IN THE SAN FRANCISCO
SUNSHINE ORDINANCE TASK FORCE

Anonymous v. José Cisneros, Office of Treasurer-Tax Collector, Theresa Buckley	Petition/Complaint Dec. 12, 2019 SOTF No. _____

COMPLAINT

I allege Respondents violated:

SFAC 67.21, 67.24, 67.26, 67.27,

Gov Code (CPRA) 6353.9 **and 6253**

in failing to respond correctly to a December 7, 2019 IDR sent to the Respondent agency. Rolling responses and exact copies were also requested on Dec. 7. The request (Exhibit B) asked for the dept head's 1 week of past Prop G and non-Prop G calendar entries, 1 week of future calendar entries, 10 emails from the dept head's govt email, and 10 emails from the dept head's personal email about the conduct of public business (pursuant to *City of San Jose*), all in specified electronic formats with metadata included. Both metadata (**A7 and A8.**) and non-metadata allegations are contained herein and may be divided by SOTF if desired. At the time of complaint, Respondents were unwilling to negotiate.

ALLEGATIONS

The following allegations are made. Email thread, requests, and responses are in Exhibit B. Sample of responsive records is in Exhibit C.

A1. SFAC 67.26 - A portion of future calendars (R3) were withheld, with justification, such as with the Mayor's Office. However, minimal withholding was still not performed. At least some information was withheld, by redaction or an entire record, which is not exempt. See SOTF 18075, and also pending SOTF 19103 and SOTF 19112.

This case has an unusual history:

1. The City first published (among all the other records) a record of a future Dec 16 meeting between Cisneros, the Mayor, and others in a presumably fully unredacted form. It provided an associated first determination letter, not mentioning any

Mayor-related withholdings/redactions. (I have not seen this meeting record, but it is implied by their future productions).

2. Then, the City redid the production, redacting partially the meeting entry table on pg. 20 by masking the values of the rows named "Recurrence" and "Recurrence Pattern," and disclosed everything else for that **Dec 16** meeting with the Mayor, published a 2nd version of all records, and requested that I delete the 1st production. At this point, the City pointed out the new redactions and I examined those newly redacted pages of production #2. City's 2nd determination letter newly stated: "In addition, we have redacted recurrence information concerning the department head meeting with the Mayor dated **November 13**, 2019, to protect the Mayor's security" (GC 6254(f), GC 6254(k), EC 1040, *Times Mirror Co. v Superior Court* (1991)). No justification was provided for the **Dec 16** department head meeting, so this may be a typo.

3. Yet later, the City redid the production a third time, redacting with a single large black rectangles all parts of the Dec 16 meeting on pg 20 and page 21 (leaving only the name of what I assume is the person printing the records), published a 3rd version, and requested further deletion of the 2nd production. City's 3rd letter replaces the Nov 13 sentence and now states: "In addition, we have redactd (*sic*) a record of one meeting with the Mayor to protect the Mayor's security" (GC 6254(f), GC 6254(k), EC 1040, *Times Mirror Co. v Superior Court* (1991)).

Due to the prior requests by the City to delete productions #1 and #2, I have, as a courtesy, but without waiving any rights, not included the earlier productions in the Exhibits as is requested by SOTF Procedure B2.

However, (1) various other departments[1] chose not to withhold and did produce their versions of this same future Dec 16 meeting in full, and (2) I have myself previously seen TTX's production #2 contents of these pages now fully redacted in production #3, and thus I can assert a violation of SFAC 67.26 for non-minimal withholding because not every single part currently masked on that page is lawfully exempt. I believe the so-called "Mayor's security" exemption does not have the scope that the City claims (see SOTF 19103[2], of which pg 62-63, is fully incorporated by reference herein). However, even if you were to assume, solely for sake of argument, that this *was* a valid exemption, it should still not exempt:

- The standard row names on the left hand side of a meeting record (i.e. the literal words like: subject, start, end, organizer, location, Show Time As,

[1] Including but not limited to DBI.
[2] https://sfgov.org/sunshine/sites/default/files/cac112619_item5.pdf

Meeting Status, Required Attendees, Optional Attendees). Note this is *not* metadata header names - this is visible in any normal PDF/print out of Outlook meetings as you can see throughout the rest of the Production #3.

- The 'Show Time As' and 'Meeting Status,' which are about *Respondent Cisneros*, not about the Mayor.
- Required Attendees and Optional Attendees who are not the Mayor.

After discussion, Respondents refuse to un-redact any further parts of the record to achieve minimal withholding, as required under SFAC 67.26.

A2. SFAC 67.26 - Past non-Prop G calendars (R2) were withheld partially. Some meetings or information about them may have been not provided. If agency fails to provide the individual meeting view as requested, that would qualify here.

A3. SFAC 67.27 - Past non-Prop G calendars (R2) were withheld in whole or in part without justification. Includes but not limited to withholding of information visible on the individual meeting view we requested, but not visible on the summary view.

A past meeting with the Mayor on Nov 13 may have been withheld in its entirety, and without justification. A hint is provided from determination letter #2:
"In addition, we have redacted **recurrence information** concerning the department head meeting with the Mayor dated **November 13, 2019**, to protect the Mayor's security" (citations omitted).

No Nov 13 meeting with the mayor is in Production #3. Evidence from other departments indicates there was a Mayor Dept Head Nov 13 meeting.

It is also possible Cisneros never attended this meeting and it was deleted prior to my request. However if after receiving my request, they deleted a record that existed at the time they received my request, and thus can never provide it to me, this is a violation.

A4. SFAC 67.27 - Some information was withheld using a justification not allowed by SFAC 67.27 (for example, they are prohibited by SFAC 67.24, or they are not laws or court cases dictating exemptions or civil or criminal liability).

A5. SFAC 67.24 - An exemption justification was used that is prohibited in CCSF, including but not limited to drafts, public interest balancing test, or deliberative process.

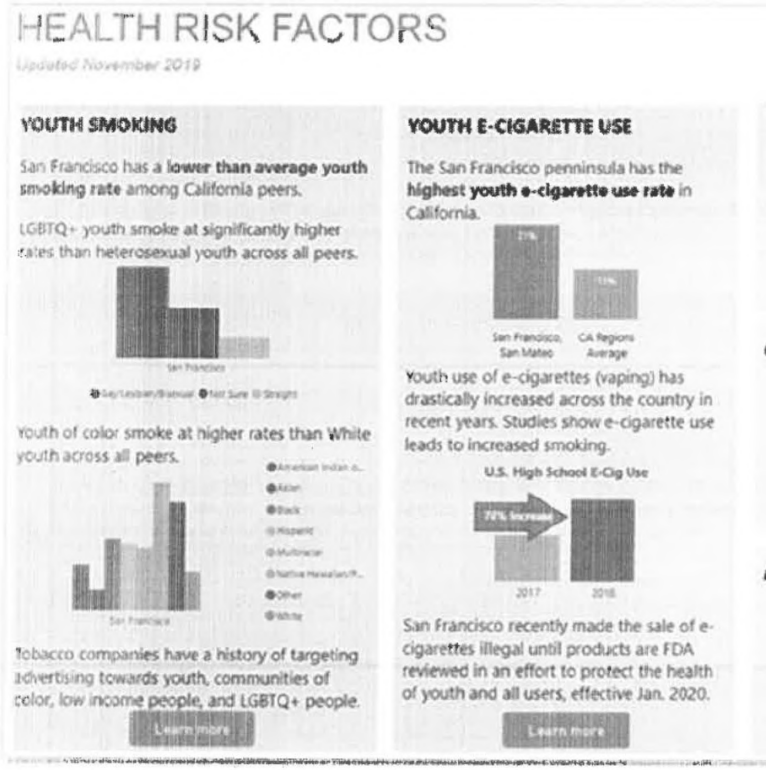
Citation to *Times Mirror Co.* is not a permitted justification in the City because the Supreme Court's holding in *Times Mirror* relies **explicitly and solely** on Gov Code 6255, which is prohibited by SFAC 67.24(g,i) (which prohibits not only GC

6255/public interest balancing test but *also prohibits any similar exemption*), and also uses the deliberative process privilege exemption, prohibited by SFAC 67.24(g,h,i) (since this privilege exists solely under GC 6255).

There is no general "security of officials" exemption in the CPRA (only a "security procedures" of police agency exemption), thus the Supreme Court fashioned in *Times Mirror* an exemption for the Governor's calendars *specifically* using the public-interest balancing test GC 6255 and the deliberative process privilege exemption.

A6. SFAC 67.27, 67.21(k), GC 6253(b) - Exact (non-metadata) copies were not provided, even though they were requested. Non-metadata information from the actual record have been withheld from us, without any justification, because the records were physically printed and scanned to PDF, instead of directly converted to PDF. For example:

- All color from all images
- The presentation/diagrams created by the City on production pg. 48-49. This is unreadable:



- Hyperlinks (which are URLs typed in by a human being), such as:the report and study URLs. In a normal PDF we'd have these hyperlinks.

From: Stuhldreher, Anne (TTX) <anne.stuhldreher@sfgov.org>
Sent: Wednesday, December 4, 2019 9:50 AM
To: Cisneros, Jose (TTX) <jose.cisneros@sfgov.org>
Cc: Fried, Amanda (TTX) <amanda.fried@sfgov.org>; Brown, Christa (TTX) <christa.brown@sfgov.org>
Subject: Draft blog post for launch

This would go under Treasurer's name, CEO of PolicyLink, and head of Fine and Fee Justice Center. Amanda and Jose: Would you be able to review, make any adjustments, and approve today if possible? Thank you. Attached and below.

BLOG POST TITLE:

New Network Launches $50,000 Competition for Cities and Counties Committed to Fine and Fee Justice

Governments across the country assess a variety of fees and fines to raise revenue and sanction unlawful conduct. In recent years, however, a growing number of policymakers and courts have realized that, for low-income people, particularly people of color, fines and fees often result in a cascade of consequences that take generations to reverse. Low-income families who cannot pay their fines and fees can have their driver's licenses suspended, wages garnished, tax refunds intercepted, and credit negatively impacted. They typically face growing and insurmountable levels of debt, deepening financial insecurity, and poverty.

At the same time, many local governments receive little to no financial benefit from fines and fees, because the cost of collecting them is nearly as high—if not higher—than the amount collected. According to a report by the East Bay Community Law Center, for example, in 2016 Alameda County California spent $1.6 million dollars to collect $1.3 million in fines, fees, and restitution, a loss of over a quarter million dollars. A recent study by the Brennan Center for

A7. SFAC 67.26 - The non-exempt metadata portion of one or records was withheld, with justification, but some of the metadata withheld is not in fact exempt and must be provided.

A8. SFAC 67.21(l), 67.27, GC 6253.9 - The original electronic format or the requested "easily generated" format were withheld, without justification.

Email and calendar metadata withheld. Email and calendar EML/MSG/ICS/original formats withheld.

EXHIBIT A - *Times Mirror* supreme court ruling

Times Mirror Co. v. Superior Court (State of California) (1991)

[No. S014461. Jul 22, 1991.]
TIMES MIRROR COMPANY, Petitioner, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; THE STATE OF CALIFORNIA et al., Real Parties in Interest.

(Superior Court of Sacramento County, No. 505002, Fred K. Morrison, Judge.)

(Opinion by Arabian, J., with Lucas, C. J., Panelli, and Baxter, JJ., concurring. Separate dissenting opinions by Mosk, J., with Broussard, J., concurring, and by Kennard, J., with Broussard, J., concurring.)

COUNSEL

Gibson, Dunn & Crutcher, Stephen J. Burns, Rex S. Heinke, Ragnhild Reif, Kelli L. Sager and Karen N. Fredericksen for Petitioner.

Pillsbury, Madison & Sutro, Edward P. Davis, Jr., Kevin M. Fong and Judy Alexander as Amici Curiae on behalf of Petitioner.

No appearance for Respondent.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, Robert L. Mukai, Chief Assistant Attorney General, N. Eugene Hill, Assistant Attorney General, Richard M. Frank, Cathy A. Neff and Ted Prim, Deputy Attorneys General, for Real Parties in Interest.

De Witt W. Clinton, County Counsel (Los Angeles), and David L. Muir, Deputy County Counsel, as Amici Curiae on behalf of Real Parties in Interest.

OPINION

ARABIAN, J.

This case arises out of a dilemma inherent in the very nature of a free and open society. An informed and enlightened electorate is essential to a representative democracy. Yet even democratic governments **[53 Cal. 3d 1329]** require some degree of confidentiality to ensure, among other things, a candid exchange of ideas and opinions among responsible officials. This tension inevitably leads to conflict, and conflict invariably leads to the courthouse.

The question before us is whether, under the California Public Records Act (Gov. Code, § 6250 et seq.; hereafter the Act),fn. 1 the Governor of the State of California (Governor) properly refused a request to disclose his daily, weekly and monthly appointment calendars and schedules. For the reasons set forth below, we conclude that the records were properly withheld.

Factual and Procedural Background

In August 1988, a reporter for the Los Angeles Times (Times) wrote the Governor requesting, under the Act, copies of his "appointment schedules, calendars, notebooks and any other documents that would list [the Governor's] daily activities as governor from [his] inauguration in 1983 to the present." The Governor's legal affairs secretary responded that the information requested was exempt from disclosure under section 6254, subdivision (l) as "correspondence of and to the Governor or employees of the Governor's office ...."fn. 2

After its request to reconsider this decision was denied, the Times filed suit seeking injunctive and declaratory relief to obtain disclosure of the materials requested. In opposition, the Governor claimed that the records came within the correspondence exemption of section 6254, subdivision (l), as well as the public interest exemption of section 6255, which applies when the public interest in nondisclosure "clearly outweighs" the public interest in disclosure.fn. 3 Specifically, the Governor claimed that release of his appointment calendars and schedules would (1) create a risk to his personal security, and (2) inhibit the free and candid exchange of ideas necessary to the decisionmaking process.

