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Superior Court of California
County of Los Angeles

AUG 11 2017

Sherri R. Carter, Executive Officer/Clerk

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Superior Court of California
County of Los Angeles

AUG 11 2017

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12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF LOS ANGELES

16 MUSLIM ADVOCATES,) Case No. BS163755
17) Assigned to the Hon. James C. Chalfant
Petitioner,)
18) **PETITIONER MUSLIM ADVOCATES'**
v.) **MEMORANDUM OF POINTS AND**
19) **AUTHORITIES IN SUPPORT OF**
THE CITY OF LOS ANGELES; THE LOS) **VERIFIED PETITION FOR WRIT OF**
ANGELES POLICE DEPARTMENT; DOES 1) **MANDATE**
20 THROUGH 10, INCLUSIVE,)
21 Respondents.) [Separate Statement Of Facts In Support Of
22) Verified Petition For Writ Of Mandate;
23) Declaration of Brendan N. Charney In Support
24) Of Verified Petition For Writ Of Mandate
25) With Corresponding Exhibits; and Request
26) For Judicial Notice In Support Of Verified
27) Petition For Writ Of Mandate Concurrently
Filed])
28) [[Proposed] Order Granting Verified Petition
Concurrently Lodged])
Petition Filed: July 25, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on October 12, 2017, at 9:30 a.m., or as soon thereafter as
3 the matter may be heard, in Department 85 of the above-captioned court, located at 111 North Hill
4 Street, Los Angeles, CA 90012, Petitioner Muslim Advocates, pursuant to its Verified Petition for
5 Writ of Mandate (“Pet.”), will and hereby does move this Court for a Writ of Mandate directed to
6 Respondents the City of Los Angeles and the Los Angeles Police Department (collectively,
7 “LAPD”) under the California Public Records Act (“CPRA”):

8 1) Declaring that the LAPD has violated the CPRA by: (a) refusing to conduct a search of its
9 hard copy and electronic repositories that was reasonably calculated to locate all records
10 responsive to Item No. 2 of Muslim Advocates’ CPRA request dated December 12, 2013
11 concerning the LAPD’s “Community Mapping” program (“Request”) (see Pet. ¶ 10, Ex. D);
12 (b) failing to provide assistance to overcome practical barriers the LAPD claims precludes it
13 from searching its electronic files for responsive records created or generated prior to 2010;
14 (c) failing to provide the reasons for its determination that 4,495 post-2010 records stored
15 on backed-up email are not disclosable until well after the litigation was initiated; (d) failing
16 to produce attachments referenced in the 5 post-2010 email records until well after the
17 litigation was initiated; and (e) failing to respond to Muslim Advocates’ Request within the
18 time frame mandated by the CPRA.

19 2) Commanding the LAPD to conduct a search of its hard copy and electronic repositories that
20 is reasonably calculated to locate all public records responsive to Muslim Advocates’
21 Request by:

- 22 a. Preparing new Intradepartmental Correspondence accurately describing the
23 content and scope of Muslim Advocates’ Request (see Section III.C.1), infra);
- 24 b. Searching for responsive records in all locations where they are likely to be
25 found, including without limitation, the Counter-Terrorism and Special
26 Operations Bureau (“CTSOB”), Planning and Research Division, Police
27 Training and Education (“PTE”) Division, Media Relations and Community
28 Affairs Group, Community Relations Division, Legal Affairs Division, Risk

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Management Division, Fiscal Operations Division, the Office of the Chief of Police, and any local patrol divisions where the LAPD has employed its 18-month "methodical engagement strategy" (see Section III.C.2-3, infra);

- c. Accessing and searching the 2007 and 2008 CTSOB's divisional file server backups for records responsive to the Request (see Section III.D.1, infra);
- d. Accessing and searching the 2007 and 2008 e-mail backups of former Deputy Chief Michael Downing for records responsive to the Request (see Section III.D.2, infra).

Muslim Advocates also seeks reasonable attorneys' fees and costs pursuant to Government Code § 6259(d), and will file a separate memorandum supporting its right to fees and costs.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the concurrently-filed Declaration of Brendan N. Charney and accompanying exhibits, the concurrently-filed Separate Statement in Support of Verified Petition for Writ of Mandate, the concurrently-filed Request for Judicial Notice in Support of Verified Petition for Writ of Mandate and any other matters of which this Court may take judicial notice, the pleadings and records on file herein, and upon such other and further matters as may be presented at the hearing.

DATED: August 11, 2017

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THOMAS R. BURKE
KAREN A HENRY
BRENDAN N. CHARNEY

By: 
Karen A. Henry

Attorneys for Petitioner
MUSLIM ADVOCATES

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I. INTRODUCTION

Muslim Advocates seeks an order from this Court, compelling the Los Angeles Police Department (“LAPD”) to comply with its obligations under California’s Public Records Act (“CPRA”) to search for and disclose records relating to its publicly-announced initiative to “map” Muslim communities in Los Angeles (referred to as “Community Mapping”). Muslim Advocates has been trying to obtain copies of records relating to Community Mapping since 2013,¹ and the LAPD has spent four years avoiding its obligations under the CPRA to search for responsive records created during the relevant time period.

