNESS: Okay.

2 BY MR. CHARNEY:

3 Q. Mr. Downing, I'll ask you to take a look at
4 this document and let me know when you've had a chance
5 to --

6 A. I've looked at it.

7 Q. Does this refresh -- does this give you any
8 information -- let me rephrase that.

9 Does this refresh your recollection as to
10 whether or not you exchanged any written communications
11 with persons outside of the LAPD after the termination
12 of community mapping?

13 A. It looks like I was responding to a question
14 from Samuel Freedman on whether or not the Muslim
15 outreach was my own initiative or if it was mandated or
16 encouraged by Chief Bratton. And I replied that the
17 mapping outreach was my -- idea was mine.

18 Q. Does that refer to the community mapping
19 program?

20 A. I think it did.

21 Q. And so this is a written communication
22 referring to the community mapping program?

23 A. Yeah.

24 Q. And so does this refresh your recollection as
25 to whether or not you've exchanged any written

1 communications with persons outside of the department
2 relating to community mapping after the mapping program
3 was terminated?

4 A. It vaguely does, yes.

5 Q. Does the omission in your memory of this
6 written communication lead you to believe that you may
7 have other lapses in memory concerning the documents
8 that relate to community mapping?

9 A. It could. I've written thousands and thousands
10 and thousands of e-mails. It could. It's not
11 substantive to me.

12 Q. So there could be other documents that you
13 created about community mapping that you don't remember
14 as you sit here today?

15 A. Not documents. I told you there was nothing
16 operational about the community mapping. It was a
17 concept that was talked about and was written about in
18 the testimony, period, and then it was shelved.

19 I think any other communication would have been
20 asking about what it was, whose idea it was, whether it
21 was the subject of a case study, whether it was a
22 question in a speech I had given from the audience. It
23 was something that, you know, kind of went nationally,
24 so people knew about it and they knew that it was an
25 opportunity for us to take a leadership position in our

1 community policing efforts toward Muslim communities.

2 Q. So there could be additional written
3 communications exchanged between you and others
4 referring to community mapping which you don't remember
5 as you sit here today right now?

6 A. I don't know.

7 Q. It's possible?

8 A. I don't know.

9 Q. Is there a difference in your mind between a
10 document and a written communication?

11 A. Yes.

12 Q. What is that difference?

13 A. A document is a document that is an operational
14 document that has structure and organization and goals
15 and objectives. And written communication -- this stuff
16 happens every day, it's like a phone call.

17 Q. Did you give your -- let me rephrase.

18 Do you know if the officer -- let me rephrase.

19 Do you know if the personnel in CTSOB and its
20 predecessor, the Counter-Terrorism and Criminal
21 Intelligence Bureau, perceived a difference between
22 documents and written communications in terms of
23 responding to CPRA requests?

24 A. I don't know.

25 Q. Is it possible that persons under your command

1 in CTSOB, or its pre-merger version, viewed documents as
2 being something that had to be disclosed in response to
3 a CPRA request but not written communications?

4 A. I don't know.

5 Q. You don't know one way or the other?

6 A. I don't.

7 Q. Do you perceive such a distinction?

8 A. It depends on what was on the CPRA request, I
9 think.

10 Q. So if a CPRA request asks for records relating
11 to a particular topic, would that include just documents
12 or written communications as well?

13 A. I think records would include probably all of
14 it.

15 Q. When you told Sergeant Seguin that there were
16 no records relating to the community mapping program,
17 had you searched written communications in the custody
18 of your office before telling him that?

19 A. Specifically e-mails?

20 Q. Any written communications.

21 A. No, I had not.

22 Q. Did you at that time -- at the time that you
23 told Sergeant Seguin that there were no records relating
24 to community mapping did you mean to convey to him that
25 there were no written communications in your custody

1 relating to community mapping?

2 A. I didn't even think about that. I was thinking
3 about documents, operational documents, outlines,
4 manuals, that type of thing.

5 Q. So it's possible at that time that there could
6 have been written communications that concerned
7 community mapping that Sergeant Seguin wasn't aware of?

8 A. I don't know.

9 Q. And it's possible that there could have been
10 written communications concerning community mapping in
11 your custody that you hadn't identified before telling
12 Sergeant Seguin that there were no records relating to
13 community mapping?

14 A. I don't know.

15 Q. So it's possible?

16 A. I don't know.

17 Q. Have you ever corresponded with an individual
18 named Steven Gomez?

19 A. Steve Gomez, the FBI agent, yes.

20 Q. Did you have any communications with him
21 regarding the community mapping program?

22 A. I don't recall.

23 Q. And in particular did you have any
24 communications with him regarding the community mapping
25 program in or around 2007 or 2008?

1 A. I don't recall because I don't know if Steve
2 Gomez was -- was kind of my counterpart as an SAC in the
3 FBI at that time, because I want to say it was Janet
4 Fedarcyk, but I'm not sure.

5 THE REPORTER: What was the name?

6 THE WITNESS: Fedarcyk. I don't know how you
7 spell it.

8 BY MR. CHARNEY:

9 Q. What is SAC?

10 A. Special agent in charge.

11 Q. And so this is sort of a -- when you say a
12 "counterpart as an SAC," this is the sort of person you
13 would be liaising with --

14 A. Yes.

15 Q. -- in dealing with the FBI?

16 A. Right.

17 Q. So the FBI might -- this is the person in the
18 FBI who you would keep informed of things in your
19 department relating to Counter-Terrorism?

20 A. Well, we were partners in terms of the Joint
21 Terrorism Task Force. I had people on the task force.
22 We would kind of supervise it together. And there would
23 be information-sharing opportunities as well.

24 Q. Would those information-sharing opportunities
25 include sharing information about programs that the LAPD

1 was working on?

2 A. Could. Could. Yeah.

3 Q. And that might include community mapping?

4 A. I don't know. It's possible. Only as a for
5 your information, this is what we're thinking.

6 Q. You mentioned a woman named -- I'm sorry. I'm
7 going to mangle the name.

8 A. Jan Fedarcyk.

9 Q. Janet Fedarcyk.

10 A. I think she was my counterpart during that
11 time, but I'm not absolutely sure.

12 Q. Did you exchange any written communications
13 with her regarding community mapping?

14 A. I don't know.

15 Q. And in particular in and around 2007 or 2008?

16 A. Yeah, I don't know.

17 Q. Did you ever know?

18 A. Maybe in 2007, if I did, I knew, but I don't
19 know now.

20 Q. Is there anything you could do to find out?

21 A. I don't think so.

22 Q. Are there any other entities or law enforcement
23 agencies that you liaised with in the same way that
24 you -- or in a similar way that you liaised with the
25 FBI?

1 A. Yeah, the Sheriff's Department, I think
2 probably -- but for me the FBI was my main partner.

3 Q. But you would also have information sharing
4 with the Los Angeles County Sheriff's Department?

5 A. Yeah.

6 Q. Any other police agencies within Southern
7 California?

8 A. Well, the Fusion Center, the Joint Regional
9 Intelligence Center in Norwalk, that was a compilation
10 of many, many agencies, and I think that was stood up in
11 2005.

12 Q. Did you have counterparts in each of these
13 organizations or contacts who were designated --

14 A. I had contacts, yeah.

15 Q. And were those contacts people who were
16 designated to engage in information sharing with you?

17 A. More around customers of the Fusion Center. So
18 the Fusion Center sat on seven counties -- same area as
19 the FBI Central District, so seven counties, 19 million
20 people, about 166 police agencies.

21 Q. And so would the Sheriff in particular, was
22 there a person at the Sheriff's Department where -- who
23 you would be -- who would be your designated point of
24 contact if you wanted to engage in information sharing?

25 MR. JOHANSEN: Objection. Vague as to time.

1 MR. CHARNEY: Thanks, Kjehl.

2 Q. In or around 2007, 2008.

3 A. Yeah, there were. I'm not sure if John Stedman
4 was the point then, but John Stedman's usually the one
5 that I interacted with, or Mike Grossman, those two, the
6 two of them.

7 Q. Do you know if you exchanged any
8 communications -- excuse me.

9 Do you know if you exchanged any written
10 communications with either of those two individuals
11 regarding community mapping?

12 A. I don't know.

13 Q. Did you ever know?

14 A. No.

15 Q. Is there anything --

16 A. If I did, in '07 I probably would have, but I
17 don't today.

18 Q. Is there anything you could do to find out?

19 A. No.

20 Q. And at the Fusion Center was there a designated
21 contact person there?

22 A. Well, each -- we had a principal, the FBI had a
23 principal, the Sheriff's had a principal. So we had
24 three opportunities.

25 Q. And who were those three principals?

1 A. Well, they changed in the last -- in '07 -- I
2 can't even remember who they are.

3 Q. Do you know if you exchanged any written
4 communications with either of those three --

5 A. I don't think I would have.

6 Q. And why do you think you wouldn't have?

7 A. Because that wasn't the initiative. They had
8 nothing to do with that initiative. Their initiative
9 was about information sharing and supporting cases.
10 This was a community outreach initiative.

11 Q. Do you know for certain that you didn't
12 exchange any communications with them?

13 A. Not for certain, but I don't see why I would.

14 Q. So you don't know for certain either way?

15 A. No.

16 Q. With regard to the Joint Regional Intelligence
17 Center, was there a contact person or principal or --

18 A. That's the same as the Fusion Center.

19 Q. Oh, okay.

20 A. JRIC is the acronym.

21 Q. So other than the Fusion Center/JRIC, were
22 there any other agencies?

23 A. No.

24 Q. What about any other -- putting aside law
25 enforcement agencies, were there any other task forces,

1 academic work -- you know, academic round tables,
2 working groups, any panels, any sort of gathering of
3 people in your field with whom you were sharing
4 information?

5 MR. JOHANSEN: Objection. Vague as to time.

6 BY MR. CHARNEY:

7 Q. In and around 2007 and 2008.

8 A. Sharing what information?

9 Q. Information about the LAPD's programs in the
10 same way -- in the same or similar way that you would
11 have shared information with the FBI.

12 A. Not that I recall.

13 Q. Is it possible?

14 A. Not that I recall.

15 Q. Have you worked with any round tables or
16 working groups or academic panels or task forces or
17 things like that?

18 A. Yes.

19 Q. And in particular in and around 2007 or 2008
20 were you working with any?

21 A. I think DHS maybe a little bit. I don't know
22 if that was '07 or '08 or '09, though, but yeah.

23 Q. And is that the Department of Homeland
24 Security?

25 A. It is.

1 Q. And when you say DHS are you referring to the
2 agency or some program that's related to it?

3 A. The agency.

4 Q. Was there a person who you were in contact with
5 at the DHS as part of that information-sharing
6 relationship?

7 A. There were several people. You know, I guess
8 on the CVE front it was mostly Irfan Saeed and Jenny
9 Presswalla.

10 Q. I suspect the court reporter might appreciate a
11 spelling.

12 A. I don't know. Irfan, I-r-f-a-n, Saeed,
13 S-a-i-d, I think, and then Jenny Presswalla, P-r-e-s-s,
14 I think, -w-a-l-l-a.

15 Q. Thank you.

16 Did you ever exchange information with either
17 of these two individuals concerning LAPD programs?

18 A. Yes.

19 Q. But you don't know as you sit here today
20 whether you had any written communications with them
21 about the community mapping program?

22 A. I don't.

23 Q. In or around early 2014 when Sergeant Seguin
24 asked you is there any records relating to community
25 mapping, had you searched your e-mail prior to that

1 conversation?

2 A. I don't believe so.

3 Q. So if there were any communications about
4 community mapping with any of the individuals or
5 entities we've discussed, you wouldn't have known one
6 way or the other at the time you spoke to Sergeant
7 Sèguin?

8 A. I don't think so. I mean I occasionally,
9 quarterly or so, the e-mails that I've already responded
10 to I'll just delete.

11 Q. Do you also go into your -- is that -- when you
12 say "occasionally," is that -- do you have, like, a
13 calendar kind of entry to ping you to do that?

14 A. No. I just when they get too, you know, too
15 many it seems to slow it down a little bit so I'll just
16 go through and thin it out.

17 Q. Is there any protocol or standard practice by
18 which you do that?

19 A. Unh-unh.

20 Q. So some e-mails will get deleted and some might
21 not?

22 A. If I wanted to keep an e-mail for some reason I
23 might flag it.

24 Q. Do you do that just for your inbox?

25 A. Yes.

1 Q. So you don't go into your sent items, for
2 instance?

3 A. No.

4 Q. And you don't delete things from your drafts
5 folder?

6 A. I don't really have a draft folder.

7 Q. Do you mean by that that you asked IT -- the IT
8 division to remove the standard drafts folder in your
9 e-mail?

10 A. No. I've just never used a draft folder. When
11 I do an e-mail I send it. I don't save it as a draft.

12 Q. Have you ever looked in the drafts folder?

13 A. I can see that it either says there is so many
14 e-mails in it or none and it's always none.

15 Q. Okay. Have you ever corresponded with an
16 individual named Usha Sutliff?

17 A. Yes.

18 Q. Who is -- I apologize, but what is that
19 person's gender?

20 A. A female.

21 Q. Who is she?

22 A. She is somebody who worked with us for a while.
23 I think she was with Manhattan Institute for a short
24 time, and then she was with Lafayette Group working on,
25 with us, the National Counter-Terrorism Academy, which

1 we developed for a year, and other DHS projects.

2 Q. When were you working with her?

3 A. I don't recall the time frame, actually. I
4 don't remember when she came on. She used to work for
5 the DA's office and then she became an employee of the
6 Manhattan Institute for a short time before she went to
7 Lafayette Group.

8 Q. Can you give me a general approximation of the
9 time?

10 A. Years ago. I mean, I just don't recall. It
11 was sometime after I became -- I think after I became a
12 deputy chief.

13 Q. And so that could have been starting in 2007?

14 A. Could have been '07, '08. I just don't really
15 recall.

16 Q. Did you ever share information with her about
17 LAPD programs?

18 A. Yeah.

19 Q. Do you know if you sent or received any written
20 communications from her concerning the community mapping
21 program?

22 A. I could have. It's possible.

23 Q. And in particular those communications could
24 have been exchanged in 2007 or 2008?

25 A. They could have.

1 Q. Or later?

2 A. Yes.

3 Q. Did you search for any of those -- did you
4 search your e-mail or -- actually, let me back up.

5 Do you have a folder or file with written
6 correspondence, like, letters as opposed to e-mails?

7 A. No.

8 Q. Does your executive assistant -- or did your
9 executive assistant maintain such a folder?

10 A. I don't think so.

11 Q. When you receive a letter what happens to it?

12 A. I acknowledge it. I'll initial it. I put it
13 out in my outbox and then I really don't know what they
14 do with it.

15 Q. So somebody else takes it under your command?

16 A. Yeah.

17 Q. And as far as you know they are not under any
18 instructions to shred it immediately?

19 A. No.

20 Q. Do you believe that they would retain it?

21 A. I don't know. I'm not sure.

22 Q. But you have no reason to believe they would
23 destroy it?

24 A. I don't know.

25 Q. Did you search for any written communications

1 to or from Ms. Sutliff before you told Sergeant Seguin
2 that there were no records related to community mapping?

3 A. No.

4 Q. And I'm sorry if we already talked about this.
5 Chand Syed worked with you in the outreach unit after
6 2010; correct?

7 A. Yes.

8 Q. He didn't have any other role where he was
9 dealing with you or the LAPD prior to that --

10 A. No.

11 Q. -- did he?

12 A. No.

13 Q. Are there any other institutions like the
14 National Counter-Terrorism Academy --

15 A. That's not an institution. That's a school.

16 Q. Okay. Are there any other entities like the
17 National Counter-Terrorism Academy that the LAPD -- or,
18 I'm sorry, the CTSOB has worked with?

19 A. Well, the National Counter-Terrorism Academy
20 was a name that we gave to a training that we did
21 relative to assisting law enforcement evolve into this
22 kind of terrorism environment. So it lasted a year. It
23 was a pilot project. And it ended after about a year.

24 Q. I see. So maybe what I should have asked is
25 are there any other entities like the Lafayette Group

1 that the LAPD has worked with on programs that involved
2 information sharing between the LAPD and that other
3 entity?

4 A. Can't think of any.

5 Q. Is it possible that there exist others?

6 A. Well, when you say work with them, I mean the
7 Ahmanson Foundation funded the seed money for the
8 National Counter-Terrorism Academy, so if that's what
9 you're referring to, that would be an entity.

10 Q. And would you share information with the
11 Ahmanson?

12 A. I would give the board briefings on what was
13 happening relative to the threat environment.

14 Q. And when was that?

15 A. I did it occasionally over the years.

16 Q. Including in 2007 to 2008?

17 A. It depends on when -- I don't know when the
18 National Counter-Terrorism Academy stood up but sometime
19 around that point I would do that, yeah.

20 Q. Did you ever give them any briefings that
21 included reference to community mapping?

22 A. I don't believe so.

23 Q. Is it possible?

24 A. I don't think so. I mean unless I talked about
25 it as an initiative that we shelved, but I can't recall

1 specifically.

2 Q. So after community mapping was terminated you
3 might have given a briefing to the Ahmanson Center in
4 which you discussed the community mapping program and
5 its termination?

6 A. I don't -- I really don't recall. I could have
7 but I don't recall specifically. It wouldn't have been
8 a big deal to me to do that.

9 Q. Sure.

10 When you gave briefings to the Ahmanson Center
11 did you ever provide an agenda of what you were going to
12 discuss?

13 A. No.

14 Q. Did you make an outline of your talking points?

15 A. Usually not. To that group I'd shoot from the
16 hip.

17 Q. Did you ever receive follow-up communications
18 from members of that group commenting on what you had
19 said or asking questions?

20 A. From Bill Ahmanson I would.

21 Q. Did you -- prior to telling Sergeant Seguin
22 that there were no records relating to community mapping
23 did you search for written communications from Bill
24 Ahmanson?

25 A. No.

1 MR. JOHANSEN: Will we have a chance to
2 validate parking before we break today? Because we
3 didn't do that last time.

4 MR. CHARNEY: Yes.

5 MR. JOHANSEN: Okay. Very good.

6 BY MR. CHARNEY:

7 Q. Why don't you take a look at the document and
8 let me know when you've had a chance to briefly
9 familiarize yourself with it. You don't need to read
10 it, you know, word by word, but just get a sense of it
11 so you know what it is.

12 While you're doing that I'll ask the court
13 reporter to mark for identification another document
14 entitled "Draft Counter Radicalization Strategies" which
15 purports to be authored by the Los Angeles Police
16 Department.

17 (Exhibit 11 marked)

18 THE WITNESS: Okay.

19 BY MR. CHARNEY:

20 Q. So my first question is does this document --
21 is this responsive to Muslim Advocates's request for
22 records relating to community mapping?

23 A. Is this document on prison rad?

24 Q. Yes, the document that you're looking at that's
25 been marked as Exhibit 10.

1 A. I wouldn't say so.

2 Q. And why not?

3 A. Because it doesn't really talk about
4 statistically mapping a community. It's talking about
5 what's happening in the prisons and the incubation that
6 is occurring there and the need for greater oversight,
7 but I don't really believe this is a mapping document.

8 Q. I'd like to turn your attention to Page 6. And
9 in particular the Section V where it says "Strategies
10 and Initiatives." And actually, I should have -- it's
11 Page 7, the last bullet point in that section, in
12 Section V.

13 MR. JOHANSEN: Is that starting with "Working
14 in concert with our seven county regional" --

15 MR. CHARNEY: You got it, Kjehl.

16 MR. JOHANSEN: Okay.

17 BY MR. CHARNEY:

18 Q. The intelligence collection and dissemination
19 process, does that involve any of the practices or
20 principles that were involved in community mapping?

21 A. No.

22 Q. How so not?

23 A. They are totally unrelated. The collection
24 process is -- is designed to understand that every first
25 responder has the ability to be a collector. If they

1 see something suspicious and there is a process to
2 report that, and it goes into our Fusion Center for
3 analysis and dissemination and feedback. And this has
4 nothing to do with community mobilization or mapping.

5 Q. So I'd like to turn your attention to I think
6 it's Exhibit 11 which has been marked by the court
7 reporter. My first question, once you've had a chance
8 to review it -- and if you could just skim it briefly to
9 get a sense of it, I'll direct your attention to
10 particular places in it.

11 A. I think this was written by Mark Stainbrook.

12 Q. Why do you think that?

13 A. I don't know. I just have a feeling. I just
14 get a sense it is.

15 Q. Have you seen it before?

16 A. I recall seeing this, yeah, I recall seeing
17 this -- this page here, and also I remember him writing
18 about my testimonies. So I think it was Mark that wrote
19 this.

20 Q. And this is -- so this is an LAPD document;
21 correct?

22 A. Yeah.

23 MR. JOHANSEN: What page were you referring to?

24 THE WITNESS: Oh, the page I was -- 15, where
25 he talks about "To this point, Deputy Chief Michael

1 Downing, in his testimony before the Senate," and then
2 there is a quote from the testimony. So that's why -- I
3 recall him writing this, I believe.

4 BY MR. CHARNEY:

5 Q. So am I right -- do you know the date of this
6 document, when this would have been created?

7 A. That's a good question.

8 Q. I'll represent to you that there are no dates
9 within the document.

10 A. Yeah. I don't know.

11 Q. Okay. Well, is there anything that would
12 refresh your recollection as to when -- or that would
13 give you information about when this was created?

14 A. Before he left LAPD, which, you know, I think
15 he's been gone about five years.

16 Q. So sometime before 2012?

17 A. I think so.

18 Q. Do you know if this document would be
19 responsive to the request for community mapping?

20 A. I don't think --

21 Q. Excuse me. For Muslim Advocates's CPRA request
22 for records concerning community mapping?

23 A. I don't believe so.

24 Q. And I'll help you out a little bit. If you
25 turn to Page 10 and look at the second paragraph,

1 leaving out the bold quote at the top, the second body
2 text paragraph.

3 MR. JOHANSEN: Start with "Local community
4 engagement begins"?

5 MR. CHARNEY: You got it, Kjehl.

6 MR. JOHANSEN: Okay.

7 THE WITNESS: Yeah, I see what you're saying,
8 uh-huh.

9 BY MR. CHARNEY:

10 Q. So based on that paragraph that you've just
11 reviewed, is this document responsive to Muslim
12 Advocates's request for records concerning community
13 mapping?

14 A. I don't know what the purpose of this document
15 was. I don't know if it was for an article or what he
16 was doing with it. It has community mapping. It says
17 it's the process where you understand the history, the
18 country of origin, the demographics, the structure, et
19 cetera. I mean it speaks to what mapping -- the intent
20 of mapping was. It wasn't part of our program or our
21 concept.

22 Q. When you say, "It wasn't part of our program or
23 concept," are you referring to this document or to --

24 A. Yeah, this document, exactly.

25 Q. So this is a document created by the LAPD that

1 refers to community mapping that wasn't a part of your
2 community mapping program?

3 A. This was created by Mark Stainbrook. I don't
4 know what the distribution of this was. I don't know if
5 it was written for the purposes of an article. I think
6 it was. I'm just not quite sure.

7 Q. But when you say that "this wasn't a part of
8 our program or concept," do you mean that this document
9 was not a document that the CTSOB developed --

10 A. Right.

11 Q. -- as part of the community mapping as
12 described in your Senate Statement?

13 A. That's correct.

14 Q. And so am I correct that you would not have
15 identified this document as being responsive to Muslim
16 Advocates's request for records relating to community
17 mapping?

18 A. That's correct.

19 Q. In hindsight, reviewing this paragraph, do you
20 think that this is -- that this document is responsive
21 to Muslim Advocates's request for records concerning
22 community mapping?

23 A. This was written long after the concept was
24 shelved, so I mean I suppose it could go either way.

25 Q. And so is it true that long after the community

1 mapping concept was shelved the department -- or at
2 least personnel within the department felt that
3 community mapping is critical for local law enforcement
4 officers?

5 A. Well, he must -- he must have that opinion. We
6 left it long behind. We've never revisited it, ever.

7 Q. And you don't know how this document was
8 distributed?

9 A. I don't. I think it was for an article. I
10 don't know what the intent was, but I think he was
11 writing it as a part of an article.

12 Q. Why do you believe that?

13 A. Because Mark was a prolific writer, you know,
14 he would like to write things. In fact, he cited all
15 the works back here, so that would be indicative of it
16 being for an article.

17 Q. And am I right that you don't know who else
18 might have worked on this document other than Mark
19 Stainbrook?

20 A. I think it was just him.

21 Q. And why do you believe that?

22 A. Because he would like to write like this. He
23 did his Fulbright Scholarship, he wrote a paper on
24 diasporas in England, and this was -- this was something
25 he was passionate about.

1 Q. So am I right that you can't be certain whether
2 or not other people in the LAPD may have helped
3 Mr. Stainbrook with this?

4 A. I don't know. I think it was mostly him. I
5 think it was all him, actually. I don't think anybody
6 helped him.

7 Q. But you didn't work with him directly on this,
8 did you?

9 A. No.

10 Q. Do you know if anybody within the LAPD read
11 this document?

12 A. I don't know. I remember seeing it. I mean, I
13 did tell you that. I remember seeing it. I remember
14 this page, the way it looked. I don't know where it
15 went.

16 Q. And why do you think this document was created
17 long after the community mapping program was terminated?

18 A. Chronicling history. I don't know.

19 Q. Okay. I'd like to ask the court reporter to
20 mark for identification a document titled "Muslim
21 Community Engagement Initiative" bearing ID stamps by
22 Muslim Advocates ID 16 through 19.

23 (Exhibit 12 marked)

24 BY MR. CHARNEY:

25 Q. If you could just briefly take a look at this

1 and familiarize yourself with it.

2 A. Yes.

3 Q. Have you seen this document before?

4 A. I don't recall seeing this.

5 Q. So this is a document concerning the Community
6 Engagement Initiative of which you weren't aware?

7 A. Well, it -- yeah, it kind of lays out the ideas
8 a bit. I don't recall seeing this.

9 Q. And so having reviewed this document do you
10 think that this is responsive to Muslim Advocates's
11 request for --

12 A. I would think this would be, yes.

13 Q. And in 2013 when -- or late 2013 or early 2014
14 when Sergeant Seguin was asking you about the existence
15 of records relating to community mapping, were you aware
16 of this document?

17 A. I don't believe so. I would have given it to
18 him had I been aware of it.

19 Q. So your representation to him that there were
20 no documents relating to community mapping was at least
21 in this instance not accurate?

22 A. I don't recall this document. Had I
23 recollected this when he asked me I would have given it
24 to him.

25 Q. I'm not saying that you were being purposely

1 untruthful; I'm just saying that you didn't have
2 knowledge of all of the documents that would be
3 responsive.

4 A. True.

5 I got to go, it's quarter till.

6 Q. They will be right back with the validation.
7 We'll get you -- it's a quick elevator down. You'll be
8 on the freeway in a sec.

9 After the meeting in which the 30 or so people
10 were outside of the department came in to talk about the
11 termination of the community mapping program, were there
12 any meetings within the department in which it was
13 announced that the community mapping program would not
14 be pursued?

15 A. I don't recall if Chief Bratton made a
16 statement to the command staff in the general staff
17 meeting or not. It would seem logical that he would
18 because it was a fairly big initiative that got a lot of
19 publicity, so I would have thought he would have, but I
20 don't have a clear recollection of that.

21 Q. Do you know if there were any agendas for that
22 meeting?

23 A. I don't.

24 Q. Do you know if any notes were taken from that
25 meeting?

1 A. I don't.

2 Q. Do you know when that meeting would have taken
3 place?

4 A. I don't because general staff meetings would
5 normally be quarterly meetings.

6 Q. So it's possible there could have been written
7 records created at that meeting referring to community
8 mapping?

9 A. It's possible. I don't recall.

10 Q. Were there meetings after that general staff
11 meeting or senior staff meeting to discuss how to --

12 A. I'm sorry. We had a deal; right? The deal was
13 a quarter till, now it's 14 till, and I got to get out
14 of here. I'll come back, but I got to get out of here.

15 MR. CHARNEY: Fine with me.

16 THE WITNESS: Okay. Thanks.

17 MR. JOHANSEN: I'll walk you out real quick.

18 (Whereupon, the witness left and a discussion
19 was held off the record)

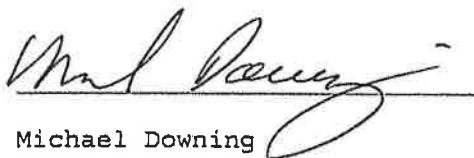
20 MR. CHARNEY: The parties are continuing the
21 deposition of Michael Downing in order to accommodate
22 the witness's personal schedule and are aiming to
23 reschedule for midweek next week, subject of course to
24 the witness confirming his availability.

25 As to the transcript of today's deposition the

1 DECLARATION UNDER PENALTY OF PERJURY

2
3
4 I, Michael Downing, hereby certify under penalty
5 of perjury that I have read the foregoing transcript of
6 my deposition taken on May 31, 2017; that I have made
7 such corrections as appear noted on the Deposition
8 Errata Page, attached hereto, signed by me; that my
9 testimony as contained herein, as corrected, is true and
10 correct.

11
12 Dated this 10 day of July, 2017, at
13 LOS ANGELES, California.

14
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16 
17
18 Michael Downing

1 STATE OF CALIFORNIA)
) SS
2 COUNTY OF LOS ANGELES)

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I, Jean F. Holliday, a Certified Shorthand Reporter, do hereby certify:

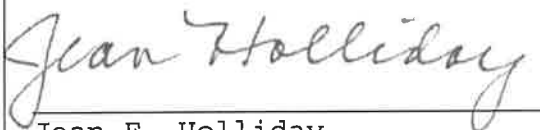
That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth, and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, nor in anywise interested in the outcome thereof.

In witness whereof, I have hereunto subscribed my name.

Dated: June 11, 2017



Jean F. Holliday
CSR No. 4535, RPR, CRR

EXHIBIT LL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MUSLIM ADVOCATES,
Petitioner,

vs.

Case No. BS163755

THE CITY OF LOS ANGELES; THE LOS
ANGELES POLICE DEPARTMENT; DOES
1-10, INCLUSIVE,
Respondents.

DEPOSITION OF MICHAEL DOWNING

VOLUME II

Thursday, June 8, 2017

9:30 a.m. - 11:14 a.m.

865 South Figueroa Street, Suite 2400

Los Angeles, California

REPORTED BY:

Jean F. Holliday

CSR No. 4535, RPR, CRR

1 A. Correct.

2 Q. And at that meeting you told him that you
3 didn't believe that there were any records?

4 A. Correct.

5 Q. Before that meeting did you ask any of your
6 liaison officers or your adjutant from the time period
7 of 2007 to 2008 if there had been any meetings about how
8 to respond to the community's concerns about community
9 mapping?

10 A. No.

11 Q. And more specifically did you ask them if there
12 are any agendas or notes that referred to such meetings?

13 A. No.

14 MR. CHARNEY: I'm going to ask the court
15 reporter to mark for identification excerpts from the
16 deposition of Dr. Luann Pannell.

17 (Exhibit 14 marked)

18 BY MR. CHARNEY:

19 Q. Deputy Chief Downing, if you could take a
20 moment to review this testimony and let me know when
21 you've had a chance.

22 MR. JOHANSEN: So Brendan, I just have a quick
23 question. I'm seeing Page 105, 106, and then was it
24 your intention that the exhibit skip to 118?

25 MR. CHARNEY: Yes. I think those are the

1 relevant portions of the deposition for our purposes.

2 MR. JOHANSEN: Okay.

3 MR. CHARNEY: I'm not representing that this is
4 a complete testimony.

5 MR. JOHANSEN: I'm just wanting to make sure
6 that I'm tracking what it is that you're proposing the
7 witness look at.

8 MR. CHARNEY: Yeah.

9 Q. Have you had a chance to review the testimony
10 that's been marked as Exhibit 14?

11 A. I reviewed Page 105, 106, 118, 119, 120, 121,
12 122.

13 Q. Great. And so do you see on Page 105 and 106
14 that there is a discussion of a general staff meeting or
15 a senior staff meeting in which it was discussed that
16 the LAPD wasn't going to move forward with a community
17 mapping program?

18 A. Yes.

19 Q. And did that accord with your testimony that
20 you've given that there was such a meeting?

21 A. Yes.

22 Q. And then do you see on Page 118 to 122 there is
23 a discussion of another set of meetings about -- and if
24 you look on Page 118, "turning focus and attention to
25 bridge building and responding to the community's

1 concerns about community mapping"?

2 A. Yes, I see that in the testimony.

3 Q. Does reading this testimony refresh your
4 recollection as to whether or not any such meetings
5 occurred?

6 A. No.

7 Q. And in particular if you could look at
8 Page 120, lines 11 to 17, let me know when you've had a
9 chance to take a look at that portion.

10 A. Yes, I've read it.

11 Q. Is the representation here that meetings about
12 bridge building and addressing the community's concerns,
13 that these meetings involved you, Deputy Chief Downing,
14 is that representation accurate?

15 A. Yes. Maybe with the exception of community
16 mapping. I think addressing the community's concerns,
17 period. The mapping was over, as far as I was
18 concerned. We were looking to the future.

19 Q. And when you say "community's concerns,
20 period," did those concerns include the concerns that
21 the LAPD's -- excuse me.

22 Did those concerns include the concerns that
23 led to the cancellation of the LAPD's community mapping
24 program?

25 A. More broadly it was concerns about trust.

1 Q. And what -- what were the concerns about
2 trust -- excuse me.

3 What were the concerns about trust that were
4 discussed in these meetings?

5 A. Whether we had the community's best interests
6 at heart; whether we understood the dynamics and
7 pressures that were on the communities; whether we were
8 in a position to listen to grievances; did we understand
9 why there were feelings of oppression; were we
10 responsive to their concerns about an environment that
11 had hate in it, where their kids would be bullied in
12 school, things like that.

13 Q. And in terms of any of those concerns, in
14 dealing with those concerns do you remember whether any
15 of these meetings referred to community mapping or the
16 community's response to community mapping or how to
17 respond to those concerns?

18 A. I don't recall.

19 Q. So it's possible?

20 A. I don't recall.

21 Q. And looking at Page 120, lines -- excuse me.

22 Looking at Page 121, lines 10 to 22, do you see
23 the reference to your staff?

24 A. Yes.

25 Q. And Dr. Pannell's response that it's possible

1 that one of your captains was there?

2 A. I see her testimony here, or her deposition.

3 Q. Do you know which one of your captains she
4 might have been referring to?

5 A. No.

6 Q. Was there a member of your staff -- excuse me.
7 Was there a member of the LAPD under your
8 command in CTSOB who would have had responsibility for
9 running or attending these kinds of meetings?

10 A. No.

11 Q. And in particular one of the liaison officers
12 or your adjutants.

13 A. They would have followed up after my meeting
14 with her.

15 Q. And which meeting with her is that?

16 A. I don't know.

17 Q. So you don't remember --

18 A. I've had several meetings with her and after
19 the meetings my staff would follow up with her.

20 Q. About what?

21 A. About how to implement a training program, for
22 example.

23 Q. Were any of those meetings in or around 2007 to
24 2009?

25 A. They could have been.

1 Q. And at any of those meetings did you discuss
2 with Dr. Pannell community mapping or the community's
3 concerns regarding community mapping or how to respond
4 to those concerns?

5 A. I don't remember specifically mapping because
6 that was the past. We were looking to the future on how
7 to build trust. So those discussions about how do we
8 get more officers to understand how to make connections
9 with communities that don't feel a part of society and
10 how do we build that bridge of trust with communities so
11 that they feel like we're supporting them.

12 Q. So it's possible that in those meetings you
13 might have discussed lessons learned from the community
14 mapping --

15 A. I don't recall that.

16 Q. And when you say you don't recall do you mean
17 you don't recall one way or another?

18 A. I don't recall the issue of mapping coming up
19 in my discussions with Dr. Pannell.

20 Q. Is it possible that they might have?

21 A. I don't recall.

22 Q. And do you know if it was your practice -- let
23 me rephrase.

24 Was it your practice to take notes in your
25 meetings with Dr. Pannell?

1 Q. And when you say you don't believe so --

2 A. I have no recollection of testifying on that
3 subject.

4 MR. CHARNEY: I'd like to ask the court
5 reporter to mark for identification -- excuse me.

6 Q. I'm going to hand you a document that has
7 already been marked for identification at the last
8 session, and this is your testimony before the
9 U.S. Senate.

10 (Exhibit 2 attached for reference)

11 BY MR. CHARNEY:

12 Q. I know you previously testified that this --
13 that you presented -- that this testimony you presented
14 was thematically similar to what's in this document.

15 A. Yes.

16 Q. Putting aside what you presented to the Senate,
17 and just focusing on Section V, Community Mapping, are
18 the statements in this written document accurate?

19 A. In Section V? Well, it's all accurate in my
20 view.

21 Q. Everything in this document that's been marked
22 as Exhibit 2 is accurate?

23 A. It's accurate. I think that one of the
24 perceptions is did we already have mapping -- would have
25 had to have been operationalized and executed, and that

1 is not accurate. That is not true. This was only a
2 concept.

3 Q. But the representations, the statements in
4 Exhibit 2 are all accurate?

5 A. Yes.

6 Q. At the beginning of the last deposition when we
7 were talking about the -- excuse me.

8 At the beginning of the last deposition I asked
9 you some questions about your relationship with the
10 Deputy City Attorneys. And one of those questions was
11 whether or not there was a written agreement between you
12 and the City Attorneys. I'm going to renew that
13 question at this point and ask you if you have a written
14 agreement with the Deputy -- excuse me, with the City
15 Attorneys's office or the Deputy City Attorneys sitting
16 here today concerning your relationship with them in
17 this matter?

18 MR. JOHANSEN: Objection. That's covered by
19 the attorney-client privilege, and I would instruct the
20 witness not to answer.

21 MR. CHARNEY: And, Kjehl, I would encourage you
22 to reconsider that instruction in light of authority
23 that written retainer and fee agreements are generally
24 not subject to the attorney-client privilege, and in
25 particular I will point you to the U.S. Supreme Court

DECLARATION UNDER PENALTY OF PERJURY

I, Michael Downing, hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on June 8, 2017; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this 10 day of July 2017, at
Los Angeles, California.


Michael Downing

1 STATE OF CALIFORNIA)
) SS
2 COUNTY OF LOS ANGELES)

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I, Jean F. Holliday, a Certified Shorthand Reporter, do hereby certify:

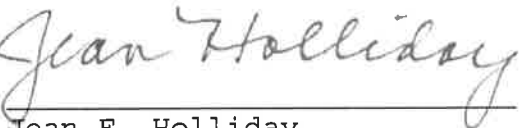
That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth, and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, nor in anywise interested in the outcome thereof.

In witness whereof, I have hereunto subscribed my name.

Dated: June 16, 2017



Jean F. Holliday
CSR No. 4535, RPR, CRR

EXHIBIT MM

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17 Attorneys for Plaintiff
18 MUSLIM ADVOCATES

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF LOS ANGELES

21 MUSLIM ADVOCATES,
22
23 Petitioner,
24
25 vs.
26 THE CITY OF LOS ANGELES; THE LOS
27 ANGELES POLICE DEPARTMENT; DOES
28 1-10, INCLUSIVE,
Respondent.

Case No. **BS163755**
Assigned to the Hon. James C. Chalfant

**NOTICE OF DEPOSITION OF PERSON(S)
MOST QUALIFIED AT RESPONDENT
LOS ANGELES POLICE DEPARTMENT**

Date: January 12, 2017
Time: 10:00 a.m.
Location: Davis Wright Tremaine LLP
865 S. Figueroa St., Suite 2400
Los Angeles, CA 90017

Action Filed: July 25, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on **Thursday, January 12, 2017 beginning at 10:00 a.m.**,
3 at the offices of Davis Wright Tremaine LLP, located at 865 South Figueroa Street, Suite 2400, Los
4 Angeles, California 90017, Petitioner MUSLIM ADVOCATES ("Muslim Advocates") will take
5 the deposition of the **PERSON(S) MOST QUALIFIED AT THE LOS ANGELES POLICE**
6 **DEPARTMENT ("LAPD")** to testify on the LAPD's behalf regarding the following subjects:

7 1. The person(s) most qualified to testify regarding the LAPD's search for records
8 responsive to Muslim Advocates December 12, 2013 request, pursuant to the California Public
9 Records Act ("CPRA), for "[a]ll records reflecting or relating to the 'Community Mapping'
10 program, as described in the Senate Statement" of Deputy Chief Michael Downing on October 30,
11 2007, including the LAPD's search of both electronic and hard-copy repositories, the search terms
12 and protocols used, the personnel, facilities, information technology, and documentation related to
13 the search, the location(s) where responsive records are kept, the location(s) the LAPD searched for
14 responsive records, the persons most likely to possess responsive records, the persons who
15 conducted the search and the instructions they received related to the search, as well as the LAPD's
16 review of any potentially responsive records to determine whether such potentially responsive
17 records actually are responsive and disclosable under the CPRA. (For reference, a copy of the
18 December 12, 2013 CPRA Request is attached as **Exhibit A.**)

19 2. The person(s) most qualified to testify regarding the LAPD's backup system(s) for
20 e-mail from 2001 to 2010, including but not limited to the information technology, personnel,
21 manuals and other documentation, policies and procedures, vendors, and/or facilities relating to the
22 e-mail backup system, as well as any efforts from 2013 to the present to retrieve information from
23 the backup system for purposes including investigations, requests, and other LAPD business.

24 3. The person(s) most qualified to testify regarding the LAPD's claim that searching its
25 backup system(s) for e-mail from 2001 to 2010 would be unduly burdensome, including the
26 LAPD's claim that "it would take a minimum of 960 hours" to search the backup system(s) for
27

28

**NOTICE OF DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES
POLICE DEPARTMENT**

1 responsive e-mails. (For reference, a copy of the LAPD's letter to Brendan Charney dated
2 November 12, 2015 is attached as **Exhibit B.**)

3 The LAPD is not a natural person. See Cal. Civ. Proc. § 2025.230. The LAPD is therefore
4 requested and required, pursuant to Section 2025.230 of the California Code of Civil Procedure, to
5 designate and produce those of its officers, directors, managing agents, employees, and/or agents
6 who are most qualified to testify on its behalf as to the subjects set forth above.

7 PLEASE TAKE FURTHER NOTICE that the deposition shall be conducted upon oral
8 examination before a court reporter and notary public authorized to administer oaths in the State of
9 California and shall be transcribed by that certified court reporter. If, for any reason, the deposition
10 is not completed on Thursday, January 12, 2017, it will continue from day-to-day, beginning at
11 10:00 a.m., excluding Saturdays, Sundays and holidays, until completed, unless otherwise agreed
12 by counsel.

13 Pursuant to California Code of Civil Procedure Section 2025.220(a)(8), there is no contract
14 between Petitioner and the deposition officer or entity providing the services of the deposition
15 officer for any service beyond this deposition. Petitioner did not direct its counsel to use a
16 particular officer or entity to provide services for this deposition.

17
18 DATED: November 30, 2016

DAVIS WRIGHT TREMAINE LLP
THOMAS BURKE
KAREN A. HENRY
BRENDAN N. CHARNEY

19
20
21
22 By:  _____
Karen A. Henry

23 Attorneys for Petitioner
24 MUSLIM ADVOCATES
25
26
27
28

**NOTICE OF DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES
POLICE DEPARTMENT**

EXHIBIT A

muslim advocates
PROMOTING FREEDOM AND JUSTICE FOR ALL

Direct dial: (415) 675-1495
Email: glenn@muslimadvocates.org

December 12, 2013

VIA USPS EXPRESS MAIL EB508543854US
Los Angeles Police Department Discovery Section
Attn: Custodian of Records
201 N. Los Angeles St., Space 301
Los Angeles, CA 90012

USM
LAPD
DEC 18 2013
LEGAL AFFAIRS DIVISION
DISCOVERY SECTION

Re: California Public Records Act ("CPRA") Request

Dear Sir or Madam:

Pursuant to the CPRA, I would like to inspect and obtain electronic copies of the following records¹ that are within the possession, custody, or control of the Los Angeles Police Department ("LAPD"), for the period September 11, 2001, through the present:

1. All records reflecting or relating to "LAPD's outreach and grassroots dialogue with Muslim communities" as described by Michael P. Downing, Commanding Officer Counter-Terrorism/Criminal Intelligence Bureau, before the U.S. Senate on October 30, 2007 ("Senate Statement").²
2. All records reflecting or relating to the "Community Mapping" program, as described in the Senate Statement.
3. All records reflecting or relating to the LAPD's policies or practices based upon individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent. Such records include but are not limited to:
 - Community mapping or Muslim mapping;

¹ Throughout this request, "record" should be given its broadest meaning under Government Code § 6252, and includes, but is not limited to, policies, protocols, manuals, instructions, training materials, memoranda, templates, forms, notices, invitations, calendars, appointments, meeting agendas, meeting or interview notes, evaluations, assessments, analyses, email communications, correspondence, maps, photographs, video or audio recordings, and information stored in any form.

² Available at:
<http://www.lapdonline.org/assets/pdf/Michael%20DowningTestimonyfortheU.S.Senate-Final.PDF>

Letter to LAPD Custodian of Records
December 12, 2013
Page 2

- Outreach to individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Surveillance, monitoring, or collection of information that is not connected to a specific criminal investigation about individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Informants in mosques or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent that are not connected to a specific criminal investigation.
4. All records reflecting or relating to communications between any employee or agent of the LAPD and the following individuals, regardless of their actual title at the time of the communication:
- Raymond Kelly, New York City Police Department ("NYPD") Commissioner;
 - David Cohen, NYPD Deputy Commissioner;
 - Lawrence ("Larry") Sanchez, Central Intelligence Agency ("CIA") liaison to the State of New York, or any capacity for the CIA or NYPD;
 - Mitchell D. Silber, NYPD Senior Intelligence Analyst
 - Arvin Bhatt, NYPD Senior Intelligence Analyst
 - Hector Berdecia, NYPD;
 - John Cutter, NYPD Deputy Chief;
 - Timothy Mehta, NYPD Sergeant;
 - Steve D'Ulisse, NYPD Captain;
 - Stephen Hoban, NYPD Detective;
 - Bryan Michael Jenkins, Senior Advisor to the President of the Rand Corporation;
 - Anyone communicating on behalf of the individuals listed in this paragraph 4.
5. All records reflecting or relating to communications between any employee or agent of the LAPD and anyone at the NYPD on the subjects specified in paragraph 3, above, including bullet points.

If you have any questions concerning this request or if the cost for access to the records will exceed \$50.00, please contact me. Thank you in advance for your assistance with this matter.

Sincerely,


Glenn Katon
Legal Director

EXHIBIT B

LOS ANGELES POLICE DEPARTMENT



CHARLIE BECK
Chief of Police

ERIC GARCETTI
Mayor

P. O. Box 30158
Los Angeles, California 90030
Telephone: (213) 978-2100
TDD: (877) 275-5273
Reference Number 14.4

November 12, 2015

Mr. Brendan N. Chamey, Esquire
DAVIS WRIGHT TREMAINE, LLP
865 S. Figueroa Street
Los Angeles, California 90017-2566

Dear Mr. Chamey:

Thank you for your most recent correspondence, dated November 2, 2015. In your letter, you reference Section 6253 of the California Public Records Act as standing for the position that the local agency must provide all responsive and non-exempt public records within 10 days of receipt of a request, and might extend such an obligation for another 14 days under circumstances enumerated in Section 6253(c)(1) - (4). The Department respectfully disagrees with such an interpretation. The aforementioned time period(s) apply to the window within which the agency shall make its determination as to whether the request seeks copies of disclosable public records in the agency's possession, and communicate the same to the requestor. When such determination is made, the agency must then "state the estimated date and time when the records will be made available." (§ 6253(c).) And while an agency may not delay or obstruct inspection or copying of public records (See § 6253(d)), the Department stated in its October 7, 2015 correspondence to you that approximately 4500 pages of records had been identified as *possibly* responsive to your request for email, and that it was necessary to review every single page to determine whether the document was first, responsive to the request and then whether it was exempt from disclosure in its entirety or contained information which must be redacted and/or segregated prior to disclosure. This process is being undertaken by a single management analyst during the course of his normal work hours, and reflects one of numerous CPRA requests the analyst is handling himself or over which he is providing supervision. The Department wanted to clarify this point, notwithstanding your "agreement" to permit the results of said review to be provided by November 18, 2015.

Respecting your request that the Department reconsider its assertion of Section 6255 over pre-2010 email, the Department has done so and must again, deny your request pursuant to Section 6255, based upon the unduly burdensome nature of the request. The Department has previously explained that it utilizes Novell GroupWise as its email system. GroupWise has a very different architecture from Microsoft Exchange or other email systems. In a GroupWise environment, all

AN EQUAL EMPLOYMENT OPPORTUNITY- EMPLOYER
www.LAPDOnline.org
www.joinLAPD.com

Brendan N. Charney

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files are encrypted and can only be read by an instance of the post office agent which created them.

To the extent the Department did not have an email archiving system prior to March 2013, locating older email would require restoration of entire post office structures (files and databases) from back-up tapes, then attempting to extract the data. More specifically, such undertaking would require the analyst to identify the tape or file containing the Post Office where the account existed at the time of the search (The email system structure has changed many times and users move constantly); Create a back-up server with the appropriate version of the back-up software to catalogue, index and read the tape; Create a Post Office server with the appropriate software from the time of the back-up and copy the restored data to it; Attempt to connect to the Post Office, clear the user's password and search for the desired email. Search capability is limited to the Sender, Recipient and Subject lines. Searching for terms in the body of the email is not possible. This process must be repeated 2 to 4 times for each year requested and for each individual account to be searched. Each restoration and extraction takes from 6-8 hours depending on the size of the Post Office.

Based on the above, and in light of the scope of your request (email from September 11, 2001 to the present), it is estimated that it would take a minimum of 960 hours to complete this request. Information Technology Division (ITD) currently receives between 10-15 requests per month to produce email in response to court subpoenas, internal investigations, personnel matters and CPRA requests. In addition to the email reconstruction/retrieval function, the designated section is responsible for supporting the current email system, managing smartphones and tablets, monitoring the subpoena delivery and tracking system, and managing the Department's extensive Body Worn Camera deployment. Therefore, the Department could only set aside approximately 3 hours per week to this restoration/retrieval/revlew effort. There are 2 people in the entire City of Los Angeles with the necessary skills to perform this task, and one of them is presently off and not expected to return until January, at the earliest.

As recently emphasized by the California Court of Appeal, "[T]he basic rule is that an agency must comply with a request if responsive records can be located with reasonable effort. (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227, citing *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165-166.) If the agency would be required to create a new set of public records in order to provide responses to a CPRA request, such agency action may be found to exceed its statutory duties. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.) Section 6255 provides that a local agency may withhold production of public records where, "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." Further, "Section 6255 imposes on the California courts a duty ... to weigh the benefits and costs of disclosure in each particular case." [Citation.] A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non-exempt from exempt information, because the statutory term 'public interest' encompasses public concern with the cost and efficiency of government." [Citations.] We may thus take it as established that the Act includes a policy favoring the efficiency of government

Brendan N. Charney

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14.4

and limitation of its costs.” (*Fredericks, supra*, at 228, quoting *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 152 (conc. & dis. opn. of Huffman, J.)(internal quotations omitted).)

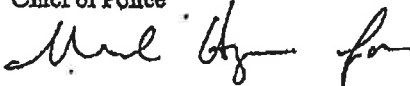
It is difficult to understand the significant public interest in disclosure of emails which, were they to exist, referenced a program or concept that, as already explained, was never implemented, either back in 2007 or today, so as to tip the scale in favor of disclosure. As such, the Department believes that “the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records,” and has therefore met its burden under Section 6255.

Any correspondence regarding this matter should include a copy of this letter and be directed to the Los Angeles Police Department - Discovery Section, 201 North Los Angeles Street, Space 301, Los Angeles, California 90012.

If you have any questions, please contact Management Analyst Caydene Monk of the Discovery Section at (213) 978-2155.

Very truly yours,

CHARLIE BECK
Chief of Police



MARTIN BLAND, Senior Management Analyst
Officer-in-Charge, Discovery Section
Legal Affairs Division

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

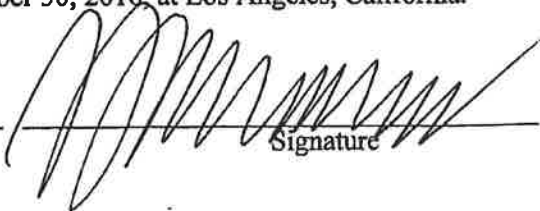
On November 30, 2016, I served the foregoing document(s) described as: **DEPONENT JULIE TELLEZ'S RESPONSE TO NOTICE OF TAKING THE DEPOSITION OF JULIE TELLEZ AND REQUESTS FOR PRODUCTION OF DOCUMENTS** by placing a true copy of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael N. Feuer, City Attorney
Carlos De La Guerra, Managing Assistant City Attorney
Kjehl T. Johansen, Deputy City Attorney
200 North Main Street, City Hall East, Room 800
Los Angeles, CA 90012
Tel: (213) 978-2283
Fax: (213) 978-8787
Email: kjehl.johansen@lacity.org
Counsel for CITY OF LOS ANGELES; THE LOS ANGELES POLICE DEPARTMENT

X (VIA PERSONAL DELIVERY) to be served on all other parties to this action by requesting that a messenger from *GLOBAL NETWORK LEGAL SERVICES* deliver true copies of the above-named documents, enclosed in sealed envelopes addressed indicated above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on November 30, 2016, at Los Angeles, California.

