

1 BRIGGS LAW CORPORATION [FILE: 2060.02]
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/22/2022 at 09:51:07 AM
Clerk of the Superior Court
By Bernabe Montijo, Deputy Clerk

4 Attorneys for Plaintiff Project for Open Government
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO – CENTRAL DIVISION

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11 PROJECT FOR OPEN GOVERNMENT,) CASE NO. 37-2022-00010862-CU-MC-CTL
12 Plaintiff,)
13 vs.) **VERIFIED COMPLAINT FOR**
14 CITY OF LEMON GROVE; and DOES 1 through) **DECLARATORY AND INJUNCTIVE**
100,) **RELIEF AND PETITION FOR WRIT OF**
15 Defendants.) **MANDATE UNDER THE CALIFORNIA**
16) **PUBLIC RECORDS ACT AND OTHER**
) **LAWS**

17 Plaintiff PROJECT FOR OPEN GOVERNMENT ("PLAINTIFF") alleges as follows:

18 **Introductory Statement**

19 1. PLAINTIFF brings this lawsuit under the California Public Records Act ("CPRA"), as
20 well as the California Constitution, the common law, and other applicable legal authorities.
21 PLAINTIFF made multiple lawful CPRA requests to Defendants/Respondents, but they have illegally
22 failed to disclose the responsive public records.

23 **Parties**

24 2. PLAINTIFF is a non-profit corporation formed and operating under the laws of the State
25 of California. It serves as a government "watchdog" for purposes of making sure that public agencies
26 and officials are transparent in their conduct, accountable for their conduct, and conform their conduct
27 to all applicable legal requirements. At least one of PLAINTIFF's members resides in and pays taxes
28 in the County of San Diego.

1 3. Defendant and Respondent CITY OF LEMON GROVE (“CITY”) is a “local agency”
2 within the meaning of Government Code Section 6252.

3 4. The true names and capacities of the Defendants/Respondents identified as DOES 1
4 through 100 are unknown to PLAINTIFF, who will seek the Court’s permission to amend this pleading
5 in order to allege the true names and capacities as soon as they are ascertained. PLAINTIFF is informed
6 and believes and on that basis alleges that each of the fictitiously named Defendants/Respondents 1
7 through 100 has jurisdiction by law over one or more aspects of the public records that are the subject
8 of this lawsuit or has some other cognizable interest in the public records.

9 5. PLAINTIFF is informed and believes and on that basis alleges that, at all times stated
10 in this pleading, each Defendant/Respondent was the agent, servant, or employee of every other
11 Defendant/Respondent and was, in doing the things alleged in this pleading, acting within the scope of
12 said agency, servitude, or employment and with the full knowledge or subsequent ratification of
13 his/her/its principals, masters, and employers. Alternatively, in doing the things alleged in this pleading,
14 each Defendant/Respondent was acting alone and solely to further his/her/its own interests.

15 **Jurisdiction and Venue**

16 6. The Court has jurisdiction over this lawsuit pursuant to Government Code Sections 6258
17 and 6259; Code of Civil Procedure Sections 526a, 1060 *et seq.*, and 1084 *et seq.*; the California
18 Constitution, and the common law, among other provisions of law.

19 7. Venue in this Court is proper because the obligations, liabilities, and violations of law
20 alleged in this pleading occurred in the County of San Diego in the State of California.

21 **Background Allegations**

22 8. With regard to the first CPRA request that is the subject of this lawsuit:

23 A. On or about March 9, 2022, PLAINTIFF caused to be submitted to CITY via an
24 e-mail to multiple CITY officials a written request for certain public records (the “First CPRA
25 Request”).

26 B. CITY received but never responded to the First CPRA Request.

27 C. A true and correct copy of the First CPRA Request is attached to this pleading
28 as Exhibit “A.”

1 9. With regard to the second CPRA request that is the subject of this lawsuit:

2 A. On or about March 10, 2022, PLAINTIFF caused to be submitted to CITY via
3 an e-mail to multiple CITY officials a second written request for certain public records (the “Second
4 CPRA Request”).

