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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SACRAMENTO

16 PUBLIC.RESOURCE.ORG, INC.,

17 Petitioners,

18 v.

19 CALIFORNIA OFFICE OF
20 ADMINISTRATIVE LAW, and the
21 CALIFORNIA BUILDING STANDARDS
22 COMMISSION

23 Respondents.

Case No.

**VERIFIED PETITION FOR PEREMPTORY
WRIT OF MANDATE ORDERING
COMPLIANCE WITH THE CALIFORNIA
PUBLIC RECORDS ACT**

[Gov't. Code §§ 6250, *et seq.*; Civ. Proc.
Code §§ 1085, *et seq.*]

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1 **INTRODUCTION**

2 1. The California Public Records Act (“CPRA”), Government Code §§ 6250 *et seq.*,
3 establishes a “fundamental and necessary right” to access “information concerning the conduct of
4 the public’s business,” including the laws of the State. This principle is enshrined in the California
5 Constitution. Cal. Const. Art. I § 3. These provisions require disclosure of governmental records to
6 the public upon request, unless exempted by law. If an agency does not honor a valid CPRA request,
7 the person making the request may seek a writ of mandate to enforce the CPRA.

8 2. Here, from December 2020 through February 2021, petitioner Public.Resource.Org,
9 Inc. (“Public Resource”) submitted CPRA requests to Respondents California Office of
10 Administrative Law (“OAL”) and California Building Standards Commission (“BSC”) seeking
11 electronic copies of the titles of the California Code of Regulations (“CCR”) each agency is
12 responsible for maintaining. Respondents refused, and their responses did not comply with the
13 CPRA.

14 3. Public Resource asked these agencies for electronic copies of the CCR so that a
15 complete, unified, and electronic version of the CCR can be assembled for public access, without
16 the strictures of private paywalls, terms of use, or the need for citizens to drive to a library to consult
17 a paper copy. Such a resource does not currently exist, even though Californians have a
18 constitutional right to freely access these materials because they are the very rules that govern the
19 “conduct of the public’s business.” Respondents’ justifications for denying Public Resource’s
20 requests ignore the mandates of the CPRA: the CCR is unambiguously a public record;
21 Respondents possess electronic copies of the CCR; they can point to no statutory basis for
22 nondisclosure; and the third-party interests they seek to protect do not (and should not) come before
23 Californians’ right to access the laws of the State.

24 4. Accordingly, Public Resource asks this Court for a writ of mandate pursuant to
25 California Code of Civil Procedure §§ 1085 *et seq.* and the CPRA commanding OAL and BSC to
26 comply with the CPRA by producing electronic copies of the CCR to Public Resource.
27
28

1 **PARTIES**

2 5. Petitioner Public Resource is a 501(c)(3) nonprofit organization, incorporated and
3 based in California, with the mission of improving public access to government records and primary
4 legal materials. Public Resource is the national leader in providing public access to legislative,
5 regulatory, and judicial edicts across a wide range of areas from both federal and state institutions.
6 Public Resource has worked extensively with the Cornell Legal Information Institute to make
7 substantial improvements to the Code of Federal Regulations (“CFR”), including campaigns to
8 make the CFR accessible to the visually impaired and viewable on mobile devices. Public Resource
9 also advised the Obama Administration’s efforts to reform the Federal Register into a far more
10 usable format, an achievement which earned the Office of the Federal Register an award in 2011
11 for “Most Innovative Federal Agency.” Public Resource is committed to making the regulations of
12 all fifty states available in a common and usable format, including updates, to allow the public to
13 see how regulatory regimes change over time.

14 6. Respondent OAL was established in 1980 to ensure that state agency regulations are
15 clear, necessary, legally valid, and available to the public. OAL is responsible for reviewing
16 administrative regulations from over 200 state agencies and transmitting those regulations to the
17 Secretary of State. OAL also oversees the publication and distribution of Titles 1–5, 7–23, and 25–
18 28 of the CCR (all Titles except Title 24, which is managed and published by BSC, and Title 6,
19 which has been revoked).