Yvette M. Merino
Print Name


Signature

1 DAVIS WRIGHT TREMAINE LLP
2 THOMAS BURKE (State Bar No. 141930)
3 tomburke@dwt.com
4 505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Telephone (415) 276-6500
Fax (415) 276-6599

5 DAVIS WRIGHT TREMAINE LLP
6 KAREN A. HENRY (State Bar No. 229707)
7 karenhenry@dwt.com
8 BRENDAN N. CHARNEY (State Bar No. 293378)
9 brendancharney@dwt.com
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Fax: (213) 633-6899

10 Attorneys for Plaintiff
11 MUSLIM ADVOCATES

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

14
15 MUSLIM ADVOCATES,
16
17 Petitioner,
18
19 vs.
20 THE CITY OF LOS ANGELES; THE LOS
ANGELES POLICE DEPARTMENT; DOES
1-10, INCLUSIVE,
21
22 Respondent.

Case No. **BS163755**
Assigned to the Hon. James C. Chalfant

**NOTICE OF CONTINUED DEPOSITION
OF PERSON(S) MOST QUALIFIED AT
RESPONDENT LOS ANGELES POLICE
DEPARTMENT**

Date: January 26, 2017
Time: 10:00 a.m.
Location: Davis Wright Tremaine LLP
865 S. Figueroa St., Suite 2400
Los Angeles, CA 90017

Action Filed: July 25, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on **Thursday, January 26, 2017 beginning at 10:00 a.m.**,
3 at the offices of Davis Wright Tremaine LLP, located at 865 South Figueroa Street, Suite 2400, Los
4 Angeles, California 90017, Petitioner MUSLIM ADVOCATES (“Muslim Advocates”) will take
5 the deposition of the **PERSON(S) MOST QUALIFIED AT THE LOS ANGELES POLICE**
6 **DEPARTMENT (“LAPD”)** to testify on the LAPD’s behalf regarding the following subjects:

7 1. The person(s) most qualified to testify regarding the LAPD’s search for records
8 responsive to Muslim Advocates December 12, 2013 request, pursuant to the California Public
9 Records Act (“CPRA), for “[a]ll records reflecting or relating to the ‘Community Mapping’
10 program, as described in the Senate Statement” of Deputy Chief Michael Downing on October 30,
11 2007, including the LAPD’s search of both electronic and hard-copy repositories, the search terms
12 and protocols used, the personnel, facilities, information technology, and documentation related to
13 the search, the location(s) where responsive records are kept, the location(s) the LAPD searched for
14 responsive records, the persons most likely to possess responsive records, the persons who
15 conducted the search and the instructions they received related to the search, as well as the LAPD’s
16 review of any potentially responsive records to determine whether such potentially responsive
17 records actually are responsive and disclosable under the CPRA. (For reference, a copy of the
18 December 12, 2013 CPRA Request is attached as **Exhibit A.**)

19 2. The person(s) most qualified to testify regarding the LAPD’s backup system(s) for
20 e-mail from 2001 to 2010, including but not limited to the information technology, personnel,
21 manuals and other documentation, policies and procedures, vendors, and/or facilities relating to the
22 e-mail backup system, as well as any efforts from 2013 to the present to retrieve information from
23 the backup system for purposes including investigations, requests, and other LAPD business.

24 3. The person(s) most qualified to testify regarding the LAPD’s claim that searching its
25 backup system(s) for e-mail from 2001 to 2010 would be unduly burdensome, including the
26 LAPD’s claim that “it would take a minimum of 960 hours” to search the backup system(s) for
27

28 **NOTICE OF CONTINUANCE OF DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT
LOS ANGELES POLICE DEPARTMENT**

1 responsive e-mails. (For reference, a copy of the LAPD's letter to Brendan Charney dated
2 November 12, 2015 is attached as **Exhibit B.**)

3 The LAPD is not a natural person. See Cal. Civ. Proc. § 2025.230. The LAPD is therefore
4 requested and required, pursuant to Section 2025.230 of the California Code of Civil Procedure, to
5 designate and produce those of its officers, directors, managing agents, employees, and/or agents
6 who are most qualified to testify on its behalf as to the subjects set forth above.

7 PLEASE TAKE FURTHER NOTICE that the deposition shall be conducted upon oral
8 examination before a court reporter and notary public authorized to administer oaths in the State of
9 California and shall be transcribed by that certified court reporter. If, for any reason, the deposition
10 is not completed on Thursday, January 26, 2017, it will continue from day-to-day, beginning at
11 10:00 a.m., excluding Saturdays, Sundays and holidays, until completed, unless otherwise agreed
12 by counsel.

13 Pursuant to California Code of Civil Procedure Section 2025.220(a)(8), there is no contract
14 between Petitioner and the deposition officer or entity providing the services of the deposition
15 officer for any service beyond this deposition. Petitioner did not direct its counsel to use a
16 particular officer or entity to provide services for this deposition.

17
18 DATED: January 13, 2017

19 DAVIS WRIGHT TREMAINE LLP
20 THOMAS BURKE
21 KAREN A. HENRY
22 BRENDAN N. CHARNEY

23
24
25
26
27
28
By: 

Brendan N. Charney

Attorneys for Petitioner
MUSLIM ADVOCATES

**NOTICE OF CONTINUANCE OF DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT
LOS ANGELES POLICE DEPARTMENT**

EXHIBIT A

muslim advocates
PROMOTING FREEDOM AND JUSTICE FOR ALL

Direct dial: (415) 675-1495
Email: glenn@muslimadvocates.org

December 12, 2013

VIA USPS EXPRESS MAIL EB508543854US
Los Angeles Police Department Discovery Section
Attn: Custodian of Records
201 N. Los Angeles St., Space 301
Los Angeles, CA 90012

USM
THUR. 12/12/13
LAPD
DEC 16 2013
LEGAL AFFAIRS DIVISION
DISCOVERY SECTION

Re: California Public Records Act ("CPRA") Request

Dear Sir or Madam:

Pursuant to the CPRA, I would like to inspect and obtain electronic copies of the following records¹ that are within the possession, custody, or control of the Los Angeles Police Department ("LAPD"), for the period September 11, 2001, through the present:

1. All records reflecting or relating to "LAPD's outreach and grassroots dialogue with Muslim communities" as described by Michael P. Downing, Commanding Officer Counter-Terrorism/Criminal Intelligence Bureau, before the U.S. Senate on October 30, 2007 ("Senate Statement").²
2. All records reflecting or relating to the "Community Mapping" program, as described in the Senate Statement.
3. All records reflecting or relating to the LAPD's policies or practices based upon individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent. Such records include but are not limited to:
 - Community mapping or Muslim mapping;

¹ Throughout this request, "record" should be given its broadest meaning under Government Code § 6252, and includes, but is not limited to, policies, protocols, manuals, instructions, training materials, memoranda, templates, forms, notices, invitations, calendars, appointments, meeting agendas, meeting or interview notes, evaluations, assessments, analyses, email communications, correspondence, maps, photographs, video or audio recordings, and information stored in any form.

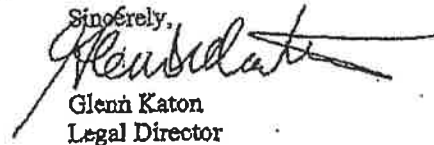
² Available at:
<http://www.lapdonline.org/assets/pdf/Michael%20DowningTestimonyfortheU.S.Senate-Final.PDF>

Letter to LAPD Custodian of Records
December 12, 2013
Page 2

- Outreach to individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Surveillance, monitoring, or collection of information that is not connected to a specific criminal investigation about individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
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 - David Cohen, NYPD Deputy Commissioner;
 - Lawrence ("Larry") Sanchez, Central Intelligence Agency ("CIA") liaison to the State of New York, or any capacity for the CIA or NYPD;
 - Mitchell D. Silber, NYPD Senior Intelligence Analyst
 - Arvin Bhatt, NYPD Senior Intelligence Analyst
 - Hector Berdecia, NYPD;
 - John Cutter, NYPD Deputy Chief;
 - Timothy Mehta, NYPD Sergeant;
 - Steve D'Ulisse, NYPD Captain;
 - Stephen Hoban, NYPD Detective;
 - Bryan Michael Jenkins, Senior Advisor to the President of the Rand Corporation;
 - Anyone communicating on behalf of the individuals listed in this paragraph 4.
5. All records reflecting or relating to communications between any employee or agent of the LAPD and anyone at the NYPD on the subjects specified in paragraph 3, above, including bullet points.

If you have any questions concerning this request or if the cost for access to the records will exceed \$50.00, please contact me. Thank you in advance for your assistance with this matter.

Sincerely,



Glenn Katon
Legal Director

EXHIBIT B

LOS ANGELES POLICE DEPARTMENT



CHARLIE BECK
Chief of Police

ERIC GARCETTI
Mayor

P. O. Box 30158
Los Angeles, California 90030
Telephone: (213) 978-2100
TDD: (877) 275-5273
Reference Number 144

November 12, 2015

Mr. Brendan N. Charney, Esquire
DAVIS WRIGHT TREMAINE, LLP
865 S. Figueroa Street
Los Angeles, California 90017-2566

Dear Mr. Charney:

Thank you for your most recent correspondence, dated November 2, 2015. In your letter, you reference Section 6253 of the California Public Records Act as standing for the position that the local agency must provide all responsive and non-exempt public records within 10 days of receipt of a request, and might extend such an obligation for another 14 days under circumstances enumerated in Section 6253(c)(1)-(4). The Department respectfully disagrees with such an interpretation. The aforementioned time period(s) apply to the window within which the agency shall make its determination as to whether the request seeks copies of disclosable public records in the agency's possession, and communicate the same to the requestor. When such determination is made, the agency must then "state the estimated date and time when the records will be made available." (§ 6253(c).) And while an agency may not delay or obstruct inspection or copying of public records (See § 6253(d)), the Department stated in its October 7, 2015 correspondence to you that approximately 4500 pages of records had been identified as *possibly* responsive to your request for email, and that it was necessary to review every single page to determine whether the document was first, responsive to the request and then whether it was exempt from disclosure in its entirety or contained information which must be redacted and/or segregated prior to disclosure. This process is being undertaken by a single management analyst during the course of his normal work hours, and reflects one of numerous CPRA requests the analyst is handling himself or over which he is providing supervision. The Department wanted to clarify this point, notwithstanding your "agreement" to permit the results of said review to be provided by November 18, 2015.

Respecting your request that the Department reconsider its assertion of Section 6255 over pre-2010 email, the Department has done so and must again, deny your request pursuant to Section 6255, based upon the unduly burdensome nature of the request. The Department has previously explained that it utilizes Novell GroupWise as its email system. GroupWise has a very different architecture from Microsoft Exchange or other email systems. In a GroupWise environment, all

AN EQUAL EMPLOYMENT OPPORTUNITY- EMPLOYER
www.LAPDOnline.org
www.joinLAPD.com

Brendan N. Charney
Page 2
14.4

files are encrypted and can only be read by an instance of the post office agent which created them.

To the extent the Department did not have an email archiving system prior to March 2013, locating older email would require restoration of entire post office structures (files and databases) from back-up tapes, then attempting to extract the data. More specifically, such undertaking would require the analyst to identify the tape or file containing the Post Office where the account existed at the time of the search (The email system structure has changed many times and users move constantly); Create a back-up server with the appropriate version of the back-up software to catalogue, index and read the tape; Create a Post Office server with the appropriate software from the time of the back-up and copy the restored data to it; Attempt to connect to the Post Office, clear the user's password and search for the desired email. Search capability is limited to the Sender, Recipient and Subject lines. Searching for terms in the body of the email is not possible. This process must be repeated 2 to 4 times for each year requested and for each individual account to be searched. Each restoration and extraction takes from 6-8 hours depending on the size of the Post Office.

Based on the above, and in light of the scope of your request (email from September 11, 2001 to the present), it is estimated that it would take a minimum of 960 hours to complete this request. Information Technology Division (ITD) currently receives between 10-15 requests per month to produce email in response to court subpoenas, internal investigations, personnel matters and CPRA requests. In addition to the email reconstruction/retrieval function, the designated section is responsible for supporting the current email system, managing smartphones and tablets, monitoring the subpoena delivery and tracking system, and managing the Department's extensive Body Worn Camera deployment. Therefore, the Department could only set aside approximately 8 hours per week to this restoration/retrieval/review effort. There are 2 people in the entire City of Los Angeles with the necessary skills to perform this task, and one of them is presently off and not expected to return until January, at the earliest.

As recently emphasized by the California Court of Appeal, "[T]he basic rule is that an agency must comply with a request if responsive records can be *located with reasonable effort*. (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227, citing *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165-166.) If the agency would be required to create a new set of public records in order to provide responses to a CPRA request, such agency action may be found to exceed its statutory duties. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.) Section 6255 provides that a local agency may withhold production of public records where, "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." Further, "Section 6255 imposes on the California courts a duty ... to weigh the benefits and costs of disclosure in each particular case." [Citation.] A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non-exempt from exempt information, because the statutory term "public interest" "encompasses public concern with the cost and efficiency of government." [Citations.] We may thus take it as established that the Act includes a policy favoring the efficiency of government

Brendan N. Charney
Page 3
14.4

and limitation of its costs.” (*Fredericks, supra*, at 228, quoting *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 152 (conc. & dis. opn. of Huffinan, J.)(internal quotations omitted).)

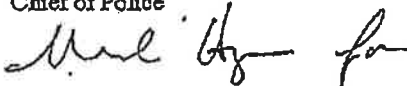
It is difficult to understand the significant public interest in disclosure of emails which, were they to exist, referenced a program or concept that, as already explained, was never implemented, either back in 2007 or today, so as to tip the scale in favor of disclosure. As such, the Department believes that “the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records,” and has therefore met its burden under Section 6255.

Any correspondence regarding this matter should include a copy of this letter and be directed to the Los Angeles Police Department – Discovery Section, 201 North Los Angeles Street, Space 301, Los Angeles, California 90012.

If you have any questions, please contact Management Analyst Caydene Monk of the Discovery Section at (213) 978-2155.

Very truly yours,

CHARLIE BECK
Chief of Police



MARTIN BLAND, Senior Management Analyst
Officer-in-Charge, Discovery Section
Legal Affairs Division

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

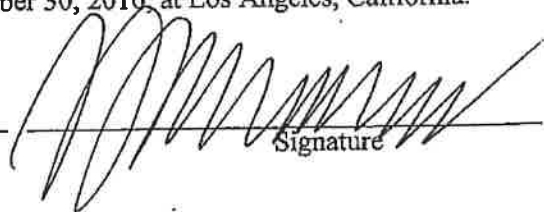
On November 30, 2016, I served the foregoing document(s) described as: **DEPONENT JULIE TELLEZ'S RESPONSE TO NOTICE OF TAKING THE DEPOSITION OF JULIE TELLEZ AND REQUESTS FOR PRODUCTION OF DOCUMENTS** by placing a true copy of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael N. Feuer, City Attorney
Carlos De La Guerra, Managing Assistant City Attorney
Kjehl T. Johansen, Deputy City Attorney
200 North Main Street, City Hall East, Room 800
Los Angeles, CA 90012
Tel: (213) 978-2283
Fax: (213) 978-8787
Email: kjehl.johansen@lacity.org
Counsel for CITY OF LOS ANGELES; THE LOS ANGELES POLICE DEPARTMENT

X (VIA PERSONAL DELIVERY) to be served on all other parties to this action by requesting that a messenger from *GLOBAL NETWORK LEGAL SERVICES* deliver true copies of the above-named documents, enclosed in sealed envelopes addressed indicated above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on November 30, 2016, at Los Angeles, California.

Yvette M. Merino
Print Name



Signature

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

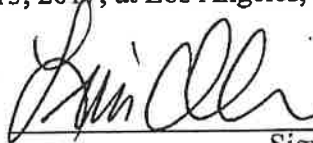
On January 13, 2017, I served the foregoing document(s) described as: **NOTICE OF CONTINUED OF DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT** by placing a true copy of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael N. Feuer, City Attorney
Carlos De La Guerra, Managing Assistant City Attorney
Kjehl T. Johansen, Deputy City Attorney
200 North Main Street, City Hall East, Room 800
Los Angeles, CA 90012
Tel: (213) 978-2283
Fax: (213) 978-8787
Email: kjehl.johansen@lacity.org
Counsel for CITY OF LOS ANGELES; THE LOS ANGELES POLICE DEPARTMENT

X (By Overnight Delivery) I deposited this document in the box or other facility located at 865 S. Figueroa Street, Suite 2400, Los Angeles, CA 90017 regularly maintained by Federal Express, in an envelope designated by Federal Express with delivery fees paid or provided for, addressed to the persons on whom it is to be served, for guaranteed next day delivery.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on January 13, 2017, at Los Angeles, California.

Lina Pearmain
Print Name



Signature

NOTICE OF CONTINUANCE OF DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT

1 DAVIS WRIGHT TREMAINE LLP
 2 THOMAS BURKE (State Bar No. 141930)
 3 tomburke@dwt.com
 4 505 Montgomery Street, Suite 800
 San Francisco, CA 94111-6533
 Telephone (415) 276-6500
 Fax (415) 276-6599

5 DAVIS WRIGHT TREMAINE LLP
 6 KAREN A. HENRY (State Bar No. 229707)
 karenhenry@dwt.com
 7 BRENDAN N. CHARNEY (State Bar No. 293378)
 brendancharney@dwt.com
 8 865 South Figueroa Street, 24th Floor
 Los Angeles, California 90017-2566
 Telephone: (213) 633-6800
 9 Fax: (213) 633-6899

10 Attorneys for Plaintiff
 11 MUSLIM ADVOCATES

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 FOR THE COUNTY OF LOS ANGELES

14
 15 MUSLIM ADVOCATES,
 16
 17 Petitioner,

18 vs.

19 THE CITY OF LOS ANGELES; THE LOS
 ANGELES POLICE DEPARTMENT; DOES
 20 1-10, INCLUSIVE,
 21
 22 Respondent.

Case No. **BS163755**
 Assigned to the Hon. James C. Chalfant

**NOTICE OF CONTINUED DEPOSITION
 OF PERSON(S) MOST QUALIFIED AT
 RESPONDENT LOS ANGELES POLICE
 DEPARTMENT**

Date: March 15, 2017
 Time: 10:00 a.m.
 Location: Davis Wright Tremaine LLP
 865 S. Figueroa St., Suite 2400
 Los Angeles, CA 90017

Action Filed: July 25, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on **Thursday, March 15, 2017 beginning at 10:00 a.m.**, at
3 the offices of Davis Wright Tremaine LLP, located at 865 South Figueroa Street, Suite 2400, Los
4 Angeles, California 90017, Petitioner MUSLIM ADVOCATES ("Muslim Advocates") will take
5 the deposition of the **PERSON(S) MOST QUALIFIED AT THE LOS ANGELES POLICE**
6 **DEPARTMENT ("LAPD")** to testify on the LAPD's behalf regarding the following subjects:

7 1. The person(s) most qualified to testify regarding the LAPD's search for records
8 responsive to Muslim Advocates December 12, 2013 request, pursuant to the California Public
9 Records Act ("CPRA), for "[a]ll records reflecting or relating to the 'Community Mapping'
10 program, as described in the Senate Statement" of Deputy Chief Michael Downing on October 30,
11 2007, including the LAPD's search of both electronic and hard-copy repositories, the search terms
12 and protocols used, the personnel, facilities, information technology, and documentation related to
13 the search, the location(s) where responsive records are kept, the location(s) the LAPD searched for
14 responsive records, the persons most likely to possess responsive records, the persons who
15 conducted the search and the instructions they received related to the search, as well as the LAPD's
16 review of any potentially responsive records to determine whether such potentially responsive
17 records actually are responsive and disclosable under the CPRA. (For reference, a copy of the
18 December 12, 2013 CPRA Request is attached as **Exhibit A.**)

19 2. The person(s) most qualified to testify regarding the LAPD's backup system(s) for
20 e-mail from 2001 to 2010, including but not limited to the information technology, personnel,
21 manuals and other documentation, policies and procedures, vendors, and/or facilities relating to the
22 e-mail backup system, as well as any efforts from 2013 to the present to retrieve information from
23 the backup system for purposes including investigations, requests, and other LAPD business.

24 3. The person(s) most qualified to testify regarding the LAPD's claim that searching its
25 backup system(s) for e-mail from 2001 to 2010 would be unduly burdensome, including the
26 LAPD's claim that "it would take a minimum of 960 hours" to search the backup system(s) for
27

28 **NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT**

1 responsive e-mails. (For reference, a copy of the LAPD's letter to Brendan Charney dated
2 November 12, 2015 is attached as **Exhibit B**.)

3 The LAPD is not a natural person. See Cal. Civ. Proc. § 2025.230. The LAPD is therefore
4 requested and required, pursuant to Section 2025.230 of the California Code of Civil Procedure, to
5 designate and produce those of its officers, directors, managing agents, employees, and/or agents
6 who are most qualified to testify on its behalf as to the subjects set forth above.

7 PLEASE TAKE FURTHER NOTICE that the deposition shall be conducted upon oral
8 examination before a court reporter and notary public authorized to administer oaths in the State of
9 California and shall be transcribed by that certified court reporter. If, for any reason, the deposition
10 is not completed on Wednesday, March 15, 2017, it will continue from day-to-day, beginning at
11 10:00 a.m., excluding Saturdays, Sundays and holidays, until completed, unless otherwise agreed
12 by counsel.

13 Pursuant to California Code of Civil Procedure Section 2025.220(a)(8), there is no contract
14 between Petitioner and the deposition officer or entity providing the services of the deposition
15 officer for any service beyond this deposition. Petitioner did not direct its counsel to use a
16 particular officer or entity to provide services for this deposition.

18 DATED: March 3, 2017

DAVIS WRIGHT TREMAINE LLP
THOMAS BURKE
KAREN A. HENRY
BRENDAN N. CHARNEY

21 By: 
22 Brendan N. Charney
23 Attorneys for Petitioner
24 MUSLIM ADVOCATES

28 **NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT**

EXHIBIT A

muslim advocates
PROMOTING FREEDOM AND JUSTICE FOR ALL

Direct dial: (415) 675-1495
Email: glenn@muslimadvocates.org

December 12, 2013

VIA USPS EXPRESS MAIL EB508543854US
Los Angeles Police Department Discovery Section
Attn: Custodian of Records
201 N. Los Angeles St., Space 301
Los Angeles, CA 90012

OSM
REC'D
LAPD
DEC 18 2013
LEGAL AFFAIRS DIVISION
DISCOVERY SECTION

Re: California Public Records Act ("CPRA") Request

Dear Sir or Madam:

Pursuant to the CPRA, I would like to inspect and obtain electronic copies of the following records¹ that are within the possession, custody, or control of the Los Angeles Police Department ("LAPD"), for the period September 11, 2001, through the present:

1. All records reflecting or relating to "LAPD's outreach and grassroots dialogue with Muslim communities" as described by Michael P. Downing, Commanding Officer Counter-Terrorism/Criminal Intelligence Bureau, before the U.S. Senate on October 30, 2007 ("Senate Statement").²
2. All records reflecting or relating to the "Community Mapping" program, as described in the Senate Statement.
3. All records reflecting or relating to the LAPD's policies or practices based upon individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent. Such records include but are not limited to:
 - Community mapping or Muslim mapping;

¹ Throughout this request, "record" should be given its broadest meaning under Government Code § 6252, and includes, but is not limited to, policies, protocols, manuals, instructions, training materials, memoranda, templates, forms, notices, invitations, calendars, appointments, meeting agendas, meeting or interview notes, evaluations, assessments, analyses, email communications, correspondence, maps, photographs, video or audio recordings, and information stored in any form.

² Available at:
<http://www.lapdonline.org/assets/pdf/Michael%20DowningTestimonyfortheU.S.Senate-Final.PDF>

Letter to LAPD Custodian of Records
December 12, 2013

Page 2

- Outreach to individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Surveillance, monitoring, or collection of information that is not connected to a specific criminal investigation about individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Informants in mosques or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent that are not connected to a specific criminal investigation.
4. All records reflecting or relating to communications between any employee or agent of the LAPD and the following individuals, regardless of their actual title at the time of the communication:
- Raymond Kelly, New York City Police Department ("NYPD") Commissioner;
 - David Cohen, NYPD Deputy Commissioner;
 - Lawrence ("Larry") Sanchez, Central Intelligence Agency ("CIA") liaison to the State of New York, or any capacity for the CIA or NYPD;
 - Mitchell D. Silber, NYPD Senior Intelligence Analyst
 - Arvin Bhatt, NYPD Senior Intelligence Analyst
 - Hector Berdeola, NYPD;
 - John Cutter, NYPD Deputy Chief;
 - Timothy Mehta, NYPD Sergeant;
 - Steve D'Ulisse, NYPD Captain;
 - Stephen Hoban, NYPD Detective;
 - Bryan Michael Jenkins, Senior Advisor to the President of the Rand Corporation;
 - Anyone communicating on behalf of the individuals listed in this paragraph 4.
5. All records reflecting or relating to communications between any employee or agent of the LAPD and anyone at the NYPD on the subjects specified in paragraph 3, above, including bullet points.

If you have any questions concerning this request or if the cost for access to the records will exceed \$50.00, please contact me. Thank you in advance for your assistance with this matter.

Sincerely,

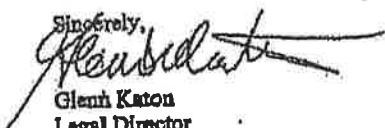

Glenn Katon
Legal Director

EXHIBIT B

LOS ANGELES POLICE DEPARTMENT



CHARLIE BECK
Chief of Police

ERIC GARIBAY
Mayor

P. O. Box 30158
Los Angeles, California 90030
Telephone: (213) 978-2100
TDD: (877) 275-5273
Reference Number 144

November 12, 2015

Mr. Brendan N. Charney, Esquire
DAVIS WRIGHT TREMAINE, LLP
865 S. Figueroa Street
Los Angeles, California 90017-2566

Dear Mr. Charney:

Thank you for your most recent correspondence, dated November 2, 2015. In your letter, you reference Section 6253 of the California Public Records Act as standing for the position that the local agency must provide all responsive and non-exempt public records within 10 days of receipt of a request, and might extend such an obligation for another 14 days under circumstances enumerated in Section 6253(e)(1)-(4). The Department respectfully disagrees with such an interpretation. The aforementioned time period(s) apply to the window within which the agency shall make its determination as to whether the request seeks copies of disclosable public records in the agency's possession, and communicate the same to the requestor. When such determination is made, the agency must then "state the estimated date and time when the records will be made available." (§ 6253(e).) And while an agency may not delay or obstruct inspection or copying of public records (See § 6253(d)), the Department stated in its October 7, 2015 correspondence to you that approximately 4500 pages of records had been identified as *possibly* responsive to your request for email, and that it was necessary to review every single page to determine whether the document was first, responsive to the request and then whether it was exempt from disclosure in its entirety or contained information which must be redacted and/or segregated prior to disclosure. This process is being undertaken by a single management analyst during the course of his normal work hours, and reflects one of numerous CPRA requests the analyst is handling himself or over which he is providing supervision. The Department wanted to clarify this point, notwithstanding your "agreement" to permit the results of said review to be provided by November 18, 2015.

Respecting your request that the Department reconsider its assertion of Section 6255 over pre-2010 email, the Department has done so and must again, deny your request pursuant to Section 6255, based upon the unduly burdensome nature of the request. The Department has previously explained that it utilizes Novell GroupWise as its email system. GroupWise has a very different architecture from Microsoft Exchange or other email systems. In a GroupWise environment, all

Brendan N. Chamey

Page 2

14.4

files are encrypted and can only be read by an instance of the post office agent which created them.

To the extent the Department did not have an email archiving system prior to March 2013, locating older email would require restoration of entire post office structures (files and databases) from back-up tapes, then attempting to extract the data. More specifically, such undertaking would require the analyst to identify the tape or file containing the Post Office where the account existed at the time of the search (The email system structure has changed many times and users move constantly); Create a back-up server with the appropriate version of the back-up software to catalogue, index and read the tapes; Create a Post Office server with the appropriate software from the time of the back-up and copy the restored data to it; Attempt to connect to the Post Office, clear the user's password and search for the desired email. Search capability is limited to the Sender, Recipient and Subject lines. Searching for terms in the body of the email is not possible. This process must be repeated 2 to 4 times for each year requested and for each individual account to be searched. Each restoration and extraction takes from 6-8 hours depending on the size of the Post Office.

Based on the above, and in light of the scope of your request (email from September 11, 2001 to the present), it is estimated that it would take a minimum of 960 hours to complete this request. Information Technology Division (ITD) currently receives between 10-15 requests per month to produce email in response to court subpoenas, internal investigations, personnel matters and CPRA requests. In addition to the email reconstruction/retrieval function, the designated section is responsible for supporting the current email system, managing smartphones and tablets, monitoring the subpoena delivery and tracking system, and managing the Department's extensive Body Worn Camera deployment. Therefore, the Department could only set aside approximately 8 hours per week to this restoration/retrieval/review effort. There are 2 people in the entire City of Los Angeles with the necessary skills to perform this task, and one of them is presently off and not expected to return until January, at the earliest.

As recently emphasized by the California Court of Appeal, "[T]he basic rule is that an agency must comply with a request if responsive records can be located with reasonable effort. (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227, citing *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165-166.) If the agency would be required to create a new set of public records in order to provide responses to a CPRA request, such agency action may be found to exceed its statutory duties. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.) Section 6255 provides that a local agency may withhold production of public records where, "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." Further, "Section 6255 imposes on the California courts a duty ... to weigh the benefits and costs of disclosure in each particular case." [Citation.] A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non-exempt from exempt information, because the statutory term "public interest" "encompasses public concern with the cost and efficiency of government." [Citations.] We may thus take it as established that the Act includes a policy favoring the efficiency of government

Brendan N. Charney

Page 3

14.4

and limitation of its costs." (*Fredericks, supra*, at 228, quoting *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 152 (conc. & dis. opn. of Huffinan, J.) (internal quotations omitted).)

It is difficult to understand the significant public interest in disclosure of emails which, were they to exist, referenced a program or concept that, as already explained, was never implemented, either back in 2007 or today, so as to tip the scale in favor of disclosure. As such, the Department believes that "the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records," and has therefore met its burden under Section 6255.

Any correspondence regarding this matter should include a copy of this letter and be directed to the Los Angeles Police Department - Discovery Section, 201 North Los Angeles Street, Space 301, Los Angeles, California 90012.

If you have any questions, please contact Management Analyst Caydene Monk of the Discovery Section at (213) 978-2155.

Very truly yours,

CHARLES BECK
Chief of Police



MARTIN BLAND, Senior Management Analyst
Officer-in-Charge, Discovery Section
Legal Affairs Division

Topics for PMQ Deposition Rachel McClain
March 15, 2016

1. LAPD's email backup system from 2001-2005.
2. LAPD's backup email system from 2009-2010.
3. Undue burden claim as it relates to retrieving email from 2001-2005.
4. Undue burden claim as it relates to retrieving email from 2009-2010.
5. Vendors related to the email backup system.
6. LAPD's POST-2010 attempts to retrieve records stored on PRE-2010 email backups during the time period from January 1, 2011 to the present.
7. Facilities, equipment, and software related to LAPD's email backup system.
[Note: "facilities" is defined by counsel for Muslim Advocates as "a place, amenity, or piece of equipment provided for a particular purpose."]
8. Facilities, equipment, and software related to LAPD's undue burden claim.
[Note: "facilities" is defined by counsel for Muslim Advocates as "a place, amenity, or piece of equipment provided for a particular purpose."]
9. Copy of PMQ deposition notice for March 15, 2017. (Copy attached.)

EXHIBIT 16
Rachel McClain Vol. 3
3/15/17

Reported by:
Jean Holliday, CSR 4935

1 DAVIS WRIGHT TREMAINE LLP
2 THOMAS BURKE (State Bar No. 141930)
3 tomburke@dwt.com
4 505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Telephone (415) 276-6500
Fax (415) 276-6599

HAND-DELIVERED

MAR 07 2017

**Public Safety
General Counsel Division**

5 DAVIS WRIGHT TREMAINE LLP
6 KAREN A. HENRY (State Bar No. 229707)
7 karenhenry@dwt.com
8 BRENDAN N. CHARNEY (State Bar No. 293378)
9 brendancharney@dwt.com
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Fax: (213) 633-6899

10 Attorneys for Plaintiff
11 MUSLIM ADVOCATES

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

14
15 MUSLIM ADVOCATES,

16 Petitioner,

17 vs.

18 THE CITY OF LOS ANGELES; THE LOS
19 ANGELES POLICE DEPARTMENT; DOES
1-10, INCLUSIVE,

20 Respondent.

Case No. **BS163755**

Assigned to the Hon. James C. Chalfant

**NOTICE OF CONTINUED DEPOSITION
OF PERSON(S) MOST QUALIFIED AT
RESPONDENT LOS ANGELES POLICE
DEPARTMENT**

Date: March 15, 2017

Time: 10:00 a.m.

Location: Davis Wright Tremaine LLP
865 S. Figueroa St., Suite 2400
Los Angeles, CA 90017

Action Filed: July 25, 2016

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NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT

4835-4077-3956v.1 0200879-000001

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on **Thursday, March 15, 2017 beginning at 10:00 a.m.**, at
3 the offices of Davis Wright Tremaine LLP, located at 865 South Figueroa Street, Suite 2400, Los
4 Angeles, California 90017, Petitioner MUSLIM ADVOCATES (“Muslim Advocates”) will take
5 the deposition of the **PERSON(S) MOST QUALIFIED AT THE LOS ANGELES POLICE**
6 **DEPARTMENT (“LAPD”)** to testify on the LAPD’s behalf regarding the following subjects:

7 1. The person(s) most qualified to testify regarding the LAPD’s search for records
8 responsive to Muslim Advocates December 12, 2013 request, pursuant to the California Public
9 Records Act (“CPRA), for “[a]ll records reflecting or relating to the ‘Community Mapping’
10 program, as described in the Senate Statement” of Deputy Chief Michael Downing on October 30,
11 2007, including the LAPD’s search of both electronic and hard-copy repositories, the search terms
12 and protocols used, the personnel, facilities, information technology, and documentation related to
13 the search, the location(s) where responsive records are kept, the location(s) the LAPD searched for
14 responsive records, the persons most likely to possess responsive records, the persons who
15 conducted the search and the instructions they received related to the search, as well as the LAPD’s
16 review of any potentially responsive records to determine whether such potentially responsive
17 records actually are responsive and disclosable under the CPRA. (For reference, a copy of the
18 December 12, 2013 CPRA Request is attached as **Exhibit A.**)

19 2. The person(s) most qualified to testify regarding the LAPD’s backup system(s) for
20 e-mail from 2001 to 2010, including but not limited to the information technology, personnel,
21 manuals and other documentation, policies and procedures, vendors, and/or facilities relating to the
22 e-mail backup system, as well as any efforts from 2013 to the present to retrieve information from
23 the backup system for purposes including investigations, requests, and other LAPD business.

24 3. The person(s) most qualified to testify regarding the LAPD’s claim that searching its
25 backup system(s) for e-mail from 2001 to 2010 would be unduly burdensome, including the
26 LAPD’s claim that “it would take a minimum of 960 hours” to search the backup system(s) for
27

28 **NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT**

1 responsive e-mails. (For reference, a copy of the LAPD's letter to Brendan Charney dated
2 November 12, 2015 is attached as **Exhibit B**.)

3 The LAPD is not a natural person. See Cal. Civ. Proc. § 2025.230. The LAPD is therefore
4 requested and required, pursuant to Section 2025.230 of the California Code of Civil Procedure, to
5 designate and produce those of its officers, directors, managing agents, employees, and/or agents
6 who are most qualified to testify on its behalf as to the subjects set forth above.

7 PLEASE TAKE FURTHER NOTICE that the deposition shall be conducted upon oral
8 examination before a court reporter and notary public authorized to administer oaths in the State of
9 California and shall be transcribed by that certified court reporter. If, for any reason, the deposition
10 is not completed on Wednesday, March 15, 2017, it will continue from day-to-day, beginning at
11 10:00 a.m., excluding Saturdays, Sundays and holidays, until completed, unless otherwise agreed
12 by counsel.

13 Pursuant to California Code of Civil Procedure Section 2025.220(a)(8), there is no contract
14 between Petitioner and the deposition officer or entity providing the services of the deposition
15 officer for any service beyond this deposition. Petitioner did not direct its counsel to use a
16 particular officer or entity to provide services for this deposition.

17
18 DATED: March 3, 2017

DAVIS WRIGHT TREMAINE LLP
THOMAS BURKE
KAREN A. HENRY
BRENDAN N. CHARNEY

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22 By: 

Brendan N. Charney

23 Attorneys for Petitioner
24 MUSLIM ADVOCATES
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28 **NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT**

EXHIBIT A



BLUESBROOKS.COM (646) 477-0700



muslim advocates
PROMOTING FREEDOM AND JUSTICE FOR ALL

Direct dial: (415) 675-1495
Email: glenn@muslimadvocates.org

December 12, 2013

VIA USPS EXPRESS MAIL EB508543854US
Los Angeles Police Department Discovery Section
Attn: Custodian of Records
201 N. Los Angeles St., Space 301
Los Angeles, CA 90012

USM
RECEIVED
LAPD
DEC 18 2013
LEGAL AFFAIRS DIVISION
DISCOVERY SECTION

Re: California Public Records Act ("CPRA") Request

Dear Sir or Madam:

Pursuant to the CPRA, I would like to inspect and obtain electronic copies of the following records¹ that are within the possession, custody, or control of the Los Angeles Police Department ("LAPD"), for the period September 11, 2001, through the present:

1. All records reflecting or relating to "LAPD's outreach and grassroots dialogues with Muslim communities" as described by Michael P. Downing, Commanding Officer Counter-Terrorism/Criminal Intelligence Bureau, before the U.S. Senate on October 30, 2007 ("Senate Statement").²
2. All records reflecting or relating to the "Community Mapping" program, as described in the Senate Statement.
3. All records reflecting or relating to the LAPD's policies or practices based upon individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent. Such records include but are not limited to:
 - Community mapping or Muslim mapping;

¹ Throughout this request, "record" should be given its broadest meaning under Government Code § 6252, and includes, but is not limited to, policies, protocols, manuals, instructions, training materials, memoranda, templates, forms, notices, invitations, calendars, appointments, meeting agendas, meeting or interview notes, evaluations, assessments, analyses, email communications, correspondence, maps, photographs, video or audio recordings, and information stored in any form.

² Available at:
<http://www.lapdonline.org/assets/pdf/Michael%20DowningTestimonyfortheU.S.Senate-Final.PDF>

Letter to LAPD Custodian of Records
December 12, 2013
Page 2

- Outreach to individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Surveillance, monitoring, or collection of information that is not connected to a specific criminal investigation about individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Informants in mosques or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent that are not connected to a specific criminal investigation.
4. All records reflecting or relating to communications between any employee or agent of the LAPD and the following individuals, regardless of their actual title at the time of the communication:
- Raymond Kelly, New York City Police Department ("NYPD") Commissioner;
 - David Cohen, NYPD Deputy Commissioner;
 - Lawrence ("Larry") Sanchez, Central Intelligence Agency ("CIA") liaison to the State of New York, or any capacity for the CIA or NYPD;
 - Mitchell D. Silber, NYPD Senior Intelligence Analyst
 - Arvin Bhatt, NYPD Senior Intelligence Analyst
 - Hector Berdeas, NYPD;
 - John Cutter, NYPD Deputy Chief;
 - Timothy Mehta, NYPD Sergeant;
 - Steve D'Ulisse, NYPD Captain;
 - Stephen Hoban, NYPD Detective;
 - Bryan Michael Jenkins, Senior Advisor to the President of the Rand Corporation;
 - Anyone communicating on behalf of the individuals listed in this paragraph 4.
5. All records reflecting or relating to communications between any employee or agent of the LAPD and anyone at the NYPD on the subjects specified in paragraph 3, above, including bullet points.

If you have any questions concerning this request or if the cost for access to the records will exceed \$50.00, please contact me. Thank you in advance for your assistance with this matter.

Sincerely,


Glenn Katon
Legal Director

EXHIBIT B

LOS ANGELES POLICE DEPARTMENT



ERIC GARCETTI
Mayor

CHARLIE BECK
Chief of Police

P. O. Box 30158
Los Angeles, California 90030
Telephone: (213) 978-2100
TDD: (877) 275-3273
Reference Number: 144

November 12, 2015

Mr. Brendan N. Chaney, Esquire
DAVIS WRIGHT TREMAINE, LLP
865 S. Figueroa Street
Los Angeles, California 90017-2566

Dear Mr. Chaney:

Thank you for your most recent correspondence, dated November 2, 2015. In your letter, you reference Section 6253 of the California Public Records Act as standing for the position that the local agency must provide all responsive and non-exempt public records within 10 days of receipt of a request, and might extend such an obligation for another 14 days under circumstances enumerated in Section 6253(c)(1)-(4). The Department respectfully disagrees with such an interpretation. The aforementioned time period(s) apply to the window within which the agency shall make its determination as to whether the request seeks copies of disclosable public records in the agency's possession, and communicate the same to the requestor. When such determination is made, the agency must then "state the estimated date and time when the records will be made available." (§ 6253(e).) And while an agency may not delay or obstruct inspection or copying of public records (See § 6253(d)), the Department stated in its October 7, 2015 correspondence to you that approximately 4500 pages of records had been identified as possibly responsive to your request for email, and that it was necessary to review every single page to determine whether the document was first, responsive to the request and then whether it was exempt from disclosure in its entirety or contained information which must be redacted and/or segregated prior to disclosure. This process is being undertaken by a single management analyst during the course of his normal work hours, and reflects one of numerous CPRA requests the analyst is handling himself or over which he is providing supervision. The Department wanted to clarify this point, notwithstanding your "agreement" to permit the results of said review to be provided by November 18, 2015.

Respecting your request that the Department reconsider its assertion of Section 6255 over pre-2010 email, the Department has done so and must again, deny your request pursuant to Section 6255, based upon the unduly burdensome nature of the request. The Department has previously explained that it utilizes Novell GroupWise as its email system. GroupWise has a very different architecture from Microsoft Exchange or other email systems. In a GroupWise environment, all

Brendan N. Charney

Page 2

14.4

files are encrypted and can only be read by an instance of the post office agent which created them.

To the extent the Department did not have an email archiving system prior to March 2013, locating older email would require restoration of entire post office structures (files and databases) from back-up tapes, then attempting to extract the data. More specifically, such undertaking would require the analyst to identify the tape or file containing the Post Office where the account existed at the time of the search (The email system structure has changed many times and users move constantly); Create a back-up server with the appropriate version of the back-up software to catalogue, index and read the tape; Create a Post Office server with the appropriate software from the time of the back-up and copy the restored data to it; Attempt to connect to the Post Office, clear the user's password and search for the desired email. Search capability is limited to the Sender, Recipient and Subject lines. Searching for terms in the body of the email is not possible. This process must be repeated 2 to 4 times for each year requested and for each individual account to be searched. Each restoration and extraction takes from 6-8 hours depending on the size of the Post Office.

Based on the above, and in light of the scope of your request (email from September 11, 2001 to the present), it is estimated that it would take a minimum of 960 hours to complete this request. Information Technology Division (ITD) currently receives between 10-15 requests per month to produce email in response to court subpoenas, internal investigations, personnel matters and CPRA requests. In addition to the email reconstruction/retrieval function, the designated section is responsible for supporting the current email system, managing smartphones and tablets, monitoring the subpoena delivery and tracking system, and managing the Department's extensive Body Worn Camera deployment. Therefore, the Department could only set aside approximately 8 hours per week to this restoration/retrieval/review effort. There are 2 people in the entire City of Los Angeles with the necessary skills to perform this task, and one of them is presently off and not expected to return until January, at the earliest.

As recently emphasized by the California Court of Appeal, "[T]he basic rule is that an agency must comply with a request if responsive records can be located with reasonable effort. (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227, citing *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165-166.) If the agency would be required to create a new set of public records in order to provide responses to a CPRA request, such agency action may be found to exceed its statutory duties. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.) Section 6255 provides that a local agency may withhold production of public records where, "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." Further, "Section 6255 imposes on the California courts a duty ... to weigh the benefits and costs of disclosure in each particular case." [Citation.] A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non-exempt from exempt information, because the statutory term 'public interest' 'encompasses public concern with the cost and efficiency of government.' [Citations.] We may thus take it as established that the Act includes a policy favoring the efficiency of government

Brendan N. Charney

Page 3

14.4

and limitation of its costs.” (*Fradericks, supra*, at 228, quoting *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 152 (conc. & dis. opn. of Huffman, J.)(internal quotations omitted).)

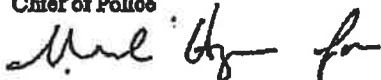
It is difficult to understand the significant public interest in disclosure of emails which, were they to exist, referenced a program or concept that, as already explained, was never implemented, either back in 2007 or today, so as to tip the scale in favor of disclosure. As such, the Department believes that “the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records,” and has therefore met its burden under Section 6255.

Any correspondence regarding this matter should include a copy of this letter and be directed to the Los Angeles Police Department – Discovery Section, 201 North Los Angeles Street, Space 301, Los Angeles, California 90012.

If you have any questions, please contact Management Analyst Caydene Monk of the Discovery Section at (213) 978-2155.

Very truly yours,

CHARLES BECK
Chief of Police



MARTIN BLAND, Senior Management Analyst
Officer-in-Charge, Discovery Section
Legal Affairs Division

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PROOF OF SERVICE BY FEDERAL EXPRESS

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine, LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566. I am familiar with the practice at my place of business for collection and processing of correspondence for overnight delivery by Federal Express. Such correspondence will be deposited with a facility regularly maintained by Federal Express for receipt on the next business day.

On March 3, 2017, I served the following document(s): **NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT** by placing a **true copy or original** in a separate envelope for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael N. Feuer, City Attorney
Carlos De La Guerra, Managing Assistant City Attorney
Kjehl T. Johansen, Deputy City Attorney
200 North Main Street, City Hall East, Room 800
Los Angeles, CA 90012
Tel: (213) 978-2283
Fax: (213) 978-8787
Email: kjehl.johansen@lacity.org
Counsel for CITY OF LOS ANGELES; THE LOS ANGELES POLICE DEPARTMENT

and by sealing the envelope and placing it for collection and delivery by Federal Express with delivery fees paid or provided for in accordance with ordinary business practices.

Executed on March 3, 2017, at Los Angeles, California.

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

Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Lina Pearson

Print Name



Signature

NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT

1 DAVIS WRIGHT-TREMAINE LLP
2 THOMAS BURKE (State Bar No. 141930)
3 tomburke@dwt.com
4 505 Montgomery Street, Suite 800
5 San Francisco, CA 94111-6533
6 Telephone (415) 276-6500
7 Fax (415) 276-6599

8 DAVIS WRIGHT TREMAINE LLP
9 KAREN A. HENRY (State Bar No. 229707)
10 karenhenry@dwt.com
11 BRENDAN N. CHARNEY (State Bar No. 293378)
12 brendancharney@dwt.com
13 865 South Figueroa Street, 24th Floor
14 Los Angeles, California 90017-2566
15 Telephone: (213) 633-6800
16 Fax: (213) 633-6899

17 Attorneys for Plaintiff
18 MUSLIM ADVOCATES

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF LOS ANGELES

21 MUSLIM ADVOCATES,
22
23 Petitioner,

24 vs.

25 THE CITY OF LOS ANGELES; THE LOS
26 ANGELES POLICE DEPARTMENT; DOES
27 1-10, INCLUSIVE,
28 Respondent.

Case No. **BS163755**
Assigned to the Hon. James C. Chalfant

**NOTICE OF CONTINUED DEPOSITION
OF PERSON(S) MOST QUALIFIED AT
RESPONDENT LOS ANGELES POLICE
DEPARTMENT**

Date: March 23, 2017
Time: 10:00 a.m.
Location: Davis Wright Tremaine LLP
865 S. Figueroa St., Suite 2400
Los Angeles, CA 90017

Action Filed: July 25, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on **Thursday, March 23, 2017 beginning at 10:00 a.m.**, at
3 the offices of Davis Wright Tremaine LLP, located at 865 South Figueroa Street, Suite 2400, Los
4 Angeles, California 90017, Petitioner MUSLIM ADVOCATES (“Muslim Advocates”) will take
5 the deposition of the **PERSON(S) MOST QUALIFIED AT THE LOS ANGELES POLICE**
6 **DEPARTMENT (“LAPD”)** to testify on the LAPD’s behalf regarding the following subjects:

7 1. The person(s) most qualified to testify regarding the LAPD’s search for records
8 responsive to Muslim Advocates December 12, 2013 request, pursuant to the California Public
9 Records Act (“CPRA), for “[a]ll records reflecting or relating to the ‘Community Mapping’
10 program, as described in the Senate Statement” of Deputy Chief Michael Downing on October 30,
11 2007, including the LAPD’s search of both electronic and hard-copy repositories, the search terms
12 and protocols used, the personnel, facilities, information technology, and documentation related to
13 the search, the location(s) where responsive records are kept, the location(s) the LAPD searched for
14 responsive records, the persons most likely to possess responsive records, the persons who
15 conducted the search and the instructions they received related to the search, as well as the LAPD’s
16 review of any potentially responsive records to determine whether such potentially responsive
17 records actually are responsive and disclosable under the CPRA. (For reference, a copy of the
18 December 12, 2013 CPRA Request is attached as **Exhibit A.**)

19 2. The person(s) most qualified to testify regarding the LAPD’s backup system(s) for
20 e-mail from 2001 to 2010, including but not limited to the information technology, personnel,
21 manuals and other documentation, policies and procedures, vendors, and/or facilities relating to the
22 e-mail backup system, as well as any efforts from 2013 to the present to retrieve information from
23 the backup system for purposes including investigations, requests, and other LAPD business.

24 3. The person(s) most qualified to testify regarding the LAPD’s claim that searching its
25 backup system(s) for e-mail from 2001 to 2010 would be unduly burdensome, including the
26 LAPD’s claim that “it would take a minimum of 960 hours” to search the backup system(s) for
27

28 **NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT**

1 responsive e-mails. (For reference, a copy of the LAPD's letter to Brendan Charney dated
2 November 12, 2015 is attached as **Exhibit B**.)

3 The LAPD is not a natural person. See Cal. Civ. Proc. § 2025.230. The LAPD is therefore
4 requested and required, pursuant to Section 2025.230 of the California Code of Civil Procedure, to
5 designate and produce those of its officers, directors, managing agents, employees, and/or agents
6 who are most qualified to testify on its behalf as to the subjects set forth above.

7 PLEASE TAKE FURTHER NOTICE that the deposition shall be conducted upon oral
8 examination before a court reporter and notary public authorized to administer oaths in the State of
9 California and shall be transcribed by that certified court reporter. If, for any reason, the deposition
10 is not completed on Thursday, March 23, 2017, it will continue from day-to-day, beginning at
11 10:00 a.m., excluding Saturdays, Sundays and holidays, until completed, unless otherwise agreed
12 by counsel.

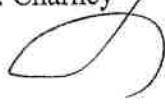
13 Pursuant to California Code of Civil Procedure Section 2025.220(a)(8), there is no contract
14 between Petitioner and the deposition officer or entity providing the services of the deposition
15 officer for any service beyond this deposition. Petitioner did not direct its counsel to use a
16 particular officer or entity to provide services for this deposition.

17
18 DATED: March 15, 2017

DAVIS WRIGHT TREMAINE LLP
THOMAS BURKE
KAREN A. HENRY
BRENDAN N. CHARNEY

19
20
21
22 By: 

Brendan N. Charney

23 Attorneys for Petitioner
24 MUSLIM ADVOCATES 

25
26
27
28 **NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT**

EXHIBIT A

muslim advocates
PROMOTING FREEDOM AND JUSTICE FOR ALL

Direct dial: (415) 675-1495
Email: glenn@muslimadvocates.org

December 12, 2013

VIA USPS EXPRESS MAIL EB508543854US
Los Angeles Police Department Discovery Section
Attn: Custodian of Records
201 N. Los Angeles St., Space 301
Los Angeles, CA 90012

USM
FIDUCIARY
LAPD
DEC 10 2013
LEGAL AFFAIRS DIVISION
DISCOVERY SECTION

Re: California Public Records Act ("CPRA") Request

Dear Sir or Madam:

Pursuant to the CPRA, I would like to inspect and obtain electronic copies of the following records¹ that are within the possession, custody, or control of the Los Angeles Police Department ("LAPD"), for the period September 11, 2001, through the present:

1. All records reflecting or relating to "LAPD's outreach and grassroots dialogue with Muslim communities" as described by Michael P. Downing, Commanding Officer Counter-Terrorism/Criminal Intelligence Bureau, before the U.S. Senate on October 30, 2007 ("Senate Statement").²
2. All records reflecting or relating to the "Community Mapping" program, as described in the Senate Statement.
3. All records reflecting or relating to the LAPD's policies or practices based upon individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent. Such records include but are not limited to:
 - Community mapping or Muslim mapping;

¹ Throughout this request, "record" should be given its broadest meaning under Government Code § 6252, and includes, but is not limited to, policies, protocols, manuals, instructions, training materials, memoranda, templates, forms, notices, invitations, calendars, appointments, meeting agendas, meeting or interview notes, evaluations, assessments, analyses, email communications, correspondence, maps, photographs, video or audio recordings, and information stored in any form.

