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# OPINION NUMBER 2005-01

**DATE:** April 1, 2005

**SUBJECT:** Disclosure Of Officials' Calendars And Official Writings Under The California Public Records Act

**PREPARED BY:** City Attorney

## I.

## BACKGROUND

By amending both the California State Constitution and the San Diego City Charter in the 2 November 2004 General Election, the voters guaranteed enhanced public access to public records and writings.[1] See, San Diego City Proposition D and California State Proposition 59. The California State Constitution and the San Diego City Charter now give the public a right of "access to information concerning the conduct of the people's business." Cal. Const. art. 1, §3(b)(1); San Diego Charter § 216.1(b)(1).

With constitutional and charter backing, San Diegans are empowered to demand greater access to writings and electronic records under the possession, custody, or control of their public officials. San Diegans can now scrutinize the writings in the possession of the Mayor, City Council, and other City officials. See, Cal. Const. art. 1, §3(b)(1); San Diego Charter § 216.1(b)(1).

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[1] Writing is used as the term that is defined by Government Code Section 6252(f): "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."

On 13 January 2005, citing these newly enacted laws, the *San Diego Union-Tribune* filed a public records request seeking the 2004 calendars of San Diego Mayor Dick Murphy and the other members of the City Council. In some cases compliance was not immediate based upon a narrow reading of the Public Records Act. In addition to the 2004 calendars of the council, Andrew Donahue from the *Voice of San Diego* has also requested the Mayor's 2002 calendar. *KFMB Channel 8 News* has requested certain phone, calendar, and emails from the Mayor's Chief of Staff, John Kern.

These facts and circumstances provide a significant opportunity to explain and clarify the rights of San Diegans to gain access to the records under the possession, custody, or control of their representatives.

## II.

## THE PUBLIC NEED FOR INFORMATION

### A. The Sovereignty of the People in a Deliberative Democracy

The passage of State Proposition 59 and City Proposition D was both a reaffirmation of the fundamental precept that in delegating authority to government officials, citizens "do not yield their sovereignty to the agencies which serve them" (California Government Code §54950), and a confirmation that any successful and long-lived government is based on a recognition not only of this absolute sovereignty but also of the rights of individuals.

As the ultimate political decision makers, citizens have the right and the responsibility to become and remain informed about public issues so that they can "maintain control over the instruments [of government] that they have created." *Id*. Information about these instruments empowers citizens not only to vote intelligently but also to protect themselves from public corruption. The former goal is achieved through deliberation—a process by which citizens "seek relevant information, reflect on the issues, and exchange views with others." (Luskin, Robert C, and Fishkin, James S., *Deliberation and 'Better Citizens,'* Center for Advanced Study in the Behavioral Sciences, Stanford University.)

Because deliberative democracy is fundamentally a public process that requires the participation and reasoned, informed judgment of the people, (London, Scott, "Teledemocracy vs. Deliberative Democracy: A Comparative Look at Two Models of Public Talk," Journal of Interpersonal Computing and Technology 33-55 (April 1995)) it cannot be successful without an educated and informed citizenry. *See also*, Flemmang, Janet A., *Democracy: Direct, Representative, and Deliberative*, 41 Santa Clara L. Rev. 1085, 1090 (2001) and Hunter, Dan, *ICANN and the Concept of Democratic Deficit*, 36 Loy. L.A. L. Rev. 1149, 1161-1162 (2003) (explaining that deliberative democracy "requires an open exchange of views and informed debate in order for political and social consensus to emerge.")

The Framers of the federal Constitution recognized the importance of public discourse in achieving the democracy they sought:

> The importance of public discourse was also written into the United States Constitution. The founding fathers believed that the only way the people could be sovereign while at the same time subject to the law was to organize government around a system of deliberative discussion. Scott London, *Teledemocracy vs. Deliberative Democracy: A Comparative Look at Two Models of Public Talk*, Journal of Interpersonal Computing and Technology, 33-35 (April 1995).

