

Public Comment
December 15, 2015
Alameda City Council

Name is Tom Virsik, local lawyer, two blocks away. (I have a copy of three letters that I am referencing.)

Fair part of practice involves private clients in conflict with public entities, including bringing and defending litigation

A few years ago a client came to me with a matter that involved the City of Alameda. That controversy is presently in litigation and set for trial early next year. The details do not matter – basically my client contends the City is liable for actions of an employee. I'm not here to address the merits of that controversy. I have a policy concern.

As I have done on many prior occasions involving other clients and other public entities, I recently made a request under the PRA for records of how much the public entity (here Alameda) has spent on litigation in the matter. I've made those requests routinely since 2012 – when a certain legal ruling was published -- and routinely the public entities provide the information. Some even have that information in their agenda packets that you can find on their websites.

Alameda, however, refused to disclose how much it spent on its litigation. The letter sent from an outside lawyer says that all information exchanged between a lawyer and client is privileged, including billings. In other words, how much a public entity spends on outside counsel is not the public's business.

There are two troubling aspects to the City's response. And they are the reason I am here to speak to you in public.

First, the refusal is not based on anything specific to my client's current litigation, the timing of my request, or any other details, but is a blanket statement that is applicable to all City of Alameda legal matters, forever. The City is telling the public it has no right to ever find out how much it spent on outside lawyers for any project, whether it is a lawsuit, assistance with negotiations, or any other project for which the City may use outside lawyers. Is that really the City's policy – to deny the public the right to know how much the City spends on outside lawyers?

Second, the refusal I received appears completely unaware that Alameda has a Sunshine ordinance. Let me be specific about the Sunshine Ordinance:

My request asked that all confidential information in any billings or invoices be redacted, that the public was entitled to only the numbers – not any lawyer advice or client confidences. Sections 2-92.8(f)(2) and 2-92.11 requires the City to provide

Submitted by Tom Virsik
under Oral Communications
at the 12-15-15 meeting

the non-confidential parts of records and redact the rest. The refusal letter is silent about that Ordinance obligation.

And, the letter refusing my request admits explicitly that the law is “unsettled” about the sort of records I was seeking, and then goes on to make legal arguments about how the unsettled law should be interpreted. The Sunshine Ordinance, on the other hand, requires the City to cite legal authority if it chooses to withhold something. Section 2-92.12. By the standard of the Sunshine Ordinance, “unsettled” law is not enough to justify providing records.

I am not here as a precursor to separate litigation or claims about violations of the Sunshine Ordinance. I am here because I suspect that your policy of transparency and the Sunshine Ordinance that gives effect to it may have been misunderstood by the outside lawyer tasked to respond to my request. I would ask that the City reaffirm – in whatever way it deems appropriate – that it has a Sunshine ordinance and expects all City personnel (internal and outside contracted ones) to rigorously adhere to it.

Thank you for your time and attention.

LAW OFFICES OF
PATRICK J. MALONEY

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ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

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e-mail: PJMLAW@pacbell.net

THOMAS S. VIRSIK

Via hand

December 1, 2015

Alan M. Cohen
Assistant City Attorney
City of Alameda
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501

RE: California Public Records Act Request
Billing Invoices in Case No. RG13689988
Alan Glover v. City of Alameda, Michael Ortega

Dear Mr. Cohen:

We make the following request for information pursuant to the Constitutional rights found in the California Public Records Act. We are seeking copies of the detailed billing or invoices in the Alan Glover matter (noted above) presented to the City of Alameda, Michael Ortega in his official capacity as a police officer and/or its Police Department by the following attorneys or law firm, including predecessors and/or successors:

Bertrand, Fox, Elliot, Osman & Wenzel

This request is for billing correspondence, summaries, invoices, and summary recaps or similar. Our request covers the period of July 21, 2012 through the date of this letter.

Because the City of Alameda may not routinely receive public records requests for attorney billings in pending matters, I am erring on the side of caution and providing authority and an explanation, although neither is required by the public records act. The current authority is County of Los Angeles v. Superior Court (2012) 211 Cal.App.4th 57. Research may reveal a Court of Appeals case this year that appeared to limit the scope of that decision. County of Los Angeles Board of Supervisors v. Superior Court of Los Angeles (2015) 235 Cal.App. 4th 1154, 1174-1175. Please note that the California Supreme Court granted review of that decision on July 8, 2015. See e.g., 351 P.3rd 329.

This office has made substantially similar requests on prior occasions to other public agencies in totally unrelated matters. See e.g., Attached September 2013 billing correspondence and invoice of the law offices of Munger, Tolles & Olson LLP, which occurred at a time the subject litigation was still pending. Please note that while the details of the work performed and the individual

providing the service were redacted, the date, hours and amount were not redacted in the documents provided. We seek comparable information for the above-listed firm.

I also want to be absolutely clear that this request is not intended to affect the cordial relationship and cooperation this office has experienced with you and the personnel of the Bertrand, Fox firm in the Glover litigation. For that reason, Mr. Fox of the Bertrand, Fox office is being copied on this request as a matter of courtesy. The billing records are in no way being sought to hinder progress in the Glover matter. In fact, the records may be of value to the overall resolution as reflected in that the Glover matter will be resolved in one of three ways: settlement, a plaintiff verdict, or a defense verdict. The billing records may aid in settlement dynamics as a real-world reflection of defense effort, much as out of pocket expenses do for a plaintiff. A plaintiff verdict for even a nominal sum may result in a statutory right to fees, and the defense cost (albeit without internal costs of the City and police) is commonly used for comparison when addressing fee requests. Finally, assuming a defense verdict, public discussion and future policy choices may be served by knowing with specificity the civic funds expended on a specific result. Please keep in mind that the public records act neither requires a requestor to explain any purpose for the records nor is a public agency permitted to rely on the stated (or suspected) purpose when responding to a request.