² Available at:
<http://www.lapdonline.org/assets/pdf/Michael%20DowningTestimonyfortheU.S.Senate-Final.PDF>

Letter to LAPD Custodian of Records
December 12, 2013
Page 2

- Outreach to individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Surveillance, monitoring, or collection of information that is not connected to a specific criminal investigation about individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
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 - David Cohen, NYPD Deputy Commissioner;
 - Lawrence ("Larry") Sanchez, Central Intelligence Agency ("CIA") liaison to the State of New York, or any capacity for the CIA or NYPD;
 - Mitchell D. Silber, NYPD Senior Intelligence Analyst
 - Arvin Bhatt, NYPD Senior Intelligence Analyst
 - Hector Berdecia, NYPD;
 - John Cutter, NYPD Deputy Chief;
 - Timothy Mehta, NYPD Sergeant;
 - Steve D'Ulisse, NYPD Captain;
 - Stephen Hoban, NYPD Detective;
 - Bryan Michael Jenkins, Senior Advisor to the President of the Rand Corporation;
 - Anyone communicating on behalf of the individuals listed in this paragraph 4.
5. All records reflecting or relating to communications between any employee or agent of the LAPD and anyone at the NYPD on the subjects specified in paragraph 3, above, including bullet points.

If you have any questions concerning this request or if the cost for access to the records will exceed \$50.00, please contact me. Thank you in advance for your assistance with this matter.

Sincerely,


Glenn Katon
Legal Director

EXHIBIT B

LOS ANGELES POLICE DEPARTMENT



CHARLES BECK
Chief of Police

MARC GARCETTI
Mayor

P. O. Box 30158
Los Angeles, California 90030
Telephone: (213) 978-2100
TDD: (877) 275-5273
Reference Number 144

November 12, 2015

Mr. Brendan N. Charney, Esquire
DAVIS WRIGHT TREMAINE, LLP
865 S. Figueroa Street
Los Angeles, California 90017-2566

Dear Mr. Charney:

Thank you for your most recent correspondence, dated November 2, 2015. In your letter, you reference Section 6253 of the California Public Records Act as standing for the position that the local agency must provide all responsive and non-exempt public records within 10 days of receipt of a request, and might extend such an obligation for another 14 days under circumstances enumerated in Section 6253(c)(1)-(4). The Department respectfully disagrees with such an interpretation. The aforementioned time period(s) apply to the window within which the agency shall make its determination as to whether the request seeks copies of disclosable public records in the agency's possession, and communicate the same to the requestor. When such determination is made, the agency must then "state the estimated date and time when the records will be made available." (§ 6253(e).) And while an agency may not delay or obstruct inspection or copying of public records (See § 6253(d)), the Department stated in its October 7, 2015 correspondence to you that approximately 4500 pages of records had been identified as *possibly* responsive to your request for email, and that it was necessary to review every single page to determine whether the document was first, responsive to the request and then whether it was exempt from disclosure in its entirety or contained information which must be redacted and/or segregated prior to disclosure. This process is being undertaken by a single management analyst during the course of his normal work hours, and reflects one of numerous CPRA requests the analyst is handling himself or over which he is providing supervision. The Department wanted to clarify this point, notwithstanding your "agreement" to permit the results of said review to be provided by November 18, 2015.

Respecting your request that the Department reconsider its assertion of Section 6255 over pre-2010 email, the Department has done so and must again, deny your request pursuant to Section 6255, based upon the unduly burdensome nature of the request. The Department has previously explained that it utilizes Novell GroupWise as its email system. GroupWise has a very different architecture from Microsoft Exchange or other email systems. In a GroupWise environment, all

Brendan N. Charney

Page 2

14.4

files are encrypted and can only be read by an instance of the post office agent which created them.

To the extent the Department did not have an email archiving system prior to March 2013, locating older email would require restoration of entire post office structures (files and databases) from back-up tapes, then attempting to extract the data. More specifically, such undertaking would require the analyst to identify the tape or file containing the Post Office where the account existed at the time of the search (The email system structure has changed many times and users move constantly); Create a back-up server with the appropriate version of the back-up software to catalogue, index and read the tape; Create a Post Office server with the appropriate software from the time of the back-up and copy the restored data to it; Attempt to connect to the Post Office, clear the user's password and search for the desired email. Search capability is limited to the Sender, Recipient and Subject lines. Searching for terms in the body of the email is not possible. This process must be repeated 2 to 4 times for each year requested and for each individual account to be searched. Each restoration and extraction takes from 6-8 hours depending on the size of the Post Office.

Based on the above, and in light of the scope of your request (email from September 11, 2001 to the present), it is estimated that it would take a minimum of 960 hours to complete this request. Information Technology Division (ITD) currently receives between 10-15 requests per month to produce email in response to court subpoenas, internal investigations, personnel matters and CPRA requests. In addition to the email reconstruction/retrieval function, the designated section is responsible for supporting the current email system, managing smartphones and tablets, monitoring the subpoena delivery and tracking system, and managing the Department's extensive Body Worn Camera deployment. Therefore, the Department could only set aside approximately 8 hours per week to this restoration/retrieval/review effort. There are 2 people in the entire City of Los Angeles with the necessary skills to perform this task, and one of them is presently off and not expected to return until January, at the earliest.

As recently emphasized by the California Court of Appeal, "[T]he basic rule is that an agency must comply with a request if responsive records can be located with reasonable effort. (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227, citing *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165-166.) If the agency would be required to create a new set of public records in order to provide responses to a CPRA request, such agency action may be found to exceed its statutory duties. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.) Section 6255 provides that a local agency may withhold production of public records where, "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." Further, "Section 6255 imposes on the California courts a duty ... to weigh the benefits and costs of disclosure in each particular case." [Citation.] A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non-exempt from exempt information, because the statutory term 'public interest' 'encompasses public concern with the cost and efficiency of government.' [Citations.] We may thus take it as established that the Act includes a policy favoring the efficiency of government

Brendan N. Charney

Page 3

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and limitation of its costs.” (*Fredericks, supra*, at 228, quoting *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 152 (conc. & dis. opn. of Huffman, J.)(internal quotations omitted).)

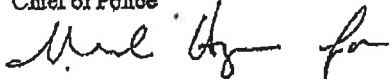
It is difficult to understand the significant public interest in disclosure of emails which, were they to exist, referenced a program or concept that, as already explained, was never implemented, either back in 2007 or today, so as to tip the scale in favor of disclosure. As such, the Department believes that “the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records,” and has therefore met its burden under Section 6255.

Any correspondence regarding this matter should include a copy of this letter and be directed to the Los Angeles Police Department – Discovery Section, 201 North Los Angeles Street, Space 301, Los Angeles, California 90012.

If you have any questions, please contact Management Analyst Caydene Monk of the Discovery Section at (213) 978-2155.

Very truly yours,

CHARLIE BECK
Chief of Police



MARTIN BLAND, Senior Management Analyst
Officer-in-Charge, Discovery Section
Legal Affairs Division

EXHIBIT NN

1 DAVIS WRIGHT TREMAINE LLP
2 THOMAS BURKE (State Bar No. 141930)
3 tomburke@dwt.com
4 505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Telephone (415) 276-6500
Fax (415) 276-6599

5 DAVIS WRIGHT TREMAINE LLP
6 KAREN A. HENRY (State Bar No. 229707)
7 karenhenry@dwt.com
8 BRENDAN N. CHARNEY (State Bar No. 293378)
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865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
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10 Attorneys for Plaintiff
11 MUSLIM ADVOCATES

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

14
15 MUSLIM ADVOCATES,
16
17 Petitioner,

18 vs.

19 THE CITY OF LOS ANGELES; THE LOS
20 ANGELES POLICE DEPARTMENT; DOES
21 1-10, INCLUSIVE,
22
23 Respondent.

Case No. **BS163755**
Assigned to the Hon. James C. Chalfant

**NOTICE OF CONTINUED DEPOSITION
OF PERSON(S) MOST QUALIFIED AT
RESPONDENT LOS ANGELES POLICE
DEPARTMENT**

Date: February 15, 2017
Time: 10:00 a.m.
Location: Davis Wright Tremaine LLP
865 S. Figueroa St., Suite 2400
Los Angeles, CA 90017

Action Filed: July 25, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on Thursday, February 15, 2017 beginning at 10:00 a.m.,
3 at the offices of Davis Wright Tremaine LLP, located at 865 South Figueroa Street, Suite 2400, Los
4 Angeles, California 90017, Petitioner MUSLIM ADVOCATES ("Muslim Advocates") will take
5 the deposition of the PERSON(S) MOST QUALIFIED AT THE LOS ANGELES POLICE
6 DEPARTMENT ("LAPD") to testify on the LAPD's behalf regarding the following subjects:

7 1. The person(s) most qualified to testify regarding the LAPD's search for records
8 responsive to Muslim Advocates December 12, 2013 request, pursuant to the California Public
9 Records Act ("CPRA), for "[a]ll records reflecting or relating to the 'Community Mapping'
10 program, as described in the Senate Statement" of Deputy Chief Michael Downing on October 30,
11 2007, including the LAPD's search of both electronic and hard-copy repositories, the search terms
12 and protocols used, the personnel, facilities, information technology, and documentation related to
13 the search, the location(s) where responsive records are kept, the location(s) the LAPD searched for
14 responsive records, the persons most likely to possess responsive records, the persons who
15 conducted the search and the instructions they received related to the search, as well as the LAPD's
16 review of any potentially responsive records to determine whether such potentially responsive
17 records actually are responsive and disclosable under the CPRA. (For reference, a copy of the
18 December 12, 2013 CPRA Request is attached as Exhibit A.)

19 2. The person(s) most qualified to testify regarding the LAPD's backup system(s) for
20 e-mail from 2001 to 2010, including but not limited to the information technology, personnel,
21 manuals and other documentation, policies and procedures, vendors, and/or facilities relating to the
22 e-mail backup system, as well as any efforts from 2013 to the present to retrieve information from
23 the backup system for purposes including investigations, requests, and other LAPD business.

24 3. The person(s) most qualified to testify regarding the LAPD's claim that searching its
25 backup system(s) for e-mail from 2001 to 2010 would be unduly burdensome, including the
26 LAPD's claim that "it would take a minimum of 960 hours" to search the backup system(s) for
27

28 NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES POLICE DEPARTMENT

1 responsive e-mails. (For reference, a copy of the LAPD's letter to Brendan Charney dated
2 November 12, 2015 is attached as Exhibit B.)

3 The LAPD is not a natural person. See Cal. Civ. Proc. § 2025.230. The LAPD is therefore
4 requested and required, pursuant to Section 2025.230 of the California Code of Civil Procedure, to
5 designate and produce those of its officers, directors, managing agents, employees, and/or agents
6 who are most qualified to testify on its behalf as to the subjects set forth above.

7 PLEASE TAKE FURTHER NOTICE that the deposition shall be conducted upon oral
8 examination before a court reporter and notary public authorized to administer oaths in the State of
9 California and shall be transcribed by that certified court reporter. If, for any reason, the deposition
10 is not completed on Wednesday, February 15, 2017, it will continue from day-to-day, beginning at
11 10:00 a.m., excluding Saturdays, Sundays and holidays, until completed, unless otherwise agreed
12 by counsel.

13 Pursuant to California Code of Civil Procedure Section 2025.220(a)(8), there is no contract
14 between Petitioner and the deposition officer or entity providing the services of the deposition
15 officer for any service beyond this deposition. Petitioner did not direct its counsel to use a
16 particular officer or entity to provide services for this deposition.

17
18 DATED: February 1, 2017

DAVIS WRIGHT TREMAINE LLP
THOMAS BURKE
KAREN A. HENRY
BRENDAN N. CHARNEY

19
20
21
22 By: 
Brendan N. Charney

23 Attorneys for Petitioner
24 MUSLIM ADVOCATES
25
26
27

28 NOTICE OF CONTINUED DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS
ANGELES POLICE DEPARTMENT

EXHIBIT A

muslim advocates
PROMOTING FREEDOM AND JUSTICE FOR ALL

Direct dial: (415) 675-1495
Email: glenn@muslimadvocates.org

December 12, 2013

VIA USPS EXPRESS MAIL EB50854385405
Los Angeles Police Department Discovery Section
Attn: Custodian of Records
201 N. Los Angeles St., Space 301
Los Angeles, CA 90012

75M
FIVE
LAPD
DEC 10 2013
LEGAL AFFAIRS DIVISION
DISCOVERY SECTION

Re: California Public Records Act ("CPRA") Request

Dear Sir or Madam:

Pursuant to the CPRA, I would like to inspect and obtain electronic copies of the following records¹ that are within the possession, custody, or control of the Los Angeles Police Department ("LAPD"), for the period September 11, 2001, through the present:

1. All records reflecting or relating to "LAPD's outreach and grassroots dialogue with Muslim communities" as described by Michael P. Downing, Commanding Officer Counter-Terrorism/Criminal Intelligence Bureau, before the U.S. Senate on October 30, 2007 ("Senate Statement").²
2. All records reflecting or relating to the "Community Mapping" program, as described in the Senate Statement.
3. All records reflecting or relating to the LAPD's policies or practices based upon individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent. Such records include but are not limited to:
 - Community mapping or Muslim mapping;

¹ Throughout this request, "record" should be given its broadest meaning under Government Code § 6252, and includes, but is not limited to, policies, protocols, manuals, instructions, training materials, memoranda, templates, forms, notices, invitations, calendars, appointments, meeting agendas, meeting or interview notes, evaluations, assessments, analyses, email communications, correspondence, maps, photographs, video or audio recordings, and information stored in any form.

² Available at:
<http://www.lapdonline.org/assets/pdf/Michael%20DowningTestimonyfortheU.S.Senate-Final.PDF>

Letter to LAPD Custodian of Records

December 12, 2013

Page 2

- Outreach to individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Surveillance, monitoring, or collection of information that is not connected to a specific criminal investigation about individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Informants in mosques or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent that are not connected to a specific criminal investigation.
4. All records reflecting or relating to communications between any employee or agent of the LAPD and the following individuals, regardless of their actual title at the time of the communication:
- Raymond Kelly, New York City Police Department ("NYPD") Commissioner;
 - David Cohen, NYPD Deputy Commissioner;
 - Lawrence ("Larry") Sanchez, Central Intelligence Agency ("CIA") liaison to the State of New York, or any capacity for the CIA or NYPD;
 - Mitchell D. Silber, NYPD Senior Intelligence Analyst
 - Arvin Bhatt, NYPD Senior Intelligence Analyst
 - Hector Berdeola, NYPD;
 - John Cutter, NYPD Deputy Chief;
 - Timothy Mehta, NYPD Sergeant;
 - Steve D'Ullase, NYPD Captain;
 - Stephen Hoban, NYPD Detective;
 - Bryan Michael Jenkins, Senior Advisor to the President of the Rand Corporation;
 - Anyone communicating on behalf of the individuals listed in this paragraph 4.
5. All records reflecting or relating to communications between any employee or agent of the LAPD and anyone at the NYPD on the subjects specified in paragraph 3, above, including bullet points.

If you have any questions concerning this request or if the cost for access to the records will exceed \$50.00, please contact me. Thank you in advance for your assistance with this matter.

Sincerely,


Glenn Katon
Legal Director

EXHIBIT B

LOS ANGELES POLICE DEPARTMENT



CHARLIE BECK
Chief of Police

ERIC GARCETTI
Mayor

P. O. Box 50158
Los Angeles, California 90030
Telephone: (213) 978-2100
TDD: (877) 275-5273
Reference Number: 144

November 12, 2015

Mr. Brendan N. Charney, Esquire
DAVIS WRIGHT TREMAINE, LLP
865 S. Figueroa Street
Los Angeles, California 90017-2566

Dear Mr. Charney:

Thank you for your most recent correspondence, dated November 2, 2015. In your letter, you reference Section 6253 of the California Public Records Act as standing for the position that the local agency must provide all responsive and non-exempt public records within 10 days of receipt of a request, and might extend such an obligation for another 14 days under circumstances enumerated in Section 6253(o)(1)-(4). The Department respectfully disagrees with such an interpretation. The aforementioned time period(s) apply to the window within which the agency shall make its determination as to whether the request seeks copies of disclosable public records in the agency's possession, and communicate the same to the requestor. When such determination is made, the agency must then "state the estimated date and time when the records will be made available." (§ 6253(o).) And while an agency may not delay or obstruct inspection or copying of public records (See § 6253(d)), the Department stated in its October 7, 2015 correspondence to you that approximately 4500 pages of records had been identified as *possibly* responsive to your request for email, and that it was necessary to review every single page to determine whether the document was first, responsive to the request and then whether it was exempt from disclosure in its entirety or contained information which must be redacted and/or segregated prior to disclosure. This process is being undertaken by a single management analyst during the course of his normal work hours, and reflects one of numerous CPRA requests the analyst is handling himself or over which he is providing supervision. The Department wanted to clarify this point, notwithstanding your "agreement" to permit the results of said review to be provided by November 18, 2015.

Respecting your request that the Department reconsider its assertion of Section 6255 over pre-2010 email, the Department has done so and must again, deny your request pursuant to Section 6255, based upon the unduly burdensome nature of the request. The Department has previously explained that it utilizes Novell GroupWise as its email system. GroupWise has a very different architecture from Microsoft Exchange or other email systems. In a GroupWise environment, all

Brandan N. Charney

Page 2

14.4

files are encrypted and can only be read by an instance of the post office agent which created them.

To the extent the Department did not have an email archiving system prior to March 2013, locating older email would require restoration of entire post office structures (files and databases) from back-up tapes, then attempting to extract the data. More specifically, such undertaking would require the analyst to identify the tape or file containing the Post Office where the account existed at the time of the search (The email system structure has changed many times and users move constantly); Create a back-up server with the appropriate version of the back-up software to catalogue, index and read the tape; Create a Post Office server with the appropriate software from the time of the back-up and copy the restored data to it; Attempt to connect to the Post Office, clear the user's password and search for the desired email. Search capability is limited to the Sender, Recipient and Subject lines. Searching for terms in the body of the email is not possible. This process must be repeated 2 to 4 times for each year requested and for each individual account to be searched. Each restoration and extraction takes from 6-8 hours depending on the size of the Post Office.

Based on the above, and in light of the scope of your request (email from September 11, 2001 to the present), it is estimated that it would take a minimum of 960 hours to complete this request. Information Technology Division (ITD) currently receives between 10-15 requests per month to produce email in response to court subpoenas, internal investigations, personnel matters and CPRA requests. In addition to the email reconstruction/retrieval function, the designated section is responsible for supporting the current email system, managing smartphones and tablets, monitoring the subpoena delivery and tracking system, and managing the Department's extensive Body Worn Camera deployment. Therefore, the Department could only set aside approximately 3 hours per week to this restoration/retrieval/review effort. There are 2 people in the entire City of Los Angeles with the necessary skills to perform this task, and one of them is presently off and not expected to return until January, at the earliest.

As recently emphasized by the California Court of Appeal, "[T]he basic rule is that an agency must comply with a request if responsive records can be located with reasonable effort. (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227, citing *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165-166.) If the agency would be required to create a new set of public records in order to provide responses to a CPRA request, such agency action may be found to exceed its statutory duties. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.) Section 6255 provides that a local agency may withhold production of public records where, "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." Further, "Section 6255 imposes on the California courts a duty ... to weigh the benefits and costs of disclosure in each particular case." [Citation.] A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non-exempt from exempt information, because the statutory term 'public interest' 'encompasses public concern with the cost and efficiency of government.' [Citations.] We may thus take it as established that the Act includes a policy favoring the efficiency of government

Brendan N. Charney

Page 3

14.4

and limitation of its costs."³ (*Fredericks, supra*, at 228, quoting *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 152 (conc. & dis. opn. of Huffman, J.)(internal quotations omitted).)

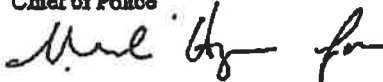
It is difficult to understand the significant public interest in disclosure of emails which, were they to exist, referenced a program or concept that, as already explained, was never implemented, either back in 2007 or today, so as to tip the scale in favor of disclosure. As such, the Department believes that "the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records," and has therefore met its burden under Section 6255.

Any correspondence regarding this matter should include a copy of this letter and be directed to the Los Angeles Police Department - Discovery Section, 201 North Los Angeles Street, Space 301, Los Angeles, California 90012.

If you have any questions, please contact Management Analyst Caylene Monk of the Discovery Section at (213) 978-2155.

Very truly yours,

CHARLIE BECK
Chief of Police



MARTIN BLAND, Senior Management Analyst
Officer-in-Charge, Discovery Section
Legal Affairs Division

EXHIBIT 00

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 2 THOMAS BURKE (State Bar No. 141930)
 3 tomburke@dwt.com
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 San Francisco, CA 94111-6533
 Telephone (415) 276-6500
 Fax (415) 276-6599

5 DAVIS WRIGHT TREMAINE LLP
 6 KAREN A. HENRY (State Bar No. 229707)
 karenhenry@dwt.com
 7 BRENDAN N. CHARNEY (State Bar No. 293378)
 brendancharney@dwt.com
 8 865 South Figueroa Street, 24th Floor
 Los Angeles, California 90017-2566
 Telephone: (213) 633-6800
 9 Fax: (213) 633-6899

10 Attorneys for Plaintiff
 11 MUSLIM ADVOCATES

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 FOR THE COUNTY OF LOS ANGELES

14
 15 MUSLIM ADVOCATES,
 16
 17 Petitioner,

18 vs.

19 THE CITY OF LOS ANGELES; THE LOS
 ANGELES POLICE DEPARTMENT; DOES
 1-10, INCLUSIVE,
 20
 21 Respondent.

Case No. **BS163755**
 Assigned to the Hon. James C. Chalfant

**NOTICE OF DEPOSITION OF PERSON(S)
 MOST QUALIFIED AT RESPONDENT
 LOS ANGELES POLICE DEPARTMENT
 CONCERNING UNDUE BURDEN CLAIM
 WITH RESPECT TO DIVISIONAL
 SERVER BACKUPS**

Date: March 22, 2017
 Time: 10:00 a.m.
 Location: Davis Wright Tremaine LLP
 865 S. Figueroa St., Suite 2400
 Los Angeles, CA 90017

Action Filed: July 25, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on **Wednesday, March 22 beginning at 10:00 a.m.**, at the
3 offices of Davis Wright Tremaine LLP, located at 865 South Figueroa Street, Suite 2400, Los
4 Angeles, California 90017, Petitioner MUSLIM ADVOCATES ("Muslim Advocates") will take
5 the deposition of the **PERSON(S) MOST QUALIFIED AT THE LOS ANGELES POLICE**
6 **DEPARTMENT** ("LAPD") to testify on the LAPD's behalf regarding the following subjects:

7 4. The person(s) most qualified to testify regarding the LAPD's backup system(s) for
8 divisional server information from 2001 to 2013, including but not limited to the information
9 technology, personnel, manuals and other documentation, policies and procedures, vendors, and/or
10 facilities relating to the divisional server backup system, as well as any efforts from 2013 to the
11 present to retrieve divisional server information from the backup system for purposes including
12 investigations, requests, and other LAPD business.

13 5. The person(s) most qualified to testify regarding the LAPD's claim that searching its
14 backup system(s) for divisional server information from 2001 to 2013 would be unduly
15 burdensome. (For reference, a copy of an email from Deputy City Attorney Kjehl Johansen to
16 Brendan Charney dated March 7, 2017 is attached as **Exhibit A.**)

17 The LAPD is not a natural person. See Cal. Civ. Proc. § 2025.230. The LAPD is therefore
18 requested and required, pursuant to Section 2025.230 of the California Code of Civil Procedure, to
19 designate and produce those of its officers, directors, managing agents, employees, and/or agents
20 who are most qualified to testify on its behalf as to the subjects set forth above.

21 PLEASE TAKE FURTHER NOTICE that the deposition shall be conducted upon oral
22 examination before a court reporter and notary public authorized to administer oaths in the State of
23 California and shall be transcribed by that certified court reporter. If, for any reason, the deposition
24 is not completed on Wednesday, March 22, 2017, it will continue from day-to-day, beginning at
25 10:00 a.m., excluding Saturdays, Sundays and holidays, until completed, unless otherwise agreed
26 by counsel.

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**NOTICE OF DEPOSITION OF PERSON(S) MOST QUALIFIED AT RESPONDENT LOS ANGELES
POLICE DEPARTMENT CONCERNING UNDUE BURDEN RE DIVISIONAL SERVER BACKUPS**

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Pursuant to California Code of Civil Procedure Section 2025.220(a)(8), there is no contract between Petitioner and the deposition officer or entity providing the services of the deposition officer for any service beyond this deposition. Petitioner did not direct its counsel to use a particular officer or entity to provide services for this deposition.

DATED: March 9, 2017

DAVIS WRIGHT TREMAINE LLP
THOMAS BURKE
KAREN A. HENRY
BRENDAN N. CHARNEY

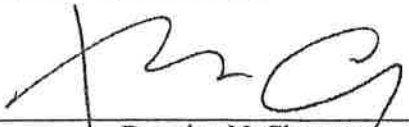
By: 
Brendan N. Charney
Attorneys for Petitioner
MUSLIM ADVOCATES

EXHIBIT A

Charney, Brendan

From: Kjehl Johansen <kjehl.johansen@lacity.org>
Sent: Tuesday, March 07, 2017 6:22 PM
To: Charney, Brendan
Cc: Linda Nguyen; Henry, Karen
Subject: Re: Muslim Advocates BS163755 - Further PMQ Deposition

Brendan,

Following up on your March 6th email:

(1) "I write to address your comments below concerning Mr. Huynh. At her PMQ deposition, Ms. McClain testified that she would need certain network resources (among other things, hard drive and server equipment) in order to retrieve e-mail backups. Ms. McClain testified that she would need to ask the Network section about the availability of these resources. See, e.g., McClain Depo at 250:19-20; 251:6; 252:15-19; 254:13-20. If Ms. McClain is reasonably prepared to answer questions about any facilities or equipment necessary to retrieve, restore or search the backup tapes, then a deposition of Mr. Huynh on this subject will not be necessary. Can you confirm that Ms. McClain will be prepared to answer questions on this subject on 3/15?"

Yes, Ms. McClain will be prepared to answer questions on this subject at her depo scheduled on 3/15/17.

(2) "As to the divisional servers, can you please advise whether or not the LAPD will take the position that it would be an undue burden to search the LAPD's backed-up divisional server information from 2001-2013?"

Yes, LAPD takes the position that it would be an undue burden to search LAPD's backed-up divisional server information from 2001-2013.

(3) In addition, Ms. McClain spoke with Wade Nakakura and will be prepared at her upcoming depo to answer questions you had regarding software licensing, as set forth on pages 278-279 on her January 26, 2017 deposition.

Regards,

Kjehl

On Mon, Mar 6, 2017 at 3:56 PM, Charney, Brendan <BrendanCharney@dwt.com> wrote:

Kjehl,

Thank you for your message.

I write to address your comments below concerning Mr. Huynh. At her PMQ deposition, Ms. McClain testified that she would need certain network resources (among other things, hard drive and server equipment) in order to retrieve e-mail backups. Ms. McClain testified that she would need to ask the Network section about the availability of these resources. See, e.g., McClain Depo at 250:19-251:6; 252:15-19; 254:13-20. If Ms. McClain is reasonably prepared to answer questions about any facilities or equipment necessary to retrieve, restore or search the backup tapes, then a deposition of Mr. Huynh on this subject will not be necessary. Can you confirm that Ms. McClain will be prepared to answer questions on this subject on 3/15?

As to the divisional servers, can you please advise whether or not the LAPD will take the position that it would be an undue burden to search the LAPD's backed-up divisional server information from 2001-2013?

As with your message below, this e-mail is not intended as a comprehensive response and Petitioner reserves the right to raise additional issues or arguments as to the matters discussed in this chain of correspondence. All rights reserved.

Regards,

Brendan

Brendan Charney | Davis Wright Tremaine LLP
865 S Figueroa Street, Suite 2400 | Los Angeles, CA 90017
Tel: (213) 633-6824 | Fax: (213) 633-6808
Email: brendancharney@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Kjehl Johansen [mailto:kjehl.johansen@lacity.org]
Sent: Monday, March 06, 2017 1:42 PM

To: Charney, Brendan
Cc: Linda Nguyen; Henry, Karen
Subject: Re: Muslim Advocates BS163755 - Further PMQ Deposition

Brendan

This email follows up on our recent correspondence regarding depositions of additional witnesses which Muslim Advocates intend to notice. In your recent emails, you identified "Anthony Huyhn

of LAPD's Systems Division," "Bruce Wise of the City's ITA group," and "LAPD Management Analyst Wade Nakaura." In addition, you identified Caydene Monk and "LAPD's record retention coordinator." For the reasons cited below, Respondents reaffirm their position that they will not be producing these witnesses for deposition should they be noticed. Respondents do not believe a telephone conversation would be useful at this point.

Bruce Wise

Muslim Advocates' PMQ deposition notice, topics 2 and 3 (for which Rachel McClain had been designated the PMQ), does not identify the City of Los Angeles Information Technology Agency ("ITA") as a subject or topic of the deposition. Thus, it is not reasonable to expect Ms. McClain to be prepared to testify as the PMQ on the topic of the City's ITA and her inability to answer certain questions regarding ITA is not a basis to depose other individuals. Regarding Mr. Wise specifically, Muslim Advocates has not shown how his proposed deposition would lead to the discovery of admissible evidence.

Anthony Huyhn

During the deposition of Ms. McClain, she testified that she did not know whether LAPD had searched the back-ups of divisional servers in response to Muslim Advocates' CPRA request (See of McClain Deposition Transcript, January 26, 2016, pages 217-18.) Ms. McClain then stated that someone in the network section of LAPD's Information Technology Division might know the answer to that question and identified Mr. Huyhn as a Senior Systems Analyst in the network section. (See pages 217-18.) It is unclear from your questioning whether you were asking about searches of divisional servers for emails or searches of divisional servers for records other than emails. I suggest that you clarify this line of questioning with Ms. McClain when she returns to testify. For searches of records other than emails, Mr. Toyama has been designated as LAPD's PMQ. Muslim Advocates has not shown that the proposed deposition of Mr. Huyhn is either necessary or would lead to the discovery of admissible evidence.

Wade Nakaura

It would be a sad waste of everyone's time to have Mr. Nakaura come in and testify on one question – does the software license you were referring to cost under \$1,000? (See pgs. 278-279 of

January 26, 2016 deposition of Rachel McClain.) Without waiving Respondents' right to object to his deposition, I will ask Ms. McClain to contact Mr. Nakaura regarding your licensing question.

Caydene Monk

Ms. Monk has retired and is no longer employed by LAPD. Thus Respondents are not in a position to produce her for deposition. Under these circumstances, Mr. Toyama's efforts to prepare for his PMQ deposition based upon review of her files is a reasonable effort to prepare for his deposition.

LAPD's Record Retention Coordinator

When you questioned LAPD's PMQ witness Greg Toyama during his February 15, 2017 deposition, Mr. Toyama mentioned LAPD's Record Retention Coordinator. (Toyama Deposition, January 15, 2017, page 106.) However, your questions did not focus on LAPD's search for records in response to Muslim Advocates' CPRA request in this case. (Pgs. 105-106.) Instead, you just wanted to "hear about [Toyama's] knowledge about the LAPD's record system in general . . ." (Page 106.) This general topic is outside the scope of Muslim Advocates' PMQ deposition notice, topic 1. Thus, it is not reasonable to expect Mr. Toyama to be prepared to testify as PMQ regarding this general areas and his inability to answer certain questions is not a basis to depose other individuals.

In addition, Judge Chalfant's written decision regarding Respondents' motion to stay proceedings stated on pages 5 and 6 that "Petitioner may not take discovery concerning . . . LAPD's policies and procedures for the retention of records." Thus, taking the deposition of LAPD's Record Retention Coordinator is not contemplated under Judge Chalfant's discovery order.

This email is being sent without waiver of any of Respondents' rights, all of which are reserved. The reasons set forth above do not constitute an exhaustive list and Respondents reserve the right to offer additional arguments should this matter result in further litigation before the trial court.

Regards,

Kjehl

On Thu, Mar 2, 2017 at 4:40 PM, Charney, Brendan <BrendanCharney@dwt.com> wrote:

Kjehl,

Thank you; we look forward to seeing you and Ms. McClain at our office at 10 am on Wednesday, March 15, 2017.

We also need to schedule the continued PMQ deposition of Mr. Toyama. Please let me know if any of the dates below work for Mr. Toyama, or if there are other dates that Respondents would prefer.

In addition, based on Mr. Toyama's testimony, we plan to notice the depositions of Caydene Monk, and the LAPD's record retention coordinator. Mr. Toyama identified both of these individuals as having knowledge that Mr. Toyama does not possess concerning whether the LAPD conducted a reasonable search for records.

With regard to depositions of fact witnesses identified by a PMQ as having knowledge concerning the reasonableness of the LAPD's search for records or Respondents' undue-burden defense, our view is that these depositions are appropriate based on the Court's discovery order. Can you please provide additional information to help us understand the basis for your anticipated objection that "such depositions fall outside the scope of permissible discovery in this case"?

We would be glad to meet and confer telephonically to discuss this issue; if you are amenable to that, please advise of your availability.

Regards,

Brendan

Brendan Charney | Davis Wright Tremaine LLP
886 S Figueroa Street, Suite 2400 | Los Angeles, CA 90017

Tel: (213) 633-6824 | Fax: (213) 633-8899
Email: brandancharney@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Kjehl Johansen [<mailto:kjehl.johansen@lacity.org>]
Sent: Wednesday, March 01, 2017 5:12 PM

To: Charney, Brendan
Cc: Linda Nguyen; Henry, Karen
Subject: Re: Muslim Advocates BS163755 - Further PMQ Deposition

Brendan,

Wednesday, March 15, 2017 works for Rachel McClain's deposition date.

With regard to the depositions of Anthony Huynh, Bruce Wise, and Wade Nakakura, we do not agree that they fit within the scope of Judge Chalfont's discovery order, which limited depositions to Persons Most Qualified within very narrow guidelines. Other than the fact that Ms. McClain identified these three individuals in her deposition taken on January 26, 2017, it is not clear to us how these individuals fit within Chalfont's discovery order or why they should be deposed. Accordingly, should you serve deposition notices for these individuals, regrettably, we will object on the grounds that such depositions fall outside the scope of permissible discovery in this case.

Regards,

Kjehl

On Wed, Mar 1, 2017 at 11:45 AM, Charney, Brendan <BrendanCharney@dwt.com> wrote:

Kjehl,

Thank you. The term facilities is meant to mean "a place, amenity, or piece of equipment provided for a particular purpose" — in this case any places, amenities, or equipment related to the LAPD's e-mail backup system.

Regards,

Brendan

Brendan Charney | Davis Wright Tremaine LLP
865 S Figueroa Street, Suite 2400 | Los Angeles, CA 90017
Tel: (213) 633-6824 | Fax: (213) 633-6899
Email: brendancharney@dwt.com | Website: www.dwt.com

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From: Kjehl Johansen [<mailto:kjehl.johansen@lacity.org>]
Sent: Tuesday, February 28, 2017 5:55 PM
To: Charney, Brendan
Cc: Linda Nguyen; Henry, Karen
Subject: Re: Muslim Advocates BS163755 - Further PMQ Deposition

Brendan,

Thank you for the clarifications. I should have a chance to speak to Rachel McClain tomorrow and discuss available dates.

Looking towards her deposition, it would be helpful if we had a better idea of what you understand the term "facilities" to mean or encompass. I will circle back with you as well regarding Mr. Huynh, Mr. Nakaura, and Mr. Wise.

Best,

Kjehl

On Tue, Feb 28, 2017 at 1:37 PM, Charney, Brendan <BrendanCharney@dwt.com> wrote:

Kjehl,

Thanks for getting back to me. The areas where PMQ testimony is still needed on topics 2 and 3 include what is listed below. Ms. McClain also was unable to answer questions regarding facilities, equipment and software related to the LAPD's e-mail back up system and undue burden claim.

In terms of scheduling, the following dates are available: Thursday, 3/2; Tuesday, 3/7; Wednesday 3/8; Tuesday, 3/14; Wednesday 3/15; Thursday 3/16. Do any of these work for Ms. McClain? Given the limited time remaining before briefing is due, an earlier date is preferred.

Based on Ms. McClain's testimony, we also plan to notice the depositions of Anthony Huynh of the LAPD's Systems Division, Bruce Wise of the City's ITA group, and LAPD Management Analyst Wade Nakakura. Before we serve the notices, can you please let me know if any of the above dates work for Mr. Huynh, Mr. Nakakura, or Mr. Wise? We would like to take the depositions in the following order: Ms. McClain, Mr. Huynh, Mr. Wise, and Mr. Nakakura.

Please let me know if any of these dates work, or if there are others that Respondents would prefer.

Regards,

Brendan

Brendan Charney | Davis Wright Tremaine LLP
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Email: brendancharney@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Kjehl Johansen [mailto:kjehl.johansen@lacity.org]
Sent: Monday, February 27, 2017 4:56 PM
To: Charney, Brendan
Cc: Linda Nguyen
Subject: Muslim Advocates BS163755 - Further PMQ Deposition

Brendan,

I wanted to follow up on our recent discussion of a further PMQ deposition. We have determined Rachel McClain will be prepared to testify as to the subjects not covered in her recent deposition. Based on your email of January 31, 2017, those subjects were identified as:

"4) The PMQ deposition on Topics 2 and 3 for those aspects of the topics on which Ms. McClain was not qualified, i.e., the LAPD's email backup system from 2001-2005 and 2009-2010; the City's undue burden claim as it relates to e-mail from 2001-2005 and 2009-2010, along with the vendors related to the backup system, and the LAPD's post-2010 attempts to retrieve information from its backup system;"

Please let me know if the above topics continue to be your understanding of the areas where deposition testimony is still needed as to Topics 2 and 3 of Muslim Advocates' PMQ deposition notice.

In addition, we would also appreciate it if you would send proposed dates for Ms. McClain's deposition.

Best,

Kjehl

--

Kjehl T. Johansen

Deputy City Attorney

Public Safety General Counsel

(213) 978-2283 phone

(213) 978-8787 fax

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--

Kjehl T. Johansen

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--

Kjehl T. Johansen
Deputy City Attorney
Public Safety General Counsel
(213) 978-2283 phone

EXHIBIT PP

Muslim Advocates v. City of Los Angeles,
et al., BS 163755

Tentative decision on motion to stay
proceedings: denied

Respondents City of Los Angeles (“City”) and Los Angeles Police Department (“LAPD”) move to stay this proceeding pending the resolution of appellate litigation in City of Los Angeles v. Superior Court, Court of Appeal (“CA”) No. B269525.

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioner Muslim Advocates commenced this proceeding on July 25, 2016. The verified Petition alleges in pertinent part as follows.

Muslim Advocates is a national legal advocacy and educational organization that counters anti-Muslim bigotry, empowers Muslim communities through charity and education, and fights discrimination through litigation and policy engagement.

On October 30, 2007, Deputy Chief Michael P. Downing, then serving as the Commanding Officer of the LAPD’s Counter-Terrorism/Criminal Intelligence Bureau, appeared before the U.S. Senate Committee on Homeland Security and Governmental Affairs. Downing discussed a recent initiative by the LAPD and an academic institution to conduct an extensive community mapping project to lay out the geographic locations of the many different Muslim population groups in the City.

On November 8, 2007, Muslim Advocates joined the ACLU of Southern California, the Islamic Shura Council, and the Council on American Islamic Relations to send the LAPD an open letter expressing concern about the community mapping project. On November 14, 2007, following protests by Muslim groups and civil libertarians, the LAPD announced it would drop the community mapping program.

On December 12, 2013, Muslim Advocates’ then-Legal Director Glenn Katon sent a Public Records Act request (the “Request”) to the LAPD’s Discovery Section, directed to its custodian of records. Item No. 2 in the Request sought “[a]ll records reflecting or relating to the ‘community mapping’ program, as described in the Senate Statement” of Deputy Chief Downing. The Request made clear that it sought “records... for the period September 11, 2001, through the present [December 12, 2013].”

In response, the LAPD asserted a 14-day extension to respond to Muslim Advocates’ Request. On January 17, 2014, the LAPD responded to the Request. In response to Item No. 2, referring to the community mapping program, the LAPD stated that “[t]here are no documents responsive to your request.”

On March 27, 2014, Muslim Advocates’ counsel, wrote to the LAPD to request “the basis for, or a correction of, the Department’s... response to Item No. 2 of the Request... that ‘[t]here are no documents responsive to your request.’” The March 27 letter also made a supplemental request for records concerning LAPD’s “effort to comply with the Request, including... [identification of] key custodians... that would be likely to maintain responsive files; Department communications regarding this request; any summaries prepared of the Request; and the name and

title of the person in charge of responding to the Request” (“Supplemental Request”).

LAPD replied to Muslim Advocates on July 2, 2014. LAPD merely repeated that “no responsive records were found.”

Muslim Advocates sent another letter on August 1, 2014, seeking an explanation or correction of LAPD’s position. The letter asked LAPD to assist Muslim Advocates in identifying responsive records. Muslim Advocates made a Second Supplemental Request, making clear that Muslim Advocates sought records of the search terms used, electronic databases that were searched (as well as available databases that were not searched), and the paper files that were searched by LAPD in response to the initial Request. The letter also asked the LAPD to “search [its] email system and other electronic databases for the term ‘Community Mapping’ and provide screen shots of the use of the term and databases searched.” Muslim Advocates offered to “speak by phone with personnel in [the LAPD’s] Information Technology Department to discuss the technical details of these searches and the Department’s electronic storage systems for e-mails and records.”

LAPD replied on August 19, 2014, invoked the “statutory fourteen days extension of time in which to respond,” and promised a substantive response “as soon as possible.” On March 16, 2015, Muslim Advocates’ counsel followed up with LAPD to request a response to Muslim Advocates’ letter. On March 26, 2015, the City Attorney’s Office contacted Muslim Advocates’ counsel and stated that it was assisting LAPD in identifying responsive, non-exempt records.

On April 20, 2015, LAPD responded to the August 1, 2014 letter. LAPD did not produce records on April 20, 2015, and agreed only to conduct a search term query of the email accounts for seven employees using the search terms “Muslim Mapping,” “Community Mapping,” and “Mapping Program.” The search would be limited to emails created after 2013.

Despite extensive communications between the parties, LAPD still refuses to search for the requested records from the relevant time period of 2001-2010, claiming it would be unduly burdensome to attempt to find out which records exist. Respondents also have failed to fulfil their duty to assist Muslim Advocates in overcoming practical barriers to disclosing the records, in part by refusing to provide Muslim Advocates with indicia of the searches the LAPD has conducted in its email backups as to other time periods and subject matters.

Petitioner Muslim Advocates alleges that Respondents’ failure to locate records responsive to the Request resulted from a search that was not a good-faith “reasonable effort” in violation of the CPRA. Respondents’ serial delays in responding to Muslim Advocates’ requests for records and follow-up correspondence also independently violate the CPRA, along with Respondents’ failure to provide a reason for their determination to withhold approximately 4,495 post-2010 records stored on backed-up email, and their failure to produce attachments referred to in the five pages of post-2010 e-mail records that LAPD did disclose.

2. Course of Proceedings

On September 12, 2016, Petitioner Muslim Advocates propounded discovery upon the City, including the following discovery requests: Form Interrogatories, Set One (7 boxes checked); First Set of Special Interrogatories (19 interrogatories propounded); First Set of Requests for Admission Regarding the Genuineness of Documents (26 requests propounded); Second Set of Requests for Admission (5 requests propounded); and, First Set of Requests for Production of Documents (16 requests propounded). Johansen Decl. ¶3.

On September 16, 2016, the City took the position that discovery is not authorized in CPRA proceedings, citing to the Anderson-Barker mandamus petition in the appellate court. Henry Decl. ¶8. The City has not yet responded to Petitioner's propounded discovery and the 30-day deadline in which to do so has been extended to December 8, 2016. Johansen Decl. ¶4.

Counsel for the parties participated in a telephone conference on September 22, 2016 relating to the discovery requests. Johansen Decl. ¶5; Henry Decl. ¶9. Counsel were unable to reach an agreement. Id. On October 4, 2016, counsel held a meet and confer regarding the proposed motion to stay, which included a discussion of the pending discovery. Johansen Decl. ¶6; Henry Decl. ¶11.

B. Applicable Law

The court has broad authority to "provide for the orderly conduct of proceedings before it." CCP §128(a)(3). A court may stay an action if doing so would promote the interests of convenience, the ends of justice, and efficiency in handling the litigation. Adamson v. Superior Court, (1980) 113 Cal.App.3d 505, 509.

It is within the court's discretion to stay an action where a common issue is pending in a case in another jurisdiction. Tinney v. Tinney, (1963) 211 Cal.App.2d 548, 552-53; Simmons v. Superior Court, (1950) 96 Cal.App.2d 119, 123; Thomson v. Continental Ins. Co., (1967) 66 Cal.2d 738. However, "the assumption underlying most of these authorities is that the two related lawsuits are between the same or substantially identical parties." Gregg v. Superior Court, (1987) 194 Cal.App.3d 134, 137. The "[t]rue test" for determining whether one court should stay a subsequent action pending determination of a prior action in a different court is "whether determination in the first suit... would be *judicata* in the second suit." Stearns v. Los Angeles City School Dist., (1966) 244 Cal.App.2d 696, 709-710, 714, 746 (holding that the trial court erred in failing to stay action pending determination of a prior action between the same parties concerning the same property where "a judgment on this question in either action would be *res judicata* in the other").

C. Anderson-Barker Summary¹

On June 4, 2015, Cynthia Anderson-Barker submitted a written CPRA request to LAPD and the Board of Police Commissioners (collectively "LAPD"). Resp. RJN Ex. D, p.6. The CPRA request sought records she believed were in LAPD's possession. Resp. RJN Ex. D, pp.6-7. The request was denied by LAPD on the grounds the records sought were not "public records" in the City's possession and were exempt under Government Code sections 6254(f), 6254(k), and 6255. Resp. RJN Ex. D at p.7.

¹ The City asks the court to judicially notice various documents from Anderson-Barker v. City of Los Angeles, ("Anderson-Barker") LASC BS156058, and the mandamus petition to the appellate court in that case, CA No. B269525 (Exs. B-M). The request is granted. Evid. Code §452(d).

The City also asks the court to judicially notice a stipulation to stay pending the outcome of Anderson-Barker in another superior court case (Ex. A). Petitioner's relevance objection is well taken and the request for judicial notice of Exhibit A is denied.

Petitioner's objections to the Johansen declaration are overruled.

On June 17, 2015, Anderson-Barker filed Anderson-Barker, a petition for writ of mandate in the superior court against the City pursuant to the CPRA. Resp. RJN Ex. D, pp. 1, 7. In that special proceeding, Anderson-Barker propounded on the City Special Interrogatories, Requests for Production of Documents, Form Interrogatories, and Requests for Admission. Resp. RJN Ex. B, p. 6. Anderson-Barker contended that discovery is warranted because she is entitled to obtain evidence showing that the City falsely denied ownership of records at issue, “a denial which when exposed establishes that in fact, the City owns the records.” Resp. RJN Ex. F, p. 9.

The City objected to Anderson-Barker’s discovery on the grounds that a petitioner cannot propound discovery as a matter of right in CPRA writ proceeding. Government Code sections 6258 and 6259, not the Civil Discovery Act, provide the exclusive procedure for obtaining review of a denied records request. Resp. RJN Ex. B, p.6. Anderson-Barker then brought a motion to compel further discovery responses. Resp. RJN Ex. B, pp.5-6. The trial court granted the motion and ordered the City to serve further responses to discovery, without objections, to Anderson-Barker’s Special Interrogatories, Requests for Production of Documents, Form Interrogatories, and Requests for Admission. Resp. RJN Ex. B, p.1.

The City filed a mandamus petition in the Court of Appeal, the trial court proceedings were stayed, and the Court of Appeal issued an order to show cause why the trial court should not be compelled to vacate its discovery order and sanctions. Resp. RJN Exs. D, E, G. The City has argued that broad-based discovery is not allowed as a matter of right in proceedings brought pursuant to the CPRA, and that the plain language of the CPRA, the legislative intent behind the CPRA, and the cases interpreting the legislative model for the CPRA — the Freedom of Information Act — all indicate that it is not permitted. Resp. RJN Ex. L, pp.1-5.

Although a date for oral argument has not been set, the City’s writ proceeding is fully briefed as of April 26, 2016. Resp. RJN Ex. C, p. 1.

D. Analysis

Respondents seek to stay this case pending resolution of Anderson-Barker in the Court of Appeal. Respondents claim that the Anderson-Barker matter bears on the present case because it concerns the issue of whether parties are entitled to discovery in a CPRA writ proceeding. According to Respondents, if this case proceeds to a decision before the Court of Appeals acts in Anderson-Barker poses a danger of inconsistent results. Mot. at 9.

Muslim Advocates argue in opposition that Respondents fail to address the fact that petitioners in CPRA actions are entitled to calendar preference, which weighs heavily against the grant of a stay. Government Code section 6258 provides that “the times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.” According to Muslim Advocates, a stay in this action would ignore the requirements of Government Code section 6258. Opp. at 4-6.

Muslim Advocates analogize Government Code section 6258 to CCP section 36, which provides for mandatory calendar preference for certain specified parties or actions. It is settled law in California that it is an abuse of discretion for a trial court to stay an action that has been given statutory calendar preference. See Koch-Ash v. Superior Court, (1986) 180 Cal.App.3d 689, 692 (calendar preference in CCP §36(a) for plaintiffs over the age of 70 is mandatory and prohibited a stay); Mobil Oil Corp. v. Superior Court, (1978) 79 Cal.App.3d 486, 495 (error to

stay an unlawful detainer action because of the statutory calendar preference for such actions). Muslim Advocates contend that the same rule should apply to CPRA actions. Opp. at 5-6.

This argument is not well taken. Unlike CCP sections 36 or 1179a, Government Code section 6258 does not explicitly provide for calendar preference -- only stating that the decision be rendered at the earliest possible time. There are no cases stating that CPRA actions are entitled to calendar preference in the same way that CCP sections 36 and 1179a grant calendar preference. Thus, Muslim Advocates is incorrect that no stay may be ordered simply because this is a CPRA action.

Muslim Advocates correctly argue that Anderson-Barker will not have a preclusive effect on this litigation. Opp. at 8. A stay pending resolution of a different case in another court is appropriate only when the other lawsuit would have a preclusive effect on the present lawsuit. Stearns v. Los Angeles City School Dist., *supra*, 244 Cal.App.2d at 746. The doctrine of *res judicata* prevents relitigation of an issue previously adjudicated when: (1) the issue sought to be precluded is identical to that decided in a prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the issue was necessarily decided in the prior proceeding; (4) the decision in the former proceeding is final and on the merits; and (5) the party against whom issue preclusion is asserted is the same party or in privity with the party to the prior proceeding. Hernandez v. City of Pomona, (2009) 46 Cal. 4th 501, 511.

The issues in Anderson-Barker are not directly on point with this case such that it is guaranteed to have a preclusive effect on this case. In Anderson-Barker, the petitioner sought discovery regarding potential perjury in a previous related CPRA action. Resp. RJN Ex. D, p.9. The discovery was also intended to address the legal question of whether the records in question were in fact public records. *Id.* Finally, there is a serious issue in Anderson-Barker whether Respondents waived their attorney-client privilege. *Id.* at 11. None of these questions are at issue in this case.

More importantly, Muslim Advocates are not party to Anderson-Barker, or in privity with the parties in Anderson-Barker. Should Respondents prevail in Anderson-Barker, the case would need to be published in order to have precedential effect. This is clearly, therefore, not the type of case in which a stay is warranted. See Gregg v. Superior Court, *supra*, 194 Cal.App.3d at 138 (“We find no precedent for preventing a litigant in the circumstances of this case from pursuing an action because other litigants are suing the same defendants over similar grievances in another forum.”) Respondents have not demonstrated that they are entitled to a stay of this action pending resolution of Anderson-Barker.