20 7. Respondent BSC was established in 1953 by the California Building Standards Law
21 (Health and Safety Code §§ 18901 *et seq.*), and is situated within the California Department of
22 General Services, under the Government Operations Agency. BSC members are appointed by the
23 Governor and confirmed by the State Senate. BSC administers California’s building code adoption
24 process; coordinates and manages the model code adoption process for various state agencies;
25 reviews and approves building standards proposed by other agencies; and codifies and publishes
26 the California Building Standards Code as Title 24 of the CCR.

27 **JURISDICTION AND VENUE**

28 8. This Court has jurisdiction under Government Code §§ 6258 and 6259; Code of

1 Civil Procedure §§ 1060 and 1085; and Article VI, Section 10 of the California Constitution.

2 9. Venue is proper in this Court because the records in question are in Sacramento
3 County. Cal. Gov't Code § 6259; Cal. Civ. Proc. Code § 401(1). Venue is also proper because
4 Respondents reside in Sacramento County and the events in this case occurred there. Cal. Civ. Proc.
5 Code §§ 393, 394(a).

6 **FACTS**

7 OAL

8 10. OAL's purpose is to "ensure that agency regulations are clear, necessary, legally
9 valid, and available to the public."¹ OAL reviews regulations from over 200 state agencies,
10 transmits them to the Secretary of State, and manages the publication of the CCR (except for Title
11 24). But OAL does not, itself, publish the CCR. Instead, OAL contracts with a private entity, West
12 Publishing Corporation ("West"), which maintains a complete copy of the CCR called the "Master
13 Database," from which West publishes print copies and an online version. Although the current
14 version of the agreement is not yet public, the prior version (for January 1, 2016—December 31,
15 2020) is available, and OAL's October 1, 2020 and October 29, 2020 Notices show that the contract
16 was renewed, and that none of the provisions listed below were substantively changed. (Exhibit A)
17 (Notice Regarding Changes to the Agreement, and OAL's Notice of Intent to Award Contract to
18 West). The changes stated in those notices are not material to this dispute, and the agreement's
19 primary thrust remains intact. Thus, on information and belief, the current contract between OAL
20 and West continues to state that:

21 The contractor shall maintain the Official California Code of Regulations (CCR) in an
22 electronic database, which for purposes of this contract shall be referred to as the "Master
23 Database." To ensure that all CCR products accurately reflect the Official CCR content,
24 the Master Database must be the source for all hard copy text and electronic products as
25 well as the source for the contents of the Internet CCR.

26 (2016-2020 OAL-West Contract, Exhibit B at 9.)

27 11. Under the contract, when OAL receives approval from the Secretary of State for

28 ¹ <https://oal.ca.gov/about-the-office-of-administrative-law/>.

1 new regulations, updates, or revisions to any part of the CCR, it continues to transmit those changes
2 to West to keep the Master Database current:

3 Prompt and accurate updating of the CCR Master Database is a key component of the
4 CCR publication contract. The contractor shall update the Master Database as soon as
5 feasible after OAL provides the contractor with regulations that have been endorsed by the
6 Secretary of State, preferably within 15 days but in no event longer than 30 days after
7 OAL delivers the regulation text. The text of regulations and all other items in the Master
8 Database shall be subject to inspection, revision, and correction by OAL. The contractor
9 shall take immediate action to make any corrections specified by OAL

10 (2016-2020 OAL-West Contract, Exhibit B at 9.) Thus, although West hosts and manages the
11 Master Database, OAL has full control over the contents of the Master Database. OAL also
12 maintains ownership over the CCR, since the OAL-West Contract expressly reserves all rights in
13 the CCR Master Database to OAL. (*Id.* at 21, 22)

14 12. West sells unrestricted access to the CCR as part of a bundle package of California
15 law for \$95 per month for one year, and provides an online version to the public, which is subject
16 to West’s terms of service. (available at: <https://www.thomsonreuters.com/en/terms-of-use.html>).

17 *Public Resource’s Request to OAL*

18 13. On December 29, 2020, Public Resource sent a CPRA request to OAL, seeking an
19 electronic copy of Titles 1–5, 7–23, and 25–28 of the CCR. (Exhibit C.) Public Resource’s letter
20 explained that the CCR is a “Public Record” under the CPRA, and that OAL was therefore obliged
21 to disclose it to Public Resource in “all formats in [OAL’s] possession, including (but not limited
22 to) structured, machine-readable digital formats, such as XML or PDF files.” Public Resource cited
23 the CPRA provision commanding agencies to provide records in “any electronic format in which
24 it holds the information” and any requested format “used by the agency to create copies for its own
25 use or for provision to other agencies.” Cal. Gov’t Code § 6253(a)(1)–(2).

