

April 18, 2024

**VIA E-MAIL**

Keli Balo  
City of San Diego Public Utilities Department  
9192 Topaz Way  
San Diego, CA 92123  
kbalo@sandiego.gov

Re: Public Records Act Request # 24-1601 – Murray Dam Engineering Evaluation

Dear Ms. Balo:

This letter concerns the heavily redacted copy of the Murray Dam Engineering Evaluation that the Public Utilities Department released in response to a public records request submitted by David Gotfredson, an investigative reporter at KFMB/CBS News 8. The redactions in the Evaluation appear to be greater than necessary to protect the public interest identified by the Department, and, in any event, the Department has not sufficiently justified the need for each redaction. We therefore write to request that you release a copy of the Evaluation with no greater redactions than those permitted by law.

On March 1, 2024, Mr. Gotfredson submitted a request for five specific records concerning dams in San Diego County as part of an investigation he is conducting concerning the safety of San Diego's dam infrastructure. One of the records he requested was the Murray Dam Engineering Evaluation dated May 10, 2023. The Department assigned # 24-1601 to this request.

On April 5, the Department disclosed a heavily redacted version of the Evaluation, citing the Public Records Act's catchall exemption by simply saying: "Some records have been withheld/redacted pursuant to the following Government Code exemption(s): Government Code section 7922.000 [public interest in non-disclosure outweighs public interest in disclosure]." On April 9, Mr. Gotfredson responded asking the Department to explain what information had been redacted and to provide a justification for those redactions.

On April 11, the Department responded by providing a new version of the Evaluation in which the names of certain individuals were unredacted but which was otherwise the same as the previously released version. The Department provided the following updated explanation, relying again on the catchall exemption: "Some of the records you requested are redacted pursuant to the following Government Code exemption(s): California Government Code section 7922.000 (formerly California Government Code section 6255(a)) [disclosure of the records would reveal vulnerabilities to, or otherwise increase the potential for an attack on the City's infrastructure]." The Department did not explain what information had been redacted.

The “catchall exemption ‘contemplates a case-by-case balancing process, *with the burden of proof on the proponent of nondisclosure* to demonstrate a clear overbalance on the side of confidentiality.’” (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1321, italics added.) The Department has not met its burden of demonstrating that the redacted portions of the Evaluation are exempt from disclosure. “A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole *or in part*, shall be in writing.” (Gov. Code, § 7922.540, subd. (a), italics added.) “An agency shall *justify* withholding any record by complying with Section 7922.000.” (Gov. Code, § 7922.540, subd. (c), italics added.) Section 7922.000, in turn, provides: “An agency shall justify withholding any record *by demonstrating* that the record in question is exempt under express provisions of this division, 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.” (Gov. Code, § 7922.000, italics added.)

We do not dispute that “[s]ecurity may be a valid factor supporting nondisclosure.” (*County of Santa Clara, supra*, 170 Cal.App.4th at p. 1329.) However, the Department’s mere assertion that disclosing the redacted information would reveal vulnerabilities does not constitute a “demonstrati[on]” that each redaction serves a public interest that “clearly outweighs” the public’s significant interest in 1) monitoring the government to assess whether the government is fulfilling its duties in maintaining infrastructure and 2) evaluating whether the infrastructure in their communities is safe. Rather, in order to justify withholding information, the Department must make a “particularized showing” as to why that specific information must be withheld. (*Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 75 [holding that, while safety concerns might militate against releasing some officer shooting records under the catchall exemption, a particularized explanation had to be made as to specific records].)

The California Court of Appeal confronted an issue similar to the instant case in *County of Santa Clara v. Superior Court*, where the county took the position that disclosing a map would reveal the location of Hetch Hetchy reservoir components, which “would allow anyone to pinpoint weak spots in the system and quickly and effectively plan a terrorist attack.” (*County of Santa Clara, supra*, 170 Cal.App.4th at p. 1327.) The court acknowledged that such concerns could potentially support nondisclosure but rejected the county’s position as insufficiently supported because “the ‘mere assertion of possible endangerment does not ‘clearly outweigh’ the public interest in access to these public records.’” (*Id.* at p. 1329.) Thus, in light of the county’s insufficient showing, the court held “that the law calls for unrestricted disclosure” of the requested records. (*Id.* at p. 1309.)

Here, the Department has made a large number of redactions, in some instances redacting entire pages. In fact, approximately 40 percent of the pages in the report have significant redactions. In order to justify each redaction, the Department must state what kind of information is being withheld in that redaction and explain how withholding that information furthers its overriding interest. It has not done so.

Accordingly, we request that you review the Evaluation in light of the principles discussed above. If a redaction is truly necessary to protect an overriding safety interest, please advise us what kind of information is being withheld in that redaction so that we can assess the propriety

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of the redaction. We believe that, in undertaking this careful review, the Department will determine that some of the information it has redacted does not meet the rigorous standards that apply to withholdings under the catchall exemption, and we look forward to receiving a new copy of the Evaluation with fewer redactions.

Please provide this updated copy of the Evaluation and the particularized explanation supporting any remaining redactions by no later than April 24, 2024. Please contact me at mhalgren@sheppardmullin.com or 619-338-6684 if you would like to discuss any of the foregoing.

Sincerely,



Matthew G. Halgren  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP