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Senate Bill 615 Will Speed Access to Public Records While Protecting Taxpayers from Unnecessary Lawsuits

By San Diego City Attorney Mara W. Elliott

As your City Attorney, I'm always looking for ways to make government more efficient and transparent.

For that reason, I'm working with state Sen. Ben Hueso on legislation to streamline record disclosure under the California Public Records Act, the state law that safeguards government accountability and public information.

Our bill, Senate Bill 615, would speed access to public information while avoiding unnecessary lawsuits resulting from innocent mistakes. It's a win-win for transparency and the taxpayers. And it's urgently needed.

Ensuring the public's access to information is critical, yet in recent years, the City of San Diego, and public agencies statewide, have struggled to keep up with a widening avalanche of Public Records Act requests.

The numbers are staggering. Since 2012, Public Record Act requests handled by the City of San Diego ballooned from 749 to 4,824 annually. That's a 644 percent increase and climbing. Cash-strapped school districts and California's public universities face similar challenges.

The records produced by the city could fill a library — tens of thousands of pages every year.

Yet the city's response to each and every PRA request must be absolutely perfect. If *just one sheet of paper* is inadvertently overlooked by any one of the dozens of city employees who are asked to search for records, it can lead to an expensive judgment against taxpayers. No excuses, no explanations, are allowed.

That no-excuses rule was created in a recent case that cost taxpayers \$158,000. Following a diligent search, the city had provided hundreds of records, but an innocent error was made. The lawyer who discovered the mistake got paid \$158,000 in fees — money that could have gone to streets and sidewalks, parks and libraries.

Some suggest that these expensive judgments against taxpayers are an unavoidable cost of maintaining open government. I disagree. And I'm working to solve this problem through state legislation rooted in a very simple value: honest communication.

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SB 615 would require public agencies and record-seekers to engage in a “meet and confer” session — basically, a simple conversation to resolve disputes in good faith before misunderstandings can escalate.

During “meet and confer,” the parties must help one another understand what records were requested, what records have been produced, and why the two may not exactly match up.

The same process is required when lawyers have disputes over pre-trial discovery of documents. Meet and confer sessions can occur in a matter of minutes over the telephone. And they’ve prevented thousands of unnecessary lawsuits.

The record-seeker doesn’t give up her right to sue. If she remains unsatisfied after “meet and confer,” she can still file a lawsuit — the very next day, in fact. And if a court finds the public agency improperly withheld records, she will still win. These cases, however, should become increasingly rare through improved communication.

View this through the eyes of the average citizen.

She may be seeking records about her child’s school or conditions in her neighborhood. She doesn’t have money for attorneys, or time for lawsuits. She simply wants the public records she’s entitled to by law. She shouldn’t have to sue to get them. The “meet and confer” process will help her get them quicker than a lawsuit ever could.

Or you can view SB 615 through the eyes of taxpayers, whose pockets are plucked every time a public-record lawsuit is filed. They shouldn’t have to pay tens of thousands of dollars whenever the city falls short of perfection. The “meet and confer” process will prevent unnecessary lawsuits and expensive judgments.

Dishonest public agencies will gain nothing from SB 615. The bill still allows lawyers to hold public officials accountable for withholding documents — and to recover their costs — just not when a judge rules that an innocent mistake was made. And with “meet and confer”, innocent mistakes should all but disappear.

The California Public Records Act was intended as a tool for citizens to get quick and easy access to public information. SB 615 will further that purpose while sparing taxpayers from unnecessary lawsuits and expensive payouts.

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