The court has its own view of permissible discovery in CPRA cases, which may or may not be consistent with a future published appellate decision, and which the parties will be required to follow in this case. Neither party’s position is entirely consistent with that view. Contrary to the City’s position, discovery is available in a CPRA case. Contrary to Petitioner’s position, that discovery is limited to issues concerning the adequacy of the City’s search and affirmative defenses. Petitioner may take discovery on where the records would be located, who conducted the search, and how the search was conducted. Petitioner may potentially take discovery on affirmative defenses raised and relied upon by the City, including undue burden. Petitioner may not take discovery concerning (a) the genuineness of documents, (b) admissions of undisputed issues, (c) identity of witnesses for the community mapping program, (d) identification of records created in the community mapping program, (e) the factual basis for an exemption (although a

privilege log may be required by the court), or (f) LAPD's policies and procedures for the retention of records. *See Opp.* at 3-4.

In this regard, Petitioner's supplemental requests are not particularly useful. LAPD's records of its "effort to comply with the Request" are not the same as discovery concerning what those efforts were, and a request for such records is too cumbersome way of finding out this information. The appropriate course is to depose the PMK(s) who conducted the search to find out where the records are located, what they did to find them, who they contacted, and where they looked. This discovery may be supplemented by follow-up depositions and/or document production requests as appropriate. Requests for admission and interrogatories are not discovery tools designed to achieve this information.

The motion for a stay is denied. The court will discuss with counsel the permissible discovery in this case.

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a
3 party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865
4 South Figueroa Street, Los Angeles, California 90017-2566.

5 On August 11, 2017, I served the foregoing document(s) described as: **DECLARATION OF**
6 **BRENDAN CHARNEY IN SUPPORT OF PETITION FOR WRIT OF MANDATE;**
7 **EXHIBITS AA-BBBB** by placing a **true copy** of said document(s) enclosed in a sealed
8 envelope(s) for each addressee named below, with the name and address of the person served
9 shown on the envelope as follows:

10
11 Michael N. Feuer, City Attorney
12 Carlos De La Guerra, Managing Assistant City Attorney
13 Kjehl T. Johansen, Deputy City Attorney
14 200 North Main Street
15 City Hall East, Room 800
16 Los Angeles, Ca 90012

17 X - (VIA PERSONAL DELIVERY) to be served on all other parties to this action by requesting
18 that a messenger from *GLOBAL NETWORK LEGAL SERVICES* deliver true copies of the above-
19 named documents, enclosed in sealed envelopes addressed indicated above.

20 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
21 true and correct. Executed on August 11, 2017, at Los Angeles, California.

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Yvette M. Merino
Print Name


Signature

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17 Attorneys for Petitioner
18 MUSLIM ADVOCATES

19 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 IN AND FOR THE COUNTY OF LOS ANGELES

21 MUSLIM ADVOCATES,
22
23 Petitioner,

24 v.

25 THE CITY OF LOS ANGELES; THE LOS
26 ANGELES POLICE DEPARTMENT; DOES 1
27 THROUGH 10, INCLUSIVE,

28 Respondents.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG 11 2017

Sherri R. Carter, Executive Officer/Clerk

By: CARMEN DEL RIO, Deputy

) Case No. BS163755
) Assigned to the Hon. James C. Chalfant
) Dept.: 85

) **DECLARATION OF BRENDAN
) CHARNEY IN SUPPORT OF PETITION
) FOR WRIT OF MANDATE; EXHIBITS
) AA-BBBB**

) [Memorandum of Points and Authorities In
) Support of Verified Petition for Writ of
) Mandate; Separate Statement of Facts In
) Support of Verified Petition for Writ of
) Mandate; and Request For Judicial Notice
) Concurrently Filed]

) [[Proposed] Order Granting Verified Petition
) Concurrently Lodged]

) Action Filed: July 25, 2016

DECLARATION OF BRENDAN N. CHARNEY

I, BRENDAN N. CHARNEY, declare:

1. I am an associate with the law firm Davis Wright Tremaine, LLP, and one of the attorneys representing Petitioner Muslim Advocates (“Muslim Advocates”) in this matter. I submit this declaration in support of the Verified Petition for Writ of Mandate (“Petition”) filed by Muslim Advocates in this matter. The matters stated in this declaration are true based on my personal knowledge and if called to testify I could and would testify competently thereto.

2. On January 12, 2017, I took the deposition of Rachel McClain in her capacity as the person designated by the Los Angeles Police Department (“LAPD”) as most qualified to testify concerning the LAPD’s e-mail backup system and undue burden claim thereto. Attached hereto as **Exhibit AA** are true and correct copies of excerpts from Volume One of the transcript of that deposition.

3. On January 26, 2017, I took the continued deposition of Ms. McClain in her capacity as the LAPD’s person-most-qualified (“PMQ”) designee. Attached hereto as **Exhibit BB** are true and correct copies of excerpts from Volume Two of the transcript of that deposition.

4. On March 15, 2017, I took the continued deposition of Ms. McClain in her capacity as the LAPD’s PMQ designee. Attached hereto as **Exhibit CC** are true and correct copies of excerpts from Volume Three of the transcript of that deposition.

5. On March 23, 2017, I took the continued deposition of Ms. McClain in her capacity as the LAPD’s PMQ designee. Attached hereto as **Exhibit DD** are true and correct copies of excerpts from Volume Four of the transcript of that deposition.

6. On February 15, 2017, I took the deposition of Greg Toyama in his capacity as the person designated by the LAPD as most qualified to testify concerning the LAPD’s search for records in response to Muslim Advocates’ December 12, 2013 CPRA request concerning Community Mapping. Attached hereto as **Exhibit EE** are true and correct copies of excerpts from Volume One of the transcript of that deposition.

7. On March 16, 2017, I took the continued deposition of Greg Toyama in his capacity as the LAPD’s PMQ designee. Attached hereto as **Exhibit FF** are true and correct copies of

1 excerpts from Volume Two of the transcript of that deposition.

2 8. On March 22, 2017, I took the deposition of Anthony Huynh in his capacity as the
3 person designated by the LAPD as most qualified to testify concerning the LAPD's divisional
4 server backup system and undue burden claim thereto. Attached hereto as **Exhibit GG** are true and
5 correct copies of excerpts from the transcript of that deposition.

6 9. On April 17, 2017, I took the deposition of Sgt. Michael Seguin. Attached hereto as
7 **Exhibit HH** are true and correct copies of excerpts from the transcript of that deposition.

8 10. On May 10, 2017, I took the deposition of Sgt. Raymona Moussa. Attached hereto
9 as **Exhibit II** are true and correct copies of excerpts from the transcript of that deposition.

10 11. On May 17, 2017, I took the deposition of Dr. Luann Pannell. Attached hereto as
11 **Exhibit JJ** are true and correct copies of excerpts from the transcript of that deposition.

12 12. On May 31, 2017, I took the deposition of former Deputy Chief Michael Downing.
13 Attached hereto as **Exhibit KK** are true and correct copies of excerpts from Volume One of the
14 transcript of that deposition.

15 13. On June 8, 2017, I took the continued deposition of former Deputy Chief Michael
16 Downing. Attached hereto as **Exhibit LL** are true and correct copies of excerpts from Volume
17 Two of the transcript of that deposition.

18 14. Attached as **Exhibit MM** are true and correct copies of the Notice of Deposition of
19 Person(s) Most Qualified at Respondent Los Angeles Police Department, along with Notices of
20 Continued Deposition of Person(s) Most Qualified at Respondent Los Angeles Police Department,
21 for the deposition of Rachel McClain in her capacity as the LAPD's PMQ.

22 15. Attached as **Exhibit NN** is a true and correct copy of the Notice of Continued
23 Deposition of Person(s) Most Qualified at Respondent Los Angeles Police Department for the
24 deposition of Greg Toyama in his capacity as the LAPD's PMQ.

25 16. Attached as **Exhibit OO** is a true and correct copy of the Notice of Deposition of
26 Person(s) Most Qualified at Respondent Los Angeles Police Department for the deposition of
27 Anthony Huynh in his capacity as the LAPD's PMQ.

28 17. Attached as **Exhibit PP** is a true and correct copy of this Court's November 8, 2016

1 Order Denying Respondents' Motion to Stay Proceedings.

2 18. Attached as **Exhibit QQ** is a true and correct copy of the transcript of the hearing
3 held before this Court on November 8, 2016 concerning Respondents' Motion to Stay Proceedings.

4 19. On October 14, 2016, I received, via e-mail, a letter from Linda N. Nguyen, a
5 Deputy City Attorney for the City of Los Angeles, and one of the attorneys of record for
6 Respondents. Attached hereto as **Exhibit RR** is a true and correct copy of the October 14, 2016
7 letter from Ms. Nguyen, along with true and correct copies of the records enclosed with the letter.

8 20. On October 21, 2016, I received, via e-mail, a letter from Ms. Nguyen. Attached
9 hereto as **Exhibit SS** is a true and correct copy of the October 21, 2016 letter from Ms. Nguyen,
10 along with true and correct copies of the records enclosed with the letter.

11 21. On February 14, 2017, I received, via e-mail, a letter from Ms. Nguyen. Attached
12 hereto as **Exhibit TT** is a true and correct copy of the February 14, 2017 letter from Ms. Nguyen,
13 along with true and correct copies of the records enclosed with the letter.

14 22. On March 7, 2017, I received an e-mail from Kjehl Johansen, at that time a Deputy
15 City Attorney for the City of Los Angeles, and one of the attorneys of record for Respondents.
16 Attached hereto as **Exhibit UU** is a true and correct copy of the e-mail chain containing the March
17 7, 2017 e-mail from Mr. Johansen.

18 23. On April 3, 2017, I sent an e-mail to Kjehl Johansen, at that time a Deputy City
19 Attorney for the City of Los Angeles, and one of the attorneys of record for Respondents. Attached
20 hereto as **Exhibit VV** is a true and correct copy of the e-mail thread in which my April 3, 2017 e-
21 mail to Mr. Johansen appears.

22 24. On April 4, 2017, I received, via e-mail, a letter from Ms. Nguyen. Attached hereto
23 as **Exhibit WW** is a true and correct copy of the April 4, 2017 letter from Ms. Nguyen, along with
24 the transmittal e-mail. In the same e-mail transmitting the April 4, 2017 letter, Ms. Nguyen
25 attached two PDFs collectively containing 124 pages, which Ms. Nguyen identified in the letter as
26 documents that the City believes are the attachments to e-mails previously disclosed to Muslim
27 Advocates in response to its CPRA Request.

28 25. Attached hereto as **Exhibit XX** is a true and correct copy of one of the attachments

1 transmitted along with Ms. Nguyen's April 4, 2017 letter: a draft LAPD document titled "Counter
2 Radicalization Strategies, Reaching Out: Policing with Muslim Communities in an Age of
3 Terrorism." This document was marked as Exhibit 11 at the Deposition of Michael Downing.

4 26. On June 30, 2017, I received, via e-mail, a letter from Mr. Johansen, at that time a
5 Deputy City Attorney for the City of Los Angeles, and one of the attorneys of record for
6 Respondents. Attached hereto as **Exhibit YY** is a true and correct copy of the June 30, 2017 letter
7 from Mr. Johansen, along with true and correct copies of records enclosed with the letter.

8 27. Attached as **Exhibit ZZ** is a true and correct copy of the Statement of Michael P.
9 Downing Before the U.S. Senate Committee on Homeland Security and Governmental Affairs
10 Presented on October 30, 2007, as marked as Exhibit 2 at the Deposition of Michael Downing.
11 During the deposition, counsel for Respondents stipulated that this document is a business record of
12 the LAPD and is admissible on that basis for all purposes in this action. This stipulation was
13 memorialized on the record during the deposition, and can be found on page 28, lines 2-8 of Exhibit
14 KK.

15 28. Attached as **Exhibit AAA** is a true and correct copy of a document titled "list of
16 Department Groups Receiving 15.2 for Muslim Advocates", as marked as Exhibit 2 at the
17 Deposition of Greg Toyama in his capacity as the LAPD's PMQ. During the deposition, counsel
18 for Respondents stipulated that this document is a business record of the LAPD and is admissible
19 on that basis for all purposes in this action. This stipulation was memorialized on the record during
20 the deposition, and can be found on page 71, line 25 to page 72, line 18 of Exhibit EE.

21 29. Attached as **Exhibit BBB** is a true and correct copy of a document titled "Legal
22 Affairs Division Discovery Section CPRA Request", as marked as Exhibit 5 at the Deposition of
23 Greg Toyama in his capacity as the LAPD's PMQ. During the deposition, counsel for Respondents
24 stipulated that this document is a business record of the LAPD and is admissible on that basis for
25 all purposes in this action. This stipulation was memorialized on the record during the deposition,
26 and can be found on page 71, line 25 to page 72, line 18 of Exhibit EE.

27 30. Attached as **Exhibit CCC** is a true and correct copy of a document titled "CPRA
28 Request from Mr. Glenn Katon with the Muslim Advocates", as marked as Exhibit 6 at the

1 Deposition of Greg Toyama in his capacity as the LAPD's PMQ. During the deposition, counsel
2 for Respondents stipulated that this document is a business record of the LAPD and is admissible
3 on that basis for all purposes in this action. This stipulation was memorialized on the record during
4 the deposition, and can be found on page 71, line 25 to page 72, line 18 of Exhibit EE.

5 31. Attached as **Exhibit DDD** is a true and correct copy of excerpts from the LAPD's
6 2016 2nd Quarter Department Manual, in particular sections 050.08 to 080.92, bearing bates
7 numbers LAPD RFP-2 00055-00063 as marked as Exhibit 28 at the Deposition of Greg Toyama in
8 his capacity as the LAPD's PMQ. This document was produced by Respondents in this action on
9 March 3, 2017 in response to Muslim Advocates' Second Set of Requests For Production Of
10 Documents under CCP § 2031.010 et seq.

11 32. Attached as **Exhibit EEE** is a true and correct copy of a document titled
12 Intradepartmental Correspondence, dated January 3, 2014, and bearing bates numbers LAPD RFP-
13 2 00039 as marked as Exhibit 29 at the Deposition of Greg Toyama in his capacity as the LAPD's
14 PMQ. This document was produced by Respondents in this action on March 3, 2017 in response to
15 Muslim Advocates' Second Set of Requests For Production Of Documents under CCP § 2031.010
16 et seq.

17 33. Attached as **Exhibit FFF** is a true and correct copy of excerpts from the LAPD
18 Manual and the LAPD's Policies and Procedures Division Reference Guide concerning
19 Memoranda of Understanding and Agreement, and bearing bates numbers LAPD RFP-2 00054,
20 00064-68 as marked as Exhibit 30 at the Deposition of Greg Toyama in his capacity as the LAPD's
21 PMQ. This document was produced by Respondents in this action on March 3, 2017 in response to
22 Muslim Advocates' Second Set of Requests For Production Of Documents under CCP § 2031.010
23 et seq.

24 34. Attached as **Exhibit GGG** is a true and correct copy of printouts from the LAPD
25 Discovery Section's tracking system, and bearing bates numbers LAPD RFP-2 0005-0008, as
26 marked as Exhibit 34 at the Deposition of Greg Toyama in his capacity as the LAPD's PMQ. This
27 document was produced by Respondents in this action on March 3, 2017 in response to Muslim
28 Advocates' Second Set of Requests For Production Of Documents under CCP § 2031.010 et seq.

1 35. Attached as **Exhibit HHH** is a true and correct copy of a 15.2 transmitting Muslim
2 Advocates' CPRA Request produced by Respondents at the deposition of Sgt. Raymona Moussa,
3 as marked as Exhibit 2 at the Deposition of Sgt. Raymona Moussa. During the deposition, counsel
4 for Respondents stipulated that this document is a business record of the LAPD and is admissible
5 on that basis for all purposes in this action. This stipulation was memorialized on the record during
6 the deposition, and can be found on page 15, lines 2-7 of Exhibit I.

7 36. Attached as **Exhibit III** is a true and correct copy of a Planning and Research
8 Division Chronological Activity Log produced by Respondents at the deposition of Sgt. Raymona
9 Moussa, as marked as Exhibit 4 at the Deposition of Sgt. Raymona Moussa. During the deposition
10 of Sgt. Raymona Moussa, counsel for Respondents stipulated that this document is a business
11 record of the LAPD and is admissible on that basis for all purposes in this action. This stipulation
12 was memorialized on the record during the deposition, and can be found on page 15, lines 2-7 of
13 Exhibit II.

14 37. Attached as **Exhibit JJJ** is a true and correct copy of a set of documents titled
15 Official Correspondence Review produced by Respondents at the deposition of Sgt. Raymona
16 Moussa, as marked as Exhibit 5 at the Deposition of Sgt. Raymona Moussa. During the deposition,
17 counsel for Respondents stipulated that this document is a business record of the LAPD and is
18 admissible on that basis for all purposes in this action. This stipulation was memorialized on the
19 record during the deposition, and can be found on page 15, lines 2-7 of Exhibit II.

20 38. Attached as **Exhibit KKK** is a true and correct copy of an e-mail thread between
21 former Deputy Chief Downing and Professor Samuel G. Freedman, as marked as Exhibit 9 at the
22 Deposition of Michael Downing. This document is substantively identical (apart from the addition
23 of bates numbers for identification purposes) to one of the documents enclosed along with the the
24 October 14, 2016 letter from Ms. Nguyen attached hereto as Exhibit RR.

25 39. Attached as **Exhibit LLL** is a true and correct copy of an LAPD document titled
26 "Muslim Community Engagement Initiative White Paper," as marked as Exhibit 12 at the
27 Deposition of Michael Downing. Apart from the addition of bates numbers for identification
28 purposes, this document is substantively identical to the document attached as Exhibit G to the

1 Petition, which Respondents admit is a true and correct copy in their First Amended Answer
2 (“FAA”), paragraph 13.

3 40. Attached as **Exhibit MMM** is a true and correct copy of a City of Los Angeles
4 Contract Purchase Order for an item of software called Transend, as marked as Exhibit 18 at the
5 Deposition of Rachel McClain in her capacity as the LAPD’s PMQ. During the deposition, counsel
6 for Respondents stipulated that this document is a business record of the LAPD and is admissible
7 on that basis for all purposes in this action. This stipulation was memorialized on the record during
8 the deposition, and can be found on page 492, lines 4-10 of Exhibit CC.

9 41. Attached as **Exhibit NNN** is a true and correct copy of the City of Los Angeles
10 Departmental Records Disposition Schedule dated August 17, 2015, as marked as Exhibit 23 at the
11 Deposition of Rachel McClain in her capacity as the LAPD’s PMQ. During the deposition, counsel
12 for Respondents stipulated that this document is a business record of the LAPD and is admissible
13 on that basis for all purposes in this action. This stipulation was memorialized on the record during
14 the deposition, and can be found on page 492, lines 4-10 of Exhibit CC.

15 42. Attached as **Exhibit OOO** is a true and correct copy of a collection of documents
16 showing the LAPD’s access of e-mail stored on backup tapes in or around June 2011 in response to
17 an internal LAPD request, as marked as Exhibit 25 at the Deposition of Rachel McClain in her
18 capacity as the LAPD’s PMQ. During the deposition, counsel for Respondents stipulated that this
19 document is a business record of the LAPD and is admissible on that basis for all purposes in this
20 action. This stipulation was memorialized on the record during the deposition, and can be found on
21 page 492, lines 4-10 of Exhibit CC.

22 43. Attached as **Exhibit PPP** is a true and correct copy of a set of logs of restorals of
23 backup tapes bearing bates number LAPD-RFP-2 00099-125, as marked as Exhibit 30 at the
24 Deposition of Rachel McClain in her capacity as the LAPD’s PMQ. This document was produced
25 by Respondents in this action on March 3, 2017 in response to Muslim Advocates’ Second Set of
26 Requests For Production Of Documents under CCP § 2031.010 et seq.

27 44. Attached as **Exhibit QQQ** is a true and correct copy of a transcript of text messages
28 between Leshon Frierson and Rachel McClain bearing bates number LAPD RFP-2 00072, as

1 marked as Exhibit 31 at the Deposition of Rachel McClain in her capacity as the LAPD's PMQ.
2 This document was produced by Respondents in this action on March 3, 2017 in response to
3 Muslim Advocates' Second Set of Requests For Production Of Documents under CCP § 2031.010
4 et seq.

5 45. On August 9, 2017, I visited the website of the United States National Archives and
6 accessed the December, 1982 report of the Congressional Commission on Wartime Relocation and
7 Internment of Civilians, titled "Personal Justice Denied" at [www.archives.gov/research/japanese-](http://www.archives.gov/research/japanese-american/justice-denied)
8 [americans/justice-denied](http://www.archives.gov/research/japanese-american/justice-denied). Attached hereto as **Exhibit RRR** is a true and correct copy of Chapter 3
9 of Personal Justice Denied, as available as of August 9, 2017 at
10 <https://www.archives.gov/files/research/japanese-americans/justice-denied/chapter-3.pdf>.

11 46. On August 9, 2017, I accessed the user guide website for Adobe Acrobat and caused
12 to be printed the portion of the user guide that covers searching PDFs in Adobe Acrobat. Attached
13 as **Exhibit SSS** is a true and correct copy of the portion of the Adobe Acrobat user guide that
14 covers searching PDFs, as available as of August 9, 2017 at
15 <https://helpx.adobe.com/acrobat/using/searching-pdfs.html>.

16 47. On August 8, 2017, I visited the LAPD's website and caused to be printed an
17 organizational chart depicting the organization of the LAPD's bureaus, offices, divisions, sections,
18 etc. Attached as **Exhibit TTT** is a true and correct copy of the organizational chart, as available as
19 of August 8, 2017 at <http://assets.lapdonline.org/assets/pdf/Org Chart 4-27-17-DP-4B.pdf>.

20 48. On August 8, 2017, I visited the LAPD's website and caused to be printed Volume
21 Two of the LAPD's Manual. Attached hereto as **Exhibit UUU** is a true and correct copy of
22 Volume Two of the LAPD's Manual, as available as of August 8, 2017 at
23 http://www.lapdonline.org/lapd_manual/volume_2.htm#040.

24 49. On August 10, 2017 I caused to be printed from the website of the Washington Post
25 an article by Abby Phillip and Abigail Hauslohner dated December 22, 2016 and titled "Trump On
26 The Future Of Proposed Muslim Ban, Registry: 'You Know My Plans'". Attached hereto as
27 **Exhibit VVV** is a true and correct copy of the article, as available as of August 9, 2017 at
28 <https://www.washingtonpost.com/news/post-politics/wp/2016/12/21/trump-on-the-future-of->

1 [proposed-muslim-ban-registry-you-know-my-plans/](http://ag.ca.gov/publications/pr.a.pdf).

2 50. On August 10, 2017, I visited the Office of the Attorney General's website and
3 accessed a presentation from the Office of the Attorney General titled "Public Records Act
4 Training". A true and correct copy of the training presentation, as available as of August 10, 2017
5 at <http://ag.ca.gov/publications/pr.a.pdf> is attached hereto as **Exhibit WWW**.

6 51. On February 17, 2017, I caused a letter to be sent to Mr. Johansen, at that time a
7 Deputy City Attorney for the City of Los Angeles, and one of the attorneys of record for
8 Respondents. The letter proposed an arrangement by which the LAPD would conduct a narrowed
9 search of Deputy Chief Downing's e-mail from only three months: December 2006, December
10 2007, and December 2008. Attached as **Exhibit XXX** is a true and correct copy of my February
11 17, 2017 letter.

12 52. On February 28, 2017, I received a letter from Ms. Nguyen responding to my
13 February 17, 2017 letter, declining the proposal. Attached as **Exhibit YYY** is a true and correct
14 copy of Ms. Nguyen's February 28, 2017 letter.

15 53. Attached hereto as **Exhibit ZZZ** is a true and correct copy of a Joint Stipulation
16 Requesting Continuance of Hearing and Setting New Briefing Schedule filed in this action on April
17 10, 2017.

18 54. Attached hereto as **Exhibit AAAA** is a true and correct copy of a collection of
19 LAPD Intradepartmental Correspondence as marked as Exhibit 9 at the Deposition of Greg Toyama
20 in his capacity as the LAPD's PMQ. During the deposition, counsel for Respondents stipulated
21 that this document is a business record of the LAPD and is admissible on that basis for all purposes
22 in this action. This stipulation was memorialized on the record during the deposition, and can be
23 found on page 71, line 25 to page 72, line 18 of Exhibit EE.

24 55. Attached as **Exhibit BBBB** is a true and correct copy of a collection of documents
25 showing the LAPD's response to an internal LAPD request for e-mail in or around September
26 2011, bearing bates number LAPD RFP-2 00097-00098, as marked as Exhibit 29 at the Deposition
27 of Rachel McClain in her capacity as the LAPD's PMQ. This document was produced by
28 Respondents in this action on March 3, 2017 in response to Muslim Advocates' Second Set of

1 Requests For Production Of Documents under CCP § 2031.010 et seq.

2 56. On Friday, May 5, 2017 I sent an e-mail concerning anticipated testimony by
3 Deputy Chief Downing to Kjehl Johansen, at that time a Deputy City Attorney for the City of Los
4 Angeles, and one of the attorneys of record for Respondents. Mr. Johansen replied the same
5 day. Attached as **Exhibit CCCC** is a true and correct copy of the May 5, 2017 e-mail thread
6 between me and Mr. Johansen.

7 This declaration was executed on the 11th day of August, 2017, in Los Angeles, California.
8 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
9 and correct.

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12 _____
13 Brendan N. Charney
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On August 11, 2017, I served the foregoing document(s) described as: **DECLARATION OF BRENDAN CHARNEY IN SUPPORT OF PETITION FOR WRIT OF MANDATE; EXHIBITS AA-BBBB** by placing a **true copy** of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael N. Feuer, City Attorney
Carlos De La Guerra, Managing Assistant City Attorney
Kjehl T. Johansen, Deputy City Attorney
200 North Main Street
City Hall East, Room 800
Los Angeles, Ca 90012

X - (VIA PERSONAL DELIVERY) to be served on all other parties to this action by requesting that a messenger from *GLOBAL NETWORK LEGAL SERVICES* deliver true copies of the above-named documents, enclosed in sealed envelopes addressed indicated above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on August 11, 2017, at Los Angeles, California.

Yvette M. Merino
Print Name



Signature

EXHIBIT QQQ

Conversation with LESHON FRIERSON ()

[1/25/17 9:32 AM] Me: Did The 960 hours include the time that it would take to restore the tape? They don't want to count machine hours as work hours so I need clarification.

[1/25/17 9:34 AM] LESHON FRIERSON: Yes it did.

[1/25/17 9:40 AM] Me: Ok so what is the estimation of time without counting the tape restoration process?

[1/25/17 9:47 AM] LESHON FRIERSON: Knock 80 hrs off the estimate.

[1/25/17 9:50 AM] Me: Ok

[1/25/17 10:23 AM] Me: Do you remember whether the backups from 2010 to 2013 had attachments backed up with them?

[1/25/17 10:25 AM] LESHON FRIERSON: No, they did not.

[1/25/17 10:25 AM] LESHON FRIERSON: Email only.

[1/25/17 10:29 AM] Me: Ok

EXHIBIT 31

Rachel McClain Vol. 4

3/23/17

Reported by:
Jean Holliday, CSR 4535

LAPD RFP-2 00072

EXHIBIT RRR

Exclusion and Evacuation

With the signing of Executive Order 9066, the course of the President and the War Department was set. American citizens of Japanese ancestry would be required to move from the West Coast on the basis of wartime military necessity, and the way was open to move any other group the military thought necessary. For the War Department and the Western Defense Command (WDC), the problem now became primarily one of method and operation, not basic policy. General DeWitt first tried "voluntary" resettlement: the Issei and Nisei were to move outside restricted military zones on the West Coast but were free to go wherever they chose. From a military standpoint, this policy was bizarre and utterly impractical besides. If the Issei and Nisei were being excluded because they threatened sabotage and espionage, it is difficult to understand why they would be left at large in the interior where there were, of course, innumerable dams, power lines, bridges and war industries to be spied upon or disrupted. For that matter, sabotage in the interior could be synchronized with a Japanese raid or invasion for a powerful fifth column effect. If this was of little concern to General DeWitt once the perceived problem was removed beyond the boundaries of his command, it raises substantial doubts about how gravely the War Department regarded the threat. The implications were not lost on the citizens and politicians of the interior western states; they believed that people who were a threat to wartime security in California were equally dangerous in Wyoming and Idaho.

For the Issei and Nisei, "voluntary" relocation was largely impractical. Quick sale of a going business or a farm with crops in the ground could not be expected at a fair price. Most businesses that relied on the ethnic trade in the Little Tokyos of the West Coast could not be sold for anything close to market value. The absence of fathers and husbands in internment camps and the lack of liquidity after funds were frozen made matters more difficult. It was not easy to leave, and the prospect of a deeply hostile reception in some unknown town or city was a powerful deterrent to moving.

Inevitably the government ordered mandatory mass evacuation controlled by the Army; first to assembly centers—temporary staging areas, typically at fairgrounds and racetracks—and from there to relocation centers—bleak, barbed-wire camps in the interior. Mass evacuation went forward in one locality after another up and down the coast, on short notice, with a drill sergeant's thoroughness and lack of sentimentality. As the Executive Order required, government agencies made an effort, only partially successful, to protect the property and economic interests of the people removed to the camps; but their loss of liberty brought enormous economic losses.

Even in time of war, the President and the military departments do not make law alone. War actions must be implemented through Congress, and the courts may review orders and directions of the President about the disposition of the civilian population. Finally, in a democratic society with a free press, public opinion will be heard and weighed. In the months immediately following Executive Order 9066, none of these political estates came to the aid of the Nisei or their alien parents. The Congress promptly passed, without debate on questions of civil rights and civil liberties, a criminal statute prohibiting violation of military orders issued under the Executive Order. The district courts rejected Nisei pleas and arguments, both on habeas corpus petitions and on the review of criminal convictions for violating General DeWitt's curfew and exclusion orders. Public opinion on the West Coast and in the country at large did nothing to temper its violently anti-Japanese rage of early February. Only a handful of citizens and organizations—a few churchmen, a small part of organized labor, a few others—spoke out for the rights and interests of the Nisei.

Few in numbers, bereft of friends, probably fearful that the next outburst of war hysteria would bring mob violence and vigilantism that law enforcement officials would do little to control, left only to choose a resistance which would have proven the very disloyalty they denied—the Nisei and Issei had little alternative but to go. Each carried a

personal burden of rage or resignation or despair to the assembly centers and camps which the government had hastily built to protect 130 million Americans against 60,000 of their fellow citizens and their resident alien parents.

CONGRESS ACTS

The Executive Order gave the military the power to issue orders; it could not impose sanctions for failure to obey them. The Administration quickly turned to Congress to obtain that authority. By February 22, the War Department was sending draft legislation to the Justice Department. General DeWitt wanted mandatory imprisonment and a felony sanction because "you have greater liberty to enforce a felony than you have to enforce a misdemeanor, *viz.* You can shoot a man to prevent the commission of a felony."¹ On March 9, 1942, Secretary Stimson sent the proposed legislation to Congress. The bill was introduced immediately by Senator Robert Reynolds of North Carolina, Chairman of the Senate Committee on Military Affairs, and by Representative John M. Costello of California.²

The Executive Order was what the West Coast Congressional delegation had demanded of the President and the War Department. Congressman John H. Tolan of California, who chaired the House Select Committee which examined the evacuation from prohibited military areas, characterized the order as "the recommendation in almost the same words of the Pacific coast delegation."³ With such regional support and military backing, there were only two circumstances under which one might have expected Congressional opposition: if Tolan's Committee, which held hearings on the West Coast in late February, immediately after the Executive Order was signed, had returned to Washington prepared to argue against the Executive Order; or if, given the fact that there was no evidence of actual sabotage or espionage, members concerned with civil rights and civil liberties had protested.

Members of the Tolan Committee did not openly abandon support of the Executive Order after their West Coast hearings. They went out persuaded that espionage and fifth column activity by Issei and Nisei in Hawaii had been central to the success of the Japanese attack. Censorship in Hawaii meant that the only authoritative news from the islands was official. With regard to sabotage and fifth column activity,

activity, that version of events was still largely made up of two pieces: Secretary Knox's firmly-stated December views that local sabotage had substantially aided the attack, and the Roberts Commission's silence about fifth column activity.⁴ Thus there was no effective answer to be made when Tolan challenged pro-Nisei witnesses:

We had our FBI in Honolulu, yet they had probably the greatest, the most perfect system of espionage and sabotage ever in the history of war, native-born Japanese. On the only roadway to the shipping harbor there were hundreds and hundreds of automobiles clogging the street, don't you see.⁵

Not privy to the facts in Hawaii, advocates of Japanese American loyalty such as the Japanese American Citizens League, were frequently reduced to arguing lamely that the mainland Nisei were different from, and more reliable than, the residents of Hawaii.⁶ This view of Pearl Harbor goes a long way toward explaining the argument, repeated by the Congressmen, that the lack of sabotage only showed that enemy loyalists were waiting for a raid or invasion to trigger organized activity.⁷

The Nisei spoke in their own defense; a few academics, churchmen and labor leaders supported them.⁸ Even much of this testimony, assuming that a mass evacuation was a *fait accompli*, addressed secondary issues such as treatment during evacuation. Traditional anti-Japanese voices such as the California Joint Immigration Committee testified firmly in favor of the Executive Order, reciting again the historical catalogue of anti-Japanese charges.⁹

Earl Warren, then Attorney General of California and preparing to run for governor, joined the anti-Japanese side of the argument. One of the first witnesses, Warren presented extensive views to the Committee; he candidly admitted that California had made no sabotage or espionage investigation of its own and that he had no evidence of sabotage or espionage.¹⁰ In place of evidence Warren offered extensive documentation about Nikkei cultural patterns, ethnic organizations and the opinions of California law enforcement officers; his testimony was illustrated by maps vividly portraying Nikkei land ownership. This was nothing but demagoguery:

I do not mean to suggest that it should be thought that all of these Japanese who are adjacent to strategic points are knowing parties to some vast conspiracy to destroy our State by sudden and mass sabotage. Undoubtedly, the presence of many of these persons in their present locations is mere coincidence, but it would seem equally beyond doubt that the presence of others is not coinci-

dence. It would seem difficult, for example, to explain the situation in Santa Barbara County by coincidence alone.

In the northern end of that county is Camp Cook where, I am informed, the only armored division on the Pacific coast will be located. The only practical entrance to Camp Cook is on the secondary road through the town of Lompoc. The maps show this entrance is flanked with Japanese property, and it is impossible to move a single man or a piece of equipment in or out of Camp Cook without having it pass under the scrutiny of numerous Japanese. I have been informed that the destruction of the bridges along the road to Camp Cook would effectually bottle up that establishment for an indefinite time, exit to the south being impossible because of extremely high mountains and to the north because of a number of washes with vertical banks 50 to 60 feet deep. There are numerous Japanese close to these bridges.

Immediately north of Camp Cook is a stretch of open beach ideally suited for landing purposes, extending for 15 or 20 miles, on which almost the only inhabitants are Japanese.

Throughout the Santa Maria Valley and including the cities of Santa Maria and Guadalupe every utility, airfield, bridge, telephone, and power line or other facility of importance is flanked by Japanese, and they even surround the oil fields in this area. Only a few miles south, however, is the Santa Ynez Valley, an area equally as productive agriculturally as the Santa Maria Valley and with lands equally available for purchase and lease, but without any strategic installations whatever. There are no Japanese in the Santa Ynez Valley.

Similarly, along the coastal plain of Santa Barbara County from Gaviota south, the entire plain, though narrow, is subject to intensive cultivation. Yet the only Japanese in this area are located immediately adjacent to such widely separated points as the El Capitan oil field, Elwood oil field, Summerland oil field, Santa Barbara Airport, and Santa Barbara Lighthouse and Harbor entrance, and there are no Japanese on the equally attractive lands between these points.

Such a distribution of the Japanese population appears to manifest something more than coincidence. But, in any case, it is certainly evident that the Japanese population of California is, as a whole, ideally situated, with reference to points of strategic importance, to carry into execution a tremendous program of sabotage on a mass scale should any considerable number of them be inclined to do so.¹¹

As late as February 8, Warren had advised the state personnel board that it could not bar Nisei employees on the basis that they were children of enemy alien parentage; such action was a violation of con-

stitutionally protected liberties.¹² This earlier stance must have given his performance before the Tolan Committee special force and effect.*

At bottom, Warren's presentation had no probative value, and calm reflection would probably have led many to question whether people planning to blow up dams or bridges would have purchased the surrounding land rather than masking their intentions more thoroughly. But these were not weeks of calm reflection. The overpowering mass of Warren's data—maps and letters and lists from all over California—gripped the imagination and turned the discussion to fruitless argument about whether land was bought before or after a powerline or plant was built; no one focused on whether there was reason to believe that this "evidence" meant anything at all. A similar "analysis" of ethnic Italian land ownership would probably have produced an equally alarming and meaningless pattern, and, as Governor Olson testified to the Committee, there were many Italian language schools which frequently inculcated Fascist values.¹³ Of course, no such comparison was made; even Olson's shocked revelation failed to attract the attention of the Committee. The fact that the first witness called by the Tolan Committee was Mayor Rossi of San Francisco and that a great deal of time was devoted to extolling the unquestionable Americanism of the DiMaggio brothers (although their father and mother were aliens), clearly brings home the advantages which numbers, political voices and comparative assimilation provided in 1942's hour of crisis.¹⁴ Helpful, too, was the absence of an organized anti-Italian faction and the patronizing ethnic stereotype of being, as President Roosevelt remarked, nothing but a lot of opera singers.¹⁵

In late February and early March, the Tolan Committee assumed that Secretary Knox knew what he was talking about and that the President was acting on informed opinion. The views of anti-Japanese witnesses added substance and confirmed what was already known or suspected. Although the Committee was eager to see that the property

*It was certainly persuasive with the Western Defense Command. In DeWitt's *Final Report*, much of Warren's presentation to the Tolan Committee was repeated virtually verbatim, without attribution. Warren's arguments, presented after the signing of the Executive Order, became the central justifications presented by DeWitt for issuing the Executive Order (Compare *Final Report*, pp. 9-10, to Tolan Committee, p. 10974). This quick reorganization of history does little to enhance the reputation of the Western Defense Command for candor and independent analysis, although Warren may well have presented his views to DeWitt earlier in February.

of aliens was safeguarded by the government and wanted the Army to be concerned about hardship cases in an evacuation, it returned to Washington unwilling to challenge the need for Executive Order 9066 and the evacuation. Only in reports issued over the next few months did the Committee begin to raise serious questions about the policy underlying exclusion and removal.¹⁶

There was no civil liberty opposition in Congress to making criminal any violation of the Executive Order. There were, of course, few Nisei of voting age and they had no voice in Congress. No one publicly questioned the military necessity of the action or its intrusion into the freedom of American citizens. Such debate as there was focused on the inclusive wording of the bill.

The language of the bill was loose indeed. Senator Danaher wondered how a person would know what conduct constituted a violation of the act, an essential requirement for a criminal statute.¹⁷ Senator Taft spoke briefly against the bill, although he did not vote against it:

I think this is probably the "sloppiest" criminal law I have ever read or seen anywhere. I certainly think the Senate should not pass it. I do not want to object, because the purpose of it is understood. . . .

[The bill] does not say who shall prescribe the restrictions. It does not say how anyone shall know that the restrictions are applicable to that particular zone. It does not appear that there is any authority given to anyone to prescribe any restriction. . . .

I have no doubt an act of that kind would be enforced in war time. I have no doubt that in peacetime no man could ever be convicted under it, because the court would find that it was so indefinite and so uncertain that it could not be enforced under the Constitution.¹⁸

The debate was no more pointed or cogent in the House, where there seemed to be some suggestion that the bill applied to aliens rather than citizens.¹⁹ The bill passed without serious objection or debate, and was signed into law by the President on March 21, 1942.²⁰

This ratification of Executive Branch actions under Executive Order 9066 was particularly important; another independent branch of government now stood formally behind the exclusion and evacuation, and the Supreme Court gave great weight to the Congressional action in upholding the imposition of a curfew and the evacuation itself.^{21*}

*The Administration also considered introducing other legislation which would have affected Japanese Americans. For example, Secretary Stimson wrote to the Director of the Bureau of Budget on February 24 about legislation

IMPLEMENTING THE EXECUTIVE ORDER

Executive Order 9066 empowered the Secretary of War or his delegate to designate military areas to which entry of any or all persons would be barred whenever such action was deemed militarily necessary or desirable.²² On February 20, 1942, Secretary Stimson wrote to General DeWitt delegating authority to implement the Executive Order within the Western Defense Command and setting forth a number of specific requests and instructions: American citizens of Japanese descent, Japanese and German aliens, and any persons suspected of being potentially dangerous were to be excluded from designated military areas; everyone of Italian descent was to be omitted from any plan of exclusion, at least for the time being, because they were "potentially less dangerous, as a whole." DeWitt was to consider redesignating the Justice Department's prohibited areas as military areas, excluding Japanese and German aliens from those areas by February 24 and excluding actually suspicious persons "as soon as practicable;" full advantage was to be taken of voluntary exodus; people were to be removed gradually to avoid unnecessary hardship and dislocation of business and industry "so far as is consistent with national safety;" accommodations were to be made before the exodus, with proper provision for housing, food, transportation and medical care. Finally, evacuation plans were to provide protection of evacuees' property.²³

Over the next month DeWitt began to implement Stimson's instructions. On March 2, he issued Public Proclamation No. 1, announcing as a matter of military necessity the creation of Military Areas No. 1 and No. 2. Military Area 1 was the western half of Washington, Oregon, and California and the southern half of Arizona; all portions of those states not included in Military Area No. 1 were in Military Area No. 2. A number of zones were established as well; Zones A-1 through A-99 were primarily within Military Area No. 1; Zone B was

to amend the Nationality Act of 1940. The proposed amendments would have permitted those who did not speak English to apply for citizenship; at the same time, it would have provided a process for cancelling citizenship for those whose conduct established allegiance to a foreign government. (Memo, Stimson to Smith, Feb. 24, 1942 [CWRIC 2809]). In effect, the legislation would have allowed naturalization of aliens from enemy countries in Europe and the cancellation of citizenship of some persons, particularly ethnic Japanese—a step never before provided, but one which the anti-Japanese faction on the West Coast had pushed in the past and would continue to urge.

the remainder of Military Area No. 1. The Proclamation further noted that in the future people might be excluded from Military Area No. 1 and from Zones A-2 to A-99, and that the designation of Military Area No. 2 did not contemplate restrictions or prohibitions except with respect to the Zones designated. The Proclamation clearly foreshadowed extensive future exclusions. It also provided that any Japanese, German, or Italian alien, and any person (citizen) of Japanese ancestry residing in Military Area No. 1 who changed his residence, was required to file a form with the post office. Finally, the Proclamation expressly continued the prohibited and restricted areas designated by the Attorney General.²⁴ A curfew regulation requiring all enemy aliens and persons of Japanese ancestry to be in their homes between 8 p.m. and 6 a.m. was added by proclamation on March 24, 1942.²⁵

In the press statement accompanying his first public proclamation, DeWitt announced that Japanese—both aliens and citizens—would be evacuated first (suspicious persons were, of course, being apprehended daily); only after the Japanese had been excluded would German and Italian aliens be evacuated. In addition, some German and Italian aliens would be altogether exempt from evacuation.²⁶

At this point “voluntary” resettlement outside the designated zones was contemplated; excluded people were free to go where they chose beyond the prohibited areas. “Voluntary” evacuation actually began before Executive Order 9066. Enemy aliens had been excluded from areas designated by the Department of Justice as early as December 1941, and many had moved out of the prohibited areas voluntarily. The Army had an interest in attempting to continue that system; Bendetsen noted that many aliens ordered to move after Pearl Harbor had found new places for themselves, stressing that the Army should not advertise that it would provide food and housing for those it displaced because numerous aliens might rush to take advantage of a free living. He also thought the Army should not be responsible for resettlement, since its job “is to kill Japanese not to save Japanese;” devoting resources to resettlement would make the Army’s primary task—that of winning the war—more difficult.²⁷

In Seattle, optimism marked the voluntary evacuation program. Local FBI agents informed J. Edgar Hoover in late February that Japanese aliens were prepared to evacuate, and that the Japanese American Citizens League, through the Maryknoll Mission, was attempting to secure facilities and employment for the Seattle Japanese community—both citizens and aliens—in St. Louis, Missouri.²⁸ The Seattle Chapter of the JACL passed and published a resolution that

its members would make every effort to cooperate with the government to facilitate evacuation measures.²⁹

More sober minds saw that the voluntary program could not work. As early as February 21, the Tolan Committee was beginning to receive complaints from areas to which the evacuees were moving;³⁰ fears of sabotage and destruction were spreading inland.³¹ Both Earl Warren and Richard Neustadt, the regional director of the Federal Security Agency, saw that only an evacuation and relocation program run by the government could work.³²

The reaction from the interior was direct and forceful. On February 21, 1942, Governor Carville of Nevada wrote to General DeWitt that permitting unsupervised enemy aliens to go to all parts of the country, particularly to Nevada, would be conducive to sabotage and subversive activities:

I have made the statement here that enemy aliens would be accepted in the State of Nevada under proper supervision. This would apply to concentration camps as well as to those who might be allowed to farm or do such other things as they could do in helping out. This is the attitude that I am going to maintain in this State and I do not desire that Nevada be made a dumping ground for enemy aliens to be going anywhere they might see fit to travel.³³

Governor Ralph L. Carr of Colorado was characterized by many contemporaries as the one mountain state governor receptive to relocation of the Issei and Nisei in his state.³⁴ His radio address of February 28, 1942, gives a vivid impression of how high feelings ran about these unwanted people:

If those who command the armed forces of our Nation say that it is necessary to remove any persons from the Pacific coast and call upon Colorado to do her part in this war by furnishing temporary quarters for those individuals, we stand ready to carry out that order. If any enemy aliens must be transferred as a war measure, then we of Colorado are big enough and patriotic enough to do our duty. We announce to the world that 1,118,000 red-blooded citizens of this State are able to take care of 3,500 or any number of enemies, if that be the task which is allotted to us. . . .

The people of Colorado are giving their sons, are offering their possessions, are surrendering their rights and privileges to the end that this war may be fought to victory and permanent peace. If it is our duty to receive disloyal persons, we shall welcome the performance of that task.

This statement must not be construed as an invitation, however. Only because the needs of our Nation dictate it, do we even consider such an arrangement. In making the transfers, we can feel assured

that governmental agencies will take every precaution to protect our people, our defense projects, and our property from the same menace which demands their removal from those sections.³⁵

The government was also beginning to realize the hardship which the "voluntary" program brought upon evacuees. For instance, Secretary Knox forwarded to the Attorney General a report that the situation of the Japanese in southern California was critical because they were being forced to move with no provision for housing or means of livelihood.³⁶ McCloy, still in favor of the voluntary program, wrote Harry Hopkins at the White House that "[o]ne of the drawbacks they have is the loss of their property. A number of forced sales are taking place and, until the last minute, they hate to leave their land or their shop."³⁷

Inevitably, the "voluntary" evacuation failed. The Army recognized this in Public Proclamation No. 4 on March 27, which prohibited persons of Japanese ancestry in Military Area No. 1 from changing their residence without instruction or approval from the Army. The Western Defense Command explained that the Proclamation was "to ensure an orderly, supervised, and thoroughly controlled evacuation with adequate provision for the protection . . . of the evacuees as well as their property." The evacuees were to be shielded from intense public hostility by this approach.³⁸ Full government control had arrived.

The change-of-address cards required by Public Proclamation No. 1 show the number of people who voluntarily relocated before March 29. In the three weeks following March 2, only 2,005 reported moving out of Military Area No. 1; since approximately 107,500 persons of Japanese descent lived there, these statistics alone showed that voluntary migration would not achieve evacuation. Public Proclamation No. 4 was issued on March 27 effective at midnight March 29. In the interval the Wartime Civil Control Administration received a rush of approximately 2,500 cards showing moves out of Military Areas No. 1 and 2.³⁹ The statistics in General DeWitt's *Final Report* are not altogether consistent: they show that from March 12 to June 30, 1942, 10,312 persons reported their "voluntary" intention to move out of Military Area No. 1. But a *net* total⁴⁰ of less than half that number—4,889—left the area as part of the "voluntary" program. Of these voluntary migrants, 1,963 went to Colorado; 1,519 to Utah; 305 to Idaho; 208 to eastern Washington; 115 to eastern Oregon; and the remainder to other states.⁴¹ The *Final Report* surmises that this net total "probably

accounts for 90 percent of the total number of Japanese . . . who voluntarily left the West Coast area for inland points."⁴²

While the voluntary program was failing, government officials and others began to propose programs designed for the evacuees. On February 20, 1942, Carey McWilliams, then a California state official and later editor of *The Nation*, sent a telegram to Biddle recommending that the President establish an Alien Control Authority run by representatives of federal agencies. The agency would register, license, settle, maintain and reemploy the evacuees, and conserve alien property. Ennis forwarded the suggestion to McCloy, who thought it had merit.⁴³ During the first week of March 1942, the Commissioner of Indian Affairs in the Interior Department, John Collier, proposed what he considered to be a constructive program for the evacuees, including useful work, education, health care and other services to be provided to them, as well as a plan for rehabilitation after the war. Collier said that the Department of the Interior would be interested in working on such a program if it were a meaningful one.⁴⁴ The Toland Committee filed an interim report which showed great prescience about future problems and considerable concern for the fate of the evacuees.⁴⁵

Whatever their individual merit, these proposals reflect genuinely sympathetic interest in the evacuees. Unfortunately, much of the thought and care that went into these programs was lost in the rush to evacuate and relocate.

MANDATORY EVACUATION

Once the decision was made that evacuation was no longer voluntary, a plan for compulsory evacuation was needed.* The core of this plan

*There is a continuing controversy over whether the Census Bureau breached the confidentiality of census information in order to aid other government agencies in locating ethnic Japanese. John Toland, in his recent book *Infamy: Pearl Harbor and Its Aftermath* (Garden City, NY: Doubleday & Co., Inc., 1982), pp. 269, 284–85, recounts an episode on November 26, 1941, in which Henry Field, an anthropologist working as an aide to President Roosevelt, was called to the office of Grace Tully, Roosevelt's secretary:

She told Field that the President was ordering him to produce, in the shortest time possible, the full names and addresses of each American-born and foreign-born Japanese listed by locality within each state. Field

was that evacuation and relocation could not be accomplished simultaneously.⁴⁶ Therefore, sites had to be found for both temporary quarters and longer-term settlement.

During the period of the voluntary evacuation program, the Army had begun a search for appropriate camp facilities, both temporary and permanent.⁴⁷ Regarding the criteria for selection of assembly centers, General DeWitt later wrote:

Assembly Center site selection was a task of relative simplicity. As time was of the essence, it will be apparent that the choice was limited by four rather fundamental requirements which virtually pointed out the selections ultimately made. First, it was necessary to find places with some adaptable pre-existing facilities suitable for the establishment of shelter, and the many needed

was completely bewildered and didn't know how to begin. She explained it was to be done by using the 1930 and 1940 censuses.

Within one week, Field is said to have delivered to Grace Tully the names and addresses of all the ethnic Japanese in the United States.

Calvert Dedrick, a Census Bureau employee who became a consultant to the Western Defense Command in late February 1942, testified to the Commission that to his knowledge the Census Bureau provided the Western Defense Command with detailed tabulations of the location of the ethnic Japanese population but did not provide the names or addresses of individuals. (Testimony, Dedrick, Washington, DC, Nov. 3, 1981, pp. 170-90.) The Census Bureau undertook an internal investigation after the publication of Toland's book and concluded that the account to Toland was not accurate and that names and addresses had not been released. (Bureau of the Census "Statement on Census Bureau Actions at the Outset of World War II as Reported in *Infamy: Pearl Harbor and Its Aftermath*, by John Toland," Oct. 1982 [CWRIC 2929-34].) A brief statement by the Census Bureau of its activities in connection with the evacuation, written in 1946, also states that names and individual identifications were not provided to the Western Defense Command. (Roger Daniels, "The Bureau of the Census and the Relocation of the Japanese Americans: A Note and a Document," *Amerasia Journal*, vol. 9, no. 1, 1982, pp. 101-05.) In his interview for the Earl Warren Oral History Project, Tom Clark mentioned the Census Bureau data in passing:

The Census Bureau moved out its raw files. . . . They would lay out on tables various city blocks where the Japanese lived and they would tell me how many were living in each block. (Earl Warren Oral History Project, *Japanese American Relocation Reviewed*, vol. 1, Interview of Tom C. Clark, p. 9.)

