

FILED/ENDORSED
MAR 17 2021
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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SACRAMENTO

16 PUBLIC.RESOURCE.ORG, INC.,
17
18 Petitioners,
19
20 v.
21
22 CALIFORNIA OFFICE OF
23 ADMINISTRATIVE LAW, and the
24 CALIFORNIA BUILDING STANDARDS
25 COMMISSION
26
27 Respondents.
28

Case No. **34-2021-80003612**
**VERIFIED PETITION FOR PEREMPTORY
WRIT OF MANDATE ORDERING
COMPLIANCE WITH THE CALIFORNIA
PUBLIC RECORDS ACT**

[Gov't. Code §§ 6250, *et seq.*; Civ. Proc.
Code §§ 1085, *et seq.*]

BY FAX

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1 INTRODUCTION

2 1. The California Public Records Act (“CPRA”), Government Code §§ 6250 *et seq.*,
3 establishes a “fundamental and necessary right” to access “information concerning the conduct of
4 the public’s business,” including the laws of the State. This principle is enshrined in the California
5 Constitution. Cal. Const. Art. I § 3. These provisions require disclosure of governmental records to
6 the public upon request, unless exempted by law. If an agency does not honor a valid CPRA request,
7 the person making the request may seek a writ of mandate to enforce the CPRA.

8 2. Here, from December 2020 through February 2021, petitioner Public.Resource.Org,
9 Inc. (“Public Resource”) submitted CPRA requests to Respondents California Office of
10 Administrative Law (“OAL”) and California Building Standards Commission (“BSC”) seeking
11 electronic copies of the titles of the California Code of Regulations (“CCR”) each agency is
12 responsible for maintaining. Respondents refused, and their responses did not comply with the
13 CPRA.

14 3. Public Resource asked these agencies for electronic copies of the CCR so that a
15 complete, unified, and electronic version of the CCR can be assembled for public access, without
16 the strictures of private paywalls, terms of use, or the need for citizens to drive to a library to consult
17 a paper copy. Such a resource does not currently exist, even though Californians have a
18 constitutional right to freely access these materials because they are the very rules that govern the
19 “conduct of the public’s business.” Respondents’ justifications for denying Public Resource’s
20 requests ignore the mandates of the CPRA: the CCR is unambiguously a public record;
21 Respondents possess electronic copies of the CCR; they can point to no statutory basis for
22 nondisclosure; and the third-party interests they seek to protect do not (and should not) come before
23 Californians’ right to access the laws of the State.

24 4. Accordingly, Public Resource asks this Court for a writ of mandate pursuant to
25 California Code of Civil Procedure §§ 1085 *et seq.* and the CPRA commanding OAL and BSC to
26 comply with the CPRA by producing electronic copies of the CCR to Public Resource.

1 **PARTIES**

2 5. Petitioner Public Resource is a 501(c)(3) nonprofit organization, incorporated and
3 based in California, with the mission of improving public access to government records and primary
4 legal materials. Public Resource is the national leader in providing public access to legislative,
5 regulatory, and judicial edicts across a wide range of areas from both federal and state institutions.
6 Public Resource has worked extensively with the Cornell Legal Information Institute to make
7 substantial improvements to the Code of Federal Regulations (“CFR”), including campaigns to
8 make the CFR accessible to the visually impaired and viewable on mobile devices. Public Resource
9 also advised the Obama Administration’s efforts to reform the Federal Register into a far more
10 usable format, an achievement which earned the Office of the Federal Register an award in 2011
11 for “Most Innovative Federal Agency.” Public Resource is committed to making the regulations of
12 all fifty states available in a common and usable format, including updates, to allow the public to
13 see how regulatory regimes change over time.

14 6. Respondent OAL was established in 1980 to ensure that state agency regulations are
15 clear, necessary, legally valid, and available to the public. OAL is responsible for reviewing
16 administrative regulations from over 200 state agencies and transmitting those regulations to the
17 Secretary of State. OAL also oversees the publication and distribution of Titles 1–5, 7–23, and 25–
18 28 of the CCR (all Titles except Title 24, which is managed and published by BSC, and Title 6,
19 which has been revoked).

20 7. Respondent BSC was established in 1953 by the California Building Standards Law
21 (Health and Safety Code §§ 18901 *et seq.*), and is situated within the California Department of
22 General Services, under the Government Operations Agency. BSC members are appointed by the
23 Governor and confirmed by the State Senate. BSC administers California’s building code adoption
24 process; coordinates and manages the model code adoption process for various state agencies;
25 reviews and approves building standards proposed by other agencies; and codifies and publishes
26 the California Building Standards Code as Title 24 of the CCR.

27 **JURISDICTION AND VENUE**

28 8. This Court has jurisdiction under Government Code §§ 6258 and 6259; Code of

1 Civil Procedure §§ 1060 and 1085; and Article VI, Section 10 of the California Constitution.

2 9. Venue is proper in this Court because the records in question are in Sacramento
3 County. Cal. Gov't Code § 6259; Cal. Civ. Proc. Code § 401(1). Venue is also proper because
4 Respondents reside in Sacramento County and the events in this case occurred there. Cal. Civ. Proc.
5 Code §§ 393, 394(a).

6 **FACTS**

7 OAL

8 10. OAL's purpose is to "ensure that agency regulations are clear, necessary, legally
9 valid, and available to the public."¹ OAL reviews regulations from over 200 state agencies,
10 transmits them to the Secretary of State, and manages the publication of the CCR (except for Title
11 24). But OAL does not, itself, publish the CCR. Instead, OAL contracts with a private entity, West
12 Publishing Corporation ("West"), which maintains a complete copy of the CCR called the "Master
13 Database," from which West publishes print copies and an online version. Although the current
14 version of the agreement is not yet public, the prior version (for January 1, 2016—December 31,
15 2020) is available, and OAL's October 1, 2020 and October 29, 2020 Notices show that the contract
16 was renewed, and that none of the provisions listed below were substantively changed. (Exhibit A)
17 (Notice Regarding Changes to the Agreement, and OAL's Notice of Intent to Award Contract to
18 West). The changes stated in those notices are not material to this dispute, and the agreement's
19 primary thrust remains intact. Thus, on information and belief, the current contract between OAL
20 and West continues to state that:

21 The contractor shall maintain the Official California Code of Regulations (CCR) in an
22 electronic database, which for purposes of this contract shall be referred to as the "Master
23 Database." To ensure that all CCR products accurately reflect the Official CCR content,
24 the Master Database must be the source for all hard copy text and electronic products as
25 well as the source for the contents of the Internet CCR.

26 (2016-2020 OAL-West Contract, Exhibit B at 9.)

27 11. Under the contract, when OAL receives approval from the Secretary of State for

28 ¹ <https://oal.ca.gov/about-the-office-of-administrative-law/>.

1 new regulations, updates, or revisions to any part of the CCR, it continues to transmit those changes
2 to West to keep the Master Database current:

3 Prompt and accurate updating of the CCR Master Database is a key component of the
4 CCR publication contract. The contractor shall update the Master Database as soon as
5 feasible after OAL provides the contractor with regulations that have been endorsed by the
6 Secretary of State, preferably within 15 days but in no event longer than 30 days after
7 OAL delivers the regulation text. The text of regulations and all other items in the Master
8 Database shall be subject to inspection, revision, and correction by OAL. The contractor
9 shall take immediate action to make any corrections specified by OAL

10 (2016-2020 OAL-West Contract, Exhibit B at 9.) Thus, although West hosts and manages the
11 Master Database, OAL has full control over the contents of the Master Database. OAL also
12 maintains ownership over the CCR, since the OAL-West Contract expressly reserves all rights in
13 the CCR Master Database to OAL. (*Id.* at 21, 22)

14 12. West sells unrestricted access to the CCR as part of a bundle package of California
15 law for \$95 per month for one year, and provides an online version to the public, which is subject
16 to West's terms of service. (available at: <https://www.thomsonreuters.com/en/terms-of-use.html>).

17 *Public Resource's Request to OAL*

18 13. On December 29, 2020, Public Resource sent a CPRA request to OAL, seeking an
19 electronic copy of Titles 1–5, 7–23, and 25–28 of the CCR. (Exhibit C.) Public Resource's letter
20 explained that the CCR is a "Public Record" under the CPRA, and that OAL was therefore obliged
21 to disclose it to Public Resource in "all formats in [OAL's] possession, including (but not limited
22 to) structured, machine-readable digital formats, such as XML or PDF files." Public Resource cited
23 the CPRA provision commanding agencies to provide records in "any electronic format in which
24 it holds the information" and any requested format "used by the agency to create copies for its own
25 use or for provision to other agencies." Cal. Gov't Code § 6253(a)(1)–(2).

26 14. On January 8, 2021, Steven Escobar, Senior Attorney for OAL, responded to Public
27 Resource's request, and invoked the statutory 14-day extension to respond to the request. (Exhibit
28 D at 36-37) On January 22, 2022, OAL provided a substantive response, stating that the CCR was

1 available from West online at <https://govt.westlaw.com/calregs/Index>, and that OAL was willing
2 to scan paper copies of the CCR and send those photocopies to Public Resource. (Exhibit D at 35.)
3 OAL did not cite any statutory exemptions which would apply to the records in question.

4 15. On February 3, 2021, Public Resource sent a reply letter seeking reconsideration
5 based on two problems with OAL's denial.

6 16. First, Public Resource explained that the online version published by West provided
7 in OAL's response was irrelevant to OAL's duties under the CPRA, which requires that agencies
8 provide public records in the electronic formats that they hold, use, or provide to other agencies.
9 Cal. Gov't Code § 6250(a)(1)-(2). Additionally, the West URL was not "publicly available" under
10 CPRA law because visitors to the private website were "subject to end-user restrictions" which "are
11 incompatible with the purposes and operation of the CPRA." *Cty. of Santa Clara v. Super. Ct.*, 170
12 Cal. App. 4th 1301, 1334 (2009). (Exhibit E.)

13 17. Second, Public Resource explained that OAL's offer to provide paper copies or
14 scanned PDFs did not comply with the CPRA's mandates that agencies produce electronic copies
15 in the electronic format (1) in which they hold the information or (2) that they use to create copies
16 for their own use or to provide to other agencies. Cal. Gov't Code § 6253.9(a)(1)-(2).

17 18. On February 17, 2021, Mr. Escobar responded to Public Resource's second letter to
18 OAL. He stated that OAL does not have a structured, machine-readable copy of the CCR. (Exhibit
19 D at 34.) He stated that OAL maintains a repository of out-of-date versions of the CCR on CD-
20 ROMs, but "that the contents of the CD-ROM cannot be copied in whole and transferred to another
21 storage device" and that each section would need to be individually extracted and copied from the
22 CD-ROM. (*Id.*) Again, OAL did not cite any statutory exemptions that would prevent disclosure.

23 19. Public Resource responded to OAL's February 17, 2021 email on February 19,
24 2021, and sent a follow-up email on February 24, 2021. (Exhibit D.) In those emails, Public
25 Resource asked for more information on the CD-ROM storage system, and whether OAL could
26 simply provide Public Resource with a copy of the CCR Master Database. On February 26, 2021,
27 Mr. Escobar responded, providing more information about the CD-ROM system. (*Id.*) On March
28 2, 2021, Mr. Escobar responded on behalf of OAL, stating: "OAL does not have a copy of a CCR

1 Master Database.” (Exhibit D at 31.)

2 BSC

3 20. BSC codifies and publishes building standards in Title 24 of the CCR, the California
4 Building Standards Code. BSC incorporates model codes into the California Building Standards
5 Code, and BSC contracts with various private parties who publish different parts of the standards.
6 Specifically, information from the International Code Council (“ICC”) is incorporated into Parts 1,
7 2, 2.5, 6, 8, 9, 10, 11 and 12 of Title 24; the International Association of Plumbing and Mechanical
8 Officials (“IAPMO”) provides information included in Parts 4 and 5; and the National Fire
9 Protection Association (“NFPA”) does so for Part 3. These three entities sell these separate parts
10 of Title 24 to the public.²

11 Public Resource’s Request to BSC

12 21. On December 29, 2020, Public Resource sent a CPRA request to BSC, seeking an
13 electronic copy of Title 24 of the CCR. (Exhibit F.) Public Resource’s letter explained that Title 24
14 of the CCR is a “Public Record” under the CPRA, and that BSC was obliged to disclose it to Public
15 Resource in “all formats in [BSC’s] possession, including (but not limited to) structured, machine-
16 readable digital formats, such as XML or PDF files.” *Id.* In support, Public Resource cited the text
17 of CPRA, which states that an agency must provide records in “any electronic format in which it
18 holds the information” and any requested format “used by the agency to create copies for its own
19 use or for provision to other agencies.” Cal. Gov’t Code § 6253.9(a)(1)–(2); (*Id.*)

20 22. On January 7, 2020, Michael Nearman, Deputy Executive Director of BSC,
21 responded to Public Resource’s request. (Exhibit G.) BSC did not cite any statutory exemptions
22 which would excuse BSC’s obligation to comply with Public Resource’s request. Instead, BSC

23 _____
24 ² Title 24 is distributed for purchase through various private entities, each with their own unique
25 set of restrictions, options, access levels, and pricing regimes. For example, the California
26 Electrical Code, Title 24 Part 3, is sold by NFPA for \$215.50 ([https://catalog.nfpa.org/NFPA-70-
27 National-Electrical-Code-with-California-Amendments-P17223.aspx](https://catalog.nfpa.org/NFPA-70-National-Electrical-Code-with-California-Amendments-P17223.aspx)); The California Plumbing
28 Code, Title 24 Part 5, is sold by IAPMO for \$179.00 ([https://iapmomembership.org/index.
php?page=shop.product_details&flypage=flypage_iapmo.tpl&product_id=1320&category_id=8
&option=com_virtuemart&Itemid=3&redirected=1&Itemid=3&vmchk=1&Itemid=3](https://iapmomembership.org/index.php?page=shop.product_details&flypage=flypage_iapmo.tpl&product_id=1320&category_id=8&option=com_virtuemart&Itemid=3&redirected=1&Itemid=3&vmchk=1&Itemid=3)); Title 24,
Parts 1, 2, 2.5, 6, 8, 9, 10, 11 and 12 are available from the ICC, which sells online access to the
codes through a multi-tiered subscription service (Basic, Basic Plus, Premium Lite, and Premium)
(<https://codes.iccsafe.org/content/CRC2019P3>).