Likewise in San Diego, the Council must keep its deliberations open and public for deliberative democracy to work. There is thus a requirement that Council "deliberations be conducted openly" and that Council actions "be taken openly." Cal. Gov't Code §54950. The Council simply does not have "the right to decide what is good for the people to know and what is not good for them to know." Cal. Gov't Code §54950.[2]

With the power of public office goes the fiduciary duty that the Council meet the highest fiduciary standards in conducting the public's business:

> It is universally agreed that local government officers owe their government, and the people of their locality, a fiduciary duty of the highest possible fidelity and of the greatest skill and diligence, as to their work, of which they are capable. Osborne, Reynolds, M. Jr., *Handbook of Local Government Law* (2nd ed. 2001); *see, Terry v. Bender* (1956) 143 Cal. App. 2d 198; *People v. Sullivan* (1952) 113 Cal. App. 2d 510; *see also, Pharmacare v. Caremark*, (D. Haw. 1996) 965 F. Supp. 1411; *United States v. Sawyer*, 239 F. 3d 31 (1st Cir. 2001) (citizens entitled to honest government services at the local level).

A critical condition of deliberative democracy is the right and obligation to level constructive criticism of the Council's policies, procedures, programs, services, or its acts or omissions. Cal. Gov't Code § 54954.3.

Thus, the right of the people to public records and writings must be understood and fixed in light of the full rights and obligations of the public in the deliberative democratic process of

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[2] The "ultimate purposes of the [Brown] Act [is] to provide the public with an opportunity to monitor and participate in the decision-making processes of" public bodies like the San Diego City Council and the City's boards and commissions. California Attorney Brown Act Pamphlet p. 12. Thus, the public has a right "to scrutinize and participate in public hearings" including the right "to witness the decision-making process." *California Attorney Brown Act Pamphlet* p. 31; see also 59 Ops. Cal. Atty. Gen. 619, 621-622 (1976).

San Diego City government. The goal of our deliberative democracy can best be achieved when self-dealing, conflicts of interest, and insider machinations are prevented by open and accessible decision making—when the public has all the information to which government officials are privy.

As Justice Louis Brandeis so accurately wrote, "[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light is the most efficient policeman." Louis D. Brandeis, *Other People's Money and How the Bankers Use It,* 62 (1933).

B. The Road to Direct Democracy in California

Early in the last century, Californians resolved to strengthen their ability to engage in informed and open deliberation with their public officials. To do so, they broke from a pure Madisonian concept of representative democracy, which was adopted by the Framers for the federal government and which relies on elected representatives to carry out the wishes of and to be responsible to their constituents.

In an attempt to more fully actuate the Founders' democratic ideals and in the process defeat the corruption that had beset state politics, California Progressives[3] modified the federal system to include certain direct democracy reforms that permitted the people to set policy themselves and also to decide whether an elected official should remain in office. (The broad goal of direct democracy "is to allow the people to circumvent the traditional legislative process when it is dominated by powerful narrow interests." Garrett, Elizabeth, *Democracy in the Wake of the California Recall*, 153 U. Pa. L. Rev. 239, 243 (2004).

The reform movement began at the municipal level when the 1902 Legislature passed a Constitutional amendment allowing some cities to amend their charters by initiative. Buoyed by this new power, people all over California began to demand a stronger voice in their government to counteract the influence of big corporations and the resulting pervasive graft. Eventually Progressives gained enough influence to successfully support candidates for public office.

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[3] The Progressive and the Populist movements arose at the about the same time and are closely related. Both espouse the interests of the people over the interests of powerful corporations, and both seek to create a responsive government through the direct democracy techniques of initiative, referendum, and recall. Lazarus, Simon, *The Genteel Populists*, 88 Harv. L. Rev. 666 (1975). However, "[w]hile the Populist impulse mistrusts and undermines the power of representative government, the Progressive stance trusts and reforms governmental institutions." (Flemmang, *ibid.* at 1085.)

