

June 20, 2005

VIA CERTIFIED MAIL

Denya Hearn, Assistant Dean of Student Life
Office of Student Life
Santa Monica Community College
1900 Pico Blvd.
Santa Monica, CA 90405

**RE: Request for Compliance with the California Public Records Act
Demand to Preserve Documents
Demand for Physical Inspection under the California Public Records Act, et. al.**

Dear Ms. Hearn,

You will find accompanying this letter a 19-page set of requests for documents under your care which, availing myself of my rights under the California Public Records Act, I would like to inspect. Please have them ready for me to come and inspect as soon as possible. If it is more to your convenience and you wish to send me copies of the relevant documents, send them to me at:

Jeff Higley
PO Box 46307
Los Angeles, Ca. 90046

Any costs that might accrue to me for such copying needs my consent before I will agree to pay them.

So that you might better understand the grounds and laws upon which I make this request, I include the following:

"CITY OF HEMET, Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; PRESS-ENTERPRISE COMPANY, Real Party in Interest. (37 Cal.App.4th 1411) completely supports a person's access to information via the CPRA as follows:

"In considering the arguments of the parties, we are mindful of the legislative declaration that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) (2) The adoption of CPRA reflected a "background of legislative impatience with secrecy in government" " (San Gabriel Tribune v. Superior Court (1983) 143 Cal.App.3d 762, 771-772 [192 Cal.Rptr. 415], quoting 53 Ops.Cal.Atty.Gen. 136, 143 (1970)) and courts must be careful to respect the purpose of the CPRA. We must give due regard to the primary purpose of CPRA, or what the United States Supreme Court has described as the "core purpose" of the analogous federal act: to " 'contribute significantly to

public understanding of the operations or activities of the government' " and to let citizens know " 'what their government is up to.' " (U.S. Dept. of Justice v. Reporters Committee (1989) 489 U.S. 749, 773, 775 [103 L.Ed.2d 774, 795, 797, 109 S.Ct. 1468].) [FN6] As our own Supreme Court has stated, "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." (CBS, Inc. v. Block (1986) 42 Cal.3d 646, 651 [230 Cal.Rptr. 362, 725 P.2d 470].) [FN7]."

Government Code, Sections 6253 and 6253.1, explains, by the way, that if there are any public records that you seek to withhold, you must state the reasons for such withholding."

And from the Santa Monica College, Board of Trustees Policies, you can find the following:

(<http://www.smc.edu/admin/trustees/meetings/2004/BP20001streading.pdf>)
Santa Monica Community College District

BOARD OF TRUSTEES POLICY
Section 2000: General District
ARTICLE 2100 ADMINISTRATIVE OPERATIONS

BP 2170 Records Management (new)

The Superintendent/President shall ensure that the District maintains a records management program for the appropriate retention and destruction of all District records, including but not limited to student records, employment records and financial records that comply with Title 5 and other relevant laws.

BP 2175 District Records

Records of the District shall be accessible to the public during normal hours of business. When access to District records is granted, examination thereof will be made in the presence of the record custodian regularly responsible for maintenance of files or designee.

If requested, copies of records of the District shall be provided at a reasonable cost per copy to be paid in advance as determined by the District.

Reference: Education Code Sections 72000, 72121
Government Code Section 54954.3, 54957.5
California Public Records Act Sections 6253.5, 6254, 6254.7

Further guidance can be found in California law:

A GUIDE TO THE CALIFORNIA
PUBLIC RECORDS ACT
THE BASICS

The Public Records Act (GOVT. CODE §§ 6250 - 6276.48) is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times

during the office hours of the...agency and every person has a right to inspect any public record, except as...provided, [and to receive] an exact copy [of] an identifiable record" unless impracticable. (§ 6253).

WHAT MUST HAPPEN

- Access is immediate and allowed at all times during business hours. (§ 6253(a)). Staff need not disrupt operations to allow immediate access, but a decision on whether to grant access must be prompt. An agency may not adopt rules that limit the hours records are open for viewing and inspection. (§§ 6253(d); 6253.4(b))
- The agency must provide assistance by helping to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (§ 6253.1)
- An agency has 10 days to decide if copies will be provided. In "unusual" cases (request is "voluminous," seeks records held off-site, OR requires consultation with other agencies), the agency may upon written notice to the requestors give itself an additional 14 days to respond. (§6253(c)) These time periods may not be used solely to delay access to the records. (§ 6253(d))
- The agency may never make records available only in electronic form. (§ 6253.9(e))
- Access is always free. Fees for "inspection" or "processing" are prohibited. (§ 6253)
- Copy costs are limited to "statutory fees" set by the Legislature (not by local ordinance) or the "direct cost of duplication", typically 10-25 cents per page. Charges for search, review or deletion are not allowed. (§ 6253(b)); North County Parents v. DOE, 23 Cal.App.4th 144 (1994). If a request for electronic records either (1) is for a record normally issued only periodically, or (2) requires data compilation, extraction, or programming, copying costs may include the cost of the programming. (§ 6253.9(a),(b))
- The agency must justify the withholding of any record by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. (§6255)

By copy of this certified written notification, I am requesting that you cease and desist all document destruction and/or modification and that any and all intended document destruction and/or document modification proceedings be suspended. I further request that you and your agents and employees retain and preserve hard-copy documents (including calendars and appointment books), electronic files, emails, voice mails, data compilations and/or tangible objects pertaining to the relevant time frame and relevant events or issues: to wit, all documents, grants, contracts, consultant contracts, courses, notes, bills, invoices, proposals, minutes, agendas, logfiles, etc. relating to the operations of the Office of Student Life.

I further request that you maintain any and all electronic data whether on the network, desktop, hard-drive, laptop, blackberry, PDA, diskette, and/or CD-ROM or DVD-ROM and whether at home or at work. I further request that you cease and desist modification of relevant documents, whether in hard-copy or electronic format.

The laws under 18 U.S.C. Section 1519 provide in part that "whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States ... or in relation to or contemplation of any such matter" has committed a federal felony punishable by imprisonment of up to 20 years.

If you plan to go on vacation during the foreseeable future, during which time I wish to inspect the aforementioned records, I request that you direct me to another custodian of records and/or employee at Santa Monica College who will aid me in my inspection.

Do not hesitate to contact me if I can be of assistance of any kind. Thank you for your prompt attention regarding this matter.

Sincerely,

Jeffery Mark Higley,

P.O. Box 46307
Los Angeles, CA 90046
Phone (310) 902-1603
Email: longwing@adelphia.net

cc: Dr. Chui Tsang, president of Santa Monica College
Dr. Robert "Bobbie" Adams