At first, the LAPD flatly denied having any responsive records. (SF No. 2.) Then, in response to questioning from Muslim Advocates, the LAPD admitted that responsive records exist and disclosed a handful of records from after 2010. (SF No. 3.) But the LAPD refused to search for records created in or around 2007—the time period when Community Mapping was “launched”—claiming records from before 2010 are stored on backup tapes that it lacks the equipment to search. (SF No. 4.) After Muslim Advocates challenged that claim, the LAPD relented, acknowledging that it has the equipment needed to search records stored on the backup tapes; yet, it still refused to do so, contending it would take 960 hours of its staff’s time. (SF No. 5.) When Muslim Advocates asked about methods for reducing the claimed burden, the LAPD stopped responding, forcing Muslim Advocates to bring this action.² (SF No. 6.)

After this Court ordered the LAPD to produce its “persons most qualified” for deposition, Muslim Advocates has learned about the little effort that the LAPD has undertaken to locate

¹ The Request at issue here is Item No. 2 in a letter dated December 12, 2013. (Statement of Fact (“SF”) No. 1.) The other numbered items in that letter are not at issue in this litigation.

² Since this Petition was filed, the LAPD has produced some responsive records. In particular, the LAPD produced 12 pages of the 4,500 records accessed from post-2010 e-mail, claiming that they had been “inadvertently withheld.” (SF No. 7.) The LAPD also has produced some records documenting its search efforts, none of which detail the search terms it used or the repositories it checked in conducting its initial search. (SF No. 8.) The LAPD produced attachments missing from post-2010 e-mails—including an LAPD strategy paper that was created “long after” Community Mapping was supposedly “shelved.” (SF No. 9.) Even after depositions had completed, the LAPD disclosed additional records, including a statement about its meeting with approximately 30 Muslim leaders and links to an audio recording of former Chief William Bratton discussing the “end” of Community Mapping. (SF No. 10.) These records—belatedly disclosed to Muslim Advocates in dribs and drabs—evidence the LAPD’s failure to conduct a reasonable search.

1 responsive records. This discovery has confirmed that the LAPD’s “search” for responsive records
2 was not even remotely calculated to uncover all responsive records. The evidence shows that the
3 LAPD failed to accurately convey the scope of Muslim Advocates’ Request to its record
4 custodians, and neglected to search logical places, review available record indices, or consult
5 personnel knowledgeable about the existence and location of records responsive to the Request.
6 Section III.C.2-3, infra. These failures violate the CPRA, warranting an order compelling the
7 LAPD to conduct a new search that is reasonably calculated to uncover all responsive records in its
8 possession, including those the LAPD has chosen to store on back up tapes. Section III.D, infra.

9 Importantly, the LAPD cannot evade its obligation to search for records stored on backup
10 tapes with a bare assertion that doing so would be “unduly burdensome.” To establish undue
11 burden, the LAPD must prove that the public interest in not searching for responsive records clearly
12 outweighs the public interest in searching for the records. But the only interest the LAPD has ever
13 identified to resist searching its backup tapes is the 960 hours it supposedly would take to access
14 and search the tapes. Notably, the LAPD has never substantiated its claim that searching relevant
15 backup tapes would take its staff 960 hours. To the contrary, the evidence confirms that the LAPD
16 has the equipment and personnel to search tapes from the relevant time period, and that the search
17 can be done within a reasonable amount of time, with a reasonable amount of effort. Section III.D,
18 infra.

19 Moreover, courts repeatedly have affirmed the manifest public interest in information about
20 law enforcement activities. City of Hemet v. Superior Court, 37 Cal.App.4th 1411, 1428 (1995).
21 This interest is heightened where, as here, the LAPD publicly announced its intent to target the
22 Muslim community. Indeed, any attempt to “map” a religious, ethnic, or national community is the
23 first step in segregating or even imprisoning that community, as evidenced by the regrettable
24 internment of Japanese Americans during the Second World War.³ The public interest in
25 understanding and evaluating law enforcement initiatives that unfairly target discrete populations
26

27 _____
28 ³ The “mapping” of Japanese Americans was a precursor to their internment. CONG. COMM’N ON
WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED at 96-98 (GPO,
Dec. 1982), available at www.archives.gov/research/japanese-americans/justice-denied.

1 and threaten unequal protection of law cannot be overstated. On balance, therefore, the public
2 interest in records relating to Community Mapping far outweighs any public interest the LAPD has
3 asserted to shirk its obligations under the CPRA to search for responsive records. Section III.D,
4 infra.

5 II. FACTUAL BACKGROUND

6 A. The LAPD's "Community Mapping" Program.

7 On October 30, 2007, then-Deputy Chief Michael Downing testified before the U.S.
8 Senate's Committee on Homeland Security and Governmental Affairs about the LAPD's efforts to
9 counter violent extremism. (SF No. 11.) In connection with his testimony, he prepared a written
10 statement ("Senate Statement") which described "Community Mapping," an initiative launched by
11 the LAPD to "lay out the geographic locations of the many different Muslim population groups
12 around Los Angeles" and to "take a deeper look at their history, demographics, language, culture,
13 ethnic breakdown, socio-economic status, and social interactions." (SF No. 12.) According to the
14 Senate Statement, Community Mapping had at least four interrelated components:

- 15 • LAPD's partnership with an academic institution to create a map identifying the
16 physical location of members of various Muslim population groups;
- 17 • LAPD's collection of the data sets needed to populate the map (i.e., the collection of
18 information concerning the Muslim groups' respective demographics, language,
19 culture, ethnic breakdown, socio-economic status, and social interactions);
- 20 • LAPD's ongoing execution of its methodical engagement strategy to build trust with
21 the Muslim communities; and
- 22 • An "intelligence-led" strategy that the LAPD would employ once the Muslim groups
23 were mapped.