We are prepared to pay the reasonable costs associated with copying the documents. If any material will be withheld, please state the specific CPRA provision that provides the authority therefore and how such hurdle may be avoided with the City's assistance. See Govt. Code § 6253.1.

Sincerely,



Thomas S. Virsik

Encl. MTO invoice (in redacted form)

Cc. Mr. Fox (via email)

MUNGER, TOLLES & OLSON LLP

355 SOUTH GRAND AVENUE
THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1560
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September 27, 2013

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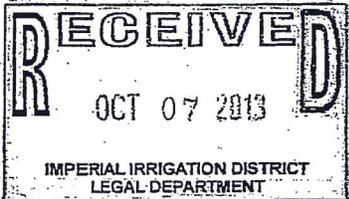
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A PROFESSIONAL CORPORATION

Imperial Irrigation District (IID)
Attn: Ross Simmons, Interim General Counsel
333 East Barioni Boulevard
PO Box 937
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WRITER'S DIRECT LINE
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Ron.Olson@mto.com

Re: Post QSA
Dear Ross:
4018204

Enclosed is our statement for services rendered and disbursements incurred in connection with the aforementioned matter during the month of July, 2013. As mentioned in the cover letter for the QSA and Related Matters billing, pursuant to the request of Jon Sokol, IID's coverage counsel, we opened this second matter entitled Post-QSA which will reflect work associated with implementation and modification of the QSA and other going forward advice.

As noted on the remittance page, all payments should be sent to the following Post Office Box:

Munger, Tolles & Olson LLP
PO Box 515065
Los Angeles, CA 90051-5965

If you have any questions regarding this statement, please call me.

Sincerely yours,

[Signature of Ronald L. Olson]

Ronald L. Olson

RLO:kjg
Enclosure
21772929.1

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MUNGER, TOLLES & OLSON LLP

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September 27, 2013

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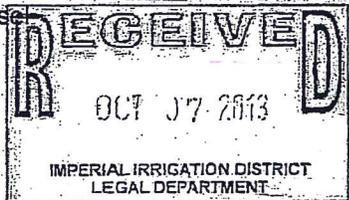
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WRITER'S DIRECT LINE
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Ron.Olson@mto.com

Re: QSA & Related Matters
122-18264-0046
Dear Ross: IID vs. MII, Interim General Counsel (GSM)

Enclosed is our statement for services rendered and disbursements incurred in connection with the aforementioned matter during the month of July, 2013. Pursuant to the request of Jon Sokol, IID's coverage counsel, we opened a second matter entitled Post-QSA that will reflect work associated with implementation and modification of the QSA and other going forward advice. The Post-QSA matter will be billed under separate cover and a separate invoice.

As noted on the remittance page, all payments should be sent to the following Post Office Box:

Munger, Tolles & Olson LLP
PO Box 515065
Los Angeles, CA 90051-5965

If you have any questions regarding this statement, please call me.

Sincerely yours,

Ronald L. Olson

RLO:kjg
Enclosure
21504142.1

R

MUNGER, TOLLES & OLSON LLP
355 SOUTH GRAND AVENUE
LOS ANGELES, CA 90071-1560

September 27, 2013

Imperial Irrigation District (IID)
Attn: Ross Simmons, Interim General Counsel
333 East Barioni Boulevard
PO Box 937
Imperial, CA 92251

Invoice Number: 526170

Tax Identification No. 95-2156481

For professional services rendered through July 31, 2013 as follows:

Post OSA

MTO Matter Number: 28135-00003

<u>DATE</u>	<u>TKPR</u>	<u>TIME</u>	<u>SERVICES</u>
7/01/13		0.80	
7/01/13		1.10	
7/01/13		1.70	
7/01/13		2.10	
7/01/13		9.10	
7/02/13		0.50	
7/02/13		7.10	
7/02/13		5.50	
7/02/13		4.80	
7/02/13		2.80	
7/03/13		0.90	

Matter Desc: Post QSA
MTO Matter #: 28135-00003

<u>DATE</u>	<u>TKPR</u>	<u>TIME</u>	<u>SERVICES</u>
7/03/13		1.20	
7/03/13		10.20	
7/04/13		0.60	
7/06/13		1.30	
7/07/13		0.50	
7/08/13		0.90	
7/08/13		3.70	
7/08/13		2.10	
7/08/13		6.50	
7/08/13		3.90	
7/08/13		1.50	
7/09/13		0.90	
7/09/13		1.80	
7/09/13		1.30	
7/10/13		1.70	
7/10/13		1.50	
7/10/13		4.50	
7/11/13		0.90	
7/11/13		9.50	

P

Matter Desc: Post QSA
MTO Matter #: 28135-00003

<u>DATE</u>	<u>TKPR</u>	<u>TIME</u>	<u>SERVICES</u>
7/11/13		3.00	
7/11/13		6.90	
7/11/13		1.00	
7/12/13		2.50	
7/12/13		8.80	
7/13/13		1.00	
7/13/13		0.70	
7/14/13		1.00	
7/14/13		3.50	
7/14/13		2.20	
7/14/13		3.30	
7/15/13		2.00	
7/15/13		3.00	
7/15/13		4.20	
7/15/13		2.30	
7/15/13		1.30	
7/15/13		0.30	
7/16/13		5.50	

Matter Desc: Post QSA
MTO Matter #: 28135-00003

<u>DATE</u>	<u>TKPR</u>	<u>TIME</u>
7/16/13		7.80
7/16/13		7.50
7/16/13		8.70
7/16/13		6.40
7/16/13		2.40
7/17/13		0.30
7/17/13		5.30
7/17/13		0.20
7/18/13		1.20
7/18/13		4.70
7/18/13		8.10
7/19/13		4.00
7/19/13		5.20
7/19/13		4.80
7/20/13		2.80
7/20/13		10.60
7/21/13		6.00