1 provided three reasons for refusing to produce the requested records.

2 23. First, BSC stated that print editions of Title 24 are available for inspection at certain
3 public libraries across the state, and can be purchased (in whole or in part) from certain private
4 entities. (*Id.*)

5 24. Second, BSC stated that Title 24 can be viewed online at
6 <https://www.dgs.ca.gov/BSC/Codes>, which links to various private websites that host different
7 parts of Title 24 with varying levels of access and restrictions on their use. (*Id.*)

8 25. Third, BSC stated that it “does not have the publishing rights to Title 24 and
9 therefore cannot provide free copies to the public” because “Title 24 is based on and includes model
10 codes produced by the publishing entities, and they then publish California’s codes, retaining
11 copyright protections.” (*Id.*)

12 26. On January 29, 2021, Public Resource sent a reply letter, explaining that BSC’s
13 reasons for its denial lacked merit, and seeking reconsideration of the issue under the CPRA’s
14 mandates. (Exhibit H.)

15 27. First, Public Resource explained that the availability of hard copy versions of public
16 records at select libraries is irrelevant to BSC’s duties under the CPRA. Nowhere in the CPRA does
17 it say that an agency can avoid complying with a CPRA request because it has deposited hard copies
18 of the requested record at various state buildings. (*Id.*)

19 28. Second, Public Resource explained that the website version of Title 24, cited in
20 BSC’s letter, did not comply with the CPRA, which requires that agencies provide public records
21 in the electronic formats that they hold, use, or provide to other agencies. Cal. Gov’t Code §
22 6250(a)(1)–(2). Public Resource also explained that the code sections available via BSC’s website
23 were “subject to end-user restrictions” which “are incompatible with the purposes and operation of
24 the CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1335; (*Id.*)

25 29. Finally, Public Resource addressed BSC’s argument that it could not provide a
26 compliant copy of Title 24 because the private publishing entities “retain copyright protections.”
27 (Exhibit H.) Public Resource explained that, under California law, any refusal to provide public
28 records on the basis of copyright protection must be supported by express statutory authority. BSC

1 provided no support for its position that any part of Title 24 is copyrighted, or that copyright could
2 support its denial.

3 30. Having received no response, Public Resource followed up on February 24, 2021 to
4 ask whether BSC would provide an additional response. (Exhibit I.) On March 2, 2021, Mia
5 Marvelli, Executive Director of BSC, responded: “BSC stands by its original response letter and
6 there will be no additional response.” (*Id.*)

7 THE CALIFORNIA PUBLIC RECORDS ACT

8 31. The CPRA was a landmark piece of legislation passed in 1968. The preamble states:
9 “In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and
10 declares that access to information concerning the conduct of the people’s business is a fundamental
11 and necessary right of every person in this state.” Cal. Gov’t Code § 6250. As the result of a 2004
12 initiative, Proposition 59, voters enshrined the CPRA’s right of access to information in the state
13 Constitution: “The people have the right of access to information concerning the conduct of the
14 people's business, and, therefore, . . . the writings of public officials and agencies shall be open to
15 public scrutiny.” Cal. Const. art. I § 3(b)(1). As amended by the initiative, the Constitution also
16 directs that the statute “shall be broadly construed if it furthers the people’s right of access, and
17 narrowly construed if it limits the right of access.” Cal. Const. art. I § 3(b)(2); *L.A. Cty. Bd. of*
18 *Supervisors v. Super. Ct.*, 2 Cal. 5th 282, 290–91 (2016).

19 32. The CPRA requires that all records that are prepared, owned, used or retained by
20 any public agency, and that are not subject to statutory exemptions, must be made publicly available
21 upon request, in the electronic formats possessed by the agency. Cal. Gov’t Code § 6253.9(a)(1)–
22 (2).

23 33. To establish that an agency has a duty to disclose under § 6253(c), a petitioner must
24 show that the record (1) “qualif[ies] as [a] ‘public record[]’” within the meaning of § 6252(e) and
25 (2) is “in the possession of the agency.” *Anderson-Barker v. Super. Ct.*, 31 Cal. App. 5th 528, 538
26 (2019).

27 34. The agency “opposing disclosure bears the burden of proving that an exemption
28 applies.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1321 (citing *Bd. of Trs. of Cal. State Univ. v.*

1 *Super. Ct.*, 132 Cal. App. 4th 889, 896 (2005); see also *L.A. Unified Sch. Dist. v. Super. Ct.*, 228
2 Cal. App. 4th 222, 239 (2014). Here, in opposing Public Resource’s request for the disclosure of
3 the CCR, Respondents BSC and OAL bear the burden of proving that an exemption applies. They
4 have not done so, nor can they.

5 **THE CALIFORNIA CODE OF REGULATIONS IS A PUBLIC RECORD.**

6 35. Respondents have not disputed that the CCR is a public record under the CPRA.
7 The CPRA defines “public record” as “any writing containing information relating to the conduct
8 of the public’s business prepared, owned, used, or retained by any state or local agency regardless
9 of physical form or characteristics.” Cal. Gov’t Code § 6252(e). The CCR contains regulations for
10 a broad range of private conduct and business operations in California, including the building code,
11 the electrical code, the plumbing code, the environmental protection code, the business regulation
12 code, the motor vehicle code, the governing regulations of the California Attorney General, the
13 firearm code, regulations regarding state-wide and regional water commissions, port authority
14 codes, crime prevention and corrections codes, military and veterans affairs codes, the toxic
15 substances code—and hundreds more.

16 36. Creation and maintenance of the CCR is required by state statute. Cal. Gov’t Code
17 § 11342.4 (“[OAL] shall adopt, amend, or repeal regulations for the purpose of carrying out the
18 provisions of this chapter.”). Cal Health & Safety Code § 18930(a) (“Any building standard adopted
19 or proposed by state agencies shall be submitted to, and approved or adopted by, the California
20 Building Standards Commission prior to codification.”)

21 37. This alone makes the CCR a public record. *League of Cal. Cities v. Super. Ct.*, 241
22 Cal. App. 4th 976, 987 (2015) (“Any record required by law to be kept by an officer, or which he
23 keeps as necessary or convenient to the discharge of his official duty, is a public record.”); *Cnty.*
24 *Youth Athletic Ctr. v. City of Nat’l City*, 220 Cal. App. 4th 1385, 1418 (2013) (the definition of
25 “public record” is “broad” and “intended to cover every conceivable kind of record that is involved
26 in the governmental process” (quoting *Coronado Police Officers Ass’n v. Carroll*, 106 Cal. App.
27 4th 1001, 1006 (2003))).

28 38. As the body of law, mandated by statute, which governs a vast swath of business

1 and private life in California under threat of penalty, the CCR is—and should be—a public record.³
2 *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1507 (2020) (“Every citizen is presumed to
3 know the law, and it needs no argument to show . . . that all should have free access to its contents.”
4 (internal quotations omitted)). In the parlance of the CPRA, the CCR unambiguously relates to “the
5 conduct of the public’s business.” Neither Respondent has argued otherwise in their
6 correspondence with Public Resource.

7 *Respondents Possess the Requested Records.*

8 39. Both Respondents possess the public records requested by Public Resource. BSC
9 has not denied that it possesses Title 24. (Exhibit G.) And although OAL stated that it “does not
10 have a copy of a CCR Master Database” (Exhibit D at 31), that characterization ignores the fact
11 that OAL has constructive possession of the CCR, which means that the OAL possesses the CCR
12 Master Database for purposes of the CPRA.

13 40. In the context of the CPRA, courts define the term “possession” to “mean both actual
14 and constructive possession.” *Bd. of Pilot Comm’rs v. Super. Ct.*, 218 Cal. App. 4th 577, 598
15 (2013). Specifically, “an agency has constructive possession of records if it has the right to control
16 the records, either directly or through another person.” *Consol. Irrigation Dist. v. Super. Ct.*, 205
17 Cal. App. 4th 697, 710 (2012).

18 41. Here, there is no dispute that OAL has the right to control the contents of the CCR
19 Master Database maintained by West. OAL’s contract with West expressly provides that West must
20 “update the Master Database as soon as feasible after OAL provides the contractor with regulations
21 that have been endorsed by the Secretary of State, preferably within 15 days but in no event longer
22 than 30 days after OAL delivers the regulation text.” (Exhibit B at 9.) The contract further states

23 _____
24 ³ Indeed, records *far less* related to the conduct of the public’s business than the CCR are public
25 records under California law. *See, e.g., Am. Civil Liberties Union Found. v. Super. Ct.*, 3 Cal. 5th
26 1032, 1036 n.2 (2017) (“There is no dispute that [automatic license plate reader] data are public
27 records.”); *City of San Jose v. Super. Ct.*, 2 Cal. 5th 608, 614 (2017) (city employee
28 communications on private email accounts and cell phones concerning a redevelopment project
were public records subject to disclosure under the CPRA); *State Dep’t of Pub. Health v. Super.
Ct.*, 60 Cal. 4th 940, 945 (2015) (anonymized citations issued by the State Department of Public
Health to various long-term health care facilities were public records subject to disclosure under
the CPRA); *Sierra Club v. Super. Ct.*, 57 Cal. 4th 157, 175 (2013) (GIS-formatted database was a
non-exempt public record subject to disclosure under the CPRA).

1 that the “text of regulations and all other items in the Master Database shall be subject to inspection,
2 revision, and correction by OAL. The contractor [i.e., West] shall take immediate action to make
3 any corrections specified by OAL.” (*Id.*) Further, OAL retains all intellectual property rights in the
4 CCR. (Exhibit B at 3, 15.) Thus, OAL has full control over the contents of the Master Database.
5 Under California law, OAL therefore has constructive possession of the Master Database and must
6 produce it under the CPRA.⁴

7 42. Additionally, the Legislature, in drafting the CPRA, contemplated the exact
8 argument that OAL makes now, and forbade it. Section 6270(a) states: Notwithstanding any other
9 provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public
10 record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a
11 state or local agency from providing the record directly pursuant to this chapter.

12 43. Thus, Respondents cannot dodge their obligations to comply with the CPRA by
13 asserting that the CCR is in the possession of third parties. The plain text of the statute forbids it,
14 as the California Supreme Court has confirmed. *City of San Jose*, 2 Cal. 5th at 623–24 (“The
15 statute’s clear purpose is to prevent an agency from evading its disclosure duty by transferring
16 custody of a record to a private holder and then arguing the record falls outside CPRA because it is
17 no longer in the agency’s possession. . . . It simply prohibits agencies from attempting to evade
18 CPRA by transferring public records to an intermediary not bound by the Act’s disclosure
19 requirements.”).

20 *Copyright Does Not Provide a Justification for Nondisclosure*

21 44. BSC argues that it cannot disclose Title 24 because it is copyrighted. (Exhibit G.)
22 BSC’s position is incorrect as a matter of law. There is no basis for BSC to assert copyright as a

23 ⁴ In *Anderson-Barker v. Super. Ct.*, 31 Cal. App. 5th 528, 539 (2019), the petitioner sought access
24 to microfiche records to which the respondent city had access but did not control. The petitioner
25 argued that such access meant that the city had “possession” of the records in question. The Court
26 of Appeal disagreed, stating that “[f]or purposes of the CPRA, the term ‘constructive possession’
27 means ‘the right to control the records.’” The term “control” is generally defined as “the power or
28 authority to manage, direct, or oversee.” Citing *City of San Jose*, 2 Cal. 5th at 623; Black’s Law
Dict. (9th ed. 2009), p. 378.). Since the City had no right or ability to control the contents of the
records in question, it did not have constructive possession. Here, in sharp contrast, OAL has the
exclusive contractual right to control the CCR Master Database. It manages, directs, owns, and
oversees the exact contents of the CCR Master Database, and is therefore in constructive
possession of it for purposes of the CPRA.

1 basis for nondisclosure. Whether the California government or any of its agencies can claim
2 copyright protection in official creations is a matter of California law. *Cty. of Santa Clara*, 170 Cal.
3 App. 4th at 1331 (“State law determines whether [a public official] may claim a copyright in his
4 office’s creations.”) (internal quotations omitted); *City of Inglewood v. Teixeira*, No. CV-15-01815-
5 MWF (MRWx), 2015 U.S. Dist. LEXIS 114539, at *7–8 (C.D. Cal. Aug. 20, 2015) (“[W]hether
6 state and local governments can claim copyright protection is governed by state law.”).

7 45. Thus, when addressing copyright as a proffered basis for an agency’s nondisclosure,
8 courts look to California law for a specific authorization. *Cty. of Santa Clara*, 170 Cal. App. 4th at
9 1333 (because no “express authorization to secure copyrights” existed for GIS data, the county
10 could not assert copyright protection as a basis for nondisclosure); *City of Inglewood*, 2015 U.S.
11 Dist. LEXIS 114539, at *8–9 (because the city could identify “no affirmative grant of authority that
12 permits it to obtain and assert a copyright for the City Council Videos,” the court held that the city
13 could not withhold the videos on copyright grounds); *Cty. of Santa Clara*, 170 Cal. App. 4th at
14 1335 (holding that the CPRA’s mandate to provide public records “overrides a government
15 agency’s ability to claim a copyright in its work unless the legislature has expressly authorized a
16 public records exemption”).

17 46. Here, the legislature has not granted anyone the right to retain copyright in the CCR.
18 *Cty. of Santa Clara*, 170 Cal. App. 4th at 1333 (“The Legislature knows how to explicitly authorize
19 public bodies to secure copyrights when it means to do so. For example, the Education Code
20 includes a number of provisions authorizing copyrights, including this one: ‘Any county board of
21 education may secure copyrights, in the name of the board, to all copyrightable works developed
22 by the board, and royalties or revenue from such copyrights are to be for the benefit of the board
23 securing such copyrights.’” (citing Cal. Ed. Code § 1044)); *see also* Cal. Ed. Code, §§ 32360,
24 35170, 72207, 81459; Health & Safety Code, §§ 25201.11(a), 13159.8(c) (code provisions
25 authorizing state agencies to secure copyright in official works).

26 47. As such, neither BSC nor OAL can assert copyright as a justification for withholding
27 records in response to Public Resource’s CPRA requests.

