



Steve M. Tietjen, Ed.D. | County Superintendent of Schools

632 WEST 13TH STREET | MERCED, CA 95341 | (209) 381-6600 | WWW.MCOE.ORG

May 30, 2023

VIA EMAIL ONLY

Central Valley Journalism Collaborative
MuckRock News
DEPT MR 145944
263 Huntington Avenue
Boston, Massachusetts 02115
145944-97329340@requests.muckrock.com

Re: MCOE’s Determination Response to May 18, 2023 California Public Records Act Request

Dear Sir/Madam:

This letter constitutes the Merced Office of Education’s (“MCOE”) determination regarding the disclosure of records within its possession that are responsive to your California Public Records Act Request, which was received by the on May 18, 2023 by email. MCOE responds to your Request as follows:

Request No. 1

Electronic copies of any email notifications, letters sent to employees, staff, teachers, contractors or parents about cyber attacks, ransomware attacks or data breaches against individual schools or the district within the past three years (Jan. 2020-May 18. 2023).

Response to Request No. 1

Your request is subject to exemption from disclosure since the volume of records to be searched is so great that it constitutes an unduly burdensome request under the “rule of reason” implied in the CPRA. [See *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761; *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.] The CPRA permits requestors to have reasonable access to the desired documents and to secure copies of specific documents, but this is subject to the imposition of reasonable restrictions on general requests for voluminous classes of material. [See *Rosenthal, supra*, at p. 754.]

In this case, the scope of your request is unduly burdensome, because it is too broad and covers a period of over three years. MCOE would need to undergo a very time-consuming and



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expensive process of reviewing and analyzing an unlimited number of documents and individual emails of all of its more than 1,300 employees to make a determination about whether those documents contain communications regarding “cyber attacks,” “ransomware attacks,” and “data breaches.” Therefore, your request, as presently formulated, is so onerous due to its overbreadth as to render it unduly burdensome pursuant to Government Code Section 7922.000 and applicable legal authorities.

MCOE has also determined that some of the records responsive to your request may be comprised of material that is exempt from disclosure on the basis of the attorney-client privilege under Evidence Code Section 954 and attorney work product privilege under Code of Civil Procedure Section 2018.030, which are incorporated into the CPRA through Government Code Section 7927.705.

MCOE has also determined that some of the records responsive to your request may be comprised of material that is exempt from disclosure on the basis of the deliberative process privilege under Government Code sections 7927.705 and 7922.000. Any records that contain information exempt from disclosure because release of such records would expose MCOE’s decision-making process, thereby discouraging candid discussion within the District and undermining MCOE’s ability to perform its functions, e.g., the “deliberative process privilege,” are exempt from disclosure pursuant to Government Code sections 7927.705 and 7922.000. [See *Times Mirror Co. v. Superior Court* (1991) 53 Cal 3d 1325, 1339-1340; *California First Amendment Coalition v. Superior Court* (1998) 67 Cal. App. 4th 159, 169-170.]

MCOE has further determined that some potentially responsive records may be comprised of material that is exempt from disclosure, as they constitute preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business. [Govt. Code § 7927.500.]

Additionally, MCOE has determined that your request may contain information protected by the fundamental right to informational privacy guaranteed by Article I, §1 of the California Constitution, which is not subject to disclosure under the balancing test provided by Government Code § 7922.000. [See *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 346-347.] First, your request may include records containing confidential information relating to individually-identifiable pupils which are not subject to disclosure absent prior written consent pursuant to 20 U.S.C. § 1232g and Education Code § 49076. [See also, *Poway Unified School District v. Superior Court* (1998) 62 Cal.App.4th 1496, 1506.] Second, your request may include records containing private, personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of the right to privacy under the Public Records Act. [Government Code § 7927.000; *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805.]



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Pursuant to section 7922.000, a public entity is entitled to withhold any part of the records “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 disclosing the record clearly outweighs the public interest served by disclosure of the record.”

Notwithstanding the above exemptions, in an attempt to comply with your request, MCOE did conduct a search of its servers for all emails from January 1, 2020 to May 18, 2023 for all of its over 1,300 employees containing the keywords “cyber attack,” “ransomware,” and “data breach.” The above searches resulted in a total of 54,301 emails. Therefore, it is the MCOE’s determination that MCOE’S public interest in nondisclosure clearly outweighs the public interest in disclosure of the requested records, as your request is so onerous, due to its overbreadth, as to render it unduly burdensome pursuant to Government Code Section 7922.000 and applicable legal authority.

Consequently, for the foregoing reasons and exemptions, it is MCOE’s determination that your request is denied at this time. Please note, however, that in an effort to assist you to “make a focused and effective request that reasonably describes an identifiable record or records” in accordance with Government Code § 7922.600, MCOE offers the following suggestions to you: (1) describe with greater particularity the specific email records you are seeking by; for example, identifying key terms or subjects that would enable MCOE to run a focused search query; (2) identify particular senders and/or recipients whose emails you are seeking; and/or (3) consider narrowing the time frame of your request to reduce the total volume of records sought, thereby reducing the total burden to MCOE.

In accordance with Government Code section 7922.540, subdivision (b), the individual responsible for the response to your CPRA Request is the undersigned.

Should you have any questions or concerns about any of the foregoing, please do not hesitate to contact me at (209) 381-6658.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan Quevedo".

Nathan Quevedo
Communications and Public Relations Officer