R

Matter Desc: Post QSA
MTO Matter #: 28135-00003

<u>DATE</u>	<u>TKPR</u>	<u>TIME</u>	<u>SERVICES</u>
7/21/13		12.60	
7/22/13		0.80	
7/22/13		7.60	
7/22/13		2.00	
7/22/13		0.30	
7/23/13		0.30	
7/23/13		5.20	
7/23/13		6.50	
7/24/13		6.80	
7/24/13		6.00	
7/25/13		0.90	
7/25/13		0.40	
7/25/13		6.30	
7/25/13		5.30	
7/26/13		7.10	
7/26/13		5.00	
7/29/13		8.30	
7/29/13		1.20	
7/30/13		8.30	
7/31/13		0.30	
		320.60	TOTAL CHARGEABLE HOURS

TOTAL FEES \$ 133,811.50
\$ (38,318.00)

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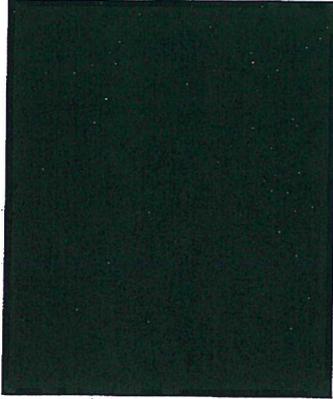
Matter Desc: Post QSA
MTO Matter #: 28135-00003

INVOICE TOTAL

\$ 95,493.50

FEE SUMMARY

TIMEKEEPER



TKPR



HOURS

RATE

AMOUNT

10.40	975.00	10,140.00
19.00	875.00	16,625.00
22.70	850.00	19,295.00
59.30	580.00	34,394.00
9.70	515.00	4,995.50
(68.90)	245.00	(16,880.50)
(87.50)	245.00	(21,437.50)
5.80	215.00	1,247.00
36.30	240.00	8,712.00
1.00	85.00	85.00
<u>320.60</u>		<u>95,493.50</u>

TOTAL

MUNGER, TOLLES & OLSON LLP
P.O. BOX 515065
LOS ANGELES, CA 90051-5065

September 27, 2013

Imperial Irrigation District (IID)
Attn: Ross Simmons, Interim General Counsel
333 East Barioni Boulevard
PO Box 937
Imperial, CA 92251

Invoice Number: 526170

Tax Identification No. 95-2156481

MTO Matter Number: 28135-00003

For professional services rendered through July 31, 2013 as follows:

TOTAL FEES

\$ 133,811.50



\$ (38,318.00)

INVOICE TOTAL

\$ 95,493.50

PLEASE RETURN THIS COPY WITH YOUR REMITTANCE

2

MUNGER, TOLLES & OLSON LLP
355 SOUTH GRAND AVENUE
LOS ANGELES, CA 90071-1560

September 27, 2013

Imperial Irrigation District (IID)
333 East Barioni Boulevard
PO Box 937
Imperial, CA 92251
Attn: Ross Simmons, Interim General Counsel

Invoice Number: 526099

Tax Identification No. 95-2156481

For professional services rendered through July 31, 2013 as follows:

QSA & Related Matters

MTO Matter Number: 28135-00002

(A)

<u>DATE</u>	<u>TKPR</u>	<u>TIME</u>	<u>SERVICES</u>
7/01/13		7.00	
7/02/13		6.30	
7/03/13		1.00	
7/03/13		3.20	
7/03/13		1.00	
7/03/13		3.30	
7/03/13		5.50	
7/03/13		1.00	
7/04/13		0.70	

975

2

Matter Desc: QSA & Related Matters
MTO Matter #: 28135-00002

DATE	TKPR	TIME	SERVICES
7/05/13		1.00	
7/05/13		2.40	
7/06/13		1.80	
7/07/13		2.20	
7/08/13		0.50	
7/08/13		7.50	
7/08/13		0.90	
7/08/13		5.90	
7/08/13		2.00	
7/09/13		1.00	
7/09/13		1.80	
7/09/13		7.00	
7/10/13		0.50	
7/10/13		2.00	
7/10/13		1.60	
7/10/13		0.90	
7/10/13		7.00	
7/11/13		0.30	
7/11/13		2.10	

7

Matter Desc: QSA & Related Matters
MTO Matter #: 28135-00002

<u>DATE</u>	<u>TKPR</u>	<u>TIME</u>	<u>SERVICES</u>
7/11/13		1.00	
7/11/13		7.00	
7/12/13		1.00	
7/12/13		3.90	
7/15/13		2.60	
7/16/13		4.10	
7/17/13		1.10	
7/18/13		0.80	
7/19/13		0.20	
7/22/13		0.60	
7/22/13		0.30	
7/26/13		0.80	
7/27/13		0.40	
7/28/13		0.50	
7/29/13		6.50	
7/31/13		0.70	
7/31/13		1.10	
		110.00	TOTAL CHARGEABLE HOURS