28 48. Furthermore, the notion that the CCR is even *eligible* for copyright protection under

1 federal law is highly dubious. The CCR is the law, which is created by agencies at the behest of the
2 legislature. The United States Supreme Court has said that such works cannot be copyrighted.
3 *Georgia*, 140 S. Ct. at 1508 (holding that even though a state commission hired private publishers
4 to draft annotations, the finished work was not copyrightable because it fell under the government
5 edicts doctrine, and explaining that “copyright does not vest in works that are (1) created by judges
6 and legislators (2) in the course of their judicial and legislative duties”). The fact that the CCR
7 includes certain model codes authored by private entities does not change this conclusion in any
8 way. *Int’l Code Council, Inc. v. UpCodes, Inc.*, No. 17-cv-6261 (VM), 2020 U.S. Dist. LEXIS
9 92324, at *46–47 (S.D.N.Y. May 26, 2020) (holding that a privately authored work may “become
10 the law” and lose copyrightability based on five considerations: “(1) whether the private author
11 intended or encouraged the work’s adoption into law; (2) whether the work comprehensively
12 governs public conduct, such that it resembles a ‘law of general applicability’; (3) whether the work
13 expressly regulates a broad area of private endeavor; (4) whether the work provides penalties or
14 sanctions for violation of its contents; and (5) whether the alleged infringer has published and
15 identified the work as part of the law, rather than the copyrighted material underlying the law.”);
16 *Veeck v. Southern Building Code Congress, Inc.*, 293 F.3d 791 (5th Cir. 2002) (en banc) (a model
17 code enters the public domain when legislatively adopted as the law of a jurisdiction).

18
19 **THE VARIOUS “FREE” VERSIONS OF THE CCR DO NOT SATISFY RESPONDENTS’**
20 **LEGAL DUTIES UNDER THE CPRA.**

21 49. Respondents have stated that the CCR is currently available, in various forms, in
22 various places, and at various levels of access, both in hard copy and online. (Exhibits D at 35, G.)
23 But all of these versions carry restrictions that are inconsistent with the CPRA.

24 50. First, electronic copies of public records are not “publicly available” under the
25 CPRA when they are restricted by private terms of use. Respondents identify various electronic
26 versions of portions of the CCR. (Exhibit G (“Title 24 may also be viewed online free of charge
27 via the CBSC website [<https://www.dgs.ca.gov/BSC/Codes>]”); Exhibit D at 35 (“The most up-to-
28 date version of the CCR Titles you request are available online at <https://govt.westlaw.com/>

1 calregs/Index.”)) But these versions are published by private entities that impose contractual
2 restrictions on the public’s ability to access, use, and modify their contents:

- 3 • **ICC** (Title 24, Parts 1, 2, 2.5, 6, 8, 9, 10, 11 and 12):
4 <https://codes.iccsafe.org/codes/california> (read-only versions of the Administrative Code,
5 Building Code, Residential Code, Energy Code, Historical Building Code, Fire Code,
6 Existing Building Code, Green Building Code, and Referenced Standards Code).
- 7 • **IAPMO** (Title 24, Parts 4 and 5): (read-only version of the Mechanical Code,
8 <http://epubs.iapmo.org/2019/CMC/index.html#p=3>, and Plumbing Code:
9 <http://epubs.iapmo.org/2019/CPC/index.html>).
- 10 • **NFPA** (Title 24, Part 3): (read-only version of California Electrical Code
11 [https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view)
12 [standards/free-access?mode=view](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view))
- 13 • **West** (Titles 1-5, 7-23, and 25-28): (available at
14 <https://govt.westlaw.com/calregs/Index?transitionType=Default&contextData=%28sc.Default%29>, but users are subject to Thompson Reuter’s Terms of Use agreement
15 (https://legal.thomsonreuters.com/en/legal-notice/terms-of-use), its privacy policy
16 governing the use of personal information (https://www.thomsonreuters.com/en/privacy-statement.html), and its cookie policy requiring users to enable first-party and third-party
17 cookies to access the CCR (https://www.thomsonreuters.com/en/privacystatement.html#cookies).⁵

21 These private versions of public laws are not “publicly available” because the private entities
22 impose “end user restrictions” that “are incompatible with the purposes and operation of the
23 CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1335 (holding that the defendant county could
24 not demand licensing agreements or impose restrictions on end users of public records). In
25 *County of Santa Clara*, the Court of Appeal held that California law barred the imposition of end
26 user restrictions on public records. This policy, the court reasoned, “effectuates the purpose of the

27 ⁵ To avoid the restrictions, a user must pay these private entities a fee ranging from approximately
28 \$66 (for a paper copy of the swimming code from IAPMO) to \$865 (for a yearly electronic
subscription to all of the codes published by the ICC).

1 statute, which is increasing freedom of information by giving members of the public access to
2 information in the possession of public agencies.” *Id.* The court explained that the same policy “is
3 enshrined in the Constitution” and “would be undercut by permitting the County to place extra-
4 statutory restrictions on the records that it must produce, through the use of end user agreements.”
5 *Id.* (citations and quotations omitted). So too here. Current electronic versions of the CCR are
6 subject to a litany of contractual and technological restrictions. *See, e.g.*, West TOS Copyright
7 Policy, <https://legal.thomsonreuters.com/en/legal-notices/contacts> (requiring express permission
8 to copy and distribute cases and statutes electronically) (last visited on Mar. 11, 2021); ICC Title
9 24, Part I <https://codes.iccsafe.org/content/CAAC2019> (read-only version, technologically
10 incapable of copying/pasting on browser) (last visited on Mar. 11, 2021); IAPMO Title 24, Part 4
11 (mechanical code) <http://epubs.iapmo.org/2019/CMC/index.html#p=1> (read-only version,
12 technologically incapable of copying/pasting on browser) (last visited on Mar. 11, 2021). These
13 private versions are inadequate under the CPRA because of these end user restrictions.

14 51. Second, the availability of paper copies at certain libraries does not free agencies
15 from their responsibility to produce electronic copies in response to CPRA requests. (Exhibit G.)
16 The CPRA is clear that “any agency that has information that constitutes an identifiable public
17 record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make
18 that information available in an *electronic format* when requested by any person.” Cal. Gov’t Code
19 § 6253.9(a) (emphasis added). Paper copies do not satisfy this requirement.

20 52. Finally, OAL’s offer to scan paper copies of the CCR similarly misses the mark.
21 (Exhibit D at 35.) OAL must provide the records in an electronic format. Cal. Gov’t Code §
22 6250(a)(1)–(2) (agencies must provide records in electronic formats that they hold, use, or provide
23 to other agencies).

24 *No Exemption Applies.*

25 53. The CPRA carries a “presumption in favor of access.” *Am. Civil Liberties Union*
26 *Found. v. Super. Ct.*, 3 Cal. 5th at 1040. Agencies can overcome that presumption only by showing
27 that one of the *over 100* statutory exemptions applies. *Long Beach Police Officers Ass’n v. City of*
28 *Long Beach*, 59 Cal. 4th 59, 67 (2014) (“The act has certain specific exemptions (Cal. Gov’t Code

1 §§ 6254–6254.30), but a public entity claiming an exemption must show that the requested
2 information falls within the exemption.”); *City of San Jose*, 2 Cal. 5th at 616 (“Every such record
3 must be disclosed unless a statutory exception is shown.”); Cal. Gov’t Code § 6255 (a) (“The
4 agency shall justify withholding any record by demonstrating that the record in question is exempt
5 under express provisions of this chapter or that on the facts of the particular case the public interest
6 served by not disclosing the record clearly outweighs the public interest served by disclosure of the
7 record.”).

8 54. In their letters to Public Resource, neither Respondent invoked *a single one* of the
9 exemptions listed in the CPRA. (Exhibits D, G & I.) By failing to do so, they have waived the
10 ability to claim any exemption under the CPRA. *Haynie v. Super. Ct.*, 80 Cal. App. 4th 603, 611
11 (2000) (“The public agency has the burden of establishing an exemption before records are
12 provided, and exemptions not then asserted are waived.”).

13 CPRA PROCEDURE FOR WRIT OF MANDATE

14 55. When a verified petition to the superior court of the county where the records or
15 some part thereof are situated establishes that certain public records are being improperly withheld
16 from a member of the public, the court shall order the public official to disclose the public record,
17 or show cause as to why he or she should not do so. Cal. Gov’t Code § 6259(a). The court shall
18 decide the case after examining the record in camera (if permitted by the Evidence Code), papers
19 filed by the parties, and any oral argument and additional evidence as the court may allow. *Id.*

20 56. If the Court finds that failure to disclose is not justified, it shall order the public
21 official to disclose the record. *Id.* § 6259(b).

22 57. To ensure that access to public records is not delayed or obstructed, the CPRA
23 requires that “[t]he times for responsive pleadings and for hearings in this proceedings shall be set
24 by the judge of the court with the object of securing a decision as to these matters at the earliest
25 possible time.” Cal. Gov’t Code § 6258.

26 58. The CPRA and the California Constitution embody and protect the “fundamental
27 and necessary right of every person in this state” to access the information concerning the conduct
28 of the people’s business. The Constitution animates this right even further by guiding courts’

1 interpretations: “A statute, court rule, or other authority . . . shall be broadly construed if it furthers
2 the people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const. Art.
3 I § 3(b)(2). Respondents cite no exemption or public interest that justifies their withholding here.
4 And indeed, it is difficult to fathom a more classic and fitting invocation of the CPRA than Public
5 Resource’s request to access core public records—the very laws which govern virtually every
6 aspect of private and business life in this state. As the United States Supreme Court said last year:
7 “Every citizen is presumed to know the law, and it needs no argument to show . . . that all should
8 have free access to its contents.” *Georgia*, 140 S. Ct. at 1507 (internal quotations omitted). In
9 California, citizens do not have “free access” to the contents of the CCR. This writ seeks to remedy
10 that.

11 **FIRST CAUSE OF ACTION**
12 **For Violation of the California Public Records Act &**
13 **Article I § 3 of the California Constitution**
(Against Respondent OAL)

14 59. Petitioner Public Resource incorporates herein by reference the allegations of
15 paragraphs 1-59 above, as if set forth in full.

16 60. Respondent OAL’s refusal to release public records and its insufficient responses to
17 lawful requests violate the CPRA and Article I § 3 of the California Constitution.

18 **SECOND CAUSE OF ACTION**
19 **For Violation of the California Public Records Act &**
20 **Article I, §3 of the California Constitution**
(Against Respondent BSC)

21 61. Petitioner Public Resource incorporates herein by reference the allegations of
22 paragraphs 1-59 above, as if set forth in full.

23 62. Respondent BSC’s refusal to release public records and its insufficient responses to
24 lawful requests violate the CPRA and Article I § 3 of the California Constitution.

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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays as follows:

63. That the Court issue a peremptory writ of mandate directing Respondents to provide Petitioner with the requested records;

64. That Petitioners be awarded attorney's fees and costs pursuant to Cal. Gov't Code § 6259(d); and

65. For such other and further relief as the Court deems proper and just.

Dated: March 17, 2021

COOLEY LLP

By: 
Matthew D. Caplan

Attorneys for Plaintiff
Public.Resource.Org, Inc.

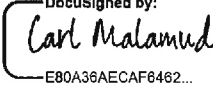
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VERIFICATION

I, Carl Malamud, hereby state as follows:

- 1. I have read the foregoing Petition for Writ of Mandate and know its contents.
- 2. I certify that the factual allegations contained in the Petition related to Petitioner Public.Resource.Org, Inc. are true, based on my own personal knowledge.

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct and that this Verification was executed on this 17th day of March, 2021 in Healdsburg, California.

DocuSigned by:

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 Carl Malamud

INDEX TO EXHIBITS

Exhibit	Pages	Description
A	1	2010 California Code of Regulations and California Notice of Register Publication Contract
B	2 - 29	2016-2020 OAL West CCR Agreement
C	30	Letter from Public.Resource.Org to Office of Administrative Law requesting a copy of Titles 1-5, 7-23 and 25-28 of the California Code of Regulations, dated December 29, 2020
D	31 - 38	Email thread between Public.Resource.Org to Office of Administrative regarding copies of Titles 1-5, 7-23 and 25-28 of the California Code of Regulations
E	39 - 40	Response Letter from Public.Resource.Org to Office of Administrative Law requesting a copy of Titles 1-5, 7-23 and 25-28 of the California Code of Regulations, dated February 3, 2021
F	41	Letter from Public.Resource.Org to Building Standards Commission requesting a copy of Title 24 the California Code of Regulations, dated December 29, 2020
G	42	Letter from California Building Standards Commission to Carl Malamud regarding Public Records Act request, dated January 7, 2021.
H	43 - 44	Response Letter from Public.Resource.Org to California Building Standards Commission responding to January 7, 2021 letter, dated January 29, 2021.
I	45 -46	Email from Mia Marvelli to Carl Malamud re PRA response, dated March 2, 2021.

Exhibit A

Exhibit B

ORIGINAL

COPY

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES
STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev. 10/2019)

<input type="checkbox"/> CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED	PAGES	AGREEMENT NUMBER	AMENDMENT NUMBER	Purchasing Authority Number
		OAL CCR CONTRACT 2015	2	OAL-7910

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY NAME

Office of Administrative Law

CONTRACTOR NAME

West Publishing Corporation

2. The term of this Agreement is:

START DATE

January 1, 2016

THROUGH END DATE

December 31, 2020

3. The maximum amount of this Agreement after this Amendment is:

Revenue contract - \$350,000 annual license fee plus 8.1% royalty payment.

