

CITY OF SAN DIEGO
ADMINISTRATIVE REGULATION

SUBJECT RESPONDING TO CALIFORNIA PUBLIC RECORDS ACT REQUESTS	Number 95.21	Issue 2	Page 1 of 13
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1. PURPOSE

To establish procedures and areas of responsibility for responding to requests for public records in compliance with the California Public Records Act (CPRA).

2. SCOPE

2.1. This Administrative Regulation (A.R.) applies to all City Departments, whether *Mayoral* or *Independent*, and all City elected officials, City officers, and employees.

2.2. All references to state law include amendments to that law.

3. DEFINITIONS

3.1. *Department Head* - a City Department Director, or his or her designee, of a *Mayoral* or *Independent Department*.

3.2. *Exempt Public Record* – a public record that is not required to be disclosed under the law.

3.3. *Independent Department* - a City Department whose *Department Head* is not appointed by the Mayor but is either an elected official or appointed by another legislative body.

3.4. *Mayoral Department* - a City Department whose *Department Head* is appointed by the Mayor.

3.5. *Mobile Device* - as described in section 5.7 of A.R. 85.10 and defined in section 3.6 of A.R. 90.66.

3.6. *Department* - all *Mayoral* and *Independent* City Departments, Programs, Offices, Boards, Commissions, and Committees.

(Supersedes Administrative Regulation 95.21, Issue 1, effective May 31, 2019)

Authorized

[Signature on File]

CHIEF OPERATING OFFICER

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- 3.7. *Public Record* - any *Writing* containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by the City regardless of physical form or characteristics. This includes *Public Records* held on any device or in any account, whether City-owned or personally owned, and created or received by the City.
- 3.8. *Public Records Act Request (Request)* - any oral or written request to inspect or reproduce a *Public Record*.
- 3.9. *Public Records Administration Program (PRA Program)* - the City Program designated to administer and assign all *Public Records Act Requests* received through the City's online *Public Records* portal or received by City staff.
- 3.10. *PRA Liaison* - employee designated by the *Department Head* to serve as liaison to the *PRA Program* and to coordinate his or her *Department's* response to a *Request*.
- 3.11. *Person* - any natural person, corporation, partnership, limited liability company, firm, or association.
- 3.12. *Wireless Stipend* - as defined by A.R. 90.25.
- 3.13. *Writing* - 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.

4. POLICY

- 4.1. The City will respond appropriately to any *Request* to inspect or reproduce a *Public Record* in compliance with the CPRA.
- 4.2. All requests for City records are treated as *Requests* and are forwarded to the *PRA Program*.
- 4.3. Text Messages
 - 4.3.1. Text messages are not intended to be a storage medium for *Public Records* or a medium for transmitting *Public Records*.

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- 4.3.2. a. Any text message determined to be a *Public Record*, whether transmitted on a City or personal *Mobile Device*, must be retained in accordance with A.R. 85.10, and A.R. 85.30.
- b. Text messages determined to be *Public Records* are not to be retained in the City's email servers; however, employees may forward such text messages to their City email account from their *Mobile Device*. The employee must then transfer and save the messages in accordance with their *Department's* Records Schedule. Guidelines for saving text messages are available on the City's intranet under Records Retention.
- 4.4. Personal Accounts and *Mobile Devices*
- 4.4.1. All City employees are encouraged not to use their personal accounts or personal *Mobile Devices* to conduct City business. When conducting City business, City accounts should be used.
- 4.4.2. a. If personal accounts or personal *Mobile Devices* are used to conduct City business, any writing, including emails and text messages that relate substantively to the conduct of City business, are potential *Public Records* and may be subject to disclosure under the CPRA. This includes personal cell phones, tablets, and computers.
- b. For employees who use a personal *Mobile Device* for City business and receive a *Wireless Stipend* in accordance with A.R. 90.25, employees must produce *Public Records* stored on their personal *Mobile Device* in compliance with A.R. 85.10, A.R. 85.30, and A.R. 90.66. *Public Records* may not be stored solely in one employee's individual storage files.
- c. If a *PRA Liaison* determines the *Request* may seek records stored on a personal electronic device or in a personal account, the *PRA Liaison* shall send a request to any *Department* employee(s) who may have responsive records stored on a personal electronic device or account to provide the Statement of Compliance required by this Administrative Regulation.
- 4.5. In accordance with the City's Master Records Schedule, *Requests* are retained in the City's online records portal for five years from the date when the *Request* is closed.

