



December 1, 2023

SUPERINTENDENT
Gary W. Woods, Ed.D.

BOARD OF EDUCATION
Allison Barclay
Danny Gonzalez
Dr. Joseph Komrosky
Steve Schwartz
Jennifer Wiersma

Via Email Only: amyipdev@csu.fullerton.edu

Amy Parker
Open Information Collective

Dear Ms. Parker:

On November 3, 2023, the Temecula Valley Unified School District (“District”) received your letter, asserting allegations against Michael Marble, Director of Compliance (“Complaint”). The District investigated your complaint in accordance with Board Policy (BP”) 1312.1 and Administrative Regulation (“AR”) 1312.1, Complaints Concerning District Employees. I served as Mr. Marble’s immediate supervisor and investigated your allegations pursuant to AR 1312.1. I have attached BP 1312.1. and AR 1312.1 for your convenience.

A. Summary of Allegations

In the Complaint, you allege that Mr. Marble violated the California Public Records Act (“PRA”) (Cal. Gov. Code § 7920.005) by failing to produce records responsive to your PRA request within a specific timeframe; failing to request an extension of the District’s alleged deadline to produce responsive records; and failing to retain additional staff members to process a high volume of public records requests. You demand that the District process your request for records by November 6, 2023; and respond to future requests within legal time limits.

B. Investigation Procedure

1. District Policy

As noted above, your Complaint was investigated in accordance with Board Policy (“BP”) and Administrative Regulation (“AR”) 1312.1, Complaints Concerning District Employees. BP and AR 1312.1 govern the investigation and processing of complaints against individual employees.

Staff responsible for investigating complaints shall attempt to resolve the complaint to the satisfaction of the parties involved within 30 days. I investigated your allegations against Mr. Marble.

2. Summary of Investigation

The following documents were reviewed in the course of this investigation:

- Complaint, dated November 3, 2023
- E-mail correspondences between M. Marble and A. Parker, dated October 13, 2023 – November 3, 2023
- Open Information Collective (“OIC”) Letter, dated November 1, 2023

Relevant sections of the California Government Code and related case law were also reviewed and are cited below.

C. Findings of Fact

The evidence discovered during this investigation resulted in the factual findings discussed below. The findings described below are based on a preponderance of the evidence standard. “Preponderance of the evidence,” for purposes of this Report, means that when considering all evidence and taking reasonable inferences into account, including credibility determinations, a fact is more likely than not, or more than 50% likely, to be true.

Relevant Communications between A. Parker and M. Marble

The evidence shows that on October 13, 2023, you sent an e-mail to the District, requesting the following documents pursuant to the PRA:

1. All resolutions, policy documents, public comments, reports, and studies held by the District from January 1, 2022 to October 9, 2023 pertaining to LGBTQ+ students, book bans pertaining in any way to LGBTQ+ content (including bans of "explicit" content that encompass LGBTQ+ content), and
2. All emails sent from official Temecula Valley email addresses between January 1, 2022 and October 9, 2023 from members of the Board or from the Superintendent regarding District policies on LGBTQ+ students and parental notification for transgender students.

On October 20, 2023, Mr. Marble provided the District’s initial response to your request, with the District’s determination of whether it possessed disclosable records. Mr. Marble informed you that the PRA did not require public agencies to make disclosable documents available within a certain timeframe. Mr. Marble also notified you that the District was experiencing an unusually high number of public records requests, and that requests were processed in the order in which they were received.

Next, Mr. Marble provided information responsive to your first request, including a link to Board meeting recordings and relevant Board Policies. Finally, Mr. Marble notified you that the District determined it possessed documents responsive to your requests but required clarification.

Between October 20 and October 23, Mr. Marble communicated with you and assisted you in narrowing the search terms for your second request. On October 23, 2023, Mr. Marble spoke to you on the telephone and discussed updating your second request to: “Any communication to or from members of the TVUSD Governing Board or the Superintendent between 10/1/2022 and 10/23/2023 that include the key term ‘5020.’” Mr. Marble sent you an e-mail confirming the

updated request, and you confirmed the same with an amendment that the end date of the time range was set to October 22, 2023, inclusive.

