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March 24, 2017

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VIA E-MAIL

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Re: Public Records Act Request

Dear Mr. Perroni:

This letter is in response to your February 23 and March 14, 2017, California Public Records Act (CPRA) requests, California Government Code sections 6250-6276.48. In your letters, you requested,

copies of the Sinatra, Andrews, and any other letters of the public who wrote about Dr. Noguchi and his work at the Coroner's office in 1981 and 1982, including any such letters and documents that were part of Dr. Noguchi's file which may now be in the possession of Mr. Antonovich.

In response to your February 23, 2017 letter, the Public Information Officer (PIO) of the Executive Office of the Los Angeles County (County) Board of Supervisors (Board) sent you an e-mail on March 2, 2017, confirming that the Executive Office had provided you with all of the responsive records in its possession regarding your request. In addition, consistent with his obligations, the PIO referred you to the Department of Medical Examiner-Coroner, by providing the contact information of the person who might be of assistance to you at the Department of Medical Examiner-Coroner.

Nonetheless, on March 14, 2017, you sent another letter addressed to the PIO, seeking the same records, as noted above, and threatening to file a lawsuit against the Executive Office of the Board.

As explained below, the Executive Office has fully complied with its obligations under the CPRA.

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CPRA establishes a rudimentary rule requiring disclosure of public records when requested. *City of San Jose v. Superior Court*, 214 Cal. Rptr. 3d 274, 279 (2017). CPRA defines the term "public records" to include "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." Cal. Gov't Code § 6252(e). Under that definition, a public records has four aspects. "It is (1) a writing, (2) with content relating to the conduct of the public's business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency." *City of San Jose*, 214 Cal. Rptr. 3d at 280.

It is undisputed that the term "local agency" includes individual officials and staff members who conduct the agencies' affairs because a governmental entity can act only through its individual officials and employees. *Id.* at 283. That is, a disembodied governmental agency cannot prepare, own, use, or retain any record. "Only the human beings who serve in agencies can do these things. When employees are conducting agency business, they are working for the agency and on its behalf." *Id.* It is also true that "public records can be held by individual officials and need not belong to an agency as a whole." *Id.* at 284. California courts have concluded that records related to the conduct of public business are subject to disclosure "if they are in an agency's actual or *constructive* possession." *Id.* (emphasis in original). "[A]n agency has constructive possession of records if it has the right to control the records, either directly or through another person." *Consol. Irr. Dist. v. Superior Court*, 205 Cal. App. 4th 697, 710 (2012). For example, in *Consolidated Irrigation*, a city did not have constructive possession of documents in files maintained by subcontractors because the city had no contractual right to control the subconsultants or their files. *Id.* at 711. Note that "[a]n agency's actual or constructive possession of records is relevant in determining whether it has an obligation to search for, collect, and disclose the material requested." *City of San Jose*, 214 Cal. Rptr. 3d at 285.

Here, the Executive Office does not have actual or constructive possession of records you are seeking. Specifically, as you acknowledge in your February 23, 2017 letter to Supervisor Barger, the subject records are not in the Executive Office's possession. To the extent that you believe that the subject records might be in the possession of the Department of Medical Examiner-Coroner, the PIO of the Executive Office, in his March 2, 2017 e-mail to you, provided you with the contact information of the person handling CPRA requests in that department. In addition, to the extent that you are alleging that Mr. Antonovich is "in possession of at least one of the records – and perhaps all of them," please note that Mr. Antonovich is not an officer of the County as he no longer serves on the Board. As such, the Executive Office has no right to control records allegedly held by Mr. Antonovich, a former Board member.

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In sum, because the Executive Office has no actual or constructive possession of the records you are seeking and because the PIO appropriately referred you to another County entity that might possess the records at issue, the Executive Office has fully complied with its obligations under the CPRA. Also note that the County reserves its right to assert all applicable privileges/doctrines and exemptions.

Very truly yours,

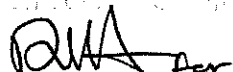
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APPROVED AND RELEASED:


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