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5. PROCEDURES

5.1. Intake of *Requests*

- 5.1.1. A *Person* can make a *Request for Public Records* by submitting their *Request* directly on the online records portal; by mail, email, telephone, facsimile; or by describing their *Request* in person to any City employee.

Employees may inform the requester of the option to make a *Request* directly on the online records portal but may not require the requester to do so.

Employees must accept *Requests* even if the requester does not wish to use the online records portal.

- 5.1.2. If a City employee receives a *Request* outside the online records portal, the employee must forward the *Request* to the *PRA Program* via publicrecords@sandiego.gov.

The employee must note the date on which the *Request* was received by the City, as well as any contact information the requester provided.

A *Person* has the right to make an anonymous *Request*. If a requester chooses to do so and declines to provide any contact information, it is the responsibility of the requester to look for his or her *Request* and the City's response on the online records portal.

- 5.1.3. *PRA Program* staff inspect and log all incoming *Requests* in the online records portal. The online portal automatically will assign an identification number once the *Request* has been entered.
- 5.1.4. *PRA Program* staff assign the *Request* to all relevant *Departments* that may have *Public Records* responsive to the *Request*. If a *PRA Liaison* believes or is aware that there are other or additional *Departments* that may have responsive *Public Records*, the *PRA Liaison* must add those *Departments* to the *Request*.

5.2. *PRA Liaison* Five-Day Response to *PRA Program*

- 5.2.1. The *PRA Liaison* consults with the *Department Head(s)* and other relevant staff to determine whether the *Request*, in whole or in part, seeks copies of *Public Records* in the possession of the *Department(s)*.

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5.2.2. Within five (5) calendar days of assignment of the *Request*, the *PRA Liaison* in each assigned *Department* must communicate the following in the online records portal:

- a. Whether or not the *Department* possesses responsive *Public Records*, or if additional time is needed to make that determination (see Section 5.4.4); and
- b. The estimated date on which disclosable *Public Records* will be made available.

5.2.3. *Departments* may not delay a response to a *Request* due to staffing levels or staff absences. If the *PRA Liaison* is out of the office during the time in which the City must respond to a *Request*, the *Department* must have a backup for the *PRA Liaison* to work on the *Request* to ensure that all deadlines are met.

5.3. Gathering Records

The *PRA Liaison* gathers responsive *Public Records* from his or her entire *Department* and confirms to the *PRA Program* that the *Department* has searched for *Public Records* that address all parts of the *Request*.

5.3.1. Emails or Calendar Entries. For *Requests* for email records or calendar entries, the *PRA Liaison* requests a Department of Information Technology (DoIT) search for electronic records.

5.3.2. Personal *Mobile Device* Searches. If a City employee is aware or reasonably believes that his or her personal account or *Mobile Device* may contain responsive *Public Records*, he or she must conduct a reasonable and meaningful search of those accounts and *Mobile Devices* for responsive *Public Records*. Upon completion of the search, the employee will execute a Statement of Compliance affirming that he or she conducted a search and the results of the search (See Attachment A.) The City will rely on the Statement of Compliance in responding to *Requests*. Anyone with questions about whether a personally held record is responsive or *Exempt* from disclosure should discuss the matter with his or her *Department's PRA Liaison* or *Department Head*.

5.3.3. Online Collaboration Tools. If online collaboration tools such as Slack are used to conduct City business, those tools must be searched for *Public Records*.

5.3.4. Publicly Available Records. If the requested *Public Record* is already publicly available, the *PRA Program* for *Mayoral Departments* or the *PRA Liaison* for *Independent Departments*, shall make the *Public Record* available to the requester as promptly as possible. They may direct the requester to the electronic location where the *Public Record* is located or, if the requester prefers, make available to the

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requestor at his or her expense, a copy of the *Public Record* (see Section 5.7).