There is no direct evidence or testimony to the effect that the Western Defense Command was in possession of the names and addresses of individual ethnic Japanese, as collected by the Census Bureau, at the time that mandatory evacuation was carried out, but Field's story raises questions.

community services. Second, power, light, and water had to be within immediate availability as there was no time for a long pre-development period. Third, the distance from the Center of the main elements of evacuee population served had to be short, the connecting road and rail net good, and the potential capacity sufficient to accept the adjacent evacuee group. Finally, it was essential that there be some area within the enclosure for recreation and allied activities as the necessary confinement would otherwise have been completely demoralizing. The sudden expansion of our military and naval establishments further limited the choice.⁴⁸

Site selection did not proceed perfectly smoothly, however. After Owens Valley in California was selected as a center, Congressman Ford of California, who had been prominent in urging the evacuation, objected. In a conversation with Gullion, DeWitt discussed Ford's objection: "Well, they are going to Owens Valley, and that's all. I don't care anything about the howl of these Congressmen or anybody else."⁴⁹ The attitude was typical of DeWitt who, given authority, did not hesitate to use it; but Ford continued to press his position, meeting with Justice Department officials and planning to meet with Bendetsen and possibly others.⁵⁰ He was not successful, since Stimson stood behind DeWitt, but it gave fair warning that many interested politicians who had pushed to establish the evacuation program and exclude the Nikkei from the West Coast retained a vital interest. As the months went by the War Department in Washington was to learn what DeWitt may have known all along: exclusion fulfilled the program of powerful organized interests in California, and no part of it would be given up without a fight.

In March work began at the first two permanent relocation centers, Manzanar in the Owens River Valley and the Northern Colorado Indian Reservation in Arizona; the sites served as both assembly and relocation centers.⁵¹ The other assembly centers were selected with dispatch. The *Final Report* explains:

After an intensive survey the selections were made. Except at Portland, Oregon, Pinedale and Sacramento, California and Mayer, Arizona, large fairgrounds or racetracks were selected. As the Arizona requirements were small, an abandoned Civilian Conservation Corps camp at Mayer was employed. In Portland the Pacific International Live Stock Exposition facilities were adapted to the purpose. At Pinedale the place chosen made use of the facilities remaining on a former mill site where mill employees had previously resided. At Sacramento an area was employed where a migrant camp had once operated and advantage was taken of nearby utilities.⁵²

A major step toward systematizing evacuation at this time was the establishment of the War Relocation Authority (WRA), a civilian agency, to supervise the evacuees after they left Army assembly centers. The War Department was eager to be out of the resettlement business, and discussed with the Attorney General and the Budget Bureau the mechanism for setting up a permanent organization to take over the job. Milton Eisenhower, a candidate fully acceptable to the War Department, was chosen to head the agency; McCloy took him to San Francisco to meet DeWitt before the Executive Order setting up the WRA was promulgated.⁵³ By March 17, plans for the independent authority responsible for the Japanese Americans were completed; the next day Roosevelt signed Executive Order 9102 to establish the War Relocation Authority,⁵⁴ appointed Eisenhower Director,⁵⁵ and allocated \$5,500,000 for the WRA.⁵⁶

WRA was established "to provide for the removal from designated areas of persons whose removal is necessary in the interest of national security. . . ." The Director was given wide discretion; the Executive Order did not expressly provide for relocation camps, and it gave the Director authority to "[p]rovide, insofar as feasible and desirable, for the employment of such persons at useful work in industry, commerce, agriculture, on public projects, prescribe the terms and conditions of such public employment, and safeguard the public interest in the private employment of such persons."⁵⁷ In short, the WRA's job would be to take over the supervision of the evacuees from the Army's assembly centers. With that final destination put in the hands of a civilian agency, the Army was ready to push firmly ahead with its part of the evacuation.

Once Public Proclamation No. 4 took effect on March 29, and persons of Japanese ancestry were barred from moving out of Military Area No. 1, systematic mandatory evacuation began. Both the evacuation and the operation of the assembly centers were under the authority of the Army, by agreement with the War Relocation Authority. Evacuation was under military supervision. The centers themselves were operated by the Wartime Civil Control Administration (WCCA), the civilian branch of the Western Defense Command. Ninety-nine geographic exclusion areas were established in Military Area No. 1; an additional nine were specified later. The California portion of Military Area No. 2 was declared a prohibited area in June.⁵⁸ Areas regarded as militarily sensitive were evacuated first. The order of evacuation was kept secret "so that the information would not reach any affected person within the area." Once announced, each evacuation

plan gave seven days from the date of posting the order until the movement of evacuees.⁵⁹

The small-scale evacuation of Terminal Island was a precursor of the mass evacuation of the West Coast and provides a vivid impression of the hardship brought by evacuation. Roughly six miles long and a half-mile wide, Terminal Island marks the boundaries of Los Angeles Harbor and the Cerritos Channel. Lying directly across the harbor from San Pedro, the island was reached in 1941 by ferry or a small drawbridge.

The Japanese community on the island was isolated, primarily occupied in fishing and canning. A half-dozen canneries, each with its own employee housing, were located on the island.⁶⁰ In 1942 the Japanese population of Terminal Island was approximately 3,500, of whom half were American-born.⁶¹ Most of the businesses which served the island were owned or operated by Issei or Nisei. The island economy supported restaurants, groceries, barbershops, beauty shops and poolhalls in addition to three physicians and two dentists.⁶²

On February 10, 1942, the Department of Justice posted a warning that all Japanese aliens had to leave the island by the following Monday. The next day, a Presidential order placed Terminal Island under the jurisdiction of the Navy. By the 15th, Secretary of the Navy Knox had directed that the Terminal Island residents be notified that their dwellings would be condemned, effective in about 30 days.⁶³ Even this pace was too slow: on February 25 the Navy informed the Terminal Islanders that they had 48 hours to leave the island. Many were unprepared for such a precipitous move.

The FBI had previously removed individuals who were considered dangerous aliens on December 7, 1941, and followed this by "daily dawn raids . . . removing several hundred more aliens."⁶⁴ As a consequence, the heads of many families were gone and mainly older women and minor children were left.⁶⁵ With the new edict, these women and children, who were unaccustomed to handling business transactions, were forced to make quick financial decisions. With little time or experience, there was no opportunity to effect a reasonable disposition.

Dr. Yoshihiko Fujikawa, a resident of Terminal Island, described the scene prior to evacuation:

It was during these 48 hours that I witnessed unscrupulous vultures in the form of human beings taking advantage of bewildered housewives whose husbands had been rounded up by the F.B.I. within 48 hours after Pearl Harbor. They were offered pittances

for practically new furniture and appliances: refrigerators, radio consoles, etc., as well as cars, and many were falling prey to these people.⁶⁶

The day after evacuation, Terminal Island was littered with abandoned household goods and equipment.⁶⁷ Henry Murakami's loss was typical. He had become a fisherman after graduating from high school. After gaining experience he leased a boat from Van Camp Seafood Company and went out on his own, saving money to increase and to improve his equipment:

By the time World War II had started, I was now the owner of 3 sets of purse seine nets. These nets were hard to get and the approximate costs of these nets in 1941 were:

set of nets for Tuna	\$10,000
set of nets for Mackerel	\$7,500
set of nets for Sardines	\$5,000

When Pearl Harbor was attacked we were stopped from going out to fish and told to remain in our fishing camp.⁶⁸

In early February, along with every alien male on Terminal Island who held a fisherman's license, Murakami was arrested and sent to Bismarck, North Dakota. His equipment lay abandoned, accessible for the taking.

The first exclusion order under the Army program was issued for Bainbridge Island near Seattle in Puget Sound, an area the Navy regarded as highly sensitive. It is illustrative of the Army's evacuation process. The order was issued on March 24, 1942, for an evacuation a week later⁶⁹ that was carried out under the direction of Bendetsen, who had been promoted to colonel and put in charge of the evacuation by DeWitt as head of the WCCA, which operated in conjunction with other federal agencies.⁷⁰

Tom G. Rathbone, field supervisor for the U.S. Employment Service, filed a report after the Bainbridge Island evacuation, with suggestions for improvement which give a clear picture of the government's approach. A meeting to outline evacuation procedures was called on March 23; representatives of a number of federal agencies were present. After setting up offices on the island, the government group "reported to Center at 8:00 a.m. . . . for the purpose of conducting a complete registration of the forty-five families of persons of Japanese ancestry who were residents of the Island." Rathbone suggested that more complete instructions from Army authorities would clarify many problems, including what articles could be taken, climate at the assembly centers and timing of evacuation. He also suggested better planning so that the evacuees would not be required to return re-

peatedly to the center: "such planning would have to contemplate the ability to answer the type of question [sic] which occur and the ability to give accurate and definite information which would enable the evacuee to close out his business and be prepared to report at the designated point with necessary baggage, etc." Further, Rathbone noted that disposition of evacuees' property following relocation caused the most serious hardship and prompted the most questions. He reported:

We received tentative information late Friday afternoon to the effect that it was presumed that the Government would pay the transportation costs of such personal belongings and equipment to the point of relocation upon proper notice. When this word was given to the evacuees, many complained bitterly because they had not been given such information prior to that time and had, therefore, sold, at considerable loss, many such properties which they would have retained had they known that it would be shipped to them upon relocation. Saturday morning we receive additional word through the Federal Reserve Bank that the question had not been answered and that probably no such transportation costs would be paid. Between the time on Friday afternoon and Saturday morning some Japanese had arranged to repossess belongings which they had already sold and were in a greater turmoil than ever upon getting the latter information. To my knowledge, there still is no answer to this question, but it should be definitely decided before the next evacuation is attempted.⁷¹

After the Bainbridge evacuation, exclusion orders were issued for each of the other 98 exclusion areas in Military Area No. 1 and areas "were evacuated in the order indicated by the Civilian Exclusion Order number with but a few exceptions."⁷² (A typical order, with map and instructions attached, appears after page 111.)

Later evacuations were better organized, but difficulties persisted. The handling of evacuee property presented a major problem for the government; one to which considerable, only partially successful effort was addressed. Congressman Tolan had sent a telegram to Attorney General Biddle on February 28, first urging the appointment of an Alien Property Custodian at the same time as an evacuation order was issued and the appointment of a coordinator for other enemy alien problems; Tolan did not address the problems of property protection or relocation assistance for citizens.⁷³ When McCloy informed Harry Hopkins of evacuees' property problems, he asked that a property custodian be appointed.⁷⁴ Hopkins replied that aliens' property could already be protected through the Treasury Department; as to the property of citizens, if McCloy would draw up documents for the President to sign, Hopkins thought a custodian for citizens' property was a good

idea.⁷⁵ The War Department drew up the papers,⁷⁶ but the custodial plan did not go through; instead the Treasury Department directed the Federal Reserve Board to assist evacuees in disposing of their property—"not a custodianship matter at all but a sort of free banking service."⁷⁷ For years to come, problems of property disposal and protection continued to haunt the evacuees and the federal government.

A minor but illuminating problem occurred when the Navy language school, which had Japanese personnel, realized it would have to relocate from Monterey to a place inland. The Navy was not pleased, but DeWitt prevailed once more, showing that he would enforce his authority to the letter without regard to the consequences for other government agencies or services.⁷⁸ There were no cases that merited making exceptions.

On May 23, 1942, Bendetsen spoke to the Commonwealth Club of San Francisco and reported that evacuation would be nearly completed by the end of May.⁷⁹ By June 6, all Japanese Americans had been evacuated from Military Area No. 1 to the assembly centers.⁸⁰ On June 8, 1942, DeWitt issued Public Proclamation No. 7, which provided "should there be any areas remaining in Military Area No. 1 from which Japanese have not been excluded, the exclusion of all Japanese from these areas is provided for in this proclamation."⁸¹ By that proclamation, any ethnic Japanese remaining in the area and not exempt were ordered to report in person to the nearest assembly center.

In early June, the next stage of the evacuation occurred when, by Public Proclamation No. 6, DeWitt ordered the exclusion of Japanese aliens and American citizens of Japanese ancestry from the California portion of Military Area No. 2 on the grounds of military necessity.⁸² Earlier the voluntary evacuees had been encouraged to move inland with no suggestion that Military Area No. 2 in California or any other state would be cleared of ethnic Japanese.⁸³ Indeed, in late April, Bendetsen was still resisting the politicians and agricultural interests who were pushing for expansion of the exclusion zone beyond Military Area No. 1.⁸⁴ The exclusion from the California portion of Military Area No. 2 appears to have been decided without any additional evidence of threat or danger in the area. The *Final Report* lamely explains this change:

Military Area No. 2 in California was evacuated because (1) geographically and strategically the eastern boundary of the State of California approximates the easterly limit of Military Area No. 1 in Washington and Oregon . . . and because (2) the natural forests

FIGURE A: An Exclusion Order

**Headquarters
Western Defense Command
and Fourth Army
Presidio of San Francisco, California
April 30, 1942**

Civilian Exclusion Order No. 27

1. Pursuant to the provisions of Public Proclamations Nos. 1 and 2, this Headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that from and after 12 o'clock noon, P.W.T., of Thursday, May 7, 1942, all persons of Japanese ancestry, both alien and non-alien, be excluded from that portion of Military Area No. 1 described as follows:

All of that portion of the County of Alameda, State of California, within that boundary beginning at the point at which the southerly limits of the City of Berkeley meet San Francisco Bay; thence easterly and following the southerly limits of said city to College Avenue; thence southerly on College Avenue to Broadway; thence southerly on Broadway to the southerly limits of the City of Oakland; thence following the limits of said city westerly and northerly, and following the shoreline of San Francisco Bay to the point of beginning.

2. A responsible member of each family, and each individual living alone, in the above described area will report between the hours of 8:00 A. M. and 5:00 P. M., Friday, May 1, 1942, or during the same hours on Saturday, May 2, 1942, to the Civil Control Station located at:

530 Eighteenth Street
Oakland, California.

3. Any person subject to this order who fails to comply with any of its provisions or with the provisions of published instructions pertaining hereto or who is found in the above area after 12 o'clock noon, P.W.T., of Thursday, May 7, 1942, will be liable to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942 entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving, or Committing any Act in Military Areas or Zones," and alien Japanese will be subject to immediate apprehension and internment.

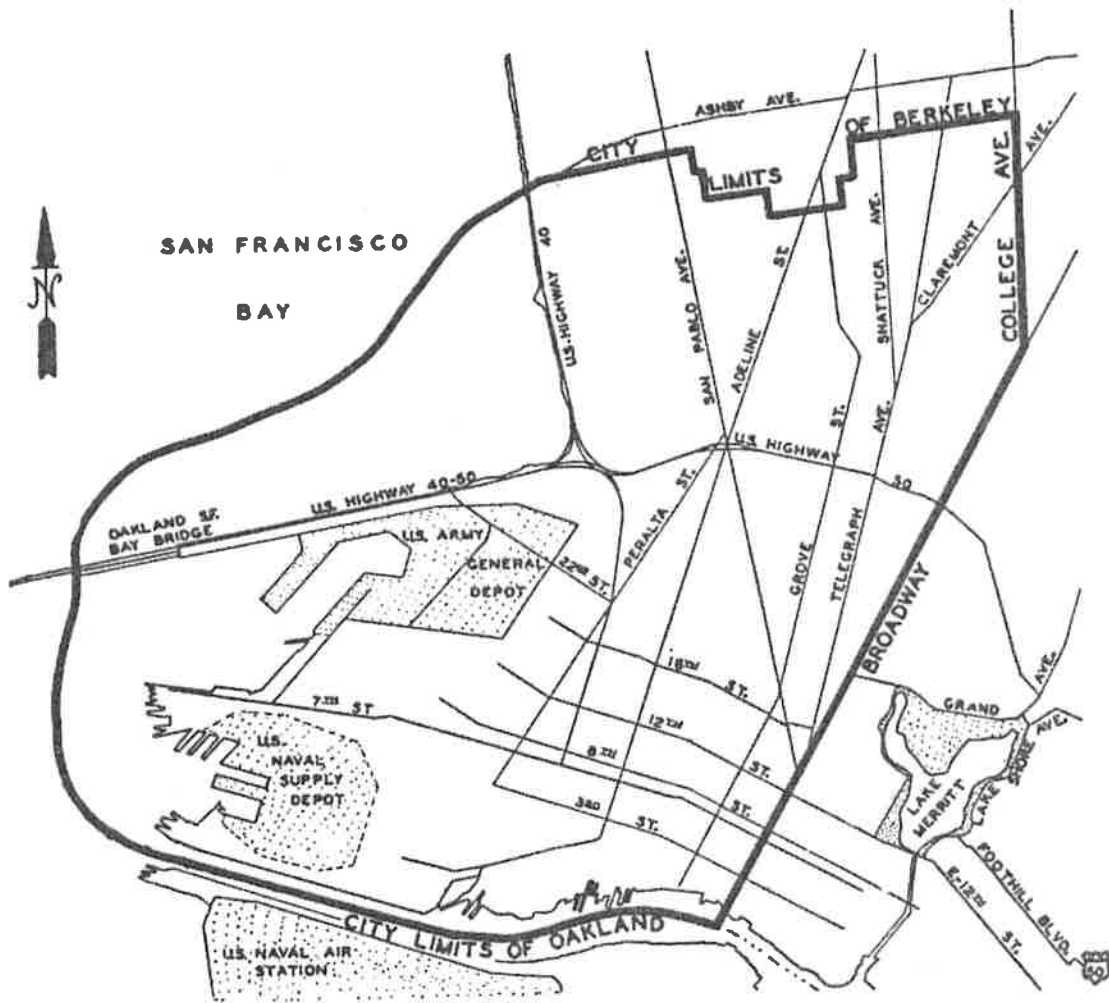
4. All persons within the bounds of an established Assembly Center pursuant to instructions from this Headquarters are excepted from the provisions of this order while those persons are in such Assembly Center.

J. L. DEWITT
Lieutenant General, U. S. Army
Commanding

Source: J. L. DeWitt, *Final Report: Japanese Evacuation from the West Coast, 1942* (1943), p. 97.

FIGURE B: Map of a Prohibited Area

PROHIBITED AREA
EXCLUSION ORDER NO. 27
Western Defense Command and Fourth Army



C. E. Order 27

This Map is prepared for the convenience of the public; see the Civilian Exclusion Order for the full and correct description.

Source: J. L. DeWitt, *Final Report: Japanese Evacuation from the West Coast, 1942* (1943), p. 98.

FIGURE C: Instructions to Evacuees

**WESTERN DEFENSE COMMAND AND FOURTH ARMY
WARTIME CIVIL CONTROL ADMINISTRATION**

Presidio of San Francisco, California

**INSTRUCTIONS
TO ALL PERSONS OF
JAPANESE
ANCESTRY**

LIVING IN THE FOLLOWING AREA:

All of that portion of the County of Alameda, State of California, within that boundary beginning at the point at which the southerly limits of the City of Berkeley meet San Francisco Bay; thence easterly and following the southerly limits of said city to College Avenue; thence southerly on College Avenue to Broadway; thence southerly on Broadway to the southerly limits of the City of Oakland; thence following the limits of said city westerly and northerly, and following the shoreline of San Francisco Bay to the point of beginning.

Pursuant to the provisions of Civilian Exclusion Order No. 27, this Headquarters, dated April 30, 1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o'clock noon, P.W.T., Thursday May 7, 1942.

No Japanese person living in the above area will be permitted to change residence after 12 o'clock noon, P.W.T., Thursday, April 30, 1942, without obtaining special permission from the representative of the Commanding General, Northern California Sector, at the Civil Control Station located at:

530 Eighteenth Street,
Oakland, California.

Such permits will only be granted for the purpose of uniting members of a family, or in cases of grave emergency.

The Civil Control Station is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, such as real estate, business and professional equipment, household goods, boats, automobiles and livestock.
3. Provide temporary residence elsewhere for all Japanese in family groups.
4. Transport persons and a limited amount of clothing and equipment to their new residence.

THE FOLLOWING INSTRUCTIONS MUST BE OBSERVED:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each individual living alone, will report to the Civil Control Station to receive further instructions. This must be done between 8:00 A. M. and 5:00 P. M. on Friday, May 1, 1942, or between 8:00 A. M. and 5:00 P. M. on Saturday, May 2, 1942.

2. Evacuees must carry with them on departure for the Assembly Center, the following property:

- (a) Bedding and linens (no mattress) for each member of the family;
- (b) Toilet articles for each member of the family;
- (c) Extra clothing for each member of the family;
- (d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;
- (e) Essential personal effects for each member of the family.

All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions obtained at the Civil Control Station. The size and number of packages is limited to that which can be carried by the individual or family group.

3. No pets of any kind will be permitted.

4. No personal items and no household goods will be shipped to the Assembly Center.

5. The United States Government through its agencies will provide for the storage at the sole risk of the owner of the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items will be accepted for storage if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.

6. Each family, and individual living alone will be furnished transportation to the Assembly Center or will be authorized to travel by private automobile in a supervised group. All instructions pertaining to the movement will be obtained at the Civil Control Station.

Go to the Civil Control Station between the hours of 8:00 A. M. and 5:00 P. M., Friday, May 1, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Saturday, May 2, 1942, to receive further instructions.

J. L. DEWITT
Lieutenant General, U. S. Army
Commanding

April 30, 1942

See Civilian Exclusion Order No. 27.

Source: J. L. DeWitt, *Final Report: Japanese Evacuation from the West Coast, 1942* (1943), pp. 99-100.

and mountain barriers, from which it was determined to exclude all Japanese, lie in Military Area No. 2 in California, although these lie in Military Area No. 1 of Washington and Oregon.⁸⁵

It is hard to believe that this is a candid analysis of the decision. The eastern boundary of California lies more than 100 miles east of Military Area No. 1 at the Oregon border. If there had been a general decision to exclude the ethnic Japanese from forests and mountains, why had they been allowed to resettle in Military Area No. 2? Morton Grodzins carefully analyzed this second exclusion decision and made a persuasive case that it was another example of the Western Defense Command adopting an utterly unsound military rationale to carry out the program of politicians, agriculturalists and agitators in eastern California who were intent on removing all ethnic Japanese from the state.⁸⁶

Whatever the motivation, there were two obvious results: the "voluntary" evacuees who had resettled in eastern California were uprooted a second time, and, by August 18, 1942, everyone of Japanese descent had been expelled from the entire state of California except for those under guard at the Tule Lake and Manzanar camps and a small handful under constant supervision in hospitals and prisons.⁸⁷ California's anti-Japanese faction had triumphed.

PUBLIC OPINION AND PROTEST

From March 28 to April 7, as the program evolved from voluntary to mandatory evacuation, the Office of Facts and Figures in the Office for Emergency Management polled public opinion about aliens in the population. Germans were considered the most dangerous alien group in the United States by 46 percent of those interviewed; the Japanese, by 35 percent. There was virtual consensus that the government had done the right thing in moving Japanese aliens away from the coast; 59 percent of the interviewees also favored moving American citizens of Japanese ancestry. The answers reflected clear educational and geographic differences. Relatively uneducated respondents were more likely to consider the Japanese the most dangerous alien group, and they were also disposed to advocate harsher treatment of the Japanese who were moved away from the coast. The east considered the Germans most dangerous, the west the Japanese. People in the south, in particular, were prone to treat Japanese harshly. The Pacific Coast

public led all other regions in believing the evacuees should be paid less than prevailing wages.⁸⁸

Despite the strong endorsement of public opinion, protest against the mass evacuation continued through a small but steady stream of letters and public statements and through litigation which contested the enforcement of the curfew and exclusion orders.

Protest was most common among church figures and academics. The Federal Council of Churches and the Home Missions Council had already made known their views that the evacuation of American citizens of Japanese ancestry was wasting a national resource.⁸⁹ Mrs. Roosevelt sent along to McCloy the objections of Virginia Swanson, a Baptist missionary.⁹⁰ Eric C. Bellquist, a professor of political science at Berkeley, presented to the Tolan Committee a lengthy and remarkably well-informed analysis which forcefully dissented from the policy of exclusion and evacuation.⁹¹ A few days later, Monroe Deutsch, Provost of the University of California, sent a telegram to Justice Felix Frankfurter protesting evacuation of people, including the Japanese, identified only as members of a group. To Deutsch this struck "an unprecedented blow at all our American principles."⁹² He did not receive any support in that quarter; an exchange between Frankfurter and McCloy concluded with the Justice assuring the Assistant Secretary that he was handling a delicate matter with both wisdom and appropriate hard-headedness.⁹³

The second stream of protest came through court challenges to the curfew and evacuation. Although the Japanese American Citizens League firmly opposed test litigation,⁹⁴ several individuals either brought lawsuits challenging the government's actions or failed to obey requirements, thereby challenging the legality of curfew and evacuation.

On April 13, 1942, Mary Ventura, an American citizen of Japanese ancestry married to a Filipino, filed a habeas corpus petition in the federal district court in the State of Washington to challenge the curfew and other restrictions imposed on her. The court denied the petition on the ground that, because Mrs. Ventura had not violated the curfew and was not in custody, she was not entitled to the remedy of habeas corpus which provides release from custody. But, in addition, the judge discussed the reasons why he would be likely to deny her petition on the merits:

The question here should be viewed with common sense consideration of the situation that confronts this nation now—that confronts this coast today. These are critical days. To strain some technical right of petitioning wife to defeat the military needs in

this vital area during this extraordinary time could mean perhaps that the "constitution, laws, institutions" of this country to which her petition alleges she is "loyal and devoted" would be for a time destroyed here on Puget Sound by an invading army. . . .

The petitioners allege that the wife "has no dual citizenship," that she is in no "manner a citizen or subject of the Empire of Japan." But how many in this court room doubt that in Tokyo they consider all of Japanese ancestry though born in the United States to be citizens or subjects of the Japanese Imperial Government? How many here believe that if our enemies should manage to send a suicide squadron of parachutists to Puget Sound that the Enemy High Command would not hope for assistance from many such American-born Japanese?

I do not believe the Constitution of the United States is so unfitted for survival that it unyieldingly prevents the President and the Military, pursuant to law enacted by the Congress, from restricting the movement of civilians such as petitioner, regardless of how actually loyal they perhaps may be, in critical military areas desperately essential for national defense.

Aside from any rights involved it seems to me that if petitioner is as loyal and devoted as her petition avers she would be glad to conform to the precautions which Congress, the President, the armed forces, deem requisite to preserve the Constitution, laws and institutions for her and all Americans, born here or naturalized.⁹⁵

Habeas petitions should have been a particularly attractive vehicle for testing the military orders, since the Nisei would not have to come into court under arrest in violation of the law as written, but even the great writ was no help in the crisis of 1942; obviously the War Department would not be put through a critical review of its decision by this judge.⁹⁶

The Nisei received no greater measure of relief in the criminal test cases. Minoru Yasui was a member of the Oregon bar and reserve officer in the Army who was working for the Consulate General of Japan in Chicago at the time of Pearl Harbor. He immediately resigned his consular position and sought to go on active duty with the Army, which would not accept him. In March he decided to violate the curfew regulations in order to test their constitutionality and was indicted by a grand jury. Yasui moved to dismiss the indictment on the ground that the curfew order was unconstitutional as applied to American citizens. The district judge agreed, but found that Yasui by his work for the consulate had renounced his citizenship, and proceeded to convict him as an alien of violating the curfew order.⁹⁷ Although sat-

ified with the result, the Justice Department did not support this outlandish theory.

Gordon Hirabayashi, an American-born university student in Seattle who was a Quaker and conscientious objector to military service, declined to report to the WCCA evacuation center. Hirabayashi was arrested for violating the curfew and failing to report and was convicted on May 16, 1942.⁹⁸ His case and Yasui's were decided by the Supreme Court on June 21, 1943; the Court restored Yasui's citizenship, but upheld the convictions for violation of the curfew regulations.⁹⁹

Other arrests resulted in convictions and sentences or in guilty pleas and suspended sentences conditional upon compliance with the curfew or evacuation orders.¹⁰⁰ Perhaps the clearest irony in the court challenges was that of Lincoln Kanai, a citizen who failed to leave San Francisco after the evacuation proclamation. While released following his arrest, Kanai left the area, then presented a habeas petition to the federal district court in Wisconsin. The judge held that he would not substitute his judgment for that of the generals regarding the proper extent of military areas. Kanai was brought back to San Francisco to stand trial; he pled guilty, and on August 27, 1942, was sentenced to six months' imprisonment.¹⁰¹

This was an extreme example of General DeWitt's unbending policy of making no exceptions to strict enforcement of the exclusion and evacuation in order to help the government's legal posture. Apart from his personal inclinations, DeWitt had been advised that "If we should consent to the exemption in [one] particular case, we have opened up the whole subject of the evacuation of citizen Japanese. We would be extremely unfair to those who have cooperated by voluntary movement and to those in similar circumstances, who have been evacuated to Santa Anita and Manzanar." He responded, "*No exemptions of Japanese.*"¹⁰²

It was not until later in 1943, after the Supreme Court decisions in *Hirabayashi* and *Yasui*, that district courts critically examined claims of military necessity as the basis for exclusion. Two orders individually excluding Maximilian Ebel and Olga Schueller, naturalized American citizens of German descent, from the Eastern Defense Command were struck down by the courts.¹⁰³ In these cases the military was put to its proof as to both the military importance of the eastern seaboard and the threat posed by the excluded person. The evidence about the East Coast is probably on a par with what could have been produced on the West Coast:

The evidence introduced through officers of Military Intelligence showed that the Eastern Military Area since the beginning of hostilities and up to the present date is known as a "sensitive area" (an area in which are located large concentrations of war-time installations or activities and also an area in which observation can be made and information valuable to the enemy can readily be obtained); that the area is open to offensive action and maneuvers; that it is exposed to direct attack by air and because of the tremendous amount of war installations and utilities exposed to sabotage. The evidence further showed that the area covering less than 14% of the land area of the United States includes about 40% of the population and over 60% of all plants manufacturing tools. There is also contained in this area a major portion of war-time installations and naval activities. It is the seat of the federal government and installations of management over communications. There are vast freight movements of supplies and equipment passing over its transportation lines; ship movements of men and supplies with their convoys and naval activities are easily discernible in this area.¹⁰⁴

The government's evidence was clearly focused on the persons to be excluded as it had never been in the Nisei cases. Ebel, for instance, had served in the German Army in World War I, was president of the Boston branch of the Kyffhaeuser Bund from at least 1939 to January 1942, when the group was disbanded. "This Bund was one of the foremost international German societies in America in its encouragement of the military spirit and keeping alive the love of Germany in the hearts of former German soldiers and civilians."¹⁰⁵

The courts did not in any way dispute the legal standards established in *Hirabayashi*. Nevertheless, in testing whether, under the war powers, there was military danger on the East Coast in 1943 sufficient to justify depriving citizens of the right to live and conduct business where they chose, the courts concluded that they had to determine whether the degree of restriction bore a reasonable relation to the degree of danger. In both cases the restriction was found excessive and the exclusion order struck down.

Surely an impartial judge would have reached the same conclusion on the West Coast in 1942 had the military been put to its proof against Nisei with unquestionable records of loyalty to the United States. How could a conscientious objector like *Hirabayashi* seriously be considered a threat to the security of Seattle? But in the spring of 1942 on the West Coast, not even the courts of the United States were places of calm and dispassionate justice.

EXHIBIT SSS



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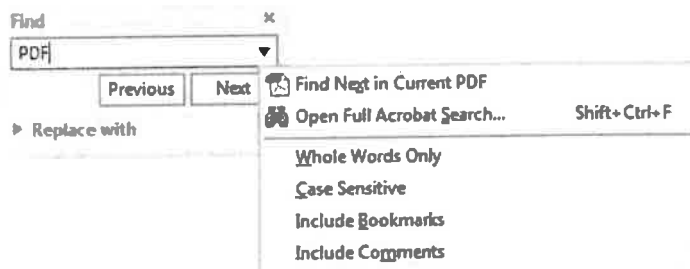
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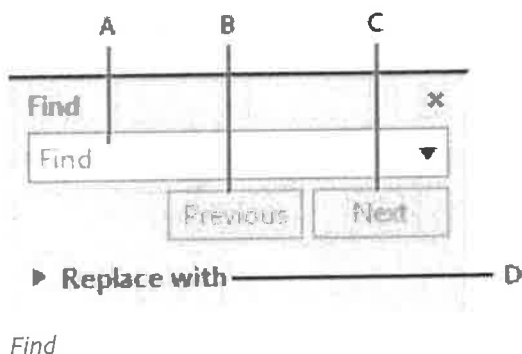
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Do one of the following:

- **Choose Edit > Advanced Search** (Shift+Ctrl/Command+F).
- On the Find toolbar, click the arrow ▼ and choose **Open Full Acrobat Search.**

Search appears as a separate window that you can move, resize, minimize, or arrange partially or completely behind the PDF window.

Arrange the PDF document window and Search window

In the Search window, click Arrange Windows .

Acrobat resizes and arranges the two windows side by side so that together they almost fill the entire screen.

*Note: Clicking the **Arrange Windows** button a second time resizes the document window but leaves the Search window unchanged. If you want to make the Search window larger or smaller, drag the corner or edge, as you would to resize any window on your operating system.*

Find and replace text in PDFs

Find and replace text in a PDF

The Find toolbar searches the currently open PDF. You can selectively replace the search term with alternative text. You replace text one instance at a time. You cannot make a global change throughout a PDF or across multiple PDFs.

- 1 **Choose Edit > Find** (Ctrl/Command+F).
- 2 Type the text you want to search for in the text box on the Find toolbar.
- 3 To replace text, click **Replace With** to expand the toolbar, then type the replacement text in the **Replace With** text box.
- 4 (Optional) Click the arrow ▼ next to the text box and choose one or more of the following:
 - Whole Words Only** Finds only occurrences of the complete word you type in the text box. For example, if you search for the word *stick*, the words *tick* and *sticky* aren't found.
 - Case-Sensitive** Finds only occurrences of the words that match the capitalization you type. For example, if you search for the word *Web*, the words *web* and *WEB* aren't found.
 - Include Bookmarks** Also searches the text in the Bookmarks panel.

Include Comments Also searches the text of any comments.

- 5 Click Next.
Acrobat jumps to the first instance of the search term, which appears highlighted.
- 6 Click Replace to change the highlighted text, or click Next to go to the next instance of the search term.
Alternatively, click Previous to go back to the previous instance of the search term.

Find text in multiple PDFs

The **Search** window enables you to look for search terms in multiple PDFs. For example, you can search across all PDFs in a specific location or all files in an open **PDF Portfolio**. The **Replace With** option is not available in the Search window.

Note:

If documents are encrypted (have security applied to them), you cannot search them as part of a multiple-document search. Open those documents first and search them one at a time. However, documents encrypted as **Adobe Digital Editions** are an exception and can be searched as part of a multiple-document search.

- 1 Open Acrobat on your desktop (not in a web browser).
- 2 Do one of the following.
 - In the Find toolbar, type the search text, and then choose **Open Full Acrobat Search** from the pop-up menu.
 - In the Search window, type the search text.

3

In the Search window, select All PDF Documents In. From the pop-up menu directly below this option, choose Browse For Location.

- 4 Select the location, either on your computer or on a network, and click OK.
- 5 To specify additional search criteria, click Show Advanced Options, and specify the options.
- 6 Click Search.

Note:

During a search, you can click a result or use keyboard shortcuts to navigate the results without interrupting the search. Clicking the Stop button under the search-progress bar cancels further searching and limits the results to the occurrences already found. It doesn't close the Search window or delete the Results list. To see more results, run a new search.

Review and save PDF search results

Review search results

After you run a search from the Search window, the results appear in page order, nested under the names of each searched document. Each item listed includes a few words of context (if applicable) and an icon that indicates the type of occurrence.

Jump to a specific instance in the search results (single PDFs only)

- 1 If necessary, expand the search results. Then select an instance in the results to view it in the PDF.


- 2 To view other instances, click another instance in the results.


Sort instances in the search results


Select an option from the Sort By menu near the bottom of the Search window. Results can be sorted by Relevance Ranking, **Date Modified**, Filename, or Location.


Icons shown with search results


The icon next to an instance of the search results indicates the search area in which the instance appears. Selecting an icon has the following effect:


Document icon  Makes the document active in the document window. Expand the list to show the individual search results within that document.


(General) Search Result icon  In PDFs, jumps to that instance of the search term, usually in the body text of the PDF. The instance of the search term is highlighted in the document.

Non-PDF Search Result or Metadata icon  In non-PDF files, opens the file; or if opening of that file type is restricted, opens a message dialog box.

Bookmark icon  Opens the Bookmarks panel and highlights the instances of the search terms.


Comments icon  Opens the Comments panel and highlights the instances of the search terms.

Layer icon  May open a message indicating that the layer is hidden and asking if you want to make it visible.

Attachment icon  Opens a file that is attached to the searched parent PDF and shows the highlighted instances of the search terms.

Save search results

You can save the search results as a PDF or CSV file. For a video, see [Saving Search Results in Acrobat](#).

Click  and choose Save results to PDF or Save results to CSV.

Advanced Search Options

By default, the Search window displays basic search options. Click **Show More Options** near the bottom of the window to display additional options. To restore the basic options, click **Show Less Options** near the bottom of the window.

Note:

You can set a preference so that More search options always appear in the Search window. In the Preferences dialog box under Categories, select Search.

Look In Restricts the search to the current PDF, all of a currently open **PDF Portfolio** (if applicable), an index, or a location on your computer. If you choose to search an index, a location, or a PDF Portfolio, additional options appear under Use These Additional Criteria.

What word or phrase would you like to search for Enter the text or phrase to search for.

Return Results Containing Restricts your search results according to the option you choose:

Match Exact Word Or Phrase Searches for the entire string of characters, including spaces, in the same order in which they appear in the text box.

Match Any Of The Words Searches for any instances of at least one of the words typed. For example, if you search for *each of*, the results include any instances in which one or both of the two words appear: *each, of, each of, or of each*.

Match All Of The Words Searches for instances that contain all your search words, but not necessarily in the order you type

them. Available only for a search of multiple PDFs or index definition files.

Boolean Query Uses the Boolean operators that you type with the search words into the **What Word Or Phrase Would You Like To Search For** box. Available only for searching multiple PDFs or PDF indexes. *Note: You cannot run wildcard searches using asterisks (*) or question marks (?) when searching PDF indexes.*

Use These Additional Criteria (text options) Includes the basic search options plus five additional options:

Proximity Searches for two or more words that are separated by no more than a specified number of words, as set in the Search preferences. Available only for a search of multiple documents or index definition files, and when **Match All Of The Words** is selected.

Stemming Finds words that contain part (the stem) of the specified search word. For example, a search for *opening* finds instances of *open*, *opened*, *opens*, and *openly*. This option applies to single words and phrases when you search the current PDF, a folder, or an index created with Acrobat 6.0 or later. Wildcard characters (*, ?) aren't permitted in stemming searches. Stemming isn't available if either **Whole Words Only** or **Case-Sensitive** is selected.

Include Bookmarks Searches the text of any bookmarks, as viewed in the Bookmarks panel.

Include Comments Searches the text of any comments added to the PDF, as viewed in the Comments panel.

Include Attachments Searches files that are attached to the current PDF or other attached PDFs (up to two levels deep).

Use These Additional Criteria (document properties) Appears only for searches across multiple PDFs or PDF indexes. You can select multiple property-modifier-value combinations and apply them to searches. This setting does not apply to non-PDF files inside **PDF Portfolios**. *Note: You can search by document properties alone by using document property options in combination with a search for specific text.*

Check box Applies the criteria set in the three connected options to the search. (The check box is selected automatically

when you enter information in any of the three options for that set. After you enter options, deselecting the check box doesn't clear the entries; they just aren't applied to the search.)

First menu (property) Indicates the document characteristic to search for. The available options include **Date Created**, **Date Modified**, Author, Title, Subject, Filename, Keywords, Bookmarks, Comments, **JPEG Images**, **XMP Metadata**, and Object Data.

Second menu (modifier) Indicates the level of matching. If the first menu selection is a date, the available options in the second menu are **Is Exactly**, **Is Before**, **Is After**, **Is Not**.

Otherwise, the available options are Contains and **Does Not Contain**.

Third box (value or text) Indicates the information to be matched, which you type in. If the first menu selection is a date, you can click the arrow to open a calendar that you can navigate to find and select the date you want.

Boolean operators

Commonly used Boolean operators include the following:

AND

Use between two words to find documents that contain both terms, in any order. For example, type **paris AND france** to identify documents that contain both *paris* and *france*.

Searches with AND and no other Boolean operators produce the same results as selecting the **All Of The Words** option.

NOT

Use before a search term to exclude any documents that contain that term. For example, type **NOT kentucky** to find all documents that don't contain the word *kentucky*. Or, type **paris NOT kentucky** to find all documents that contain the word *paris* but not the word *kentucky*.

OR

Use to search for all instances of either term. For example, type **email OR e-mail** to find all documents with occurrences of either spelling. Searches with OR and no other Boolean operators produce the same results as selecting the Any Of The Words option.

^ (exclusive OR)

Use to search for all instances that have either term but not both. For example, type **cat ^ dog** to find all documents with occurrences of either *cat* or *dog* but not both *cat* and *dog*.

()

Use parentheses to specify the order of evaluation of terms. For example, type **white AND (whale OR ahab)** to find all documents that contain either *white* and *whale* or *white* and *ahab*. (The query processor performs an OR query on *whale* and *ahab* and then performs an AND query on those results with *white*.)

To learn more about Boolean queries, syntax, and other Boolean operators that you can use in your searches, refer to any standard text, website, or other resource with complete Boolean information.

Search index files of cataloged PDFs

A full-text index is created when someone uses Acrobat to define a *catalog* of PDFs. You can search that index rather than running a full-text search of each individual PDF in the catalog.

An index search produces a results list with links to the occurrences of the indexed documents.

Note:

To search a PDF index, you must open Acrobat as a stand-alone application, not within your web browser.

In **Mac OS**, indexes created with some older versions of Acrobat are not compatible with the Acrobat X Search feature. If you have upgraded recently, update the index before using Acrobat X to search.

- 1 **Choose Edit > Advanced Search.**
- 2 Type the search text, and then click Show **More Options**, near the bottom of the Search window.
- 3 For Look In, choose Select Index.
- 4 Select an index from the list, or click Add and add an index. Repeat as needed.

Note:

To read file data about a selected index, click Info. To exclude an index from the search, select it and click Remove.

- 5 Click OK to close the Index Selection dialog box, and then choose Currently Selected Indexes from the Look In menu.
- 6 Proceed with your search as usual.

Note:

Selecting the **Match Whole Word Only** option when searching indexes significantly reduces the time taken to return results. See *Creating PDF indexes*.

Search features preferences

In the Preferences dialog box under Categories, select Search.

Ignore Asian Character Width Finds both half-width and full-width instances of the Asian language characters in the search text.

Ignore Diacritics And Accents Finds the search terms with any variation of the alphabetical characters. For example, typing *cafe* finds both *cafe* and *café*. Likewise, typing *café* finds both versions. If this option isn't selected, typing *cafe* doesn't find *café*, and vice versa.

Always Show More Options in Advanced Search Shows the additional options available in the Search window, in addition to the basic options.

Show Document Title In Search Results Displays document titles in search results. If a document does not have a title, displays the filename. When deselected, displays filenames in search results.

Maximum Number Of Documents Returned In Results Limits the search results in the **Search PDF** window to a specific number of documents. The default value is 500, but you can enter any number from 1 to 10,000.

Range Of Words For Proximity Searches Limits the search results to those in which the number of words between the search terms isn't greater than the number you specify. Accepts a range from 1 to 10,000.

Enable Fast Find Generates a cache of information from any PDF that you search. This cache reduces subsequent search times for that PDF.

Maximum Cache Size

Limits the temporary cache of search information for the Fast Find option to the specified size in megabytes (from 5 to 100,000). The default setting is 100.

Purge Cache Contents Deletes the **Fast Find** option's entire temporary cache of search information.

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EXHIBIT TTT

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VOLUME 2

Organization and Functions of the LAPD

GENERAL

005. STATE CONSTITUTION PROVISION-CITY CHARTER TO PROVIDE FOR GOVERNMENT OF MUNICIPAL POLICE FORCE, Article XI, Section 5 (b), of the Constitution of the State of California authorizes the City of Los Angeles to provide for (1) *the constitution, regulation, and government of the city police force;* (2) *subgovernment in all or part of a city;* (3) *conduct of city elections and;* (4) *plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.*

010. CHARTER PROVISIONS-POWERS AND DUTIES-DEPARTMENT.

The general powers and duties of the Department and members thereof are prescribed in the following City Charter section:

"Sec. 570. The Police Department shall have the power and duty to enforce the penal provisions of the Charter, City ordinances and state and federal law. In the discharge of these powers and duties, the members of the Department shall have the powers and duties of peace officers as defined by state law."

015. CHARTER PROVISIONS-POWERS AND DUTIES-POLICE COMMISSION.

The powers and duties of the Police Commission are prescribed in the Los Angeles City Charter, as follows:

015.10 POLICE COMMISSION-HEAD OF DEPARTMENT. There shall be the following departments each of which shall be under the control and management of a board of commissioners that shall be the head of the department:

"Sec. 500 (a)

- Fire*
- Fire and Police Pensions*
- Library*
- Los Angeles City Employees Retirement System*
- Police*
- Public Works*
- Recreation and Parks*

Each department created in the Charter shall have a board of commissioners

consisting of five commissioners, unless some other number is provided in the Charter for a specific board.□

"Sec. 507. Other than the elected offices, each department and office established by the Charter or created by ordinance, and each of the Public Works bureaus of Contract Administration, Engineering, Sanitation, Street Lighting, and Street Services shall have a chief administrative officer. In departments under the control and management of a board of commissioners, the chief administrative officer administers the affairs of the department. In departments and offices not under the control and management of a board of commissioners, the chief administrative officer has full charge and control of all work of the department or office. Elsewhere in the Charter and in the Los Angeles Administrative Code, chief administrative officers may have different position titles including general manager and director."

015.20 POLICE COMMISSION-EXECUTIVE POWER. The general executive powers and duties of the Police Commission are prescribed in the following City Charter section:

"Sec. 506. Subject to the provisions of the Charter, and to any ordinances as are not in conflict with the grants of power made to each department in the Charter:

Management. *The head of each department shall have power to supervise, control, regulate and manage the department.*

Rules and Regulations. *The head of each department shall have the power to make and enforce all rules and regulations necessary for the exercise of the powers conferred upon the department by the Charter. The board of each department under the control and management of a general manager shall have the power to make and enforce all rules and regulations necessary for the exercise of powers and the performance of the duties conferred upon that board by the Charter. Every order or resolution adopting a rule of general application to be followed by the public shall be published once in a daily newspaper and shall take effect upon publication. Those rules, when adopted by order of a general manager who is the head of a department, shall be subject to the approval of the Mayor.*

Police Power. *No grant of power by the Charter to any department or board of City government shall be construed to restrict the power of the Council to enact ordinances under the police power of the City, except as otherwise specifically provided in the Charter.□*

015.30 POLICE COMMISSION-APPOINTMENT AND REMOVAL OF THE CHIEF OF POLICE. The Chief of Police shall be appointed, shall serve, and shall be removed in accordance with the following provisions:

□ **Sec. 575. Recruitment and Selection.** *The recruitment and selection of qualified candidates for the position of Chief of Police shall be administered by the general manager of the Personnel Department, in cooperation with the Board of Police Commissioners, through a system of open competition based on professionally accepted recruitment and selection standards. The general manager of the Personnel*

Department shall refer a group of at least six highly qualified candidates to the Board of Police Commissioners, which shall then provide a list of three recommended candidates, in ranked order, to the Mayor for review and for appointment of one of them to the Office of Chief of Police. At the request of the Mayor, the Board of Police Commissioners shall provide the Mayor with an additional list of three candidates, in ranked order, from the group of candidates previously provided by the general manager of the Personnel Department. The Mayor's appointee shall be subject to confirmation by the Council. Should the Council fail to confirm the appointee, and if any additional candidates remain, the Mayor may request and receive from the Board of Police Commissioners one additional candidate, who will be selected from the group of candidates previously provided by the general manager of the Personnel Department. The Mayor may appoint that candidate or one of the candidates on the list or lists previously provided to the Mayor by the Board of Police Commissioners, subject to Council confirmation.

Term. *The Chief of Police shall serve a five-year term and may be appointed, in the manner described below, to a second five-year term. No person shall serve as Chief of Police for more than ten years altogether. Time accrued as Acting Chief of Police or as a temporary Chief of Police shall not be included in calculating the ten years.*

Reappointment. *If the Chief of Police wishes to be considered for appointment to a second term, he or she shall apply to the Board of Police Commissioners for that appointment at least 180 days prior to the expiration of the first term. At least 90 days prior to the expiration of the first term, the Board of Police Commissioners shall, in its discretion, respond affirmatively or negatively to that application. If the Board of Police Commissioners acts, affirmatively or negatively, on the application for appointment, that action shall be subject to the provisions of Section 245 and the Council may assert its jurisdiction over the matter of the application for appointment. Should that jurisdiction be asserted, any affirmative or negative action on the appointment shall be final. If the Board of Police Commissioners fails to respond to the application within 90 days prior to the expiration of the first term, the Mayor shall, at least 60 days prior to the expiration of the first term, act in lieu of the Board. Should the Mayor so act, the Council, by two-thirds vote, may act within 30 days to override the Mayor's action, the action shall be final. If the request of the Chief of Police for appointment to a second term is not approved as provided in this section, there shall be no reappointment and a vacancy in the Office of the Chief of Police shall occur at the expiration of the first term.*

Removal by Board. *The Chief of Police shall serve at the pleasure of the City, as set forth herein, and shall not attain any property interest in the position of Chief of Police. The Board of Police Commissioners may remove the Chief of Police from office at any time prior to the expiration of a first or second five-year term. Should the Board of Police Commissioners so act to remove the Chief of Police, it shall promptly notify the Mayor of its action. If the Council has not asserted its jurisdiction over the matter of the removal of the Chief of Police as permitted under Section 245, the Mayor shall have five days from the last date on which the Council could have asserted jurisdiction to reverse the action of the Board of Police Commissioners. Upon the Mayor's failure to act within that period, the removal*

shall become effective. By a letter received by the City Clerk within five days of the effective date of the removal, the removed Chief of Police may request a hearing on the removal before the Council which, by two-thirds vote, may override the removal and restore the Chief of Police to office. If the Council asserts jurisdiction over the matter of the removal of the Chief of Police, the removal shall be effective immediately. Should the provision of an appeal from the removal be required by law, the Council shall, by ordinance, provide an appellate procedure in conformance with the law. The Chief of Police may request an appeal by letter to the City Clerk within five days of the effective date of the removal.

Removal by Council.*The Council may remove the Chief of Police from office in accordance with the following procedures. The Council, by two-thirds vote, may initiate removal proceedings by giving ten days written notice of a public hearing on the proposed removal to the Mayor, the Board of Police Commissioners and the Chief of Police. At the hearing, the Mayor and the Board of Police Commissioners shall appear to discuss with the Council whether the Chief of Police should be removed from office. The views of the Chief of Police shall be heard and considered at his or her request. Thereafter, the Council, by two-thirds vote, may act to remove the Chief of Police from office, and the removal shall be effective immediately. Should the provision of an appeal from the removal be required by law, the Council shall, by ordinance, provide an appellate procedure in conformance with the law. The Chief of Police may request an appeal by letter to the City Clerk within five days of the effective date of the removal. □*

020. CHARTER PROVISIONS-POWERS AND DUTIES - CHIEF OF

POLICE. The powers and duties of the Chief of Police are prescribed in the Los Angeles City Charter. The following provisions thereof are quoted in full because of their general interest and direction.

□ **Sec. 574.** *The chief administrative officer of the Police Department shall be known as the Chief of Police. Subject to the provisions of the Charter, the rules of the Police Department, and the instruction of the Board of Police Commissioners, the Chief of Police shall have the power and duty to:*

- (a) Suppress all riots, disturbances and breaches of the peace, and to that end may call on any person for aid. The Chief may pursue and arrest, within the limits of the City, any person fleeing from justice, and shall without delay bring all persons arrested by the Department before a judge of the proper court for trial or examination. The Chief may receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from places outside the City;*
- (b) Administer the affairs of the Department as its chief administrative officer, except as to matters under the control of the Executive Director of the Board of Police Commissioners;*
- c) Appoint, discharge, discipline, transfer and issue instructions to the employees of the Department, other than the Secretary of the Board, the chief accounting employee of the*

Department, the Inspector General of the Police Department and his or her staff, the Executive Director of the Board and his or her staff, all subject to the civil service

provisions of the Charter;

(d) Expend the funds of the Department, except those funds under the control of the Executive Director, in accordance with the provisions of the budget appropriations or of

appropriations made after adoption of the budget;

(e) Recommend to the Board of Police Commissioners prior to the beginning of each fiscal year an annual Departmental budget covering the anticipated revenues and

expenditures of the Department, except the anticipated revenues and expenditures under the control of the Executive Director, and conforming so far as practicable to the forms and dates provided in the Charter for the general City budget;

(f) Certify all expenditures of the Department to the chief accounting employee, except those expenditures under the control of the Executive Director;

(g) Exercise further powers in the administration of the Department conferred upon the Chief of Police by the Board of Police Commissioners; and,

(h) Execute, personally or by deputy, and return all writs and processes issued by any court having jurisdiction of criminal cases arising upon violations of the provisions of the

Charter or ordinance. The Chief's jurisdiction and that of his or her deputies in the service of process in all criminal cases, and in cases of violation of City ordinances, shall be co-extensive with that of the County of Los Angeles. □

020.30 CHIEF OF POLICE-TEMPORARY ABSENCE OR INABILITY TO ACT. □ **Sec. 512.** *Wherever the Charter provides for the discharge of specific duties by a specific appointee other than the Chief of Police, the appointing power may designate an employee in the same department to act in case of the appointee's temporary absence or other inability to act, or upon the written request of such appointee. □*

025. RANK ESTABLISHED - CIVIL SERVICE COMMISSION. The order of rank in the Department, as established by the Civil Service Commission, shall be as follows:

- Chief of Police (COP).
- Deputy Chief (DEP CHF).
- Commander (CMDR).
- Captain (CAPT).
- Lieutenant (LT).
- Sergeant (SGT), Detective (DET).
- Police Officer (PO).