On October 31, 2023, you sent Mr. Marble an e-mail inquiring on the status of your request. Mr. Marble responded and reminded you that the District was processing a high level of PRA requests and that typical document production timelines were about six to eight weeks. Contrary to your assertion in your Complaint, Mr. Marble did *not* inform you that the District was experiencing a “lack of sufficient staffing.”

On November 1, 2023, you sent Mr. Marble an e-mail explaining your belief that the District was required to produce responsive documents within a specific time frame as well as your belief that the District could request an extension of fourteen days to provide responsive documents. Finally, you asserted that the District failed to meet its legal obligations under the PRA by failing to hire additional staff to process PRA requests.

On November 3, 2023, Mr. Marble notified you that the District did not agree with your above-described analysis. Mr. Marble also explained that the District would provide responsive records within six to eight weeks, as previously advised.

Findings

The District’s investigation resulted in the findings noted below. Where there is sufficient evidence to exceed the 50% threshold, the fact or allegation is sustained. Where there is insufficient evidence to exceed the 50% threshold mentioned above, even if there is some supporting evidence, the fact or allegation is not sustained. Finally, where there is significant and compelling evidence to conclude that a fact or allegation is untrue, the fact or allegation is unfounded.

Allegation 1: Mr. Marble violated the PRA by failing to provide records responsive to your request within ten days.

Factual Finding 1: This allegation is unfounded. Government Code section 7922.535, subdivision (a), states:

Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. If the agency determines that the request seeks disclosable public records, the agency shall also state the estimated date and time when the records will be made available.

You contend that Government Code Section 7922.535, subdivision (a), sets forth strict time restrictions on the “processing” of a PRA request. The plain language of Section 7822.535, subdivision (a) states a ten-day time frame in which a public agency must send an initial response, and an estimated date when the records will be made available.

Mr. Marble complied with Section 7922.535, subdivision (a). Mr. Marble determined that your request sought disclosable public records in the possession of the District within just seven days.

Mr. Marble notified you that he estimated the records would be available within six to eight weeks. These actions constitute compliance with the PRA.

Your correspondence and Complaint assert your belief that a 2015 California Appellate Court decision in *Farhad Fredericks v. The Superior Court of San Diego County; City of San Diego, et al.* (“*Fredericks*”) (2015) 233 Cal.App.4th 209, invalidates the plain meaning of Section 7922.535. The District disagrees with your analysis of *Fredericks* and the significance of the case.

In *Fredericks*, the court considered whether a law enforcement agency was required to disclose “information” found in “complaints or requests for assistance” and could charge the requestor copying and ancillary costs related to the request. The *Fredericks* court held that a police department did not fully comply with its disclosure duties under the PRA by limiting details and the time range of the records it disclosed. The court in *Fredericks* did not specifically consider whether public agencies are required to disclose records within 10 days of receipt of PRA requests and/or whether that 10-day deadline may only be extended by an additional 14 days.

The language from the *Fredericks* opinion relied upon in your correspondence written on behalf of the OIC is, at best, dicta and does not change the language of the PRA. Further, I do not interpret the language from *Fredericks* to convert the plain meaning of the PRA to require disclosure within a 10-day period (or one that is extended by an additional 14 days).

You may also be interested in knowing that *Fredericks* received disapproving treatment by the California Supreme Court in 2020. (See *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward*, (2020) 9 Cal.5th 488.) Therefore, *Fredericks* should not be considered significant precedent or in any way negating the plain meaning of subdivision (a) of Government Code Section 7922.535.

Allegation 2: Mr. Marble violated the PRA by failing to request a fourteen-day extension of the alleged deadline to produce records.

Factual Finding 2: This allegation is unfounded. Under the PRA, in unusual circumstances, the time limit for the determination of whether requested records are disclosable may be extended by written notice from the head of the agency, setting forth the reasons for the extension and the date on which a *determination* is expected to be dispatched. No notice shall specify a date that would result in an extension of the initial determination for more than fourteen days. (See Cal. Government Code § 7922.535(b).)

In your correspondence and Complaint, you assert that Mr. Marble should have filed a fourteen-day extension pursuant to Section 7922.535, subdivision (b), requesting additional time to produce records. The fourteen-day extension process specifically applies to a public entity’s initial response and determination of whether it possesses disclosable records. Mr. Marble provided the District’s initial response within the initial ten-day timeframe. As a result, an extension was unnecessary.