5.3.5. *Public Records Storage.* All *City Departments* must centralize the storage of the *Department's Public Records* to facilitate a timely search and response to the *Request*.

5.3.6. *Public Records Not Existing in Requested Form.* When *Public Records* are not stored in the manner requested, the *PRA Liaison* must describe to the requestor the information technology and physical location in which the records exist and provide suggestions for retrieving the *Public Records*.

5.3.7. Clarification of Request.

- a. If a *Department* needs clarification of the *Request* in order to search for *Public Records*, *PRA Program* staff or *PRA Liaison* shall contact the requestor to seek clarification.
- b. The CPRA requires an agency to assist the public in making a focused and effective *Request* that reasonably describes identifiable record(s).
- c. In order to assist requesters, City staff shall do all of the following to the extent reasonable under the circumstances: (1) assist the requester in identifying records that are responsive to the request or the intent of the request; (2) provide a description of the information technology and physical location in which the record or records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the record or records.

5.3.8. *Data Compilation, Extraction, or Programming.* The City is not required to create a record that does not exist at the time a *Request* is made. If fulfilling the *Request* requires the construction of a record that entails data compilation, extraction, or programming, the requester must bear the cost of production. (See Section 5.7.) *PRA Program* staff or *PRA Liaison* must obtain written authorization from the requester before creating a record at the cost of the requester.

5.4. Ten-Day Response to Requestor for *Mayoral Departments*¹

Within 10 calendar days of the City's receipt of the *Request*, *PRA Program* staff must respond to the requester on behalf of the City. If the tenth calendar day after receipt falls on a Saturday, Sunday, or City holiday, the ten-day initial response must be sent no later than the next business day. *PRA Program* staff serve as the point of contact for the requester throughout the timeline of the *Request*.

¹ For *Independent Departments*, the remainder of the PRA procedure is explained in Section 5.9.

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- 5.4.1. The ten-day response must contain the estimated date and time upon which the disclosable *Public Records* will be made available.
- 5.4.2. If all responsive *Public Records* are located and provided by the tenth day, or if the ten-day response states that no responsive *Public Records* exist, the *Request* can be closed.
- 5.4.3. The ten-day response does not require the actual disclosure of *Public Records* at that time. Rather, responsive non-*Exempt* records must be promptly disclosed following a reasonable search and review of the records for exemptions.
- 5.4.4. In unusual circumstances, as specified below, *PRA Program* staff may extend the ten-day response requirement by written notice to the requester setting forth the reasons for the extension and the date on which a determination will be made as to whether the request, in whole or in part, seeks copies of disclosable *Public Records*. The notice must specify a date that is within 14 calendar days of the notice. If the determination is that responsive non-*Exempt* records exist, then the estimated date of disclosure must be provided to the requestor. This 14-day extension to determine whether disclosable *Public Records* exist may only be asserted once. It is the responsibility of the *PRA Liaisons* for the assigned *Department(s)* to provide this determination to the *PRA Program* prior to the conclusion of the 14-day extension period.

Unusual circumstances mean one or more of the following:

- a. Location. The need to search for and collect the requested *Public Records* from multiple City facilities or other establishments that are separate from the office or *Department* processing the *Request*.
- b. Volume. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct *Public Records* that are requested in a single *Request*.
- c. Multiple Agencies. The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the *Request*.

5.5. Determining Whether a Record May Be Disclosed

- 5.5.1. Every *Person* has the right to inspect any *Public Record*, except for those which may be *Exempt* from disclosure under California Government Code sections 6250, et seq. (See *League of California Cities; The People's Business: A Guide to the California Public Records Act*, (2017)). Any reasonably segregable portions of a *Public Record* shall be available for inspection after removal of any portions that

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are *Exempt* from disclosure. If *Public Records* that would otherwise be *Exempt* have been previously disclosed by the City, they are not *Exempt* from disclosure in response to later *Requests*. This does not include mistakenly disclosed privileged or otherwise *Exempt* records, which will be retrieved immediately. This also does not include those records disclosed pursuant to California Government Code section 6254.5.