26 14. On January 8, 2021, Steven Escobar, Senior Attorney for OAL, responded to Public
27 Resource’s request, and invoked the statutory 14-day extension to respond to the request. (Exhibit
28 D at 36-37) On January 22, 2022, OAL provided a substantive response, stating that the CCR was

1 available from West online at <https://govt.westlaw.com/calregs/Index>, and that OAL was willing
2 to scan paper copies of the CCR and send those photocopies to Public Resource. (Exhibit D at 35.)
3 OAL did not cite any statutory exemptions which would apply to the records in question.

4 15. On February 3, 2021, Public Resource sent a reply letter seeking reconsideration
5 based on two problems with OAL’s denial.

6 16. First, Public Resource explained that the online version published by West provided
7 in OAL’s response was irrelevant to OAL’s duties under the CPRA, which requires that agencies
8 provide public records in the electronic formats that they hold, use, or provide to other agencies.
9 Cal. Gov’t Code § 6250(a)(1)-(2). Additionally, the West URL was not “publicly available” under
10 CPRA law because visitors to the private website were “subject to end-user restrictions” which “are
11 incompatible with the purposes and operation of the CPRA.” *Cty. of Santa Clara v. Super. Ct.*, 170
12 Cal. App. 4th 1301, 1334 (2009). (Exhibit E.)

13 17. Second, Public Resource explained that OAL’s offer to provide paper copies or
14 scanned PDFs did not comply with the CPRA’s mandates that agencies produce electronic copies
15 in the electronic format (1) in which they hold the information or (2) that they use to create copies
16 for their own use or to provide to other agencies. Cal. Gov’t Code § 6253.9(a)(1)-(2).

17 18. On February 17, 2021, Mr. Escobar responded to Public Resource’s second letter to
18 OAL. He stated that OAL does not have a structured, machine-readable copy of the CCR. (Exhibit
19 D at 34.) He stated that OAL maintains a repository of out-of-date versions of the CCR on CD-
20 ROMs, but “that the contents of the CD-ROM cannot be copied in whole and transferred to another
21 storage device” and that each section would need to be individually extracted and copied from the
22 CD-ROM. (*Id.*) Again, OAL did not cite any statutory exemptions that would prevent disclosure.

23 19. Public Resource responded to OAL’s February 17, 2021 email on February 19,
24 2021, and sent a follow-up email on February 24, 2021. (Exhibit D.) In those emails, Public
25 Resource asked for more information on the CD-ROM storage system, and whether OAL could
26 simply provide Public Resource with a copy of the CCR Master Database. On February 26, 2021,
27 Mr. Escobar responded, providing more information about the CD-ROM system. (*Id.*) On March
28 2, 2021, Mr. Escobar responded on behalf of OAL, stating: “OAL does not have a copy of a CCR

1 Master Database.” (Exhibit D at 31.)

2 BSC

3 20. BSC codifies and publishes building standards in Title 24 of the CCR, the California
4 Building Standards Code. BSC incorporates model codes into the California Building Standards
5 Code, and BSC contracts with various private parties who publish different parts of the standards.
6 Specifically, information from the International Code Council (“ICC”) is incorporated into Parts 1,
7 2, 2.5, 6, 8, 9, 10, 11 and 12 of Title 24; the International Association of Plumbing and Mechanical
8 Officials (“IAPMO”) provides information included in Parts 4 and 5; and the National Fire
9 Protection Association (“NFPA”) does so for Part 3. These three entities sell these separate parts
10 of Title 24 to the public.²