026. RANK AND PAYGRADE. The order of rank and paygrade in the Department is as follows:

- Chief of Police (COP).

- Deputy Chief II (Asst Chief).
- Deputy Chief I (Dep Chf).
- Commander (Cmdr).
- Captain III (Capt. III).
- Captain II (Capt. II).
- Captain I (Capt. I).
- Lieutenant II (Lt. II).
- Lieutenant I (Lt. I).
- Sergeant II (Sgt. II)/Detective III (Det. III).
- Sergeant I (Sgt. I)/Detective II (Det. II).
- Detective I (Det. I).
- Police Officer III+1 (PO III+1).
- Police Officer III (PO III).
- Police Officer II (PO II).
- Police Officer I (PO I).

030. DEPARTMENT ORGANIZATION-TERMINOLOGY.

030.10 FUNCTION - DEFINED. "Function" shall mean the broadest course of action or task performed by an organizational unit, and it includes those major aspects which distinguish one organizational unit from another.

030.20 JURISDICTION - DEFINED. "Jurisdiction" shall mean the sphere of authority exercised by an organizational unit within the Department; it includes those limits (functional, geographical, or legal) within which an organizational unit may exercise any or all of its powers.

030.30 SPECIAL DUTIES - DEFINED. "Special duties" shall mean those specific activities performed by an organizational unit, in addition to its functions, which must be accomplished to fulfill the objectives or purpose of the unit. The responsibilities listed are characteristic and outstanding.

030.40 LINE COMMAND - DEFINED. "Line command" shall mean the exercise of the authority of command delegated by the Chief of Police to his or her immediate subordinates, and by them to their subordinates, down the lines of direct command to the lowest level of authority.

030.50 STAFF RESPONSIBILITY - DEFINED. "Staff responsibility" shall refer to the responsibility given to a staff officer for developing and recommending policies and procedures affecting those functions coming within his jurisdiction, and for informing the Chief of Police as to the conformance to such policies and procedures throughout the Department.

030.60 SPECIAL LIAISON - DEFINED. "Special liaison" shall refer to those specific liaison contacts that are characteristic and outstanding, which an organizational unit maintains for the Department with outside agencies.

030.80 ORGANIZATION - DEFINED. "Organization" shall mean the structure of the Department resulting from a division of the duties placed upon the Chief of

Police to ensure coordination and the accomplishment of Department objectives.

040. DEPARTMENT ORGANIZATION - DESCRIPTIVE TITLES OF ORGANIZATIONAL ENTITIES. The magnitude of the task imposed upon the Chief of Police is such that it necessitates the segregation of Department employees into organizational entities. The organization levels so established shall be described by the following terms in the order listed:

- Department.
- Bureau.
- Group.
- Area or Community Police Station.
- Division.
- Section.
- Unit.
- Detail.

040.10 DEPARTMENT - DEFINED. "Department" shall be used to describe the Los Angeles Police Department as created in Section 500 (a) of the City Charter.

040.30 BUREAU - DEFINED. "Bureau" shall be used to describe a major segregation, either functional or geographical, of kindred phases of activities within the Department.

Note: An "administrative office" shall be established within each bureau to assist the commanding officer in the performance of routine clerical tasks and special duties.

040.40 GROUP - DEFINED. "Group" shall be used to describe a functional segregation of activities, and/or an assembling of two or more divisions or sections, within a bureau.

040.50 AREA - DEFINED. "Area" shall be used internally to describe a geographic subdivision of an operations bureau.

040.52 COMMUNITY POLICE STATION - DEFINED. The geographic command within a geographic bureau shall be known as a "Community Police Station" when referring to such command externally.

040.54 SUBDIVISION, SUBSTATIONS, COMMUNITY SERVICE CENTERS, AND STOP - IN - LOCATIONS - ESTABLISHED. All geographic separations of a community police station shall be designated as "subdivision" thereof, and the headquarters in which such subdivisions are maintained, even though no separation of control exists, shall be described as "Substations." "Community Services Centers" are community police station field offices and are managed by the Area Commanding Officer. "Stop-in-Locations" are not designated as field offices, but are used by sworn personnel on an as-needed basis. Stop-in-Locations are managed by the Area Commanding Officer.

040.60 DIVISION - DEFINED. "Division" shall be used to describe a functional

subdivision of activities within the Office of the Chief of Police, a bureau, group, or Area.

040.70 SECTION - DEFINED. "Section" shall be used to describe a major activity within the Office of the Chief of Police, a bureau, group, Area, or division.

040.80 UNIT - DEFINED. "Unit" shall be used to describe a specific activity within an Area, division, or section.

040.90 DETAIL - DEFINED. "Detail" shall be used to describe a specific assignment or a duty.

050. DEPARTMENT ORGANIZATION - POSITIONS ESTABLISHED. By authority of the Los Angeles City Charter and Civil Service Rule 11A, Section 6, the following positions are established for the purpose of internal administration:

050.10 GENERAL MANAGER. The general manager of the Police Department shall be known as the Chief of Police, as provided in Charter Section 574 (Manual Section 2/020).

050.15 ACTING CHIEF OF POLICE. The Acting Chief of Police shall, upon the direction of the Chief of Police and with the approval of the Police Commission, assume command of the Department during an authorized absence of the Chief of Police.

050.30 BUREAU COMMANDING OFFICER. Bureau commanding officers shall exercise line command over the employees of their assigned bureaus. In addition, they shall assume staff responsibility over all matters relating to, or concerned with, the fulfillment of the functions of their assigned bureaus. They are responsible for keeping the Chief of Police informed as to the activities and the accomplishments of the groups, or Areas, divisions, and sections within their assigned bureaus.

050.40 GROUP COMMANDING OFFICER. Group commanding officers shall exercise line command over the employees of their assigned groups.

050.50 AREA COMMANDING OFFICER. Area commanding officers shall exercise line command over the employees of their assigned Areas.

050.60 DIVISION COMMANDING OFFICER. Division commanding officers shall exercise line command over the employees of their assigned divisions.

050.70 OFFICER IN CHARGE. Officers in charge shall exercise line command over the employees of their assigned watches, sections, units, or details.

060. DEPARTMENT ORGANIZATION. The Department organization is established as set forth in the following sections.

061. POLICE COMMISSION. Commission Investigation Division shall report to the Police Commission (Manual Section 2/120) through the Executive Director.

062. OFFICE OF THE CHIEF OF POLICE. The Office of the Chief of Police will consist of:

Chief of Staff.

- Administrative Section.

Employee Relations Group.

Office of Constitutional Policing and Policy.

- Governmental Liaison section.
- Department Risk Manager.
- Risk Management Legal Affairs Group.
- Legal Affairs Division.
- Risk Management Division.
- OMBUDS Section.
- Policies and Procedures Division.
- Audit Division.
- Media Relations and Community Affairs Group.
- Community Relationship Division.

Professional Standards Bureau.

- Special Operations Division.
- Force Investigation Division.
- Internal Affairs Group.
- Administrative Investigations Division.
- Criminal Investigations Division.

Office of Administrative Services.

- Assistant to the Director.
- Behavioral Science Services.
- Use of Force Review Division.
- Fiscal Operations Division.
- Administrative Services Bureau.
- Police Science and Training Bureau.
- Real-Time Analysis and Critical Response Division (RACR).

Office of Special Operations.

- Assistant to the Director.
- Chief of Detectives.
- Counter Terrorism and Special Operations Bureau.
- Security Services Division.
- Property Division.
- Youth Programs/Gang Reduction Youth Development (GRYD).

Office of Operations.

- COMPSTAT Division.
- Assistant to the Director.
- Central Bureau.
- West Bureau.
- Valley Bureau.
- South Bureau.
- Criminal Gang and Homicide Division.
- Special Olympics Planning Group.

Information Technology Bureau.

- Application Development & Support Division.
- Information Technology Division.
- Grants Section.
- Radio planning Section.

063. OFFICES - ESTABLISHED. The Department shall be divided into the following functional offices under the direction of the Chief of Police:

- Office of Operations.
- Office of Special Operations.
- Office of Administrative Services.
- Office of Constitutional Policing and Policy.

064. OFFICE DIRECTORS - ESTABLISHED. An Assistant Chief shall command each of the four organizational Offices and will hold the title of Director of their respective Office.

065. OFFICE OF SPECIAL OPERATIONS. The Office of Special Operations shall consist of the Director and the following:

<p>Assistant to the Director.</p> <ul style="list-style-type: none"> • Property Division. • Custody Services Division. 	<p>Counter Terrorism and Special Operations Bureau.</p> <ul style="list-style-type: none"> • Major Crimes Division. • Emergency Services Division. • Metropolitan Division. • Air Support 	<p>Chief of Detectives.</p> <ul style="list-style-type: none"> • Investigative Analysis Section. • Assistant Commanding Officer. • Robbery Homicide Division. • Forensic Science 	<p>Youth Programs Unit/Gang Reduction Youth development Unit (GRYD)</p>
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<ul style="list-style-type: none"> • Security Services Division. 	<ul style="list-style-type: none"> • Emergency Operations Division. 	<ul style="list-style-type: none"> • Technical Investigation Division • Juvenile Division. • Gang and Narcotics Division. • Detective Support & Vice Division. • Commercial Crimes Division.
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066. OFFICE OF ADMINISTRATIVE SERVICES (OAS). The Office of Administrative Services shall consist of the Director and the following:

<p>Assistant to the Director.</p> <ul style="list-style-type: none"> • Employee Assistance Unit. • Officer Representation Unit. • HYDRA 	<p>Use of Force Review Division.</p>	<p>Behavioral Science Services.</p>	<p>Fiscal Operations Division.</p>	<p>Real-Time Analysis and Critical Response Division (RACR)</p>
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<p>Administrative Services Bureau.</p> <ul style="list-style-type: none"> • Assistant Commanding Officer. • Motor Transport Division. • Facilities Management Division. • Communications Division.. • Records and Identification Division. • Personnel Division. • Recruitment and Employment Division. • Facilities Management Division. 	<p>Police Services and Training Bureau.</p> <ul style="list-style-type: none"> • Assistant Commanding Officer. • Police Training and Education. • Training Division. • In-Service Training. • Magnet Schools. • Reserve Officer and Volunteer Section.
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067. OFFICE OF OPERATIONS. The Office of Operations shall consist of the Director and the following:

- COMPSTAT Division

Assistant to the Director, Office of Operations.

- Operations-Central Bureau.
- Operations-West Bureau.
- Operations-Valley Bureau.
- Operations-South Bureau.
- Criminal Gang and Homicide Division.
- Special Olympics Planning Group.

067.05. OFFICE OF CONSTITUTION POLICING AND POLICY. The Office of Constitutional Policing and Policy shall consist of the Director and the following:

- Policies and Procedures Division.
- Audit Division.
- Governmental Liaison

Department Risk Manager, Risk Management Legal Affairs Group, Office of Constitutional Policing and Policy.

- Risk Management Division.
- Legal Affairs Division.
- OMBUDS Section.

068. OPERATIONS - CENTRAL BUREAU.

- Assistant Commanding Officer.

Central Area.	Hollenbeck Area.	Newton Area.
<ul style="list-style-type: none"> • Central Patrol Division. • Central Detective Division. 	<ul style="list-style-type: none"> • Hollenbeck Patrol Division. • Hollenbeck Detective Division 	<ul style="list-style-type: none"> • Newton Patrol Division. • Newton Detective Division.

<p>Northeast Area.</p> <ul style="list-style-type: none"> • Northeast Patrol Division. • Northeast Detective Division. 	<p>Rampart Area.</p> <ul style="list-style-type: none"> • Rampart Patrol Division. • Rampart Detective Division. 	<p>Central Traffic Division.</p>
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069. OPERATIONS - SOUTH BUREAU.

- Assistant Commanding Officer.

<p>Harbor Area.</p> <ul style="list-style-type: none"> • Harbor Patrol Division. • Harbor Detective Division. 	<p>77th Street Area.</p> <ul style="list-style-type: none"> • 77th Street Patrol Division. • 77th Street Detective Division. 	<p>Southeast Area.</p> <ul style="list-style-type: none"> • Southeast Patrol Division. • Southeast Detective Division. 	<p>Southwest Area.</p> <ul style="list-style-type: none"> • Southwest Patrol Division. • Southwest Detective Division.
<p>South Traffic Division.</p>		<p>Criminal Gang/Homicide Division.</p>	

070. OPERATIONS - WEST BUREAU.

- Assistant Commanding Officer.

<p>Hollywood Area.</p> <ul style="list-style-type: none"> • Hollywood Patrol Division. • Hollywood Detective Division. 	<p>Pacific Area.</p> <ul style="list-style-type: none"> • Pacific Patrol Division. • Pacific Detective Division. 	<p>West Los Angeles Area.</p> <ul style="list-style-type: none"> • West Los Angeles Patrol Division. • West Los Angeles Detective Division.
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<p>Wilshire Area.</p> <ul style="list-style-type: none"> • Wilshire Patrol Division. • Wilshire Detective Division. 	<p>Olympic Area.</p> <ul style="list-style-type: none"> • Olympic Patrol Division. • Olympic Detective Division. 	<p>LAX Field Service Section.</p>	<p>West Traffic Division.</p>
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071. OPERATIONS - VALLEY BUREAU.

- Assistant Commanding Officer.

<p>Van Nuys Area.</p> <ul style="list-style-type: none"> • Van Nuys Patrol Division. • Van Nuys Detective Division. 	<p>Mission Area.</p> <ul style="list-style-type: none"> • Mission Patrol Division. • Mission Detective Division. 	<p>North Hollywood Area.</p> <ul style="list-style-type: none"> • North Hollywood Patrol Division. • North Hollywood Detective Division. 	<p>Foothill Area.</p> <ul style="list-style-type: none"> • Foothill Patrol Division. • Foothill Detective Division.
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<p>Devonshire Area.</p> <ul style="list-style-type: none"> • Devonshire Patrol Division. • Devonshire Detective Division. 	<p>West Valley Area.</p> <ul style="list-style-type: none"> • West Valley Patrol Division. • West Valley Detective Division. 	<p>Topanga Area.</p> <ul style="list-style-type: none"> • Topanga Patrol Division. • Topanga Detective Division. 	<p>Valley Traffic Division.</p>
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072. OFFICE OF CONSTITUTIONAL POLICING AND POLICY. The Office of Constitutional Policing and Policy shall consist of the Director and the following:

- Policies and Procedures Division.
- Audit Division.
- Governmental Liaison.

- Commanding Officer, Risk Management Legal Affairs Group.
 - Risk Management Division.
 - Legal Affairs Division.
 - Ombuds Section.

080. WATCHES ESTABLISHED. The tours of duty shall be known as watches, the hours of which shall be set by respective commanding officers in accordance with predetermined needs based upon analytical study and with proper organizational approval.

085. CITY JAIL SYSTEM ESTABLISHED. The City Jail System is established in the following sections of the Los Angeles Administrative Code, Division 22, Chapter 11, Article 11, Section 22.279. The City Jail System shall be and consist of the following named stations, substations, and buildings, together with all premises, buildings, and enclosures connected there with:

- (a) Premises located at 1546 West Martin Luther King Jr. Boulevard, commonly known as the "Southwest Area Jail."
- (b) Premises located at 2175 John S. Gibson Boulevard, San Pedro, commonly known as the "Harbor Area Jail."
- (c) Premises located at 1358 North Wilcox Avenue, commonly known as the "Hollywood Area Jail."
- (d) Premises located at 4861 Venice Boulevard, commonly known as the "Wilshire Area Jail."
- (e) Premises located at 7600 Broadway Street, commonly known as the "77th Street Jail Section."
- (f) Premises located at 12312 Culver Boulevard, commonly known as the "Pacific Area Jail."
- (g) Premises located at 150 North Los Angeles Street, commonly known as the "Metropolitan Jail Section."
- (h) Premises located at 12760 Osborne Street, commonly known as the "Foothill Area Jail."
- (i) Premises located at 6240 Sylmar Avenue, Van Nuys, commonly known as the "Valley Jail Section."
- (j) Premises located at 10250 Etiwanda Avenue, commonly known as the "Devonshire Area Jail."

Los Angeles Administrative Code, Division 22, Chapter 11, Article 11, Section 22.280. If and when any of said stations, substations, or buildings are moved to a new location, and if and when any new station, substation or building of the said Department of Police be established, then any jail located in such station, substation, or building so moved or established may by resolution of the City Council be declared to be a part of the Los Angeles City Jail System.

090. PERMANENT BOARDS AND COMMITTEES.

090.10 BOARDS AND COMMITTEES DEFINED. Department boards and

committees shall consist of personnel assembled together at the direction of the Chief of Police for the purpose of gathering, investigating, and acting upon information pertaining to the varied programs in which the Department is engaged.

090.20 REVIEWING OFFICER DEFINED. As the convening authority, the Chief of Police may designate a Deputy Chief of Police to act as the Reviewing Officer on all matters within the jurisdiction of a particular board or committee. The Reviewing Officer shall provide administrative staff supervision and shall submit appropriate reports concerning the activities of the board or committee to the Chief of Police.

090.25 CHAIR - SELECTION. The member-officer with the most seniority in the highest paygrade within the highest rank shall, when not otherwise indicated, be the chair of Department boards and committees.

090.30 CHAIR'S DUTIES. The Chair shall be responsible for maintaining the official files of the board or committee, providing staff and clerical support, and maintaining a record of the minutes of all meetings. The Chair shall submit appropriate reports concerning the activities of the board or committee to the Reviewing Officer or, when no Reviewing Officer has been designated, directly to the Chief of Police or other specified personnel.

The Chair of any board or committee, the membership of which is wholly or partially at the discretion of the Chief of Police, shall submit to the Chief of Police the names of those persons recommended to fill vacancies when they occur and any proposed changes in the membership of the board or committee.

090.40 RECORDER'S DUTIES. When a member has been designated as the Recorder, the member shall assume responsibility for maintaining the official files and records of the authority, board, or committee.

090.50 ALTERNATE MEMBERS. Unless otherwise specified, alternate members of appropriate rank may be designated to sit with a board or committee subject to the approval of the Chair.

092. BOARDS.

092.20 COMMENDATIONS BOARD.

Responsibilities. The Commendations Board shall be responsible for:

- Evaluating commendation reports regarding acts performed by Department personnel.
- Recommending the Bureau Commendation, when appropriate, and returning the reports to the bureau of origin for presentation.
- Approving the awarding of the Police Star, Lifesaving Medal, Police Meritorious Achievement Medal, Community Policing Medal, and Human Relations Medal to employees whose commendatory acts meet the criteria.

- Forwarding reports worthy of consideration for the Police Medal, the Los Angeles Police Department Purple Heart, the Police Meritorious Service Medal, or the Police Meritorious Unit Citation, to the Director, Office of Administrative Services.
- Forwarding reports worthy of consideration for the Medal of Valor, the Police Distinguished Service Medal, the Police Commission Distinguished Service Medal, the Police Commission Integrity Medal or the Police Commission Unit Citation, to the Chief of Police.

Membership. The Board shall be comprised of:

- The Commanding Officer, Police Sciences and Training Bureau, as Chair.
- One captain selected by the Director, Office of Operations.
- One captain selected by the Director, Office of Special Operations.
- One captain selected by the Director, Office of Administrative Services (OAS).
- One civilian commanding officer selected by the Director, OAS.

Reviewing Officer. The Director, OAS, is the Reviewing Officer on all matters within the purview of the Commendations Board.

092.40 TECHNOLOGY REVIEW AND ADVISORY COMMITTEE (TRAC).

Responsibilities. The Technology Review and Advisory Committee (TRAC) will meet a minimum of twice per year or as needed, and will be responsible for:

- Recommending to the Chief of Police, Department priorities and implementation of new information systems and technology;
- Reviewing and approving proposed systems to ensure responsiveness to Department needs and to ensure that all Information Technology (IT) projects promote a:
 - Reduction of redundant technologies;
 - Collaboration of organizations with similar needs; and,
 - A unified approach to acquire project funding (e.g. state/federal/private grants/donations).
- Establishing ad hoc committees to oversee the development, final implementation, and follow up of specialized systems.

Membership. The TRAC will be comprised of the following:

- ? Chief of Staff, Office of the Chief of Police;
- ? Director, Office of Administrative Services;
- ? Director, Office of Operations;
- ? Director, Office of Special Operations; and,
- ? Commanding Officer, Information Technology Bureau (Chair).

The TRAC will also include staff, when necessary, to be available as a direct report to the TRAC to manage specific initiatives as deemed necessary by the Chief of

Police and/or the TRAC.

Additional advisory members may be requested, as needed, for expertise in their respective subject areas. These areas may include, but are not limited to representatives from:

- Administrative Services Bureau;
- Police Sciences and Training Bureau;
- Professional Standards Bureau;
- Detective Bureau;
- Counter Terrorism and Special Operations Bureau;
- Fiscal Operations Division;
- COMPSTAT Division, Real-Time Analysis and Critical Response Division;
- Grants Section;
- Information Technology Agency; and,
- Mayor's Office.

Reviewing Officer. The Chief of Police will be the Reviewing Officer for all matters within the purview of the TRAC.

092.50 USE OF FORCE REVIEW BOARD - RESPONSIBILITIES. The Use of Force Review Board shall convene at the direction of the Chair of the Board and shall:

- Avail itself of any facilities of the Department necessary to conduct a complete examination of the circumstances involved in the incident under investigation;
- Report its findings and recommendations to the Chief of Police; and,
- Upon adjournment, forward the Use of Force Internal Process Report, Form 01.67.01, and other related reports to the Chief of Police.

Membership. The Use of Force Review Board shall be composed of the following:

- The Director, Office of Administrative Services, Chair;
- The involved employee's bureau commanding officer, as an ex-officio member;
- Peer member;
- Operations staff officer selected by the Director, Office of Operations; and,
- The Commanding Officer, Police Sciences and Training Bureau.

Note: The Director, Office of Administrative Services will select an alternate member when a conflict arises.

Exception: When the involved employee is assigned to an organizational entity not subordinate to a bureau commanding officer, the Director, Office of Operations shall appoint a staff officer as an ad hoc member to fill the otherwise vacant position of the involved employee's bureau commanding officer.

Peer member. A peer member of the same classification as the involved employee

shall be selected from a different bureau of assignment than the involved employee. The role of the peer member is to provide the Board with insight at a level of expertise equal to the rank and tenure of the involved employee. The Chair of the Use of Force Review Board shall select the peer member from a standing pool of personnel. Prior to that selection, the Chair shall ensure that the peer member selected has a clear understanding of the role. In addition, the chair shall ensure that the member receives training in Use of Force Review Board responsibilities and functions. Members shall be appointed to the pool as follows:

- Six members of the classification of Police Officer shall be designated by each Operations Bureau commanding officer, the Director, Office of Administrative Services, and the Director, Office of Operations;
- One member each of the classifications of Detective and Sergeant shall be designated by each Operations Bureau commanding officer, and the Office of Administrative Services;
- One member of the classification of Lieutenant shall be designated by the Director, Office of Administrative Services, and the Director, Office of Operations; and,
- One peer member from other classes shall be designated by the Chair as necessary. During the time the Use of Force Review Board is convened, the selected peer member shall be assigned to the Use of Force Review Board as his/her primary duty assignment. Such assignment shall terminate upon adjournment of the Board. An employee's Use of Force Review Board peer member pool standing shall terminate upon the direction of his/her bureau commanding officer or upon his/her transfer from the bureau from which he/she was designated.

Advisory Committee. The committee shall be comprised of the following ad hoc members for technical expertise.

- Officer in Charge (OIC), Self Defense Unit, Training Division;
- The Commanding Officer, Use of Force Review Division;
- The Commanding Officer, Police Sciences and Training Bureau's;
- The Commanding Officer, Force Investigation Division (FID);
- The OIC, Tactics Unit, Training Division; and,
- The FID investigative team.

Special Duties-Chair. The Chair of the Use of Force Review Board shall, upon receipt, review all investigation reports and convene the Board when the investigation involves:

- In custody death;

Note: When reviewing in-custody deaths of juveniles, the Chair of the Use of Force Review Board shall ensure that Force Investigation Division has made the proper notification to the State of California Board of Corrections.

- Death or serious injury resulting from police action except those reportable only as traffic collisions;

Note: An injury shall be considered serious when the injury is substantial and requires hospitalization.

- All head strikes with an impact weapon;
- All upper body control hold use of force incidents;
- Discharge of a firearm by sworn and/or security personnel; and,
- Any other incident involving the discharge of a firearm by a Department employee which, in the judgment of the Chair, warrants review.

Exception: The Chair, Use of Force Review Board, may, at his or her discretion, choose not to convene the Board in the following instances:

- Discharge of firearm incidents involving only the destruction of animals;
- Accidental discharge of firearm incidents not resulting in injuries AND occurring in the presence of Department employees only AND not involving law enforcement action; and,
- In custody deaths where the cause of death is due to natural causes and there is no use of force or procedural violation by a Department employee.

Involved Employee. Whenever an employee becomes involved in a reviewable use of force incident, the employee directly involved may:

- Attend the Use of Force Review Board and observe the presentation of the case; and,
- Address the board on his or her behalf to personally present any relevant information, with the approval of the Chair.

Office of the Inspector General. A representative from the Office of the Inspector General may attend any Use of Force Review Board hearing and interview any hearing participant.

Reviewing Officer. The Chief of Police is the Reviewing Officer for all matters within the purview of the Use of Force Review Board.

092.61 CARRYING A CONCEALED WEAPON BOARD (RETIREES).

Responsibilities. The Carrying a Concealed Weapon Board shall be responsible for denying or revoking a retiree's privilege to carry a concealed weapon upon showing of just cause.

Membership. The Board shall be comprised of:

- The Commanding Officer, Police Sciences and Training Bureau, as Chair;
- A peer member, selected by the retired officer or the Los Angeles Police Protective League; and,
- A Police Commission Hearing Officer.

Reviewing Officer. The Director, Office of Administrative Services is the Reviewing Officer for all matters within the jurisdiction of the Carrying a Concealed

Weapon Board (Retirees).

092.70 MANAGEMENT DEVELOPMENT ADVISORY BOARD.

Responsibilities. The Management Development Advisory Board shall be responsible for:

- Reviewing applications and ranking the candidates for Management Development Programs; and,
- Forwarding, through appropriate channels to the Chief of Police, a list of candidates recommended for selection.

Note: The Chief of Police shall make the final selection from the list of recommended candidates.

Membership. The Board shall be comprised of:

- Staff officers selected by the Chief of Police.

Reviewing Officer. The Chief of Police is the Reviewing Officer on all matters within the jurisdiction of the Management Development Advisory Board.

092.80 PROMOTIONAL ASSESSMENT BOARDS. Promotional Assessment Boards shall convene at the request of the Director, Office of Administrative Services.

Responsibilities. Promotional Assessment Boards shall be responsible for:

- Evaluating promotional candidates;
- Ranking candidates for promotion within designated whole scores from the published Civil Service Report of Eligibles; and,
- Making promotional recommendations to the Chief of Police.

Membership. Boards shall be comprised of three members designated by the Director, Office of Administrative Services. The Director, Office of Administrative Services shall designate the Chair of the Board.

Reviewing Officer. The Director, Office of Administrative Services, is the Reviewing Officer on all matters within the jurisdiction of Promotional Assessment Boards.

092.90 AUTHORITY REVIEW FOR PRODUCT EVALUATIONS. The Director, Office of Administrative Services, is the Reviewing Officer for all product evaluations.

093. COMMITTEES.

093.10 UNIFORM COMMITTEE.

Responsibilities. The Uniform and Equipment Committee shall be responsible for:

- Considering any changes in the uniform and personal equipment worn by uniformed personnel and making recommendations to the Chief of Police;
- Maintaining and publishing, semi-annually, a roster of authorized uniform dealers and their addresses, and publishing without delay the names and addresses of any dealers added to or deleted from the list;
- Supplying authorized dealers with copies of the Department Uniform and Personal Equipment Specifications Manual and Department directives pertaining to the same; and,
- Originating and maintaining correspondence concerning uniform and personal equipment matters.

Membership. The Committee shall be comprised of:

- The Commanding Officer, Police Sciences and Training Bureau, as Chairperson;
- One command officer from Detective Bureau selected by the Director, Office of Special Operations;
- One command officer from a Geographic Bureau, selected by the Director, Office of Operations;
- One command officer selected by the Director, Office of Administrative Services; and,
- Two sworn directors from the Los Angeles Police Protective League.

Reviewing Officer. The Chief of Police is the Reviewing Officer for all matters within the jurisdiction of the Uniform and Equipment Committee.

093.20 EXECUTIVE FLEET SAFETY COMMITTEE. The Executive Fleet Safety Committee (EFSC) will be convened by the Department Traffic Coordinator (DTC) to review all traffic collisions involving □A□ or □K□ injuries; traffic collisions that resulted from the consumption of alcohol or drugs or which may result in a criminal filing; or a traffic collision(s) resulting in an employee accruing eight or more points or four preventable traffic collisions within 36 months. The EFSC consists of:

- Department Traffic Coordinator □ Chairperson;
- Office of Constitutional Policing and Policy;
- Involved employee's commanding officer;
- Involved employee's bureau commanding officer;
- Commanding Officer, Training Division;
- Commanding Officer, traffic division of occurrence, or traffic division from the employee's bureau of assignment if the collision occurred outside the City; and,
- Peer member (same rank) of the involved employee, as selected by the Chairperson of the Executive Fleet Safety Committee; and,
- Assistant to the Director, Office of Operations.

When a committee member is unavailable, an alternate may serve with approval of the EFSC Chairperson. The DTC may grant permission for a Command Staff member to observe the proceedings, with no participation.

The involved employee(s) and their representative may be present during the presentation of the traffic collision facts before the EFSC. They may not be present during the Committees' deliberations.

The EFSC will make a recommendation for adjudication to the Chief of Police (COP). The Commanding Officer (CO), Emergency Operations Division (EOD), will submit the EFSC recommendation to the COP within 30 business days. The COP will make the final adjudication within 30 business days. The employee will be notified in writing of the decision by the CO, EOD. The employee has 30 business days to submit a written appeal (pursuant to Manual Section 3/207.50).

093.45 HOME GARAGING REVIEW COMMITTEE.

Responsibilities. The Home Garaging Review Committee shall be responsible for:

- Managing the Department's Home Garaging Program in accordance with the policies and procedures set forth by the Board of Police Commissioners and the City Council;
- Establishing a submission schedule for renewal applications;
- Reviewing all home garage applications annually; and,
- Determining which applications comply with those policies.

Membership. The Home Garaging Review Committee shall be comprised of the following:

- The Director, Office of Administrative Services, as Chair;
- The Director, Office of Special Operations;
- The Chief of Staff; and,
- The Director, Office of Operations.

Reviewing Authority. The Chief of Police is the Reviewing Authority for this committee.

093.57 LIABILITY MANAGEMENT COMMITTEE.

Responsibilities. The Liability Management Committee (LMC) is responsible for developing strategies to improve risk management policies, procedures, and foster better coordination between Department entities as well as the City Attorney's Office.

Membership. The LMC, chaired by the Department Risk Manager (DRM), is comprised of representatives from the following Department entities:

- Office of Administrative Services (OAS);
- Work Environment Liaison Section (WELS);

- Office of Constitutional Policing and Policy (OCPP);
- Legal Affairs Division (LAD);
- Office of the Chief of Staff (COS);
- Employee Relations Group (ERG);
- Professional Standards Bureau (PSB);
- Internal Affairs Group (IAG);
- Workplace Investigation Unit (WIU); and
- Also invited to attend committee meetings are representatives of the Office of the City Attorney (OCA) and the Office of the Inspector General (OIG).

Reviewing Officer. The Chief of Police is the Reviewing Authority for this committee.

093.75 OPERATIONS COMMUNICATIONS COMMITTEE.

Responsibilities. The Operations Communications Committee shall be responsible for developing communications procedures affecting both the operations bureaus and Communications Division. The Committee shall not establish policy, but instead meet as needed to develop procedures based on existing Department policy.

Membership. The Committee shall be comprised of:

- The Commanding Officer, Communications Division as Chair;
- A Staff or command officer, Counter Terrorism and Special Operations Bureau;
- The Commanding Officer, Policies and Procedures Division;
- Nine representative members from the Office of Operations (to include traffic divisions and detectives) selected by the Director, Office of Operations;
- One command officer, designated by the Director, Office of Administrative Services; and,
- Officer in Charge, Radio Planning Section.

Note: Selection of representative members shall be based upon their productive contribution to communications issues and anticipated permanency in their assignments.

Reviewing Officer. The Director, Office of Administrative Services, is the Reviewing Officer for all matters within the jurisdiction of the Operations Communications Committee.

093.95 RISK MANAGEMENT EXECUTIVE COMMITTEE.

Responsibilities. The Risk Management Executive Committee (RMEC) reviews, processes, and makes recommendations to the Chief of Police regarding Department-wide risk and liability issues.

Membership. The RMEC membership shall be comprised of the following command level personnel or their command level designee:

- Department Risk Manager, as Chair;
- Director, Office of Constitutional Policing and Policy;
- Chief of Staff;
- Director, Office of Operations;
- Director, Office of Administrative Services;
- Director, Office of Special Operations;
- Commanding Officer, Detective Bureau;
- Commanding Officer, Operations-Central Bureau;
- Commanding Officer, Operations-South Bureau;
- Commanding Officer, Operations-West Bureau;
- Commanding Officer, Operations-Valley Bureau;
- Commanding Officer, Risk Management Division;
- Commanding Officer, Counter-Terrorism and Special Operations Bureau;
- Commanding Officer, Administrative Services Bureau;
- Commanding Officer, Legal Affairs Division;
- Commanding Officer, Employee Relations Group;
- Commanding Officer, Behavioral Science Services;
- Commanding Officer, Police Sciences and Training Bureau;
- Commanding Officer, Professional Standards Bureau or Commanding Officer Internal Affairs Group; and,
- City Attorney's Office Representative (Legal Advisor).

Present as Observers.

- Inspector General's Office Representative.

Reviewing Officer. The Chief of Police is the Reviewing Officer for all matters within the jurisdiction of the RMEC.

093.96 TACTICS TRAINING REVIEW COMMITTEE □ **DEFINED.** The TTRC is organized to bring best practices in tactics, firearms, use of force policy, and training to the recruit and in-service training curricula.

Tactics Training Review Committee Members. The Commanding Officer, Police Sciences and Training Bureau's, will serve as the committee chair. The following are standing members of the TTRC:

- Assistant Commanding Officer, Police Sciences and Training Bureau, Chair;
- Commanding Officer, Training Division, TD;
- Commanding Officer, In-Service Training, TD;
- Director, Police Training and Education (PTE);
- Commanding Officer, Use of Force Review Division (UOFRD);
- Officer in Charge, Firearms and Tactics Section, TD;
- Assistant Officer in Charge, Firearms and Tactics Section, TD;
- Officer in Charge, Defensive Tactics Section, TD;
- Assistant Officer in Charge, Defensive Tactics Section, TD;
- Officer in Charge, Field Training Section, PTE;
- Representative from the Los Angeles City Attorney's Office; and,
- Representative from Legal Affairs Division (LAD).

Tactics Training Review Committee Responsibilities. The TTRC will be responsible to perform the following:

- Provide advice and recommendations to the Chief of Police regarding reliable and safe field tactics;
- Provide advice and recommendations regarding the appropriate manner in which to train Department employees;
- Review and approve changes to existing tactics and firearms training prior to implementation; and,
- Cross-staff with the Commanding Officer, UOFBPC, and other appropriate entities to prepare Use of Force directives for signature by the Chief of Police.

Reviewing Officer. The Director, Office of Administrative Services, is the Reviewing Officer for all matters within the jurisdiction of the Tactics Training Review Committee.

093.97 USE OF FORCE BEST PRACTICES COMMITTEE - DEFINED. The purpose of the UOFBPC is to analyze issues on an as needed basis and trends arising from significant use of force incidents. The UOFBPC is subcommittee of the TTRC.

Use of Force Best Practices Committee Members. The Commanding Officer, UOFRD, will serve as the committee chair. The following are standing members of the UOFBPC:

- Commanding Officer, Use of Force Review Division, Chair;
- Assistant Commanding Officer, Police Sciences and Training Bureau;
- Two personnel selected from TD who are use of force trainers;
- Four personnel selected from the Office of Operations;
- Representative from the Los Angeles Police Protective League;
- One use of force expert or legal counsel from outside the Department;
- Representative from the Los Angeles City Attorney's Office;
- Representative from LAD; and,
- Representative from Professional Standards Bureau.

Use of Force Best Practices Committee Responsibilities. The UOFBPC will be responsible to perform the following:

- Provide insight into significant or notable use of force incidents to assist in adjudication and identify lessons learned;
- Make recommendations regarding investigative protocols/tactics, or other issues arising from the analysis of use of force incidents;
- Make recommendations regarding improvements to field procedures; and,
- Provide advice and recommendations to the Chief of Police regarding improvements in field procedures, investigative protocols and tactics or other issues arising from the analysis of use of force incidents as needed.

Meetings. The UOFBPC will meet on an as-needed basis as determined by the Chief of Police or Director, Office of Administrative Services.

Reviewing Officer. The Director, Office of Administrative Services, is the Reviewing Officer for all matters within the jurisdiction of the Use of Force Best Practices Committee.

094. BOARDS OF INQUIRY AND AD HOC COMMITTEES.

094.05 TERMINOLOGY.

Convening Authority. The convening authority for Department boards of inquiry and ad hoc committees shall be the Chief of Police.

Precept. A Department precept is a document issued by the convening authority to activate a board of inquiry or ad hoc committee. The precept designates the chair, names the membership, sets forth the rules of assembling, clearly states the matter that is to be investigated, describes the scope of jurisdiction, and gives explicit instructions as to what the final report shall include, and any pertinent information relevant to the course of action to be taken.

Note: Boards of Inquiry and ad hoc committees are primarily fact finding bodies and, unless specifically directed by the convening authority in the precept to express opinions or make recommendations, shall confine themselves to findings of fact.

094.10 BOARDS OF INQUIRY. A Department board of inquiry shall consist of Department personnel assembled in compliance with a precept for the purpose of investigating a particular matter or alleged incident involving Department personnel or equipment. Some of the proceedings of a Department board of inquiry may, under certain conditions, become evidence before a Board of Rights or other administrative tribunal. When the nature of the board of inquiry is such that the findings may be prejudicial to a Department employee, the concerned employee shall be afforded the opportunity to appear before the board and present facts in his or her own behalf. In such cases, or when the employee appears at the request of the board of inquiry, the employee shall be informed of the nature of the inquiry prior to offering information in his or her own behalf. At the discretion of the chair, the employee may be permitted to present a reasonable number of witnesses in support of relevant issues raised by him or her before the board.

Exception: These requirements shall not apply if, in the opinion of the convening authority, the subject matter is such that revealing it would likely hinder the chances of a complete and thorough investigation. In such cases, the precept and the board's report shall be classified or reclassified as "Confidential." The chair shall recommend to the convening authority whenever, in his or her opinion, the inquiry should be classified as confidential. The inquiry shall be classified as confidential when the disclosure of the inquiry would be contrary to the best interest of the City.

When the proceedings reveal that an employee may be the subject of a personnel complaint involving a **prosecutable offense**, the employee shall be advised of his or her Miranda rights as a private person and allowed to exercise the same rights afforded a private person under similar circumstances.

094.15 AD HOC COMMITTEES. A Department ad hoc committee shall consist of Department personnel assembled in compliance with a precept for the purpose of gathering and studying information pertaining to policies, procedures, programs, or conditions that affect the Department.

094.20 MEMBERSHIP. Department boards of inquiry and ad hoc committees shall be comprised of members of appropriate class, rank, and seniority designated by the convening authority. The composition of such boards or committees shall be regulated by the circumstances to be investigated. The number of members to constitute such bodies shall be determined by the convening authority, who will consider the importance of the subject matter and the qualifications of Department employees to serve as members.

094.25 CHAIR - RESPONSIBILITY. The chair of a Department board of inquiry or ad hoc committee shall be responsible for providing administrative supervision on such matters within the jurisdiction of the board or committee, maintaining a record of the minutes of all meetings, and providing staff and clerical support.

Note: The precept will recognize the chair's capability to provide staff and clerical support from his regular assignment and will assign additional support when required.

The chair shall submit a final, and any other related, report to the convening authority via the reviewing officer when one has been designated. The final report shall contain the findings and, when appropriate, recommendations of the board or committee. Upon approval of the final report by the convening authority, the board or committee shall be deactivated.

Note: Dissenting members of a board or committee may prepare a minority report and submit it with the final report. The chair may comment on the minority report by separate correspondence to the convening authority.

094.30 REVIEWING OFFICER - RESPONSIBILITY. At his or her discretion, the convening authority **may** designate an officer senior in rank to the chair to act as Reviewing Officer on all matters within the jurisdiction of a particular Department board of inquiry or ad hoc committee. The reviewing officer shall provide administrative staff supervision and submit appropriate reports concerning the activities and progress of the board or committee to the convening authority.

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EXHIBIT VVV

The Washington Post

Post Politics

Trump on the future of proposed Muslim ban, registry: 'You know my plans'

By Abby Phillip and Abigail Hauslohner December 22, 2016

President-elect Donald Trump on Wednesday appeared to stand by his plans to establish a registry for Muslims and temporarily ban Muslim immigrants from the United States.

Speaking outside his Mar-a-Lago resort in Florida, Trump did not walk back the proposals after he was asked by a reporter whether he was rethinking or reevaluating them in the wake of a fresh terrorist attack in Berlin.

"You know my plans all along," Trump said.

He went on to add that the attack on a Berlin Christmas market, which was claimed by the Islamic State, had vindicated him. German authorities said a 24-year-old Tunisian migrant, who they said has ties to Islamist extremists, was responsible for the attack, which killed 12 people and injured dozens. The suspect was later killed in a shootout with Italian police in Milan.

"I've been proven to be right. One-hundred-percent correct," Trump said. "What's happening is disgraceful."

Trump has long called for a temporary ban on Muslims entering the United States and has expressed openness to a registry of Muslims already in the country.

A year ago, in a statement, Trump said he wanted a "total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on."

The proposal was sharply criticized by Republicans and Democrats alike. And later, Trump and his senior aides and surrogates sought to soften the proposal, suggesting that Trump would support a ban on immigration only from countries that had been "compromised by terrorism."

In interviews, Trump has characterized his position as an expansion, not a contraction of his proposal.

But given an opportunity on Wednesday to clarify his remarks, Trump suggested that his plans stood as he had articulated them early in his campaign. The statement proposing a "complete" shutdown of Muslim immigration remains on Trump's website. And Trump has not clarified how exactly he would address the issue as president.

On Thursday, Kellyanne Conway, a senior Trump aide, said that he would not seek an immigration ban based on religion. Asked repeatedly on CNN whether Trump supports a ban on Muslims, Conway said, "That in and of itself? No."

"You're going back to over a year ago and what he said about the ban versus what he said later about it when he made it much more specific and talked about countries where we know they have a higher propensity of training and exporting and in some cases harboring terrorists," Conway said.

The issue is the source of anxiety for Muslims and advocates across the United States.

"I think that at this point, we don't quite know what he means when he says Muslim ban," said Faiza Patel, who co-directs the liberty and national security program at the Brennan Center for Justice at New York University's law school. "A lot of people have interpreted that as he intends to revive the NSEERS system, which was made inoperational a few years ago," she added, referring to the registry system developed by current Trump adviser Kris Kobach, which civil rights groups and security experts said unfairly targeted Muslims and provided few security benefits.

Jaime "Mujahid" Fletcher, who founded IslamInSpanish, a center for Muslim Latinos in Houston, said the issue of a registry came up last week when he and other area Muslim leaders met with FBI agents in Houston.

"We met with the head of the FBI in their office," Fletcher said. "It was all about this new administration coming in: What can we expect from them? Is this going to be a change in the way they approach our community?" He said the meeting was reassuring.

Muslim leaders said they felt that a registry would take America backward and the FBI seemed to agree. "They didn't foresee us going back to the past. They were reassuring. This is the way they see it," Fletcher said. It was good to hear, he said, but area Muslims are still concerned. "Obviously the community feels there are orders and commands from higher up, and if those are sent down to a local level, will they act? And how much of what they think now could change in the future?"

In response to other questions from reporters outside Mar-a-Lago, Trump said that he had last spoken to President Obama two days ago.


He was also asked about his characterization of the Berlin attack as an attack on Christians.


"ISIS and other Islamist terrorists continually slaughter Christians in their communities and places of worship as part of their global jihad," Trump had said in a statement issued after the attack on Monday.

On Wednesday, Trump appeared unfamiliar with the statement issued in his name.

"Who said that?" Trump countered, challenging the reporter. "It's an attack on humanity. That's what it is. An attack on humanity, and it's got to be stopped."

This post has been updated.

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EXHIBIT WWW

Public Records Act Training

Office of the
California Attorney General

California Constitution, Article 1, Section 3, Subdivision B

- ❖ Constitutional amendment added by Proposition 59
- ❖ Provides generalized right of access to be implemented by statute
- ❖ Statutes that provide access are to be liberally construed

California Constitution, Article 1, Section 3, Subdivision B

- ❖ Statutes that restrict access are to be narrowly construed
- ❖ Legislature must make findings justifying the need for new statutory provisions that restrict access

California Constitution, Article 1, Section 3, Subdivision B

❖ Constitutional provision expressly preserves:

- constitutional provisions or statutes restricting access that were in existence at the time.

California Constitution, Article 1, Section 3, Subdivision B

❖ Constitutional provision expressly preserves:

- individual rights of privacy.
- the rights of due process and equal protection of the laws.

Applicable Statutes

❖ Public Records Act (PRA), Government Code section 6250-6276.48

– Provides public access to state and local government records.

Applicable Statutes

❖ Legislative Open Records Act, Government Code section 9070-9080

– Provides public access to records of the Legislature.

Applicable Statutes

Judicial records

- Case law provides access to judicial records.

Applicable Statutes

❖ Freedom of Information Act (FOIA), 5
U.S.C. Section 552

– Provides public access to records of the
federal government.

Applicable Statutes

❖ If records are mistakenly sought under FOIA, California agency should:

- explain that FOIA covers federal government records.
- explain that PRA covers California government records.
- provide records in accordance with PRA.

Applicable Statutes

- ❖ Freedom of Information Act (FOIA), 5 U.S.C. Section 552

- Provides public access to records of the federal government.

Applicable Statutes

- ❖ Judicial records

- Case law provides access to judicial records.

Applicable Statutes

❖ Information Practices Act (IPA) vs. Public Records Act (PRA)

– PRA

- All government records are disclosable unless specifically made exempt
- Applies to state and local government records

Applicable Statutes

❖ Information Practices Act (IPA) vs. Public Records Act (PRA)

– How to reconcile these conflicting laws?

- IPA contains exemption for all records disclosed under PRA.
- Therefore, IPA does not shield records from disclosure that are otherwise disclosable under the PRA.

Applicable Statutes

- ❖ Information Practices Act (IPA) vs. Public Records Act (PRA)

- Records that are exempt from disclosure to public under the PRA may be accessible to the subject of the records under the IPA.

Public Records Act: Purposes

Access to information about the conduct of the public's business is a fundamental and necessary right of every person in the state

- ❖ In providing access, PRA remains mindful of individual privacy rights

Public Records Act: Purposes

- ❖ Access permits public to monitor governmental activities
- ❖ Agency cannot deny access to disclosable records based on requester's intended usage

Public Records Act: Definitions

❖ Public record defined:

- Any writing that is owned, used or retained by a government agency in the conduct of its official business.

Public Records Act: Definitions

❖ Writing defined:

- Any means of recording information including paper, audio tape, video tape, compact disc, DVD, computer diskette, computer hard drive, etc.

Public Records Act: Definitions

❖ E-mail is expressly covered.

Issues:

- When is email no longer a record?
- When you place it in the trash?
- When it leaves your hard drive?
- When it is erased from the agency's back-up tape?

Public Records Act: Definitions

- ❖ During discovery in litigation, agency may be required to recover email from back-up tapes
- ❖ At present, there are no cases or opinions regarding retrieval of email trash under the PRA. PRA and litigation serve very different purposes. Based on the purposes of the PRA as discussed in *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, it seems unlikely that agencies would be asked to retrieve records from back-up tapes under the PRA.

Making A Request

- ❖ If agency were required to extract information from back-up tapes under PRA, full cost recovery likely (see subsequent discussion of costs.)

Making A Request

- ❖ Request may be made orally or in writing
- ❖ Recommend that agency confirm oral requests in writing
- ❖ Written requests facilitate agency compliance by reducing confusion about the records requested and permitting agency to track the request

Making A Request

- ❖ Request need not identify an exact record
- ❖ Request may identify records by their general content

Making A Request

- ❖ Request must still be sufficiently precise to permit the agency to locate the records
- ❖ Request should not be unduly burdensome

Making A Request

- ❖ Request should be specific and focused (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.)
- ❖ Specific and focused requests facilitate prompt disclosure by government

Making A Request

❖ Open ended requests:

- Are burdensome
- Frustrate agency
- Are expensive for requester
- May lead to non-compliance

Making A Request

- ❖ When a request is not specific and focused, the agency has a duty to assist the public in focusing the request
 - Assist in identifying requested information
 - Describe physical location of the record

Making A Request

- ❖ When a request is not specific and focused, the agency has a duty to assist the public in focusing the request
 - Describe technology in which the record is housed
 - Help public to overcome any practical barriers to access

Agency Duty To Search

- ❖ Agency must make reasonable efforts to locate requested records. At a minimum, such efforts should include:
 - consulting record indexes
 - consulting knowledgeable people
 - looking in logical places

Agency Duty To Search

- ❖ Special rule for electronic records
- ❖ Record must be provided in electronic format used by the agency if requested
- ❖ Software developed by the government is not disclosable
- ❖ Commercial software is not disclosable
- ❖ Data housed in protected software may still be disclosable

Inspection Of Records

❖ General Rule

- Agency records may be inspected at any time during regular office hours

Inspection Of Records

- ❖ In reality, the agency may need to:
 - locate the requested records
 - gather multiple records for inspection
 - redact exempt information prior to inspection
- ❖ Appointment to inspect records may be necessary under these circumstances

Requesting Copies Of Records

- ❖ Agency should provide records promptly
- ❖ Agency has up to 10 days to:
 - determine if it will comply with the request, and
 - notify the requester of its determination.

Requesting Copies Of Records

- ❖ Agency may extend period to make this determination for up to 14 days if there is a need to:
 - communicate with field offices
 - examine voluminous records

Requesting Copies Of Records

- ❖ Agency may extend period to make this determination for up to 14 days if there is a need to:
 - communicate with others who have an interest in the records.
 - construct computer reports.

Requesting Copies Of Records

- ❖ Once the determination to comply with the request has been made, the agency has a reasonable period of time to provide the records
- ❖ Remember that records must be provided promptly

Requesting Copies Of Records

- ❖ If the agency cannot provide the records during the time for making a determination, it must provide a good faith estimate of when the copies will be available

Fees For Duplication Of Records

- ❖ Agency may charge the direct cost of duplication

- Direct cost includes:

- pro-rata cost of duplication equipment
 - pro-rata cost of equipment operator (salary and benefits)

- ❖ DOJ charges \$.10/ per page

Fees For Duplication Of Records

❖ Agency may charge the direct cost of duplication

– Direct costs do not include:

- research
- retrieval
- redaction

Fees For Duplication Of Records

Issue: What, if any, are the “direct costs of duplication” associated with faxing or e-mailing a record to a requester?

Fees For Duplication Of Records

- ❖ Special rules for electronic records

- Agency may recover full costs where agency is required to:

- extract or compile data
 - undertake programming to produce data

Fees For Duplication Of Records

- ❖ Special rules for electronic records

- What does it mean to extract or compile data for purposes of this section?

- Full cost recovery probably not available for merely extracting or compiling information loaded in extractable fields in a data base such as an Excel spreadsheet.

Fees For Duplication Of Records

- ❖ Special rules for electronic records

- Some requesters contend that they can require agencies to create new records through extraction, compilation or programming even if the agency would otherwise have no need to create the record. We doubt that this is the correct interpretation of the special cost provision for electronic records.