- 5.5.2. If the *PRA Liaison* gathers all *Public Records* that are potentially responsive to a *Request* and determines that some, in whole or in part, may be *Exempt* from disclosure:
- a. The *PRA Liaison* reviews the decision with his or her *Department Head*, who makes the final determination of whether or not a *Public Record* or portion thereof is *Exempt* from disclosure; and
 - b. If the requested *Public Records* fall under the authority of more than one *Mayoral Department* and there is disagreement as to the required disclosure, the respective Deputy Chief Operating Officer(s) shall make the determination.
- 5.5.3. If the *Department Head* determines that portions of a *Public Record* are to be redacted or withheld entirely from public disclosure, the *PRA Liaison* shall redact the *Exempt* portion or remove the *Exempt Public Record(s)* from the *Department's* response.
- 5.5.4. If it is not clear whether a *Public Record* is *Exempt*, the *Department Head* should consult with the *Department's* assigned Deputy City Attorney.

5.6. Production of Records

- 5.6.1. Once the *Department Head* has determined which *Public Records* are disclosable and approves them for release, the *PRA Liaison* shall either upload the *Public Records* to the online records portal or otherwise make the *Public Records* available for review in person by the requester.
- a. Every *Person* has a right to inspect any *Public Record* during regular City office hours. However, this does not mean immediate access without notice and on demand. Except for *Public Records Exempt* from disclosure, the records shall be made available promptly to any *Person* for inspection, or for copying (see Section 5.7).
 - b. If requested *Public Records* do not exist electronically, the *PRA Liaison* must include contact information in the *Department's* final response for the requester to make arrangements to review the *Public Records*.

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- c. Public inspection of physical *Public Records* should be supervised by *Department* staff and during the normal hours of the *Department's* operations.

- 5.6.2. When a requested *Public Record* is in an electronic format, it must be made available in the electronic format in which the information is held. In addition, the City must provide a copy of an electronic *Public Record* in the format requested if the requested format is one that has been used by the City to create copies for its own use or to provide to other agencies.

- 5.7. Recovery of Costs in Response to Public Records Act Requests
 - 5.7.1. The *Department* must ensure the collection of fees associated with the reproduction of their *Department's Public Records* in accordance with the City's fee schedule found at: <https://www.sandiego.gov/city-clerk>. The *PRA Liaison* will include the cost of duplication of the requested *Public Records* in the *Department's* final response to the *Request* and relay that to the *PRA Program* prior to proceeding with reproduction of the *Public Records*.
 - 5.7.2. When the *Public Record* is in an electronic format, the cost of duplication shall be limited to the necessary direct cost of reproducing a copy of the *Public Records* in an electronic format. However, the requester shall bear the cost of producing a copy of the *Public Records* when: (1) the *Public Record* is one that is produced only at otherwise regularly scheduled intervals; or (2) it would require data compilation, extraction, or programming to construct or redact the *Public Record*. In these circumstances, the City will state the cost of producing the requested *Public Record* to the requester and obtain their authorization to proceed in writing.
 - 5.7.3. All monies collected by City staff shall be deposited with the City Treasurer in accordance with San Diego Municipal Code section 22.0704.
 - 5.7.4. There is no charge for the inspection of a *Public Record*.

- 5.8. Final Response and Closing the Request
 - 5.8.1. The *PRA Liaison* will provide his or her *Department's* final response to the *Request* in a message to the *PRA Program* in the online records portal. This response must be the final response for the entire *Department*, including all divisions or employees to which the *Request* was assigned. The *PRA Liaison* must indicate whether any *Exempt Public Records* have been withheld or redacted, and if so, the legal authority upon which she or he relied. Additionally, the name and title of the person making this determination must be stated in the final response.
 - 5.8.2. *PRA Program* staff will provide a response to the requester on behalf of all *Mayoral Departments*, citing any and all exemptions claimed by all *Mayoral*

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Departments and setting forth the name and title of the person making the determination of exemption in whole or in part.

5.8.3. Once all *Departments* have provided their final response and *PRA Program* staff have provided the City's response to the requester, the *PRA Program* closes the *Request* in the online records portal. However, if a requester makes a supplemental *Request* or asserts that the City possesses additional responsive *Public Records*, the *Request* may be reopened, and the procedure shall start over at Section 5.2.

