The Law Office of
Matthew Strugar

May 19, 2017

Reny Leddy
Executive Director
Downtown Property Owners Alliance
110 E. 9th Street, Suite A1175
Los Angeles, CA 90079
rena@fashiondistrict.org

Via U.S. Mail and email

Re: Downtown Property Owners Association's Obligations Under the California Public Records Act

Dear Ms. Leddy,

I represent [redacted] I am writing in the hopes of resolving a dispute between [redacted] and the Downtown Property Owners Association related to the production of Exhibit B of the Agreement for Consulting Services dated January 17, 2017 between the Downtown Property Owners Association and Urban Place Consulting Group as requested by [redacted] under the California Public Records Act (CPRA).

As you know, on February 21, 2017, [redacted] requested records related to the Fashion District Business Improvement District's (BID) "renewal process, including … communications between the BID and the consultant and/or the engineer, [and] contracts with and invoices from the consultant[.]"

In your March 2, 2017 response acknowledging receipt of the request, you stated that you determined that communications between the BID and renewal consultants were exempt from disclosure under the CPRA under the deliberative process privilege, the right to privacy, and what appears to be Government Code section 6255's catch-all exemption (permitting withholding where "the public interest served by nondisclosure clearly outweighs the public interest served by disclosure of the record"). On March 14, you wrote [redacted] stating that your March 2 assessment was not a denial of renewal material but an explanation of the exemptions that you expected would apply to the requested materials.

On March 30, 2017, you sent [redacted] a copy of the January 17, 2017 Agreement for Consulting Services between the Downtown Property Owners Association and Urban Place Consulting Group, with Exhibit B purposefully-removed from the production. You did not claim any exemptions for Exhibit B or even indicate that it was being withheld.

On April 10, 2017 [redacted] wrote you asking why Exhibit B was missing from the production. In response, on April 12, 2017, you sent [redacted] another copy of the contract, this time including Exhibit B with all of the information related to hourly rates and anticipated time for work redacted. You asserted this information was exempt a) as protected as proprietary and/or trade secret information b) as management's deliberative process; and c) as what appears to be Government Code section 6255's catch-all exemption (incorrectly stated as "the public benefit in nondisclosure does not outweigh the public benefit in disclosure").

[redacted] asked you to reconsider your exemptions and provided reasons why the exemptions were not well taken—on April 12, April 13, and April 19, 2017. You reiterated your position that the information in Exhibit B is exempt.

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I am writing to again request that you reconsider your exemption assertions and provide an unredacted copy of Exhibit B. Hourly rates and the number of expended or anticipated hours in contracts with public entities are quintessential records routinely produced under the CPRA.

The trade secret and proprietary information assertion is not well taken. The CPRA recognizes evidentiary privileges as exempt from disclosure under the act (Gov't Code § 6254(k)), including the trade secrets privilege recognized by Evidence Code sections 1060 & 1061, which in turns looks to the definition of trade secret in Civil Code section 3426.1, defining a trade secret as "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

The hourly rate and anticipated time of a consultant who does business with quasi-public entities that are subject to the CPRA are not "a formula, pattern, compilation, program, device, method, technique, or process," and anything similar. It is simply an hourly rate and anticipated time.

It also cannot be the subject of efforts to maintain its secrecy—Urban Place Consulting Group naturally must share its hourly rates and anticipated time to all potential and actual clients who seek its services.

There is a complete absence of any expression of confidentiality of this information in the Agreement for Consulting Services.

The deliberative process privilege assertion fares no better. Deliberative process is not an exemption from disclosure under the CPRA. Instead, the interests protected by a deliberative process privilege—preserving the candor of predecisional advice among executive decision-makers—may support the public interest in nondisclosure under the catch-all exemption in Government Code section 6255.

The contract and its exhibits are not predecisional. Downtown Property Owners Association and Urban Place Consulting Group made the decision and entered into the contract. That alone destroys the claim of a deliberative process privilege, even if the CPRA explicitly recognized it.

As to the catch-all exemption itself, I note that outset your exemption assertion misstated the standard. The question is not whether "the public benefit in non-disclosure does not outweigh the public benefit in disclosure" but whether "the public interest served by nondisclosure *clearly outweighs* the public interest served by disclosure of the record." Government Code § 6255 (emphasis added).

Mr. [redacted] wrote you three times (April 12, April 13, and April 19, 2017) asking that you articulate the public interest served by nondisclosure here. You refused to provide such an articulation.

There is significant public interest in disclosure of Exhibit B. The Los Angeles Municipal Lobbying Ordinance, Los Angeles Municipal Code §§ 48.01*et seq*., is triggered by the number of hours lobbyists are compensated within certain time frames. UPC represents in the Agreement for Consulting Services that it is properly licensed, permitted, and approved to carry out the work of the contract, but Urban Place Consultant does not appear to be a registered lobbyist with Los Angeles City Ethics Commission. Exhibit B will likely demonstrate whether UPC's assertions are truthful and whether it is in compliance with the Municipal Lobbying Ordinance.

Given the Downtown Property Owners Association's responsibilities under its contract with the city and the Los Angeles Contractor Responsibility Ordinance, Los Angeles Administrative Code (LAAC) Section 10.40 *et seq*., Exhibit B will also demonstrate the property owner's compliance with law.

Exhibit B will also demonstrate whether the rates the Downtown Property Owners Association is paying UPC, and the anticipated time for their services, are in line with industry standards. There is a significant public interest in this type of information in any publicly funded contract, but the

specter of nonmarket rates and time is elevated here given that you appear to have been formerly employed at UPC before becoming the Executive Director of the Downtown Property Owners Association.

In short, Exhibit B is not exempt from the Public Records Act. I ask that you provide an unredacted copy to me or directly to Mr. [redacted] on or before May 29, 2017.

Sincerely,

Matthew Strugar
Law Office of Matthew Strugar