11 Public Resource’s Request to BSC

12 21. On December 29, 2020, Public Resource sent a CPRA request to BSC, seeking an
13 electronic copy of Title 24 of the CCR. (Exhibit F.) Public Resource’s letter explained that Title 24
14 of the CCR is a “Public Record” under the CPRA, and that BSC was obliged to disclose it to Public
15 Resource in “all formats in [BSC’s] possession, including (but not limited to) structured, machine-
16 readable digital formats, such as XML or PDF files.” *Id.* In support, Public Resource cited the text
17 of CPRA, which states that an agency must provide records in “any electronic format in which it
18 holds the information” and any requested format “used by the agency to create copies for its own
19 use or for provision to other agencies.” Cal. Gov’t Code § 6253.9(a)(1)–(2); (*Id.*)

20 22. On January 7, 2020, Michael Nearman, Deputy Executive Director of BSC,
21 responded to Public Resource’s request. (Exhibit G.) BSC did not cite any statutory exemptions
22 which would excuse BSC’s obligation to comply with Public Resource’s request. Instead, BSC

23 _____
24 ² Title 24 is distributed for purchase through various private entities, each with their own unique
25 set of restrictions, options, access levels, and pricing regimes. For example, the California
26 Electrical Code, Title 24 Part 3, is sold by NFPA for \$215.50 ([https://catalog.nfpa.org/NFPA-70-
27 National-Electrical-Code-with-California-Amendments-P17223.aspx](https://catalog.nfpa.org/NFPA-70-National-Electrical-Code-with-California-Amendments-P17223.aspx)); The California Plumbing
28 Code, Title 24 Part 5, is sold by IAPMO for \$179.00 ([https://iapmomembership.org/index.
29 php?page=shop.product_details&flypage=flypage_iapmo.tpl&product_id=1320&category_id=8
30 &option=com_virtuemart&Itemid=3&redirected=1&Itemid=3&vmcchk=1&Itemid=3](https://iapmomembership.org/index.php?page=shop.product_details&flypage=flypage_iapmo.tpl&product_id=1320&category_id=8&option=com_virtuemart&Itemid=3&redirected=1&Itemid=3&vmcchk=1&Itemid=3)); Title 24,
31 Parts 1, 2, 2.5, 6, 8, 9, 10, 11 and 12 are available from the ICC, which sells online access to the
32 codes through a multi-tiered subscription service (Basic, Basic Plus, Premium Lite, and Premium)
33 (<https://codes.iccsafe.org/content/CRC2019P3>).

1 provided three reasons for refusing to produce the requested records.

2 23. First, BSC stated that print editions of Title 24 are available for inspection at certain
3 public libraries across the state, and can be purchased (in whole or in part) from certain private
4 entities. (*Id.*)

5 24. Second, BSC stated that Title 24 can be viewed online at
6 <https://www.dgs.ca.gov/BSC/Codes>, which links to various private websites that host different
7 parts of Title 24 with varying levels of access and restrictions on their use. (*Id.*)

8 25. Third, BSC stated that it “does not have the publishing rights to Title 24 and
9 therefore cannot provide free copies to the public” because “Title 24 is based on and includes model
10 codes produced by the publishing entities, and they then publish California’s codes, retaining
11 copyright protections.” (*Id.*)

12 26. On January 29, 2021, Public Resource sent a reply letter, explaining that BSC’s
13 reasons for its denial lacked merit, and seeking reconsideration of the issue under the CPRA’s
14 mandates. (Exhibit H.)

15 27. First, Public Resource explained that the availability of hard copy versions of public
16 records at select libraries is irrelevant to BSC’s duties under the CPRA. Nowhere in the CPRA does
17 it say that an agency can avoid complying with a CPRA request because it has deposited hard copies
18 of the requested record at various state buildings. (*Id.*)

19 28. Second, Public Resource explained that the website version of Title 24, cited in
20 BSC’s letter, did not comply with the CPRA, which requires that agencies provide public records
21 in the electronic formats that they hold, use, or provide to other agencies. Cal. Gov’t Code §
22 6250(a)(1)–(2). Public Resource also explained that the code sections available via BSC’s website
23 were “subject to end-user restrictions” which “are incompatible with the purposes and operation of
24 the CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1335; (*Id.*)

25 29. Finally, Public Resource addressed BSC’s argument that it could not provide a
26 compliant copy of Title 24 because the private publishing entities “retain copyright protections.”
27 (Exhibit H.) Public Resource explained that, under California law, any refusal to provide public
28 records on the basis of copyright protection must be supported by express statutory authority. BSC

1 provided no support for its position that any part of Title 24 is copyrighted, or that copyright could
2 support its denial.