5 B. CITY received but never responded to the Second CPRA Request.

6 C. A true and correct copy of the Second CPRA Request is attached to this pleading
7 as Exhibit “B.”

8 10. With regard to the third CPRA request that is the subject of this lawsuit:

9 A. On or about March 10, 2022, PLAINTIFF caused to be submitted to CITY via
10 yet another e-mail to multiple CITY officials a separate written request for certain public records (the
11 “Third CPRA Request”).

12 B. CITY received but never responded to the Third CPRA Request.

13 C. A true and correct copy of the Third CPRA Request is attached to this pleading
14 as Exhibit “C.”

15 11. PLAINTIFF is informed and believes and on that basis alleges as follows with respect
16 to the First CPRA Request, the Second CPRA Request, and the Third CPRA Request:

17 A. Prior to the commencement of this lawsuit (at a minimum), CITY did not do a
18 thorough search for all public records responsive to the First CPRA Request, the Second CPRA
19 Request, and/or the Third CPRA Request, including but not limited to failing to search for responsive
20 public records maintained on the personal accounts and/or devices of public officials. By way of
21 example and not limitation, CITY has never provided PLAINTIFF with any affidavit or other evidence
22 like that described in *Smith v. City of San Jose*, 2 Cal.5th 608 (2017), to satisfactorily establish that each
23 CITY-affiliated agent using a personal account and/or device has thoroughly searched for and produced
24 all responsive public records in and/or on the agent’s personal account and/or device.

25 B. Prior to the commencement of this lawsuit (at a minimum), CITY had not
26 produced all public records responsive to the First CPRA Request, the Second CPRA Request, and/or
27 the Third CPRA Request and at least one responsive public record exists but has not been disclosed.
28

1 C. Prior to the commencement of this lawsuit (at a minimum), CITY did nothing
2 or not enough to assist PLAINTIFF in submitting a focused and effective request that would enable
3 PLAINTIFF to obtain those responsive records that are not exempt from disclosure.

4 D. To the extent that any of the responsive records and/or information therein was
5 not disclosed based on one or more CPRA exemptions prior to the commencement of this lawsuit (at
6 a minimum), CITY either (i) did not identify the exemption(s) being invoked to justify non-disclosure
7 of the record and/or information, (ii) did not identify the person responsible for making the exemption
8 determination, (iii) erroneously determined that an exemption applied to the responsive record(s) and/or
9 information, (iv) withheld more information than warranted based on the asserted exemption(s), or (v)
10 committed some combination of the foregoing legal errors.

11 E. CITY intentionally withheld the public records responsive to the First CPRA
12 Request, the Second CPRA Request, and/or the Third CPRA Request prior to the commencement of
13 this lawsuit.

14
15 12. PLAINTIFF and other members of the public have been harmed as a result of
16 Defendants'/Respondents' failure to comply promptly, accurately, properly, and in full with all open-
17 government laws applicable to the First CPRA Request, the Second CPRA Request, and/or the Third
18 CPRA Request. By way of example and not limitation, the legal rights of PLAINTIFF to access
19 information concerning the conduct of the people's business were being violated and might continue
20 to be violated.

21 **FIRST CAUSE OF ACTION:**
22 **Violation of Government Code Section 6253(a)**
(Against All Defendants/Respondents)

23 13. The preceding allegations in this pleading are fully incorporated into this paragraph.

24 14. Defendants/Respondents violated Government Code Section 6253(a) with respect to the
25 First CPRA Request, the Second CPRA Request, and/or the Third CPRA Request because they denied
26 PLAINTIFF the right to inspect the public record(s) responsive to the First CPRA Request, the Second
27 CPRA Request, and/or the Third CPRA Request prior to the commencement of this lawsuit.