TOTAL FEES

\$ 44,800.50

DISBURSEMENTS

Matter Desc: QSA & Related Matters
MTO Matter #: 28135-00002

16.25

16.25

56.24

22.07

18.04

47.14

18.10

56.29

217.88

40.00

80.00

120.00

0.55

7.26

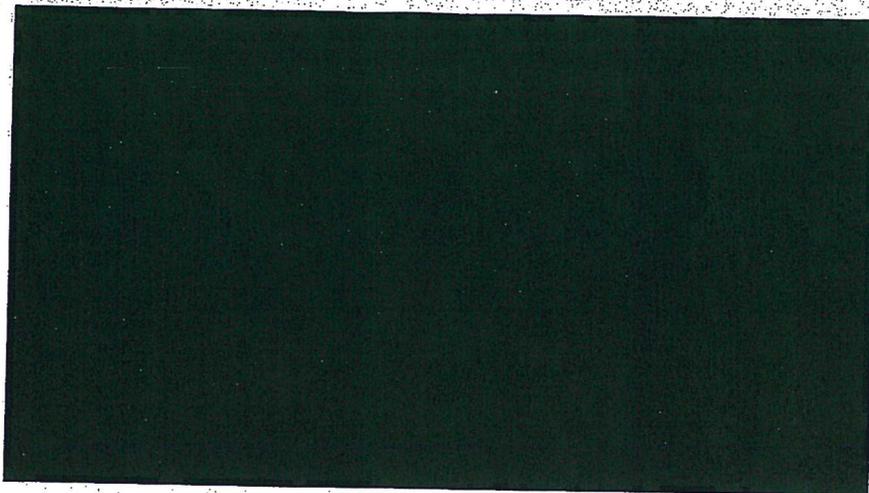
7.81

(250.90)

236.90

(14.00)

Matter Desc: QSA & Related Matters
 MTO Matter #: 28135-00002



20.00
 20.00
 27.00
 21.27
 48.27

TOTAL DISBURSEMENTS

416.21

INVOICE TOTAL

\$ 45,216.71

FEE SUMMARY

TIMEKEEPER



TKPR



<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
4.10	975.00	3,997.50
32.90	875.00	28,787.50
6.60	850.00	5,610.00
1.10	580.00	638.00
6.00	215.00	1,290.00
37.50	75.00	2,812.50
18.80	75.00	1,410.00
3.00	85.00	255.00
<u>110.00</u>		<u>44,800.50</u>

TOTAL

MUNGER, TOLLES & OLSON LLP
P.O. BOX 515065
LOS ANGELES, CA 90051-5065

September 27, 2013

Imperial Irrigation District (IID)
333 East Barioni Boulevard
PO Box 937
Imperial, CA 92251
Attn: Ross Simmons, Interim General Counsel

Invoice Number: 526099

Tax Identification No. 95-2156481

MTO Matter Number: 28135-00002

For professional services rendered through July 31, 2013 as follows:

TOTAL FEES	\$ 44,800.50
TOTAL DISBURSEMENTS	416.21
INVOICE TOTAL	<u>45,216.71</u>
TOTAL AMOUNT DUE	\$ 45,216.71

PLEASE RETURN THIS COPY WITH YOUR REMITTANCE

~~\$45,216.71~~ to
other
invoice.

~~45,216.71~~

(1,950)

43,266.71

LAW OFFICES OF
BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

A PROFESSIONAL CORPORATION
THE WATERFRONT BUILDING
2749 HYDE STREET
SAN FRANCISCO, CALIFORNIA 94109
Facsimile (415) 353-0990

SENDER'S DIRECT E-MAIL:
msnyder@bfesf.com

SENDER'S DIRECT DIAL:
(415) 353-0999 ext. 207

December 10, 2015

VIA E-MAIL & U.S. MAIL

Thomas S. Virsik
LAW OFFICES OF PATRICK J. MALONEY
2425 Webb Avenue, Suite 100
Alameda, CA 94501-2922

Re: *Glover v. City of Alameda*
Alameda County Superior Court Case No. RG13689988
Our File No. ALA 5048
PRA Request

Dear Mr. Virsik:

The City of Alameda is in receipt of your California Public Records Act request for billing and invoices from July 21, 2012 through the present prepared by the law firm of Bertrand, Fox, Elliot, Osman, & Wenzel in the pending matter of *Glover v. City of Alameda*. By this letter, outside counsel for the City in this matter hereby objects on behalf of the City to this request on the basis that the requested documents are protected by the attorney-client privilege specified in Evidence Code § 952.

We appreciate your courtesy in providing citations supporting this request. However, as you are aware, the *County of Los Angeles v. Superior Court* (2012) 211 Cal.App.4th 57 (*Anderson-Barker*) case addressed only whether billing information for pending litigation was protected from CPRA disclosure by the pending litigation exemption of § 6254(b) of that Act. The appellant in that case did not challenge the trial court's determination that the documents were not attorney-client privileged. (*Id.* at 62.)

The only post-*Anderson-Barker* opinion to address the question of whether billing invoices are considered attorney-client privileged (as opposed to protected under the pending litigation exception within CPRA) was *County of Los Angeles Board of Supervisors v. Superior Court of Los Angeles County* (2015) 235 Cal.App.4th 1154. That opinion has been superseded by a grant of certiorari by the California Supreme Court.

Thomas S. Virsik
December 10, 2015
Page 2

Accordingly, the law as to whether billing records are protected from CPRA disclosure by Evidence Code § 952 is unsettled. Our position is that, as a communication between an attorney and a client which is intended to be confidential, billing records are protected by the attorney-client privilege embodied in Evidence Code § 952 and so are not subject to disclosure under the CPRA. Per *Anderson-Barker*'s precedent, we do not assert the applicability of the pending litigation exemption, and only argue that the documents are exempted from disclosure as attorney-client communications, an issue which *Anderson-Barker* did not address.

Evidence Code § 952 defines a "confidential communication between client and lawyer" as information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

"The term 'confidential communication' is broadly construed, and communications between a lawyer and his client are presumed confidential, with the burden on the party seeking disclosure to show otherwise." (*Palmer v. Superior Court* (2014) 231 Cal.App.4th 1214, 1226 (quoting *Gordon v. Superior Court* (1997) 55 Cal.App.4th 1546, 1557).) The attorney-client privilege "bars discovery of a privileged communication irrespective of whether [that communication also] includes unprivileged material. (*Ibid.*)

Because the attorney-client communication privilege of § 952 "protects a *transmission* irrespective of its content, there should be no need to examine the content in order to rule on a claim of privilege." (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 739 (citing *Cornish v. Superior Court* (1989) 209 Cal.App.3d 467, 480.)