3 30. Having received no response, Public Resource followed up on February 24, 2021 to
4 ask whether BSC would provide an additional response. (Exhibit I.) On March 2, 2021, Mia
5 Marvelli, Executive Director of BSC, responded: “BSC stands by its original response letter and
6 there will be no additional response.” (*Id.*)

7 THE CALIFORNIA PUBLIC RECORDS ACT

8 31. The CPRA was a landmark piece of legislation passed in 1968. The preamble states:
9 “In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and
10 declares that access to information concerning the conduct of the people’s business is a fundamental
11 and necessary right of every person in this state.” Cal. Gov’t Code § 6250. As the result of a 2004
12 initiative, Proposition 59, voters enshrined the CPRA’s right of access to information in the state
13 Constitution: “The people have the right of access to information concerning the conduct of the
14 people's business, and, therefore, . . . the writings of public officials and agencies shall be open to
15 public scrutiny.” Cal. Const. art. I § 3(b)(1). As amended by the initiative, the Constitution also
16 directs that the statute “shall be broadly construed if it furthers the people’s right of access, and
17 narrowly construed if it limits the right of access.” Cal. Const. art. I § 3(b)(2); *L.A. Cty. Bd. of*
18 *Supervisors v. Super. Ct.*, 2 Cal. 5th 282, 290–91 (2016).

19 32. The CPRA requires that all records that are prepared, owned, used or retained by
20 any public agency, and that are not subject to statutory exemptions, must be made publicly available
21 upon request, in the electronic formats possessed by the agency. Cal. Gov’t Code § 6253.9(a)(1)–
22 (2).

23 33. To establish that an agency has a duty to disclose under § 6253(c), a petitioner must
24 show that the record (1) “qualif[ies] as [a] ‘public record[.]’” within the meaning of § 6252(e) and
25 (2) is “in the possession of the agency.” *Anderson-Barker v. Super. Ct.*, 31 Cal. App. 5th 528, 538
26 (2019).

27 34. The agency “opposing disclosure bears the burden of proving that an exemption
28 applies.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1321 (citing *Bd. of Trs. of Cal. State Univ. v.*

1 *Super. Ct.*, 132 Cal. App. 4th 889, 896 (2005); see also *L.A. Unified Sch. Dist. v. Super. Ct.*, 228
2 Cal. App. 4th 222, 239 (2014). Here, in opposing Public Resource’s request for the disclosure of
3 the CCR, Respondents BSC and OAL bear the burden of proving that an exemption applies. They
4 have not done so, nor can they.

5 **THE CALIFORNIA CODE OF REGULATIONS IS A PUBLIC RECORD.**

6 35. Respondents have not disputed that the CCR is a public record under the CPRA.
7 The CPRA defines “public record” as “any writing containing information relating to the conduct
8 of the public’s business prepared, owned, used, or retained by any state or local agency regardless
9 of physical form or characteristics.” Cal. Gov’t Code § 6252(e). The CCR contains regulations for
10 a broad range of private conduct and business operations in California, including the building code,
11 the electrical code, the plumbing code, the environmental protection code, the business regulation
12 code, the motor vehicle code, the governing regulations of the California Attorney General, the
13 firearm code, regulations regarding state-wide and regional water commissions, port authority
14 codes, crime prevention and corrections codes, military and veterans affairs codes, the toxic
15 substances code—and hundreds more.

16 36. Creation and maintenance of the CCR is required by state statute. Cal. Gov’t Code
17 § 11342.4 (“[OAL] shall adopt, amend, or repeal regulations for the purpose of carrying out the
18 provisions of this chapter.”). Cal Health & Safety Code § 18930(a) (“Any building standard adopted
19 or proposed by state agencies shall be submitted to, and approved or adopted by, the California
20 Building Standards Commission prior to codification.”)