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

Pursuant to section 2.1 of the OAL CCR CONTRACT 2015, the parties agree to extend the contract by 1 year beginning 1/1/2020 and ending 12/31/2020. This is the second of two optional extensions provided for in Section 2.1.1 of the original contract.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (If other than an individual, state whether a corporation, partnership, etc)

West Publishing Corporation

CONTRACTOR BUSINESS ADDRESS

610 Oppeman Drive

CITY

Eagan

STATE

MN

ZIP

55123

PRINTED NAME OF PERSON SIGNING

Donna H. Gies

TITLE

Assistant General Counsel

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

11-22-2019

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Office of Administrative Law

CONTRACTING AGENCY ADDRESS

300 Capitol Mall, Suite 1250

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Kenneth J. Pogye

TITLE

Director

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

12-2-19

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (if Applicable)

APPROVED

DEC 10 2019

OFFICE OF LEGAL SERVICES
DEPT. OF GENERAL SERVICES

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STATE OF CALIFORNIA
STANDARD AGREEMENT AMENDMENT
 STD. 213 A (Rev 8/08)

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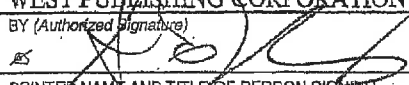
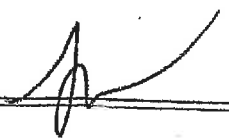
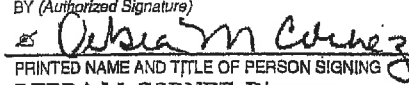
AGREEMENT NUMBER	AMENDMENT NUMBER
OAL CCR CONTRACT2015	1
REGISTRATION NUMBER	

ORIGINAL

- This Agreement is entered into between the State Agency and Contractor named below:
STATE AGENCY'S NAME
 OFFICE OF ADMINISTRATIVE LAW
CONTRACTOR'S NAME
 WEST PUBLISHING CORPORATION
- The term of this Agreement is 1/1/2016 through 12/31/2019
- The maximum amount of this Agreement after this amendment is: \$Revenue contract - \$350,000 annual license fee plus 8.1% royalty payment.
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
 Pursuant to section 21.1 of the OAL CCR CONTRACT 2015, the parties mutually agree to extend the contract by one year beginning January 1, 2019 and ending December 31, 2019. This is the first of two optional extensions provided for in Section 21.1 of the contract.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		CALIFORNIA Department of General Services Use Only <div style="border: 2px solid black; padding: 5px; text-align: center;"> APPROVED NOV 30 2018 </div> OFFICE OF LEGAL SERVICES DEPT. OF GENERAL SERVICES
<small>CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)</small> WEST PUBLISHING CORPORATION		
<small>BY (Authorized Signature)</small> 	<small>DATE SIGNED (Do not type)</small> 11/15/18	
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small> Alejandro Medrano, Manager, Government Customer Contracts		
<small>ADDRESS</small> 610 Opperman Drive, Eagan, MN 55123		
STATE OF CALIFORNIA		<input type="checkbox"/> Exempt per: 
<small>AGENCY NAME</small> OFFICE OF ADMINISTRATIVE LAW		
<small>BY (Authorized Signature)</small> 	<small>DATE SIGNED (Do not type)</small> 11-19-2018	
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small> DEBRA M. CORNEZ, Director		
<small>ADDRESS</small> 300 Capitol Mall, Suite 1250, Sacramento, CA 95814		

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 08/03)

AGREEMENT NUMBER OAL CCR CONTRACT 2015
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME	OFFICE OF ADMINISTRATIVE LAW		
CONTRACTOR'S NAME	WEST PUBLISHING CORPORATION		
- The term of this Agreement is: 1/1/2016 through 12/31/2018
- The maximum amount of this Agreement is: \$ [Revenue Contract: \$350,000 Annual License Fee + 8.1% Royalty paid to OAL]
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	9 page(s)
Exhibit B – Budget Detail and Payment Provisions	2 page(s)
Exhibit C* – General Terms and Conditions	1
Check mark one item below as Exhibit D:	
<input checked="" type="checkbox"/> Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)	8 page(s)
<input type="checkbox"/> Exhibit - D* Special Terms and Conditions	
Exhibit E – Additional Provisions	page(s)

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.dgs.ca.gov/ois/Resources/StandardContractLanguage.aspx

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.




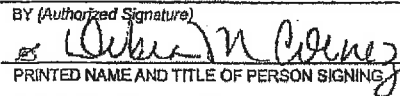
CONTRACTOR		California Department of General Services Use Only  <div style="border: 2px solid black; padding: 5px; text-align: center;"> APPROVED SEP 29 2015 </div> OFFICE OF LEGAL SERVICES DEPT. OF GENERAL SERVICES  <input type="checkbox"/> Exempt per:
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) West Publishing Corporation		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 9/16/2015	
PRINTED NAME AND TITLE OF PERSON SIGNING John S. Nelson, Director, Procurement and Proposal Management		
ADDRESS 610 Opperman Drive, Eagan MN 55123		
STATE OF CALIFORNIA		
AGENCY NAME Office of Administrative Law		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 9-9-2015	
PRINTED NAME AND TITLE OF PERSON SIGNING Debra M. Cornez, Director		
ADDRESS 300 Capitol Mall, Suite 1250, Sacramento, CA 95814		

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Exhibit A, Scope of Work/Required Publication Services

1. Costs

All costs incurred by the contractor in its performance of this contract are the responsibility of the contractor and shall not be charged to the state of California.

2. Master Database

The contractor shall maintain the Official California Code of Regulations (CCR) in an electronic database, which for purposes of this contract shall be referred to as the "Master Database." To ensure that all CCR products accurately reflect the Official CCR content, the Master Database must be the source for all hard copy text and electronic products as well as the source for the contents of the Internet CCR.

Prompt and accurate updating of the CCR Master Database is a key component of the CCR publication contract. The contractor shall update the Master Database as soon as feasible after OAL provides the contractor with regulations that have been endorsed by the Secretary of State, preferably within 15 days but in no event longer than 30 days after OAL delivers the regulation text. The text of regulations and all other items in the Master Database shall be subject to inspection, revision, and correction by OAL. The contractor shall take immediate action to make any corrections specified by OAL.

The contractor shall maintain the Master Database in a secure environment and shall establish an Availability and Operational Recovery Plan to protect the integrity and availability of the Master Database against the risk of attacks that may cause nuisance, significant interruptions of service or unauthorized changes to the Master Database content. At a minimum, the contractor's Availability and Operational Recovery Plan shall include upgrading software and installing software patches and updates as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Master Database.

The CCR Master Database shall consist of material not subject to any claims of ownership or copyright, except those of OAL on behalf of the state of California. The CCR Master Database shall include tables of contents, headings and captions, regulation text including all charts, graphs, tables, illustrations, forms etc. designated by OAL for publication, authority and reference citations, and history notes.

Upon completion or termination of the contract, the contractor shall provide OAL with a useable electronic database containing the data from the Master Database. The data must be provided in a standard (free from any proprietary formatting or codes) portable and easily processed or converted format such as XML or a relational database capable of extraction via standard SQL queries. The contractor shall be responsible for all costs associated with transferring the data to OAL in a usable form upon completion or termination of the CCR publication contract.

3. California Code of Regulations

3.1. Official California Code of Regulations

The contractor shall publish the Official CCR on 8½ by 11 Inch pages, loose leaf, in a form which assures that pages can be easily inserted into standard three-ring binders. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Regulation text shall be printed in black, with font size no smaller than that used in the Official CCR in 2014. The format of the Official CCR is subject to OAL approval prior to initial publication. The contractor must submit any future format changes to the Director of OAL for approval prior to implementing any changes. The contractor may offer binders for sale to subscribers but shall not require any subscriber to purchase binders.

The contractor shall accurately and legibly print regulations as filed with the Secretary of State, including all charts, graphs, tables, illustrations, notes, graphics, etc. Each volume of the Official CCR shall contain the following:

- (a) Title Page;
- (b) A page listing hierarchy for that title with a nomenclature cross-reference for the pre-1990 hierarchy;
- (c) Table of contents for that title listing the headings of each Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article;
- (d) Division level table of contents preceding each division within a title;
- (e) Complete text of regulations, including all narrative text, forms, appendices, prefaces, footnotes, endnotes, tables, formulas, graphics, illustrations or other regulatory material designated by OAL for publication;
- (f) Authority and reference citations for each section;
- (g) History notes for each section;
- (h) The Register number and publication date of the last revision on each page to reflect the last date any item on that page was affected by a regulatory action;
- (i) Such other materials as OAL may direct to be published.

In addition to the items listed above, the Official CCR may, in the contractor's sole discretion, also include annotations, appropriate research references, or other editorial material created by the contractor, to which the contractor may retain all intellectual property rights.

3.2. CCR Supplement ("Register")

The contractor shall compile the regulations filed during each calendar week, and use this compilation to update the CCR by publishing the weekly California Code of Regulations (CCR) Supplement. Using the underline (or italics) and ~~strikeout~~ in regulation text to discern changes to the existing text of the CCR, the publisher shall integrate newly adopted, amended or repealed regulations into the CCR and publish the resulting regulatory changes in the CCR Supplement.

The contractor shall number the CCR Supplement by week and year (e.g. Register 2014, No. 42 contains regulations filed with the Secretary of State during the 42nd week of 2014);

and shall publish the weekly CCR Supplement preferably within 15 days but in no event longer than 30 days after OAL sends regulation text for publication.

For sections that are being repealed, the contractor shall add the word (Repealed) to the heading for the repealed section. If other repealed section(s) appear on a page being revised in that issue of the CCR Supplement, and the heading of the other repealed section(s) are missing the word (Repealed), the contractor shall add (Repealed) to that heading.

The Supplement shall match the format requirements stated above for the Official CCR. The CCR Supplement shall be distributed to subscribers accompanied by information adequate to inform subscribers how to replace the updated pages of the Official CCR. The contractor shall distribute the CCR Supplement on a timely basis to subscribers for all full sets, subscribers to individual title(s) or subscribers to any other product iteration offered by the publisher that are affected by the weekly updates.

3.3. CCR Tables of Contents

3.3.1. Master Table of Contents

The contractor shall publish a Master Table of Contents with a complete listing by heading of all regulations in all titles (excluding Title 24) by Title, Division, Chapter, Subchapter, Group and Subgroup where applicable, and Article. The contractor shall update the Master Table of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages.

3.3.2. Division Level Table of Contents

Each Division of the CCR shall be preceded by a Division Level Table of Contents for that Division listing the headings of each Chapter, Subchapter, Group and Subgroup where applicable, Article and Section. The contractor shall update the Division Level Tables of Contents quarterly to reflect regulations that were added, amended or repealed during the previous calendar quarter, and distribute any revised pages, accompanied by instructions adequate to inform subscribers how to replace the updated pages, except that if regulatory material filed by OAL with the Secretary of State includes entire new chapters or entire new articles, the contractor shall distribute a revised Division level Table of Contents (or revised pages in the Division Level Table of Contents) when it publishes the new chapter or article.

4. Master Index

The contractor shall create and publish a Master Index to which the contractor may retain all intellectual property rights. The Master Index shall include a Table of Statutes to Regulations, listing all of the California statutes cited in the Authority and Reference notes following each section of the CCR. The Master Index shall be updated no less than annually.

The Master Index may, in the contractor's sole discretion, include appropriate research references, annotations or other editorial material to which the contractor may retain all

intellectual property rights. The title page of the Master Index shall indicate that the Master Index has not been reviewed by the Office of Administrative Law and is not part of the Official California Code of Regulations. The contractor shall publish the Master Index no later than 180 days after the start date of the CCR publication contract.

The contractor may copyright the Master Index. If the contractor declines to obtain a copyright on its own behalf, the contractor shall obtain a copyright in the name of OAL on behalf of the State of California. All expenses of obtaining such copyright, either on behalf of the contractor or OAL, shall be the responsibility of the contractor.

5. Electronic CCR

The contractor shall publish the CCR on CD-ROM, or other successor technology as may otherwise be agreed to by OAL and the contractor, monthly at a minimum. The Electronic CCR shall contain all elements of the Official CCR and shall accurately reflect the complete contents of the Official CCR. The Electronic CCR may, in the contractor's sole discretion, also include other appropriate research references, annotations or other editorial material to which the contractor may retain all intellectual property rights.

6. CCR Products

In addition to selling full sets of the CCR in hardcopy and CD-ROM, and licensing all or part of the CCR to other publishers, the contractor may, in its sole discretion, elect to additionally publish any segments or compilations of the CCR for sale as separate units, in any topic area or other grouping, and in any format.

7. Internet CCR

The contractor shall make available on the Internet and free to the public an electronic version of the CCR which is capable of accommodating a high number of simultaneous users, at minimum supporting the number of simultaneous users who visited the Internet CCR in 2014. The Internet CCR shall meet the following minimum requirements:

- (a) Accessible to Persons with Disabilities: The contractor shall ensure that the Internet CCR complies with applicable state and federal requirements for accessibility by persons with disabilities.
- (b) Content: The Internet CCR shall accurately reflect the content of the Official CCR. The contractor shall update the Internet CCR no later than 5:00 p.m. Pacific time on the next business day following the date it issues the weekly CCR Supplement. The Internet CCR shall accurately reflect the date on which the online CCR was last updated.
- (c) Format: The Internet CCR shall include any necessary information, software, and technical support to make the complete CCR available, including graphics, tables, forms and any other material included in the Official CCR. The format shall be compatible with all Internet browser software and supported versions widely in use, including, but not limited, to Internet Explorer, Mozilla Firefox, Apple Safari and Google Chrome. The use of browser plugins or additional software (such as Adobe Flash, Microsoft Silverlight etc.) to view the database content is discouraged.

- (d) Agency List and Division Level Links: The Internet CCR shall contain list of state agency names and addresses, each of which shall contain a permanent link (i.e. hard link that a user may save as a "favorite" or "bookmark" browser link) to the division level table of contents for that agency.
- (e) Data Integrity and Availability: The contractor shall make the Internet CCR available 24 hours a day, 7 days a week, excluding scheduled maintenance approved by OAL not to exceed 2 hours per week. The maximum allowable outage during times of disaster shall not exceed 5 working days. The contractor shall take steps to protect the integrity and availability of the Internet CCR against the risk of attacks that may cause nuisance, alter the data by unauthorized individuals, or significant interruptions of service. These steps shall include upgrading software and installing patches as often as necessary to address security risks; removal of unnecessary software applications that run with administrative privileges or that receive packets from the network; use of an external firewall; establishment of remote administration security; restricted server scripts; web server shields with packet filtering, and education of personnel working with the Internet CCR.
- (f) Accuracy: The contractor shall ensure that the Internet CCR accurately reflects the most recent weekly updated version of the Official CCR; that it is complete and contains all the material defined as part of the Official CCR; and that it is fit for publication on the Internet.
- (g) User-Friendly: Response time for a basic query must be comparable to response times for Internet legal research databases widely in use. The contractor shall ensure that users can view, print and search with reasonable ease of use. The contractor shall provide users with a universal search capability, including, but not limited to search by natural language, literal strings, and available use of Boolean operators. The contractor shall include a link to "FAQ" and/or "Help" on the home page to provide information to help users navigate the website. Linking commercial advertising is expressly prohibited without the prior written consent of the Director of OAL.
- (h) User Support: The contractor shall provide toll-free customer assistance during regular business hours. The contractor shall respond to customer service inquiries within two business days of receiving a voice message, written communication, or email.
- (i) Privacy: The contractor shall collect information adequate to report to OAL the number of visits to the website and length of session; however the contractor shall not collect personally identifiable information from any user's Internet session without the explicit, opt-in consent of the user. The contractor shall post a "privacy and conditions of use" page informing users about the collection and use of information regarding visits to the online CCR.
- (j) Reports: The contractor shall provide OAL with quarterly reports about usage of the Internet CCR during the prior calendar quarter. This report shall contain information about the number of users visiting the Internet CCR, including the number of visitors per week and average session length. The contractor shall also report the number and type of technical support queries for the Internet CCR, and provide a detailed explanation for any unanticipated interruption in service that exceeds one hour.