Attorney-client privileged documents are protected from disclosure automatically, without any burden on the objecting party to show that harm would result from disclosure. (*Costco Wholesale Corp.*, 47 Cal.4th at 732.)

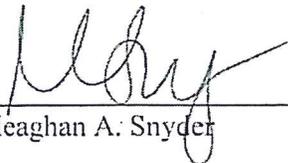
Billing records certainly fall within the protection of § 952. There is no dispute that an attorney-client relationship exists between Bertrand, Fox, Elliot, Osman & Wenzel and the City of Alameda. The billing records sought are intended to be confidential and are transmitted in confidence between the attorney and the client. No third party is included which could moot the privilege. The billing records are protected because of their transmission between an attorney and client, and so the inquiry ends there.

Thomas S. Virsik
December 10, 2015
Page 3

For the reasons enumerated above, the City of Alameda hereby invokes the protection of Evidence Code § 952 and will not release billing records for the above-mentioned pending litigation.

Very truly yours,

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

By: 
Meaghan A. Snyder

MAS/

cc: Alan Cohen, Assistant City Attorney, City of
Alameda

LAW OFFICES OF
PATRICK J. MALONEY

2425 WEBB AVENUE, SUITE 100
ALAMEDA ISLAND, CALIFORNIA 94501-2922

PATRICK J. "MIKE" MALONEY

(510) 521-4575
FAX (510) 521-4623
e-mail: PJMLAW@pacbell.net

THOMAS S. VIRSIK

December 11, 2015

Meaghan Snyder
Bertrand, Fox, Eliot, Osman & Wenzel
2749 Hyde Street
San Francisco, CA 9109

RE: California Public Records Act Request – 1 December 2015
Billing Invoices in Case No. RG13689988
Alan Glover v. City of Alameda, Michael Ortega

Dear Ms. Snyder:

I am in receipt of your letter of 10 December 2015 on behalf of the City of Alameda (City) "objecting" to the Request. The City objection is not limited as to the nature, identity, stage, timing or any other aspects of any specific litigation, matter, or negotiation that may involve outside counsel. Accordingly, I am treating the letter as reflecting the City's policy choices applicable to any PRA request that seeks outside counsel invoices in any matter at any stage of litigation, negotiation, or otherwise.

I am interpreting the City's "objection" as a claim of exemption under the Act, albeit the letter does not recite the specific statutory PRA exemption claimed. As explained below, the City's authorities do not support its decision to withhold records from the public given the City admits that the application of its claimed exemption is an "unsettled" issue. In addition, the City has sufficient means to provide the requested information without running afoul of its claimed "objection." Finally, the claim of exemption reflects a policy choice excluding the public from a notable portion of the City's business on the public's behalf, which the City's decision-makers may wish to revisit.

Evidence Code § 952

The authorities cited by the City (other than the one no longer citable per the grant of certiorari) neither address the PRA, law firm invoices, nor whether or how such invoices are treated under the PRA. Palmer v. Superior Court (2014) 231 Cal.App.4th 1214 (intrafirm communications at issue, not invoices, and not in relation to PRA); Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725 (attorney letter at issue, not invoices, unrelated to PRA); Gordon v. Superior Court (1997) 55 Cal.App.4th 1546, 1560 (whether special master followed proper procedure when attorney records seized per warrant, unrelated to PRA).

The City properly acknowledges that whether billing records of outside counsel – redacted of work product and other privileged information – are subject to the attorney client privilege is an “unsettled” issue. The City also acknowledges that recent authority has held that such invoices are subject to disclosure under the PRA, albeit the City contends it is invoking a different exemption that leads to a different result. County of Los Angeles v. Superior Court (2012) 211 Ca.App.4th 57.

The City has misunderstood the burdens and roles of the public and the public agency under the PRA. “By case law, the CPRA is broadly construed. Exemptions, however, are narrowly construed. . . . Section 6254 lists a variety of exemptions to the disclosure obligations contained in the CPRA. Exemptions under the CPRA “are to be narrowly construed [citation], and the government agency opposing disclosure bears the burden of proving that one or more apply in a particular case.” County of Los Angeles v. Superior Court 211 Ca.App.4th at 60-63 (citation omitted). It is the City, not the public, which bears the burdens. “As proponents of nondisclosure, petitioners bear the “ ‘burden of proof ... of ... demonstrat[ing] a “clear overbalance” on the side of confidentiality.’ ” Pasadena Police Officers Association v. Superior Court, (2015) 240 Cal.App.4th 268, 291 (citations omitted).

That a public agency enjoys an attorney-client privilege with its outside counsel is unremarkable. St. Croix v. Superior Court (2014) 228 Cal.App.4th 434, 440, 441. But the City has not identified authority that the amount that an outside firm bills the City – rates, dates, and charges -- is privileged. Just because an item of writing can be found in an attorney’s file does not automatically invest it with privilege. WellPoint Health Networks, Inc. v. Superior Court, (1997) 59 Cal.App.4th 110, 119. Law firm billings are not documents that were transmitted from a client to an attorney in confidence, in any event. Any privileged or work-product material is not requested and may be redacted, as noted in the initial request. It is difficult to fathom that a time-keeper (machine or human) accurately recording only time spent and the rate charged would thereby be revealing (2) communication received in confidence from a client or (2) “legal opinions formed and the advice given by the lawyer.” Evid. Code § 952. In any event, the City has the burden to demonstrate per the PRA that the amounts of time and rates qualify as either of the two qualifying types of confidential communications. The City has not identified authority that the amount it bills to a public client is within one or the other sub-category of the statutory privilege.