21 37. This alone makes the CCR a public record. *League of Cal. Cities v. Super. Ct.*, 241
22 Cal. App. 4th 976, 987 (2015) (“Any record required by law to be kept by an officer, or which he
23 keeps as necessary or convenient to the discharge of his official duty, is a public record.”); *Cnty.*
24 *Youth Athletic Ctr. v. City of Nat’l City*, 220 Cal. App. 4th 1385, 1418 (2013) (the definition of
25 “public record” is “broad” and “intended to cover every conceivable kind of record that is involved
26 in the governmental process” (quoting *Coronado Police Officers Ass’n v. Carroll*, 106 Cal. App.
27 4th 1001, 1006 (2003))).

28 38. As the body of law, mandated by statute, which governs a vast swath of business

1 and private life in California under threat of penalty, the CCR is—and should be—a public record.³
2 *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1507 (2020) (“Every citizen is presumed to
3 know the law, and it needs no argument to show . . . that all should have free access to its contents.”
4 (internal quotations omitted)). In the parlance of the CPRA, the CCR unambiguously relates to “the
5 conduct of the public’s business.” Neither Respondent has argued otherwise in their
6 correspondence with Public Resource.

7 *Respondents Possess the Requested Records.*

8 39. Both Respondents possess the public records requested by Public Resource. BSC
9 has not denied that it possesses Title 24. (Exhibit G.) And although OAL stated that it “does not
10 have a copy of a CCR Master Database” (Exhibit D at 31), that characterization ignores the fact
11 that OAL has constructive possession of the CCR, which means that the OAL possesses the CCR
12 Master Database for purposes of the CPRA.

13 40. In the context of the CPRA, courts define the term “possession” to “mean both actual
14 and constructive possession.” *Bd. of Pilot Comm’rs v. Super. Ct.*, 218 Cal. App. 4th 577, 598
15 (2013). Specifically, “an agency has constructive possession of records if it has the right to control
16 the records, either directly or through another person.” *Consol. Irrigation Dist. v. Super. Ct.*, 205
17 Cal. App. 4th 697, 710 (2012).

18 41. Here, there is no dispute that OAL has the right to control the contents of the CCR
19 Master Database maintained by West. OAL’s contract with West expressly provides that West must
20 “update the Master Database as soon as feasible after OAL provides the contractor with regulations
21 that have been endorsed by the Secretary of State, preferably within 15 days but in no event longer
22 than 30 days after OAL delivers the regulation text.” (Exhibit B at 9.) The contract further states

23 _____
24 ³ Indeed, records *far less* related to the conduct of the public’s business than the CCR are public
25 records under California law. *See, e.g., Am. Civil Liberties Union Found. v. Super. Ct.*, 3 Cal. 5th
26 1032, 1036 n.2 (2017) (“There is no dispute that [automatic license plate reader] data are public
27 records.”); *City of San Jose v. Super. Ct.*, 2 Cal. 5th 608, 614 (2017) (city employee
28 communications on private email accounts and cell phones concerning a redevelopment project
were public records subject to disclosure under the CPRA); *State Dep’t of Pub. Health v. Super.
Ct.*, 60 Cal. 4th 940, 945 (2015) (anonymized citations issued by the State Department of Public
Health to various long-term health care facilities were public records subject to disclosure under
the CPRA); *Sierra Club v. Super. Ct.*, 57 Cal. 4th 157, 175 (2013) (GIS-formatted database was a
non-exempt public record subject to disclosure under the CPRA).

1 that the “text of regulations and all other items in the Master Database shall be subject to inspection,
2 revision, and correction by OAL. The contractor [i.e., West] shall take immediate action to make
3 any corrections specified by OAL.” (*Id.*) Further, OAL retains all intellectual property rights in the
4 CCR. (Exhibit B at 3, 15.) Thus, OAL has full control over the contents of the Master Database.
5 Under California law, OAL therefore has constructive possession of the Master Database and must
6 produce it under the CPRA.⁴

7 42. Additionally, the Legislature, in drafting the CPRA, contemplated the exact
8 argument that OAL makes now, and forbade it. Section 6270(a) states: Notwithstanding any other
9 provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public
10 record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a
11 state or local agency from providing the record directly pursuant to this chapter.

