State Water Resources Control Board

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Agency Secretary

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Arnold Schwarzenegger
Governor

February 16, 2006

Mr. Abraham Hyatt
Staff Writer
The Tribune, San Luis Obispo
P.O. Box 112
San Luis Obispo, CA 93406

Dear Mr. Hyatt:

PUBLIC RECORDS ACT REQUEST

This letter responds to your appeal of Roger Briggs' February 8, 2006, letter regarding your Public Records Act request. Your letter also includes a request for statements from homeowners. You clarified yesterday that you were seeking the forms with the names and addresses redacted. We will produce the requested documents, with the names and addresses redacted, and with other identifying information redacted where we conclude that doing so is necessary to protect privacy or security. (See Gov. Code, § 6255.) I expect that we can provide all the non-exempt information by March 3, 2006, although I am hoping to do so sooner than that.

Mr. Briggs' February 8 letter stated that the Public Records Act exempts disclosure of records where an individual's privacy or security interests outweigh the public interest in disclosing documents. His letter also stated that we would disclose non-exempt documents after we completed our investigation into the individuals' claims that their information is exempt, and the statutory basis for exempting information. We have not completed that investigation because we did not expect that anyone would have legitimate reasons for non-disclosure. Once we learned that some of these claims might have merit, it became necessary to investigate further. Disclosure of any individual's information before that investigation is complete would waive all exemptions. As we indicated, assuming we hear back from the affected individuals, we will determine which documents or portions of documents must be redacted before disclosing them. As I stated to you in my February 9, 2006, e-mail, we have not determined which portions of documents are exempt and therefore have not denied your request. In fact, we granted your request because the February 8 letter stated that we would provide all non-exempt public records (or redacted public records) after we are able to contact the affected residents. As stated in Mr. Briggs' letter, we expect to complete that balancing test in approximately two weeks, i.e., by February 23, 2006, at least for those individuals who received our request for an explanation.

The Public Records Act does not require disclosure of documents by any particular date where there is reason for the delay.

I am surprised at *The Tribune's* disregard of asserted risks to individuals who have raised concern about their personal safety. Your letter cited *New York Times Company v. Superior Court* (1990) 218 Cal.App.3d 1579. I reviewed that case before Mr. Briggs issued his letter. *New York Times* held that a water district must disclose the addresses of water customers who exceeded their water allocation in violation of local law. In that case, the threat of verbal or physical harassment was purely speculative. The interest in public disclosure was high because disclosure was necessary to determine whether the water district properly determined which customers were "chronic water abusers." (*Id.* at 1585.) Disclosure would ensure that no individuals received special treatment or, conversely, discriminatory treatment. Finally, the court held that publication of the customers who exceeded their allocation in a given period "will discourage profligate use of water during the ensuing months and encourage customers to bring their consumption within the guidelines of the ordinance." (*Id.* at 1586.)

The facts in the Los Osos situation are different. *All* residents within the prohibition zone are violating the law, so there is no reason to single out particular abusers. As you know, the process of selecting the recipients of the first cease and desist orders (CDOs) was random. The only reason we did not include the entire prohibition zone was procedure. Some of the residents have asserted legitimate safety concerns that are more than mere speculation. For example, peace officers have an increased expectation of privacy in disclosure of their names with their home addresses, as evidenced by the numerous statutes prohibiting disclosure of information regarding peace officers. Although those statutes do not apply here, they establish a public policy in favor of protecting such information.

Section 6255 requires a balancing of the public interest in disclosure against any asserted interest in non-disclosure. *Gilbert v. City of San Jose* (2003) 114 Cal.App.3d 606 required a public entity to take reasonable steps to notify the persons whose information was requested in order to give them time to object. *Teamsters Local 856 v. Priceless, LLC* (2004) 112 Cal.App.4th 1500 held it was proper to withhold employee names in a request for salary information, where general salary information was provided by job classification. The court noted that disclosure of names and addresses is not required where the disclosure sheds no light on an agency's performance of its statutory duties. Where the risk of harassment or social stigma is more than mere speculation, an agency may withhold information identifying a person's name, address and/or telephone number (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; 84 Ops. Cal. Atty. Gen. 55 (2001)).

In this case, even where a resident raises legitimate privacy concerns, we may be able to resolve those concerns by providing information that is not individually identifiable, e.g., addresses or assessors' parcel numbers only. However, since premature disclosure would waive the

section 6255 exemption, the affected residents should have the opportunity to voice and justify their objections first.

We expect to provide you with more information next week. In the meantime, I hope the foregoing addresses your concerns.

Sincerely,

Lori T. Okun
Senior Staff Counsel

cc: Mr. Roger Briggs **[via email only]**
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