- (k) Title 24 Explanatory Note: The contractor shall list title 24 in the list of CCR titles in the Internet CCR, state that title 24 is published by the Building Standards Commission (BSC) and link the listing for title 24 to the BSC website at <http://www.bsc.ca.gov/default.htm>.

8. The California Regulatory Notice Register

The contractor shall publish the California Regulatory Notice Register (Notice Register) each Friday using material provided by OAL the previous week. The contractor may elect to receive the material in hardcopy or via electronic mail. The Notice Register shall be printed on 8½ by 11 inch pages, three-hole punched, in a format of comparable quality to that in use in 2014. Text paper shall be 20 lb. standard weight with a minimum of 30% postconsumer recycled content. Text shall be printed in black; font size shall be no smaller than 10 point for text within paragraphs.

Potential elements of the Notice Register include, but are not limited to:

- (a) Notices of Proposed Regulatory Action
- (b) Summaries of approved regulations filed with the Secretary of State the previous week
- (c) Summaries of regulation decisions issued during the previous week and summaries of the reasons for OAL disapproval of a proposed regulation
- (d) Quarterly index of OAL regulation decisions
- (e) An agency's request for review of an OAL disapproval decision, OAL's response to the agency request for review, and the Governor's decision
- (f) Underground regulation petitions and underground regulation determinations issued pursuant to Government Code section 11340.5
- (g) General Public Interest Notices
- (h) Petition decisions pursuant to Government Code section 11340.7
- (i) Periodic indices of regulations approved and filed with the Secretary of State
- (j) OAL announcements
- (k) An Annual Rulemaking Calendar pursuant to Government Code section 11017.6. The contractor may distribute the Annual Rulemaking Calendar to subscribers on CD or other electronic format, but shall provide a print version upon request by any subscriber.

By 10:00 a.m. Pacific Time on every Friday, the contractor shall send a linked PDF copy of that day's issue of the Notice Register which fully and accurately reflects the print version of the Notice Register. (For purposes of this RFP, the term "linked PDF copy" means that each item listed in the online Table of Contents shall include a hyperlink so that clicking on that item in the Table of Contents takes the user to that notice in the text of the Notice Register.) The linked PDF copy of the Notice Register shall be sent by electronic mail to the person(s) designated by the Director of OAL to receive the linked PDF copy of the Notice Register.

9. Transmission of Material for Publication

OAL shall furnish to the contractor, at the contractor's expense, all regulations, notices and any other material designated for publication under the CCR publication contract. OAL shall deliver to the contractor, at the contractor's expense, a copy of approved regulations

endorsed by the Secretary of State each day that OAL files regulations with the Secretary of State. The contractor's method for collection and delivery shall provide for routine delivery the next business day after OAL files approved regulations with the Secretary of State. OAL shall provide the contractor with approved notices once each week via electronic mail.

The contractor may elect to receive an unofficial advance copy of proposed regulations prior to review and action by OAL, to be transmitted to the contractor at the contractor's expense. The contractor shall understand that these unofficial advance copies of regulations may be revised before filing or may never be filed with the Secretary of State, and may therefore not become part of the Official CCR.

By 10:00 a.m. on the business day following the date OAL takes action on any proposed regulatory action, OAL shall inform the contractor of such action by sending, via electronic mail, a Daily Action Report containing the following information:

- (a) OAL File Number
- (b) Title affected
- (c) Agency
- (d) OAL Action (Approval/Disapproval/Withdrawn)
- (e) Date of filing with Secretary of State

10. Editorial Responsibilities and Accuracy

The contractor shall ensure that regulation text, as published, accurately reflects the final regulation text as filed with the Secretary of State. The contractor shall ensure that notice text, as published, accurately reflects the text of the notice provided by OAL. All editorial work, including but not limited to proofreading, copyreading, correction, data preparation, formatting, and typographical composition work for the CCR and Notice Register, shall be performed at the contractor's expense.

The contractor shall not alter the text of regulations, notices or any other materials furnished by OAL for publication, except as expressly directed or authorized by OAL. If, at any time during the CCR publication contract, OAL determines that the publisher's editorial work is unsatisfactory, OAL will advise the publisher in writing and give the publisher a reasonable opportunity to correct any deficiencies. OAL defines a satisfactory level of accuracy as zero percentage (0%) of error rate as compared to the final regulation text filed with the Secretary of State or as compared to the text of notices provided by OAL.

The text of regulations and all data in the Master Database shall be subject to inspection, revision, and correction by OAL. Questions regarding the text of regulations or notices shall be promptly called to the attention of OAL. Inferior, unprofessional, or unsatisfactory work shall be rejected and returned to the contractor for prompt correction at no additional cost to the state or CCR subscribers. OAL's inspection, revision, or acceptance of work shall not be considered a waiver of the contractor's duty to correct, at the contractor's own expense, errors or defects subsequently discovered.

The contractor shall advise the Director of OAL in advance, in writing, of any proposed changes in the method and manner of performing editorial work covered by the CCR

publication contract. The Director of OAL, or designated representative, and the contractor's representative shall, on the request of either party or at reasonable intervals, meet and confer to foster communication and cooperation between OAL and the contractor about the parties' rights and responsibilities under the CCR publication contract.

11. Publications and Services for OAL

The contractor shall provide OAL during the term of the CCR publication contract with the following publications and products, free of charge:

- (a) Four (4) subscriptions to the Official CCR and CCR Supplement in hard copy;
- (b) Three (3) subscriptions to the Master Table of Contents, in hard copy;
- (c) Three (3) subscriptions to the Master Index, in hard copy;
- (d) One (1) subscription to the CD-Rom version of the CCR;
- (e) One (1) subscription to Annotated California Codes;
- (f) Five (5) copies of each issue of the California Regulatory Notice Register;
- (g) One (1) complete replacement set of CCR binders annually;
- (h) 1000 copies annually of a softbound book containing selected statutes and regulations specified by OAL as relevant to California rulemaking law. The format and content of the book shall be substantially similar to the 2014 edition of "California Rulemaking Law under the Administrative Procedure Act."

Additionally, the contractor shall provide each employee of OAL, for the exclusive use by OAL, with free access to any online legal research database services provided by the contractor. The level of service provided shall include, at a minimum, access to cases and judicial materials, statutes and legislative materials, administrative law and regulations, analytical materials, and journals and law reviews for all states and the federal government; news and business materials available to basic national service subscribers, any other features available to subscribers that are reasonably relevant to OAL's duties, and to new online legal research database services created during the term of the CCR publication contract that are reasonably relevant to OAL's duties.

12. Publications for County Clerks and Depository Libraries

The contractor shall provide, free of charge, one (1) subscription of the hard copy version of the CCR (or, at the recipient's option, subscription to CD-ROM or other mutually agreeable electronic format) to each of the fifty-eight (58) county clerks or their designees, pursuant to Government Code section 11343.5; and to each state depository library, pursuant to Government Code sections 14900-14912.

The contractor shall provide, free of charge, one (1) subscription of the hardcopy version of the Notice Register (or, at the recipient's option, subscription to CD-ROM or other mutually agreeable electronic format) to state depository libraries, pursuant to Government Code sections 14900-14912.

13. Reports

The contractor shall provide OAL with periodic reports regarding the content of the Official CCR and the Notice Register. These reports are to be provided no less often than annually and shall include but are not limited to:

- (a) The number of regulation sections in existence at the end of the prior calendar year. This report shall specify the total number of active regulation sections and the total number of repealed regulation sections in each title, and in addition shall specify the total number of sections in all CCR titles combined;
- (b) A tally of the number of regulations adopted, amended or repealed during the prior calendar year. This report shall specify the number of files sent by OAL for publication and the number of regulation sections that were adopted, amended or repealed during the period covered.
- (c) A page count of the Official CCR for the prior calendar year. This report shall state the number of pages in each title and include the total number of pages for all titles.

Exhibit B, Revenue Provisions

14. Annual License Fee and Royalty

In exchange for being granted the exclusive rights to publish the Official California Code of Regulations and the California Regulatory Notice Register, the contractor agrees to pay an annual license fee of \$350,000.00 and a royalty of 8.1% on net revenues.

For purposes of this agreement, "net revenues" means all sales proceeds less returns, discounts refunded to the customer, and, if not charged separately but included in the sales price, sales taxes, transportation and handling, and in addition, all revenues received from licenses to third parties (including affiliated companies) without any reduction.

The contractor shall pay the annual license fee in advance, at quarterly intervals, beginning with the commencement of the CCR publication contract on January 1, 2016. No portion of the annual license fee shall be refundable during a quarter notwithstanding early termination of the contract.

The contractor shall pay the royalty at quarterly intervals. All royalties payable pursuant to this agreement shall accrue to the benefit of OAL, and be accounted for by the contractor, during each of the quarterly periods ending on March 31, June 30, September 30 and December 31 of each calendar year. The contractor shall pay OAL any and all royalty amounts due for each quarterly period within 90 days after the end of that quarterly period.

If the contractor provides academic institutions or governmental entities such as the courts with significantly discounted rates for its Internet legal research database because of their academic nature or the public benefit they provide, no royalties shall be paid by the contractor for CCR-related usage of the contractor's Internet legal research database by those customers. This exemption shall not apply to any academic institution or governmental entity whose subscription agreement is modified to require payments at rates comparable to those paid by commercial entities.

15. Compensation Delivery Requirements

Compensation shall be mailed or delivered to the following address:

Office of Administrative Law
ATTN: Debra Comez, Director
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

16. Standard Budget Contingency Clause

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the state of California shall have the option to either cancel this agreement with no liability occurring to the state, or offer an agreement amendment to the contractor to reflect the reduced amount.

Exhibit C, State of California General Terms and Conditions

The state of California General Terms and Conditions (GTC-610) are hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at <http://www.dgs.ca.gov/pd/Resources/FormsResourcesLibrary.aspx>.

Exhibit D, Special Terms and Conditions

17. Compensation and Royalties

Refer to Exhibit B, Revenue Provisions.

18. Intellectual Property Rights

The Official CCR, Notice Register and the Master Database, in all forms, are the sole and exclusive property of the state of California. The copyrights in the Official CCR, Notice Register and the Master Database shall be owned, noticed, and registered in the name of OAL on behalf of the state of California. In no event shall the Official CCR, Notice Register or Master Database be considered a "joint work" as that term is defined in 17 U.S.C. section 101. Except as to editorial enhancements described below, all rights in all copyrightable works prepared by the contractor, either individually or jointly with others, in connection with, or related to, the services performed by the contractor for OAL or the state of California shall belong exclusively to the state of California and shall constitute "works made for hire." The contractor agrees to execute, acknowledge and deliver to OAL, at no cost to the state of California, all documents required to register or otherwise protect such works in the United States or in any other country and to recognize ownership in such works by the state of California, its assignees or designees. The contractor shall take no action which will infringe or abridge the rights of the state of California in any of the works which are the subject of this CCR publication contract.

The contractor shall not procure or claim any copyright or other intellectual property rights with respect to the Official CCR, the Notice Register or the Master Database, or in the Master Table of Contents the contractor develops pursuant to this CCR publication contract, or in any of the following material:

- Tables of contents for each Title and Division
- The hierarchical structure of the CCR (divisions, chapters, articles, etc.)
- The captions (e.g. Title 1, Section 6, "Submission of Regulatory Actions (Form 400)")
- The text of the regulations, including any appendices, tables, graphics, illustrations, charts, forms or other items that are part of regulatory material filed with the Secretary of State and designated by OAL for publication in the CCR
- Authority and Reference citations
- History Notes
- The Official California Code of Regulations Supplement

The state of California will own the data used to publish the California Code of Regulations and the California Regulatory Notice Register. Pursuant to section 2 of this contract, the contractor will provide to the state of California, upon contract termination at no additional cost, all data in the Master Database in an electronic format that preserves the content of the CCR for future publication.

The state of California expressly reserves the right to use the CCR, its captions, text, and related notations, etc., in any manner that the state so chooses.

The state grants the contractor the exclusive right to publish and use the Official CCR and Notice Register and/or provide the Official CCR and Notice Register to third parties in whatever form and by whatever means it desires, subject to the licensing and royalty provisions of this contract. All versions of the CCR licensed shall accurately reflect the content of the Official CCR.

The contractor may add editorial enhancements which do not alter the substance of the CCR, CCR Supplement, or Notice Register, and may copyright the editorial enhancements. All expenses of obtaining copyright, either on behalf of the contractor or the state of California, will be the responsibility of the contractor, and copies of any documents pertaining to copyright must be provided to the Director of OAL. If the contractor declines to obtain a copyright in the editorial enhancements on its own behalf, the contractor shall obtain a copyright in the name of OAL on behalf of the state of California. OAL and the state of California shall have a royalty-free, worldwide, nonexclusive, perpetual license, for use of all Intellectual property rights in all editorial enhancements created by the contractor during the term of this contract. For the purposes of this provision, "use" shall include reproduction or disclosure by OAL or the state for informational purposes or as otherwise required by law, including but not limited to the Public Records Act.

If OAL terminates this CCR publication contract before the anticipated term due to the contractor's breach, default, or abandonment of the CCR and/or Notice Register publications, both OAL and any successor publisher of the CCR and/or Notice Register shall be held harmless for any infringement of the contractor's intellectual property rights in the editorial enhancements, including copyright, relating to action taken by OAL in good faith to facilitate continued publication and availability of the CCR and Notice Register. OAL and any successor publisher shall be held harmless for any such infringement even if the premature termination of the CCR publication contract by OAL is ultimately found to have been without cause.

