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To Whom It May Concern,

My name is Amy Parker. I am a student at California State University, Fullerton (henceforth “CSU Fullerton”), and a Founding Member of the Open Information Collective (henceforth “OIC”). In my position as Founding Member of the OIC, I am authorized to represent the OIC’s views regarding various subject-matter interests of it, including Division 10 (commencing with Section 7920.000) of Title 1 of the California Government Code (henceforth “GOV”), also known as the California Public Records Act (henceforth “CPRA”).

In previous interactions with the Risk Management office of Human Resources, Diversity and Inclusion at CSU Fullerton, and indirectly through it with the California State University Office of General Counsel and the CSU Fullerton University Counsel, it has been presented that the CPRA (under current GOV 7922.535, previously GOV 6253, and at the time of the cited case GOV 6256) does not require an agency to produce records within a certain time frame.

The verbiage used by the California State University, and its Records Access Officers at its various campuses and in the Chancellor’s Office, comes from *Motorola Communication & Electronics, Inc. v. Department of General Services* (55 Cal.App.4th 1342, 1997), in which Justice Puglia wrote in the majority opinion (bold formatting added for clarity):

Motorola suggests the Department failed to comply with section 6256 by failing to produce any documents within 10 days of the requests. **Section 6256 requires an agency, upon receipt of a request for public records, to determine within**

From the desk of the Open Information Collective

“Without publicity, no good is permanent; under the auspices of publicity, no evil can continue.”

F.M. Amy Parker, A.A.

F.M. Monica Hanson

S.M. Sem Arquieta

10 days whether to comply and to notify the requesting party of its decision. It does not require production within 10 days. Here, the Department notified Motorola on July 5 it was compiling the requested documents.

The Public Records Act **does not specify** when records must be produced to a requesting party. Section 6253 says "[p]ublic records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record" That section requires specified agencies, including the Department, to establish guidelines for accessibility of records. The record in this proceeding does not contain a copy of any guidelines adopted by the Department.

It is thus understandable why the California State University currently holds this position. While the Open Information Collective disagrees with the interpretation in *Motorola*, it does acknowledge that it would be reasonable for the California State University to follow it; further, while a case appealed to the California Court of Appeals would not be bound by *Motorola*, it would still be supporting evidence, and would bind all lower courts within the State of California.

However, another precedent, which supersedes *Motorola*, has since been discovered by the Open Information Collective. *Farhad Fredericks v. The Superior Court of San Diego County; City of San Diego, et al., Real Parties in Interest* (233 Cal.App.4th 209, 2015), has the following ruling from Justice Huffman:

Where an agency can show objectively that there is an undue burden in complying with a request, the CPRA provides for an **extension of time**. Under section 6253, subdivision (c), an agency's obligation to disclose in a timely manner may be changed by the circumstances of the case, if disclosable records are sought but specified "**unusual circumstances**" **apply to them**. Section 6253, subdivision (c)(4), outlines as "unusual circumstances" that justify an extension of time those that involve an agency's "need to compile data, to write programming language or a computer program, or to construct a computer report to extract data." Likewise, section 6253, subdivision (c)(2), specifies that an agency's "need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request," will constitute unusual circumstances and justify an extension of time to produce.

This ruling clearly concurs with the opinions of the Open Information Collective. It has previously been stated that the 14-day extension proves the OIC's argument, as the "voluminous

number of records” exception (among others) would not be relevant solely to the determination of whether the *categories of records in the request are disclosable* (which is what the California State University claims the 10-day limit is for); if the extension was applied to process voluminous numbers of records, by the time that extension would be irrelevant, the records would already be assembled and redacted, and under GOV 7922.500, they would be required to be disclosed. For more information, see the OIC’s Analysis of Applicable Law that was submitted to CSU Fullerton.

Within this ruling, Justice Huffman uses the same logic as the Open Information Collective. He notes that the remedy provided to an agency for a burdensome request is an extension of time. This extension of time is then clearly stated to be the “unusual circumstances” provided by GOV 6253(c), which is now GOV 7922.535(c). In fact, at the end of the cited paragraph, Huffman directly says that the unusual circumstances (specifically mentioning the voluminous amount exception) “justify an extension of time to **produce**”.