Withholding Records

- ❖ Exemptions are generally discretionary, not mandatory
- ❖ Generally, the agency may redact exempt information; remainder of record must be disclosed
- ❖ Where exemptions render the entire record worthless, the entire record may be withheld

Withholding Records

- ❖ Agencies should consider disclosure issues in designing records
- ❖ Exempt and disclosable information segregated from one another so that a clerk can duplicate disclosable information without need for further review by an attorney or other agency personnel

Withholding Records

- ❖ Agencies need not provide privilege or exemption log of exempt records
- ❖ Agencies should provide a sufficient explanation of the reasons for withholding records so that the public can decide whether to challenge the agency's withholding

Withholding Records

- ❖ If exempt information is disclosed, the exemption is waived
- ❖ The following disclosures are not waivers:
 - Disclosures pursuant to the Information Practices Act
 - Disclosures made pursuant to discovery requests

Withholding Records

- ❖ The following disclosures are not waivers:
 - Disclosures made pursuant to court order
 - Disclosures to another government agency when there is a confidentiality agreement and the head of the agency designates those employees who are permitted to examine the records

Withholding Records

❖ Source of Exemptions

- Expressly provided in Gov. Code, § 6254
- Imported into section 6254, subd. (k) from other provisions of state or federal law
- Public interest balancing test under section 6255

Litigation and Legal Advice Exemptions

- ❖ Pending litigation (Gov. Code, § 6254 (b))

- Exempts records prepared for use in litigation

- Exemption lasts only for duration of litigation

Litigation and Legal Advice Exemptions

❖ Pending litigation (Gov. Code, § 6254 (b))

- Settlement itself is disclosable
- Depositions are disclosable

Litigation and Legal Advice Exemptions

- ❖ Pending litigation (Gov. Code, § 6254 (b))

- Exempts records prepared for use in litigation

- Exemption lasts only for duration of litigation

Litigation and Legal Advice Exemptions

- ❖ Attorney-client privilege (Evid. Code, § 954 imported into PRA via Gov. Code, § 6254 (k))

– Although public disclosure generally waives the privilege, disclosure to opposing party for purpose of advancing negotiations does not constitute waiver (*STI Outdoor v. Superior Court* (2001) 91 Cal.App.4th 334, 341.)

Litigation and Legal Advice Exemptions

❖ Attorney work product (Code Civ. Proc., § 2018.30 imported into PRA via Gov. Code, § 6254 (k))

- Protects impressions and conclusions of attorney
- Exemption is permanent
- Applies to legal advice in litigation and nonlitigation contexts

Litigation and Legal Advice Exemptions

❖ Evid. Code, § 1040 imported into PRA via Gov. Code, § 6254 (k)

- Protects confidential information when in public interest to do so
- Often duplicative of public interest balancing test under Gov. Code, § 6255

Litigation and Legal Advice Exemptions

❖ Evid. Code, § 1040 imported into PRA via Gov. Code, § 6254 (k)

- PRA exemptions in the context of discovery
- Litigants may make requests before or during litigation

Litigation and Legal Advice Exemptions

- ❖ Evid. Code, § 1040 imported into PRA via Gov. Code, § 6254 (k)
 - If agency believes PRA request violates discovery order, agency should use collateral estoppel to defeat the request
 - Agencies may not use PRA exemptions to defeat discovery requests; must use Evid. Code, § 1040

Exemption For Personnel Records— Gov. Code, § 6254, Subd. C

- ❖ Exemption applies to personnel, medical or similar records whose disclosure would constitute an unwarranted invasion of personal privacy
- ❖ Usually involves personal information required by employer

Exemption For Personnel Records— Gov. Code, § 6254, Subd. C

- ❖ Exemption generally does not cover information that would be exchanged at a cocktail party, such as educational background, employment background and training
- ❖ Personnel records are defined by content, not by location

Exemption For Personnel Records— Gov. Code, § 6254, Subd. C

- ❖ Performance evaluations are exempt from disclosure
- ❖ Case law is unsettled regarding when disclosure of personnel actions are required to be disclosed:

Exemption For Personnel Records— Gov. Code, § 6254, Subd. C

- Court required disclosure if there were substantial evidence of wrongdoing irrespective of outcome; nondisclosable only if charges found to be groundless (*AFSCME v. Regents of University of California* (1978) 80 Cal.App.3d 913; and *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041.)

Exemption For Personnel Records— Gov. Code, § 6254, Subd. C

- Where agency publicized personnel action to deter similar conduct, court found that personnel action was nondisclosable unless there were a compelling governmental justification (*Payton v. City of Santa Clara* (1982) 132 Cal.App.3d 152.)

Exemption For Personnel Records— Gov. Code, § 6254, Subd. C

- When an agency files a personnel action with the State Personnel Board, the filing is a disclosable public record unless it involves a peace officer (*Copley Press, Inc. v. Superior Court of San Diego County* (2006) 39 Cal.4th 1272, held that the county civil service commission’s files of peace officer disciplinary actions are confidential records of the “employing agency” within the meaning of Pen. Code, §§ 832.7 and 832.8.)

Exemption For Investigatory Records – Gov. Code, § 6254, Subd. F

- ❖ Protects complaints to, and investigatory, intelligence and security records of, the Attorney General
- ❖ Protects investigatory records used for law enforcement, licensing or correctional purposes
 - Law enforcement purposes refers to traditional criminal law enforcement

Exemption For Personnel Records— Gov. Code, § 6254, Subd. C

- When an agency files a personnel action with the State Personnel Board, the filing is a disclosable public record unless it involves a peace officer (*Copley Press, Inc. v. Superior Court of San Diego County* (2006) 39 Cal.4th 1272, held that the county civil service commission’s files of peace officer disciplinary actions are confidential records of the “employing agency” within the meaning of Pen. Code, §§ 832.7 and 832.8.)

Exemption For Investigatory Records – Gov. Code, § 6254, Subd. F

- ❖ Agencies with non-licensing administrative authority must use public interest balancing test to protect investigative records; they cannot invoke the investigatory exemption of section 6254(f)
- ❖ Public interest in nondisclosure is strongest during pendency of investigation

Public Interest Balancing Test – Gov. Code, § 6255

- ❖ Protects records where the public interest in nondisclosure clearly outweighs the public interest in disclosure
- ❖ Public interest in nondisclosure does not refer to the administrative convenience of a public agency, but to the broader interests of the public in general

Public Interest Balancing Test – Gov. Code, § 6255

- ❖ *San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, outlines the three-step test for the public interest balancing test:
 - The public interest in disclosure
 - The public interest in nondisclosure
 - Less intrusive alternatives to satisfy the public interest in disclosure

Public Interest Balancing Test – Gov. Code, § 6255

❖ In *San Jose*, the press requested copies of citizen complaints about airport noise.

– Public interest in disclosure:

- Monitor the governmental response to these complaints

Public Interest Balancing Test – Gov. Code, § 6255

– Public interest in nondisclosure:

- Disclosure intrudes upon complainant privacy
- Chilling effect on citizen complaints

Public Interest Balancing Test – Gov. Code, § 6255

- Less burdensome alternatives:
 - Press can attend city council meetings in which noise complaints were discussed
 - Press can contact interest groups involved in both sides of the airport noise debate
 - Press can visit affected neighborhoods

Public Interest Balancing Test – Gov. Code, § 6255

- ❖ Court concluded that city was justified in withholding names of complainants.
- ❖ Remember– the agency bears the burden of demonstrating that the public interest is best served by maintaining the confidentiality of the records.

Public Interest Balancing Test – Gov. Code, § 6255

- ❖ Any state agency (other than constitutional officers) that wishes to assert the public interest balancing test must first receive approval from the Governor's Legal Affairs Secretary

Deliberations, Correspondence, And Drafts

❖ Deliberative process privilege

- Protects records involved in the decision-making process
- Implemented through public interest balancing test in Gov. Code, § 6255
- Permits candid debate and airing of potential solutions

Deliberations, Correspondence, And Drafts

- ❖ Deliberative process privilege

- Focuses on recommendatory speech not facts
- Sometimes facts are inextricably intertwined with recommendatory speech and thus are exempt as well

Deliberations, Correspondence, And Drafts

- ❖ Deliberative process privilege

- Advisors may be from inside or outside the government
- Deliberative process privilege may be overcome by a narrow request with high public interest

Deliberations, Correspondence, And Drafts

❖ Correspondence Exemptions

- Only the Governor and the Legislature have correspondence exemptions
- Correspondence means letters from persons outside the government

Deliberations, Correspondence, And Drafts

❖ Correspondence Exemptions

- Governor's action requests and budget change proposals would be protected by the deliberative process privilege not the correspondence exemption
- Some agencies use the balancing test to protect the names and addresses of persons who write the agency

Deliberations, Correspondence, And Drafts

- ❖ Drafts, notes and memoranda (Gov. Code, § 6254 (a))

- Protects preliminary drafts, notes and memoranda that are not retained in the ordinary course of business where the public interest in nondisclosure outweighs the public interest in disclosure

Deliberations, Correspondence, And Drafts

- ❖ Drafts, notes and memoranda (Gov. Code, § 6254 (a))
 - Difficult test to understand and apply (*Citizens for a Better Environment v. California Department of Food and Agriculture* (1985) 171 Cal.App.3d 704.)
- ❖ Deliberative process privilege exemption is easier to understand and apply

Copyright and Trade Secrets

❖ Copyright

- Federal agencies excluded from federal copyright protection, but
- States are not expressly excluded
- Copyright protection presumably imported into PRA via Gov. Code, § 6254 (k)

Copyright and Trade Secrets

❖ Copyright

- Gov. Code, § 6254.9 (software developed by government) implicitly endorses copyright protection for California government records

Copyright and Trade Secrets

❖ Copyright

- *County of Suffolk v. First American Real Estate Solutions* (2001) 261 F.3d 179, required disclosure of copyrighted government mapping data but prohibited the requester from distributing the information

Copyright and Trade Secrets

❖ Copyright

- This approach balanced disclosure under New York Public Records Act and copyright protection

Copyright and Trade Secrets

❖ Trade Secrets

- Trade secrets not expressly exempt
- However, the confidentiality of trade secrets is protected by Evid. Code, § 1060, and is imported into the PRA via Gov. Code, § 6254(k)

Copyright and Trade Secrets

❖ Trade Secrets

- Section 3426.1 of the Civil Code states that “trade secret,” for purposes of the PRA, is defined by the definition that was in use in 1984. One must look to case law and the Restatement of Torts to determine the definition.

Copyright and Trade Secrets

❖ Trade Secrets

- Agency must determine whether records submitted to it are protected by trade secret
- If not protected, agency must disclose
- Agency may wish to withhold for limited period in order for holder of right to seek protection in court

Enforcement

- ❖ Mandate, injunctive relief, declaratory relief
- ❖ If plaintiff prevails, plaintiff receives court costs and attorney's fees
- ❖ Plaintiff prevails if suit motivates disclosure

Enforcement

- ❖ Once suit is filed, any voluntary disclosure by agency means plaintiff has prevailed
- ❖ Plaintiff need not prevail on all issues; one issue is probably sufficient
- ❖ Agency receives fees only if suit is adjudged totally frivolous

Where To Get More Information

- ❖ Summary of the California Public Records Act 2004

http://ag.ca.gov/publications/summary_public_records_act.pdf

- ❖ Guidelines For Access to Department of Justice Public Records

<http://ag.ca.gov/consumers/general/prs.php>

EXHIBIT XXX



Suite 2400
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Brendan N. Charney
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BrendanCharney@DWT.com

February 17, 2017

VIA EMAIL AND U.S. MAIL

Deputy City Attorney Kjehl T. Johansen
City Attorney's Office
200 N. Main St.
City Hall East, Room 800
Los Angeles, CA 90012
Fax: (213) 978-8787
Email: kjehl.johansen@lacity.org

Re: *Muslim Advocates v. City of Los Angeles*, LASC Case No. BS 163755
Proposal For Cooperation Concerning Limited Search Based on PMQ Testimony

Kjehl:

In the spirit of cooperation, and based on information revealed in discovery in this matter, I write to propose that the LAPD conduct a search for a subset of records responsive to Muslim Advocates' CPRA Request for records concerning the LAPD's Community Mapping Program.

Before filing the Petition in this matter, Muslim Advocates asked the LAPD for assistance in overcoming practical barriers to disclosure of the requested records.¹ Specifically, the LAPD was asked to propose methods to reduce any burden involved in searching responsive records in the LAPD's backup tapes of pre-2010 e-mail. As an example, Muslim Advocates suggested that the LAPD identify those departmental personnel most likely to have created or received e-mails regarding the Program, and "start by searching that individual's e-mail records."

This letter follows up on that request in light of the deposition testimony of Rachel McClain (as the LAPD's person most qualified on the LAPD's e-mail backup system and undue burden claim for 2005-2008). Based on Ms. McClain's testimony, as well as records disclosed after the filing of the Petition, **we propose a search of Deputy Chief Michael Downing's e-mail backup tapes from December 2006, December 2007, and December 2008 for the terms "Community Mapping," "Mapping Program," "Mapping," and "Muslim."** We believe that this limited search would not pose an undue burden, and that Deputy Chief Downing's e-mail records are the most likely to contain responsive records, for the reasons discussed below.

¹ A copy of the February 18, 2016 letter containing this request for assistance is attached as **Attachment A.**

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The LAPD previously claimed that searching the pre-2010 backed-up e-mail of 7 custodians would be unduly burdensome because:

- 1) it would require the LAPD to search “each and every tape containing e-mail prior to 2010,”²
- 2) searching the 7 custodians’ e-mail for the period Sept. 11, 2001 to November 12, 2015 would supposedly take a minimum of “960 hours;”³ and
- 3) for pre-2010 e-mail, “search capability is limited to the Sender, Recipient, and Subject lines.”⁴

As the LAPD’s PMQ, however, Ms. McClain testified, among other things, that:

- 1) the LAPD has access to backed-up “WP domain files” that identify each specific tape in which backed-up e-mail for a particular user on a particular month is stored;⁵
- 2) to retrieve one custodian’s email for a particular month would take “maybe three days” of 8-hour days, barring any “roadblocks” (such as missing or broken equipment or difficulties obtaining credentials or network information in the LAPD’s possession) — and an approximately 8 hour portion of these three days would involve “machine” time, *i.e.*, automated computer processes during which LAPD personnel could perform other tasks;⁶ and
- 3) in addition to searching sender, recipient, and subject, the LAPD’s e-mail client “might” be able to search within the body of pre-2010 e-mail — and that each key term search takes one minute or less.⁷

² A copy of the LAPD’s October 7, 2015 letter containing this representation is attached as **Attachment B**.

³ A copy of the LAPD’s November 12, 2015 letter containing this representation is attached as **Attachment C**.

⁴ See **Attachment C**.

⁵ See LAPD Person Most Qualified Deposition of Rachel McClain (“McClain PMQ Depo.”) at 166:5 -13; 244:21 – 247:16.

⁶ See McClain PMQ Depo. at 288:8 - 289:4.

⁷ See McClain PMQ Depo. at 276:4-12; 284:8-18. If the e-mail client cannot do so, it should be possible for the LAPD to search the body of e-mails by printing Deputy Chief Downing’s emails
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In other words, to search the e-mail backups of one custodian at a few points in time, only a few tapes must be consulted, and the WP domain files will allow the Department to identify those tapes “readily.”⁸ What’s more, the entire retrieval and search process for each month’s backup is likely to take only 16 hours of active human time — and, at most, if there are multiple problems with equipment, credentials, or network information, “a week or two” to fix the equipment, credentials or network information problems.⁹ Indeed, Ms. McClain testified that, in 2011 the LAPD was able to identify and restore a backup tape containing e-mail from 2006, and that this restoral process took only half an hour of human time.¹⁰

The proposed search therefore will not present an undue burden because, based on Ms. McClain’s testimony, it is apparent that the LAPD will not need to search “each and every tape” to find the few tapes that contain Deputy Chief Downing’s email as it existed in December 2006, December 2007, and December 2008 — but can instead use the WP domain files to identify the particular tapes on which these e-mail backups are stored. Since this search would involve only one custodian’s e-mail at only three points in time, it will involve drastically less than the 960 hours claimed to be required to search the accounts of 7 custodians each over 170 points in time.¹¹

Any efforts required to search the backup tapes containing Deputy Chief Michael Downing’s e-mail from December 2006, December 2007, and December 2008 are warranted, given that such a search is highly likely to yield responsive records, and to provide the parties with concrete information regarding the LAPD’s search capability, whether additional records exist, and where they might be found.

The years 2006-2008 are a crucial time period during which records related to the Community Mapping Program likely were created, received, and transmitted, given that in October 2007, Deputy Chief Downing testified before the U.S. Senate that the Program had been “launched” with an “academic institution” partner, and suggested that this program had been ongoing for “the past 18 months.”¹² Deputy Chief Downing is the LAPD personnel most likely to have created or received e-mail records regarding the Community Mapping Program, given that he presented the Program to the U.S. Senate and stated in an e-mail produced by the Department after the filing of the Petition in this matter that “the mapping outreach idea was

to PDF, and applying Adobe Acrobat’s OCR search functionality to the full text of the e-mails. McClain PMQ Depo. at 281:13-23.

⁸ McClain PMQ Depo. at 166:5-13.

⁹ See McClain PMQ Depo. at 287:4 – 289:4.

¹⁰ See McClain PMQ Depo. at 192:11-193:10.

¹¹ There are approximately 171 months between Sept. 11, 2001 and November 12, 2015.

¹² See Senate Statement of Deputy Chief Michael Downing, attached as **Attachment D**.

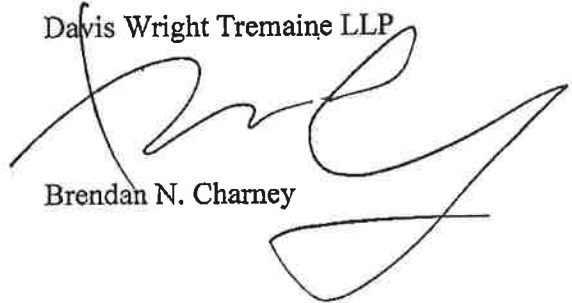
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mine ... I kept [then-LAPD Chief] Bratton informed.”¹³ Based on these facts, we are confident that responsive records are contained in, at the very least, Deputy Chief Downing’s email backups from December 2006, December 2007, and December 2008.

We welcome dialogue on this proposal, and will be glad to meet and confer to discuss any concerns, suggestions, or questions you may have regarding narrowing this case and moving forward cooperatively. Please advise of your availability for a meet-and-confer session.

Sincerely,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'Brendan N. Charney', written over the typed name below.

Brendan N. Charney

cc: Farhana Khera, Esq., Muslim Advocates
Thomas Burke, Esq.
Karen Henry, Esq.

¹³ For reference, a copy of this LAPD record — an e-mail dated March 5, 2015 and marked by Muslim Advocates with the identifier ID 97 — is attached as **Attachment E**.

ATTACHMENT A



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February 18, 2016

Via Facsimile and Overnight Mail

Martin Bland, Officer-in-Charge
Discovery Section, Legal Affairs Division
Los Angeles Police Department
201 N. Los Angeles St., Space 301
Los Angeles, CA 90012
Fax: (213) 978-2080

Re: CPRA Request from Muslim Advocates; Reference No. C13-1200040

Dear Mr. Bland:

I write in reply to your letters of November 12 and 18, 2015,¹ as part of our ongoing correspondence regarding Muslim Advocates' December 12, 2013 California Public Records Act ("CPRA") request for records pertaining to the Department's "Community Mapping" Program ("Request"). It is beyond disappointing that, after two years of correspondence, the Department has produced only 5 records – after confirming the existence of thousands of potentially responsive records.

For your reference, here is a brief summary of where things stand:

More than two years ago, Muslim Advocates requested records relating to a Deputy Chief's testimony before the U.S. Senate about the Department's program to map Muslim communities in Los Angeles. The Deputy Chief testified in October 2007 that the program had been "recently launched" in partnership with an "academic institution," and that the Department was "soliciting input" from "local Muslim groups."² Moreover, the testimony referred to outreach activities to Muslim communities that had already been taking place "[f]or the past 18 months" at the "divisional level." When Muslim Advocates made its Request for records regarding this "Community Mapping" Program and the "LAPD's outreach and grassroots dialogue" with Muslim communities, however, the Department claimed no records existed.

¹ A set of relevant prior correspondence is attached for your reference as **Exhibit A**.

² A copy is attached as **Exhibit B**.

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What's more, the Department cited the Deputy Chief's testimony as a "non-Department related news article" — even though a transcript of this Departmental testimony is available on the Department's own website. Following several letters from Muslim Advocates' counsel, the Department agreed to produce records in response to only a subset of the Request: e-mail records created after 2010. The Department continues to flatly deny the portion of the Request seeking e-mail records from 2001-2010 — the period most germane to a request about a program launched in 2007 — on the grounds that a search for these records would be an "undue burden." Notably, the Department's November 12, 2015 letter does not deny that responsive e-mail records from 2001-2010 may exist. Instead, the Department simply refuses to search for these records.

After withdrawing its claim that the Senate testimony of a Deputy Chief was somehow a "non-Department...news article," the Department has continued to offer evolving justifications for its refusal to produce pre-2010 e-mail, repeatedly shifting position when challenged by Muslim Advocates. For instance:

- On April 20, 2015, the Department claimed that it "does not possess the machines necessary to perform back-up retrieval for e-mail older than [2010]." After additional correspondence with Muslim Advocates' undersigned counsel, the Department admitted on July 30, 2015 that it "has recently become aware that it possesses some of this equipment."
- Likewise, in its April 20 letter, the Department claimed that discussions concerning the proposed "Community Mapping" program had been "conceptual" before the October 2007 Senate Testimony and involved only "verbal dialogue with other possible non-governmental participants or potential partners." Muslim Advocates' counsel followed up, however, to ask the Department how it could possibly know that discussions involved only verbal dialogue, unless the Department had searched its e-mail system to confirm the absence of written dialogue (which it steadfastly refuses to do). In response, the Department again changed tack, writing that "[t]he Department's response concerning the nature of discussions...about a mapping program back in 2007 was intended to provide background and context—not as an express statement that [verbal dialogue] constituted the exclusive method of all such communications."
- In the Department's July 30 letter, the Department also stated that, to search pre-2010 e-mail backups, "search criteria must be clearly defined and individual parties must be identified." In response, Muslim Advocates identified seven departmental personnel who are likely to have had custody of records concerning the "Community Mapping" program. Nonetheless, the Department continues to deny this portion of the Request, now claiming that it would be an "undue burden" to search the accounts of only seven custodians — even though the Department concedes that it has pre-2010 e-mail backup

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records in its control, and searches and retrieves these records when convenient for the Department's own purposes, including the Department's own "investigations and requests."

As to the portion of the Request seeking post-2010 records, the Department identified approximately 4500 pages of e-mail as potentially responsive to the Request. After an additional delay of more than a month, the Department produced only 5 pages. It did not specify whether the remaining 4495 documents were withheld subject to an exemption to the CPRA, or because the Department contends these thousands of documents are nonresponsive. Although at least ten attachments are referenced in the e-mails, no attachments were produced.

Thus, more than two years after making its Request, Muslim Advocates still has no Departmental records showing, among other things, the identity of the "academic institution" with whom the Department conferred to launch the Program, nor the identity of the "local Muslim groups" from whom the Department solicited input. Nor has Muslim Advocates seen the Department's correspondence with these Program participants. Most importantly, Muslim Advocates has been denied access to the internal Departmental correspondence that surely must have been created at the time of the Deputy Chief's 2007 testimony. This internal correspondence would shed light on, for instance, the Department's purpose(s) in proposing the Program, the attitudes and expectations of Departmental personnel concerning the Program, any resources expended in connection with the Program, and whether the Department created any personnel positions, committees, policies, or any other institutional structures in connection with the Program. As discussed below, records of the Department's own internal correspondence and conduct with respect to the "Community Mapping" Program are necessary to fully evaluate the Department's continuing public statements about the relationship between public safety and Muslim communities in Southern California. Importantly, the Department has also failed to provide records showing whether it conducted a sufficient search for the records it has agreed to release, which suggests that it did not conduct a full search of all available paper and electronic files.³

³ On August 1, 2014, Muslim Advocates' counsel requested "all records of search terms used, and the databases those terms were run against, for searches conducted pursuant to our Original Request and Supplemental Request." Muslim Advocates also sought records of the "names and any summaries of" paper files that were checked; the names of "available electronic databases that were not searched pursuant to the Requests." It also requested that the Department "search [its] email system and other electronic databases for the term 'Community Mapping' and provide screen shots of the use of the term and databases searched." The Department never provided a response to these requests. See Exh. A.

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The California Constitution, along with the CPRA, expresses California's commitment to open government, and confirms the public's right to scrutinize — for themselves — the conduct of the people's business. See Cal. Const. Art. I, § 3(b); Cal. Gov't Code § 6250. Under the "Sunshine Amendment" expressed in Article I, Section 3(b) of the California Constitution, a statute or other authority "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Thus, any exemption set forth in Section 6255 must be "narrowly construed" under the California Constitutional law — including the "undue burden" exemption claimed by the Department under Section 6255. Cal. Const. Art. I, § 3(b); County of Santa Clara v. Superior Court, 170 Cal. App. 4th 1301, 1321 (2009). Indeed, even before the "Sunshine Amendment," the California Supreme Court had already observed that the CPRA's purpose is to promote "[m]aximum disclosure of the conduct of governmental operations." CBS, Inc. v. Block, 42 Cal. 3d 646, 652 (1986) (rejecting law-enforcement agency's claim that catch-all Section 6255 exemption shielded production of individuals' concealed-carry applications) (emphasis added). In ordering that records be disclosed to the public, the California Supreme Court emphasized that:

"disclosure statutes such as the [CPRA]... were passed to ensure public access to vital information about the government's conduct of its business. If the press and the public are precluded from learning the [specific facts contained in government records], there will be no method by which the public can ascertain whether the law is being properly applied or carried out in an evenhanded manner."

Block, 42 Cal. 3d at 656.

Here, the Department has made many representations about the Program, and about the Department's efforts (or lack thereof) to search for records regarding the Program. The public, however, is not required to accept these representations at face value — especially given that so many of the Department's representations have proved inaccurate. Rather, Muslim Advocates is entitled to see the Department's records, in order to scrutinize, for itself, how the Department actually developed, launched, and then mothballed the "Community Mapping" Program.

To try to excuse its continuing failure to produce pre-2010 records, the Department recently made the incredible claim that it is "difficult to understand the significant public interest" in these records. Nonsense. The LAPD does not get to decide what is in the public's interest, and in this case the requested records are indisputably in the public interest. The records concerned a matter of public interest when the Deputy Chief touted the "Community Mapping" Program to the U.S. Senate; remained in the public interest as Department officials continued outreach to Muslim communities at the time the Request was made in 2013; and are just as much in the public interest now, as current presidential candidates continue to debate the treatment of American Muslims, and LAPD personnel — including the Deputy Chief who announced the "Community Mapping" Program — continue to make public statements regarding the

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relationship between Muslim communities and public safety.⁴ Putting aside the (generally inclusive and reassuring) tone of these Departmental statements, they further demonstrate that the subject of Muslim Advocates' Request directly relates to the public's strong interest in how law enforcement engages with Muslim communities in the context of ongoing public safety controversies. Moreover, the U.S. Court of Appeals for the Third Circuit recently reversed dismissal of a lawsuit based on an alleged Muslim mapping and surveillance program by the NYPD, comparing the program to the treatment of "Jewish-Americans during the Red Scare, African-Americans during the Civil Rights Movement, and Japanese-Americans during World War II." Hassan v. City of New York, 804 F.3d 277, 307, 309 (3rd Cir. 2015).

Put simply, the Department's claim that the public has no interest in the records lacks credibility — as did its initial claim that there were no records at all about the "Community Mapping" Program. Likewise, the Department's burden claim is also without credence.

The LAPD has provided nothing to show that Muslim Advocates' Request is unduly burdensome. Nor has the Department identified any specific defect in the Request. The Request can be fulfilled with "reasonable effort" and does not involve the proverbial search for a "needle in a haystack." See, e.g., Cal. First Amendment Coalition v. Superior Court, 67 Cal. App. 4th 159, 166 (1998). Indeed, Muslim Advocates has restricted the requested search by date; by subject matter — the specific "Community Mapping" Program announced in October 2007; and by identity of custodian, providing the names of seven Department personnel whose e-mail accounts likely contain records regarding the Program. Accordingly, the Department attempts to support its burden claim by citing only deficiencies under the Department's own control. For instance, the Department points out the personnel available to undertake a search also have other responsibilities such as "managing smartphones and tablets." It also claims that "there are 2 people in the entire City of Los Angeles with the necessary skills to perform [backup retrieval], and one of them is presently off and not expected to return until January." The Department,

⁴ See LAPD Chief Beck to Host Muslim Community Forum, CBS News, Sept. 19, 2013, available at <<http://losangeles.cbslocal.com/2013/09/19/lapd-chief-beck-to-host-muslim-community-forum/>>; Martin Kaste, Counterterrorism Cops Try to Build Bridges With Muslim Communities, KUNC (NPR), Dec. 22, 2015, available at <<http://www.kunc.org/post/counterterrorism-cops-try-build-bridges-muslim-communities#stream/0>>; Ian Lovett, Los Angeles Police Dept. Seeks to Reassure Local Muslims, New York Times, Dec. 2, 2015, available at <<http://www.nytimes.com/live/san-bernardino-shooting/lapd-seeks-to-reassure/>>; Samuel Freedman, Los Angeles Police Leader Makes Outreach to Muslims His Mission, Mar. 6, 2015, available at <<http://www.nytimes.com/2015/03/07/us/lapd-deputy-chief-muslims.html>>. Copies are enclosed as Exhibit C.

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however, may not frustrate the public's right of access to government records by understaffing its information technology department.

Most fatal to the Department's burden claim is the fact that *the Department has accessed pre-2010 e-mail backup records for other purposes*. The Department cannot use an "undue burden" claim to cherry pick among requests for public records, providing access when the Department deems convenient, while denying access to requestors like Muslim Advocates.

Moreover, the Department's refusal to search pre-2010 records is also indefensible because its refusal *excludes records from the time period most germane to the Request*: records created at around the time that the "Community Mapping" Program was announced in 2007. The pre-2010 records that the Department claims would involve an "undue burden" are critical to understanding the "Community Mapping" Program announced in 2007, and indeed constitute the heart of Muslim Advocates' Request. A court will reject the Department's claim that it is an "undue burden" to search for these critical records, just as courts have rejected similar attempts by agencies to avoid searching e-mail backups created during the critical time period of a request. *See, e.g., Ctr. for Biological Diversity v. Office of the U.S. Trade Representative*, 450 Fed. Appx. 605, 607, 610 (9th Cir. 2011) (unpublished) (holding that public agency failed to conduct adequate search under FOIA for records relating to a program that began in April 2006, because the agency searched only those e-mail backup records created after June 2006).

Throughout this lengthy correspondence over the course of two years, Muslim Advocates has engaged cooperatively with the Department, and continues to seek assistance from the Department in overcoming any practical barriers to producing the records. As we have reminded the Department, a public agency has a duty to reasonably "assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request...[and to] [p]rovide suggestions for overcoming any practical basis for denying access to the records or information sought." Cal. Gov't Code § 6253.1. A public agency's failure to assist a requestor in overcoming practical difficulties to production will support an award of attorneys' fees against the agency. *See, e.g., Pac. Merch. Shipping Ass'n v. Bd. Of Pilot Comm'rs for the Bays of San Francisco*, 2015 Cal. App. LEXIS 1082, *28 (Nov. 6, 2015).

The Department has presented a picture of maximum cost, but has so far failed to suggest strategies for overcoming the practical difficulties it claims would be required to conduct a search. To overcome the practical difficulties related to the Department's burden claim, Muslim Advocates requests assistance from the Department as detailed below. The Department should also explain what differentiates Muslim Advocates' Request from other instances in which the Department has elected to search backed-up email from before 2010. To that end, please:

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- a. Identify each search request that has been performed on pre-2010 e-mail backups within the last three years, including the subject matter of the request, the amount of data retrieved, how many user accounts were searched, and a substantive description of how use of search terms, identification of custodians, or other search restrictions made the search possible;⁵
- b. Identify and propose search terms or methodologies that would reduce the burden the Department claims would be required to review pre-2010 e-mail. For instance, is one of the seven departmental personnel identified by Muslim Advocates in its September 21, 2015 letter more likely than the others to have created or received e-mail records regarding the Program? If so, perhaps the Department can start by searching that individual's email records, and then cross-reference across other personnel to determine whether e-mail was sent to their accounts. Also, if Department personnel are unavailable to conduct the search due to competing Departmental responsibilities or personnel leave, perhaps the Department can identify a third party vendor to conduct the search.

In addition, the Department has failed to specify why it withheld approximately 4,495 records that were retrieved but not produced, nor has it explained why it has failed to produce responsive attachments to the 5 records that it did produce. Accordingly, please state the reason that approximately 4,495 records were withheld in response to the portion of Muslim Advocates' Request seeking post-2010 e-mail. If any records were withheld subject to a claim of CPRA exemption, please identify the exemption(s) you claim are applicable. Please also promptly produce the attachments referenced in the documents produced on November 18, 2015. Finally, please also provide the records requested on August 1, 2014 regarding the sufficiency of the Department's search for records, including all records of search terms used, and the databases those terms were run against; screen shots of the use of the term and databases searched; as well as the names and any summaries of paper files that were checked, and the names of available electronic databases and paper files that were not searched pursuant to the Requests.

⁵ This request for assistance amplifies a similar request that Muslim Advocates made on November 2, 2015, but to which the Department failed to respond.

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Given the time that has already passed since Muslim Advocates' 2013 Request, a prompt response will be appreciated.

Sincerely,
Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read "Brendan Charney", written over a horizontal line.

Brendan Charney

cc: Julie Raffish, Los Angeles City Attorney's Office, via U.S. Mail and fax (213) 978-8787
Carlos De La Guerra, Los Angeles City Attorney's Office, via U.S. Mail

Enclosures

ATTACHMENT B

LOS ANGELES POLICE DEPARTMENT

CHARLIE BECK
Chief of Police



ERIC GARCETTI
Mayor

P. O. Box 30158
Los Angeles, California 90030
Telephone: (213) 978-2100
TDD: (877) 275-5273
Reference Number: 14.4

October 7, 2015

Mr. Brendan N. Charney
Davis Wright Tremaine, LLP
865 S. Figueroa Street
Los Angeles, CA 90017-2566

Dear Mr. Charney:

I have reviewed your supplemental California Public Records Act ("Act") request, dated September 21, 2015, submitted on behalf of your client, Muslim Advocates, wherein you re-state your client's original request for "[a]ll records reflecting or relating to the 'Community Mapping' program, as described in the October 30, 2007 testimony of LAPD Deputy Chief Michael Downing before the United States Senate's Homeland Security & Governmental Affairs Committee." It appears from this correspondence that this request specifically seeks pre-2013 e-mail, based upon responses provided by the Department in its July 30, 2015 letter to you.¹

The Department has conducted a query/search of email for the period January 2010 to April 2015 and has identified approximately 4500 pages of records which may or may not be responsive to your request. The Department must undertake a review of each and every page to first determine whether the document is responsive. Then, where responsive documents are identified, it must then determine whether any such document is exempt from disclosure. It is anticipated this review process will take approximately six weeks. Once said review is complete, the Department will provide all identified, responsive and not otherwise exempt records.

Respecting a search for email prior to January 2010, the Department respectfully disagrees with the characterization in your September 21st correspondence that the Department's July 30, 2015 responses, or your identification of seven past or present Department employees, in any way

¹ Your September 21, 2015 correspondence specified that the restatement of the original request was directed to emails from the accounts of the following individuals: William Bratton, Michael Downing, Joan T. McNamara, Michel R. Moore, Mark G. Stainbrook, Johnathan Celentano and Chand Syed.

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Brendan N. Charney

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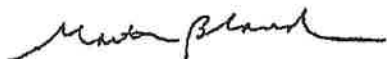
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"focuses the search" in a manner which "allay the concerns raised in the July 30 Letter" concerning "time and difficulty of the search." Notwithstanding the identification of individual parties, the Department maintains that any search for pre-2010 email would necessitate an extremely large number of personnel hours and as stated in the Department's July 30 Letter, involve the attempted retrieval and review of email which is not segregated, meaning, each and every tape containing email prior to 2010 would need to be searched first for the seven persons identified, and then for the subject matter in question. Such a search is clearly unduly burdensome, and as previously stated in its response to Item (m) of its July 30 Letter, the Department is denying your request for records or attempted searches for records of pre-2010 email pursuant to Section 6255 of the Act.

Any correspondence regarding this matter should include a copy of this letter and be directed to the Los Angeles Police Department - Discovery Section, 201 North Los Angeles Street, Space 301, Los Angeles, California 90012. If you have any questions, please contact Senior Management Analyst Greg Toyama of the Discovery Section at (213) 978-2178.

Very truly yours,

CHARLIS BECK
Chief of Police



MARTIN BLAND, Senior Management Analyst
Officer-in-Charge, Discovery Section
Legal Affairs Division

ATTACHMENT C

LOS ANGELES POLICE DEPARTMENT



CHARLIE BECK
Chief of Police

ERIC GARCETTI
Mayor

P. O. Box 30158
Los Angeles, California 90030
Telephone: (213) 978-2100
TDD: (877) 275-5273
Reference Number: 14.4.

November 12, 2015

Mr. Brendan N. Charney, Esquire
DAVIS WRIGHT TREMAINE, LLP
865 S. Figueroa Street
Los Angeles, California 90017-2566

Dear Mr. Charney:

Thank you for your most recent correspondence, dated November 2, 2015. In your letter, you reference Section 6253 of the California Public Records Act as standing for the position that the local agency must provide all responsive and non-exempt public records within 10 days of receipt of a request, and might extend such an obligation for another 14 days under circumstances enumerated in Section 6253(c)(1)-(4). The Department respectfully disagrees with such an interpretation. The aforementioned time period(s) apply to the window within which the agency shall make its determination as to whether the request seeks copies of disclosable public records in the agency's possession, and communicate the same to the requestor. When such determination is made, the agency must then "state the estimated date and time when the records will be made available." (§ 6253(c).) And while an agency may not delay or obstruct inspection or copying of public records (See § 6253(d)), the Department stated in its October 7, 2015 correspondence to you that approximately 4500 pages of records had been identified as *possibly* responsive to your request for email, and that it was necessary to review every single page to determine whether the document was first, responsive to the request and then whether it was exempt from disclosure in its entirety or contained information which must be redacted and/or segregated prior to disclosure. This process is being undertaken by a single management analyst during the course of his normal work hours, and reflects one of numerous CPRA requests the analyst is handling himself or over which he is providing supervision. The Department wanted to clarify this point, notwithstanding your "agreement" to permit the results of said review to be provided by November 18, 2015.

Respecting your request that the Department reconsider its assertion of Section 6255 over pre-2010 email, the Department has done so and must again, deny your request pursuant to Section 6255, based upon the unduly burdensome nature of the request. The Department has previously explained that it utilizes Novell GroupWise as its email system. GroupWise has a very different architecture from Microsoft Exchange or other email systems. In a GroupWise environment, all

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files are encrypted and can only be read by an instance of the post office agent which created them.

To the extent the Department did not have an email archiving system prior to March 2013, locating older email would require restoration of entire post office structures (files and databases) from back-up tapes, then attempting to extract the data. More specifically, such undertaking would require the analyst to identify the tape or file containing the Post Office where the account existed at the time of the search (The email system structure has changed many times and users move constantly); Create a back-up server with the appropriate version of the back-up software to catalogue, index and read the tape; Create a Post Office server with the appropriate software from the time of the back-up and copy the restored data to it; Attempt to connect to the Post Office, clear the user's password and search for the desired email. Search capability is limited to the Sender, Recipient and Subject lines. Searching for terms in the body of the email is not possible. This process must be repeated 2 to 4 times for each year requested and for each individual account to be searched. Each restoration and extraction takes from 6-8 hours depending on the size of the Post Office.

Based on the above, and in light of the scope of your request (email from September 11, 2001 to the present), it is estimated that it would take a minimum of 960 hours to complete this request. Information Technology Division (ITD) currently receives between 10-15 requests per month to produce email in response to court subpoenas, internal investigations, personnel matters and CPRA requests. In addition to the email reconstruction/retrieval function, the designated section is responsible for supporting the current email system, managing smartphones and tablets, monitoring the subpoena delivery and tracking system, and managing the Department's extensive Body Worn Camera deployment. Therefore, the Department could only set aside approximately 8 hours per week to this restoration/retrieval/review effort. There are 2 people in the entire City of Los Angeles with the necessary skills to perform this task, and one of them is presently off and not expected to return until January, at the earliest.

As recently emphasized by the California Court of Appeal, "[T]he basic rule is that an agency must comply with a request if responsive records can be located with reasonable effort. (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227, citing *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165-166.) If the agency would be required to create a new set of public records in order to provide responses to a CPRA request, such agency action may be found to exceed its statutory duties. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.) Section 6255 provides that a local agency may withhold production of public records where, "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." Further, "Section 6255 imposes on the California courts a duty ... to weigh the benefits and costs of disclosure in each particular case." [Citation.] A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non-exempt from exempt information, because the statutory term 'public interest' 'encompasses public concern with the cost and efficiency of government.' [Citations.] We may thus take it as established that the Act includes a policy favoring the efficiency of government

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and limitation of its costs.” (*Fredericks, supra*, at 228, quoting *North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 152 (conc. & dis. opn. of Huffman, J.)(internal quotations omitted).)

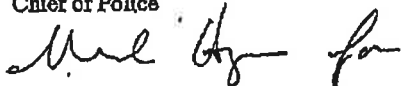
It is difficult to understand the significant public interest in disclosure of emails which, were they to exist, referenced a program or concept that, as already explained, was never implemented, either back in 2007 or today, so as to tip the scale in favor of disclosure. As such, the Department believes that “the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records,” and has therefore met its burden under Section 6255.

Any correspondence regarding this matter should include a copy of this letter and be directed to the Los Angeles Police Department – Discovery Section, 201 North Los Angeles Street, Space 301, Los Angeles, California 90012.

If you have any questions, please contact Management Analyst Caydene Monk of the Discovery Section at (213) 978-2155.

Very truly yours,

CHARLIE BECK
Chief of Police



MARTIN BLAND, Senior Management Analyst
Officer-in-Charge, Discovery Section
Legal Affairs Division

ATTACHMENT D

Statement of
Michael P. Downing
Commanding Officer
Counter-Terrorism/Criminal Intelligence Bureau
Los Angeles Police Department

Before the
Committee on Homeland Security's and Governmental Affairs
United States Senate

Presented on
October 30, 2007

I. Introduction

Chairman Lieberman, Ranking Member Collins, and Members of the Subcommittee, thank you for the opportunity to discuss the Los Angeles Police Department's (LAPD) efforts to identify and counter violent extremism, which happens in this case, to be ideologically based.

Local law enforcement has a culture and capacity that no federal agency enjoys - the know-how and ability to engage communities that today are a vital part of the equation. Part of this engagement process is the demonstration of sensitivity to terminology that offends and/or isolates communities, hence, "*Ideologically Based Violent Extremism.*"

No agency knows their landscape better than local law enforcement; we were designed and built to be the eyes and ears of communities - the First Preventers of terrorism. What is important to law enforcement is that we carefully and accurately define those who we suspect will commit a criminal-terrorist act within our communities. That job needs to be done with the kind of balance and precision that inspires the support and trust of the American people in order to aid us in the pursuit of our lawful mission.

Prior to 2001, much of America overlooked Muslim communities in the United States (U.S). Iranians who immigrated to the U.S. following the hostage crisis received some media attention but the broader Muslim community in this country was not at the forefront of the national psyche. The reverse is now true as a result of the post-9/11 media coverage and the wars in Iraq and Afghanistan. Muslim communities here and abroad have become centerpieces of coverage for the print and broadcast media. While this coverage has, in many cases, helped to educate the American public, it has also put Muslims under a very bright spotlight. Feelings of persecution and vulnerability by large swaths of Muslim communities have created anxiety and uncertainty about the future.

Before 9/11, law enforcement was equally unaware of this community, both at a federal and statewide level. Even with our newfound awareness, law enforcement personnel are working from a disadvantage because of the obstacles we face as we approach wary communities deeply concerned with issues such as the implications of the Patriot Act, racial-profiling in the transportation industry, and the mischaracterization of Islam in the media. High-profile arrests and investigations of violent extremists such as the Fort Dix 6 play into Muslims' fears that they are under increased scrutiny. These underlying dynamics play a role in how these communities interact with all facets of American society, especially law enforcement.

One major role that law enforcement can play in the fight against violent ideological extremism is that of educator. Teaching all communities about the dangers of extreme ideologies can dispel harmful rumors and myths that alienate already pressured communities. We have learned from the European experience how these alienated communities become a breeding ground for violent extremism and a safe haven for potential terrorists to hide among the population.

Granted, the U.S. does not have the same types of problems as England, France, Germany, or Israel. While the tactics terrorists employ are learned behaviors that migrate across national boundaries - through groups, training camps, and the Internet - the underlying motivations for

these violent acts are unique to the host countries. Consequently, the remedies (i.e., jailhouse de-radicalization in Malaysia, the Channel Project in northern England, and the BIRR Project in Australia) are often contextually bounded and dependent on the depth, strength, national allegiance and identity of the native Muslim community.

In Los Angeles, for example, there are many Muslim communities that do not share the same risk profile as those in the United Kingdom as they are much more integrated into the larger society. That said, the European example does provide U.S. law enforcement with a starting point when searching for early indicators of radicalization.

We have learned that Muslim communities in the U.S. are mistrustful of the mainstream media. Therefore, they may turn to other sources of information for news and socialization, such as the Internet. Unfortunately, despite all of the positive aspects of the Internet, it allows those individuals and groups with ideological agendas to easily make contact with like-minded individuals and access potentially destructive information.

As we move from the virtual to the physical, it is important to apply the hard-won lessons we have learned in combating gang crime to the problem of terrorism. Southern California was the birthplace of gang culture and in Los Angeles we are all too familiar with the threat of violent crime by street gangs. Regardless of how many police officers we deploy, we can only suppress specific incidents. While more police are part of the answer, the real solution lies in the community – with the strengthening of the family structure and the economic base; and the weakening of political power bases built on victimization and a cultural tolerance of violence. The problem of violent street gangs is based on deep community structures. However, so are the solution sets of youth-at-risk programs, parenting classes, economic infusion, job training, community activism against violence and religion-based interventions.

While it might seem counter-intuitive, the isolation of Muslim communities acts both as a wall and as a self-regulator. Similar to gangs, the signs of extremism are first seen on the most local levels: in the families, neighborhoods, schools, mosques, and work places. The wall built by the community is the barrier created to sustain cultural identity and values and protect against the pace of assimilation.

II. LAPD Strategies and Initiatives

One of the biggest challenges for law enforcement in this environment is separating political jihadists (i.e., those who intentionally plant seeds of division in an effort to alienate and isolate Muslim citizens from the rest of society) from legitimate actors. Teaching all communities about the dangers of extreme ideologies can dispel harmful rumors and myths that alienate already pressured communities. The LAPD has done much outreach in this area, both with Muslim and non-Muslim communities. For the 18 months, we have been involved in outreach and grassroots dialogue with Muslim communities, bringing the entire command staff to observe, learn, engage and, most importantly, listen. This has helped to build more robust trust networks at the divisional level of police service. One of our goals is to be viewed as trusted friends by Muslim communities in our city.

Our outreach to the non-Muslim community has combined education with prevention. We now have Terrorism Liaison Officers (TLOs) at all of our divisions and Fire Stations who serve as the principal points of contact for terrorism information and intelligence. These liaison officers educate Department personnel and the broader community about the indicators of violent extremism and have proven to be critical assets when it comes to raising the level of terrorism prevention and preparedness.

The education provided by the TLOs has been supplemented with training by outside experts. Within our ranks, we have worked to educate our officers in the Counter-Terrorism and Criminal Intelligence Bureau about Islam and the cultural sensitivities they should be aware of when they are in the field. Approaching Muslims with respect and integrity is a large piece of the counter-narrative that law enforcement can write for itself.

The LAPD must have the capability to hunt for signs of radicalization and terrorism activities on the Internet. We recently started a cyber investigations unit to do just that. The Internet is the virtual hangout for radicals and terrorists. It provides a plain-view means of identifying and gathering information on potential threats. Information gleaned from this open source, fed into the radicalization template, and combined with a thorough understanding of operational indicators, is critical to articulating suspicion and justifying the increased application of enforcement measures.

LAPD's Counter-Terrorism and Criminal Intelligence Bureau initiatives for both the present and future have aligned people, purpose, and strategy around the mission of building capacity to hunt and disrupt operational capability on the part of terrorists (recruiting, funding, planning, surveilling, and executing operations). However, just as important, we have aligned our resources to focus on the motivational side of the terrorist equation and have made great efforts and organizing, mobilizing and in partnership, raising the moderate Muslim voice to prevent the extremists from making inroads into this faith community. A few of these strategies are described below:

- ? Working in concert with our seven county regional and federal partners, we continue to build capacity to collect, fuse, analyze, and disseminate both strategic and operational intelligence. We are aligning our intelligence collection and dissemination process with an eye toward accountability and ensuring that our First Preventers have the information they need when they need it.
- ? Our Terrorism Liaison Officers are casting an ever-wider safety net to train more people in the city to be public data collectors and First Preventers.
- ? We have started a Muslim outreach program with our command staff to leverage resources, institutionalize the idea of developing the counter-narrative, and facilitate an educational process. In developing this counter-narrative, the goal is to inspire Muslim communities to responsibly partner with law enforcement to protect American values. We also aim to elevate the moderate Muslim voice and empower people to counter the extremist ideology with confidence. This enables community

leadership to assist law enforcement in identifying those individuals and groups who espouse extremism and work to divide Muslim communities from American society.

- ? We are working with a think tank to develop a training program for mid-level executives that will be tailored specifically to state and local law enforcers. It is our hope that this will develop into a model for a national counter-terrorism academy.
- ? We initiated the Regional Public Private Infrastructure Collaboration System – a tool that enhances communication between and within LAPD and the Private Sector.
- ? Our Archangel program is a Critical Infrastructure Protection System that includes a Protective Security Task Force.
- ? We are developing a Cyber Investigation Unit to hunt violent extremists on the Internet.
- ? Our Community Mapping project is described below in Section V.

III. A Different Problem

In contrast to much of Europe, which has suffered from a marked increase in violence and violent intentions – often by its own citizens, the problem we face in the U.S is mainly political. There are those among us, I call them political jihadists, who are attempting to create division, alienation, and a sense of persecution in Muslim communities in order to create a cause. They are the nemesis of community engagement. Their purpose is to create the conditions that facilitate the radicalization process for international political causes.

Law enforcement's *ultimate* goal is to engender the continued loyalty and good citizenship of American-Muslims – not merely disrupt terrorist activities. Let me be clear, I am not saying that law enforcement should relax its effort to hunt down and neutralize small numbers of “clusters” on the criminal side of the radicalization trajectory. That task remains, and must be done with precision and must also be carried out in the context of what is ultimately valuable. What good is it to disrupt a group planning a mall bombing if the enforcement method is so unreasonable that it is widely criticized and encourages many more to enter the radicalization process?

The point is not merely an academic one—it has operational consequence. In preserving good will and by in by Muslim communities, law enforcement is, in fact, advancing its intelligence agenda by fostering an environment that maximizes tips and leads surfacing from those same communities. The long-term solution to this radicalization problem will come from Muslim communities themselves.

The natural question is: What factors put a community at-risk? Taking a page from the European experience, diaspora communities are in transition from one culture to another, making its members particularly vulnerable to identity crises which may be very easily subverted by ideologues. As Eric Hoffer wrote in his book, “The True Believer: Thoughts on the Nature of

Mass Movements”: “Faith in a holy cause is to a considerable extent a substitute for the lost faith in ourselves.” If there is a real or perceived threat of discrimination between the new community and the host, then an “us against them” mentality may prevail making that final step towards radicalization that much easier. Some Muslim communities may view any local discrimination as linked to Muslim causes globally, and vice versa, any discrimination against the *Ummah* (the global Muslim community) may be felt locally.

The Pakistani-British community in the United Kingdom is a diaspora, which is significant, because it makes the 2nd and 3rd generations of the community particularly vulnerable to the social pressures of growing up in a country very different from their parents’ and grandparents’ homeland. As a diaspora community, they remain transnational, tending to maintain close family, social, and financial ties with Pakistan. Globalization allows a diaspora to maintain these transnational contacts via faster, cheaper air travel, global communications technology (Internet and cell phone), global mass media, and nearly instant transnational banking. If the first two risk factors are present, then one must ask, “Does the community also hail from an unstable homeland with Wahabbi-Salafi ties?” If so, that community, like the British-Pakistani Muslim community, might be at greater risk of incubating homegrown radicalization.