24 B. Muslim Advocates' CPRA Request And The LAPD's Response.

25 On December 12, 2013, Muslim Advocates sent a request to the LAPD under the CPRA,
26 seeking, among other things, copies of "[a]ll records reflecting or relating to" Community Mapping
27 ("Request"). (SF No. 13.) The LAPD responded on January 17, 2014, stating "[t]here are no
28 documents responsive to your request." (SF No. 14.) Given the nature of the mapping program,

1 | however, Muslim Advocates found it highly improbable that no records relating to the program
2 | existed. As a result, by correspondence dated March 27, 2014, Muslim Advocates identified
3 | specific portions of the Senate Statement that led it to believe that the LAPD has records in its
4 | possession related to Community Mapping. (SF No. 15.) In that letter, Muslim Advocates also
5 | asked the LAPD to specify if responsive records had been destroyed, and sought records relating to
6 | the agency's efforts to comply with the Request. (SF No. 16.)

7 | This sparked a years-long exchange of correspondence between the parties that need not be
8 | recited here. Pet. at ¶¶ 14-54, Exs. H-Y. At its core, however, this correspondence reveals the
9 | LAPD's serial delays, material misrepresentations, and general failure to assist Muslim Advocates
10 | to inspect and copy indisputably public records. Consequently, Muslim Advocates was left with no
11 | choice but to seek court intervention.

12 | **C. Muslim Advocates Seeks A Writ Of Mandate.**

13 | On July 25, 2016, Muslim Advocates filed a Verified Petition for Writ of Mandate, alleging
14 | violations of the CPRA and seeking an order directing the LAPD to discharge its duty under the
15 | CPRA. (SF No. 17.) The LAPD filed its Amended Answer on September 2, 2016. (SF No. 18.)

16 | In response to written discovery propounded by Muslim Advocates in support of the
17 | Petition, the LAPD moved to block discovery. (SF No. 19.) On November 8, 2016, this Court
18 | denied that motion and ordered the LAPD to submit to the depositions of its persons most qualified
19 | ("PMQ"). (SF No. 20.) The Court clearly instructed the LAPD that its PMQ designee(s) should be
20 | "the person or persons who know the most about the search that was conducted and where the
21 | documents should be." (SF No. 21.) The LAPD designated three PMQs: Greg Toyama, the Sr.
22 | Management Analyst in Charge of the LAPD's CPRA Unit, testified as the PMQ on the LAPD's
23 | search for records (SF No. 22), Anthony Huynh, the Officer in Charge of the LAPD's Network
24 | Support Section, testified as the PMQ on divisional file server backups (SF No. 23), and Rachel
25 | McClain, a Sr. Systems Analyst II, testified as the PMQ on e-mail backups (SF No. 24).

26 | When Muslim Advocates learned that the LAPD intended to proffer the declarations of
27 | Deputy Chief Downing, Officer Raymona Moussa, Dr. Luann Pannell, and Sergeant Michael
28 | Seguin to circumvent the testimony of its PMQs, it deposed these declarants. (SF No. 25.) As

1 explained below, the testimony of the LAPD's witnesses confirms that its "search" for records was
2 woefully inadequate.

3 **III. THE COURT SHOULD GRANT THIS PETITION AND COMPEL THE LAPD TO**
4 **CONDUCT A REASONABLE SEARCH FOR RESPONSIVE RECORDS.**

5 **A. Muslim Advocates Has A Statutorily And Constitutionally Guaranteed Right**
6 **To Inspect Non-Exempt, Responsive Records In The LAPD's Possession.**

7 "[A]ccess to information concerning the conduct of the people's business is a fundamental
8 and necessary right of every person in this state." Gov't Code § 6250. The CPRA was enacted to
9 "increas[e] freedom of information by giving members of the public access to information in the
10 possession of public agencies." American Civil Liberties Union of Northern California v. Superior
11 Court ("ACLU"), 202 Cal.App.4th 55, 66 (2011). This policy of transparency was endorsed by
12 California voters in 2004 when they overwhelmingly approved Proposition 59, which amended the
13 state Constitution to specifically declare that "the writings of public agencies ... shall be open to
14 public scrutiny." Cal. Const. Art. I § 3(b). The underlying justification for such broad public
15 access "is the notion that government should be accountable for its actions." CBS, Inc. v. Block,
16 42 Cal.3d 646, 651 (1986). To ensure accountability, "individuals must have access to
17 government files." Id. As the California Supreme Court emphasized, "if the press and the public
18 are precluded from [inspecting public records], there will be no method by which the public can
19 ascertain whether the law is being properly applied or carried out in an evenhanded manner." Id. at
20 656; Bakersfield City Sch. Dist. v. Superior Court, 118 Cal.App.4th 1041, 1045 (2004) ("[t]he
21 CPRA embodies a strong policy in favor of disclosure of public records").

22 **B. The LAPD Has A Duty Under The CPRA To Search For And Disclose**
23 **Responsive Records In Its Possession.**

24 The CPRA requires agencies, like the LAPD, to search for and disclose public records upon
25 receipt of a request "which reasonably describes an identifiable record," unless the agency can
26 establish that the record is exempt from disclosure.⁴ Although the CPRA is silent on what

27 _____
28 ⁴ The CPRA defines "public record" as "any writing containing information relating to the conduct
of the public's business prepared, owned, used, or retained by any state or local agency." Cal.