In 1910, Republican Hiram Johnson was elected Governor on his promise to eliminate the power that corporate interests held over the government. As he explained in his first Inaugural Address:

> In the political struggle from which we have just emerged, the issue was so sharply defined and so thoroughly understood that it may be superfluous for me to indicate the policy which in the ensuring four years will control the executive department of the State of California. The electorate has rendered its decision, a decision conclusive upon all its representatives. But while we know the sort of government demanded and decreed by the people, it may not be amiss to suggest the means by which that kind of administration may be attained and continued. Successful and permanent government must rest primarily on recognition of the rights of men and the absolute sovereignty of the people.
> . . .
> In the consummation of our design at least to have the people rule, we shall go forward, without malice or hatred, not in animosity or person hostility, but calmly, coolly, pertinaciously, unswervingly, and with absolute determination, until the public service reflects only the public good and represents alone the people. (Official Website for the California Governor, Governors' Gallery.)

During his campaign Governor Johnson championed amending the California Constitution to institute direct democracy statewide. The voters responded in 1911 by establishing their Constitutional rights to the initiative, the referendum, and the recall, which are designed:

> [T]o give grassroots movements that plausibly represent majority wishes methods to discipline elected agents when they are more responsive to minority interests rather than to discipline elected agents when they are more responsive to minority interests rather than to the larger electorate. (Garrett, *id*.)

Johnson explained the need for these tools in his First Inaugural Address on 3 January 1911:

> When, with your assistance, California's government shall be composed only of those who recognize one sovereign and master, the people, then is presented to us the question of how best can we arm the people to protect themselves hereafter? If we can give to the people the means by which they may accomplish such other reforms as they desire, the means as well by which they may prevent the misuse of the power temporarily centralized in the Legislature, . . . then all that lies in our power will have been done in the direction of safeguarding the future . . . . [T]he first step in our design to preserve and perpetuate popular government shall be the adoption of the initiative, the referendum, and the recall. (Inaugural Address, *ibid.*)

In their wisdom and with great optimism, the Progressives left a legacy to the people of California ensuring that they can, if they remain informed and involved, use the tools of direct democracy to counteract the influence of organized special interests and self-serving politicians to prove that they retain the power of the sovereign. (Under California's direct democracy "policy is determined at the local or state level by a combination of direct and representative institutions." Garrett, Elizabeth, *California's Hybrid Democracy,* Geo. Wash. L. Rev., 2005).

## III.

## THE REAFFIRMATION OF DIRECT DEMOCRACY

### A. Relevant Historical Parallels

The Progressives realized that that the pursuit of self-interest is a basic component of human nature from which political decision makers are not exempt. Because of this fact, corruption and special-interest politics are a universal problem. "Inevitably, self-interest will influence institutional design decisions when elected officials choose the rules that determine whether they will retain office and that shape their behavior in office." (Garrett, Elizabeth, *California's Hybrid Democracy*, Working Paper No. 39, Center for the Study of Law and Politics.)

At present, this inevitability is painfully evident in the City of San Diego, which appears to be mired in corruption and inefficiency. The City, which has been unable to issue a financial statement free of material error since June 2001, faces a budget deficit of approximately $1.5 billion. While the City's deficit has grown, City officials have given hundreds of millions of dollars of public funds and property to special interests. Two City Council members have been indicted for extortion and fraud in connection with their public duties. The U.S. Grand Jury, the San Diego County District Attorney, and the U.S. Securities & Exchange Commission are conducting criminal and civil investigations of other alleged violations of the law by City officials.

These current facts and circumstances are remarkably similar to the problems with government that Californians were experiencing in the early years of the 20th Century. Then as now "the popular belief was that political control . . . .lay behind the scenes . . ." (Rolle, A., California: A History 194 (1998)) and that special interest influence had corrupted the political process. And then as now, the people were concerned about whether they were receiving the honest government services to which they are entitled. *See Pharmacare v. Caremark*, (D. Haw. 1966) 965 F. Supp. 1411; *United States v. Sawyer*, 239 F.3d 31 (1st Cir. 2001). In the November 2004 General Election voters registered their discomfort with government by enacting legislation intended to strengthen their rights to directly participate in their governance.