In support of his opposition, the Governor submitted several declarations explaining the process by which his appointment calendars and schedules **[53 Cal. 3d 1330]** are created, the function they serve, and the implications of their public disclosure. Susan Pederson, the Governor's scheduling secretary, explained that after reviewing requests for meetings and invitations, she drafts a "scheduling memorandum" which is then reviewed with four senior staff members of the Governor's office. A final scheduling memorandum and a "tentative month-long calendar" are then prepared in consultation with the Governor; the calendar "is a schematic representation of engagements and meetings discussed in the scheduling memorandum." Thereafter, a finished month-long calendar is produced which identifies the Governor's "major time commitments for public appearances and private meetings." Copies of this calendar are given to the Governor, a "limited number" of members of the Governor's office, the Director of Finance, the Governor's security director and those responsible for the Governor's transportation.

Each week the scheduling secretary also formulates a schedule for the two upcoming weeks, which incorporates information from the monthly calendar as well as more recently approved appointments and appearances. The schedule for the first week is designated "final," and that for the second is designated "advance." Lastly, a complete daily schedule is prepared on the afternoon or evening prior to each working day; the daily schedule "accounts for all the Governor's time from his departure from home in the morning until his departure from the office in the evening." The two-week and daily schedules are distributed to the same persons as the monthly calendar. According to Ms. Pederson, all persons receiving the monthly, two-week and daily schedules "do so with the understanding that they are to treat the schedule[s] and any accompanying material as confidential, and destroy the schedule once they have completed their use of it."fn. 4 Ms. Pederson did not indicate in her declaration whether or to what extent copies of the final calendars and schedules are normally retained by herself, the Governor or anyone else in the Governor's office.fn. 5

The level of detail set forth in the daily and two-week schedules is exhaustive. Each reflects, for example, "the timing and details of the Governor's arrivals and departures everywhere he goes in the course of his day **[53 Cal. 3d 1331]** ... whether and when family members and traveling companions will be with him, the particular aircraft or other means of transportation to be used, names of pilots and drivers, airport gate departures, specific hotel accommodations, [and] automobile and other ground arrangements." Thus, according to Ms. Pederson, the schedules and calendars necessarily reflect the daily "patterns and habits of the Governor," including the occasions "when he is likely to be alone."

Dennis Williams, the director of security for the Governor, also submitted a declaration. According to Mr. Williams, disclosure of the Governor's schedule "at any time in advance of the period to which

they pertain would seriously impair the ability of [his] office to assure the Governor's security, and would constitute a potential threat to the Governor's safety, because the information they contain will enable the reader to know in advance and with relative precision when and where the Governor may be found, those persons who will be with him, and when he will be alone." Even disclosure of outdated schedules would pose a a security risk, in Mr. Williams's opinion, because they would "enable the reader to discern characteristic habits and activity patterns followed by the Governor, from which opportunities for access to the Governor's person may be surmised."

The Governor also submitted a declaration in support of his opposition to the Times complaint. In it he asserted that disclosure of his calendars and schedules would "be detrimental to the substantial public interest now served by protection of the confidential decisionmaking processes of [his] office ...." He explained that he had always considered his schedules and calendars to be confidential and had required his advisors to treat them as such, "because of the essential character of many of the meetings and appointments reflected in these papers, because of the decision making reflected in ... these papers, and because of concerns pertaining to security."

Elaborating upon the potentially adverse consequences of disclosure on the decisionmaking process, the Governor noted that his office requires him to meet with people of wide-ranging views on a multiplicity of subjects. Because of the frequent sensitivity of the subjects under discussion, "it is necessary," he stated, "that the meetings themselves be fundamentally private, so that those present may feel free to express their candid opinions to me and so that I can be assured of the candor of their expressions ...." Routine disclosure of the identities of the persons with whom the Governor meets, he asserted, would inhibit the deliberative process, in some instances by discouraging persons from attending meetings, in others by leading to unwarranted inferences about the subject under discussion. Furthermore, the Governor argued, although the calendars and schedules contain "facts" **[53 Cal. 3d 1332]** rather than opinions or advice, they necessarily reflect the Governor's "deliberative judgment" as to those persons, issues or events he considers to be of sufficient significance to occupy his time, and those he does not. Thus, the Governor claimed that disclosure of his calendars and schedules could substantially impair the quality of his decisions and the decisionmaking process of his office.

The Times's motion for injunctive and declaratory relief was heard on November 22, 1988. Following the hearing, the trial court denied the Times's motion for injunctive relief as well as its request for an in camera review, finding that the records were exempt from disclosure for each of the reasons urged by the Governor. However, the Court of Appeal reversed, holding that the records did not constitute correspondence under the Act; that disclosure would not implicate the deliberative process of government "because information relating to the content of meetings is not sought"; and that any security risk to the Governor, however slight, could not be evaluated without examining the documents themselves. Accordingly, the Court of Appeal remanded to the superior court "for an in camera review, segregation of any information posing a legitimate security risk, and disclosure of all nonexempt material."

Because we agree with the trial court that the public interest in not disclosing the records clearly outweighs the public interest in disclosure (§ 6255), we shall reverse the judgment of the Court of Appeal.

Discussion

A. Scope of Review

Before turning to the merits, we address a threshold issue concerning the applicable scope of review. [1a] Relying on section 6259, subdivision (c) and Freedom Newspapers, Inc. v. Superior Court

(1986) 186 Cal. App. 3d 1102 [231 Cal. Rptr. 189] (hereafter sometimes Freedom Newspapers), the Attorney General contends the Times can prevail only if the trial court acted in excess of its jurisdiction. An erroneous interpretation of the Act, abuse of judicial discretion or lack of substantial evidence to support the judgment would not, he asserts, justify reversal of the trial court's decision. We disagree.

Prior to 1984, review of a trial court order either directing disclosure of a public record or refusing disclosure was by appeal. In 1984, however, the Legislature substituted a writ procedure for the appellate process by amending section 6259 to provide as follows: "In an action filed on or after January 1, 1985, an order of the court, either directing disclosure by a **[53 Cal. 3d 1333]** public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of the extraordinary writ of review as defined in Section 1067 of the Code of Civil Procedure." (§ 6259, subd. (c); Stats. 1984, ch. 802, § 1, pp. 2804-2805.)fn. 6 Section 1067 of the Code of Civil Procedure states: "The writ of certiorari may be denominated the writ of review."

In Freedom Newspapers, Inc. v. Superior Court, supra, 186 Cal. App. 3d 1102, the Court of Appeal considered the scope of review available under a writ of review filed pursuant to section 6259, subdivision (c). In that case, a newspaper had filed a public- records request for certain information concerning fees paid to court- appointed lawyers and investigators in an ongoing murder case. The trial court denied the request, holding that the public interest in nondisclosure-the defendant's right to a fair trial-outweighed any public interest in disclosure.

The Court of Appeal affirmed, despite the majority's view that the ruling was erroneous. Citing the seminal cases of Abelleira v. District Court of Appeal (1941) 17 Cal. 2d 280, 288 [109 P.2d 942, 132 A.L.R. 715], and Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal. 2d 450, 454 [20 Cal. Rptr. 321, 369 P.2d 937], the court noted that the granting of a writ of review or certiorari is generally confined to circumstances in which the trial court has exceeded its jurisdiction, either in the fundamental sense that it lacks power over the person or subject matter of the litigation, or in the broader sense that its act exceeds the defined power of the court, whether that power be defined by the Constitution, a statute, or a court-developed rule under the doctrine of stare decisis. By that standard, the Court of Appeal concluded, **[53 Cal. 3d 1334]** the trial court had not exceeded its jurisdiction as no statute, constitutional provision or clearly controlling precedent based on the Act compelled a contrary result. (Freedom Newspapers, supra, 186 Cal.App.3d at p. 1109.)

The Court of Appeal in this matter purported to distinguish Freedom Newspapers on the ground that the trial court's decision in the latter case was merely "arguably incorrect," while the lower court's ruling here was "fundamentally erroneous" under settled law. The distinction is not persuasive. As discussed in the following section, the question of access to the Governor's personal calendars and schedules is a difficult and unsettled legal issue; whatever its substantive merits, nothing in the record suggests that the trial court's decision constituted an act in excess of jurisdiction. (Abelleira v. District Court of Appeal, supra, 17 Cal.2d at p. 288.)

Nevertheless, we are not persuaded that our scope of review is as limited as the Governor urges or as the Freedom Newspapers court concluded. Both assume that by use of the term "writ of review" the Legislature clearly and unambiguously intended to preclude review of lower court orders on the merits. That assumption is unwarranted. Apart from providing for issuance of the extraordinary writ of review as defined in section 1067 of the Code of Civil Procedure, which merely states that "writ of review" may be used as an alternative to writ of certiorari, section 6259, subdivision (c) is silent as to the scope of review to be accorded orders under the Act.

To be sure, the writ of review is traditionally limited to acts in excess of jurisdiction. (Abelleira v. District Court of Appeal, supra, 17 Cal. 2d 228.) [2] [1b] However, the legislative history of the 1984 amendment to section 6259, subdivision (c) reveals that the exclusive purpose of the amendment was to speed appellate review, not to limit its scope.fn. 7 The bill which contained the amendment, Senate Bill No. 2222, 1983-1984 Regular Session, was sponsored by a news organization, the California Newspaper Publishers' Association. It was inspired by a case in which a newspaper had successfully sued in the superior court to obtain **[53 Cal. 3d 1335]** government records, but was forced to wait several years while the case was on appeal, by which time the story was no longer newsworthy.

The perceived evil at which the bill was aimed, according to a Senate Judiciary Committee analysis, was "delays of the appeal process, [by means of which] public officials are frustrating the intent of the laws for disclosure ...." "The sponsors of this bill," the analysis continued, "seek to correct an injustice they perceive due to ... the potential for ... public agencies to delay the disclosure of public documents." Accordingly, the amendment's goal was "to prohibit public agencies from delaying the disclosure of public records by appealing a trial court decision and using continuances in order to frustrate the intent of the Public Records Act." (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 2222 (1983-1984 Reg. Sess.).)

The synopsis of the bill prepared for the Assembly Committee on the Judiciary was to the same effect: "The bill is intended to expedite appellate review of judicial rulings relating to the withholding of public records by providing for the review to be by petition for issuance of a writ rather than by appeal." Although the Assembly analysis noted that writ review might occasionally result in a summary denial rather than an adjudication on the merits, there is no indication that the Legislature intended to preclude review on the merits altogether in every case. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 2222 (1983-1984 Reg. Sess.) Aug. 6, 1984.)

Moreover, we believe such an interpretation to be more fully in accord with the Act's express purpose of broadening the public's access to public records. (CBS, Inc. v. Block (1986) 42 Cal. 3d 646, 651 [230 Cal. Rptr. 362, 725 P.2d 470].) There is no indication that the Legislature, in amending section 6259, intended sub silentio to shelter trial court orders, particularly those denying disclosure of public records, from appellate oversight. Nor, in light of our responsibility to avoid absurd results (County of Sacramento v. Hickman, supra, 66 Cal.2d at p. 849, fn. 6), can we believe that the Legislature could have intended the chaos which might otherwise result from a construction of the statute disallowing review on the merits of conflicting decisions in the trial courts.

Finally, we note that effective January 1, 1991, the Legislature has provided that orders under the Act "shall be immediately reviewable by petition to the appellate court for issuance of an extraordinary writ." (§ 6259, subd. (c); Stats. 1990, ch. 908, § 2.) The amendment also added two new provisions: (1) the petition for extraordinary writ must be filed within ten days after receipt of notice of the trial court order, and (2) no stay of the trial court order shall be permitted "unless the petitioning party demonstrates **[53 Cal. 3d 1336]** it will otherwise sustain irreparable damage and probable success on the merits." (Ibid.)

The effect of the 1990 amendment providing for review by "extraordinary writ," including presumably writ of mandate, is, of course, to make it plain that review of orders subject to the amendment is not confined to acts in excess of jurisdiction. The analysis of the bill prepared for the Assembly Committee on the Judiciary indicates that the recent amendment was a response to Freedom Newspapers, Inc. v. Superior Court, supra, 186 Cal. App. 3d 1102, and was intended to overrule that decision by "clarifying" that the purpose of writ review is to speed appellate review, not to preclude reviw on the merits. As the analysis explains, "[T]he courts [(an apparent reference to Freedom Newspapers)] ... have narrowly interpreted [the 1984 amendment] to review questions of jurisdiction and not broader as intended by the original statute. This bill expands the extraordinary writ by clarifying that courts

can rule quickly on substantive issues." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 2272 (1989-1990 Reg. Sess.), italics added.)

Thus, while logic and history support a broad interpretation, we need not ultimately determine the meaning of the 1984 amendment; its replacement makes plain the Legislature's intent that trial court orders under the Act shall be reviewable on their merits. As a practical matter, therefore, declining to reach the substantive issues presented here would only delay their resolution to a future day; judicial economy and the significance of the questions presented militate in favor of a decision sooner rather than later. Therefore, as we have in the past, we shall conduct an independent review of the trial court's ruling; factual findings made by the trial court will be upheld if based on substantial evidence. (CBS, Inc. v. Block, supra, 42 Cal.3d at pp. 650-651.)

B. Disclosure of the Records

We turn to the merits of the Times's request for disclosure of the Governor's appointment calendars and schedules from his inaugural to the date of the request, a period of approximately five years. As noted earlier, the Governor claimed that the records were exempt from disclosure on three separate grounds: the correspondence exemption set forth in section 6254, subdivision (l); the deliberative process privilege, as subsumed under the "public interest" exception of section 6255; and the threat to the Governor's personal security, also pursuant to section 6255.

1. The Correspondence Exemption

[3] Section 6254, subdivision (l) exempts from operation of the Act "correspondence of and to the Governor or employees of the Governor's **[53 Cal. 3d 1337]** office." Black's Law Dictionary defines "correspondence" as constituting, inter alia, the "[i]nterchange of written communications." (Black's Law Dict. (5th ed. 1979) p. 311.) Seizing on this broad definition, the Governor argues that his calendars and schedules constitute "written communications" between his scheduling secretary, his senior staff and himself, and thus fall within the scope of the exemption.