In continuance of its rights under the current contract, upon contract termination or expiration, the contractor may, in its sole discretion, continue using and publishing, in its entirety the CCR data in its possession at the time of termination or expiration, including the Master Index and Master Table of Contents in an unofficial capacity as the contractor deems fit. To facilitate this use, the contractor shall have a non-exclusive, royalty-free, worldwide, perpetual license to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the data in its possession at the time of termination or expiration, and to sublicense others to do these things.

Pre-existing Intellectual property: In performing any services or providing any deliverables under this CCR publication contract, the contractor will not use any pre-existing Intellectual property including, but not limited to, any trade secret, invention, work of authorship or protectable design that has already been conceived or developed by anyone before the contractor renders any services under this contract, unless the contractor has the right to use it for OAL's benefit. If the contractor is not the owner of such pre-existing intellectual property, the contractor will obtain from the owner any rights necessary to enable the contractor to comply with this agreement. If the contractor uses any pre-existing Intellectual

property in connection with this agreement, the contractor hereby grants to OAL a non-exclusive, royalty-free, worldwide perpetual license to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the property and to sublicense others to do these things.

Intellectual property indemnification: The contractor will give OAL notice immediately if at any time the contractor knows or reasonably should know of any third party claim to any pre-existing intellectual property provided by the contractor to OAL pursuant to this agreement. The contractor will indemnify and hold harmless OAL from all liability arising from the contractor's use of such pre-existing intellectual property.

19. Damages

19.1. Actual Damages

In the event that the contractor fails to satisfactorily complete or perform the activities it is obligated to perform under the CCR publication contract, the contractor shall be liable for the state's full cost in securing completion of any activities or services needed to publish the CCR and Notice Register and other publications covered by the CCR publication contract. The state shall not be liable for any of the contractor's costs, other than those specifically covered by this contract, in complying with the contract requirements.

19.2. Liquidated Damages

Time is of the essence in the CCR publication contract. It is OAL's intent to have hard copy, electronic and Internet publishing services performed in such a way that the system is kept completely and continuously up-to-date. Delays in publication, inaccurate publication, or a failure by the contractor to cooperate with OAL, will result in damages to the state of California and the public that would be difficult to accurately assess, and for that reason, the CCR publication contract provides for liquidated damages in the amount of \$15,000 for each day of delayed publication of any publication covered by the CCR publication contract, or for each day the contractor fails in a material way to perform its obligations under the contract. The contractor shall pay the state of California for such failures at the sole discretion of the state according to this section.

The purpose of liquidated damages is to ensure adherence to the requirements in the contract. No punitive intention is inherent. OAL will provide written notification to the contractor of each failure to meet a performance requirement. If the failure is not resolved to the satisfaction of OAL within a reasonable warning/correction time period specified by OAL, liquidated damages may be imposed retroactively to the date of failure to perform.

From January 1, 2016 through February 28, 2016, a "grace period" will be in effect during which time the contractor shall perfect its update and production processes for publication of the Official CCR, online CCR and Notice Register. During this period, liquidated damages will not be imposed.

20. Audits

In addition to the audit provision contained in the state of California General Terms and Conditions, on written request by OAL, the contractor will allow the Bureau of State Audits, the State Controller or designee of OAL, or in the alternative, an independent certified public accountant who is mutually acceptable to the contractor and OAL to have access to, and to copy, during ordinary business hours and for as many days as required, the contractor's books and financial records as necessary to calculate the royalty for any quarter during the term of this CCR publication contract. If the contractor and OAL cannot agree on the selection of an independent certified public accountant, the contractor and OAL will each select a certified public accountant, and the two accountants will choose a third certified public accountant who will then review the contractor's books and records to determine the amount of the royalty.

The determination of the amount of royalties by the auditor will be final and binding on the contractor and OAL. If the auditor finds any discrepancy between the amount of royalty due and the amount of royalty paid for such quarter, the difference will be paid by the contractor to OAL, or refunded by OAL to the contractor, as the case may be, within 30 working days after written notice of the discrepancy is given to both parties. If the amount of the royalty paid for any quarter is less than 95% of the amount due, the contractor will pay all accounting costs. In all other instances, OAL will pay all accounting costs. The contractor will bear all other costs of access to its books and records.

The auditor will hold the contractor's financial information and trade secrets in confidence and will disclose to OAL only the amount of royalties due OAL and the factual basis for the determination of the amount(s) due.

Audits conducted under this provision shall be in accordance with generally accepted auditing standards.

21. Term; Termination

21.1. Term

The CCR publication contract shall begin January 1, 2016, and have a term of three years, with 2 optional 1-year extensions to be exercised upon mutual agreement of OAL and the contractor.

21.2. Failure to Perform

OAL may terminate this CCR publication contract if the contractor fails to perform the covenants herein contained at the time and in the manner herein provided. In the event of termination, OAL may proceed with the work in any manner deemed proper by OAL. The cost to the state shall be added to any sum due from the contractor to OAL under this CCR publication contract.

Persistent failure to meet publication dates or persistent failure to take corrective actions specified by OAL shall constitute a material breach of the CCR Publication Contract. In the

event the contractor fails to perform the CCR publication contract, or a substantial part thereof, the Director of OAL shall provide written notice of the failure and make a reasonable effort to resolve the failure with the contractor. If the contractor's failure is not resolved, OAL may, in its sole judgment reasonably exercised, terminate the contract, in whole or in substantial part, by presenting written notice of termination to the contractor. The notice shall specify the extent to which the contract is terminated and the date upon which such termination becomes effective. Upon termination, OAL will retain all legal remedies available to it, including damages for increased expense on behalf of all subscribers, for the remaining term of the contract.

21.3. Parties' Obligations Upon Termination

If the contract is terminated for any reason other than by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall deliver or transmit to OAL, within 10 days after termination, the complete Master Database current as of the date of termination. The Master Database shall be provided to OAL in electronic form pursuant to Section 2 of this contract.

If the contract terminates by the expiration of the term specified in the contract or the term of any extension thereto, the contractor shall provide OAL with the Master Database in electronic form pursuant to Section 2 of this contract according to the following schedule: 1) 90 days prior to the anticipated expiration of the term; 2) 30 days prior to the anticipated expiration of the term; and 3) concurrently with the expiration of the term.

Upon termination of this contract for any reason, the contractor loses the right to publish the Official CCR. The contractor agrees, upon OAL's request, to provide to OAL within 10 days of termination, lists in mutually acceptable electronic form of the subscribers to all forms of the publications covered by this contract, and of all entities granted a license to publish any of the publications covered by this contract. In addition, for a period of sixty (60) days after termination of this contract, the contractor agrees to cooperate with OAL and any successor publisher of the Official CCR to provide information necessary for the continued publication of the Official CCR.

22. Changes

If changes in California law oblige OAL to alter the publication services to be performed under this contract, or to alter the time allowed for performance of services under this contract, and such changes cause an increase in the costs to the contractor, or the time required for the contractor's performance of this contract, OAL and the contractor shall negotiate an equitable adjustment to the compensation, or time of performance, or both, and the contract shall be modified accordingly. Any such modification must be in writing and is subject to the approval of the Department of General Services before it becomes effective.

Any claim by the contractor for equitable adjustment under this provision must be asserted in writing to the director of OAL or designated representative not later than thirty (30) days after the date OAL notifies the contractor of a change in California law, or within such

extension as OAL may grant in writing. OAL may, in its sole discretion, consider any such claim regardless of when asserted.

Pending any such equitable adjustment, the contractor shall diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in the contractor's claim for equitable adjustment, OAL shall have the right to require the submission of supporting cost data and/or to inspect the contractor's pertinent books and records for the purpose of verifying the contractor's claim and determining the basis for entitlement to an equitable adjustment.

The contractor's claim for equitable adjustment shall be fully supported by factual information and shall separately identify all increases and decreases in costs. The claim shall be submitted by a senior official authorized to bind the contractor in a signed writing that contains the following certification statement: "I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested to be changed accurately reflects the contract adjustment for which (insert contractor's name here) believes the state is liable."

23. Substitutions

If it becomes necessary for the contractor to substitute any subcontractor, or management, supervisory or key personnel, those substitutions must include replacements with equal or greater qualifications. The contractor shall provide OAL with detailed justification documenting the necessity for the substitutions. No substitute subcontractor(s) or personnel are authorized to begin work until the contractor has received written approval from OAL. OAL reserves the right to reject any proposed subcontractor or personnel at any time.

24. Severability

Should any provision of this contract be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

25. Waiver/Non-Waiver

Any waiver of the terms and conditions of the CCR publication contract must be in writing. Any single waiver does not imply any future waiver of any terms or conditions. Failure of either party to enforce any provision of this contract shall not constitute or be construed as a waiver of such provision or the right to enforce such provision.

26. Rights of State Agencies

Nothing in this contract shall prevent the state of California or a California state agency from publishing, reproducing, or distributing its own regulations, except that no agency of the state of California may, during the term of this contract, authorize commercial publication of regulations unless the commercial publisher has obtained a license from the contractor.

27. Right of Inspection

The director of OAL or designated representative, shall have a continuing right to inspect, at reasonable intervals, all manufacturing and editorial premises used in performance of the CCR publication contract, including premises occupied by the contractor's subcontractors, if any. The contractor shall provide for such right of inspection in any subcontractors' facilities by arrangements with subcontractors or agents. The contractor shall be responsible for all reasonable expenses relating to any meeting or inspection pursuant to this contract, including reasonable transportation, lodging, and related travel expenses of OAL personnel reasonably necessary to the purpose of any meeting or inspection.

Upon request by the Director of OAL or designated representative, the contractor shall provide one copy of any of its CCR or Notice Register products for inspection by OAL.

28. Subscription Lists

Upon completion or termination of this contract, including premature termination due to a breach, default, abandonment or any other reason, the contractor shall provide a copy to OAL, or to a successor publisher designated by OAL, of each and every subscription list for all contractor's Official CCR products. The copy of each and every subscription list shall include all relevant information reasonably needed by a successor publisher to fulfill subscription obligations. This includes, but is not limited to, the names and addresses of subscribers, types and categories of subscriptions for all Official CCR products for each subscriber, and subscription cost information, including current payment status of all subscribers, and beginning and ending dates of each subscription.

29. Miscellaneous Provisions

29.1. Short Title

This contract shall be referred to by the parties as the "CCR Publication Contract."

29.2. Statutory Requirements

The contractor shall ensure that the content and distribution of all CCR and Notice Register products published pursuant to this contract comply with applicable requirements of the Administrative Procedures Act, including, but not limited to, Government Code sections 11344 and 11344.1.

29.3. Cooperation

Each party shall cooperate with the other party as is reasonably necessary to further the purposes of this contract and the other party's performance hereunder.

29.4. Electronic Submission Plan

The contractor shall work with OAL to devise a format and/or method that will allow for the future electronic transmission of proposed regulation text and notices.

29.5. Marketing and Advertising Of CCR

The contractor shall undertake reasonable efforts to market and advertise the CCR during the term of this contract. The contractor shall keep the Director of OAL advised informally as to the manner in which the CCR is marketed and advertised during the term of the contract. No advertisements shall be published in the Official CCR or in the Internet CCR except with express written permission of the Director of OAL.

30. Entire Agreement

This document constitutes the entire agreement of the parties. However, RFP-CCR-2015 and the contractor's proposal shall be used to establish intent in resolving any ambiguities that may be contained herein.

31. Contract Administration

Subject to the other party's continuing approval, each party shall assign overall responsibility for its performance of this agreement to a contract administrator who is competent in the management and performance of the party's obligations under this agreement. Each party's contract administrator shall be the primary contact for the other party with regard to matters related to this agreement.

The contract administrator for OAL is:

Kevin D. Hull, Senior Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Kevin.Hull@oal.ca.gov
Phone: 916-323-8916
Fax: 916-323-6826

The contractor administrator for the contractor is: (for contract-related issues)

~~John S. Nelson~~ Kris Wendorff
~~Director, Procurement and Proposal Management~~, Contracts Counsel
Office of General Counsel
Thomson Reuters
610 Opperman Drive
Eagan, MN 55123
Phone: 651-687-4400 4391
Fax: 651-687-5686
~~XXXXXXXXXXXXXXXXXXXX~~ kris.wendorff@thomsonreuters.com
~~XXXXXXXXXXXXXXXXXXXX~~
thomsonreuters.com

*JSW
ome*

Project Administrators (for day-to-day project or account issues):

William McKay, Business Manager
Thomson Reuters
50 California Street
San Francisco, CA 94111
Phone: 415.344.5193
Fax: 415.344.3906
william.mckay@thomsonreuters.com

Stefan Vasiliou, Managing Editor
Thomson Reuters
50 California Street
San Francisco, CA 94111
Phone: 415.344.3937
Fax: 415.344.3906
stefan.vasiliou@thomsonreuters.com

*JSW
ome*

Exhibit C



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Open Source "America's Operating System"

"It's Not Just A Good Idea—It's The Law!"

December 29, 2020

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339

Re: California Public Records Act Request (via email to staff@oal.ca.gov)

Dear Office of Administrative Law:

Under the California Public Records Act (Government Code § 6250 et seq.) and Article I, § 3(b) of the California Constitution, I write to request a copy of Titles 1-5, 7-23, and 25-28 of the California Code of Regulations.

The contents of these Titles are public records under Government Code § 6252(e) ("Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.").

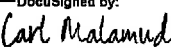
Please provide these records in all formats in your possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files. Under Government Code § 6250(a)(1), you must provide these records in "any electronic format in which [you] hold[] the information." Additionally, Government Code § 6250(a)(2) directs you to "provide a copy of an electronic record in the format requested if the requested format is one that has been used by [you] to create copies for [your] own use or for provision to other agencies." Thus, you must provide copies of these records in all formats that you hold, use, or provide to other agencies.

If you determine that any material is exempt from disclosure, please specify the exemption within 10 days, as required by Government Code § 6253.1(c). If you believe that an exemption is discretionary, please state why you are withholding the information. If, for any reason, you refuse to disclose any part of these records, Government Code § 6255 requires you to explain why.

Please provide a determination on this request within 10 days, as required by Government Code § 6253(c).

If needed, please contact me at (707) 385-1617 or carl@media.org. Please notify me of any duplication costs exceeding \$100 before you duplicate the records so that I may decide which records I want copied.

Sincerely,

DocuSigned by:

E80A36AECAF6462...