Objection not Impediment to Partial Disclosure

Assuming the integrity of its objection, the City is able to honor its objection and still provide the crux of the public information requested. The PRA contemplates that a public agency may provide information in a modified form to assist the public with protecting its Constitutional rights. See Govt. Code § 6253.1. Copies of checks or wires sent by the City to law firm(s) are a practical partial responsive solution honoring the claim of privilege because such documents would be free of any indicia that can be considered privileged or work-product. An outside law firm would have had no direct involvement with the creation of the payment vehicle by City staff, thus no concerns regarding the transmission of confidential or work-product information can exist. The City would simply be providing proof of the amounts paid over the course of time.

The original PRA request is not waived, but pursuant to section 6253.1 and the public agency’s duty to assist the public in obtaining partial information, demand is made for the indicia (likely

The original PRA request is not waived, but pursuant to section 6253.1 and the public agency's duty to assist the public in obtaining partial information, demand is made for the indicia (likely checks, wires, staff reports, Board meeting agenda items, and the like) reflecting the amounts the City has transmitted to its outside law firm in the above matter from July 21, 2012 to date.

Public Policy

The City claims that all content that is "transmitted" (bottom of page 2) by and among outside counsel and the City are privileged. The City's position contemplates no qualifiers, including passage of time or the nature of the "transmissions." The City's response can be understood as a blanket public policy choice to forever withhold from the public any and all records of all outside attorneys the City engages from time to time, on litigation or otherwise. Given that City policy, the public will never have a right to learn how much of its money was spent on outside legal efforts of any nature at any time, past, current, or future. The City's policy contrast starkly with many other public entities' policies that reflect a view that the public is entitled to know how much the agency spends on the public's behalf – including on lawyers. Enclosed are a few examples of contrasting pro-transparency policy choices made by other public entities for the City's (its decision-makers') consideration.

If the City's policy preventing disclosure to the public of what it spends (or has ever spent) on its several outside counsel is other than described, please provide whatever policy document(s) so reflect. The forum for change to any such City policy is obviously public and political, rather than legal.

Sincerely,



Thomas S. Virsik

Encl. San Diego County Water Authority Special Counsel Expenditure Report for Oct-Nov 2015 (posted on website)

Imperial Irrigation District Accounts Payable Checks and Wires for April 2014 (posted on website)

Cc. Alan Cohen, Asst. City Attorney (by hand)

**General Counsel's Office
Special Counsel Expenditure Report
(October-November 2015)**

Special Counsel	Project	OF Budget Invoices Approved for Payment this Period	CIP Budget Invoices Approved for Payment this Period	Total \$ Expended of \$5,360,000 Budget Allocation for FYs 16 & 17 (Fees & Costs)
Allen Markins	SD Coastkeeper Litigation	\$947.32		\$59,284.45 (OP)
Bram Blasing McLaughlin & Smith	Energy Projects & Contracts		\$14,684.60	\$18,016.10 (CIP)
Brownstein, Hyatt, Farber, Schreck	QSA Litigation - State	\$737.75		\$1,107.75 (OP)
	QSA Litigation - SWRCB			\$0.00 (OP)
	QSA Implementation	\$33,468.70 ¹		\$51,485.82 ¹ (OP)
	MWD Rate Litigation	\$96,415.00		\$111,640.43 (OP)
	Public Records Litigation			\$0.00 (OP)
Colantoni Highsmith & Whitley	Metropolitan Rates	\$3,340.00		\$3,595.00 (OP)
Daley & Helf	Nob Hill Improvements Project		\$17,830.00	\$37,067.45 (CIP)
Dentons US LLP	San Vicente Dam Raise Project		\$228,811.68	\$497,427.68 (CIP)
Ecker & Van Nest	Metropolitan Rates	\$319,427.94		\$480,003.84 (OP)
Liebert Cassidy Whitmore	Personnel Issues	\$65.00 ²		\$1,492.40 ² (OP)
	Lease Negotiations	\$195.00 ²		\$1,384.82 ² (OP)
Orrick Herrington & Suncliff LLP	Bond Counsel Services			\$0.00 ² (OP)
Pillsbury Winthrop Shaw Pittman LLP	Employer Benefit Matters	\$851.50		\$851.50 (OP)
Procopio Cory Hampreaves & Sawicki	Traylor-Shua Joint Venture (TSJV)		\$152,254.93	\$438,299.03 (CIP)
Van Ness Feldman	San Vicente Pumped Storage Study FERC permit		\$1,520.80	\$7,970.40 (CIP)
Totals:		\$421,719.51	\$415,102.01	\$656,482.97 (OP) \$988,775.66 (CIP)
FY 16 & 17 Budget Remaining:				\$4,703,517.03

¹ Not included in totals, these legal expenses related to QSA came out of Colorado River Program budget, not GC budget.

² Not included in totals, these legal expenses related to personnel issues/lease negotiations came out of Human Resources budget, not GC budget.

³ Not included in totals, these legal expenses related to bond counsel services came out of Finance budget, not GC budget.



May 13, 2014

BOARD AGENDA MEMORANDUM

Consent

SUBJECT Accounts Payable Checks and Wires for April 2014
DEPARTMENT Finance
PRESENTER Greg Broeking, chief financial officer

Background

The board has asked to review the list of checks issued and wire transfers and acknowledge same under the consent agenda. The reports for the month of April 2014 are provided herein and Mr. Broeking will be available to respond to questions.

Financial Impact

Total accounts payable warrants:

	April	Year-to-date
Checks	\$ 7,222,884	\$ 57,580,287
Wires	\$37,802,428	\$115,775,227

Recommendation

Staff requests that the board acknowledge receipt of the reports submitted for the month of April 2014.