1 constitutes an adequate search, California courts have adopted the standard set forth in federal
2 Freedom of Information Act (“FOIA”) cases: An agency’s search must be “reasonably calculated
3 to locate responsive documents.” Community Youth Athletic Center v. City of National City
4 (“CYAC”), 220 Cal.App.4th 1385, 1420 (2013); ACLU, 202 Cal.App.4th at 85. The hallmark of
5 this inquiry is reasonableness, and what is reasonable depends on the facts of each case.

6 While resolution of this issue necessarily requires an ad hoc review, there are factors to
7 guide the court’s evaluation. As a threshold matter, “[a]n agency is . . . obliged to search for
8 records based on criteria set forth in the search request.” California First Amendment Coalition v.
9 Superior Court (“CFAC”), 67 Cal.App.4th 159, 166 (1998); Calif. State Univ., 90 Cal.App.4th 810,
10 825 (2001). Based on the language of the request, an agency must “determine whether it has such
11 writings under its control and the applicability of any exemption.” CFAC, 67 Cal.App.4th at 166.
12 The agency’s search “should be broad enough to account for the problem that the requester may not
13 know what documents or information of interest an agency possesses.”⁵ CYAC, 220 Cal.App.4th at
14 1425. An agency also is required to provide assistance to a requester who solicits help locating
15 responsive records, as Muslim Advocates repeatedly did here. Cal. Gov’t Code § 6253.1 (a)(1).
16 Importantly, an agency must be “sufficiently proactive [and] diligent in making a reasonable effort
17 to identify and locate” the requested records. Id. The California Attorney General counsels that,
18 “[a]t a minimum, [reasonable] efforts should include: consulting record indexes [,] consulting
19 knowledgeable people [, and] looking in logical places.” Office of the California Attorney General,
20 Public Records Act Training at 31 (available as of April 4, 2016 at
21 <http://ag.ca.gov/publications/pract.pdf>) (emphasis added) (Decl. Ex. WWW).

22 Ultimately, it is the agency’s burden to prove the adequacy of its search by proffering
23 evidence showing its search was reasonably calculated to locate all responsive records. Baltranena

24 Gov’t Code § 6252(e). Thus, the term “public record” is broadly defined “to cover every
25 conceivable kind of record that is involved in the governmental process.” Calif. State Univ., Fresno
Ass’n, Inc. v. Superior Court, 90 Cal.App.4th 810, 825 (2001); City of San Jose v. Superior Court,
26 2 Cal.5th 608, 617 (2017).

27 ⁵ The request must describe public records clearly enough to permit the agency to determine
28 whether writings of the type described in the request are under its control. CFAC, 67 Cal.App.4th
at 165-166. “However, the requirement of clarity must be tempered by the reality that a requester,
having no access to agency files, may be unable to precisely identify the documents sought. Thus,
writings may be described by their content.” Id. at 165-166.

1 v. Clinton, 770 F.Supp.2d 175, 182 (D.D.C. 2011); CYAC, 220 Cal.App.4th at 1418 (quoting
2 CFAC, 67 Cal.App.4th at 167). In evaluating the agency’s evidence on this issue, courts should
3 consider “such relevant factors as the amount of time and staff devoted to the request and whether
4 the agency attempted to limit its search to one or more places when other sources likely would have
5 contained [the] information requested.” Landmark Legal Foundation v. E.P.A., 272 F.Supp.2d 59,
6 62 (D.D.C. 2003). The LAPD has not met this burden.

7 **C. The LAPD’s Perfunctory Search Was Not Calculated To Uncover All**
8 **Responsive Records.**

9 When the LAPD receives a CPRA request, an analyst in the Discovery Section is assigned
10 to determine which of the 18 bureaus and offices, 81 divisions, or dozens of other sections are
11 likely to have responsive records. (SF No. 26.) Once that determination is made, the analyst
12 prepares and sends to the relevant bureaus/divisions/sections Intradepartmental Correspondence
13 (referred to as a “15.2”), informing the recipient that a request has been made, describing the
14 records requested, and instructing the recipient to search for and produce any responsive material,
15 or to provide a justification for withholding responsive records. (SF No. 27.) Staff within each
16 division is then responsible for conducting the actual searches. (SF No. 28.)

17 Notably, however, there are no written policies or protocols to help analysts determine to
18 which bureaus/divisions/sections to send 15.2s; and divisional staff do not receive any standards to
19 guide their search. (SF No. 29.) Although the LAPD trains staff on CPRA exemptions, it does not
20 offer standardized training on how to search for and identify disclosable records. (SF No. 30.)
21 Moreover, the LAPD does not verify whether a search was conducted properly (i.e., it does not
22 ensure that people with knowledge were contacted, that all the places likely to hold records were
23 searched, or that all responsive records have been produced). (SF No. 31.) Simply put, the
24 LAPD’s “search” here exemplifies a failure to comply with the CPRA in three fundamental ways.

25 **1. The LAPD Inaccurately Described The Scope Of Muslim Advocates’**
26 **Request To Its Record Custodians.**

27 As noted above, the scope of an agency’s search is determined by the request. CYAC, 220
28 Cal.App.4th at 1420. Because requesters generally have no access to agency files, they are

1 permitted to describe requested records by their content, rather than their specific titles. CFAC, 67
2 Cal.App.4th at 166. This is the approach Muslim Advocates followed: its Request seeks “[a]ll
3 records reflecting or relating to” Community Mapping. (SF No. 32.) Thus, the LAPD’s search
4 should have been calculated to locate records: (1) reflecting Community Mapping; and (2) relating
5 to Community Mapping. It was not.

