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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – CENTRAL DIVISION

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11 ARTURO CASTAÑARES,) CASE NO. 37-2021-00017713-CU-MC-CTL
12 Plaintiff and Petitioner,)
13 vs.) **VERIFIED COMPLAINT FOR**
14 CITY OF CHULA VISTA; and DOES 1 through) **DECLARATORY AND INJUNCTIVE**
100,) **RELIEF AND PETITION FOR WRIT OF**
15 Defendants and Respondents.) **MANDATE UNDER THE CALIFORNIA**
16) **PUBLIC RECORDS ACT AND OTHER**
) **LAWS**

17 Plaintiff and Petitioner ARTURO CASTAÑARES ("PLAINTIFF") alleges as follows:

18 **Introductory Statement**

19 1. PLAINTIFF brings this lawsuit under the California Public Records Act ("CPRA"), as
20 well as the California Constitution, the common law, and other applicable legal authorities.
21 PLAINTIFF made a lawful CPRA request to Defendants/Respondents, but they have illegally failed to
22 disclose the responsive public records.

23 **Parties**

24 2. PLAINTIFF is a journalist and the publisher of *La Prensa San Diego*. In this capacity,
25 one of his primary roles as a government "watchdog" is ensuring that public agencies comply with all
26 applicable laws aimed at promoting transparency and accountability in government.

27 3. Defendant and Respondent CITY OF CHULA VISTA ("CITY") is a "local agency"
28 within the meaning of Government Code Section 6252.

1 4. The true names and capacities of the Defendants/Respondents identified as DOES 1
2 through 100 are unknown to PLAINTIFF, who will seek the Court’s permission to amend this pleading
3 in order to allege the true names and capacities as soon as they are ascertained. PLAINTIFF is informed
4 and believes and on that basis alleges that each of the fictitiously named Defendants/Respondents 1
5 through 100 has jurisdiction by law over one or more aspects of the public records that are the subject
6 of this lawsuit or has some other cognizable interest in the public records.

7 5. PLAINTIFF is informed and believes and on that basis alleges that, at all times stated
8 in this pleading, each Defendant/Respondent was the agent, servant, or employee of every other
9 Defendant/Respondent and was, in doing the things alleged in this pleading, acting within the scope of
10 said agency, servitude, or employment and with the full knowledge or subsequent ratification of
11 his/her/its principals, masters, and employers. Alternatively, in doing the things alleged in this pleading,
12 each Defendant/Respondent was acting alone and solely to further his/her/its own interests.

13 **Jurisdiction and Venue**

14 6. The Court has jurisdiction over this lawsuit pursuant to Government Code Sections 6258
15 and 6259; Code of Civil Procedure Sections 526a, 1060 *et seq.*, and 1084 *et seq.*; the California
16 Constitution, and the common law, among other provisions of law.

17 7. Venue in this Court is proper because the obligations, liabilities, and violations of law
18 alleged in this pleading occurred in the County of San Diego in the State of California.

19 **FIRST CAUSE OF ACTION:**
20 **Violation of Open-Government Laws**
(Against All Defendants/Respondents)

21 8. The preceding allegations in this pleading are fully incorporated into this paragraph.

22 9. On or about April 5, 2021, PLAINTIFF caused to be submitted to CITY a request for
23 certain public records (“CPRA Request”). On or about April 14, 2021, CITY responded to a portion
24 of the CPRA Request and asserted that the responsive records are exempt from disclosure. A true and
25 correct copy of the CPRA Request and response is attached to this pleading as Exhibit “A.”

26 10. PLAINTIFF is informed and believes and on that basis alleges as follows:

27 A. CITY did not do a thorough search for all public records responsive to the CPRA
28 Request, including but not limited to failing to search for responsive public records maintained on the
personal accounts and/or devices of public officials. By way of example and not limitation, CITY has

1 never provided PLAINTIFF with any affidavit or other evidence like that described in *Smith v. City of*
2 *San Jose*, 2 Cal.5th 608 (2017), to satisfactorily establish that each CITY-affiliated agent using a
3 personal account and/or device has thoroughly searched for and produced all responsive public records
4 in and/or on the agent's personal account and/or device.

5 B. CITY has not produced all public records responsive to the CPRA Request and
6 at least one responsive public record exists but has not been disclosed.

7 C. CITY did nothing or not enough to assist PLAINTIFF in submitting a focused
8 and effective request that would enable PLAINTIFF to obtain those responsive records that are not
9 exempt from disclosure.

10 D. To the extent that any of the responsive records and/or information therein was
11 not disclosed based on one or more CPRA exemptions, CITY either (i) did not identify all exemption(s)
12 being invoked to justify non-disclosure of the record and/or information, (ii) did not identify the person
13 responsible for making the exemption determination, (iii) erroneously determined that an exemption
14 applied to the responsive record(s) and/or information, (iv) withheld more information than warranted
15 based on the asserted exemption(s), or (v) committed some combination of the foregoing legal errors.

16 11. PLAINTIFF and other members of the public have been harmed as a result of
17 Defendants'/Respondents' failure to produce the public record responsive to the CPRA Request. By
18 way of example and not limitation, the legal rights of PLAINTIFF to access information concerning the
19 conduct of the people's business are being violated and continue to be violated.