12 43. Thus, Respondents cannot dodge their obligations to comply with the CPRA by
13 asserting that the CCR is in the possession of third parties. The plain text of the statute forbids it,
14 as the California Supreme Court has confirmed. *City of San Jose*, 2 Cal. 5th at 623–24 (“The
15 statute’s clear purpose is to prevent an agency from evading its disclosure duty by transferring
16 custody of a record to a private holder and then arguing the record falls outside CPRA because it is
17 no longer in the agency’s possession. . . . It simply prohibits agencies from attempting to evade
18 CPRA by transferring public records to an intermediary not bound by the Act’s disclosure
19 requirements.”).

20 *Copyright Does Not Provide a Justification for Nondisclosure*

21 44. BSC argues that it cannot disclose Title 24 because it is copyrighted. (Exhibit G.)
22 BSC’s position is incorrect as a matter of law. There is no basis for BSC to assert copyright as a

23 ⁴ In *Anderson-Barker v. Super. Ct.*, 31 Cal. App. 5th 528, 539 (2019), the petitioner sought access
24 to microfiche records to which the respondent city had access but did not control. The petitioner
25 argued that such access meant that the city had “possession” of the records in question. The Court
26 of Appeal disagreed, stating that “[f]or purposes of the CPRA, the term ‘constructive possession’
27 means ‘the right to control the records.’” The term “control” is generally defined as “the power or
28 authority to manage, direct, or oversee.” Citing *City of San Jose*, 2 Cal. 5th at 623; Black’s Law
Dict. (9th ed. 2009), p. 378.). Since the City had no right or ability to control the contents of the
records in question, it did not have constructive possession. Here, in sharp contrast, OAL has the
exclusive contractual right to control the CCR Master Database. It manages, directs, owns, and
oversees the exact contents of the CCR Master Database, and is therefore in constructive
possession of it for purposes of the CPRA.

1 basis for nondisclosure. Whether the California government or any of its agencies can claim
2 copyright protection in official creations is a matter of California law. *Cty. of Santa Clara*, 170 Cal.
3 App. 4th at 1331 (“State law determines whether [a public official] may claim a copyright in his
4 office’s creations.”) (internal quotations omitted); *City of Inglewood v. Teixeira*, No. CV-15-01815-
5 MWF (MRWx), 2015 U.S. Dist. LEXIS 114539, at *7–8 (C.D. Cal. Aug. 20, 2015) (“[W]hether
6 state and local governments can claim copyright protection is governed by state law.”).

7 45. Thus, when addressing copyright as a proffered basis for an agency’s nondisclosure,
8 courts look to California law for a specific authorization. *Cty. of Santa Clara*, 170 Cal. App. 4th at
9 1333 (because no “express authorization to secure copyrights” existed for GIS data, the county
10 could not assert copyright protection as a basis for nondisclosure); *City of Inglewood*, 2015 U.S.
11 Dist. LEXIS 114539, at *8–9 (because the city could identify “no affirmative grant of authority that
12 permits it to obtain and assert a copyright for the City Council Videos,” the court held that the city
13 could not withhold the videos on copyright grounds); *Cty. of Santa Clara*, 170 Cal. App. 4th at
14 1335 (holding that the CPRA’s mandate to provide public records “overrides a government
15 agency’s ability to claim a copyright in its work unless the legislature has expressly authorized a
16 public records exemption”).

17 46. Here, the legislature has not granted anyone the right to retain copyright in the CCR.
18 *Cty. of Santa Clara*, 170 Cal. App. 4th at 1333 (“The Legislature knows how to explicitly authorize
19 public bodies to secure copyrights when it means to do so. For example, the Education Code
20 includes a number of provisions authorizing copyrights, including this one: ‘Any county board of
21 education may secure copyrights, in the name of the board, to all copyrightable works developed
22 by the board, and royalties or revenue from such copyrights are to be for the benefit of the board
23 securing such copyrights.’” (citing Cal. Ed. Code § 1044)); *see also* Cal. Ed. Code, §§ 32360,
24 35170, 72207, 81459; Health & Safety Code, §§ 25201.11(a), 13159.8(c) (code provisions
25 authorizing state agencies to secure copyright in official works).

26 47. As such, neither BSC nor OAL can assert copyright as a justification for withholding
27 records in response to Public Resource’s CPRA requests.