6 Despite the clear language in the Request, the 15.2 prepared by Ms. Monk described the
7 Request as “asking for records pertaining to the policies or practices based upon individuals or
8 communities that are Muslim, or of Arab, South Asian or Middle Eastern descent.” (SF No. 33.)
9 This statement is vague, at best, and certainly does not alert divisional staff to search for records
10 reflecting or relating to Community Mapping.⁶ Thus, Ms. Monk’s erroneous description of the
11 scope of records sought by Muslim Advocates was not reasonably calculated to locate responsive
12 records. Muslim Advocates’ Petition should be granted for this reason alone, and the LAPD should
13 be directed to issue a new 15.2 accurately describing the scope of the Request.

14 2. The LAPD Failed To Search Logical Places For Responsive Records.

15 Ms. Monk was responsible for sending the 15.2 to the bureaus, divisions, and sections
16 reasonably likely to possess responsive records. (SF No. 35.) However, other than requesting an e-
17 mail search by the Information Technology division, Ms. Monk sent the 15.2 to only three of the
18 LAPD’s hundred-plus bureaus, offices and divisions: (1) Counter-Terrorism and Special Operations
19 Bureau (“CTSOB”); (2) the Planning and Research Division; and (3) the Police Training and
20 Education (“PTE”) Division. (SF No. 36.) Mr. Toyama—the LAPD’s PMQ on the search—could
21 not begin to explain why the 15.2 for Muslim Advocates’ Request was not more broadly distributed
22 to other bureaus, offices, divisions, and sections likely to have responsive records. (SF No. 37.)
23 For example, given the vehement public reaction to the launch of Community Mapping, it would be
24 logical to send a 15.2 to the Media Relations and Community Affairs Group and/or the Community
25 Relations Section. Moreover, in light of the constitutional issues implicated by a plan to map
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28 ⁶ Indeed, the searches conducted by the few custodians receiving Ms. Monk’s 15.2 were unduly
narrow and calculated to find records containing the term “Community Mapping.” (SF No. 34.)
The Request, however, also seeks record “relating to” Community Mapping.

1 communities on the basis of their religious beliefs, it would also seem obvious to send a 15.2 to the
2 Legal Affairs Division and/or the Risk Management Division. Given the attendant costs of
3 preparing for and launching an extensive mapping project, it would be reasonable to send a 15.2 to
4 the Fiscal Operations Division. And in view of the methodical engagement strategy the LAPD
5 employed in the 18 months preceding the Senate Statement, it would be logical to send a 15.2 to the
6 patrol division(s) in the geographic regions identified as having large Muslim populations.

7 Indeed, the Planning and Research Division specifically informed Ms. Monk that responsive
8 records were likely to be found in two other locations: the Community Relations Section and the
9 Office of the Chief of Police. (SF No. 38.) Inexplicably, however, Ms. Monk never directed 15.2s
10 to these two divisions and, as a result, they were not searched for responsive records. (SF No. 39.)
11 The LAPD's failure to search logical places for responsive records plainly violated the CPRA. "It
12 is well-settled that if an agency has reason to know that certain places may contain responsive
13 documents, it is obligated . . . to search barring an undue burden." CYAC, 220 Cal.App.4th at
14 1425. The LAPD has never claimed that searching the Media Relations and Community Affairs
15 Group, Community Relationship Division, Legal Affairs Division, Risk Management Division,
16 Fiscal Operations Division, the Office of the Chief of Police, and/or the relevant patrol division(s)
17 would be unduly burdensome. And as one court explained in applying a similar public records law,
18 "agencies are required to make more than a perfunctory search and to follow obvious leads as they
19 are uncovered. The search should not be limited to one or more places if there are additional
20 sources for the information requested." Neighborhood Alliance of Spokane County v. County of
21 Spokane, 172 Wash.2d 702, 720 (2011). The LAPD improperly limited distribution of the 15.2s
22 related to the Request. For this additional reason, the Court should grant this Petition and order the
23 LAPD to search the Media Relations and Community Affairs Group, Community Relationship
24 Division, Legal Affairs Division, Risk Management Division, Fiscal Operations Division, the
25 Office of the Chief of Police, and/or the relevant patrol division(s) for responsive records.

26 **3. The Searches Conducted By CTSOB, The Planning And Research**
27 **Division, And The PTE Division Were Wholly Inadequate.**

28 The testimony of the LAPD's witnesses concerning the divisions that were searched show

1 the LAPD failed to look in logical places, failed to ask knowledgeable people, and failed to consult
2 record indices or inventories. For instance, LAPD policy requires that each division maintain
3 inventories of its records (SF No. 40), but neither CTSOB nor the PTE Division checked
4 inventories or indices for records. (SF No. 41.) In short, deposition testimony uncovered serious
5 holes in the LAPD’s “search.”

6 More specifically, Sgt. Seguin—who conducted the search of CTSOB’s records (SF No.
7 42)—failed to look in any of that division’s hard copy files, electronic devices, indices, or
8 inventories. (SF No. 43.) Nor did he try to find out if other LAPD personnel might have
9 knowledge or records about the program, or research the kind of records normally created when a
10 program such as Community Mapping is proposed, or search for correspondence regarding the
11 program. (SF No. 44.) Rather, the only things he did to “search” was talk to Deputy Chief
12 Downing for less than five minutes, and type the phrases “Senate Statement” and “Community
13 Mapping” into the CTSOB’s file server. (SF No. 45.)⁷ Moreover, Sgt. Seguin did not review
14 pertinent subject-matter folders on the division’s file server (such as those for “outreach” or
15 “countering violent extremism”), and had no clue whether his “search” of the file server looked
16 within the contents of documents. (SF No. 47.)