The current claim by the California State University Office of the General Counsel is that the time limits specified in the CPRA do not apply to the *production* of documents, but rather to making a determination of whether the type of records are disclosable. This opinion is directly contrary to the cited part of the precedent. The opinion in *Fredericks*, being 18 years newer than *Motorola* and more closely aligned to the statutes as standing today, would thus take binding precedence over *Motorola* for the purposes of *stare decisis*, and is the opinion the California State University should follow.

The concerns of the California State University with regards to large requests which would be completely unreasonable to process within 24 calendar days are understood by both the Open Information Collective and by Justice Huffman in *Fredericks*. As affirmed in *Fredericks*, it has been previously declared in *California First Amendment Coalition v. Superior Court of Sacramento County* (67 Cal.App.4th 159, 1998) that public agencies may raise objections that a request is unduly burdensome; this ruling extended *American Civil Liberties Union Foundation v. Deukmejian* (32 Cal.3d 440, 1982), and also noted that agencies are required to comply with all requests within reasonable effort as per *State Board of Equalization v. Superior Court* (10

Cal.App.4th 1177, 1992). This is further extended through parallel construction of *Duenas Iturralde v. Comptroller of the Currency* (315 F.3d 311, 2003).

However, there is a clear solution to this. In the cases of extreme searches, extensions beyond the “unusual circumstances” standard of the CPRA can be applied. Justice Huffman noted in *Fredericks* that the “purposes of the CPRA should be honored through such a reasonable standard [as was defined in GOV 6253.1, now GOV 7922.600], so that not only an agency response, but the request that generates it, are within reasonable boundaries that are appropriate in light of the statutory scheme.” This would only apply in the most extreme circumstances, however, when there is no possible other option for the CSU. For instance, a recent request handled by CSU Fullerton initially matched 68,000 emails. It is reasonable for the CSU to handle this request in totality, but to expect it to be done within 24 days is entirely unreasonable; this would be one case where further extension beyond 24 days would be warranted. For a counterexample, another recent request handled by the CSU Chancellor’s Office was also voluminous; while the exact number of documents is unknown, based on extrapolation from the initial data size, it can be estimated at approximately 2,000 emails. This would be entirely reasonable to handle within 24 days; in fact, it is a perfect example of when to use the 14 day extension. Many other types of requests not only should not be extended past 24 days, but should not be extended past 10; for instance, Associated Students, Inc. at CSU Fullerton, projected a delivery date of 70 days after the marked date on the request to provide some pay/stipend information and employment contracts, a request which should be easy to process within 10 days.

I would also like to acknowledge the complaint that was filed with the University through CSU Fullerton University Registrar Shelly Hsu on October 10, 2023. That complaint primarily concerned the Open Information Collective’s request for expenditures pertaining to CSU Fullerton’s 2023 Convocation event; however, while using that as primary standing for the complaint, it concerned all conduct in violation of the statutes by the Risk Management office of Human Resources, Diversity and Inclusion at CSU Fullerton, which naturally extends to the California State University as a whole (as the University was acting under policies and guidance established by the University’s Office of General Counsel). While the Convocation request was

resolved successfully, with all desired documents disclosed, the complaint has still not been acknowledged by any of its recipients, and its claims (to which this supports) are still outstanding at large. If that complaint is still in processing, the findings of this document may be used as further supporting evidence to its claims.

If the California State University wishes further clarification on the Open Information Collective's position, or needs assistance with amending its protocols and recommended protocols in compliance with the precedents of *Fredericks*, contact information for the OIC can be found at <https://oic.amyip.net/index.php/contact>. Further, as an authorized representative of the Open Information Collective, and the primary assignee for actions concerning agencies in California, you can contact me directly for more information. I thank the California State University for its time in considering these issues, and hope a speedy resolution leading to greater compliance with the law can be reached.

Sincerely,

Amy Parker, A.A.

she/her/hers

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