The Court of Appeal rejected the contention, however, ruling that Webster's definition of correspondence as "communication by letters" (Webster's New Collegiate Dict. (9th ed. 1984) p. 293) was more in conformity with the "ordinary import of the language" of the statute and the underlying legislative intent. (People ex rel. Younger v. Superior Court (1976) 16 Cal. 3d 30, 43 [127 Cal. Rptr. 122, 544 P.2d 1322].)

The Court of Appeal was correct. Prior to 1975, the Act exempted from disclosure all records "[i]n the custody of or maintained by the Governor or employees of the Governor's office employed directly in his office ...." (Stats. 1970, ch. 1295, § 1.5, p. 2397.) In 1975, this exemption was amended to limit the exemption to correspondence of or to the Governor and his staff. (Stats. 1975, ch. 1246, § 3, p. 3209.) "Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ...." (Louisiana-Pacific Corp. v. Humboldt Bay Mun. Water Dist. (1982) 137 Cal. App. 3d 152, 159 [186 Cal. Rptr. 833].)

The Governor's suggested definition of correspondence as "written communications" is so broad as to encompass nearly every document generated by the Governor's office, effectively reinstating the original exemption and rendering the 1975 amendment a nullity. Refining the definition, as the Governor suggests, to written communications "directed to an identifiable person or person for the purpose of establishing contact with the recipient," accomplishes little. Even under this definition, the exception would swallow the rule.

Therefore, we conclude that for purposes of the Act, the correspondence exemption must be confined to communications by letter. The Governor's appointment calendars and schedules plainly do not

meet this definition, and therefore are not exempt from disclosure under section 6254, subdivision (l).

2. The Public Interest Exemption

[4a] The Governor also asserts that his personal calendars and schedules are exempt from disclosure under section 6255, the so-called "public **[53 Cal. 3d 1338]** interest" exemption. An understanding of the claim requires a brief discussion of the purposes and structure of the Act and the exceptions thereto.

The Act replaced a hodgepodge of statutes and court decisions relating to disclosure of public records. (American Civil Liberties Union Foundation v. Deukmejian (1982) 32 Cal. 3d 440, 447 [186 Cal. Rptr. 235, 651 P.2d 822]; Shaffer et al., A Look at the California Records Act and Its Exemptions (1974) 4 Golden Gate L.Rev. 203, 210-213.) Its preamble declares "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250; American Civil Liberties Union Foundation v. Deukmejian, supra, 32 Cal.3d at p. 447.) In this and other respects the Act was modeled on its federal predecessor, the Freedom of Information Act (5 U.S.C. § 552 et seq.; hereafter FOIA), which was "broadly conceived" (EPA v. Mink (1973) 410 U.S. 73, 80 [35 L. Ed. 2d 119, 128, 93 S.Ct. 827]) to require "full agency disclosure unless information is [statutorily] exempted ...." (Federal Open Market Committee v. Merrill (1979) 443 U.S. 340, 351 [61 L. Ed. 2d 587, 598, 99 S. Ct. 2800].) The legislative history and judicial construction of the FOIA thus "serve to illuminate the interpretation of its California counterpart." (American Civil Liberties Union Foundation v. Deukmejian, supra, 32 Cal.3d at p. 447; CBS, Inc. v. Block, supra, 42 Cal.3d at p. 651.)

The Act sets forth numerous categories of records exempt from compelled disclosure. (§ 6254.) [5] In addition, section 6255 establishes a "catchall" exemption that permits the government agency to withhold a record if it can demonstrate that "on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."

The Act does not specifically identify the public interests that might legitimately be "served by not making the record public" under section 6255. The nature of those interests, however, may be fairly inferred, at least in part, from the specific exemptions contained in section 6254. As one commentator has observed: "[S]ection 6255 was designed to act as a catchall for those individual records similar in nature to the categories of records exempted by section 6254, but which the Legislature determined, in balancing the competing interests, would not justify disclosure as a general rule .... [T]he provisions of section 6254 will provide appropriate indicia as to the nature of the public interest in nondisclosure and will thus aid the courts in determining the disclosability of a document under section 6255." (Note, The California Public Records Act: The Public's Right of Access to Governmental Information (1976) 7 Pacific L.J. 105, 119-120, italics added; see also American Civil Liberties Union Foundation v. Deukmejian, supra, 32 Cal.3d at p. 462 (conc. and dis. opn. of Bird, C. J.) ["The specific **[53 Cal. 3d 1339]** exemptions of section 6254 are of considerable aid in ascertaining the Legislature's conception of 'the public interest served by not making [a] record public ....' "].)

While the specific exemptions set forth in section 6254 may be helpful in identifying certain interests to be protected under section 6255, they are not exclusive. Nothing in the text or the history of section 6255 limits its scope to specific categories of information or established exemptions or privileges. Each request for records must be "considered on the facts of the particular case" in light of the competing "public interests." (§ 6255.)

[4b] With these broad principles in mind, we turn to the question whether, on the facts presented, the public interest in nondisclosure of the Governor's appointment calendars and schedules "clearly outweighs" the public interest in disclosure of the records. (§ 6255.)

a. The Deliberative Process Privilege

(1) The Public Interest in Nondisclosure

Although not covered by the specific exemption for "preliminary drafts, notes, or ... memoranda" set forth in section 6254, subdivision (a),fn. 8 the Governor nevertheless contends that disclosure of his appointment schedules and calendars would jeopardize the decisionmaking or "deliberative process" which this exemption was designed to protect.fn. 9 More specifically, he argues that disclosure of the records in question, which identify where, when and with whom he has met, would inhibit access to the broad spectrum of persons and viewpoints which he requires to govern effectively.

While state precedents relating to the deliberative process or "executive" privilege are relatively scarce, federal cases are abundant.fn. 10 The FOIA **[53 Cal. 3d 1340]** equivalent to section 6254, subdivision (a) is contained in exemption 5 (5 U.S.C. § 552(b)(5)).fn. 11 As the United States Supreme Court has explained: "That Congress had the Government's executive privilege specifically in mind in adopting Exemption 5 is clear .... The cases uniformly rest the privilege on the policy of protecting the 'decision making processes of government agencies' ...." (NLRB v. Sears, Roebuck & Co. (1975) 421 U.S. 132, 150 [44 L. Ed. 2d 29, 47, 95 S. Ct. 1504].)

In adopting exemption 5, Congress's main concern, made plain in a Senate Report, was that "frank discussion of legal or policy matters" might be inhibited if "subjected to public scrutiny," and that "efficiency of Government would be greatly hampered" if, with respect to such matters, government agencies were "forced 'to operate in a fishbowl.' " (EPA v. Mink, supra, 410 U.S. at p. 87 [35 L.Ed.2d at p. 132], quoting from Sen.Rep. No. 813, 89th Cong., 1st Sess., p. 9; NLRB v. Sears, Roebuck & Co., supra, 421 U.S. at p. 150 [44 L.Ed.2d at p. 47].) As the high court has observed in an analogous context: "Human experience teaches that those **[53 Cal. 3d 1341]** who expect public dissemination of their remarks may well temper candor with a concern for appearances ... to the detriment of the decisionmaking process." (United States v. Nixon, supra, 418 U.S. at p. 705 [41 L.Ed.2d at p. 1062].)

To prevent injury to the quality of executive decisions, the courts have been particularly vigilant to protect communications to the decisionmaker before the decision is made. "Accordingly, the ... courts have uniformly drawn a distinction between predecisional communications, which are privileged [citations]; and communications made after the decision and designed to explain it, which are not." (NLRB v. Sears, Roebuck & Co., supra, 421 U.S. at pp. 151-152 [44 L.Ed.2d at p. 48].) As Professor Cox in his seminal article on executive privilege has explained, protecting the predecisional deliberative process gives the chief executive "the freedom 'to think out loud,' which enables him to test ideas and debate policy and personalities uninhibited by the danger that his tentative but rejected thoughts will become subjects of public discussion. Usually the information is sought with respect to past decisions; the need is even stronger if the demand comes while policy is still being developed." (Cox, Executive Privilege (1974) 122 U.Pa.L.Rev. 1383, 1410.)

In determining whether a document falls within the parameters of exemption 5, the federal courts have also recognized "that it requires different treatment for materials reflecting deliberative or policy-making processes on the one hand, and purely factual, investigative matters on the other." (EPA v. Mink, supra, 410 U.S. at p. 89 [35 L.Ed.2d at p. 133].) The courts have readily acknowledged, however, that the fact/opinion dichotomy may be misleading, and have refused to apply it in a mechanical or unthinking manner. The privilege, as one appeals court has written, "is intended to protect the deliberative process of government and not just deliberative material." (Mead Data Cent., Inc. v. U.S. Dept. of Air Force (D.C. Cir. 1977) 566 F.2d 242, 256 [184 App.D.C. 350], italics added; accord, National Wildlife Federation v. U.S. Forest Serv. (9th Cir. 1988) 861 F.2d 1114, 1118-119.) Accordingly, in some circumstances "the disclosure of even purely factual material may so expose the deliberative process ... that it must be deemed exempted by [5 United States Code] section 552(b)(5)." (Mead Data

Cent., Inc. v. U.S. Dept. of Air Force, supra, 566 F.2d at p. 256.) Decisions holding the exemption to be applicable even to "purely factual material" are legion. (See, e.g., Montrose Chemical Corporation of California v. Train (D.C. Cir. 1974) 491 F.2d 63, 67-71 [160 App.D.C. 270]; Lead Industries Ass'n v. Occup. S. & H. Admin. (2d Cir. 1979) 610 F.2d 70, 85-86 [60 A.L.R.Fed. 390]; Ryan v. Department of Justice (D.C. Cir. 1980) 617 F.2d 781, 790 [199 App.D.C. 199]; Russell v. Department of the Air Force (D.C. Cir. 1982) 682 F.2d 1045, 1048 [221 **[53 Cal. 3d 1342]** App.D.C. 96]; Dudman Communications v. Dept. of Air Force (D.C. Cir. 1987) 815 F.2d 1565, 1568 [259 App.D.C. 364]; Wolfe v. Department of Health and Human Services (D.C. Cir. 1988) (in bank) 839 F.2d 768, 774 [268 App.D.C. 89]; National Wildlife Federation v. U.S. Forest Serv., supra, 861 F.2d at pp. 1118-1119.)

In short, the courts' focus in exemption 5 cases is less on the nature of the records sought and more on the effect of the records' release. [6] The key question in every case is "whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." (Dudman Communications v. Dept. of Air Force, supra, 815 F.2d at p. 1568.) Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is "actually ... related to the process by which policies are formulated" (Jordan v. United States Dept. of Justice (D.C. Cir. 1978) 591 F.2d 753, 774 [192 App.D.C. 144]) or "inextricably intertwined" with "policy-making processes." (Ryan v. Department of Justice, supra, 617 F.2d at p. 790; Soucie v. David (D.C. Cir. 1971) 448 F.2d 1067, 1078 [145 App.D.C. 144].)

[4c] Although the precise question presented here-whether the Governor may properly invoke the deliberative process privilege with respect to his appointment calendars and schedules-has not heretofore been adjudicated, any number of decisions offer useful points of comparison.fn. 12 Montrose Chemical Corporation of California v. Train, supra, 491 F.2d 63, **[53 Cal. 3d 1343]** for example, illustrates how the seemingly straightforward distinction between fact and opinion blurs when the facts themselves reflect on the deliberative process. In that case, the plaintiffs sought two summaries of evidence presented at a public hearing which had been prepared by staff for the Administrator of the Environmental Protection Agency. Although the summaries contained only factual material, the court of appeals nevertheless held that the deliberative process privilege applied. The documents revealed the authors' evaluative judgment as to the relative significance of the facts in the record; the plaintiffs were attempting to discover, in advance of the administrator's decision, what facts he considered to be important or unimportant. (Id. at pp. 67-70.) Thus, "[t]o probe the summaries of record evidence," the court concluded, "would be the same as probing the decision-making process itself." (Id. at p. 68; see also Lead Industries Ass'n v. Occup. S. & H. Admin., supra, 610 F.2d at p. 85 ["Disclosing factual segments from the [agencies'] summaries would reveal the deliberative process of summarization itself by demonstrating which facts in the massive rule-making record were considered significant by the decisionmaker and those assisting her."]; Washington Research Proj., Inc. v. Department of H., E. & W. (D.C. Cir. 1974) 504 F.2d 238, 250-251 [164 App.D.C. 169] ["[T]he judgmental element arises through the necessity to select and emphasize certain facts at the expense of others."]; Farmworkers Legal Services v. U.S. Dept. of Labor (E.D.N.C. 1986) 639 F. Supp. 1368, 1373 ["Because the list sought here is composed of selective fact, it ... could reveal the deliberative process."].)

The parallel here is evident. Disclosing the identity of persons with whom the Governor has met and consulted is the functional equivalent of revealing the substance or direction of the Governor's judgment and mental processes; such information would indicate which interests or individuals he deemed to be of significance with respect to critical issues of the moment. The intrusion into the deliberative process is patent.

Brockway v. Department of the Air Force (8th Cir. 1975) 518 F.2d 1184 illuminates another pertinent facet of the issue before us. The father of an Air Force pilot sought disclosure of certain witnesses'

statements concerning an airplane crash in which his son was killed. Although the information was factual rather than advisory in nature, the court nevertheless held that confidentiality was necessary to prevent " 'inhibition of the free flow of information' " to the Air Force. (Id. at p. 1193, quoting Note, The Freedom of Information Act and the Exemption for Intra-Agency Memoranda (1976) 86 Harv.L.Rev. 1047, 1052-1053.) "[W]ithout the assurances of confidentiality," the court concluded, the "flow of information to the Air Force" might be sharply curtailed, and the deliberative processes and efficiency of the agency greatly hindered. (518 F.2d at pp. 1193-1194.) **[53 Cal. 3d 1344]**

The reasoning of the federal court applies with equal force here. If the law required disclosure of a private meeting between the Governor and a politically unpopular or controversial group, that meeting might never occur. Compelled disclosure could thus devalue or eliminate altogether a particular viewpoint from the Governor's consideration. Even routine meetings between the Governor and other lawmakers, lobbyists or citizens' groups might be inhibited if the meetings were regularly revealed to the public and the participants routinely subjected to probing questions and scrutiny by the press.