B. State Proposition 59

Proposition 59, which passed with 83.3% of the vote, amended the California Constitution to include the public's right of access to meetings of governmental bodies and to documents controlled by governmental officials. ("The people shall have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." Cal. Const. art. 1, §3(b)(1). The supporters of Proposition 59 had argued that if the government asks the public for funding, power, and trust, it should be as transparent as possible. (Argument in Support of Proposition 59, 2 November 2004 General Election.)

C. City of San Diego Proposition D

Proposition D, which passed with 82.56% of the vote, amended the San Diego City Charter to mirror existing California law and the changes to it made by Proposition 59. The supporters of Proposition D had argued that the public has a right to a "government that is open, responsive and accountable to the people it serves." (Argument in Support of Proposition D, 2 November 2004 General Election.)

These new laws built on a state statutory scheme, popularly know as the Brown Act, whose "ultimate purpose [is] to provide the public with an opportunity to monitor and participate in the decision-making processes" of public bodies. California Attorney Brown Act Pamphlet p. 12. The Brown Act establishes the public's right to address their government and to criticize both its acts, including policies, procedures, programs, services, and its omissions. California Gov't Code §54950.)

Under the Act citizens may directly address a governmental body on any item of public interest before or during the time it is considered. *Id.* at §54954.3. So that citizens can effectively carry out the obligation to participate, which is a prerequisite of deliberative democracy, the Act also confers on them the right to governmental entities that discuss issues and take actions openly and the concomitant right to access certain writings controlled by these entities. *Id.*

## IV.

## APPLICATION OF NEW CONSTITUTIONAL AND CHARTER RIGHTS TO QUESTION OF WHETHER DOCUMENTS MUST BE PRODUCED

A. New Constitutional and Charter Laws Expands Public Right to Documents

The right to access public papers, including the calendars, emails, phone records, and related writings of city officials is vital to the success of accountable and deliberative democracy

in San Diego. Simply put, the people of San Diego have a right to get answers to the question of whether their government is corrupt and a lot of other information as well.

The authority typically relied upon to not produce this type of records has been the California Supreme Court case, *Times Mirror Co*. v. *Superior Court*, (1991) 53 Cal. 3d 1325. In that case the Supreme Court created a new exemption under the California Public Records Act. In *Times Mirror*, the Los Angeles Times had requested then-Governor Deukmajian to produce his appointment schedules, calendars, notebooks, and any other documents that would detail his official activities from his 1983 inauguration to the August 1988 date when the request was made. *Id*. at 1329. This request was made pursuant to the Public Records Act. (Cal. Gov't Code § 6250 *et seq.*)

In denying the *Times'* request, the Governor asserted that the records were exempt from disclosure under specific provisions of the Public Records Act. *Times Mirror*, 53 Cal. 3d at 1340) ("Although not covered by the specific exemption for 'preliminary drafts, notes, or … memoranda' set forth in section 6254, subdivision (a) the Governor nevertheless contends that disclosure of his appointments, schedules and calendars would jeopardize the decision making or deliberative process.")

The Court acknowledged that the 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." *Id*. at 1238. Nonetheless, the Court ultimately concluded that the public interest in nondisclosure of the calendars and schedules clearly outweighed the public interest in disclosure. In so holding, the Court placed a high value on the "deliberative process" stating that: "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. . . . The intrusion into the deliberative process is patent." *Id*. at 1343.

The Court also noted that revealing certain information might have a chilling effect. "If the law required disclosure of a private meeting between the Governor and a politically unpopular or controversial group, that meeting might never occur." *Id*. at 1344. The Court concluded that certain content in the calendar could reflect the governor's "deliberative process" in that, "[w]hile 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." *Id*. at 1344.

The Court rejected the *Times* argument 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." The Court created a new exemption, rejecting the argument that disclosure might reveal whether the Governor was receiving a broad range of opinions, and "ultimately whether the state's highest elected officer was attending

diligently to the public business." *Id*. at 1345. Nonetheless, the Court balanced the competing public interests and determined that the greater interest was in protecting the decision making process of government.