1 **SECOND CAUSE OF ACTION:**
2 **Violation of Government Code Section 6253(b)**
3 (Against All Defendants/Respondents)

4 15. The preceding allegations in this pleading are fully incorporated into this paragraph.

5 16. Defendants/Respondents violated Government Code Section 6253(b) with respect to the
6 First CPRA Request, the Second CPRA Request, and/or the Third CPRA Request because it reasonably
7 described at least one identifiable public record that was not exempt from disclosure but
8 Defendants/Respondents did not make any such public record promptly available to PLAINTIFF prior
9 to the commencement of this lawsuit.

10 **THIRD CAUSE OF ACTION:**
11 **Violation of Government Code Section 6253(c)**
12 (Against All Defendants/Respondents)

13 17. The preceding allegations in this pleading are fully incorporated into this paragraph.

14 18. Defendants/Respondents violated Government Code Section 6253(c) with respect to the
15 First CPRA Request, the Second CPRA Request, and/or the Third CPRA Request because they did not,
16 within 10 days from receipt of the CPRA Request(s), accurately and properly determine whether the
17 request, in whole or in part, seeks copies of disclosable public records in the possession of the agency
18 and did not promptly, accurately, and properly notify PLAINTIFF of the determination and the reasons
19 therefor.

20 **FOURTH CAUSE OF ACTION:**
21 **Violation of Government Code Section 6253.1**
22 (Against All Defendants/Respondents)

23 19. The preceding allegations in this pleading are fully incorporated into this paragraph.

24 20. Defendants/Respondents violated Government Code Section 6253.1 with respect to the
25 First CPRA Request, the Second CPRA Request, and/or the Third CPRA Request because they did not
26 do any of the following: (1) assist PLAINTIFF to identify records and information that are responsive
27 to the First CPRA Request, the Second CPRA Request, and/or the Third CPRA Request or to the
28 purpose of the First CPRA Request, the Second CPRA Request, and/or the Third CPRA Request; (2)
describe the information technology and physical location in which responsive records exist; or (3)
provide suggestions for overcoming any practical basis for denying access to the records or information
sought.

1 **FIFTH CAUSE OF ACTION:**
2 **Declaratory Relief under Code of Civil Procedure Section 1060 et seq.**
3 (Against All Defendants/Respondents)

4 21. The preceding allegations in this pleading are fully incorporated into this paragraph.

5 22. PLAINTIFF is informed and believes and on that basis alleges that an actual controversy
6 exists between PLAINTIFF, on the one hand, and Defendants/Respondents, on the other hand,
7 concerning their respective rights and duties under the CPRA, the California Constitution, the common
8 law, and other applicable legal authorities. As alleged in this pleading, PLAINTIFF contends that CITY
9 failed to comply promptly and in full with each of the open-government laws applicable to the First
10 CPRA Request, the Second CPRA Request, and/or the Third CPRA Request as set forth in the
11 preceding causes of action; whereas Defendants/Respondents dispute PLAINTIFF's contention.

12 23. PLAINTIFF desires a judicial determination and declaration as to whether Defendants/
13 Respondents fully complied with all open-government laws applicable to the First CPRA Request, the
14 Second CPRA Request, and/or the Third CPRA Request.

15 **Prayer**

16 FOR ALL THESE REASONS, PLAINTIFF respectfully prays for the following relief against
17 all Defendants/Respondents (and any and all other parties who may oppose PLAINTIFF in this lawsuit)
18 jointly and severally:

19 A. *On the First, Second, Third, and Fourth Causes of Action:*

20 1. A judgment determining or declaring that Defendants/Respondents did not
21 promptly and fully comply and/or have not promptly and fully complied with the CPRA, the California
22 Constitution, the common law, and/or other applicable laws with regard to PLAINTIFF's requests;

23 2. A writ of mandate ordering Defendants/Respondents to promptly and fully
24 comply with the CPRA, the California Constitution, the common law, and all other applicable laws with
25 regard to PLAINTIFF's requests to the extent they did not do so prior to a determination on the merits
26 of this lawsuit; and

27 3. Preliminary and permanent injunctive relief directing Defendants/Respondents
28 to fully respond to PLAINTIFF's requests and to permit PLAINTIFF to inspect and obtain copies of all

1 responsive public records (or portions thereof as allowed by law) to the extent they did not do so prior
2 to a determination on the merits of this lawsuit.