In sum, while the raw material in the Governor's appointment calendars and schedules is factual, its essence is deliberative. Accordingly, we are persuaded that the public interest in withholding disclosure of the Governor's appointment calendars and schedules is considerable.fn. 13

(2) Balancing the Interests

[7] Having so concluded, however, the lingering question nevertheless remains whether the public interest in nondisclosure "clearly outweighs" the public interest in disclosure. (§ 6255.) On the facts presented, we are persuaded that it does.

The Times asserts that, "in a democratic society, the public is entitled to know how [the Governor] performs his duties, including the identity of persons with whom he meets in the performance of his duties as Governor." Although the Times makes no effort to elaborate on this statement, its meaning is abundantly clear. In politics, access is power in its purest form. Entrance to the executive office is the passport to influence in the decisions of government. The public's interest extends not only to the individual they elect as Governor, but to the individuals their Governor selects as advisors.

One could readily imagine additional public benefits accruing from disclosure of the Governor's private itinerary, as well. It could be argued, for **[53 Cal. 3d 1345]** example, that the prospect of publicity would expand rather than contract the number and variety of persons meeting with the Governor. Disclosure might also reveal whether the Governor was, in fact, receiving a broad range of opinions, and ultimately whether the state's highest elected officer was attending diligently to the public business.

Moreover, in response to the assertion that disclosure could chill the flow of information to the executive office, one might argue, as the Court of Appeal concluded, that the Governor's advisors should be made of "sterner stuff"; we need not assume that the Governor, or those otherwise inclined to confer with the Governor, would be deterred by the mere specter of publicity.

The answer to these arguments is not that they lack substance, but pragmatism. The deliberative process privilege is grounded in the unromantic reality of politics; it rests on the understanding that if the public and the Governor were entitled to precisely the same information, neither would likely receive it. Politics is an ecumenical affair; it embraces persons and groups of every conceivable interest: public and private; popular and unpopular; Republican and Democratic and every partisan stripe in between; left, right and center. To disclose every private meeting or association of the Governor and expect the decisionmaking process to function effectively, is to deny human nature and

contrary to common sense and experience. (See United States v. Nixon, supra, 418 U.S. at p. 705 [41 L.Ed.2d at p. 1062].)

Furthermore, whatever merit disclosure might otherwise warrant in principle is simply crushed under the massive weight of the Times's request in this case: the newspaper seeks almost five years of the Governor's calendars and schedules, covering undoubtedly thousands of meetings, conferences and engagements of every conceivable nature. We are not persuaded that any identifiable public interest supports such a wholesale production of documents.

Accordingly, on the present record, we conclude that the public interest in nondisclosure clearly outweighs the public interest in disclosure. (§ 6255.)

Lest there be any misunderstanding, however, we caution that our holding does not render inviolate the Governor's calendars and schedules or other records of the Governor's office. There may be cases where the public interest in certain specific information contained in one or more of the Governor's calendars is more compelling, the specific request more focused, and the extent of the requested disclosure more limited; then, the court might properly conclude that the public interest in nondisclosure does not **[53 Cal. 3d 1346]** clearly outweigh the public interest in disclosure, whatever the incidental impact on the deliberative process. Plainly, that is not the case here.fn. 14

b. The Governor's Security Interest

Our conclusion that the trial court properly denied the Times's request under the public interest exemption (§ 6255) finds additional support in the evidence relating to the potential threat to the Governor's physical security.

As noted earlier, the Governor's daily and weekly schedules set forth in exhaustive detail the particulars of the Governor's meetings and travel: time and location of arrivals and departures; traveling companions; hotel accommodations; and ground transportation. The revelation of such information, the Governor's security director reasonably asserts, "would seriously impair [his] ... ability to assure the Governor's security, and would constitute a potential threat to the Governor's safety, because the information ... will enable the reader to know in advance and with relative precision when and where the Governor may be found, those persons who will be with him, and when he will be alone." Confining disclosure to outdated calendars and schedules might mitigate but would not altogether eliminate the threat; it is plausible to believe that an individual intent on doing harm could use such information to discern activity patterns of the Governor and identify areas of particular vulnerability.

The Times argues that the Governor has, in effect, waived any security interest by voluntarily releasing "public schedules" for each coming week. The contention lacks merit. The "public schedules" set forth in the record reveal little more than the time and place of the Governor's scheduled public speaking engagements; they contain none of the specific details characteristic of his personal calendars and schedules.

Nor are we persuaded that the trial court erred, as the Times contends, in refusing to order an in camera review of the requested records to segregate information which might pose a legitimate security risk from other material, such as outdated schedules and calendars, which purportedly would not. **[53 Cal. 3d 1347]** As noted, the trial court could properly find, based on the declarations, that an individual intent on doing harm to the Governor might be able to reconstruct the Governor's daily habits and patterns using outdated schedules.fn. 15

Conclusion

"Give every man thy ear, but few thy voice," Shakespeare's Polonius advised.fn. 16 Those in policymaking positions of government would do well to abide the admonition. Access to a broad array of opinions and the freedom to seek all points of view, to exchange ideas, and to discuss policies in confidence, are essential to effective governance in a representative democracy. Accordingly, we are persuaded, on the instant record, that the public interest served by not disclosing the Governor's appointment calendars and schedules clearly and substantially outweighs the public interest in their disclosure. (§ 6255.)

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Panelli, J., and Baxter, J., concurred.

MOSK, J.,

Dissenting.

The dissent of Justice Kennard is irrefutable, and I agree completely with her opinion on the law. I write separately only on the issue of public policy.

Secrecy has always been deemed anathema to democratic government. Time and again justices of the Supreme Court have deplored secrecy in government. Justice Frankfurter declared that, "Secrecy is not congenial to truth seeking." (Anti-Fascist Committee v. McGrath (1951) 341 U.S. 123, 171 [95 L. Ed. 817, 854, 71 S. Ct. 624].) Justice Stevens wrote that, "Neither our elected nor our appointed representatives may abridge the free flow of information simply to protect their own activities from public scrutiny." (Press-Enterprise Co. v. Superior Court (1986) 478 U.S. 1, 19 [92 L. Ed. 2d 1, 17, 106 S. Ct. 2735].) Justice Douglas quoted Henry Steele Commager, the noted historian: " 'The generation that made the nation thought secrecy in government one of the instruments of Old World tyranny and committed **[53 Cal. 3d 1348]** itself to the principle that a democracy cannot function unless the people are permitted to know what their government is up to.' " (EPA v. Mink (1973) 410 U.S. 73, 105 [35 L. Ed. 2d 119, 142, 93 S. Ct. 827].) Justice Douglas also quoted James Madison: " 'A popular government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.' " (Id. at p. 110 [35 L.Ed.2d at p. 145].) Justice Brennan wrote that secrecy "can only breed ignorance and distrust" and that, conversely "free and robust reporting, criticism, and debate can contribute to public understanding ... as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and public accountability." (Nebraska Press Assn. v. Stuart (1976) 427 U.S. 539, 587 [49 L. Ed. 2d 683, 714, 96 S. Ct. 2791].) Justice Blackmun declared that information is necessary " 'to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.' " (John Doe Agency v. John Doe Corp. (1989) 493 U.S. 146, 152 [107 L. Ed. 2d 462, 471, 110 S. Ct. 471, 475].)

Countless similar observations by justices and commentators could be cited. In short, the lessons of history tell us over and over that secrecy in government, except as provided by law, causes lack of public confidence and various other ills. We would do well to heed the words of Justice Brandeis: "sunlight is said to be the best of disinfectants."

Secrecy is inconsistent with the duty of public officials to keep the public informed of their activities, including the identity of those persons who have access to them. That this is not an unreasonable requirement is made clear on the national scene.

It is common knowledge that the schedule of the President of the United States is released to broadcast and print media by his press secretary every day, in advance of events. In contrast, the daily

schedule of the Governor is shrouded in secrecy both before and long after the events have transpired, indeed permanently. It is difficult to rationalize justification for the Governor of this state being more furtive in his scheduling than the President of the United States. Certainly the problems of the state are not more significant, more potentially devastating, than those involving the nation's security and welfare with which the President is concerned.

It is true that the national media are requested not to release the President's schedule in advance of events. But, having been advised of the events and appointments, they are free to publish the information immediately **[53 Cal. 3d 1349]** afterwards. Here the petitioner does not seek the Governor's schedule in advance, but only after the events and appointments have transpired.

Though the majority do not tell us, one must wonder whether under their theory this secrecy in scheduling applies not merely to the Governor but to the entire executive branch of our state government, to secretaries, cabinet officers, chairpersons of boards and commissions. And if it is a prerogative of the executive branch, does it also apply to county executives and local mayors? If we are not to be discriminatory, the secrecy pit is bottomless.

The majority, in their footnote 14, observe that the Commission on Judicial Performance conducts its investigations in confidence, pursuant to a constitutional provision. They make my point: if there is to be governmental secrecy it must be pursuant to law. There is no statutory or constitutional provision specifically granting the right of secrecy to the Governor.

The conclusion is inescapable, as Justice Kennard declares in her discussion of the applicable law, that the judgment of the Court of Appeal should be affirmed.

Broussard, J., concurred.

KENNARD, J.

I dissent.

To support its holding that a governor's appointment calendars and schedules are exempt from disclosure, the majority relies primarily on the deliberative process privilege. Because the requested documents reveal the identity of those with whom a governor has met, the majority reasons that their disclosure would reveal "the substance or direction of the Governor's judgment and mental processes" (maj. opn., ante, p. 1343) or "devalue or eliminate altogether a particular viewpoint from the Governor's consideration" (maj. opn. ante, p. 1344) and thereby "chill the flow of information to the executive office" (maj. opn. ante, p. 1345). I am not persuaded.

The documents at issue disclose only the fact of meetings, not the contents of communications. With rare exceptions, the deliberative process is not compromised by disclosing merely the identity of the participants in policy discussions. Even assuming that the documents at issue contain some material protected by the deliberative process privilege, the government has not made the detailed and specific showing required to establish such a claim, and such protected matter, if it exists, could be easily segregated **[53 Cal. 3d 1350]** from the bulk of the requested public records.fn. 1 I conclude also that concerns about a governor's security do not warrant complete exemption of the requested records.

I

The California Public Records Act (Gov. Code, § 6250 et seq.; hereafter the Act)fn. 2 was modeled on the federal Freedom of Information Act (5 U.S.C. § 552; hereafter the FOIA). The purpose of both the Act and the FOIA is to require that public business be conducted "under the hard light of full public scrutiny" (Tennessean Newspapers, Inc. v. Federal Housing Admin. (6th Cir. 1972) 464 F.2d 657,

660), and thereby "to permit the public to decide for itself whether government action is proper" (Washington Post Co. v. U.S. Dept. of Health, etc. (D.C. Cir. 1982) 690 F.2d 252, 264, italics in original). The Act declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) For both the FOIA and the Act, "disclosure, not secrecy, is the dominant objective." (Dept. of Air Force v. Rose (1976) 425 U.S. 352, 361 [48 L. Ed. 2d 11, 21, 96 S. Ct. 1592].)

Because the FOIA provided a model for the Act, and because they have a common purpose, the Act and its federal counterpart "should receive a parallel construction." (American Civil Liberties Union Foundation v. Deukmejian (1982) 32 Cal. 3d 440, 451 [186 Cal. Rptr. 235, 651 P.2d 822].) Therefore, federal decisions under the FOIA may be used to construe the Act. (Braun v. City of Taft (1984) 154 Cal. App. 3d 332, 342 [201 Cal. Rptr. 654]; San Gabriel Tribune v. Superior Court (1983) 143 Cal. App. 3d 762, 772, 777 [192 Cal. Rptr. 415].)

It is undisputed that the Act protects the deliberative processes of government agencies and officials, but it is not clear whether it does so through subdivisions (a) or (k) of section 6254 (see maj. opn., ante, p. 1339, fns. 8 & **[53 Cal. 3d 1351]** 9), through section 6255, or through all of these. (See 53 Ops.Cal.Atty.Gen. 136 (1970).) The majority proceeds on the assumption that the Act protects the deliberative process through section 6255.fn. 3 Although it would seem that the deliberative process privilege is more properly located in subdivision (a) of section 6254 (see Citizens for a Better Environment v. Department of Food & Agriculture (1985) 171 Cal. App. 3d 704, 712 [217 Cal.Rptr. 504]), I will likewise assume, for purposes of this case only, that it may properly be asserted under section 6255.

The role of the deliberative process privilege under the FOIA has been well defined. The privilege is included within the ambit of what is commonly referred to in FOIA cases as exemption 5.fn. 4 (See EPA v. Mink, supra, 410 U.S. 73, 85-86 [35 L. Ed. 2d 119, 131-132].) Because the deliberative process privilege has been the subject of intense and careful scrutiny in the context of the FOIA, consideration of the cases and commentaries construing the federal legislation is crucial to a proper resolution of the issue presented here.

The deliberative process privilege protects an agency's internal working papers consisting of advice, recommendations, opinions, and other material reflecting deliberative or policymaking processes. (Wu v. National Endowment for Humanities (5th Cir. 1972) 460 F.2d 1030, 1034; Soucie v. David (D.C. Cir. 1971) 448 F.2d 1067, 1077 [145 App.D.C. 144].) Like all exemptions under both the FOIA and the Act (see United States Dept. of Justice v. Julian, supra, 486 U.S. 1, 8 [100 L. Ed. 2d 1, 11]; New York Times Co. v. Superior Court (1990) 218 Cal. App. 3d 1579, 1585 [268 Cal.Rptr. 21]), it is to be narrowly construed.