Carl Malamud
Public.Resource.Org, Inc.

cc: Matthew Caplan, Cooley LLP
Joseph D. Mornin, Cooley LLP
Ryan T. O'Hollaren, Cooley LLP
David Halperin, Of Counsel, Public Resource

Exhibit D

From: Escobar, Steven@OAL <Steven.Escobar@oal.ca.gov>
Sent: Tuesday, March 2, 2021 3:55 PM
To: 'Carl Malamud'
Cc: 'David Halperin'; Caplan, Matt; Mornin, Joe; O'Hollaren, Ryan T.
Subject: RE: California Public Records Act request to the Office of Administrative Law

[External]

Dear Mr. Malamud,

In our prior responses on January 22, 2021, February 17, and February 26, 2021, OAL identified the electronic formats in which OAL has the CCR and identified options for making it available to you. On February 24, 2021, you subsequently requested a copy of "a CCR Master Database." OAL responds to this request as follows:

OAL does not have a copy of a CCR Master Database.

OAL does not have the CCR in any other electronic format other than that previously identified and, therefore, OAL considers our response to your Public Records Act request complete. Please let us know if you are interested in any of the formats previously identified so that we can work with you to coordinate inspection or copying.

Sincerely,

Steven Escobar

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: steven.escobar@oal.ca.gov

From: Escobar, Steven@OAL
Sent: Friday, February 26, 2021 9:56 AM
To: 'Carl Malamud' <carl@media.org>
Cc: David Halperin <davidhalperindc@gmail.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe <jmornin@cooley.com>; O'Hollaren, Ryan T. <rohollaren@cooley.com>
Subject: RE: California Public Records Act request to the Office of Administrative Law

Dear Mr. Malamud,

Thank you for your email dated February 19, 2021, which was in response to OAL's email response dated February 17, 2021. In your February 19, 2021 email, you raised several additional questions. Below, those questions are restated along with OAL's responses to each question immediately following.

1. When you say you will provide us the contents of CD-ROM, I wasn't sure what that means. Will you send us a CD or DVD? Will you extract the .rtf files and graphics files

and send them to us? Or, could we come to your office with a laptop to use your CDs there and extract the files ourselves? Or, perhaps you were going to print out the documents?

OAL will make the contents of the CD ROM available in whichever manner you choose, so long as OAL has the capability to do so. Please note that OAL cannot directly copy the entire disc, therefore, copying the contents of the CD ROM by OAL, whether copying and pasting into a separate file or printing each section, will take a considerable amount of time for which OAL will need to be compensated consistent with the PRA. It may be most efficient and cost effective if you come to OAL's office and use your computers to extract the desired content yourselves.

2. My discussions with your vendor about purchasing the electronic files was that they no longer sell the CD-ROM product. I believe that means that any CCR you allow us to inspect will be considerably out of date. Do you happen to know the most recent date of the CD-ROMs you do have?

As stated in OAL's prior response, the most recent CD ROM that OAL has is current through October 16, 2020.

3. When you say you do not have an electronic copy, how does the company posting the CCR online get the CCR and its updates? Does the company get the files directly from the agencies? Or does the company read the Register and then make the updates?

Final regulatory changes that are approved by OAL for publication in the CCR are in hard copy. Each day that regulations are approved by OAL for publication, Thomson Reuters sends a courier to OAL to pick up hard copies of those regulations. OAL does not provide the regulatory changes to Thomson Reuters in electronic format nor does Thomson Reuters get the official changes directly from the rulemaking agencies.

4. If OAL doesn't have an electronic copy, are you aware of other agencies in the government that do have it?

OAL does not know whether any other state agencies have electronic copies of the official CCR in their possession.

Once again, please let us know if you have any questions or how you would like to proceed. We also received your subsequent request of February 24, 2021 and will be responding to that request separately.

Sincerely,

Steven Escobar

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: steven.escobar@oal.ca.gov

From: Carl Malamud <carl@media.org>

Sent: Wednesday, February 24, 2021 9:59 AM

To: Escobar, Steven@OAL <Steven.Escobar@oal.ca.gov>

Cc: David Halperin <davidhalperindc@gmail.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe <jmornin@cooley.com>; O'Hollaren, Ryan T. <rohollaren@cooley.com>

Subject: Re: California Public Records Act request to the Office of Administrative Law

Dear Mr. Escobar -

I was just checking in to see if you had received my messages with a few quick questions. As you know from my previous letter, we were hoping get an answer by this Friday. Understood you may be busy!

There is one thing that puzzles me however. I know you are offering inspection of the CD-ROMs, but those are out-of-date. But, my understanding of how this all works is the CCR is stored in a CCR Master Database, which is current. That certainly is an electronic record and would suit our purposes just fine. Can't you just make us a copy of that?

Looking forward to hearing from you soon!

With best regards,

Carl Malamud

On Fri, Feb 19, 2021 at 1:06 PM Carl Malamud <carl@media.org> wrote:

Dear Mr. Escobar -

Thank you for your email of February 17. I'm familiar with the CD-ROM product, which I subscribed to in 2012 and 2013. We were translating the CCR into HTML files and making them available for people to read on the Internet. I stopped my subscription because I couldn't afford the cost. One of the goals of Public Resource is to make the regulations of all 50 states available in a common format to allow people to access the documents if they are visually impaired, to allow people to compare changes in regulations across time, to allow people to similar regulations in different states, and of course to download in bulk all the state regulations to build other sites.

My understanding of the CD-ROM product, at least in 2012, was that I could extract an "rtf" word processing file for each title. In addition, I was able to get "tif" images for graphics included in the CCR. My experience was that the rtf format was very rudimentary, I seem to remember the CD came with terms of use, and it was terribly difficult to map the graphic files to the rtf word processing files once they were out of the proprietary interface.

I did have a few quick questions for you.

1. When you say you will provide us the contents of CD-ROM, I wasn't sure what that means. Will you send us a CD or DVD? Will you extract the .rtf files and graphics files and send them to us? Or, could we come to your office with a laptop to use your CDs there and extract the files ourselves? Or, perhaps you were going to print out the documents?
2. My discussions with your vendor about purchasing the electronic files was that they no longer sell the CD-ROM product. I believe that means that any CCR you allow us to inspect will be considerably out of date. Do you happen to know the most recent date of the CD-ROMs you do have?
3. When you say you do not have an electronic copy, how does the company posting the CCR online get the CCR and its updates? Does the company get the files directly from the agencies? Or does the company read the Register and then make the updates?
4. If OAL doesn't have an electronic copy, are you aware of other agencies in the government that do have it?

Thanks very much for your time. If you prefer a zoom call or phone call, we could do that. Email works fine for me however if that is convenient!

With best regards,

Carl

On Wed, Feb 17, 2021 at 5:58 PM Escobar, Steven@OAL <Steven.Escobar@oal.ca.gov> wrote:

Dear Mr. Malamud:

On December 29, 2020, you emailed the Office of Administrative Law ("OAL") Reference Attorney, in which you requested copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR"). Specifically, you requested that OAL "provide these records in all formats in [our] possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files." On January 8, 2021, OAL notified you that we would respond within the additional 14-days pursuant to

Government Code section 6253, subdivision (c). OAL subsequently responded (see below) on January 22, 2021, which included guidance as to the formats in which OAL holds the CCR and sought further clarification of what records you were interested in receiving. On February 3, 2021, you clarified that you were seeking all electronic versions of the referenced titles. We therefore respond as follows:

As OAL mentioned in its January 22, 2021, response, in addition to the hard copy and online version of the CCR, OAL has historical versions of the requested titles. These historical versions are contained on CD ROM and constitute the only electronic format in which OAL holds the information. The most recent version OAL has is dated November 2020 and is current through October 16, 2020. OAL no longer receives the CCR on CD ROM and this CD ROM is the last one OAL expects to receive. OAL also has various prior versions of the CCR on CD ROM. Based on OAL's examination of the November 2020 CD ROM, the regulatory content of the CD ROM is the same as that which is available online, however, it is current only through October 16, 2020, whereas the online version is updated weekly. Please note that upon OAL's review of this CD ROM, it is OAL's understanding that the contents of the CD ROM cannot be copied in whole and transferred to another storage device. It is OAL's understanding that in order to copy or produce the regulatory content of the CD ROM, each section would need to be manually extracted and copied from the CD ROM individually.

Other than the CD ROMs discussed above, OAL does not have the requested CCR titles in the electronic format(s) requested, including in a structured, machine-readable XML or PDF file. OAL staff uses the on-line version and the hard copy CCR. If you would like the contents of any of the CD ROMs, please let us know so that we can coordinate inspection or copying in accordance with the Public Records Act.

Please let us know if you have any questions or how you would like to proceed.

Sincerely,

Steven Escobar

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: steven.escobar@oal.ca.gov

From: Carl Malamud <carl@media.org>

Sent: Wednesday, February 3, 2021 12:07 PM

To: Escobar, Steven@OAL <Steven.Escobar@oal.ca.gov>

Cc: David Halperin <davidhalperindc@gmail.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe

<jmornin@cooley.com>; O'Hollaren, Ryan T. <rohollaren@cooley.com>

Subject: Re: California Public Records Act request to the Office of Administrative Law

Dear Mr. Escobar -

Please find attached a letter in response to your January 22 electronic mail.

Please don't hesitate to contact me if you have any questions.

With best regards,

Carl Malamud

On Fri, Jan 22, 2021 at 11:34 AM Escobar, Steven@OAL <Steven.Escobar@oal.ca.gov> wrote:

Dear Mr. Malamud:

This is in response to the e-mail you sent to the Office of Administrative Law ("OAL") Reference Attorney on December 29, 2020, in which you requested copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR"). Specifically, you requested that OAL "provide these records in all formats in [our] possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files." On January 8, 2021, we responded to your request and invoked the 14-day extension to respond pursuant to Government Code section 6253, subdivision (c). Our follow-up response is below.

The most up-to-date version of the CCR Titles you request are available online at <https://govt.westlaw.com/calregs/index>. We also have the Titles you request in hard copy, which are considered the "official version" of the CCR. They comprise 38 volumes plus the Master Index. We can provide a paper copy of these records at a cost of \$0.20 per page. If you desire an electronic copy, we can also scan each page of the print version of the CCR into PDF files and provide those files to you. However, scanning each page of the print version of the CCR into PDF would be very time consuming and include additional costs, as there are over 29,000 pages in the print version of the CCR when you include the Master Index. OAL estimates that it would take approximately two to four weeks for one of our office technicians to scan this number of pages, and the cost of the office technician's time would need to be paid by you. If you choose to have OAL scan each page of the print version of the CCR into PDF files, please inform us of your request, as we will only begin scanning pages upon your specific request and payment of fees.

In addition, we also have historical versions of the CCR that we retain but that are not as up-to-date as those that you will find in the on-line version. All past versions are a snapshot in time of what was published during a particular period. We anticipate that you are looking for the most recent version of what is published, and therefore, suggest the online version. If this is not what you are seeking, please clarify what additional records you are looking for and we will let you know if we have them.

If you need help searching the online CCR, please contact the OAL Reference Attorney at staff@oal.ca.gov, or the Thomson Reuters technical support, which is on the same contact page as provided above.

Please let us know if we can be of further assistance.

Sincerely,

Steven Escobar

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: steven.escobar@oal.ca.gov

From: Carl Malamud <carl@media.org>

Sent: Friday, January 8, 2021 5:26 PM

To: Escobar, Steven@OAL <Steven.Escobar@oal.ca.gov>

Cc: David Halperin <davidhalperindc@gmail.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe <jmornin@cooley.com>; O'Hollaren, Ryan T. <rohollaren@cooley.com>

Subject: Re: California Public Records Act request to the Office of Administrative Law

Dear Mr. Escobar:

Thank you for your note. We are happy to wait until January 22 for your response.

Best regards,

Carl Malamud

On Fri, Jan 8, 2021 at 5:20 PM Escobar, Steven@OAL <Steven.Escobar@oal.ca.gov> wrote:

Dear Mr. Malamud:

This is in response to the e-mail you sent to the Office of Administrative Law ("OAL") Reference Attorney on December 29, 2020, in which you requested copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR"). Specifically, you requested that OAL "provide these records in all formats in [our] possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files" (your "CPRA Request").

Agencies are permitted to extend the date for responding to a public records request for fourteen days beyond the original 10-day deadline under specified circumstances. (Govt. Code, § 6253, subd. (c).) Your request was received by this office on December

29, 2020 and the initial deadline of our response therefor is January 8, 2021. Fourteen days beyond this date is January 22, 2021.

In this instance, an extension is needed as OAL needs to search for, collect, and appropriately examine a voluminous amount records, and consult with various individuals within OAL to respond to your CPRA request. We will provide a further response on or before January 22, 2021.

Sincerely,

Steven Escobar

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: steven.escobar@oal.ca.gov

CONFIDENTIALITY NOTICE: This e-mail from the State of California, with its contents and attachments, is solely for the use of the intended recipient and may contain confidential and privileged information. Unauthorized interception, review, copying, distribution, use, disclosure or reliance is prohibited. If you are not the intended recipient, please contact the sender and destroy all copies of this e-mail.

From: Escobar, Steven@OAL

Sent: Friday, January 1, 2021 6:49 PM

To: 'Carl Malamud' <carl@media.org>

Cc: David Halperin <davidhalperindc@gmail.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe <jmornin@cooley.com>; O'Hollaren, Ryan T. <rohollaren@cooley.com>

Subject: RE: California Public Records Act request to the Office of Administrative Law

Hi Carl,

This e-mail is to acknowledge receipt of your request.

Sincerely,

Steven Escobar

Senior Attorney

Office of Administrative Law

Phone: (916) 324-6948

Fax: (916) 323-6826

E-Mail: steven.escobar@oal.ca.gov

From: Carl Malamud <carl@media.org>

Sent: Tuesday, December 29, 2020 12:00 PM

To: OAL Reference Attorney <OALReferenceAttorney@oal.ca.gov>

Cc: David Halperin <davidhalperinc@gmail.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe <jmornin@cooley.com>; O'Hollaren, Ryan T. <rohollaren@cooley.com>

Subject: California Public Records Act request to the Office of Administrative Law

Dear Sir/Madam -

Please find attached a California Public Records Act request to the Office of Administrative Law. I would appreciate it if you would acknowledge receipt.

With best regards,

Carl Malamud, President

Public.Resource.Org, Inc.

Exhibit E



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Open Source "America's Operating System"

"It's Not Just A Good Idea—It's The Law!"