3 B. *On the Fifth Cause of Action:*

4 1. An order determining and declaring that the failure of Defendants/Respondents
5 to disclose all public records (or portions thereof as allowed by law) responsive to PLAINTIFF's
6 requests and to permit PLAINTIFF to inspect and obtain copies of such records does not comply with
7 the CPRA, the California Constitution, the common law, and/or other applicable laws; and

8 2. Preliminary and permanent injunctive relief directing Defendants/Respondents
9 to respond to and disclose all public records (or portions thereof as allowed by law) responsive to
10 PLAINTIFF's requests and to permit PLAINTIFF to inspect and obtain copies of such records.

11 C. *On All Causes of Action:*

12 1. An order providing for the Court's continuing jurisdiction over this lawsuit in
13 order to ensure that Defendants/Respondents fully comply with the CPRA, the California Constitution,
14 the common law, and/or other applicable laws;

15 2. All attorney fees and other legal expenses incurred by PLAINTIFF in connection
16 with this lawsuit; and

17 3. Any further relief that this Court may deem appropriate.

18 Date: March 22, 2022.

Respectfully submitted,

19 BRIGGS LAW CORPORATION

20 By: Cory J. Briggs
21 Cory J. Briggs

22 Attorneys for Plaintiff Project for Open Government
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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "A"



99 East "C" Street, Suite 111
Upland, CA 91786
T: 909-949-7115
F: 909-949-7121

BLC File(s): 2060.99

9 March 2022

City Clerk Audrey Malone
City of Lemon Grove
amalone@lemongrove.ca.gov

Re: Request to Inspect and Obtain Copies of Public Records, Public Information, and Other Matters

Dear City Clerk:

On behalf of Project for Open Government and pursuant to the California Constitution (Article I, Section 3), the California Public Records Act (GOV'T CODE § 6250 *et seq.*), the common law, *Smith v. City of San Jose*, 2 Cal.5th 608 (2017), and your agency's own local rules and regulations, I am writing to request an opportunity to first inspect and then obtain copies of the "public records" (as that term, including public information and other matters, is defined under the foregoing authorities) listed on *Attachment 1: Categories of Requested Public Records* to this request, regardless of whether the responsive public records are maintained on public or private devices and/or in public or private accounts (*e.g.*, social-media accounts or personal mobile devices).

I ask that you make a determination on this request within 10 days of your receiving it, or even sooner if you can do so without having to review the responsive records. If you believe that any of these records is exempt from disclosure, I urge you to note in your reply whether the exemption is discretionary and, if so, whether you are required to exercise your discretion to withhold the record in this particular case. If you determine that any portion of the responsive records is exempt from disclosure and that you intend to withhold that portion, I ask that you redact that portion for the time being and make the other portion available as requested. In any event, please respond with a signed notification citing the legal authorities on which you rely if you determine that any portion of the responsive records, if not all of them, is exempt and will not be disclosed.

If public records responsive to this request are available in one or more non-paper formats (including but not limited to electronic, magnetic, or digital formats), make sure that your response to this request includes production of all responsive records in non-paper formats even if the records are also available in paper format. If there are no records responsive to a particular category listed on *Attachment 1*, please confirm in writing that such records do not exist; and if responsive records used to exist but have been lost, stolen, or



destroyed, please (i) identify the date of loss, theft, or destruction and (ii) provide a copy of all available evidence of the loss, theft, or destruction.