The privilege has three policy bases: "First, it protects creative debate and candid consideration of alternatives within an agency, and, thereby, **[53 Cal. 3d 1352]** improves the quality of agency policy decisions. Second, it protects the public from the confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon. And third, it protects the integrity of the decision-making process itself by confirming that 'officials should be judged by what they decided[,] not for matters they considered before making up their minds.' " (Jordan v. United States Dept. of Justice (D.C. Cir. 1978) 591 F.2d 753, 772-773 [192 App.D.C. 144], fns. omitted.) The ultimate purpose of the deliberative process privilege is "to prevent injury to the quality of agency decisions." (NLRB v. Sears, Roebuck & Co. (1975) 421 U.S. 132, 151 [44 L. Ed. 2d 29, 47, 95 S. Ct. 1504].)

To qualify for exemption under the deliberative process privilege, a document or a portion of a document must be both predecisional and deliberative. (NLRB v. Sears, Roebuck & Co., supra, 421

U.S. 132, 151-154 [44 L. Ed. 2d 29, 47-49]; Mead Data Cent., Inc. v. U. S. Dept. of Air Force (D.C. Cir. 1977) 566 F.2d 242, 257 [184 App.D.C. 350].) To establish that a document is predecisional, an agency must identify an agency decision or policy to which the document contributed (Senate of Puerto Rico v. U.S. Dept. of Justice (D.C. Cir. 1987) 823 F.2d 574, 585 [262 App.D.C. 166]), or at least must show "that the document is in fact part of some deliberative process" (1 Braverman & Chetwynd, Information Law (1985) § 9-4.3.1, p. 364, italics in original; NLRB v. Sears, Roebuck & Co., supra, 421 U.S. at p. 151, fn. 18 [44 L.Ed.2d at p. 48]).

In this case, the government has satisfied neither of these foundational requirements for invoking the deliberative process privilege.

First, the government has not shown that the documents are predecisional. It has not identified particular policies or decisions that resulted from particular meetings mentioned in the calendars and schedules or otherwise shown that the meetings were each part of some deliberative process. Indeed, it seems likely that many of the meetings were ceremonial occasions unrelated to any policy or decision, and that others consisted of explanation of policies already formulated or the formulation of plans and strategies for their implementation. The deliberative process privilege can have no application to such postdecisional or nondecisional meetings.

Second, the government has not shown that the documents are deliberative. To qualify as deliberative, a document generally must consist of opinions or recommendations. Purely factual material may be withheld only if it is "inextricably intertwined with policy-making processes" (Soucie v. David, supra, 448 F.2d 1067, 1077-1078, fn. omitted), if it would expose the deliberative process by the manner in which the factual material is **[53 Cal. 3d 1353]** organized or presented (Ryan v. Department of Justice (D.C. Cir. 1980) 617 F.2d 781, 790 [199 App.D.C. 199]), or if it would compromise the agency's ability to gather information in the future (Brockway v. Department of Air Force (8th Cir. 1975) 518 F.2d 1184, 1191-1192).

The majority relies on an analogy between agency summaries of factual material, which are exempt from disclosure if they reveal the deliberative process by the manner in which material is summarized, and appointment calendars showing the persons with whom a high government official has met. The majority encapsulates this reasoning in the following sentence: "Disclosing the identity of persons with whom the Governor has met and consulted is the functional equivalent of revealing the substance and direction of the Governor's judgment and mental processes; such information would indicate which interests or individuals he deemed to be of significance with respect to critical issues of the moment." (Maj. opn., ante, p. 1343.)

The analogy is inapt. The selection of a fact for inclusion in a summary indicates clearly and directly that the person making the summary considers it important to the decision. But information that a governor has met or will meet with an individual on a particular date has no such unambiguous significance. Although disclosure of appointment calendars and schedules does provide glimpses into the inner workings of the governor's office, and thereby serves a substantial public interest, these glimpses are so indirect that they will injure the decisional process only in rare instances.

Consider first a list of the occasions on which a governor has met or will meet with members of his or her personal staff or with the heads of executive branch agencies. Without information as to both the topics discussed and the advice or opinions offered, such a list would reveal nothing about the status of the governor's thinking about "critical issues of the moment." Although information that a governor seldom or never meets with an agency director could signify that the governor has little confidence in the individual's advice (it could also indicate a preference for communication by telephone or written memorandum), it would disclose nothing about the substance of the governor's thinking on any issue and so would pose no threat of injury to the deliberative process.

Consider next a list of occasions on which a governor has met with persons outside state government. Although the list would not disclose the topics discussed or the advice or opinions expressed, these could sometimes be inferred if the persons with whom the governor met had publicly advocated particular positions on issues that required a decision by the governor. Even in these cases, however, information that the Governor met with an **[53 Cal. 3d 1354]** advocate for a particular position reveals little about how the governor is inclined to decide the issue. Governors do not meet only with advocates whose views they are inclined to favor. A governor may wish to test a tentative decision or inclination against the arguments of those advocating a different course, or the governor may choose to hear the opposing arguments as a matter of courtesy, political expediency, or public relations. And if a governor has met with representatives of all points of view, what can this possibly reveal about "the substance and direction of the governor's judgment" as to the question at issue? Thus, information that a governor has met with an individual does not reveal the Governor's judgment about the merits of the position the individual is advocating, and so poses no discernible threat of injury to the deliberative process.

On the other hand, there is a very substantial public interest in disclosure of the occasions on which a governor has met with persons outside government who seek to influence the governor's decisions on critical issues. This interest is reflected in the many decisions under the FOIA holding that the deliberative process privilege does not protect communications by interested parties seeking to influence government decisions. (Van Bourg, Allen, Weinberg & Roger v. N.L.R.B. (9th Cir. 1985) 751 F.2d 982, 985; County of Madison, N. Y. v. U. S. Dept. of Justice (1st Cir. 1981) 641 F.2d 1036, 1040-1042; Mead Data Cent., Inc. v. U. S. Dept. of Air Force, supra, 566 F.2d 242, 257-258; NAACP Legal Defense Fund v. U.S. Dept. of Justice (D.D.C. 1985) 612 F. Supp. 1143, 1146-1147; see also Weaver & Jones, The Deliberative Process Privilege (1989) 54 Mo.L.Rev. 279, 300; Project: Government Information and the Rights of Citizens (1975) 73 Mich.L.Rev. 971, 1071; Note, The Freedom of Information Act: A Seven- year Assessment (1974) 74 Colum.L.Rev. 895, 942; Note, The Freedom of Information Act and the Exemption for Intra-agency Memoranda (1973) 86 Harv.L.Rev. 1047, 1065.) The public interest in monitoring the activities of those who seek to gain private advantage by influencing government decisions is also reflected in the detailed regulatory system enacted to control the practice of lobbying. (§ 86100 et seq.)

Although the majority defends its holding with citation to Brockway v. Department of Air Force, supra, 518 F.2d 1184, examination of that decision exposes the weakness of the majority's position. The Brockway court held that the deliberative process privilege protects an agency document containing the statements of witnesses to an airplane crash. Yet in that case the agency voluntarily revealed the names of the witnesses it had interviewed. (Id. at p. 1186.) No claim was ever made that disclosing merely the fact of the interviews, as opposed to what was said, would harm the deliberative **[53 Cal. 3d 1355]** process privilege.fn. 5 (See also 8 Wright & Miller, Federal Practice and Procedure (1970) § 2019, pp. 160-161 ["Frequently statutes requiring particular kinds of reports to be made to government will provide that such reports are to be kept confidential. ... The fact that a person has made a report of this kind is not privileged, even though the contents of the report may be."].)

Many other FOIA decisions also weigh heavily against the majority's conclusion. Under the FOIA, courts and commentators alike have concluded that the identities of persons who participate in the process of formulating policy within a governmental agency by giving opinions, advice, or recommendations are essentially factual rather than deliberative, and that disclosure of documents revealing the names of participants in policy formulation will not compromise the deliberative process.

For instance, in two cases in which it was alleged that the government had charged exorbitant prices for homes sold to low-income buyers, courts ordered disclosure of the identity of the appraisers on whom the government had relied. (Tennessean Newspapers, Inc. v. Federal Housing Admin., supra, 464 F.2d 657; Philadelphia Newspapers, Inc. v. Department of H. & U. D. (E.D.Pa. 1972) 343 F. Supp.

1176.) One of these courts observed that the appraisers' names were outside the deliberative process privilege because names are "essentially factual." (Philadelphia Newspapers, Inc. v. Department of H. & U. D., supra, at p. 1178.) The other court, recognizing the public's interest in disclosure of conflicts of interest, remarked that the "name of an appraiser could be sufficient to establish a motivation sufficient to trigger an investigation." (Tennessean Newspapers, Inc. v. Federal Housing Admin., supra, at p. 660.)

In another case, a federal district court ordered the Federal Trade Commission to disclose the names of outside experts it had consulted during the process of formulating a regulation. The court stated: "The government has attempted to expand the policy of exemption 5-encouragement of a frank discussion of legal and policy matters in order to enhance the quality of agency decisions-beyond its necessary and proper limits. The FOIA **[53 Cal. 3d 1356]** 'creates a liberal disclosure requirement, limited only by specific exemptions which are to be narrowly construed.' [Citation.] Outside expert consultants would not be chilled in their advice or recommendations to the agency if it were known that they had rendered advice. After all, as experts they are members of a profession which demands the rendition of advice to many groups. They should expect the fact of rendition to eventually become public. Protection of the content of the advice rendered would adequately serve the purpose of encouraging frank discussion, and therefore the names and addresses of the outside expert consultants will be ordered disclosed." (Assn. of National Advertisers, Inc. v. FTC (D.D.C. 1976) C.A.No. 75-1304, 1976-2 Trade Cas. (CCH) ¶ 61,021, pp. 69,491, 69,493; see also Assn. of National Advertisers, Inc. v. FTC (D.D.C. 1976) C.A.No. 75-0896, 1976-2 Trade Cas. (CCH) ¶ 61,112, pp. 70,041, 70,045.)

Commentators have reached the same conclusion: "A requirement that names be disclosed is supported in the most mechanical sense by the observation that names are factual and that factual material falls outside the ambit of the exemption's protection. More importantly, the same kind of policy analysis that underlies the factual material limitation of exemption (5) argues for disclosure of names. Few outside consultants would be discouraged from providing recommendations by the mere prospect that their names would be disclosed, without the content of their advice; indeed, the most likely cases for such discouragement are those of blatantly prejudiced potential consultants who would fear the public imputation of malice. And there is of course a public interest in knowing who is being consulted by the Government and contributing to its decisions." (Note, The Freedom of Information Act and the Exemption for Intra-agency Memoranda, supra, 86 Harv.L.Rev. 1047, 1065-1066, fn. omitted; see also O'Reilly, Federal Information Disclosure (1989) § 15.16, pp. 15-78 to 15-79.)

Disclosure of the identity of participants in policy formulation occurs routinely in FOIA cases. Often, the agency has made the disclosure voluntarily. (See, e.g., Washington Post Co. v. U. S. Dept. of Heath, etc., supra, 690 F.2d 252, 257.) In other cases, the trial court has mandated disclosure by requiring the agency to prepare a Vaughn index (named after Vaughn v. Rosen (D.C. Cir. 1973) 484 F.2d 820 [157 App.D.C. 340]), and to furnish the index to both the court and the requesting party.

A Vaughn index identifies the author, recipient, and subject matter of each document that the agency has withheld in whole or in part under a claim of exemption. (see Osborn v. I.R.S. (6th Cir. 1985) 754 F.2d 195, 196; Weaver & Jones, op. cit. supra, 54 Mo.L.Rev. 279, 301-302.) The purpose of the index is to give the court and the opposing party sufficient information about the withheld document, or portion of a document, to assess the **[53 Cal. 3d 1357]** validity of the agency's exemption claim. (Vaughn v. Rosen, supra, 484 F.2d 820.) The government must provide a Vaughn index before the court makes its decision "in most FOIA cases." (Osborn v. I.R.S., supra, at p. 197.)

Although the participants in the process of policy formulation and rule- making are disclosed through the Vaughn indexes, this has not prevented the courts from making them a standard procedure in FOIA cases. Rather, the federal courts' continued use of the Vaughn index implies a determination that disclosing the names of agency employees who have authored internal documents, the contents of

which are or may be privileged, will work no harm to an agency's deliberative process in the vast majority of cases. (See 1 Braverman & Chetwynd, op. cit. supra, § 9-4.3.2, at p. 371.)fn. 6

Because the schedules and calendars at issue disclose only the identity of persons who have met with the Governor, and not what was said at those meetings, the deliberative process privilege can have little, if any, application. The frank exchange of views is unlikely to be compromised by public knowledge of the occasions on which a governor has met in the past with other government officials, with particular members of the governor's personal staff, or with persons outside state government. The majority holding, under which documents containing the names of persons who might have participated in policy formulation may be withheld from the public, finds no support in the deliberative process privilege.

II

The majority also relies to some extent on concern for a governor's physical safety. The government submitted evidence in the trial court that disclosure of former Governor Deukmejian's appointment calendars and schedules would have revealed his characteristic patterns of movement while in office and would have disclosed particular times when he would likely have been alone. The government argues that this information could be useful to a potential assailant, and that it therefore should be kept confidential.

This argument should be rejected. The government has not shown that disclosure of appointment calendars and schedules would elevate the risk above that which high public officials normally must accept. For example, **[53 Cal. 3d 1358]** those elected to the Legislature must attend its public sessions, as judges must attend the public sessions of court. Although such public appearances, at preannounced times and places, carry a certain risk to the safety of legislators and judges, the risk is one that is deemed acceptable.fn. 7 Greater safety for public officials might be obtainable at the cost of total secrecy in government, but the price would be unacceptably high.

III

The government may be able to establish that parts of a governor's appointment calendars and schedules are exempt from disclosure under the Act, even though it has not established an exemption for these public records as a whole.