If social factors - such as enclaves where residents are culturally and linguistically isolated - contribute to radicalization, it is important for law enforcement to be aware of those potentially vulnerable communities. This is part of our next step. We want to map the locations of these closed, vulnerable communities, and in partnership with these communities, infuse social services that will help the people who live there while weaving these enclaves into the fabric of the larger society. While the role of the law enforcer is not one of religious scholar or social worker, there is the potential to build and strengthen bridges from communities to those resources. It is then we will know where to find our Pakistani, Iranian, Somali, Chechen, Jordanian, and North African communities and thus understand how better to support their integration into the greater society. It is then that local law enforcement becomes an enabler.

IV. Legitimacy and Constitutionality

It is our position that legitimacy and intelligence are equally important tools for U.S. law enforcement to use in counter-terrorism efforts. Legitimacy starts with an organizational knowledge and pride in operating constitutionally and within the law. The need for transparency – being perceived to be and authentically honoring this principle – in intelligence and counter-terrorism activities cannot be understated. Taking great care to ensure that intelligence and enforcement operations are narrowly targeted against terrorist cells determined to go operational is critical. Law enforcement and its advocates must also avoid name-calling exchanges with political jihadists, opting instead to engage them professionally on specific issues. Political jihadists will reveal themselves in these exchanges by being unreasonable and unable to articulate specific grievances, preferring instead to use personal attacks and blanket accusations. In doing so, they are failing in their purpose to attract converts.

Community policing initiatives in Muslim communities should aim to create a shared sense of threat: society as a whole fears the indiscriminate, mass violence we are seeing around the world. All forms of communication with the public (whether analytical reports or post-incident news conferences) should address this fear. In summary, law enforcement’s most pressing

challenge is to shield the public from this threat, while not advancing the purpose of political jihadists. It is a difficult balance to achieve, however, raising the moderate Muslim voice and creating the counter-narrative that offsets the fanatical trajectory of radicalization.

The LAPD has created the Counter-Terrorism and Criminal Intelligence Bureau with nearly 300 officers who are solely dedicated to counter-terrorism, criminal intelligence gathering, and community building. Policing terrorism must be a convergent strategy that enhances the fight against crime and disorder. In building the resistance to crime and disorder, we create hostile environments to terrorists.

V. Community Mapping

We need to understand the problem as it exists in Los Angeles before we roll out programs to mitigate radicalization. Historically, the temptation has been to turn to intervention programs before we have clearly identified problems within the community. In the past we have relied on interventions based on "experts," logic or previous programs that are either generic or insensitive to the constellation of issues. This has consistently produced unremarkable results. Public safety pays a high cost for this business practice. This is one of many reasons to support the rationale behind community mapping, a process that delivers a richer picture and road map that can guide future strategies.

In order to give our officers increased awareness of our local Muslim communities, the LAPD recently launched an initiative with an academic institution to conduct an extensive "community mapping" project. We are also soliciting input of local Muslim groups, so the process can be transparent and inclusive. While this project will lay out the geographic locations of the many different Muslim population groups around Los Angeles, we also intend to take a deeper look at their history, demographics, language, culture, ethnic breakdown, socio-economic status, and social interactions. It is our hope to identify communities, within the larger Muslim community, which may be susceptible to violent ideologically-based extremism and then use a full-spectrum approach guided by an intelligence-led strategy.

Community mapping is the start of a conversation, not just data sets: It is law enforcement identifying with its community and the community identifying with its families, neighborhoods, city, state, country and police. For the past 18 months, the LAPD's outreach and grassroots dialogue with Muslim communities has helped the entire command staff to observe, learn, engage and, most importantly, listen. This has helped to build more robust trust networks at the divisional level of the police service area.

Without a community mapping blueprint and methodical community engagement strategy, our outreach efforts will be sporadic. Our counter-narrative will be empty of meaning, leaving us talking about, rather than talking with, this community.

VI. Conclusion – The Evolving Threat

We need to show that our democratic principles built on the values, practices, and lives of American citizens are sacred and worthy of embracing. We need to show our belief in human dignity, the family and the value of the individual. We need to show how we honor the meaning of our lives by what we contribute to others' lives. We need to show that behind the badges of American law enforcement are caring Americans "doing" law enforcement. To do this we need to go into the community and get to know peoples' names. We need to walk into homes, neighborhoods, mosques, and businesses. We need to know how Islam expresses itself in Los Angeles if we expect to forge bonds of community support. The LAPD has been involved in this process and we are now ready to evolve our outreach to a more sophisticated and strategic level.

The U.S. faces a vicious, amorphous, and unfamiliar adversary on our land. The principal threats will be local, self-generating and self-directed. If there are direct connections with overseas groups, these are most likely to be initiated by the local actors. Cases in point include the 7/7 bombers, the Glasgow car bombers, and, more locally, Lodi in which local individuals and groups sought out training in Pakistan. This is not intended to dismiss threats that emerge from overseas locations, which should continue to be of concern. Rather, it is an estimate of relative density—locally generated threats will manifest themselves with greater frequency.

Ultimately, preventing extremism will be up to neighborhoods and communities, but thread by thread, relationship by relationship, the police can help build a network of services and relationships that will make it very hard for terrorism to take root. American Muslim neighborhoods and communities have a genuine responsibility in preventing any form of extremism and terrorism. If the broader communities are intolerant of such things, these ideologies cannot take root in its midst. I believe no amount of enforcement or intelligence can ultimately prevent extremism if the communities are not committed to working with law enforcement to prevent it.

ATTACHMENT E

Subject: Re: important question
From: MICHAEL DOWNING <25692@lapd.lacity.org>
Date: Thu, 05 Mar 2015 14:37:00
To: " " <sgf1@columbia.edu>

Yes

Sent from my iPhone

> On Mar 5, 2015, at 2:29 PM, Samuel G. Freedman <sgf1@columbia.edu> wrote:

>

> Got it, thanks. So it was primarily your autonomy.

>

>> On Thursday, March 5, 2015, MICHAEL DOWNING <michael.dow
ing@lapd.lacity.org> wrote:

>> The mapping outreach idea was mine. When we shelved that we went to grass
roots outreach. I kept Bratton informed

>>

>> Sent from my iPhone

>>

>>> On Mar 5, 2015, at 2:36 PM, Samuel G. Freedman <sgf1@columbia.edu> wrote:

>>>

>>> Dear Chief Downing,

>>>

>>> My editor has a question he wanted me to run by you. To what extent was
your Muslim outreach your own initiative and to what extent was it mandated or
encouraged by Chief Bratton?

>>>

>>> If you can email me back later today or early tomorrow, that would be
great.

>>>

>>> Thanks,

>>> Sam Freedman

>>>

>>>

>>>

>>> Prof. Samuel G. Freedman

>>> Columbia Journalism School

>>> 2950 Broadway

>>> New York, NY 10027

>>> sgf1@columbia.edu

>>> 212-854-1829

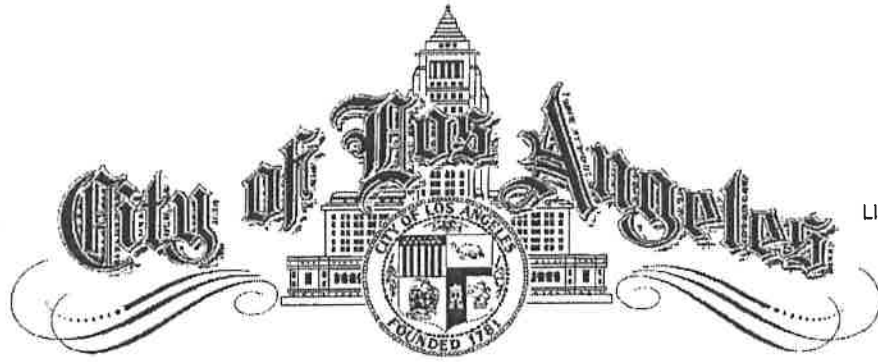
>>>

>>>

>>>

> Prof. Samuel G. Freedman

EXHIBIT YYY



Linda N. Nguyen
Tel (213) 978-8395
Fax (213) 978-8787
Linda.N.Nguyen@lacity.org

MICHAEL N. FEUER
CITY ATTORNEY

February 28, 2017

Mr. Brendan N. Charney
David Wright Tremaine LLP
865 S. Figueroa Street, Suite 2400
Los Angeles, CA 90017-2566

BY ELECTRONIC MAIL
brendancharney@dwt.com

Re: Muslim Advocates v. City of Los Angeles
LASC Case No. BS 163755

Dear Brendan:

Thank you for your February 17, 2017 letter in which you propose an initial search of three months' worth of LAPD pre-2010 emails pursuant to Muslim Advocates' December 12, 2013 CPRA request. We also appreciate the time you and co-counsel took to answer our questions regarding your February 17th proposal during a subsequent conference call. Nevertheless, we must decline your proposal. Even if such a search could be accomplished, which LAPD does not concede, it would be unduly burdensome and would not constitute a reasonable search as contemplated under the California Public Records Act.

While your efforts to engage LAPD in a discussion regarding overcoming practical barriers to the disclosure of LAPD pre-2010 emails are most appreciated, your proposal does not eliminate all the barriers that have been identified in this case. A significant part of the difficulty in retrieving pre-2010 emails stems from a combination of factors independent of the number of months included in the search. In other words, a significant barrier to retrieving pre-2010 emails exists whether the search covers a couple of years' worth of email or whether it covers only three months' worth of emails.


Brendan N. Charney
David Wright Tremaine LLP
Re: Muslim Advocates v. City of Los Angeles
February 28, 2017
Page 2

Again, thank you for your February 17th proposal. We remain open to any other suggestions you may have to narrow or resolve the issues in this matter.

If you have any questions, please contact me at (213) 978-8395.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By: 
Linda N. Nguyen
Deputy City Attorney

LNN/aa

cc: Thomas R. Burke, Davis Wright Tremaine LLP
Karen A. Henry, Davis Wright Tremaine LLP
Kjehl T. Johansen, Deputy City Attorney
Debra L. Gonzalez, Assistant City Attorney

m:\pgen\pgen\linda.nguyen\writs\muslim advocates\correspondences to dwt\ltr to dwt re feb 17th proposal.doc

EXHIBIT ZZZ

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17 Attorneys for Petitioner
18 MUSLIM ADVOCATES

19 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 IN AND FOR THE COUNTY OF LOS ANGELES

21 MUSLIM ADVOCATES,
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Case No. BS163755
Assigned to the Hon. James C. Chalfant
Dept.: 85

**JOINT STIPULATION REQUESTING
CONTINUANCE OF HEARING AND
SETTING NEW BRIEFING SCHEDULE**

([Proposed] Order filed concurrently)
Current Hearing Date: May 23, 2017, 1:30 pm
Hearing Date Request: Sept. 28, 2017, 1:30 pm
Action Filed: July 25, 2016

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 10 2017

Sherri R. Carter, Executive Officer/Clerk
By Michael Rivera, Deputy

1 Petitioner Muslim Advocates (“Petitioner”) and Respondents the City of Los Angeles and
2 the Los Angeles Police Department (“LAPD”) (collectively, “Respondents”) jointly submit this
3 stipulation requesting that the Court continue the hearing currently set for May 23, 2017 at 1:30 pm
4 on Petitioner’s Petition for Writ of Mandate to September 28, 2017 at 1:30 pm.¹ This stipulated
5 request is made with reference to the following facts concerning this action:

6 1. On November 8, 2016, the Court held a hearing on Respondents’ Motion to Stay
7 Discovery. At the hearing, the Court ordered the depositions of the LAPD’s person(s) most
8 qualified (“PMQ”) on its search for records and undue burden defense. The Court noted that PMQ
9 depositions should be supplemented by follow-up depositions and/or document production requests
10 as appropriate.

11 2. Between January, 2017 and April, 2017, Muslim Advocates has taken the
12 depositions of the persons that the LAPD identified as PMQs, spread over multiple sessions to
13 accommodate the witnesses’ personal schedules; Muslim Advocates also propounded document
14 requests to the LAPD, to which the LAPD responded.

15 3. The LAPD’s PMQ on its search for records — a core issue in this litigation —
16 identified additional individuals with pertinent knowledge critical to this issue.

17 4. The parties have agreed to work cooperatively to arrange for the depositions of these
18 additional individuals, and seek a continuance of the hearing date to facilitate these depositions.

19 NOW, THEREFORE, SUBJECT TO THE APPROVAL OF THE COURT, IT IS HEREBY
20 AGREED THAT:

- 21 1. The hearing currently set for May 23, 2017 at 1:30 PM on Petitioner’s Petition for Writ
22 of Mandate is continued to **September 28, 2017 at 1:30 PM.**
23 2. Petitioner’s Opening Brief shall be filed no later than July 28, 2017;
24 3. Respondents’ Opposition Brief shall be filed no later than August 29, 2017;

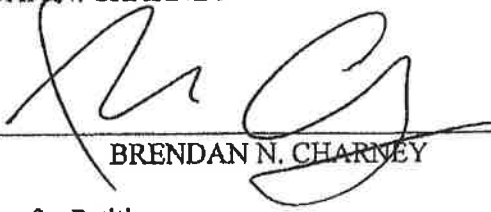
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26
27 ¹ The courtroom clerk identified this date as available on the Court’s calendar. The Parties have
28 reserved this hearing date, pending the Court’s decision on this Request.

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4. Petitioner's Reply Brief shall be filed no later than September 13, 2017.

DATED: April 5, 2017

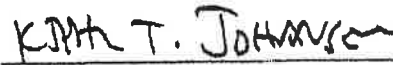
DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE
KAREN A. HENRY
BRENDAN N. CHARNEY

By: 
BRENDAN N. CHARNEY

Attorneys for Petitioner
MUSLIM ADVOCATES

DATED: April 5, 2017

LOS ANGELES CITY ATTORNEY'S OFFICE
MICHAEL N. FEUER, City Attorney
CARLOS DE LA GUERRA, Managing Assistant City
Attorney
KJEHL T. JOHANSEN, Deputy City Attorney
LINDA N. NGUYEN, Deputy City Attorney

By: 
KJEHL T. JOHANSEN

Attorneys for Respondents
THE CITY OF LOS ANGELES and THE LOS
ANGELES POLICE DEPARTMENT

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2400, Los Angeles, CA 90017.

On April 6, 2017, I served the foregoing DOCUMENT(s) described as: **JOINT STIPULATION REQUESTING CONTINUANCE OF HEARING AND SETTING NEW BRIEFING SCHEDULE** by placing a true copy of said DOCUMENT(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael N. Feuer, City Attorney
Carlos De La Guerra, Managing Assistant City Attorney
Kjehl T. Johansen, Deputy City Attorney
200 North Main Street
City Hall East, Room 800
Los Angeles, Ca 90012

I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service. I am familiar with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service, which practice is that when correspondence is deposited with the Davis Wright Tremaine LLP, personnel responsible for delivering correspondence to the United States Postal Service, such correspondence is delivered to the United States Postal Service that same day in the ordinary course of business.

Executed on April 6, 2017, Los Angeles, California.

- State I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.
- Federal I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Yvette M. Merino
Print Name



Signature

EXHIBIT AAAA

INTRADEPARTMENTAL CORRESPONDENCE

December 20, 2013
14.4

TO: Commanding Officer, Counter Terrorism & Special Operations Bureau

FROM: Commanding Officer, Legal Affairs Division

SUBJECT: CALIFORNIA PUBLIC RECORDS ACT REQUEST FROM
MUSLIM ADVOCATES

The Discovery Section of Legal Affairs Division has received the attached request from Glenn Katon, Legal Director with the Muslim Advocates, asking for records pertaining to policies or practices based upon individuals or communities that are Muslim, or of Arab, South Asian or Middle Eastern descent. Mr. Katon's request was made pursuant to the California Public Records Act (the Act).

The request is being forwarded to you for review. Please provide any responsive records and materials that are in the possession of Counter Terrorism and Special Operations Bureau and its subordinate commands. Please provide these materials to Legal Affairs, Discovery Section by January 3, 2014. Personnel claiming an exemption to disclosure must provide specific justification for non-disclosure. A 15.2 is also being sent to Planning and Research Division and to Training Division requesting any responsive materials they may possess.

If you need additional information, or have any questions regarding this matter, please contact Management Analyst Caydene Monk of the Discovery Section at (213) 978-2136.

Sandra Johnson
for

ROSEIRA C. MORENO, Captain
Commanding Officer
Legal Affairs Division

Attachment

EXHIBIT 9

Greg Toyama
2/15/17

Reported by:
Jean Holliday, CSR 4535

Direct dial: (415) 675-1495
Email: glenn@muslimadvocates.org

December 12, 2013

VIA USPS EXPRESS MAIL EB508543854US
Los Angeles Police Department Discovery Section
Attn: Custodian of Records
201 N. Los Angeles St., Space 301
Los Angeles, CA 90012

USM
RECEIVED
LAPD
DEC 16 2013
LEGAL AFFAIRS DIVISION
DISCOVERY SECTION

Re: California Public Records Act ("CPRA") Request

Dear Sir or Madam:

Pursuant to the CPRA, I would like to inspect and obtain electronic copies of the following records¹ that are within the possession, custody, or control of the Los Angeles Police Department ("LAPD"), for the period September 11, 2001, through the present:

1. All records reflecting or relating to "LAPD's outreach and grassroots dialogue with Muslim communities" as described by Michael P. Downing, Commanding Officer Counter-Terrorism/Criminal Intelligence Bureau, before the U.S. Senate on October 30, 2007 ("Senate Statement").²
2. All records reflecting or relating to the "Community Mapping" program, as described in the Senate Statement.
3. All records reflecting or relating to the LAPD's policies or practices based upon individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent. Such records include but are not limited to:
 - Community mapping or Muslim mapping;

¹ Throughout this request, "record" should be given its broadest meaning under Government Code § 6252, and includes, but is not limited to, policies, protocols, manuals, instructions, training materials, memoranda, templates, forms, notices, invitations, calendars, appointments, meeting agendas, meeting or interview notes, evaluations, assessments, analyses, email communications, correspondence, maps, photographs, video or audio recordings, and information stored in any form.

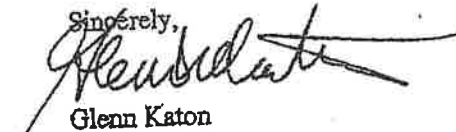
² Available at:
<http://www.lapdonline.org/assets/pdf/Michael%20DowningTestimonyfortheU.S.Senate-Final.PDF>

Letter to LAPD Custodian of Records
December 12, 2013
Page 2

- Outreach to individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Surveillance, monitoring, or collection of information that is not connected to a specific criminal investigation about individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Informants in mosques or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent that are not connected to a specific criminal investigation.
4. All records reflecting or relating to communications between any employee or agent of the LAPD and the following individuals, regardless of their actual title at the time of the communication:
- Raymond Kelly, New York City Police Department ("NYPD") Commissioner;
 - David Cohen, NYPD Deputy Commissioner;
 - Lawrence ("Larry") Sanchez, Central Intelligence Agency ("CIA") liaison to the State of New York, or any capacity for the CIA or NYPD;
 - Mitchell D. Silber, NYPD Senior Intelligence Analyst
 - Arvin Bhatt, NYPD Senior Intelligence Analyst
 - Hector Berdecia, NYPD;
 - John Cutter, NYPD Deputy Chief;
 - Timothy Mehta, NYPD Sergeant;
 - Steve D'Ulisse, NYPD Captain;
 - Stephen Hoban, NYPD Detective;
 - Bryan Michael Jenkins, Senior Advisor to the President of the Rand Corporation;
 - Anyone communicating on behalf of the individuals listed in this paragraph 4.
5. All records reflecting or relating to communications between any employee or agent of the LAPD and anyone at the NYPD on the subjects specified in paragraph 3, above, including bullet points.

If you have any questions concerning this request or if the cost for access to the records will exceed \$50.00, please contact me. Thank you in advance for your assistance with this matter.

Sincerely,



Glenn Katon
Legal Director

INTRADEPARTMENTAL CORRESPONDENCE

December 20, 2013
14.4

TO: Commanding Officer, Planning and Research Division

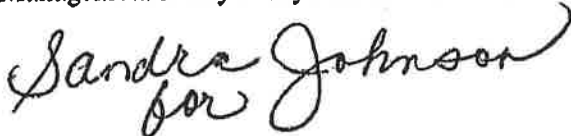
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The request is being forwarded to you for review. Please provide any responsive records to the Discovery Section by January 3, 2014. Personnel claiming an exemption to disclosure must provide specific justification for non-disclosure. A 15.2 is also being sent to Counter Terrorism and Special Operations Bureau and to Training Division requesting any responsive materials they may possess.

If you need additional information, or have any questions regarding this matter, please contact Management Analyst Caydene Monk of the Discovery Section at (213) 978-2136.

A handwritten signature in cursive script that reads "Sandra Johnson" with "for" written below it.

ROSEIRA C. MORENO, Captain
Commanding Officer
Legal Affairs Division

Attachment

Direct dial: (415) 675-1495
Email: glenn@muslimadvocates.org

December 12, 2013

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Los Angeles Police Department Discovery Section
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Los Angeles, CA 90012

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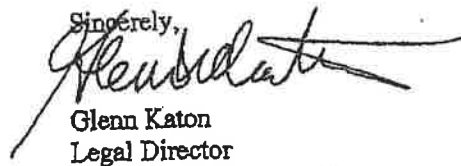
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Letter to LAPD Custodian of Records
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Page 2

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 - Hector Berdecia, NYPD;
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Sincerely,



Glenn Katon
Legal Director

INTRADEPARTMENTAL CORRESPONDENCE

December 20, 2013

14.4

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FROM: Commanding Officer, Legal Affairs Division

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ROSEIRA C. MORENO, Captain
Commanding Officer
Legal Affairs Division

Attachment


muslim advocates
PROMOTING FREEDOM AND JUSTICE FOR ALL

Direct dial: (415) 675-1495
Email: glenn@muslimadvocates.org

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Dear Sir or Madam:

Pursuant to the CPRA, I would like to inspect and obtain electronic copies of the following records¹ that are within the possession, custody, or control of the Los Angeles Police Department ("LAPD"), for the period September 11, 2001, through the present:

1. All records reflecting or relating to "LAPD's outreach and grassroots dialogue with Muslim communities" as described by Michael P. Downing, Commanding Officer Counter-Terrorism/Criminal Intelligence Bureau, before the U.S. Senate on October 30, 2007 ("Senate Statement").²
2. All records reflecting or relating to the "Community Mapping" program, as described in the Senate Statement.
3. All records reflecting or relating to the LAPD's policies or practices based upon individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent. Such records include but are not limited to:
 - Community mapping or Muslim mapping;

¹ Throughout this request, "record" should be given its broadest meaning under Government Code § 6252, and includes, but is not limited to, policies, protocols, manuals, instructions, training materials, memoranda, templates, forms, notices, invitations, calendars, appointments, meeting agendas, meeting or interview notes, evaluations, assessments, analyses, email communications, correspondence, maps, photographs, video or audio recordings, and information stored in any form.

² Available at:
<http://www.lapdonline.org/assets/pdf/Michael%20DowningTestimonyfortheU.S.Senate-Final.PDF>

Letter to LAPD Custodian of Records
December 12, 2013
Page 2

- Outreach to individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Surveillance, monitoring, or collection of information that is not connected to a specific criminal investigation about individuals who or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent;
 - Informants in mosques or communities that are Muslim, or are of Arab, South Asian or Middle Eastern descent that are not connected to a specific criminal investigation.
4. All records reflecting or relating to communications between any employee or agent of the LAPD and the following individuals, regardless of their actual title at the time of the communication:
- Raymond Kelly, New York City Police Department ("NYPD") Commissioner;
 - David Cohen, NYPD Deputy Commissioner;
 - Lawrence ("Larry") Sanchez, Central Intelligence Agency ("CIA") liaison to the State of New York, or any capacity for the CIA or NYPD;
 - Mitchell D. Silber, NYPD Senior Intelligence Analyst
 - Arvin Bhatt, NYPD Senior Intelligence Analyst
 - Hector Berdecia, NYPD;
 - John Cutter, NYPD Deputy Chief;
 - Timothy Mehta, NYPD Sergeant;
 - Steve D'Ulisse, NYPD Captain;
 - Stephen Hoban, NYPD Detective;
 - Bryan Michael Jenkins, Senior Advisor to the President of the Rand Corporation;
 - Anyone communicating on behalf of the individuals listed in this paragraph 4.
5. All records reflecting or relating to communications between any employee or agent of the LAPD and anyone at the NYPD on the subjects specified in paragraph 3, above, including bullet points.

If you have any questions concerning this request or if the cost for access to the records will exceed \$50.00, please contact me. Thank you in advance for your assistance with this matter.

Sincerely,



Glenn Katon
Legal Director

EXHIBIT BBBB

2/23/2017

Project Details

#1000911 Subject

Email Audit

Do Not Close

Initial Org-Unit ITD
Assigned Unit GW&DR
Status Close

Div:

Contact Person 22055 Trotter, Philip
Assigned To V9434 McClain, Rachel
Closed By: V9434 McClain, Rachel

Start Date 05/17/2011
Due Date 07/31/2011
Closed Date 09/12/2011

Narrative:

Risk Management Request Email Audit. Contact Capt Trotter.

Results: 2008 - present

Risk Management Request Email Audit. Contact Capt Trotter.

Comments

#	Date	Serial	Name	Attachment
9341	9/12/2011 10:51:00 AM	V9434	McClain, Rachel	
Data retrieved. Capt Trotter notified via email. Data placed on Trotter's G drive.				
6215	7/7/2011 12:09:00 PM	V9400	Dominguez, Maria	
Ticket Number 1000911 until July 31, 2011-Extended Due Date				
6213	7/7/2011 12:05:00 PM	V9434	McClain, Rachel	
Request has 3 individuals for 3 years. Completed 2 of the 3 searches. Need more time for final search.				
5850	6/24/2011 12:09:00 PM	V9400	Dominguez, Maria	
Per Leshon Frierson-Also, please extend 1000911 to 6/30/11 so Rachel can complete some additional retrieval work. We will contact Capt Trotter to let him know of the delay-Extended Due Date 6-30-11				
5845	6/24/2011 10:40:00 AM	G8131	Frierson, Leshon	
Requested extension.				
5461	6/14/2011 3:43:00 PM	N4071	Lim, Stephen	
extension granted				
4890	5/31/2011 5:08:00 PM	N4071	Lim, Stephen	
extension granted				
4873	5/31/2011 2:58:00 PM	G8131	Frierson, Leshon	
Requested extension to June 10th				
4398	5/19/2011 8:53:00 AM	G8131	Frierson, Leshon	
Assigned to Rachel Borders for processing				
4333	5/18/2011 10:30:00 AM	G9508	Huynh, Anthony	
Reassigned to GW&DR unit.				
4315	5/17/2011 5:36:00 PM	V9400	Dominguez, Maria	1000911.pdf
See Attachment				
4314	6/17/2011 5:35:00 PM	V9400	Dominguez, Maria	
See Comments				

Contacts

Serial Name Phone Entered By Entered On

Name Due Status OrgUnit Assignee

Request Extension

EXHIBIT 29

Rachel McClain Vol. 4

3/23/17

Reported by:
Jean Holliday, CSR 4535

LAPD RFP-2 00097

ANGELA DOMINGUEZ - Fw: Request

100911

From: JEFF JANTZ
To: v9400@lapd.lacity.org
Date: 5/16/2011 4:35 PM
Subject: Fw: Request

>>> PHILLIP TROTTER 5/16/2011 1:45:08 PM >>>
Leshon,Jeff

I need a copy of all the emails from July 15, 2008 to March 28, 2010, between me and Polke Officer III Laura Gerritsen, 31167, including the names of anyone cc'd and any attachments.

Also, a copy of all the emails during the same date range between me and Sergeant I+II Dawn Amber McCallum, 27617, including the names of anyone cc'd and any attachments.

Let me know if you need a 15.2 or whether this email will suffice and how long it will take.

Phil Trotter

EXHIBIT CCCC

Charney, Brendan

From: Kjehl Johansen <kjehl.johansen@lacity.org>
Sent: Friday, May 05, 2017 2:39 PM
To: Charney, Brendan
Cc: Linda Nguyen; Henry, Karen; Pearmain, Lina
Subject: Re: Muslim Advocates - BS163755 - follow up re Sgt. Seguin testimony

Brendan,

Yes, LAPD plans to submit a declaration from Michael Downing. However, he has retired from the Department so I am not in a position to offer dates that he is available for deposition.

Regards,

Kjehl

On Fri, May 5, 2017 at 2:21 PM, Charney, Brendan <BrendanCharney@dwt.com> wrote:

Kjehl,

Sgt. Seguin testified at several points in his deposition that, in framing his search of CTSOB's records, he relied on Deputy Chief Downing's representation that there were no records concerning Community Mapping.

Can you let us know whether the LAPD plans to submit a declaration from Deputy Chief Downing in opposition to Muslim Advocates' Petition?

If so, a deposition of Deputy Chief Downing will be appropriate, and we would ask you to kindly let us know available dates for Deputy Chief Downing's deposition.

Regards,

Brendan

--

Kjehl T. Johansen
Deputy City Attorney
Public Safety General Counsel
(213) 978-2283 phone
(213) 978-8787 fax

*****Confidentiality Notice *****

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14 Los Angeles, California 90017-2566
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17 Attorneys for Petitioner
18 MUSLIM ADVOCATES

19 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 IN AND FOR THE COUNTY OF LOS ANGELES

21 MUSLIM ADVOCATES,
22
23 Petitioner,

24 v.

25 THE CITY OF LOS ANGELES; THE LOS
26 ANGELES POLICE DEPARTMENT; DOES 1
27 THROUGH 10, INCLUSIVE,

28 Respondents.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG 11 2017

Sherri R. Carter, Executive Officer/Clerk

By: CARMEN DEL RIO, Deputy

) Case No. BS163755
) Assigned to the Hon. James C. Chalfant
) Dept.: 85

) **DECLARATION OF BRENDAN
) CHARNEY IN SUPPORT OF PETITION
) FOR WRIT OF MANDATE; EXHIBITS
) AA-BBBB**

) [Memorandum of Points and Authorities In
) Support of Verified Petition for Writ of
) Mandate; Separate Statement of Facts In
) Support of Verified Petition for Writ of
) Mandate; and Request For Judicial Notice
) Concurrently Filed]

) [[Proposed] Order Granting Verified Petition
) Concurrently Lodged]

) Action Filed: July 25, 2016

DECLARATION OF BRENDAN N. CHARNEY

I, BRENDAN N. CHARNEY, declare:

1. I am an associate with the law firm Davis Wright Tremaine, LLP, and one of the attorneys representing Petitioner Muslim Advocates (“Muslim Advocates”) in this matter. I submit this declaration in support of the Verified Petition for Writ of Mandate (“Petition”) filed by Muslim Advocates in this matter. The matters stated in this declaration are true based on my personal knowledge and if called to testify I could and would testify competently thereto.

2. On January 12, 2017, I took the deposition of Rachel McClain in her capacity as the person designated by the Los Angeles Police Department (“LAPD”) as most qualified to testify concerning the LAPD’s e-mail backup system and undue burden claim thereto. Attached hereto as **Exhibit AA** are true and correct copies of excerpts from Volume One of the transcript of that deposition.

3. On January 26, 2017, I took the continued deposition of Ms. McClain in her capacity as the LAPD’s person-most-qualified (“PMQ”) designee. Attached hereto as **Exhibit BB** are true and correct copies of excerpts from Volume Two of the transcript of that deposition.

4. On March 15, 2017, I took the continued deposition of Ms. McClain in her capacity as the LAPD’s PMQ designee. Attached hereto as **Exhibit CC** are true and correct copies of excerpts from Volume Three of the transcript of that deposition.

5. On March 23, 2017, I took the continued deposition of Ms. McClain in her capacity as the LAPD’s PMQ designee. Attached hereto as **Exhibit DD** are true and correct copies of excerpts from Volume Four of the transcript of that deposition.

6. On February 15, 2017, I took the deposition of Greg Toyama in his capacity as the person designated by the LAPD as most qualified to testify concerning the LAPD’s search for records in response to Muslim Advocates’ December 12, 2013 CPRA request concerning Community Mapping. Attached hereto as **Exhibit EE** are true and correct copies of excerpts from Volume One of the transcript of that deposition.

7. On March 16, 2017, I took the continued deposition of Greg Toyama in his capacity as the LAPD’s PMQ designee. Attached hereto as **Exhibit FF** are true and correct copies of

1 excerpts from Volume Two of the transcript of that deposition.

2 8. On March 22, 2017, I took the deposition of Anthony Huynh in his capacity as the
3 person designated by the LAPD as most qualified to testify concerning the LAPD's divisional
4 server backup system and undue burden claim thereto. Attached hereto as **Exhibit GG** are true and
5 correct copies of excerpts from the transcript of that deposition.

6 9. On April 17, 2017, I took the deposition of Sgt. Michael Seguin. Attached hereto as
7 **Exhibit HH** are true and correct copies of excerpts from the transcript of that deposition.

8 10. On May 10, 2017, I took the deposition of Sgt. Raymona Moussa. Attached hereto
9 as **Exhibit II** are true and correct copies of excerpts from the transcript of that deposition.

10 11. On May 17, 2017, I took the deposition of Dr. Luann Pannell. Attached hereto as
11 **Exhibit JJ** are true and correct copies of excerpts from the transcript of that deposition.

12 12. On May 31, 2017, I took the deposition of former Deputy Chief Michael Downing.
13 Attached hereto as **Exhibit KK** are true and correct copies of excerpts from Volume One of the
14 transcript of that deposition.

15 13. On June 8, 2017, I took the continued deposition of former Deputy Chief Michael
16 Downing. Attached hereto as **Exhibit LL** are true and correct copies of excerpts from Volume
17 Two of the transcript of that deposition.

18 14. Attached as **Exhibit MM** are true and correct copies of the Notice of Deposition of
19 Person(s) Most Qualified at Respondent Los Angeles Police Department, along with Notices of
20 Continued Deposition of Person(s) Most Qualified at Respondent Los Angeles Police Department,
21 for the deposition of Rachel McClain in her capacity as the LAPD's PMQ.

22 15. Attached as **Exhibit NN** is a true and correct copy of the Notice of Continued
23 Deposition of Person(s) Most Qualified at Respondent Los Angeles Police Department for the
24 deposition of Greg Toyama in his capacity as the LAPD's PMQ.

25 16. Attached as **Exhibit OO** is a true and correct copy of the Notice of Deposition of
26 Person(s) Most Qualified at Respondent Los Angeles Police Department for the deposition of
27 Anthony Huynh in his capacity as the LAPD's PMQ.

28 17. Attached as **Exhibit PP** is a true and correct copy of this Court's November 8, 2016

1 Order Denying Respondents' Motion to Stay Proceedings.

2 18. Attached as **Exhibit QQ** is a true and correct copy of the transcript of the hearing
3 held before this Court on November 8, 2016 concerning Respondents' Motion to Stay Proceedings.

4 19. On October 14, 2016, I received, via e-mail, a letter from Linda N. Nguyen, a
5 Deputy City Attorney for the City of Los Angeles, and one of the attorneys of record for
6 Respondents. Attached hereto as **Exhibit RR** is a true and correct copy of the October 14, 2016
7 letter from Ms. Nguyen, along with true and correct copies of the records enclosed with the letter.

8 20. On October 21, 2016, I received, via e-mail, a letter from Ms. Nguyen. Attached
9 hereto as **Exhibit SS** is a true and correct copy of the October 21, 2016 letter from Ms. Nguyen,
10 along with true and correct copies of the records enclosed with the letter.

11 21. On February 14, 2017, I received, via e-mail, a letter from Ms. Nguyen. Attached
12 hereto as **Exhibit TT** is a true and correct copy of the February 14, 2017 letter from Ms. Nguyen,
13 along with true and correct copies of the records enclosed with the letter.

14 22. On March 7, 2017, I received an e-mail from Kjehl Johansen, at that time a Deputy
15 City Attorney for the City of Los Angeles, and one of the attorneys of record for Respondents.
16 Attached hereto as **Exhibit UU** is a true and correct copy of the e-mail chain containing the March
17 7, 2017 e-mail from Mr. Johansen.

18 23. On April 3, 2017, I sent an e-mail to Kjehl Johansen, at that time a Deputy City
19 Attorney for the City of Los Angeles, and one of the attorneys of record for Respondents. Attached
20 hereto as **Exhibit VV** is a true and correct copy of the e-mail thread in which my April 3, 2017 e-
21 mail to Mr. Johansen appears.

22 24. On April 4, 2017, I received, via e-mail, a letter from Ms. Nguyen. Attached hereto
23 as **Exhibit WW** is a true and correct copy of the April 4, 2017 letter from Ms. Nguyen, along with
24 the transmittal e-mail. In the same e-mail transmitting the April 4, 2017 letter, Ms. Nguyen
25 attached two PDFs collectively containing 124 pages, which Ms. Nguyen identified in the letter as
26 documents that the City believes are the attachments to e-mails previously disclosed to Muslim
27 Advocates in response to its CPRA Request.

28 25. Attached hereto as **Exhibit XX** is a true and correct copy of one of the attachments

1 transmitted along with Ms. Nguyen's April 4, 2017 letter: a draft LAPD document titled "Counter
2 Radicalization Strategies, Reaching Out: Policing with Muslim Communities in an Age of
3 Terrorism." This document was marked as Exhibit 11 at the Deposition of Michael Downing.

4 26. On June 30, 2017, I received, via e-mail, a letter from Mr. Johansen, at that time a
5 Deputy City Attorney for the City of Los Angeles, and one of the attorneys of record for
6 Respondents. Attached hereto as **Exhibit YY** is a true and correct copy of the June 30, 2017 letter
7 from Mr. Johansen, along with true and correct copies of records enclosed with the letter.

8 27. Attached as **Exhibit ZZ** is a true and correct copy of the Statement of Michael P.
9 Downing Before the U.S. Senate Committee on Homeland Security and Governmental Affairs
10 Presented on October 30, 2007, as marked as Exhibit 2 at the Deposition of Michael Downing.
11 During the deposition, counsel for Respondents stipulated that this document is a business record of
12 the LAPD and is admissible on that basis for all purposes in this action. This stipulation was
13 memorialized on the record during the deposition, and can be found on page 28, lines 2-8 of Exhibit
14 KK.

15 28. Attached as **Exhibit AAA** is a true and correct copy of a document titled "list of
16 Department Groups Receiving 15.2 for Muslim Advocates", as marked as Exhibit 2 at the
17 Deposition of Greg Toyama in his capacity as the LAPD's PMQ. During the deposition, counsel
18 for Respondents stipulated that this document is a business record of the LAPD and is admissible
19 on that basis for all purposes in this action. This stipulation was memorialized on the record during
20 the deposition, and can be found on page 71, line 25 to page 72, line 18 of Exhibit EE.

21 29. Attached as **Exhibit BBB** is a true and correct copy of a document titled "Legal
22 Affairs Division Discovery Section CPRA Request", as marked as Exhibit 5 at the Deposition of
23 Greg Toyama in his capacity as the LAPD's PMQ. During the deposition, counsel for Respondents
24 stipulated that this document is a business record of the LAPD and is admissible on that basis for
25 all purposes in this action. This stipulation was memorialized on the record during the deposition,
26 and can be found on page 71, line 25 to page 72, line 18 of Exhibit EE.

27 30. Attached as **Exhibit CCC** is a true and correct copy of a document titled "CPRA
28 Request from Mr. Glenn Katon with the Muslim Advocates", as marked as Exhibit 6 at the

1 Deposition of Greg Toyama in his capacity as the LAPD's PMQ. During the deposition, counsel
2 for Respondents stipulated that this document is a business record of the LAPD and is admissible
3 on that basis for all purposes in this action. This stipulation was memorialized on the record during
4 the deposition, and can be found on page 71, line 25 to page 72, line 18 of Exhibit EE.

5 31. Attached as **Exhibit DDD** is a true and correct copy of excerpts from the LAPD's
6 2016 2nd Quarter Department Manual, in particular sections 050.08 to 080.92, bearing bates
7 numbers LAPD RFP-2 00055-00063 as marked as Exhibit 28 at the Deposition of Greg Toyama in
8 his capacity as the LAPD's PMQ. This document was produced by Respondents in this action on
9 March 3, 2017 in response to Muslim Advocates' Second Set of Requests For Production Of
10 Documents under CCP § 2031.010 et seq.

11 32. Attached as **Exhibit EEE** is a true and correct copy of a document titled
12 Intradepartmental Correspondence, dated January 3, 2014, and bearing bates numbers LAPD RFP-
13 2 00039 as marked as Exhibit 29 at the Deposition of Greg Toyama in his capacity as the LAPD's
14 PMQ. This document was produced by Respondents in this action on March 3, 2017 in response to
15 Muslim Advocates' Second Set of Requests For Production Of Documents under CCP § 2031.010
16 et seq.

17 33. Attached as **Exhibit FFF** is a true and correct copy of excerpts from the LAPD
18 Manual and the LAPD's Policies and Procedures Division Reference Guide concerning
19 Memoranda of Understanding and Agreement, and bearing bates numbers LAPD RFP-2 00054,
20 00064-68 as marked as Exhibit 30 at the Deposition of Greg Toyama in his capacity as the LAPD's
21 PMQ. This document was produced by Respondents in this action on March 3, 2017 in response to
22 Muslim Advocates' Second Set of Requests For Production Of Documents under CCP § 2031.010
23 et seq.

24 34. Attached as **Exhibit GGG** is a true and correct copy of printouts from the LAPD
25 Discovery Section's tracking system, and bearing bates numbers LAPD RFP-2 0005-0008, as
26 marked as Exhibit 34 at the Deposition of Greg Toyama in his capacity as the LAPD's PMQ. This
27 document was produced by Respondents in this action on March 3, 2017 in response to Muslim
28 Advocates' Second Set of Requests For Production Of Documents under CCP § 2031.010 et seq.

1 35. Attached as **Exhibit HHH** is a true and correct copy of a 15.2 transmitting Muslim
2 Advocates' CPRA Request produced by Respondents at the deposition of Sgt. Raymona Moussa,
3 as marked as Exhibit 2 at the Deposition of Sgt. Raymona Moussa. During the deposition, counsel
4 for Respondents stipulated that this document is a business record of the LAPD and is admissible
5 on that basis for all purposes in this action. This stipulation was memorialized on the record during
6 the deposition, and can be found on page 15, lines 2-7 of Exhibit I.

7 36. Attached as **Exhibit III** is a true and correct copy of a Planning and Research
8 Division Chronological Activity Log produced by Respondents at the deposition of Sgt. Raymona
9 Moussa, as marked as Exhibit 4 at the Deposition of Sgt. Raymona Moussa. During the deposition
10 of Sgt. Raymona Moussa, counsel for Respondents stipulated that this document is a business
11 record of the LAPD and is admissible on that basis for all purposes in this action. This stipulation
12 was memorialized on the record during the deposition, and can be found on page 15, lines 2-7 of
13 Exhibit II.

14 37. Attached as **Exhibit JJJ** is a true and correct copy of a set of documents titled
15 Official Correspondence Review produced by Respondents at the deposition of Sgt. Raymona
16 Moussa, as marked as Exhibit 5 at the Deposition of Sgt. Raymona Moussa. During the deposition,
17 counsel for Respondents stipulated that this document is a business record of the LAPD and is
18 admissible on that basis for all purposes in this action. This stipulation was memorialized on the
19 record during the deposition, and can be found on page 15, lines 2-7 of Exhibit II.

20 38. Attached as **Exhibit KKK** is a true and correct copy of an e-mail thread between
21 former Deputy Chief Downing and Professor Samuel G. Freedman, as marked as Exhibit 9 at the
22 Deposition of Michael Downing. This document is substantively identical (apart from the addition
23 of bates numbers for identification purposes) to one of the documents enclosed along with the the
24 October 14, 2016 letter from Ms. Nguyen attached hereto as Exhibit RR.

25 39. Attached as **Exhibit LLL** is a true and correct copy of an LAPD document titled
26 "Muslim Community Engagement Initiative White Paper," as marked as Exhibit 12 at the
27 Deposition of Michael Downing. Apart from the addition of bates numbers for identification
28 purposes, this document is substantively identical to the document attached as Exhibit G to the

1 Petition, which Respondents admit is a true and correct copy in their First Amended Answer
2 (“FAA”), paragraph 13.

3 40. Attached as **Exhibit MMM** is a true and correct copy of a City of Los Angeles
4 Contract Purchase Order for an item of software called Transend, as marked as Exhibit 18 at the
5 Deposition of Rachel McClain in her capacity as the LAPD’s PMQ. During the deposition, counsel
6 for Respondents stipulated that this document is a business record of the LAPD and is admissible
7 on that basis for all purposes in this action. This stipulation was memorialized on the record during
8 the deposition, and can be found on page 492, lines 4-10 of Exhibit CC.

9 41. Attached as **Exhibit NNN** is a true and correct copy of the City of Los Angeles
10 Departmental Records Disposition Schedule dated August 17, 2015, as marked as Exhibit 23 at the
11 Deposition of Rachel McClain in her capacity as the LAPD’s PMQ. During the deposition, counsel
12 for Respondents stipulated that this document is a business record of the LAPD and is admissible
13 on that basis for all purposes in this action. This stipulation was memorialized on the record during
14 the deposition, and can be found on page 492, lines 4-10 of Exhibit CC.

15 42. Attached as **Exhibit OOO** is a true and correct copy of a collection of documents
16 showing the LAPD’s access of e-mail stored on backup tapes in or around June 2011 in response to
17 an internal LAPD request, as marked as Exhibit 25 at the Deposition of Rachel McClain in her
18 capacity as the LAPD’s PMQ. During the deposition, counsel for Respondents stipulated that this
19 document is a business record of the LAPD and is admissible on that basis for all purposes in this
20 action. This stipulation was memorialized on the record during the deposition, and can be found on
21 page 492, lines 4-10 of Exhibit CC.

22 43. Attached as **Exhibit PPP** is a true and correct copy of a set of logs of restorals of
23 backup tapes bearing bates number LAPD-RFP-2 00099-125, as marked as Exhibit 30 at the
24 Deposition of Rachel McClain in her capacity as the LAPD’s PMQ. This document was produced
25 by Respondents in this action on March 3, 2017 in response to Muslim Advocates’ Second Set of
26 Requests For Production Of Documents under CCP § 2031.010 et seq.

27 44. Attached as **Exhibit QQQ** is a true and correct copy of a transcript of text messages
28 between Leshon Frierson and Rachel McClain bearing bates number LAPD RFP-2 00072, as

1 marked as Exhibit 31 at the Deposition of Rachel McClain in her capacity as the LAPD's PMQ.
2 This document was produced by Respondents in this action on March 3, 2017 in response to
3 Muslim Advocates' Second Set of Requests For Production Of Documents under CCP § 2031.010
4 et seq.

5 45. On August 9, 2017, I visited the website of the United States National Archives and
6 accessed the December, 1982 report of the Congressional Commission on Wartime Relocation and
7 Internment of Civilians, titled "Personal Justice Denied" at [www.archives.gov/research/japanese-](http://www.archives.gov/research/japanese-american/justice-denied)
8 [americans/justice-denied](http://www.archives.gov/research/japanese-american/justice-denied). Attached hereto as **Exhibit RRR** is a true and correct copy of Chapter 3
9 of Personal Justice Denied, as available as of August 9, 2017 at
10 <https://www.archives.gov/files/research/japanese-americans/justice-denied/chapter-3.pdf>.

11 46. On August 9, 2017, I accessed the user guide website for Adobe Acrobat and caused
12 to be printed the portion of the user guide that covers searching PDFs in Adobe Acrobat. Attached
13 as **Exhibit SSS** is a true and correct copy of the portion of the Adobe Acrobat user guide that
14 covers searching PDFs, as available as of August 9, 2017 at
15 <https://helpx.adobe.com/acrobat/using/searching-pdfs.html>.

16 47. On August 8, 2017, I visited the LAPD's website and caused to be printed an
17 organizational chart depicting the organization of the LAPD's bureaus, offices, divisions, sections,
18 etc. Attached as **Exhibit TTT** is a true and correct copy of the organizational chart, as available as
19 of August 8, 2017 at <http://assets.lapdonline.org/assets/pdf/Org Chart 4-27-17-DP-4B.pdf>.

20 48. On August 8, 2017, I visited the LAPD's website and caused to be printed Volume
21 Two of the LAPD's Manual. Attached hereto as **Exhibit UUU** is a true and correct copy of
22 Volume Two of the LAPD's Manual, as available as of August 8, 2017 at
23 http://www.lapdonline.org/lapd_manual/volume_2.htm#040.

24 49. On August 10, 2017 I caused to be printed from the website of the Washington Post
25 an article by Abby Phillip and Abigail Hauslohner dated December 22, 2016 and titled "Trump On
26 The Future Of Proposed Muslim Ban, Registry: 'You Know My Plans'". Attached hereto as
27 **Exhibit VVV** is a true and correct copy of the article, as available as of August 9, 2017 at
28 <https://www.washingtonpost.com/news/post-politics/wp/2016/12/21/trump-on-the-future-of->

1 [proposed-muslim-ban-registry-you-know-my-plans/](http://ag.ca.gov/publications/pr.a.pdf).

2 50. On August 10, 2017, I visited the Office of the Attorney General's website and
3 accessed a presentation from the Office of the Attorney General titled "Public Records Act
4 Training". A true and correct copy of the training presentation, as available as of August 10, 2017
5 at <http://ag.ca.gov/publications/pr.a.pdf> is attached hereto as **Exhibit WWW**.

6 51. On February 17, 2017, I caused a letter to be sent to Mr. Johansen, at that time a
7 Deputy City Attorney for the City of Los Angeles, and one of the attorneys of record for
8 Respondents. The letter proposed an arrangement by which the LAPD would conduct a narrowed
9 search of Deputy Chief Downing's e-mail from only three months: December 2006, December
10 2007, and December 2008. Attached as **Exhibit XXX** is a true and correct copy of my February
11 17, 2017 letter.

12 52. On February 28, 2017, I received a letter from Ms. Nguyen responding to my
13 February 17, 2017 letter, declining the proposal. Attached as **Exhibit YYY** is a true and correct
14 copy of Ms. Nguyen's February 28, 2017 letter.

15 53. Attached hereto as **Exhibit ZZZ** is a true and correct copy of a Joint Stipulation
16 Requesting Continuance of Hearing and Setting New Briefing Schedule filed in this action on April
17 10, 2017.

18 54. Attached hereto as **Exhibit AAAA** is a true and correct copy of a collection of
19 LAPD Intradepartmental Correspondence as marked as Exhibit 9 at the Deposition of Greg Toyama
20 in his capacity as the LAPD's PMQ. During the deposition, counsel for Respondents stipulated
21 that this document is a business record of the LAPD and is admissible on that basis for all purposes
22 in this action. This stipulation was memorialized on the record during the deposition, and can be
23 found on page 71, line 25 to page 72, line 18 of Exhibit EE.

24 55. Attached as **Exhibit BBBB** is a true and correct copy of a collection of documents
25 showing the LAPD's response to an internal LAPD request for e-mail in or around September
26 2011, bearing bates number LAPD RFP-2 00097-00098, as marked as Exhibit 29 at the Deposition
27 of Rachel McClain in her capacity as the LAPD's PMQ. This document was produced by
28 Respondents in this action on March 3, 2017 in response to Muslim Advocates' Second Set of

1 Requests For Production Of Documents under CCP § 2031.010 et seq.

2 56. On Friday, May 5, 2017 I sent an e-mail concerning anticipated testimony by
3 Deputy Chief Downing to Kjehl Johansen, at that time a Deputy City Attorney for the City of Los
4 Angeles, and one of the attorneys of record for Respondents. Mr. Johansen replied the same
5 day. Attached as **Exhibit CCCC** is a true and correct copy of the May 5, 2017 e-mail thread
6 between me and Mr. Johansen.

7 This declaration was executed on the 11th day of August, 2017, in Los Angeles, California.
8 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
9 and correct.

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12 _____
13 Brendan N. Charney
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, Suite 2400, 865 South Figueroa Street, Los Angeles, California 90017-2566.

On August 11, 2017, I served the foregoing document(s) described as: **DECLARATION OF BRENDAN CHARNEY IN SUPPORT OF PETITION FOR WRIT OF MANDATE; EXHIBITS AA-BBBB** by placing a **true copy** of said document(s) enclosed in a sealed envelope(s) for each addressee named below, with the name and address of the person served shown on the envelope as follows:

Michael N. Feuer, City Attorney
Carlos De La Guerra, Managing Assistant City Attorney
Kjehl T. Johansen, Deputy City Attorney
200 North Main Street
City Hall East, Room 800
Los Angeles, Ca 90012

X - (VIA PERSONAL DELIVERY) to be served on all other parties to this action by requesting that a messenger from *GLOBAL NETWORK LEGAL SERVICES* deliver true copies of the above-named documents, enclosed in sealed envelopes addressed indicated above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on August 11, 2017, at Los Angeles, California.

Yvette M. Merino
Print Name



Signature