All responsive records must be produced for inspection before my client will pay for copies, unless I agree otherwise in writing after receiving your estimate of copying costs. Furthermore, my client reserves the right to make its own reproduction of the responsive records, at its own expense.

One final, important request: Please remind all agents of your agency that Government Code Section 6200 provides, *inter alia* and with my emphasis, that every public officer having custody of any record “filed or deposited in any public office, or ***placed in his or her hands for any purpose***, is punishable by imprisonment [for up to four years] . . . if, ***as to the whole or any part of the record*** . . . the officer willfully does or permits any other person to do any of the following: (a) Steal, remove, or secrete. (b) Destroy, mutilate, or deface. (c) Alter or falsify.” This punishment applies even when the officer maintains custody of such records outside your agency’s office or on the officer’s private property.

Thank you for your time and attention to this matter. If I can provide any clarification that will help you to expedite this request, please do not hesitate to contact me in writing. Because the law requires you to assist members of the public in making a focused and effective request that reasonably describes identifiable records, I will assume that you fully understand what public records are being sought unless I receive written correspondence from you to the contrary.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs



Attachment 1: Categories of Requested Public Records

Page 1 of 2 (following request letter)

1a. Any and all claims filed against the City of Lemon Grove (inclusive) since December 1, 2020, under Government Code Sections 810-998.3 and pertaining in any way to Councilmember Liana LeBaron.

1b. Any and all claims filed against one or more elected officials of the City of Lemon Grove (inclusive) since December 1, 2020, under Government Code Sections 810-998.3 and pertaining in any way to Councilmember Liana LeBaron.

1c. Any and all claims filed against one or more employees of the City of Lemon Grove (inclusive) since December 1, 2020, under Government Code Sections 810-998.3 and pertaining in any way to Councilmember Liana LeBaron.

2a. For each and every City of Lemon Grove employment position that has been unfilled for any period of time since December 1, 2020, any and all public records that identify the name of each individual who filled the position for any period of time since December 1, 2020.

2b. For each and every City of Lemon Grove employment position that has been unfilled for any period of time since December 1, 2020, any and all public records that identify the days on which the position was not filled since December 1, 2020.

2c. For each and every City of Lemon Grove employment position that has been unfilled for any period of time since December 1, 2020, any and all public records that advertise or otherwise announce an opportunity for an individual to submit an employment application to fill the position.

3a. Since December 1, 2020, each and every public record in which any prospective City of Lemon Grove employee in any way expressed a negative opinion about working for the City or otherwise indicated that the City is not a desirable place to work.

3b. Since December 1, 2020, each and every public record in which any City of Lemon Grove employee in any way expressed a negative opinion about working for the City or otherwise indicated that the City is not a desirable place to work.

4a. For each meeting of the Lemon Grove City Council since December 1, 2020, any and all audio recordings of the meeting (including any portion thereof).

4b. For each meeting of the Lemon Grove City Council since December 1, 2020, any and all video recordings of the meeting (including any portion thereof).

5. Each and every written reprimand, admonishment, or warning of any kind given to Lemon Grove City Councilmember Liana LeBaron.



Attachment 1: Categories of Requested Public Records

Page 2 of 2 (following request letter)

6. For each and every investigation or other inquiry performed with respect to Lemon Grove City Councilmember Liana LeBaron, each and every contract between the City and the investigator and/or the investigator's firm.

7. Each and every negative comment or criticism received by one or more members of the Lemon Grove City Council concerning Councilmember Liana LeBaron. (This category excludes oral comments or criticisms made orally during a City Council meeting).

The writings request above include “**ELECTRONICALLY STORED INFORMATION**”; “**ELECTRONICALLY STORED INFORMATION**” has the same meaning that it has under California Code of Civil Procedure Section 2016.020.