The public official or agency invoking an exemption bears the burden of establishing that it applies. (§ 6255; Senate of Puerto Rico v. U.S. Dept. of Justice, supra, 823 F.2d 574, 585; Church of Scientology, etc. v. U. S. Dept. (9th Cir. 1979) 611 F.2d 738, 742; Braun v. City of Taft, supra, 154 Cal. App. 3d 332, 345.) To discharge its burden, an agency may not rely upon conclusory and generalized allegations. (Senate of Puerto Rico v. U.S. Dept. of Justice, supra, at p. 585; Church of Scientology, etc. v. U. S. Dept., supra, at p. 742.) Instead, it must provide a "detailed factual justification" for each exemption claim (Washington Post Co. v. U. S. Dept. of Health, etc., supra, 690 F.2d 252, 269; see also Mead Data Cent., Inc. v. U. S. Dept. of Air Force, supra, 566 F.2d 242, 258 [an agency "must show by specific and detailed proof that disclosure would defeat, rather than further, the purpose of the FOIA"]; Black v. Sheraton Corporation of America (D.D.C. 1974) 371 F. Supp. 97, 101 ["To recognize such a broad claim [of privilege,] in which the [government] has given no precise or compelling reasons to shield these documents from outside scrutiny, would make a farce of the whole procedure."].)

Although a heavy burden is thus imposed on a public official or agency seeking to avoid disclosure, the burden is not impossible to discharge. In this case, there may well be portions of the appointment calendars and schedules at issue that are protected by the deliberative process privilege, by the interest in protecting the Governor's safety, or by other important **[53 Cal. 3d 1359]** public interests. For this

reason, I agree with the Court of Appeal that the case should be remanded to give the government an opportunity to provide the detailed factual justification required to establish that portions of the schedules and calendars are exempt from disclosure. If a factual dispute remained after a sufficiently detailed justification had been provided, the proper procedure would have been for the trial court to conduct an in camera review of the documents, or at least of a representative sample. (See EPA v. Mink, supra, 410 U.S. 73, 93 [35 L. Ed. 2d 119, 135]; Church of Scientology, etc. v. U. S. Dept., supra, 611 F.2d 738, 742.)

When the government succeeds in establishing that parts of requested documents are exempt, those portions are deleted and the rest disclosed. This is mandated by section 6257, which provides: "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law." (See also Johnson v. Winter (1982) 127 Cal. App. 3d 435, 440 [179 Cal. Rptr. 585]; Anderson v. Department of Health & Human Services (10th Cir. 1990) 907 F.2d 936, 941.)

IV

A former United States Attorney General has remarked: "Nothing would be so alien to our form of government as pervasive secrecy, for people cannot govern themselves if they cannot know the actions of their government. Yet it is elementary that the welfare of the nation and that of its citizens may require that some information be kept in confidence." (Richardson, Freedom of Information (1974) 20 Loyola L.Rev. 45.) The FOIA and the Act seek to accommodate these competing concerns by mandating a general policy of full disclosure, with specific and narrowly drawn exemptions.

To establish an exemption under section 6255, an agency must show "that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." (Italics added.) When conducting this balancing process, the public's right to know what public officials are doingfn. 8 provides "a heavy and constant weight" in favor of disclosure. (Comment, The California Public Records Act: The Public's Right of Access to Governmental Information (1976) 7 Pacific L.J. 105, 119; see also Citizens for a Better Environment v. Department of Food & Agriculture, supra, 171 Cal.App.3d **[53 Cal. 3d 1360]** 704, 715 ["If the records sought pertain to the conduct of the people's business there is a public interest in disclosure."].) The weight varies, however, in accordance with "the gravity of the governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate." (Citizens for a Better Environment v. Department of Food & Agriculture, supra, at p. 715.) How our state governors spend their working hours, and how they go about obtaining advice and formulating policy are matters of great public importance, and, as already noted, disclosure of the names of the persons with whom a governor has met during office hours will illuminate this subject in significant ways.

The public interest in secrecy has not been shown to clearly outweigh this interest in disclosure. The government has made no specific and detailed demonstration that the requested documents, and all reasonably segregable portions of those documents, must be withheld to protect the deliberative processes or the physical safety of our state governors. By holding that the public has no right to know the identity of persons with whom a governor has met, the majority expands the deliberative process privilege well beyond its proper ambit and disregards the wisdom of the federal courts and legal commentators. I would hold that neither the deliberative process privilege, nor concern for the physical safety of our governors, nor the two combined, justifies a blanket exemption for a governor's personal appointment calendars and schedules. I therefore would affirm the judgment of the Court of Appeal.

Broussard, J., concurred.

FN 1. All further statutory references are to the Government Code unless otherwise indicated.

FN 2. Section 6254, subdivision (l) exempts from disclosure under the Act: "Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter."

FN 3. Section 6255 provides in full: "The agency shall justify withholding any record by demonstrating that the record in question is exempt under the express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."

FN 4. Ms. Pederson stated in her declaration that the daily schedules frequently include attachments in the nature of briefing memoranda to acquaint the Governor with the particulars of individual meetings, appearances or functions. To the extent such attachments actually contain advisory opinions, the Times indicated in its briefing that it did not seek disclosure of these documents.

FN 5. Although the record is unclear, it appears that the Governor does retain superseded appointment calendars and schedules. While this matter was pending, the Times moved for an order barring the Governor from transferring any of the requested records to the State Archives and placing a limitation on public access, pursuant to section 6268. The Governor filed an opposition to the motion. We granted the motion to preserve the subject matter of the litigation pending final determination of the appeal.

FN 6. As noted, post, at page 1335, the Legislature recently amended section 6259, subdivision (c) to provide: "In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure ... shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ." (Stats. 1990, ch. 908, § 2, No. 5 Deering's Adv. Legis. Service, p. 3265.)

We requested briefing at oral argument on the question whether that portion of section 6259, subdivision (c), prohibiting review by appeal contravenes article VI, section 11 of the California Constitution, which confers appellate jurisdiction upon the Courts of Appeal over every cause as to which the "superior courts have original jurisdiction." The Attorney General, on behalf of the Governor, submits that section 6259, subdivision (c) is constitutional. Times Mirror does not take a clear position, but appears to view the statute as constitutionally valid, as well. While the question is an interesting one, we need not decide it in this case. Whatever the merits of the provision purporting to preclude review by appeal, we discern no constitutional impediment to the Legislature providing, as it has here, an avenue of relief by means of writ review. As noted above, we interpret the statute to permit review of a trial court order on the merits.

FN 7. The Governor argues that the text of section 6259, subdivision (c) is clear and unambiguous and therefore cannot be construed in light of its legislative history. We disagree. As noted above, the statute does not squarely set forth a standard of review. Thus, the language is not altogether clear and unambiguous. Moreover, while ambiguity is generally thought to be a condition precedent to interpretation, this is not always the case. "The literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole." (Silver v. Brown (1966) 63 Cal. 2d 841, 845 [48 Cal. Rptr. 609, 409 P.2d 689]; accord Friends of Mammoth v. Board of Supervisors (1972) 8 Cal. 3d 247, 259 [104 Cal. Rptr. 761, 502 P.2d 1049] ["Once a particular legislative intent has been ascertained, it must be given effect ' "even though it may not be consistent with the strict letter of

the statute." ' "]; County of Sacramento v. Hickman (1967) 66 Cal. 2d 841, 849, fn. 6 [59 Cal. Rptr. 609, 428 P.2d 593].)

FN 8. Section 6254, subdivision (a) exempts "Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure ...."

FN 9. Although not cited by the Governor, we note that section 6254, subdivision (k) is also arguably relevant. That section exempts records "the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Section 1040 of the Evidence Code establishes a privilege for "official information," defined as "information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made." (Evid. Code, § 1040, subd. (a).) Under subdivision (k) of section 6254, therefore, the instant records might arguably be exempt from disclosure pursuant either to the common law "mental process" (see fn. 11, post, at p. 1340) or the statutory "official information" privilege.

FN 10. The terms "executive privilege" and "deliberative process privilege" refer to the same concept and will be used interchangeably in this opinion. (See Killington, Ltd. v. Lash (Vt. 1990) 572 A.2d 1368, 1371-1372, fn. 3; Babets v. Secretary of Executive Office (1988) 403 Mass. 230 [526 N.E.2d 1261, 1262, fn. 3].) It should be noted, however, that the term "executive" privilege as used here and by the federal courts interpreting the FOIA does not refer to whatever constitutional content the doctrine might have (see United States v. Nixon (1974) 418 U.S. 683 [41 L. Ed. 2d 1039, 94 S.Ct. 3090]), but rather to the traditional common law privilege that attached to confidential intraagency advisory opinions, a privilege which was later codified in exemption 5. (Kaiser Aluminum & Chemical Corp. v. United States (Ct. Cl. 1958) 157 F. Supp. 939, 946 [141 Ct.Cl. 38]; EPA v. Mink, supra, 410 U.S. at pp. 86-87 [35 L.Ed.2d at pp. 131- 132].)

The common law privilege protecting the "mental processes" of legislators is also well settled in California (see City of Fairfield v. Superior Court (1975) 14 Cal. 3d 768, 772-773 [122 Cal. Rptr. 543, 537 P.2d 375]; State of California v. Superior Court (1974) 12 Cal. 3d 237, 257-258 [115 Cal. Rptr. 497, 524 P.2d 1281]) although the analogous "deliberative process" privilege has not been litigated. Other states, however, have specifically held that a governor, in the discharge of official duties, is entitled to an executive privilege to protect the governor's internal mental or deliberative processes. (See, e.g., Hamilton v. Verdow (1980) 287 Md. 544 [414 A.2d 914, 922, 10 A.L.R.4th 333] [investigative report prepared for the Governor concerning a state mental hospital entitled to confidentiality to protect "deliberative communications between officials and those who assist them in formulating ... governmental action."]; Doe v. Alaska Superior Ct., Third Jud. Dist. (1986 Alaska) 721 P.2d 617, 622-623 [Governor's file concerning a candidate for appointment to state office entitled to confidentiality under the executive privilege protecting "the deliberative and mental processes of decision- makers."]; Nero v. Hyland (1978) 76 N.J. 213 [386 A.2d 846, 853] [executive privilege protects character investigation report on candidate for state government prepared at the request of the Governor]; Killington, Ltd. v. Lash, supra, 572 A.2d at p. 1374 ["Both the constitutional and common-law roots of the [executive] privilege strongly require its recognition in Vermont" to protect, under the Vermont Access to Public Records statute, deliberative material in the possession of the Governor]; but cf. Babets v. Secretary of Executive Office, supra, 526 N.E.2d 1261 [Massachusetts high court refused to recognize executive privilege based on the common law or the state constitution to protect documents in the possession of the department of social services].)

FN 11. Title 5 United States Code section 552(b)(5) provides that agencies need not disclose "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other

than an agency in litigation with the agency."

FN 12. Several federal and state decisions have addressed the question whether a public official's personal appointment records and schedules constitute "agency records" within the meaning of the FOIA or its local counterpart. (See Bureau of Nat. Affairs v. U.S. Dept. of Justice (D.C. Cir. 1984) 742 F.2d 1484 [239 App.D.C. 331]; Washington Post v. U.S. Dept. of State (D.D.C. 1986) 632 F. Supp. 607; Yacobellis v. City of Bellingham (1989) 55 Wn. App. 706 [780 P.2d 272]; Kerr v. Koch (N.Y. 1988) 15 Media L.Rptr. 1579.) These cases have uniformly focused on whether the records relate to official agency business as opposed to purely private matters; none has addressed the question of executive privilege presented here, although one expressly left that issue open. (Washington Post v. U.S. Dept. of State, supra, 632 F.Supp. at p. 616 ["The Court's decision that the records of schedule are subject to disclosure does not limit the defendant's right to withhold portions of the documents under a valid claim of statutory exemption pursuant to the Act."].)

The Governor concedes that his appointment calendars and schedules constitute "public records" under the Act. (See § 6252, subd. (d) [" 'Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. 'Public records' in the custody of the Governor means any writing prepared on or after January 6, 1975."].) It would be difficult indeed to argue to the contrary, inasmuch as the records clearly appear to "relat[e] to the conduct of the public's business." In any event, as noted, the Governor does not contend that the information sought lies outside the scope of the Act. He asserts, rather, that the records are exempt from disclosure under sections 6254, subdivision (l) and 6255.

FN 13. Our conclusion is not altered by the Times's subsequent willingness, expressed in its briefs and at oral argument, to exclude from disclosure any information relating to future events. The Times apparently believes that past events cannot qualify as "predecisional" and therefore do not merit protection under exemption 5 of the FOIA. (See NLRB v. Sears, Roebuck & Co., supra, 421 U.S. at pp. 151-152 [44 L.Ed.2d at pp. 47- 48], and the discussion, ante, at page 1341.) As noted earlier, however, the question under section 6255 is not whether a document qualifies in every particular for protection under federal law, but whether the public interest in nondisclosure clearly outweighs the public interest in disclosure. Moreover, the risks of disclosure outlined above apply in many cases regardless of whether the meetings are past or future. Participants may be chilled and discouraged by the knowledge that a meeting will routinely be disclosed, and executive judgments in ongoing policy matters may be prematurely revealed. Indeed, the Times's dogged determination to obtain even past schedules and calendars of the Governor is telling testimony to their continued vitality and relevance to the decisionmaking process.

FN 14. In his dissenting opinion, Justice Mosk asserts that "secrecy is inconsistent with the duty of officials to keep the public informed of their activities ..." and suggests that our holding represents a departure from both democratic principles and judicial precedent. On the contrary, express statutory and constitutional provisions recognize the need for confidentiality in governmental deliberations. Thus, it has been held that the activities of judges under investigation by the Commission on Judicial Performance-activities which the public would presumably be most interested in learning-are nevertheless not subject to disclosure pursuant to the provisions of article VI, section 18 of the California Constitution and for reasons of "sound public policy." (Mosk v. Superior Court (1979) 25 Cal. 3d 474, 491, 499 [159 Cal. Rptr. 494, 601 P.2d 1030].)