17 Sgt. Seguin’s failure to exercise a reasonable search stems from his bare reliance on Deputy
18 Chief Downing’s mistaken representation that no responsive records existed. (SF No. 48.) But
19 Deputy Chief Downing had an improperly restrictive understanding of what constitutes “records”
20 within the meaning of the CPRA. For example, he thought “documents” were limited to
21 “operational document[s] that ha[ve] structure and organization[.]” (SF No. 49.) He did not
22 consider emails, written correspondence, or other forms of records when he told Sgt. Seguin that no
23 responsive records existed. (SF No. 50.) And Sgt. Seguin took his representation at face value
24 without finding out the basis for his claim; he never asked Downing if he had actually looked for
25 records, nor did he ask Downing if responsive records ever existed, or if other personnel or
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27 ⁷ Sgt. Seguin also testified that he reviewed e-mails provided by ITD, but he does not know when
28 he conducted that review, or if the messages he reviewed related to Community Mapping, as
opposed to one of the other items in the Request not at issue here. (SF No. 46.)

1 locations might have responsive records. (SF No. 51.)

2 Nor did the other divisions search the types of records likely to be responsive. When the
3 LAPD works with an outside entity such as the “academic institution” mentioned in the Senate
4 Statement, for example, an MOA should be issued and maintained by Planning and Research. (SF
5 No. 52.) Planning and Research, however, did not search for any MOAs with the “academic
6 institution” in the Senate Statement until well after this litigation was initiated. (SF No. 53.) Even
7 Mr. Toyama admitted there was no justification for this failure. (SF No. 54.)

8 Planning and Research also failed to search its hard-copy library for directives relating to
9 CTSOB from 2007-2008. (SF No. 55.) Nor did it search working documents or drafts on its file
10 server, its e-mails,⁸ or hard copy correspondence. (SF No. 56.) None of its personnel read the
11 Senate Statement or conferred with Deputy Chief Downing. (SF No. 59.) Likewise, Dr. Pannell,
12 the director of the PTE Division, testified that, although she attended meetings to discuss how to
13 respond to the public’s concerns about Community Mapping, she never searched her notes from
14 those meetings. (SF No. 60.) What is more, the written records supposedly documenting the
15 LAPD’s search efforts are incomplete and unreliable. (SF No. 61.) The LAPD failed to chronicle
16 the method of its search, despite alleging it is “common practice” to do so. (SF No. 62.)⁹

17 The inadequacy of the search is further illustrated by the fact that the LAPD produced some
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20 ⁸ Planning and Research alleged that it failed to search these obvious repositories because a search
21 of its electronic directives database and project list did not return any results for Community
22 Mapping. Yet the division only searched the titles (not the contents) of these files, did not look at
23 the Senate Statement, and did not record the search terms that were used. (SF No. 57.) Given these
24 deficiencies, it is possible that one of the directives or projects referred to Community Mapping—in
25 addition to other e-mails, correspondence, working documents, or drafts in other repositories. In
26 addition, these electronic resources may not contain all of Planning and Research’s paper records.
27 (SF No. 58.)

28 ⁹ In particular, personnel who search for records are supposed to fill out a hard-copy or electronic
chronological report, or “chrono,” of their search activity. (SF No. 63.) Without a chrono, the
LAPD has no way of knowing how divisional personnel conducted their searches, let alone whether
such searches were “reasonable” under the CPRA. (SF No. 64.) The LAPD produced only one
such log, for Planning and Research. (SF No. 65.) The only potential reference to a search for
records is the bare note “research topic – Muslim PRD related” (SF No. 66)—and this note refers to
researching the scope of the Request, not searching for records. (SF No. 67.) There is no indication
that CTSOB or PTE division created a chrono of their actions to search for records. (SF No. 68.)
Nor did Caydene Monk, the analyst charged with coordinating the search, fill out the mandated
electronic or hard-copy chrono showing any specific steps to search for records. (SF No. 69.)

1 documents after Muslim Advocates brought this suit (note 2, supra), thereby undermining the
2 LAPD's claim that no documents existed. Bory v. U.S. R.R. Retirement Bd., 933 F.Supp.2d 1353,
3 1363 (M.D. Fla. 2013) (finding that an agency's disclosure of records subsequent to initiation of
4 lawsuit supports conclusion that pre-litigation search was not reasonably calculated to locate all
5 responsive records). Under these circumstances, a further search of these divisions is warranted.

6 **D. The LAPD Cannot Justify Its Flat Refusal To Search Relevant Electronic**
7 **Records Simply By Labeling Such A Search "Unduly Burdensome."**

8 Records maintained by agencies in electronic formats are public records.¹⁰ Although the
9 LAPD acknowledges that it maintains electronic files and emails generated during the time period
10 set forth in Muslim Advocates' Request, it refuses to search its email records prior to 2010 or its
11 relevant divisional file servers for the key time period, claiming such a search would be unduly
12 burdensome because those records are stored on backup tapes. In response, Muslim Advocates
13 narrowed its Request as to electronic records; yet, the LAPD still refuses to search, asserting that
14 any search of these backup tapes would impose an undue burden on its staff. (SF No. 70.)