Check	Date	Amount Paid	Name	Description
150242728	4/24/2014	7,505.89	TOYOTA MOTOR CREDIT CORPORATION	*ACR10048647-GR/IR RECON A/C
150242729	4/24/2014	892.50	TOYOTALIFT, INC	*training technicians on diesel-GR/IR RECON A/C
150242730	4/24/2014	2,750.00	TRANSCANADA TURBINES INC	*boescope inspection-GR/IR RECON A/C
150242731	4/24/2014	35.00	TRI-SIGNAL INTEGRATION, INC.	*monitoring agreement april 2014-BLDG MAINT COSTS
150242732	4/24/2014	45,000.00	TRUEPOINT SOLUTIONS, LLC	*annual service maint fee 5/1/1404/30/15-OUTSIDE SERV SOFTWARE
150242733	4/24/2014	677.00	TRULY NOLEN OF AMERICA 066	*066-66005192-1235 grapefruit blvd coachella-PURCHASE SERV-FIELD
150242734	4/24/2014	1,645.50	UNDERGROUND SERVICE ALERT OF	*1401dat ticket charges-PURCHASE SERV-FIELD
150242735	4/24/2014	3,731.27	UNIFY INC	*4803566 svcmcs hl path 3000/4000 2/12/14-2/11/15-PURCHASE SERV-FIELD
150242736	4/24/2014	669.92	UNISOURCE WORLDWIDE, INC. *	*toilet seat cover-GR/IR RECON A/C
150242737	4/24/2014	310.31	UNITED PARCEL SERVICE, INC.	*856041-MATERIALS PURCH
150242738	4/24/2014	2,500.00	UNITED WAY OF THE DESERT	*24th annual vip gala/bronze sponsor table of 10-CONTRIBUTE/DONATIONS
150242739	4/24/2014	57.87	UTILITY CRANE & EQUIPMENT	*seal kit-GR/IR RECON A/C
150242740	4/24/2014	31,105.14	UTILITY TREE SERVICE INC	*TREE TRIMMING 4/4/2014-PURCHASE SERV-FIELD
150242741	4/24/2014	667.85	VALENZUELA, CARL	*repair 15 hp pump motor bearing-MATERIALS PURCH
150242742	4/24/2014	3,635.06	VALLEY PETROLEUM EQUIPMENT, INC.	*nozzle rbt hose brakeway-PURCHASE SERV-FIELD
150242743	4/24/2014	1,663.34	VANDERGRIFF, ROCKY	*april 2014 service tender drop 4-PURCHASE SERV-FIELD
150242745	4/24/2014	153.95	W B A INC	*CHAIRS, BANQUET TABLES, PICKUP/DELIVERY-MATERIALS PURCH
150242747	4/24/2014	991.10	WAXIE'S ENTERPRISES, INC.	*blue mx liner brush-MATERIALS PURCH
150242748	4/24/2014	500.00	WERNER, MARGARET S.	*5/2014 RENT DILLON SUBSTATION-RENT
150242749	4/24/2014	2,252.70	WESCO DISTRIBUTION, INC.	*oshkosh shovel spade sumpoon split handle-GR/IR RECON A/C
150242750	4/24/2014	427.03	WEST COAST SAFETY SUPPLY CO INC	*q2 sensor for ltx battery-MATERIALS PURCH
150242751	4/24/2014	1,044.47	WESTAIR GASES & EQUIPMENT	*cable boxes-MATERIALS PURCH
150242752	4/24/2014	120.00	WESTERN MEATS PROCESSORS INC	*3/2014 WEIGHT TICKETS-PURCHASE SERV-FIELD
150242753	4/24/2014	2,151.20	WYMORE, INC.	*hammer screw-MATERIALS PURCH
150242754	4/24/2014	454.68	XEROX CORPORATION *	*70657574 ttn678657 record manage imperial-MACHINERY RENTAL
150242755	4/24/2014	183,300.23	YUMA COUNTY WATER USER'S	*March 2014 Power Billing-PUR POW - CONTRACT
150242756	4/24/2014	894.40	YUMA WINLECTRIC COMPANY	*fixture-MATERIALS PURCH
150242758	4/24/2014	140.73	ZENDEIAS HARDWARE INC	*COTTON HOE NOZZLE COOLER-MATERIALS PURCH
150242769	4/24/2014	2,585.55	VIP MARKETING SERVICES INC	*pens and water bottles-GR/IR RECON A/C
150242851	4/28/2014	2,170.72	ARKADIN INC	*CZ27078-010314013114 CONFERENCE CALLS 2/2014-TELEPHONE USAGE
Total other AP		5,110,899.77		
150241188	4/3/2014	385.00	GREENBERG GLUSKER FIELDS	*LEGAL SERVICES 2/2014-LEGAL EXPENSES
150241224	4/3/2014	860.00	LYON, G S - CONSULTANTS INC	*California Flood Claims-LEGAL EXPENSES
150241240	4/3/2014	10,020.50	MUNGER TOLLES & OLSON LLP	*LEGAL SERVICES JAN 2014-LEGAL EXPENSES
150241245	4/3/2014	20,033.00	NOSSAMAN LLP	*LEGAL SERVICES JAN 2014-LEGAL EXPENSES
150241289	4/3/2014	23,899.88	SIMMONS FIRM, THE	*file# 13-0998 feb 2014 monthly cap per contract-LEGAL EXPENSES
150241605	4/10/2014	1,568.20	FULBRIGHT & JAWORSKI LLP	*LEGAL SERVICES 1/2014-LEGAL EXPENSES