Allegation 3: Mr. Marble violated the PRA by failing to retain additional staff to process a high volume of PRA requests.

Factual Finding 3: This allegation is unfounded. Under the PRA, public agencies are not permitted to delay or obstruct the inspection or copying of public records. (See Cal. Gov. Code § 7922.500.) My investigation revealed that Mr. Marble did not and has not delayed or obstructed the production of any records. Rather, my investigation revealed that Mr. Marble engaged in reasonable efforts to both clarify your request and locate responsive documents.

In your Complaint, you assert that Mr. Marble's predicted six-to-eight-week processing time for the production of records is unreasonable and that the District should hire more staff members to process the current and unusual influx of PRA requests. However, you do not cite any authorities for this assertion, other than generally stating that other public entities in the State of California maintain staff dedicated to processing PRA requests.

My investigation revealed that the six to eight weeks processing time is reasonable under all relevant circumstances, including the scope of your request, and does not constitute an obstruction or delay in the process of producing public records. In fact, Mr. Marble provided you with publicly available records responsive to your first request when he sent the October 20, 2023 initial response. This demonstrates an effort to promptly process your request.

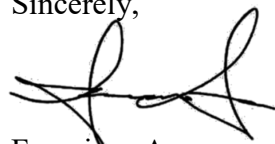
As Mr. Marble noted, the District is in the process of reviewing and responding to multiple PRA requests and must carefully review responsive records to ensure confidential information, such as student and employee information or privileged information is not inadvertently disclosed. Moreover, as Mr. Marble informed you, the District is working diligently to process all pending requests, including your request. This is not unreasonable under the circumstances. Therefore, Mr. Marble did not violate the PRA.

D. Corrective Action and Conclusion

As described in the Findings, your allegations are unfounded. Mr. Marble complied with the plain language of the PRA. As a result, no corrective action is warranted at this time and your Complaint is dismissed.

Thank you for your willingness to bring your concerns to the District's attention.

Sincerely,



Francisco Arce
Assistant Superintendent
Human Resources and Development

Enclosures: BP 1312.1
AR 1312.1

Policy 1312.1: Complaints Concerning District Employees

Status: ADOPTED

Original Adopted Date: 01/16/2018

The Board of Trustees accepts responsibility for providing a means by which the public can hold employees accountable for their actions. The Board desires that complaints be resolved expeditiously without disrupting the educational process.

The Superintendent or designee shall develop regulations which permit the public to submit complaints against district employees in an appropriate way. These regulations shall protect the rights of involved parties. The Board may serve as an appeals body if the complaint is not resolved.

(cf. 1312.2 - Complaints Concerning Instructional Materials)

(cf. 1312.3 - Uniform Complaint Procedures)

(cf. 3515.2 - Disruptions)

The Board prohibits retaliation against complainants. The Superintendent or designee at his/her discretion may keep a complainant's identity confidential, except to the extent necessary to investigate the complaint. The district will not investigate anonymous complaints unless it so desires.

Regulation 1312.1: Complaints Concerning District Employees

Status: ADOPTED

Original Adopted Date: 01/16/2018 | **Last Revised Date:** 07/26/2022 | **Last Reviewed Date:** 07/26/2022

The Superintendent or designee shall determine whether a complaint should be considered a complaint against the district and/or an individual employee, and whether it should be resolved by the district's process for complaints concerning personnel and/or other district procedures.