FN 15. Nor are we persuaded by the Times's contention that the trial court abused its discretion simply by failing to review the records in camera. Section 6259, subdivision (a), provides that the trial court may order disclosure where it appears that records are being improperly withheld, and states that " [t]he court shall decide the case after examining the record in camera, if permitted by subdivision (b)

of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow." We have never construed this section to compel an in camera review where-as here-such review is unnecessary to the court's decision, and we decline to do so here.

FN 16. Hamlet, act I, scene 3.

FN 1. It bears emphasis that a governor's appointment calendars and schedules are indeed public records. The government has conceded as much in this case, and courts have so held in regard to similar documents prepared for executive branch officials (Washington Post v. U.S. Dept. of State (D.D.C. 1986) 632 F. Supp. 607 [records of schedule of Secretary of State Alexander Haig]; Bureau of Nat. Affairs v. U.S. Dept. of Justice (D.D.C. 1984) 742 F.2d 1484, 1495 [239 App.D.C. 331] [daily agendas of Assistant Attorney General William Baxter]; Kerr v. Koch (N.Y. 1988) 15 Media L.Rptr. 1579 [appointment calendar of New York City mayor]).

As the majority points out (maj. opn., ante, p. 1342, fn. 12), in one of these cases the court remarked that its decision "does not limit the defendant's right to withhold portions of the documents under a valid claim of statutory exemption pursuant to the Act." (Washington Post v. U.S. Dept. of State, supra, 632 F. Supp. 607, 616, italics added.) None of the cases in any way suggests that calendars and schedules might be entirely exempt from disclosure.

FN 2. All further statutory references are to the Government Code, unless otherwise stated.

FN 3. Section 6255 contains a residuary or "catchall" exemption. It provides: "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." (Italics added.) Note that this public interest exemption applies to individual records, rather than to entire classes of records.

FN 4. Exemption 5, which the United States Supreme Court has termed a "somewhat Delphic provision" (United States Dept. of Justice v. Julian (1988) 486 U.S. 1, 11 [100 L. Ed. 2d 1, 13, 108 S.Ct. 1606]), permits an agency to withhold from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." (5 U.S.C. § 552(b)(5).) It was intended to incorporate the substance of certain privileges, including the deliberative process privilege, that would be available to the government during litigation to shield internal agency documents. (See United States v. Weber Aircraft Corp. (1984) 465 U.S. 792 [79 L. Ed. 2d 814, 104 S. Ct. 1488].) The high court has cautioned, however, that discovery rules should be applied to FOIA cases only "by way of rough analogies." (EPA v. Mink (1973) 410 U.S. 73, 86 [35 L. Ed. 2d 119, 131, 93 S. Ct. 827].)

FN 5. Moreover, it seems unlikely that a governor's meetings would involve the kind of factual investigation at issue in Brockway, supra, 518 F.2d 1184, as such investigations are normally conducted at lower levels of the executive branch. If a governor did meet in confidence with an individual to acquire information, and disclosure of the meeting could jeopardize a governor's ability to acquire similar confidential information in the future, a claim of privilege should be recognized. (See 53 Ops.Cal.Atty.Gen., supra, 136, 149 ["The need of a governmental agency to preserve its informational input channels has been recognized by the courts and the Legislature in this State as vital to the efficient operation of government."].) But such instances must be quite rare, and the government bears the burden of identifying them to the extent they exist within the requested material, as discussed below in part III of this dissent.

FN 6. There are specific exceptions to this general rule of disclosure. For example, it has twice been held that the identity of persons who rendered advice need not be disclosed when the content of their advice has already been made public and disclosure could discourage candid advice in the future. (Tax Reform Research Group v. I.R.S. (D.D.C. 1976) 419 F. Supp. 415, 423-424; Wu v. Keeney (D.D.C. 1974) 384 F. Supp. 1161, 1166.) Here, the government has not made the showing required to establish any such exception.

FN 7. The schedules apparently contain detailed information about airport gate departures and arrivals, means of ground transportation, hotel accommodations, and the like. This level of detail may well elevate the risk above that which high government officials normally must accept, but the briefs of the requesting party reveal that it does not now seek such information and it could be deleted from the documents before disclosure. The essence of the request is for documents revealing the identity of the persons with whom former Governor Deukmejian met and the dates and times of the meetings.

FN 8. The clearest and most emphatic expression of this right appears in section 54950: "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

EXHIBIT B - Request, email thread, response letters

IMMEDIATE DISCLOSURE REQUEST - DEC. 7, 2019

Pursuant to the CPRA and SF Sunshine Ordinance

This is an Immediate Disclosure Request (SFAC 67.25(a)) for the records numbered below. Your response is required by **Dec. 10, 2019**. Rolling records responses are requested (67.25(d)).

NOTE: Please be certain you have properly redacted all of your responses. Once you send them to us, there is no going back. The email address sending this request is a publicly-viewable mailbox. All of your responses (including all responsive records) may be instantly and automatically available to the public online via the MuckRock.com FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock).

Please read carefully the exact wording of my request and follow the Sunshine Ordinance and CPRA precisely. Every violation will be appealed, including but not limited to:

- any untimely or incomplete response (SF Admin Code 67.21, 67.25),
- failure to provide records in a rolling fashion as soon as each is available (SF Admin Code 67.25),
- failing to indicate whether you have responsive records or not for each request below and whether or not you withheld any records for each request below (Gov Code 6253(c))
- withholding more than the minimum exempt portion of any record or withholding an entire record if any portion at all is non-exempt (SF Admin Code 67.26),
- failure to justify with a footnote or "other clear reference" to an exemption statute or case law for each and every redaction or withholding (SF Admin Code 67.26, 67.27), including any so-called 'metadata',
- failure to provide "exact copies" of records (Gov Code 6253(b)), for example, by physically printing electronic records and scanning them back in, which degrades their content and causes loss of colors, hyperlinks, metadata, and searchable text content
- failure to provide the "electronic format in which [you] hold[] the information" (Gov Code 6253.9),
- failure to provide any "easily generated" format that we request below (SF Admin Code 67.21(l)),
- redacting or withholding information whose exemption you have already waived by producing it to the public before (Gov Code 6254.5),
- refusing to use email (SF Admin Code 67.21(b)), or requiring me to use a third-party service which imposes on me any terms and conditions beyond those of the CPRA (Gov Code

Requests:

1. the specific calendar required to be kept by SF Admin Code 67.29-5 (aka “Prop G calendar”) for your Department Head (whether an employee or elected official, defined pursuant to SF Charter 2A.30 para 1), with each and every meeting/item for Nov 10 - Nov

17, 2019 (inclusive). Since these dates are more than 3 business days prior to this request, you must immediately provide them. You may use any format to provide this calendar as long as it provides at least the location, exact start and end times, general description of topics, and (as required by 67.29-5) identity of meeting participants for every meeting. If all 67.29-5 information is not visible in a summary view, you must print out the individual meeting entries.

2. every meeting/entry on every calendar for your Department Head for Nov 10-17, 2019 (inclusive). This specifically includes both the SFAC 67.29-5/Prop G calendar, and all other calendar records (aka "non-Prop G" calendars) prepared, owned, retained, or used by your Department Head or agency staff (see SOTF Order 19047). Calendars and meeting entries are requested in their original electronic format or in .ICS format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, email addresses, invitees and their attendance status, recurrences, exact start/end times, locations, titles, and descriptions. Daily, weekly, or monthly summary views are non-responsive - each individual meeting entry is requested.

3. every meeting/entry on every calendar for your Department Head for future dates Dec 16-23 (inclusive). This specifically includes both the SFAC 67.29-5/Prop G calendar, and all other calendar records (aka "non-Prop G" calendars) prepared, owned, retained, or used by your Department Head or agency staff (see SOTF Order 19047). Calendars and meeting entries are requested in their original electronic format or in .ICS format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, email addresses, invitees and their attendance status, recurrences, exact start/end times, locations, titles, and descriptions. Daily, weekly, or monthly summary views are non-responsive - each individual meeting entry is requested.

4. the most recent 5 emails sent by your Department Head via their government email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses.

5. the most recent 5 emails received by your Department Head via their government email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses.

6. the most recent 5 emails relating to the conduct of public business, subject to *City of San Jose v Superior Court (Smith, 2017)*, sent by your Department Head via their personal

email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses.

7. the most recent 5 emails relating to the conduct of public business, subject to *City of San Jose v Superior Court (Smith, 2017)*, received by your Department Head via their personal email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses.

From: Anonymous Person 12/07/2019

Subject: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Request (... Email

To Whom It May Concern:

Attached is an Immediate Disclosure Request (SF Admin Code 67.25(a)).
Your response is required by Dec. 10, 2019. Rolling records responses are requested (67.25(d)).

NOTE: Please be certain you have properly redacted all of your responses. Once you send them to us, there is no going back. The email address sending this request is a publicly- viewable mailbox. All of your responses (including all responsive records) may be instantly and automatically available to the public online via the MuckRock.com FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.

Sincerely,

Anonymous

IDR-20191207-TTX.pdf

Download

From: Anonymous Person 12/07/2019

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Requ... Email

RE: the DEC 7 IMMEDIATE DISCLOSURE REQUEST from this email address

Please note: "Exact copies" are requested for all records pursuant to CPRA Gov Code 6253(c). Please email all records, or publish them to your own website/portal (as long as the URL is accessible without any login), or upload them and publish them to MuckRock.com directly using the auto-generated link in the footer below. Do not physically mail any records.
Provide only those copies available without fees - if you believe certain copies require fees, instead provide the required notice of which records are available for in-person inspection.

Your response is still required by Dec. 10, 2019. Rolling records responses were requested (67.25(d)).

NOTE: Please be certain you have properly redacted all of your responses. Once you send them to us, there is no going back. The email address sending this request is a publicly- viewable mailbox. All of your responses (including all responsive records) may be instantly and automatically available to the public online via the MuckRock.com FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as

I intend that these communications with the City all be public records.

Sincerely,

Anonymous

From: San Francisco Office of the Treasurer & Tax Collector 12/10/2019

Subject: Response to Immediate Disclosure Request of December 7, 2019 (received on December 9, 20... Email

Please find the attached response to your Immediate Disclosure Request.

Theresa Buckley
Tax Collector Attorney
Office of the Treasurer & Tax Collector
City and County of San Francisco
P.O. Box 7426
San Francisco, CA 94120-7426
Tel: (415) 554-4492
Fax: (415) 554-5010
Theresa.Buckley@sfgov.org<mailto:Theresa.Buckley@sfgov.org>

Muckrock_12.9.19 IDR Response letter

Download

From: San Francisco Office of the Treasurer & Tax Collector 12/10/2019

Subject: RE: Response to Immediate Disclosure Request of December 7, 2019 (received on December 9... Email

To whom it may concern,

Please find attached an amended response letter to your immediate disclosure request. We are providing a further redacted copy of the documents provided earlier today at 12:47 pm. The unredacted copy was disclosed inadvertently. We request that it be returned or destroyed and not disseminated any further.

Theresa Buckley
(415) 554-4492
Theresa.Buckley@sfgov.org<mailto:Theresa.Buckley@sfgov.org>

Final_Amended response letter

Download

From: Anonymous Person 12/10/2019

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Requ... Email

Just to inform you at this time, I have requested MuckRock to remove the first set of documents you published entitled "MuckRock_12.9.19_Responsive Documents_Final"

In the spirit of your request, I have not compared your first response to your corrected one to determine what you redacted.
I'm asking as a courtesy that you please indicate which pages/areas in your Corrected PDF you

further redacted so I may appeal them if needed.

Please be sure any further responses are correctly redacted. Thanks!

Also, I will need some time to analyze your full letter - I'm just responding to your deletion request.

NOTE: Please be certain you have properly redacted all of your responses. Once you send them to us, there is no going back. The email address sending this request is a publicly- viewable mailbox. All of your responses (including all responsive records) may be instantly and automatically available to the public online via the MuckRock.com FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.

Sincerely,

Anonymous

From: San Francisco Office of the Treasurer & Tax Collector 12/10/2019

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Requ... Email

Thank you very much. The additional redaction occurred on page 20 of the PDF document. There were no other changes.

Theresa Buckley
(415) 554-4492
Theresa.Buckley@sfgov.org<mailto:Theresa.Buckley@sfgov.org>

From: San Francisco Office of the Treasurer & Tax Collector 12/10/2019

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Requ... Email

Hello,

Thank you again for your response. We are providing a Second amended PRA response. We have further redacted the information contained on pages 20 and 21 of the PDF that was previously produced to you. There were no other changes. The partially redacted copy was disclosed inadvertently. We request that it be returned or destroyed and not disseminated any further.

Theresa Buckley
(415) 554-4492
Theresa.Buckley@sfgov.org<mailto:Theresa.Buckley@sfgov.org>

MuckRock_12.9.19_Responsive Documents_revised corrected version
Download

SKM_658e19121015540
Download

Download

From: Anonymous Person 12/10/2019

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Requ... Email

I have again requested MuckRock remove the "MuckRock_12.9.19_Responsive Documents_Final_Corrected" . Please note I have not requested removal of any of your past determination *letters,* just the earlier records productions.

Just to keep the written record straight for the probably inevitable appeals arising out of this:

1. The City first published (among various other records) a record of a Dec 16 meeting with the Mayor in a presumably fully unredacted form (I have not seen this particular unredacted page of the record myself, but this is assumed from the 2nd production).

2. Then, the City redid the production, redacting only the values (but not the names) on pg. 20 of "Recurrence" and "Recurrence Pattern," and disclosed everything else for that Dec 16 meeting with the Mayor, published a 2nd version, and requested deletion of the 1st production. At this point, you pointed out the new redactions and I did indeed examine those newly redacted pages of production #2. Your 2nd letter stated: "In addition, we have redacted recurrence information concerning the department head meeting with the Mayor dated November 13, 2019, to protect the Mayor's security" (citations omitted). [To be clear, there is no meeting in the 2nd production for Nov 13. I assume you mean the pg. 20 Dec 16 meeting, though frankly your citation of Nov 13 confuses me as to why it would be relevant, or if there is some other Nov 13 meeting you have withheld somehow. Keep in mind I had also requested Nov 10-17. Please confirm no Nov. 13 meetings have been withheld in any of these productions.]