ELECTRONICALLY STORED INFORMATION described above shall be produced in its native format by CD, DVD, or portable USB drive. **ELECTRONICALLY STORED INFORMATION** shall also be produced, to the extent practical and at reasonable cost, in paper format.

Please note: E-mail communications produced in response to this request for public records should identify not only the named recipient(s) but any and all “cc” and/or “bcc” recipient(s). All attachments to e-mail communications, text messages, direct social-media messages, or other electronic communications should be produced along with the communications.



**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "B"



99 East "C" Street, Suite 111
Upland, CA 91786
T: 909-949-7115
F: 909-949-7121

BLC File(s): 2060.99

10 March 2022

City Clerk Audrey Malone
City of Lemon Grove
amalone@lemongrove.ca.gov

Re: Request to Inspect and Obtain Copies of Public Records, Public Information, and Other Matters

Dear City Clerk:

On behalf of Project for Open Government and pursuant to the California Constitution (Article I, Section 3), the California Public Records Act (GOV'T CODE § 6250 *et seq.*), the common law, *Smith v. City of San Jose*, 2 Cal.5th 608 (2017), and your agency's own local rules and regulations, I am writing to request an opportunity to first inspect and then obtain copies of the "public records" (as that term, including public information and other matters, is defined under the foregoing authorities) listed on *Attachment 1: Categories of Requested Public Records* to this request, regardless of whether the responsive public records are maintained on public or private devices and/or in public or private accounts (*e.g.*, social-media accounts or personal mobile devices).

I ask that you make a determination on this request within 10 days of your receiving it, or even sooner if you can do so without having to review the responsive records. If you believe that any of these records is exempt from disclosure, I urge you to note in your reply whether the exemption is discretionary and, if so, whether you are required to exercise your discretion to withhold the record in this particular case. If you determine that any portion of the responsive records is exempt from disclosure and that you intend to withhold that portion, I ask that you redact that portion for the time being and make the other portion available as requested. In any event, please respond with a signed notification citing the legal authorities on which you rely if you determine that any portion of the responsive records, if not all of them, is exempt and will not be disclosed.

If public records responsive to this request are available in one or more non-paper formats (including but not limited to electronic, magnetic, or digital formats), make sure that your response to this request includes production of all responsive records in non-paper formats even if the records are also available in paper format. If there are no records responsive to a particular category listed on *Attachment 1*, please confirm in writing that such records do not exist; and if responsive records used to exist but have been lost, stolen, or destroyed, please (i) identify the date of loss, theft, or destruction and (ii) provide a copy of all available evidence of the loss, theft, or destruction.



All responsive records must be produced for inspection before my client will pay for copies, unless I agree otherwise in writing after receiving your estimate of copying costs. Furthermore, my client reserves the right to make its own reproduction of the responsive records, at its own expense.

One final, important request: Please remind all agents of your agency that Government Code Section 6200 provides, *inter alia* and with my emphasis, that every public officer having custody of any record “filed or deposited in any public office, or ***placed in his or her hands for any purpose***, is punishable by imprisonment [for up to four years] . . . if, ***as to the whole or any part of the record*** . . . the officer willfully does or permits any other person to do any of the following: (a) Steal, remove, or secrete. (b) Destroy, mutilate, or deface. (c) Alter or falsify.” This punishment applies even when the officer maintains custody of such records outside your agency’s office or on the officer’s private property.

Thank you for your time and attention to this matter. If I can provide any clarification that will help you to expedite this request, please do not hesitate to contact me in writing. Because the law requires you to assist members of the public in making a focused and effective request that reasonably describes identifiable records, I will assume that you fully understand what public records are being sought unless I receive written correspondence from you to the contrary.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

cc: Mayor Racquel Vasquez
Councilmember Jennifer Mendoza
Councilmember Jerry Jones
Councilmember George Gastil



Attachment 1: Categories of Requested Public Records

Page 1 of 1 (following request letter)

1. Between 12:01 a.m. on March 1, 2022, and 6:00 p.m. on March 8, 2022, each and every **WRITING** that contains the word “baboon” and was at any time in the possession, custody, or control of one or more employees or elected officials of the City of Lemon Grove (inclusive), regardless of the **WRITING**’s author and regardless of the medium through which the **WRITING** was obtained. (Responsive records may include but are not in any way limited to e-mail communications, social-media posts, text messages, and social-media messages.)