15 As courts have recognized, CPRA requests "inevitably impose some burden on government
16 agencies." Cal. First Amendment Coalition, 67 Cal.App.4th at 166. To justify its refusal to comply
17 with a CPRA request on grounds of "undue burden," however, an agency must demonstrate that
18 "on the facts of the particular case the public interest served by not making the record public clearly
19 outweighs the public interest served by disclosure of the record." Cal. Gov't Code § 6255
20 (emphasis added). Importantly, the agency bears the burden of demonstrating a "clear
21 overbalance" on the side of non-disclosure. Fredericks v. Superior Court, 233 Cal.App.4th 209,
22 228 (2015). An agency cannot meet this heavy burden with mere speculation. Connell v. Superior
23 Court, 56 Cal.App.4th 601, 612 (1997). The LAPD cannot satisfy this strict evidentiary standard.

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¹⁰ Written communications, such as e-mails, are public records under the CPRA, (Cal. Gov't C. 6252(g)), as are backup tapes that contain information involved in the government process. Calif. State Univ., Fresno Ass'n, Inc., 90 Cal.App.4th at 825; City of San Jose, 2 Cal.5th at 618; Farrell v. City of Detroit, 530 N.W.2d 105, 110 (Mich. App. 1995) (holding that backup tapes containing data used by public agency are "equivalent" of that data and must be disclosed).

1 **1. The LAPD Cannot Establish That Searching CTSOB's Electronic**
2 **Divisional Files From 2007-2008 Is Unduly Burdensome.**

3 The LAPD concedes that it has not conducted a complete search of its relevant divisional
4 files for responsive records (SF No. 71); indeed, it did not even disclose the existence of its
5 divisional file servers until it was forced to do so in discovery (SF No. 72). Notably, the LAPD's
6 undue burden claim in this context is not based on any attempts to actually access responsive
7 records or from any meaningful evaluation of what it would take to do so, but rather on the sole fact
8 that it has stored records from the relevant time period on backup tapes. (SF No. 73.) Thus, the so-
9 called "burden" on the LAPD does not come from the number of records requested, but from how it
10 has chosen to organize and maintain its records. The LAPD should not be permitted to use its
11 decision to store its records in this medium as a justification to deny access to public records in its
12 possession. As one court explained in evaluating an agency's undue burden claim under an
13 analogous public records law, "a requestor cannot control how an agency catalogues or organizes
14 [its] files. As such, an agency's failure to maintain the files in a way necessary to meet its
15 obligations under the [public records law] should not be held against the requestor. To so hold
16 would permit an agency to avoid its obligations under the [public records law] simply by failing to
17 orderly maintain its records." Department of Corrections v. St. Hilaire, 128 A.3d 859, 865 (Pa.
18 Commw. Ct. 2015).

19 Here, Muslim Advocates is asking only that a few backup tapes be accessed—enough to
20 allow a search of the CTSOB's shared "P drives" and individual "G drives" from 2007 and 2008—
21 the key period during which Community Mapping was proposed, planned, and "launched." The
22 LAPD admits that these backups have never been searched in response to the Request (SF Nos. 71,
23 73), so the only way to know if they contain responsive records is to access them. (SF No. 74.)
24 There is strong reason to think that documents exist on these backups, not least because CTSOB
25 personnel continued to create records referring to Community Mapping after it was supposedly
26 shelved in 2007. (SF No. 75.) What's more, though Deputy Chief Downing claimed that neither
27 he nor his staff had saved any electronic drafts or "tracked changes" of his Senate Statement, he
28 could not explain the apparent presence of tracked changes on the version available on the LAPD's

1 website, which suggests that someone in CTSOB saved drafts of the Senate Statement as it was
2 revised, presumably on the file server where CTSOB stored its documents in the normal course of
3 business. (SF Nos. 76-77.)

4 The LAPD has everything it needs to access these divisional backups: the equipment and
5 software (SF No. 78); the tapes¹¹ containing the backed-up data for each division—including,
6 among others, the “P Drive” for CTSOB’s documents (SF No. 79); and trained, skilled personnel
7 who can access divisional backups. (SF No. 81.) Accessing divisional file server backups is
8 “straightforward,” (SF No. 82), and the entire process for accessing a taped monthly backup of one
9 unit’s P Drive will take “a business day max.” (SF No. 83). This includes at least four hours of
10 machine time, during which its personnel can do other things. (SF No. 84.) Notably, while the
11 LAPD’s counsel has asserted that it would be an undue burden to search these divisional backup
12 tapes, the LAPD’s PMQ on this topic could not confirm that it would be an undue burden to search
13 CTSOB’s divisional backup tapes for 2007-2008. (SF No. 85.)

14 Against this minimal burden, the public interest in these records is formidable. The
15 “overriding issue is ‘whether disclosure would contribute significantly to public understanding of
16 government activities.’” Fredericks, 233 Cal. App. 4th at 228 (2015). The records requested here
17 will cast light on one of the most intractable and persistent issues of public concern in America:
18 discrimination “directed at particular religious, or national, or racial minorities.” Hassan v. City of
19 N.Y., 804 F.3d 277, 296 (3d Cir. 2015), as amended (Feb. 2, 2016) (quoting United States v.
20 Carolene Prods. Co., 304 U.S. 144, 152 n. 4 (1938) (denying motion to dismiss for lack of standing,
21 holding that constitutional claims may proceed so that plaintiffs may “collect[]...evidence”
22 concerning allegations that New York singled out Muslims for unconstitutional surveillance). In
23 the face of rising anti-Muslim sentiment and misguided calls for “registries” (Decl., Ex. VVV) and
24 “bans” on travel to “predominantly Muslim countries”, Int’l Refugee Assistance Project v. Trump,
25 857 F.3d 554, 572 (4th Cir. 2017), as amended (May 31, 2017), cert. granted, No. 16-1436, 2017
26 WL 2722580 (U.S. June 26, 2017), special attention must be paid to any official calls for

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28 ¹¹ At the time that Muslim Advocates made its Request, backup tapes from 2007-2008 were well
within the LAPD’s nine-year retention period. (SF No. 80.)