(cf. 1312.2 - Complaints Concerning Instructional Materials)
(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 4144/4244/4344 - Complaints)

To promote prompt and fair resolution of the complaint, the following procedures shall govern the resolution of complaints against district employees:

1. Every effort should be made to resolve a complaint at the earliest possible stage. Whenever possible, the complainant should communicate directly to the employee in order to resolve concerns.
2. If a complainant is unable or unwilling to resolve the complaint directly with the employee, he/she may submit an oral or written complaint to the employee's immediate supervisor or the principal.
3. All complaints related to district personnel other than administrators shall be submitted in writing to the principal or immediate supervisor. If the complainant is unable to prepare the complaint in writing, administrative staff shall help him/her to do so. Complaints related to a principal or central office administrator shall be initially filed in writing with the Superintendent or designee. Complaints related to the Superintendent shall be initially filed in writing with the Board.
4. When a written complaint is received, the employee shall be notified within five days or in accordance with collective bargaining agreements.
5. A written complaint shall include:
 - a. The full name of each employee involved
 - b. A brief but specific summary of the complaint and the facts surrounding it
 - c. A specific description of any prior attempt to discuss the complaint with the employee and the failure to resolve the matter
6. Staff responsible for investigating complaints shall attempt to resolve the complaint to the satisfaction of the parties involved within 30 days.
7. Both the complainant and the employee against whom the complaint was made may appeal a decision by the principal or immediate supervisor to the Superintendent or designee, who shall attempt to resolve the complaint to the satisfaction of the person involved within 30 days. Parties should consider and accept the Superintendent or designee's decision as final.

Complaints must be filed not later than six months from the date of the event or events giving rise to the complaint, or six months from the date the complainant had or reasonably should have obtained knowledge of the facts of the event or events giving rise to the complaint.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ADMINISTRATIVE REGULATION ("AR") 1312.1 AND/OR BOARD POLICY ("BP") 1312.1, THE SUPERINTENDENT OR DESIGNEE MAY DEEM ANY COMPLAINANT A "VEXATIOUS COMPLAINANT" AND DISMISS ANY COMPLAINT FILED BY SUCH COMPLAINANT PURSUANT TO AR 1312.1 AND BP 1312.1, AS DESCRIBED BELOW. A VEXATIOUS COMPLAINANT, FOR ONLY PURPOSES OF THIS AR 1312.1 AND BP 1312.1, IS ANY COMPLAINANT WHO, IN THE PRECEDING FOUR YEARS, FILED AT LEAST FOUR COMPLAINTS PURSUANT TO BP 1312.1, AR 1312.1, BP 1312.2, AR 1312.2, BP 1312.3, AR 1312.3, BP 1312.4, AND/OR AR 1312.4, THAT HAVE BEEN FINALLY DETERMINED ADVERSELY TO THE COMPLAINANT, INCLUDING COMPLAINTS DEEMED UNSUBSTANTIATED. PRIOR TO DISMISSING ANY COMPLAINT FILED BY ANY VEXATIOUS COMPLAINANT,

THE SUPERINTENDENT OR DESIGNEE SHALL INITIALLY REVIEW THE COMPLAINT AND, IF THE SUPERINTENDENT OR DESIGNEE DETERMINES THAT IT APPEARS THAT THE COMPLAINT HAS MERIT AND HAS NOT BEEN FILED FOR AN IMPROPER PURPOSE, THE COMPLAINT SHALL BE PROCESSED IN ACCORDANCE WITH THE INVESTIGATION AND OTHER PROCEDURES DESCRIBED HEREIN. HOWEVER, IF THE SUPERINTENDENT OR DESIGNEE, THROUGH THEIR INITIAL REVIEW, DOES NOT DETERMINE THAT THE COMPLAINT HAS MERIT AND HAS NOT BEEN FILED FOR AN IMPROPER PURPOSE, THEY SHALL DENY THE COMPLAINT, NOTIFY THE COMPLAINANT OF THE DENIAL IN WRITING, AND TAKE NO FURTHER ACTION ON THE COMPLAINT. AN "IMPROPER PURPOSE" INCLUDES, BUT IS NOT LIMITED TO, ANY COMPLAINT THAT IS FILED TO HARASS, INTIMIDATE, RETALIATE, AND/OR CAUSE THE DISTRICT TO INCUR UNNECESSARY EXPENSE AND OR STAFF TIME. THE SUPERINTENDENT'S OR DESIGNEE'S DECISION TO DENY THE COMPLAINT FOR THE REASONS DESCRIBED IN THIS PARAGRAPH SHALL BE FINAL.

Any complaint of child abuse or neglect alleged against a district employee shall be reported to the appropriate local agencies in accordance with law, Board policy and administrative regulation.

(cf. 5141.4 - Child Abuse Prevention and Reporting)
