Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: September 20, 2019

TO: Kris Michell, Chief Operating Officer

FROM: City Attorney

SUBJECT: Public Records Act Request for City Staff Directory Information

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INTRODUCTION

The San Diego Union-Tribune has asked the City of San Diego (City) to disclose a staff directory, including email addresses and phone numbers, under the California Public Records Act [Public Records Act or CPRA]. You have indicated that releasing all City employee email addresses at once could create a potential threat to the City's cybersecurity because it would make it substantially easier for bad actors to launch phishing attacks against the City, which could interrupt critical City operations.[1]

QUESTIONS PRESENTED

Are City staff directories exempt from disclosure under the Public Records Act?

SHORT ANSWER

An individual employee's name, title, or contact information is disclosable under the CPRA unless an exemption exists that the City wishes to exercise. The City may, for example, decline to provide a complete staff directory if releasing the direct telephone numbers or email addresses of all, or a large number of, employees, would create a potential threat to the City's cybersecurity such that the public interest in nondisclosure would clearly outweigh the public interest in disclosure.

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[1] Recent ransomware attacks against the cities of Atlanta and Baltimore cost those cities millions of dollars in remediation efforts and lost productivity. *See* Ian Duncan, *Baltimore estimates cost of ransomware attack at $18.2 million as government begins to restore email accounts*, The Baltimore Sun, May 29, 2019, https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-ransomware-email-20190529-story-html/; Theo Douglas, *What Can We Learn from Atlanta?*, Government Technology, October/November 2018, https://www.govtech.com/security/What-Can-We-Learn-from-Atlanta.html/.

ANALYSIS

I. EXEMPTIONS TO DISCLOSURE UNDER THE PUBLIC RECORDS ACT

The Public Records Act, which is codified at sections 6250 *et seq.* of the California Government Code,[2] sets forth the requirements for disclosure of public records. It requires the disclosure of governmental records to the public, upon request, unless there is a legal basis to withhold the records from disclosure. Cal. Gov't Code § 6253.9(b). This memo discusses whether City staff may assert section 6255(a), known as the "catch-all" exemption, based on a security concern associated with the disclosure. This exemption applies where "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."[3] This exemption puts the "burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality." *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065, 1071 (2006).[4]

A. Applicability of Exemptions to Employee Names and Titles

The California courts have analyzed application of the catch-all exemption in the context of security concerns. Generally, employee information is releasable. In *Int'l Federation of Professional and Technical Engineers v. Superior Court*, 42 Cal. 4th 319 (2007), the California Supreme Court found that, absent a specific finding of a need for anonymity, the public interest in disclosure of employee names and titles outweighed the interest in nondisclosure. *Id.* at 337. The Court stated: "If an officer's anonymity is essential to his or her safety, the need to protect the officer would outweigh the public interest in disclosure and would justify withholding the officer's name" (citing *Commission on Peace Officer Standards & Training v. Superior Court*, 42 Cal. 4th 278, 301 (2007)). Absent such a finding, the information would be releasable. *Id. See also San Diego Employees Retirement Association v. Superior Court*, 196 Cal. App. 4th 1228 (2011) (finding that county employees' retirement system was required to disclose retirees' names); *see also American Civil Liberties Union of N. California v. Superior Court*, 202 Cal. App. 4th 55 (2011) (security concerns were inadequate to exempt California Department of Corrections from withholding names of companies from which the agency sought to acquire lethal injection drugs).

There have been limited situations where the California courts have found that the public interest in the release of employee names was outweighed by the public interest in nondisclosure. *See Los Angeles Unified School District v. Superior Court*, 228 Cal. App. 4th 222 (2014) (school district did not need to provide newspaper with names of teachers associated with teacher evaluation scores); *see also San Jose v. Superior Court*, 74 Cal. App. 4th 1008 (1999) (public interest in withholding public records containing names of persons who complained about airport noise clearly outweighed public interest in disclosure).

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[2] All references are to the California Government Code unless otherwise stated.
[3] For an in-depth discussion of the "catch-all" exemption, *see* City Att'y MOL No. 2009-7 (Jul. 9. 2009).
[4] Another exemption under the CPRA, Section 6254.19 of the California Government Code, specifically exempts the release of an "information security record" when "disclosure of that record would reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of a public agency."

B. Applicability of Exemptions to Employee Phone Numbers and Email Addresses

There are no California cases that specifically address the question of whether a government agency may decline to produce a complete staff directory due to security threats. There is limited case law which is somewhat analogous. For example, in *Times Mirror Co. v. Superior Court*, 53 Cal. 3d. 1325 (1991), the California Supreme Court found that the Governor's schedule and appointment calendars were exempt from release because release of the information would create a potential threat to the Governor's security. Accordingly, under the balancing test of section 6255, "the public interest served by not disclosing the Governor's appointment calendars and schedules clearly and substantially outweighs the public interest in their disclosure."

There are also some federal cases that are instructive. In 2018, the D.C. District Court found that the release of direct phone extensions of employees of the Bureau of Prisons "could possibly lead to the same sort of harassment that courts have feared other government employees might suffer if their direct work contact is divulged." *Pinson v. Dept. of Justice*, 313 F. Supp. 3d 88, 112 (D.D.C. 2018) (the applicable federal exemption was for unwarranted invasion of personal privacy, similar to section 6254(c) of the CPRA, but the reasoning may also be applicable to California's catch-all exemption). *See also*, *Shurtleff v. U.S. Environmental Protection Agency*, 991 F. Supp. 2d 1 (D.D.C. 2013) (holding that email addresses could be withheld under the personal privacy exemption of the Freedom of Information Act). *But see Friedman v. U.S. Secret Service*, 923 F. Supp. 2d 262 (D.D.C. 2013) (email address and work phone numbers were not exempt for personnel and medical files).

Taken together, the California and federal cases suggest that, in certain circumstances, the public interest in disclosure of employee email addresses and telephone numbers may be outweighed by the public interest in nondisclosure. A court may find that the City's security concerns outweigh the need for public access to a complete employee directory, as the public already has alternative means for identifying and reaching City officials. In addition, a court may consider whether the disclosure of email addresses and direct phone numbers of all employees would negatively impact operations; this information could weigh in favor of non-disclosure.

CONCLUSION

In conclusion, the decision by City staff to disclose or withhold due to concerns about security should be based on credible facts and information, including whether a potential threat to the City's cybersecurity exists, what level of information may be safely disclosed, and the extent of any disruption to operations that may result.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/Steven R. Lastomirsky
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Deputy City Attorney

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