The Court in *Times Mirror* drew heavily upon an exemption contained in the federal Freedom of Information Act to support its judicially created deliberative process exemption to the Public Records Act:

While state precedents relating to the deliberative process or 'executive' privilege are relatively scarce, federal cases are abundant. The FOIA equivalent to section 6254, subdivision (a) is contained in exemption 5(b)(5). *** The cases uniformly rest the privilege on the policy of protecting the 'decision making processes of government agencies. *Times Mirror,* 53 Cal. 3d at 1339-1340.

With the passage of Propositions 59 and D, voters put greater weight on their need for disclosure than on any "chilling effect" disclosure has on candid discussions amongst officials. Voters in their law-making capacity appear more concerned about the corruption secret government makes possible than chilling the discussions amongst their public officials.

As President Wilson said: Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety. Wilson, *The New Freedom*, 113-114; *See also* Bok, Sissela, *Secrets On the Ethics of Concealment and Revelation,* 171.

Further, commentators have grown increasingly suspect of the reasoning underlying the chilling effect argument:

> Several commentators have been philosophically and empirically critical of the chilling effect argument. According to these critics, in addition to offending the public policy of open and accountable government as articulated by Congress in FOIA [the federal Freedom of Information Act] there is no evidence that any chilling effect of government officials exists. In contrast, there is abundant evidence to the contrary. If the waging of the Vietnam War, Watergate, and the IRAN-Contra affair is any indication, the protection from discovery of the deliberative process has the actual effect of producing poorly guided, flawed, and even illegal decisions. *An Imperfect Shield: How Private Parties Can Attack And Defeat The Executive Privilege For Deliberative Process In Government Procurement Litigation*, 28 Pub Const L. J. 127, 143.

As the argument in favor of Proposition 59 stated: "Proposition 59 is about open and responsible government. A government that can hide what it does will never be accountable to

the public it is supposed to serve. We need to know what the government is doing and how decisions are made in order to make the government work for us."

Prop D added section 216.1 to the San Diego City Charter and Prop 59 amended Article 1 Section 3(a) to the California Constitution.

The language in both provisions (Propositions D and 59) is identical and provides:

> (b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
>
> (2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.
>
> ***
>
> (5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records. [Emphasis added.] Cal. Const. art. 1, § 3(b)(1),(2),(5); San Diego Charter § 216.1(b)(1),(2),(3).

These new Constitutional and Charter public record provisions contain two provisions of direct significance to the continued validity of the *Times Mirror* holding. First, the exemption created by the court in *Times Mirror* that allowed the Governor to withhold his calendar from public disclosure must be "narrowly construed" because "it limits the right of access." [Emphasis added.] Cal. Const. art. 1, § 3(a)(2); San Diego Charter § 216.1(a)(2). Second, only "constitutional or statutory exceptions to the right of access to public records" were preserved after their enactment, not court created ones like those created by the court in *Times Mirror*. [Emphasis added.] Cal. Const. art. 1, § 3(a)(5); San Diego Charter § 216.1(a)(5).

*Times Mirror*, in light of the voters' decision to adopt Proposition D and Proposition 59, is of dubious authority. In light of the passage of Propositions D and 59, the balance has shifted more towards open government and disclosure of government writings and a more narrow evaluation of any exemptions to disclosure. This shift will ensure that the people can effectively participate in and evaluate government decision making.

B. Request for Officials' Calendars

Since the passage of Proposition 59, the City has received requests from various news media for all, or portions of, the calendars or appointment schedules of the elected officials. In the past, these requests were sometimes denied, asserting the deliberative process privilege permitted under the *Times Mirror* case. It appears that the deliberative process privilege in some of our previous opinions has been expanded beyond the original rationale.

Moreover, mere calendar entries of who met with an elected official and when they met, are unlikely to reflect the substance of pre-decisional policy. To qualify as deliberative, a document should reflect opinions, recommendations, strategies, or mental processes. Even then, portions of the document may be subject to disclosure with portions redacted if it is determined that the public interest in nondisclosure clearly outweighs the public interest in disclosure. Cal. Gov't Code §§ 6255 and 6257; see, *An Imperfect Shield: How Private Parties Can Attack And Defeat The Executive Privilege For Deliberative Process In Government Procurement Litigation*, 28 Pub. Con. L. J. 127 137-149.