5.9. Procedure for *Independent Departments*

5.9.1. Ten-Day Response

Within 10 calendar days of the City's receipt of the *Request*, the *PRA Liaison* must respond to the requester on behalf of the City. If the tenth calendar day after receipt falls on a Saturday, Sunday, or City holiday, the ten-day initial response must be sent no later than the next business day. The *PRA Liaison* serves as the *Department* point of contact for the requester throughout the timeline of the *Request*.

See sections 5.4.1, 5.4.4 for Ten-Day Response requirements.

5.9.2. Production of Records

Follow the procedure in Section 5.6.

5.9.3. Recovery of Costs in Response to *Public Records Act Requests*

Follow the procedure in Section 5.7.

5.9.4. Final Response and Closing the Request

- a. The *PRA Liaison* will provide his or her *Department's* final response to the *Request* in a message directly to the requester in the online records portal. This response must be the final response for the entire *Department*, including all divisions or employees to which the *Request* was assigned. The *PRA Liaison* must indicate whether any *Exempt Public Records* have been withheld or redacted, and if so, cite the applicable legal authority upon which the *Public Record* is being withheld or redacted. Additionally, the name and title of the person making this determination must be stated in the final response.
- b. For *Requests* in which only one *Independent Department* is assigned, once the *PRA Liaison* has provided the *Department's* response to the requester, the *PRA Liaison* closes the *Request* in the online records portal. However, if a requester makes a supplemental *Request* or asserts that the *Department* possesses additional responsive *Public Records*, the *Request* may be reopened, and the procedure will start over at Section 5.2.

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6. RESPONSIBILITIES

6.1. Employee

- 6.1.1. All City employees are responsible for conducting a reasonable search of their City and personal accounts, files, and *Mobile Devices* if the employee's *Public Records* may be responsive to a *Request*.
- 6.1.2. If it is not clear whether a record on a personal account or *Mobile Device* is responsive to a *Request*, or whether an exemption applies to a *Public Record*, employees should consult the CPRA or their *Department's PRA Liaison*.

6.2. PRA Liaison

- 6.2.1. The *PRA Liaison* must have a general understanding of the CPRA and *Public Records* provided in response to his or her *Department's Requests*. The *PRA Liaison* must take CPRA Compliance training, training on the online records portal, and any other PRA-related trainings assigned by the *PRA Program*.
- 6.2.2. The *PRA Liaison* is responsible for ensuring that *Public Records* provided in response to a *Request* are in the appropriate format prior to uploading them to the online records portal.
- 6.2.3. The *PRA Liaison* is responsible for coordinating his or her *Department's* response with *PRA Program* staff and communicating within the online records portal.
- 6.2.4. If a *PRA Liaison* is aware that other or additional *Departments* may have *Public Records* responsive to a *Request*, it is the responsibility of the *PRA Liaison* to add those *Departments* to the *Request* to ensure thorough review. See Section 5.1.4.
- 6.2.5. In *Mayoral Departments*, the *PRA Liaison* is responsible for communicating the *Department's* final response to the *PRA Program*.
- 6.2.6. In *Independent Departments*, the *PRA Liaison* is responsible for providing the initial 10-day response and final response on behalf of his or her *Department* directly to the requester via the online records portal.

6.3. PRA Program Staff

- 6.3.1. *PRA Program* staff administers and assigns all *Requests* received by the City.
- 6.3.2. *PRA Program* staff ensures that non-*Exempt Public Records* are disclosed promptly after any necessary search and review by the assigned *Mayoral Department(s)*.

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6.3.3. *PRA Program* staff provides training on CPRA Compliance and on the online records portal to *PRA Liaisons* and other employees who handle *Requests*. The *PRA Program* provides general guidance on processing *Requests* and provides technical assistance to employees using the online records portal.

6.4. Department Head

6.4.1. *Department Heads* must determine whether its Department's responsive *Public Records* to a *Request* may be disclosed in whole or in part.

6.4.2. *Department Heads* must review *Public Records* responsive to a *Request* prior to their release.