2a. Between 12:01 a.m. on March 1, 2022, and 6:00 p.m. on March 8, 2022, each and every **WRITING** received by or for the benefit of one or more employees or elected officials of the City of Lemon Grove (inclusive) through any medium whatsoever from or on behalf of Carol Kim (inclusive). (Responsive records may include but are not in any way limited to e-mail communications, social-media posts, text messages, and social-media messages.)

2b. Between 12:01 a.m. on March 1, 2022, and 6:00 p.m. on March 8, 2022, each and every **WRITING** sent by or on behalf of one or more employees or elected officials of the City of Lemon Grove (inclusive) through any medium whatsoever to or for the benefit of Carol Kim (inclusive). (Responsive records may include but are not in any way limited to e-mail communications, social-media posts, text messages, and social-media messages.)

As used above, “**WRITING**” has the same meaning that it has under California Evidence Code Section 250 and includes “**ELECTRONICALLY STORED INFORMATION**”; “**ELECTRONICALLY STORED INFORMATION**” has the same meaning that it has under California Code of Civil Procedure Section 2016.020; and “**AGENTS**” includes officials, officers, directors, managers, employees, independent contractors, attorneys, consultants, advisors, staff members, representatives, and every other kind of agent.

ELECTRONICALLY STORED INFORMATION described above shall be produced in its native format by CD, DVD, or portable USB drive. **ELECTRONICALLY STORED INFORMATION** shall also be produced, to the extent practical and at reasonable cost, in paper format.

Please note: E-mail communications produced in response to this request for public records should identify not only the named recipient(s) but any and all “cc” and/or “bcc” recipient(s). All attachments to e-mail communications, text messages, direct social-media messages, or other electronic communications should be produced along with the communications.



**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND
OTHER LAWS**

Exhibit "C"



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BLC File(s): 2060.99

10 March 2022

Mayor and City Council
City of Lemon Grove
c/o City Clerk Audrey Malone
Via e-mail: amalone@lemongrove.ca.gov

Re: Demand for Cure and Correction of Violations of Ralph M. Brown Act; Notice of Intent to Sue

Dear Mayor and City Council:

On behalf of my client, Project for Open Government, I am writing to demand the cure and correction of multiple violations of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) committed by the City Council; and to notify you of my client's intent to sue the City for a determination of whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is invalid under federal or state law.

I begin with the Brown Act violations.

Last month, at the direction of the City Council, the City Attorney sent a February 8, 2022 memorandum to everyone at City Hall. Among other things, the memo mandates that members of the Council deal with the internal and external services provided by the City only through the City Manager and not through either individual members of the staff or third-party contractors. If the action to approve this mandate did not appear on an agenda, then it would have been action taken in violation of Government Code Section 54954.2(a)(3) ("No action or discussion shall be undertaken on any item not appearing on the posted agenda...."). My client has been unable to find anything in the Council's agendas giving prior notice of any proposed action to approve this mandate, and thus my client believes that the Council violated the Brown Act when it approved the mandate.

Two days ago, Councilmember Jerry Jones publicly admitted at a City Council meeting that the Council had taken certain steps motivated by its antipathy toward the viewpoints and advocacy of Councilmember Liana LeBaron. Mr. Jones stated:

We've tried to take steps incrementally in order to deal with the situation, the interruptions, the dysfunction, and so on. The first step we took was the manual that we created, and we put restrictions not just on Councilmember LeBaron; we put restrictions on all of us, all of us. The last restriction we put on ourselves was, all contact between staff [and any member of the Council] would be made through the City Manager. And that wasn't a restriction on just Councilmember LeBaron; that was on all of us, because you know



obviously we cannot operate as a little, small city any more.... * * *
So we put that restriction on all of us. The memo went out. All
contact between the City Manager and the staff must be through the
City Manager.