3. Yet later, the City redid the production a third time, redacting now in full all parts of the meeting on pg 20 and page 21 (except the name of what I assume is the person printing the records), published a 3rd version, and requested further deletion of the 2nd production. Your 3rd letter stated: "In addition, we have redactd (sic) a record of one meeting with the Mayor to protect the Mayor's security" (citations omitted).

In this case, since I know partially what's on pg 20-21 (from production #2, not #1), I will allege production #3 is a clear violation of SFAC 67.26 (minimum withholding). There are certainly at least *some words* on that page that are non-exempt even if you take as valid the generic "Mayor's security" argument (though, as you may see in SOTF 19103 vs the Mayor's Office, that entire argument is being challenged, as well, because not everything is a "security procedure" of the SFPD). To be clear, you have claimed both the following completely standard row heading *names* [subject, location, start, end, show time as, meeting status, organizer, required attendees, optional attendees], AND the complete values of all of those rows, even things like Mr. Cisneros's own statuses and attendance (not the Mayor's) are being redacted to protect the Mayor's security.

Furthermore, your citations to Times Mirror Co are impermissible, and prohibited by SFAC 67.27 and 67.24, because Times Mirror specifically relies on Gov Code 6255, which is prohibited within CCSF by SFAC 67.24(g,i) (Supreme Court's Conclusion states: “Accordingly, we are persuaded, on the instant record, that the public interest served by not disclosing the Governor's appointment calendars and schedules clearly and substantially outweighs the public interest in their disclosure. (§6255.)”). There is no general security of officials exemption in the CPRA (only a "security procedures" of police agency exemption), thus the Supreme Court fashioned an exemption for the Governor's calendars specifically using the public-interest balancing test 6255 and the deliberative privilege exemption (which is also prohibited in CCSF 67.24(h), and also derives from the aforementioned balancing test)

derives from the aforementioned balancing test).

Would your office like to change its position on the full redactions of pg 20 or 21, and/or the justifications? If so, please issue a new letter / recordset. Obviously if you decide to unredact some things from production #3, we wouldn't need to again request #3 be deleted.

Finally, I have a lot more to reply to regarding the rest of your production - this is just about the changing redactions on pg 20/21.

NOTE: Please be certain you have properly redacted all of your responses. Once you send them to us, there is no going back. The email address sending this request is a publicly- viewable mailbox. All of your responses (including all responsive records) may be instantly and automatically available to the public online via the MuckRock.com FOIA service used to issue this request (though the requester is an anonymous user, not a representative of MuckRock). Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. The digital signature, if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender. Please do not include any confidential information, as I intend that these communications with the City all be public records.

Thanks!

Anonymous

From: San Francisco Office of the Treasurer & Tax Collector 12/11/2019

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Requ... Email

The response sent at 4:03 pm on December 10, 2019 was our final response.

Theresa Buckley
(415) 554-4492
Theresa.Buckley@sfgov.org<mailto:Theresa.Buckley@sfgov.org>

From: Anonymous Person 12/11/2019

Subject: RE: California Public Records Act Request: Calendars and Emails - Immediate Disclosure Requ... Email

Thank you - we will file appeals.

Office of the Treasurer & Tax Collector
City and County of San Francisco

Legal Section

José Cisneros, Treasurer

December 10, 2019

Sent via U.S. Mail and E-mail to: 84162-44435865@requests.muckrock.com

Anonymous
Via MuckRock.com
MuckRock News
DEPT MR 84162
411A Highland Ave
Somerville, MA 02144-2516

Re: December 9, 2019 Immediate Disclosure Request

Dear Anonymous:

On Saturday, December 7, 2019, you sent an Immediate Disclosure Request to the Office of the Treasurer & Tax Collector under San Francisco Administrative Code section 67.25(a). Monday, December 9, 2019, was the first business day that the request was received. The deadline to respond is today, December 10, 2019, the next business day after the request was received. S.F. Admin. Code Sec. 67.25(a).

In this request, you sought the following:

1. "the specific calendar required to be kept by SF Admin Code 67.29-5 (aka "Prop G calendar") for your Department Head (whether an employee or elected official, defined pursuant to SF Charter 2A.30 para 1), with each and every meeting/item for Nov 10 - Nov 17, 2019 (inclusive). Since these dates are more than 3 business days prior to this request, you must immediately provide them. You may use any format to provide this calendar as long as it provides at least the location, exact start and end times, general description of topics, and (as required by 67.29-5) identity of meeting participants for every meeting. If all 67.29-5 information is not visible in a summary view, you must print out the individual meeting entries."

2. "every meeting/entry on every calendar for your Department Head for Nov 10-17, 2019 (inclusive). This specifically includes both the SFAC 67.29-5/Prop G calendar, and all other calendar records (aka "non-Prop G" calendars) prepared, owned, retained, or used by your Department Head or agency staff (see SOTF Order 19047). Calendars and meeting entries are requested in their original electronic format or in .ICS format, with all

non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, email addresses, invitees and their attendance status, recurrences, exact start/end times, locations, titles, and descriptions. Daily, weekly, or monthly summary views are non-responsive - each individual meeting entry is requested."

3. "every meeting/entry on every calendar for your Department Head for future dates Dec 16-23 (inclusive). This specifically includes both the SFAC 67.29-5/Prop G calendar, and all other calendar records (aka "non-Prop G" calendars) prepared, owned, retained, or used by your Department Head or agency staff (see SOTF Order 19047). Calendars and meeting entries are requested in their original electronic format or in .ICS format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, email addresses, invitees and their attendance status, recurrences, exact start/end times, locations, titles, and descriptions. Daily, weekly, or monthly summary views are non-responsive - each individual meeting entry is requested."

4. "the most recent 5 emails sent by your Department Head via their government email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses."

5. "the most recent 5 emails received by your Department Head via their government email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses."

6. "the most recent 5 emails relating to the conduct of public business, subject to *City of San Jose v Superior Court (Smith, 2017)*, sent by your Department Head via their personal email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses."

7. "the most recent 5 emails relating to the conduct of public business, subject to *City of San Jose v Superior Court (Smith, 2017)*, received by your Department Head via their personal email account. Emails are requested in their original electronic format, or in .EML or .MSG format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, and From/To/Cc/Bcc email addresses."

We have conducted a diligent search for these records. We address each request in order below.

Request No. 1:

We have conducted a diligent search and located records responsive to your request. They are attached.

Request No. 2:

We have conducted a diligent search and located records responsive to your request. They are attached. These records are being produced in a PDF format and requested metadata is being withheld to protect the integrity and security of the original record and to avoid the unwarranted disclosure of data that could pose a risk to the city's systems and network and/or the inadvertent disclosure of exempt confidential or privileged information. *See* Cal. Gov. Code Secs. 6253.9 (a)(1), (f); 6254.19.

Request No. 3:

We have conducted a diligent search and located records responsive to your request. They are attached. These records are being produced in a PDF format and requested metadata is being withheld to protect the integrity and security of the original record and to avoid the unwarranted disclosure of data that could pose a risk to the city's systems and network and/or the inadvertent disclosure of exempt confidential or privileged information. *See* Cal. Gov. Code Secs. 6253.9 (a)(1), (f); 6254.19.

Request No. 4:

We have conducted a diligent search and located records responsive to your request. They are attached. These records are being produced in a PDF format and requested metadata is being withheld to protect the integrity and security of the original record and to avoid the unwarranted disclosure of data that could pose a risk to the city's systems and network and/or the inadvertent disclosure of exempt confidential or privileged information. *See* Cal. Gov. Code Secs. 6253.9 (a)(1), (f); 6254.19. In addition, we have redacted a personal email address and telephone numbers from the first page of documents responsive to this request to protect personal privacy. *See* Cal. Gov. Code Secs. 6254(c), Art. I, Secs. 1 and 3 of the California Constitution, S.F. Admin. Code Sec. 67.1(g), and S.F. Admin Code Sec. 12M.

Request No. 5:

We have conducted a diligent search and located records responsive to your request. They are attached. These records are being produced in a PDF format and requested metadata is

being withheld to protect the integrity and security of the original record and to avoid the unwarranted disclosure of data that could pose a risk to the city's systems and network and/or the inadvertent disclosure of exempt confidential or privileged information. *See* Cal. Gov. Code Secs. 6253.9 (a)(1), (f); 6254.19.

Request No. 6:

We conducted a diligent search and did not find records responsive to your request.

Request No. 7:

We conducted a diligent search and did not find records responsive to your request.

If you have any questions, please contact me at (415) 554-4492.

Respectfully Yours,

Theresa A. Buckley

THERESA A. BUCKLEY
Tax Collector Attorney

Enclosures

SECOND LETTER

Office of the Treasurer & Tax Collector
City and County of San Francisco

Legal Section

José Cisneros, Treasurer

December 10, 2019

Sent via U.S. Mail and E-mail to: 84162-44435865@requests.muckrock.com

Anonymous
Via MuckRock.com
MuckRock News
DEPT MR 84162
411A Highland Ave
Somerville, MA 02144-2516

Re: AMENDED December 9, 2019 Immediate Disclosure Request Response

Dear Anonymous:

On Saturday, December 7, 2019, you sent an Immediate Disclosure Request to the Office of the Treasurer & Tax Collector under San Francisco Administrative Code section 67.25(a). Monday, December 9, 2019, was the first business day that the request was received. The deadline to respond is today, December 10, 2019, the next business day after the request was received. S.F. Admin. Code Sec. 67.25(a). This is an AMENDED response that replaces the response letter sent previously today.

In this request, you sought the following:

1. "the specific calendar required to be kept by SF Admin Code 67.29-5 (aka "Prop G calendar") for your Department Head (whether an employee or elected official, defined pursuant to SF Charter 2A.30 para 1), with each and every meeting/item for Nov 10 - Nov 17, 2019 (inclusive). Since these dates are more than 3 business days prior to this request, you must immediately provide them. You may use any format to provide this calendar as long as it provides at least the location, exact start and end times, general description of topics, and (as required by 67.29-5) identity of meeting participants for every meeting. If all 67.29-5 information is not visible in a summary view, you must print out the individual meeting entries."

2. "every meeting/entry on every calendar for your Department Head for Nov 10-17, 2019 (inclusive). This specifically includes both the SFAC 67.29-5/Prop G calendar, and all other calendar records (aka "non-Prop G" calendars) prepared, owned, retained, or used by your Department Head or agency staff (see SOTF Order 19047). Calendars and

meeting entries are requested in their original electronic format or in .ICS format, with all non-exempt headers and metadata, and you must preserve all attachments, exhibits, formatting, hyperlinks, images, colors, email addresses, invitees and their attendance status, recurrences, exact start/end times, locations, titles, and descriptions. Daily, weekly, or monthly summary views are non-responsive - each individual meeting entry is requested."

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We have conducted a diligent search for these records. We address each request in order below.

Request No. 1:

We have conducted a diligent search and located records responsive to your request. They are attached.

Request No. 2:

We have conducted a diligent search and located records responsive to your request. They are attached. These records are being produced in a PDF format and requested metadata is being withheld to protect the integrity and security of the original record and to avoid the unwarranted disclosure of data that could pose a risk to the city's systems and network and/or the inadvertent disclosure of exempt confidential or privileged information. *See* Cal. Gov. Code Secs. 6253.9 (a)(1), (f); 6254.19.

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Request No. 4:

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Request No. 6:

We conducted a diligent search and did not find records responsive to your request.

Request No. 7:

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If you have any questions, please contact me at (415) 554-4492.

Respectfully Yours,

Theresa A. Buckley

THERESA A. BUCKLEY
Tax Collector Attorney

Enclosures

Office of the Treasurer & Tax Collector
City and County of San Francisco

Legal Section

José Cisneros, Treasurer

December 10, 2019

Sent via U.S. Mail and E-mail to: 84162-44435865@requests.muckrock.com

Anonymous
Via MuckRock.com
MuckRock News
DEPT MR 84162
411A Highland Ave
Somerville, MA 02144-2516

Re: AMENDED December 9, 2019 Immediate Disclosure Request Response

Dear Anonymous:

On Saturday, December 7, 2019, you sent an Immediate Disclosure Request to the Office of the Treasurer & Tax Collector under San Francisco Administrative Code section 67.25(a). Monday, December 9, 2019, was the first business day that the request was received. The deadline to respond is today, December 10, 2019, the next business day after the request was received. S.F. Admin. Code Sec. 67.25(a). This is an AMENDED response that replaces the response letter sent previously today.

In this request, you sought the following:

1. "the specific calendar required to be kept by SF Admin Code 67.29-5 (aka "Prop G calendar") for your Department Head (whether an employee or elected official, defined pursuant to SF Charter 2A.30 para 1), with each and every meeting/item for Nov 10 - Nov 17, 2019 (inclusive). Since these dates are more than 3 business days prior to this request, you must immediately provide them. You may use any format to provide this calendar as long as it provides at least the location, exact start and end times, general description of topics, and (as required by 67.29-5) identity of meeting participants for every meeting. If all 67.29-5 information is not visible in a summary view, you must print out the individual meeting entries."

2. "every meeting/entry on every calendar for your Department Head for Nov 10-17, 2019 (inclusive). This specifically includes both the SFAC 67.29-5/Prop G calendar, and all other calendar records (aka "non-Prop G" calendars) prepared, owned, retained, or used by your Department Head or agency staff (see SOTF Order 19047). Calendars and

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Respectfully Yours,

Theresa A. Buckley

THERESA A. BUCKLEY
Tax Collector Attorney

Enclosures

EXHIBIT C - Sample of records provided (from Production #3, which they used to replace the first two productions -- which are not produced here by City's request)

THIS EXHIBIT IS ON FILE WITH SOTF BUT NOT INCLUDED TO TTX