With respect to existing court rules, such as *Times Mirror*, Proposition 59 requires that they be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. In reevaluating the basis for nondisclosure of the Governor's calendar discussed in *Times Mirror* and the competing public interests, it is clear that the deliberative process privilege asserted for calendar entries has little value when weighed against the strong public interest in disclosure of elected officials' calendars. During the last year, several serious questions have been raised about decisions made by elected officials and their performance of City business. Disclosure of officials' calendars or appointment schedules will help make government more accountable to the public it is supposed to serve and allow the public to see whether their elected officials are diligently attending to the people's business.

C. Requests for Telephone Records and E-mails

The City also has received requests for telephone records and e-mails between John Kern, the Mayor's Chief of Staff, and certain individuals that may have worked on the Mayor's reelection campaign during 2004. In the past this office has advised that the deliberative process privilege may apply to such communications in reliance on the rationale in the *Times Mirror* case. The passage of Propositions 59 and D requires us to reevaluate this prior advice. In narrowly construing the court-created deliberative process exemption announced in *Times Mirror* and in balancing the public's interest in whether public resources were used in connection with the Mayor's campaign, it seems that the public interest in disclosure is significant.

The content of telephone records is similar to that of calendars because the records do not reflect the content of those conversations. They only disclose when and with whom discussions

may have occurred with a public official. As such, the deliberative process privilege, if any, to be protected is minimal. On balance, the value of disclosure of telephone records of calls made from city telephones to campaign telephones, in the context of Proposition 59 and a desire for more transparency in government, outweighs any public interest in nondisclosure.

With respect to e-mails sent or received from City computers to or from an individual associated with Mayor Murphy's reelection campaign, the analysis is more complicated. First, are the e-mails a "public record"? The Public Records Act defines a public record as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained" by the City. If the subject e-mails contain information relating to City business, they are a public record. However, a City official may not use the Public Records Act to shield from disclosure writings he/she prepared on City computers especially when they relate to political or election activities. The public has a heightened need for records that show misuse of public facilities.

Second, if the e-mails concern the campaign or other non-City business, they may not be public records as defined by the Public Records Act. Nonetheless, the public has an interest in knowing whether City resources may have been misused. The fact of any inappropriate use may be disclosed by the City. Under the City's electronic mail usage policy, "all computer files are the property of the City of San Diego . . . which reside in part or in whole on any City electronic system or equipment." San Diego Admin. Reg. 90.62, § 4.2. Further, the City reserves the right to access and disclose all messages sent over its electronic mail system or stored in computer files of City computers. San Diego Admin. Reg. § 4.2A. The regulation applies to employees, elected officials, and all others who may use the City's computers in the performance of their City-related job duties. San Diego Admin Reg. § 2.1, 2.2.

Statutory exemptions were preserved under the enactment of Proposition 59 and Proposition D. Thus, there may be facts and circumstances warranting non-production or limited production of emails, calendars, and phone records when they fall under these express statutory exemptions. However, these exemptions under Propositions D and 59 must be "narrowly construed if it limits the right to access." Cal. Const. art. 1, § 3(b)(1); San Diego Charter § 216.1(b)(1). The records sought by the requests discussed in this opinion fall outside any express exemption as set forth above, and they must be produced.

## V.

## CONCLUSION

In adopting two changes to the State Constitution and San Diego City Charter, voters have decided to significantly expand their access to documents in the possession, custody, or control of their public officials. Access to such records is critical in order for the public to carry out their deliberative and accountable democracy rights.

The news media have chosen to test these new provisions of law by requesting calendar, emails and phone records of certain San Diego elected officials. Although the public may have had a right of access to these records under prior law, they now clearly do under the new Constitutional and Charter provisions adopted by the voters.

Respectfully submitted,

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