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CITY OF SAN DIEGO

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Mara W. Elliott
CITY ATTORNEY

May 11, 2022

Ms. Kris Michell
[REDACTED]
[REDACTED]

Re: Destruction of California Public Records

Dear Ms. Michell,

Our Office is currently responding to requests for public records under the California Public Records Act and as part of discovery in litigation related to the City's acquisition and stewardship of the buildings known as 101 Ash Street and Civic Center Plaza.

We recently learned that in the final days of your employment with the City of San Diego you directed City staff in the Information Technology Department to erase from your cell phone(s) and computer public records found in email, text messages, and other chat tools relating to this litigation. The San Diego Municipal Code (SDMC) requires retention of City records for the period of time designated in the Master Records Schedule, or until the termination of a legal hold. A City record is defined as follows:

Record means recorded information of any kind and in any form, created or received by the City that is evidence of its operations. Records include paper and electronic documents, electronic databases, electronic mail, correspondence, forms, photographs, film, sound recordings, maps, and other documents that have administrative, legal, operational, fiscal or historical value requiring retention of the record for a specific period of time.

The City Administrative Records also make clear that such City records include content hosted by online collaborative platforms: "Social media and tools that facilitate conversation, including but not limited to, Instant Messaging, Twitter, Facebook, YouTube, LinkedIn, and blogs, may be a record subject to retention." San Diego Admin. Reg. 85.10 § 2.10.

The destruction of public records violates not only the SDMC but also state law (Cal. Gov't Code § 6200 subd. (b)). The City could face penalties, including payment of attorney's fees (Cal. Gov't Code § 6259 subd. (d)) and court-ordered sanctions for discovery violations (Cal. Code Civ. Proc. § 2023.030) if it is unable to produce public records to which a third party is legally entitled.

Ms. Kris Michell

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Further, former City employee Cybele Thompson recently testified in deposition that you sent her City records pertaining to this litigation after she left the City and while you were still COO. We would like to understand your actions: which records were shared, for what reason, and were copies or originals of those records maintained by the City?

My Office seeks your cooperation in recovering the records that were destroyed and their return to the City. Please contact me by Monday, May 16, 2022, to begin the process of identifying and recovering all City records.

Sincerely,
MARA W. ELLIOTT, City Attorney

By:


M. Travis Phelps
Assistant City Attorney
Civil Litigation Division

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