20 **SECOND CAUSE OF ACTION:**
21 **Declaratory Relief under Code of Civil Procedure Section 1060 et seq.**
(Against All Defendants/Respondents)

22 12. The preceding allegations in this pleading are fully incorporated into this paragraph.

23 13. PLAINTIFF is informed and believes and on that basis alleges that an actual controversy
24 exists between PLAINTIFF, on the one hand, and Defendants/Respondents, on the other hand,
25 concerning their respective rights and duties under the CPRA, the California Constitution, the common
26 law, and other applicable legal authorities. As alleged in this pleading, PLAINTIFF contends that CITY
27 failed to comply promptly and in full with one or more open-government laws applicable to the CPRA
28 Request; whereas Defendants/Respondents dispute PLAINTIFF's contention.

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2. All attorney fees and other legal expenses incurred by PLAINTIFF in connection with this lawsuit; and

3. Any further relief that this Court may deem appropriate.

Date: April 19, 2021.

Respectfully submitted,
BRIGGS LAW CORPORATION

By: Cory J. Briggs
Cory J. Briggs

Attorneys for Plaintiff and Petitioner Arturo Castaños

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "A"

From: Shannel Honore <shonore@chulavistapd.org>
Date: April 14, 2021 at 6:00:42 PM PDT
To: art@laprensasd.com
Subject: RE: Drone video footage

Dear Mr. Castanares:

This email is a timely partial response to your request for public records, which the City of Chula Vista received by email on April 5, 2021.

Please see the City's responses to your specific requests, copied below, in bold:

"Lt. Peak.

I would like to request access to and copies of video footage from all CVPD drone flights conducted between March 1 and March 31, 2021, as well as documents related to the retention and custody of such videos, who maintains the physical storage of those videos, who has access to those videos, and documents related to all costs associated with the storage and retention of those videos. **Video from drone flights is not provided, because it is an investigative record exempt from disclosure. Cal. Gov. Code 6254(f). Regarding retention and custody, please see the FAQ section of the Chula Vista Police Department's drone webpage, available at the link following the bolded type. The FAQ section includes a hyperlink to Department Policy 448, which addresses retention.**

<https://www.chulavistaca.gov/departments/police-department/programs/uas-drone-program>

Please redact any such videos that may be part of any ongoing or pending investigations, but provide a log of any videos or documents withheld, who made the determination to withhold them, and when they may be released. **As noted, video from drone flights is not provided, because it is an investigative record exempt from disclosure. Cal Gov. Code 6254(f). This exemption lasts indefinitely, even after an investigation is closed. *Rivero v. Superior Court (1997) 54 Cal. App. 4th 1048, 1052; Williams v. Superior Court (1993) 5 Cal.4th 337, 361-362.* The California Public Records Act does not require, and the City respectfully declines, to create a record, such as list or log that identifies records being withheld. *Haynie v. Superior Court (2001) 26 Cal. App. 4th 1061.***

The balance of your request requires the need to search for, collect, and appropriately examine a number of separate and distinct records that are demanded in a single

request; therefore, pursuant to the provisions of Government Code section 6253(c), the City is asserting its authority to extend the time to reply. This assertion of the City's authority to extend the time to reply shall not serve as a waiver of any privileges or exemptions to disclosure pursuant to applicable provisions of the CPRA and any other applicable statutory and/or case law authority.

Accordingly, the City will respond to your request on or before April 26, 2021 to inform you if/when any responsive records may be available. Thank you in advance for your patience.

Shannel
Shannel Honoré
Police Support Services Manager
Chula Vista Police Department
315 Fourth Ave., Chula Vista, CA 91910
619-691-5132 Voice
619-585-5745 Fax

From: Art Castañares <art@laprensasd.com>
Sent: Monday, April 5, 2021 5:31 PM
To: Dan Peak <DPeak@chulavistapd.org>
Subject: Drone video footage

Warning:
External
Email

Lt. Peak.

I would like to request access to and copies of video footage from all CVPD drone flights conducted between March 1 and March 31, 2021, as well as documents related to the retention and custody of such videos, who maintains the physical storage of those videos, who has access to those videos, and documents related to all costs associated with the storage and retention of those videos.

Also, please provide all documenting related to any preplanning, flight plans, mapping, or other information used to organize, operate, and monitor those flights.

Please redact any such videos that may be part of any ongoing or pending investigations, but provide a log of any videos or documents withheld, who made the determination to withhold them, and when they may be released.

Please contact me if you have any questions about my request.

Thank you.
Art

Arturo Castaños
Publisher / CEO
La Prensa San Diego
San Diego's Original
Latino Community Newspaper

Tel. 619.857.1295
www.laprensaSD.com

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE RELIEF AND PETITION FOR WRIT OF MANDATE etc. and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner _____ a _____ of _____

_____, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on April 19, 20 21, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Arturo Castañares
Type or Print Name


Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California. I am over the age of 18 and not a party to the within action; my business address is, _____

On _____, 20 ____, I served the foregoing document described as _____

_____ on _____ in this action by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
 by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL
 * I deposited such envelope in the mail at _____, California. The envelope was mailed with postage thereon fully prepaid.
 As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 20 ____, at _____, California.

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 20 ____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I
 (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)