February 3, 2021

Steven Escobar
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA
95814-4339
steven.escobar@oal.ca.gov

Re: California Public Records Act Request

Dear Mr. Escobar:

I write in response to your January 22, 2021 email response to my California Public Records Act ("PRA") request for electronic copies of Titles 1 through 5, 7 through 23, and 25 through 28 of the California Code of Regulations (the "CCR").

We understand from your response that you possess the documents and information that we've requested, but that you are refusing to produce them. In so doing, the PRA places the burden on you to prove that disclosure is not warranted – either through a statutory exemption, or based on the public interest. *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 914 (2020), review denied (May 13, 2020); *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 70 (2014); *County of Los Angeles v. Superior Court*, 211 Cal.App.4th 57, 63 (2012); § 6255. Your letter did neither.

Instead, your letter ignores the PRA and offers to provide paper copies or scanned PDFs of paper copies. Neither option satisfies your duties under the PRA.

First, your letter states that the CCR is available online at <https://govt.westlaw.com/calregs/Index>. This does not satisfy your duty to provide electronic copies in every electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. Cal. Gov. Code §§ 6253.9(a)(1) ("The agency shall make the information available in any electronic format in which it holds the information."), (a)(2) ("Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies."). When a request is made, "the agency may charge the cost to construct a record," but it must produce a compliant electronic copy to the requestor. *Cty. of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1336 (2009). Your letter identifies no authority to the contrary. And indeed, none exists.

Moreover, the CCR version on the website you provided is not "publicly available" within the meaning of the PRA. This version is not "publicly available" because it imposes "end user restrictions" that "are incompatible with the purposes and operation of the CPRA." *Cty. of Santa Clara*, 170 Cal. App. 4th at 1334. For instance, it is constrained by terms of use that restrict users' activity (<https://legal.thomsonreuters.com/en/legal-notices/terms-of-use>) a privacy policy governing the use of personal information (<https://www.thomsonreuters.com/en/privacy-statement.html>), and a cookie policy requiring users to enable first-party and third-party cookies to access the CCR (<https://www.thomsonreuters.com/en/privacy-statement.html#cookies>).

Second, paper copies and scanned PDFs are insufficient. The PRA clearly states that you must produce electronic copies in the electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. Cal. Gov. Code §§ 6253.9(a)(1)-(2). Your letter does not state that you only possess paper copies of the CCR. Nor does your letter state that you do not possess copies in the file types that I requested:

Exhibit F



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Open Source "America's Operating System"

"It's Not Just A Good Idea—It's The Law!"

December 29, 2020

Office of Public Affairs
Department of General Services
707 3rd Street, 8th Floor
West Sacramento, CA 95605

Re: California Public Records Act Request (via email to DGSPublicAffairs@dgs.ca.gov)

Dear Office of Public Affairs:

Under the California Public Records Act (Government Code § 6250 et seq.) and Article I, § 3(b) of the California Constitution, I write to request a copy of Title 24 of the California Code of Regulations.

The contents of Title 24 are public records under Government Code § 6252(e) ("Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.").

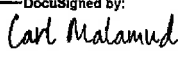
Please provide these records in all formats in your possession, including (but not limited to) structured, machine-readable digital formats, such as XML or PDF files. Under Government Code § 6250(a)(1), you must provide these records in "any electronic format in which [you] hold[] the information." Additionally, Government Code § 6250(a)(2) directs you to "provide a copy of an electronic record in the format requested if the requested format is one that has been used by [you] to create copies for [your] own use or for provision to other agencies." Thus, you must provide copies of these records in all formats that you hold, use, or provide to other agencies.

If you determine that any material is exempt from disclosure, please specify the exemption within 10 days, as required by Government Code § 6253.1(c). If you believe that an exemption is discretionary, please state why you are withholding the information. If, for any reason, you refuse to disclose any part of these records, Government Code § 6255 requires you to explain why.

Please provide a determination on this request within 10 days, as required by Government Code § 6253(c).

If needed, please contact me at (707) 385-1617 or carl@media.org. Please notify me of any duplication costs exceeding \$100 before you duplicate the records so that I may decide which records I want copied.

Sincerely,

DocuSigned by:

E8DA36AECFAF6462...

Carl Malamud
Public.Resource.Org, Inc.

cc: Matthew Caplan, Cooley LLP
Joseph D. Mornin, Cooley LLP
Ryan T. O'Hollaren, Cooley LLP
David Halperin, Of Counsel, Public Resource

Exhibit G

January 7, 2021

VIA EMAIL
Mr. Carl Malamud
carl@media.org

Dear Mr. Malamud:

The California Building Standards Commission (CBSC) received your Public Records Act request (enclosed) on December 29, 2020 for records on file at our office.

Upon review of your PRA request it appears you are requesting a free copy of the 2019 California Building Standards Code (Title 24, California Code of Regulations).

The 2019 Title 24 is available for public inspection at the CBSC office pursuant to Health and Safety Code Section 18942. Additionally, most state document depository libraries have a set available, or your local city or county building or planning department may have a printed copy of Title 24 available for public viewing and/or copying. Title 24 may also be viewed online free of charge via the CBSC website. Individual parts or a full set of Title 24 may be purchased from the International Code Council, International Association of Plumbing and Mechanical Officials (Parts 4 & 5) or the National Fire Protection Association (Part 3).

CBSC does not have the publishing rights to Title 24 and therefore cannot provide free copies to the public. This is because Title 24 is based on and includes model codes produced by the publishing entities, and they then publish California's codes, retaining copyright protections. Please contact the publisher(s) of the code books (linked above) to obtain a complete copy.

If you have any questions or need further information you may contact me by telephone at (916) 263-0916 or by email at cbsc@dgs.ca.gov.

Sincerely,



Michael Nearman, Deputy Executive Director
California Building Standards Commission

Enclosure: December 29, 2020 PRA request email

cc: CBSC Chron File
Department of General Services—Office of Public Affairs
Department of General Services—Office of Legal Services

Exhibit G - 000042

Exhibit H



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Open Source “America’s Operating System”

“It’s Not Just A Good Idea—It’s The Law!”

January 29, 2021

Michael Nearman
Deputy Executive Director
California Building Standards Commission
2525 Natomas Park Drive, Suite 130
West Sacramento, CA 95833
michael.Nearman@dgs.ca.gov

Re: California Public Records Act Request

Dear Mr. Nearman:

I write in response to your January 7, 2021 letter in response to my California Public Records Act (“PRA”) request for electronic copies of Title 24 of the California Code of Regulations.

We understand from your response that you possess the documents and information that we’ve requested, but that you are refusing to produce them. In so doing, the PRA places the burden on you to prove that disclosure is not warranted – either through a statutory exemption, or based on the public interest. *Becerra v. Superior Court*, 44 Cal. App. 5th 897, 914 (2020), review denied (May 13, 2020); *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 70 (2014); *County of Los Angeles v. Superior Court*, 211 Cal.App.4th 57, 63 (2012); § 6255. Your letter did neither. Nowhere in the PRA – or any other California law, for that matter – are private interests, such as those of publishers, favored over California’s constitutional right to publicly access the law of the land. Here, Title 24 of the California Code of Regulations is unambiguously a public record subject to disclosure, and no exemption or public interest applies. The justifications for withholding listed in your letter are insufficient, and inconsistent with both the text and spirit of the PRA and applicable law.

First, you state that print editions of Title 24 are available for inspection at certain locations, and can be purchased (in whole or part) from private organizations. This does not satisfy your duty to provide electronic copies upon request under the PRA. See Cal. Gov. Code § 6253.9(a) (“any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person”). Nowhere does the PRA say that making rival versions of the records available at select libraries and state buildings exempts the agency from complying with PRA requests. When a request is made, “the agency may charge the cost to construct a record,” but it must produce a compliant electronic copy to the requestor. *Cty. of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1336 (2009). You letter identifies no authority to the contrary. And indeed, none exists.

Second, you state that Title 24 can be viewed on the Building Standards Commission (“BSC”) website. This does not satisfy your duty to provide electronic copies in every electronic format (1) in which you hold the information or (2) that you use to create copies for your own use or to provide to other agencies. Id. §§ 6253.9(a)(1) (“The agency shall make the information available in any electronic format in which it holds the information.”), (a)(2) (“Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.”).

Moreover, the version of Title 24 on the BSC website is not “publicly available” within the meaning of the PRA. You provided a link to <https://www.dgs.ca.gov/BSC/Codes>, which directs visitors to view Title 24 on the proprietary website of International Code Council, Inc. at <https://codes.iccsafe.org/>. This version is not “publicly available” because it imposes severe “end user restrictions” that “are incompatible with the purposes and operation of the CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1334. For instance, the “Basic” access level only provides read-only

access in a proprietary format. For further access and functionality—such as the ability to copy, paste, print, and search—a reader must buy a subscription, priced between \$216 and \$865 per year. Such licensing schemes and end user agreements have been squarely rejected by the California Court of Appeal. *Id.* at 1334.

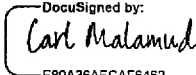
Third, you state that “CBSC does not have the publishing rights to Title 24 and therefore cannot provide free copies to the public” because “Title 24 is based on and includes model codes produced by the publishing entities, and they then publish California’s codes, retaining copyright protections.” This is not a valid basis to withhold materials in response to a PRA request. As noted above, an agency “shall make the information available in any electronic format in which it holds the information.” Cal. Gov. Code § 6253.9(a)(1). Any refusal to provide public records on the basis of copyright protection must be supported by express statutory authority. *Cty. of Santa Clara*, 170 Cal. App. 4th at 1333 (because no “express authorization to secure copyrights” existed for GIS data, the county could not assert copyright protection as a basis for nondisclosure); *City of Inglewood v. Teixeira*, No. CV-15-01815-MWF (MRWx), 2015 U.S. Dist. LEXIS 114539, at *8-9 (C.D. Cal. Aug. 20, 2015) (because the city could identify “no affirmative grant of authority that permits it to obtain and assert a copyright for the City Council Videos,” the court held that the city could not withhold the videos on copyright grounds).

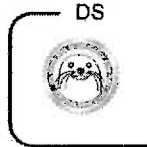
Your letter points to no authority to support the notion that any alleged copyright interest in Title 24, even if valid, would prevent BSC from producing such records in response to the PRA request. This is because none exists. In fact, the California Court of Appeal has held that assertions of copyright protections over public records were inconsistent with the PRA: “The same persuasive reasoning applies to the interplay between copyright law and California’s public records law, with the result that unrestricted disclosure is required. Doing so effectuates the purpose of the statute, which is ‘increasing freedom of information by giving members of the public access to information in the possession of public agencies.’” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1335 (citing *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 876 (Fla. Dist. Ct. App. 2004)).

Please provide copies of Title 24 in every electronic format in your possession—including (without limitation) structured, machine-readable formats, such as XML files—by February 12. If you withhold any materials, please identify them and state the basis for your decision to withhold them, as required by Government Code § 6253(c).

In the event we do not satisfactorily resolve this issue by February 26, I will authorize my attorneys to initiate writ proceedings to challenge the BSC’s refusal to provide me with these public records.

With best regards,

DocuSigned by:

E80A36AEC6AF64E2...
Carl Malamud, President
Public Resource



cc: Matthew Caplan, Cooley LLP
Joseph D. Mornin, Cooley LLP
Ryan T. O’Hollaren, Cooley LLP
David Halperin, Of Counsel, Public Resource

Exhibit I

From: Marvelli, Mia@DGS <Mia.Marvelli@dgs.ca.gov>
Sent: Tuesday, March 2, 2021 4:11 PM
To: carl@media.org
Cc: Mills, Laura@DGS; Nearman, Michael@DGS; DGS Public Affairs@DGS; davidhalperindc@gmail.com; Caplan, Matt; Mornin, Joe; O'Hollaren, Ryan T.
Subject: FW: Response to December 29, 2020 Public Records Act Request
Attachments: PRA-10-20 Response-01-07-21.pdf

[External]

Dear Mr. Malamud,

BSC stands by its original response letter and there will be no additional response.

Sincerely,

Mia Marvelli, Executive Director
she/her
California Building Standards Commission
dgs.ca.gov/BSC
916-263-0916

From: Carl Malamud <carl@media.org>
Sent: Wednesday, February 24, 2021 10:45 AM
To: Mills, Laura@DGS <Laura.Mills@dgs.ca.gov>
Cc: Nearman, Michael@DGS <Michael.Nearman@dgs.ca.gov>; DGS Public Affairs@DGS <DGSPublicAffairs@dgs.ca.gov>; David Halperin <davidhalperindc@gmail.com>; Caplan, Matt <mcaplan@cooley.com>; Mornin, Joe <jmornin@cooley.com>; O'Hollaren, Ryan T. <rohollaren@cooley.com>
Subject: Re: Response to December 29, 2020 Public Records Act Request

CAUTION: This email originated from a NON-State email address. Do not click links or open attachments unless you are certain of the sender's authenticity.

Dear Mr. Nearman and Ms. Mill -

I had not received any response to my letter of January 29, 2021. I was wondering if we should be expecting one from you? We had requested a response by February 12 with the hope that we could resolve these issues by February 26, which is this Friday.

Would you mind letting me know if you plan on responding? The letter is at the following address in case it was lost in the shuffle:

<https://law.resource.org/pub/us/cfr/regulations.gov/foia/bsc.ca.gov.20210129.pdf>

With best regards,

Carl Malamud

On Fri, Jan 29, 2021 at 1:16 PM Carl Malamud <carl@media.org> wrote:

Dear Mr. Nearman and Ms. Mills -

Please find attached a reply to your letter of January 7, 2021.

Best regards,

Carl Malamud

On Thu, Jan 7, 2021 at 2:50 PM Mills, Laura@DGS <Laura.Mills@dgs.ca.gov> wrote:

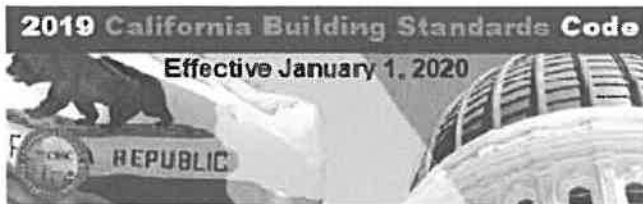
Dear Mr. Malamud:

Please find attached CBSC's response letter to your request of December 29, 2020.

Best regards,

Laura Mills, AGPA

Department of General Services
California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Office (916) 263-0916
Direct (916) 263-1330
Email laura.mills@dgs.ca.gov
Website www.dgs.ca.gov/bsc



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