1 “mapping” of the community. Although the LAPD continues to tout its laudable outreach to
2 Muslim communities, the public is entitled to look behind its public relations and “community
3 outreach” to examine primary records of the LAPD’s more controversial practices towards
4 Muslims. Scrutiny of these records is all the more urgent in light of the contradiction between the
5 LAPD’s claim that Community Mapping was scuttled in 2007 and the LAPD’s disclosure of an
6 internal strategy paper that refers to Community Mapping “long after” it was supposedly scuttled.
7 (SF No. 9.) This contradiction suggests the continued specter of mapping based on “distinctions
8 between citizens on religious grounds” which inevitably “pose a particularly acute ‘danger of
9 stigma and stirred animosities.’” Hassan, 804 F.3d at 296 (quoting Bd. of Educ. of Kiryas Joel
10 Vill. Sch. Dist. v. Grumet, 512 U.S. 687, 728 (1994) (Kennedy, J., concurring)). The requested
11 records will further the public’s fundamental interest in understanding the genesis—and apparent
12 continued attention to—a program that singles out a particular faith community for scrutiny. In
13 short, full search and disclosure will fulfill the CPRA’s goal of permitting citizens to hold
14 government to account by, among other things, “ascertain[ing] whether the law is being ... carried
15 out in an evenhanded manner.” Block, 42 Cal. 3d at 656.

16 **2. The LAPD Cannot Show That Searching Deputy Chief Downing’s**
17 **Emails From 2007-2008 Is Unduly Burdensome.**

18 The California Supreme Court recently held that communications stored in a public
19 employee’s personal account are disclosable if they relate to public business, noting that a contrary
20 rule would allow “government officials [to] hide their most sensitive, and potentially damning,
21 discussions in such accounts” and “would not only put an increasing amount of information beyond
22 the public’s grasp but also encourage government officials to conduct the public’s business in
23 private.” City of San Jose, 2 Cal.5th at 620 (citations omitted). The same concern applies to
24 storage of controversial records on backup tapes; agencies cannot be permitted to use backups to
25 put information “beyond the public’s grasp.” But that is exactly what the LAPD proposes to do by
26 using an “undue burden” claim to prevent disclosure.

27 It is telling that the LAPD not only refused to work with Muslim Advocates during literally
28 years of pre-litigation correspondence to overcome any burden that searching email backups

1 supposedly would cause, but also resisted civil discovery designed to shed light on the nature and
2 scope of this purported burden. (SF No. 19.) Having obtained, through Court-ordered discovery,
3 the assistance that the LAPD refused to provide, Muslim Advocates has found a way to minimize
4 any “burden” of restoring e-mail backups: access only a few backups of Deputy Chief Downing’s
5 e-mail from the key period of 2007 and 2008, using the equipment, software, and know-how that
6 the LAPD has finally acknowledged possessing (after being repeatedly pressed over several
7 depositions) (SF No. 86)—a process that will take far less than the 960 hours claimed by the LAPD
8 in its early correspondence with Muslim Advocates. (SF No. 87.)

9 Curiously, Rachel McClain, the LAPD’s PMQ on this topic, had no idea how the LAPD
10 determined that it would take 960 hours to search the backed-up e-mail accounts of seven
11 custodians for responsive records. (SF No. 88.) But she did agree that focusing on one user’s e-
12 mail backups covering two years of e-mail will take considerably less than the LAPD’s previous
13 960-hour calculation. (SF No. 87.) To identify and access data on a backup tape containing one
14 user’s e-mail for one month would take three days in a best case scenario, and up to two weeks in a
15 worst case scenario. (SF No. 89.) Indeed, since 2010, the LAPD has accessed pre-2010 e-mail
16 from backup on multiple occasions. Four backups were accessed in 2011; each took between 15
17 minutes and an hour and a half of human time to retrieve. (SF No. 90.)¹²

18 The LAPD claims that certain technical “roadblocks” may prevent access to the backups,
19 but this is pure speculation. (SF No. 92.) The only way the LAPD will know whether
20 “roadblocks” will preclude access to the email records is to attempt to access them. (SF No. 93.)
21 On the other hand, it is clear that the LAPD has backup tapes from the critical time period of 2007-
22 2008 and can locate enough tapes to access a user’s e-mail as it existed during several points during
23 a given year. (SF No. 94.) Once the tapes are accessed, e-mail can be filtered by date and quickly
24 searched based on sender, recipient, and subject line. (SF No. 95.) It should also be possible to
25 search within the body of e-mail, either within the e-mail client, or by using Adobe Acrobat to view
26 and search the e-mail. (SF No. 96.)

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28 ¹² Pre-2010 e-mail may have been accessed on other occasions as well. (SF No. 91.)

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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: **PETITIONER MUSLIM ADVOCATES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE** 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