150241650	4/10/2014	63,868.77	JENNINGS, STROUSS & SALMON, PLLC	*LEGAL SERVICES FEB 2014-LEGAL EXPENSES
150241657	4/10/2014	674.00	KEATING, IRENE R.	*Preece v. ID, Case No. ECU 07824-LEGAL EXPENSES
150241674	4/10/2014	91,235.26	LEWIS BRISBOIS BISGAARD & SMITH LLP	*LEGAL SERVICES DECEMBER 2013-LEGAL EXPENSES
150241727	4/10/2014	1,966.50	NOSSAMAN LLP	*LEGAL SERVICES FEB 2014-LEGAL EXPENSES
150241810	4/10/2014	233.94	SULLIVAN, HILL, LEWIN, REZ & ENGEL	*LEGAL SERVICES FEB 2014-LEGAL EXPENSES
150242036	4/17/2014	30,306.06	BRAUN, BLAISING, & MCLAUGHLIN P.C.	*LEGAL SERVICES FEB 2014-LEGAL EXPENSES
150242053	4/17/2014	10,000.00	CARTER, JOHN P., APC	*LEGAL SERVICES APR 2014 RETAINER-LEGAL EXPENSES
150242077	4/17/2014	7,697.00	DAVIS WRIGHT TREMAINE LLP	*LEGAL SERVICES 3/27-3/31/14-LEGAL EXPENSES
150242164	4/17/2014	1,067.50	KELLER-BLESNER ENGINEERING	*LEGAL SERVICES MAR 2014-LEGAL EXPENSES
150242193	4/17/2014	108,588.90	MUNGER TOLLES & OLSON LLP	*LEGAL SERVICES JAN 2014-LEGAL EXPENSES
150242201	4/17/2014	24,279.00	NOSSAMAN LLP	*LEGAL SERVICES JAN 2014 & FEB 2014-LEGAL EXPENSES
150242263	4/17/2014	354.57	SOMACH, SIMMONS & DUNN	*LEGAL SERVICES MARCH 2014-LEGAL EXPENSES
150242268	4/17/2014	6,525.00	STENEHEM, JEROME	*LEGAL SERVICES Martinez witness-LEGAL EXPENSES
150242270	4/17/2014	4,621.82	SULLIVAN, HILL, LEWIN, REZ & ENGEL	*LEGAL SERVICES FEB 2014-LEGAL EXPENSES
150242500	4/24/2014	1,954.98	ALLEN, MATKINS, LECK, GAMBLE, MALLO	*LEGAL SERVICES THROUGH APRIL 9, 2014-LEGAL EXPENSES
150242555	4/24/2014	89,715.39	CURRIER & HUDSON APC	*LEGAL SERVICES MARCH 2014-LEGAL EXPENSES
150242563	4/24/2014	4,902.00	DENNIS H. MORITA, APC	*LEGAL SERVICES OCTOBER 2013-LEGAL EXPENSES
150242588	4/24/2014	13,067.80	FULBRIGHT & JAWORSKI LLP	*LEGAL SERVICES 1/13/14 - 3/3/14-LEGAL EXPENSES
150242629	4/24/2014	3,409.80	LAW OFFICES OF DENNIS L SHIELDS APC	*LEGAL SERVICES FEB 2014-LEGAL EXPENSES
150242630	4/24/2014	38,041.20	LAW OFFICES OF RALPH B. KOSTANT	*LEGAL SERVICES FEB 2014-LEGAL EXPENSES
150242632	4/24/2014	23,559.47	LYNCH & MARTIN, LLP	*LEGAL SERVICES FEBRUARY 2014-LEGAL EXPENSES
150242633	4/24/2014	200.00	LYON, G S - CONSULTANTS INC	*LEGAL CALIFAT FLOOD CLAIMS 3/13-4/9/14-LEGAL EXPENSES
150242664	4/24/2014	562.50	OSWALT, FRANK	*LEGAL SERVICES MARCH 2014-LEGAL EXPENSES
150242691	4/24/2014	7,687.50	RICHARDS WATSON & GERSHON	*LEGAL SERVICES 2/14/2014 - 3/13/2014-LEGAL EXPENSES
150242706	4/24/2014	28,622.37	SIMMONS FIRM, THE	*LEGAL SERVICES MAR 19, 2014 - MARCH 31, 2014-LEGAL EXPENSES
Total Legal checks		618,307.81		
150241173	4/3/2014	35,000.00	ENERGTECH EXPERTS	*2013 LEAP ROUND 2-WESTMOBLAND UNION ELEMENTARY-CUST REBATES & INCEN
150241236	4/3/2014	596.29	MONROE STREET UNOCAL	*CESP INCENTIVE CAM50076178 NEW LED CANOPY LAMPS-CUST REBATES & INCEN
150241296	4/3/2014	16,082.00	SUNPOWER CAPITAL LLC	*REBATE FOR 10.074KW SYS. DEANNA SCHMETT #50563016-CUST REBATES & INCEN
150241454	4/1/2014	32,866.20	NEXTAGE ENERGY SOLUTIONS	*INSULATION, 13 GRANT AVE., CALEXICO-CUST REBATES & INCEN
150241457	4/10/2014	3,500.00	1ST METHODIST CHURCH	*HVAC, 207 W 7TH STREET, HOLTVILLE-CUST REBATES & INCEN
150241464	4/10/2014	1,750.00	AGUILAR, BRIGIDA	*HVAC, 1019 ZAPATA ST, CALEXICO-CUST REBATES & INCEN
150241468	4/10/2014	125.00	ALLEN, JEFFREY	*REFRIGERATOR, 84355 ACQUA COURT, INDIO-CUST REBATES & INCEN
150241477	4/10/2014	1,750.00	ARMSTRONG, JENNIFER	*HVAC, 306 W ALLEN ST, BRAWLEY-CUST REBATES & INCEN
150241478	4/10/2014	125.00	ARREDONDO, GUILLERMINA V	*REFRIGERATORS, 50091 KENMORE ST, COACHELLA-CUST REBATES & INCEN