My client has been unable to find anything in the Council's agendas giving prior notice of any proposed action to approve the so-called "last restriction," and thus my client believes that the Council has again violated the Brown Act.

Illegal action to block Councilmember LeBaron's access to staff is not your only Brown Act violation. Last week the City Attorney indicated, pursuant to instructions received from the City Council, that Councilmembers' access codes to City Hall have been revoked and the conference room has been locked (even when unused by others). Once more, my client has been unable to find anything in the Council's agendas giving prior notice of any proposed action to approve the revocation of Councilmembers' access codes for City Hall or keeping them out of the conference room when it is not in use, and so my client believes that the Council has once again violated the Brown Act.

I now turn to the City Council's punishment and discouragement of Councilmember LeBaron's exercise of federal, state, and local rights to expression on her own behalf and on behalf of her constituents.

The mandate, the "last restriction," and the physical-access revocation described above, collectively if not separately, deprive Councilmember LeBaron of her legal right as an individual member of the City Council to "deal with the administrative services of the city ... for the purpose of inquiry...." See Lemon Grove Mun. Code § 2.04.070(A). While the Municipal Code gives her the right of direct contact with all staff members for inquiry purposes, your mandate, last restriction, and access revocation each make it unduly difficult (if not impossible) for her to adequately respond to inquiries from her constituents and other members of the public. Each action violates her constitutional rights of expression (which are no less than the free-expression rights of any ordinary member of the public) as well as the applicable local legal authority.

Furthermore, by denying Councilmember LeBaron of a place to meet with her constituents on confidential or otherwise sensitive matters, you are outrageously burdening her freedom of expression and right of inquiry because she is left with no choice but to meet people in her own residence or in someone else's private residence or office. That would be bad enough at any point in history, but especially today – with all the social unrest and threats directed against public servants – your physical-access revocation forces Councilmember LeBaron and those with whom she meets to bear an unreasonable risk to their safety. There is a reason why City Hall is in the same building as – indeed, is right next door to – the Sheriff's Department. Whether for reasons of ethics or personal safety, elected officials and the public should not be forced to interact in an insecure setting.

For these reasons, my client respectfully demands that the City Council promptly cure and correct the foregoing Brown Act violations and the unlawful intrusion on Councilmember LeBaron's rights of expression and inquiry under federal, state, and local law. Under the Brown Act, the violations must be cured not more than 30 days after receipt of this letter. Please notify me *in*



writing as soon as possible to let me know whether the violations will be cured/corrected and, if so, when the cure/correction will take place.¹ (My client may sue before receiving your response.)

Thank you for your prompt attention to this important matter.

Sincerely,

BRIGGS LAW CORPORATION


Cory J. Briggs

cc: Mayor Racquel Vasquez
Councilmember Jennifer Mendoza
Councilmember Jerry Jones
Councilmember Liana LeBaron
Councilmember George Gastil

¹ If you believe that the three actions did not violate the Brown Act, then please consider this a California Public Records Act request and please provide: (i) for each proposed action, any and all agendas identifying the proposed action; and (ii) for each approved action, any and all minutes reporting the approved action.



VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE etc. and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of Project for Open Government

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on March 22, 20 22, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mat Wahlstrom
Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California. I am over the age of 18 and not a party to the within action; my business address is,

On , 20 , I served the foregoing document described as

by placing the true copies thereof enclosed in scaled envelopes addressed as stated on the attached mailing list:
by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

* I deposited such envelope in the mail at , California.

The envelope was mailed with postage thereon fully prepaid.

As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on , 20 , at , California.

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on , 20 , at , California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)