6.4.3. The *Department Heads* must set forth the reasons for which their *Department's Public Records* are redacted or withheld for the City's response to the requester, if a portion or the entirety of the *Department's Public Records* are *Exempt* from disclosure. If it is not clear whether an exemption applies to a *Public Record*, or if there is a question as to which is the most appropriate exemption to apply, *Department Heads* are responsible for consulting with the *Department's* advisory attorney.

6.4.4. The *Department Head* is responsible for taking CPRA Compliance training and ensuring that his or her *Department's PRA Liaison* has taken the required trainings.

6.4.5. All *Department Heads* are responsible for appointing at least one *PRA Liaison* and one backup in their *Department* and ensuring that the role of *PRA Liaison* is staffed at all times. The *Department Head* shall determine the most appropriate staff to serve as *PRA Liaison* given the duties and responsibilities described herein. The *Department Head* must inform the *PRA Program* of changes to the *PRA Liaison* assignments.

6.4.6. *Department Heads* are responsible for ensuring that sufficient resources are committed to *Requests* directed to their *Department* so that *Requests* are processed timely and in compliance with the CPRA.

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APPENDIX

Legal References

California Government Code § 6250, *et seq.*

League of California Cities; The People's Business: A Guide to the California Public Records Act, (2017)

City References

Administrative Regulation 85.10 – Records Management, Retention and Disposition

Administrative Regulation 85.30 – Vital Records Retention and Preservation

Administrative Regulation 90.25 – Wireless Communication Services

Administrative Regulation 90.66 – Mobile Device Policy

Forms

Attachment A - Statement of Compliance Regarding Search of Personal Accounts and Devices

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Public Records

Exemption from disclosure

Administering Department

Communication



ATTACHMENT A

**STATEMENT OF COMPLIANCE
REGARDING SEARCH OF PERSONAL
ACCOUNTS AND DEVICES OF**

**California Public Records Act Request
(Gov. Code § 6250, et seq.)**

Print or type name of official or employee

Re: _____
Insert Next Request or other control number

Requestor: _____
Print or type name of requestor

I, _____, state as follows:
Print name

1. I am an official or employee of the City of San Diego. I have received notice by the City of San Diego of a California Public Records Act (CPRA) request that requires a search for Public Records on my personal electronic messaging account(s) and/or device(s).
2. The CPRA request provided to me seeks:

Insert text of CPRA request

3. I am the owner or authorized user of the following personal account(s) and/or device(s) and am able to certify the records:

Insert description of personal electronic account(s) and/or device(s)

4. I have made a good faith, diligent, thorough, and complete search of the above-mentioned personal account(s) and/or device(s) for all responsive electronic communications to the above mentioned CPRA request.
5. Any responsive electronic communications discovered, and referenced below, were prepared, used, sent, or received by me in the ordinary course of business.

6. Any responsive electronic communications discovered, and referenced below, are true copies of all non-exempt records in my possession described in the above mentioned CPRA request.

Check the applicable box:

- I certify that I do not possess any responsive electronic communications.
- I certify that it is my practice to forward all public business electronic communications to my work email: _____.
Insert e-mail address

- I certify that I cannot reasonably recover responsive electronic communications.

Explain efforts to retrieve responsive electronic communications and why you were unable to recover responsive electronic communications.

- I certify that I found potentially responsive electronic communications from my personal account(s) and/or device(s), but I am withholding them because the communications are personal business and not a Public Record subject to the CPRA, or they are exempt from disclosure pursuant to California Government Code sections 6254 and/or 6255.

Describe with sufficient facts why the electronic communications are personal business and not subject to the CPRA, or specify the applicable statutory exemption(s). Attach additional pages, if necessary.

- I certify that I found potentially responsive electronic communications from my personal account(s) or device(s). I am providing all responsive communications except for those communications which are personal business and not a Public Record subject to the CPRA, or they are exempt from disclosure pursuant to California Government Code sections 6254 and/or 6255.

Describe with sufficient facts why the electronic communications are personal business and not subject to the CPRA, or specify the applicable statutory exemption(s). Add additional pages, if necessary.

Executed this ____ day of _____ 20____, in _____, California

Signature: _____ Print Name: _____

City Position/Title: _____