28 48. Furthermore, the notion that the CCR is even *eligible* for copyright protection under

1 federal law is highly dubious. The CCR is the law, which is created by agencies at the behest of the
2 legislature. The United States Supreme Court has said that such works cannot be copyrighted.
3 *Georgia*, 140 S. Ct. at 1508 (holding that even though a state commission hired private publishers
4 to draft annotations, the finished work was not copyrightable because it fell under the government
5 edicts doctrine, and explaining that “copyright does not vest in works that are (1) created by judges
6 and legislators (2) in the course of their judicial and legislative duties”). The fact that the CCR
7 includes certain model codes authored by private entities does not change this conclusion in any
8 way. *Int’l Code Council, Inc. v. UpCodes, Inc.*, No. 17-cv-6261 (VM), 2020 U.S. Dist. LEXIS
9 92324, at *46–47 (S.D.N.Y. May 26, 2020) (holding that a privately authored work may “become
10 the law” and lose copyrightability based on five considerations: “(1) whether the private author
11 intended or encouraged the work’s adoption into law; (2) whether the work comprehensively
12 governs public conduct, such that it resembles a ‘law of general applicability’; (3) whether the work
13 expressly regulates a broad area of private endeavor; (4) whether the work provides penalties or
14 sanctions for violation of its contents; and (5) whether the alleged infringer has published and
15 identified the work as part of the law, rather than the copyrighted material underlying the law.”);
16 *Veeck v. Southern Building Code Congress, Inc.*, 293 F.3d 791 (5th Cir. 2002) (en banc) (a model
17 code enters the public domain when legislatively adopted as the law of a jurisdiction).

18
19 **THE VARIOUS “FREE” VERSIONS OF THE CCR DO NOT SATISFY RESPONDENTS’**
20 **LEGAL DUTIES UNDER THE CPRA.**

21 49. Respondents have stated that the CCR is currently available, in various forms, in
22 various places, and at various levels of access, both in hard copy and online. (Exhibits D at 35, G.)
23 But all of these versions carry restrictions that are inconsistent with the CPRA.

24 50. First, electronic copies of public records are not “publicly available” under the
25 CPRA when they are restricted by private terms of use. Respondents identify various electronic
26 versions of portions of the CCR. (Exhibit G (“Title 24 may also be viewed online free of charge
27 via the CBSC website [<https://www.dgs.ca.gov/BSC/Codes>]”); Exhibit D at 35 (“The most up-to-
28 date version of the CCR Titles you request are available online at <https://govt.westlaw.com/>

1 calregs/Index.”)) But these versions are published by private entities that impose contractual
2 restrictions on the public’s ability to access, use, and modify their contents:

- 3 • **ICC** (Title 24, Parts 1, 2, 2.5, 6, 8, 9, 10, 11 and 12):
4 <https://codes.iccsafe.org/codes/california> (read-only versions of the Administrative Code,
5 Building Code, Residential Code, Energy Code, Historical Building Code, Fire Code,
6 Existing Building Code, Green Building Code, and Referenced Standards Code).
- 7 • **IAPMO** (Title 24, Parts 4 and 5): (read-only version of the Mechanical Code,
8 <http://epubs.iapmo.org/2019/CMC/index.html#p=3>, and Plumbing Code:
9 <http://epubs.iapmo.org/2019/CPC/index.html>).
- 10 • **NFPA** (Title 24, Part 3): (read-only version of California Electrical Code
11 [https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view)
12 [standards/free-access?mode=view](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view))
- 13 • **West** (Titles 1-5, 7-23, and 25-28): (available at
14 <https://govt.westlaw.com/calregs/Index?transitionType=Default&contextData=0%28sc.Default%29>, but users are subject to Thompson Reuter’s Terms of Use agreement
15 (https://legal.thomsonreuters.com/en/legal-notices/terms-of-use), its privacy policy
16 governing the use of personal information (https://www.thomsonreuters.com/en/privacy-statement.html), and its cookie policy requiring users to enable first-party and third-party
17 cookies to access the CCR (https://www.thomsonreuters.com/en/privacystatement.html#cookies).⁵

21 These private versions of public laws are not “publicly available” because the private entities
22 impose “end user restrictions” that “are incompatible with the purposes and operation of the
23 CPRA.” *Cty. of Santa Clara*, 170 Cal. App. 4th at 1335 (holding that the defendant county could
24 not demand licensing agreements or impose restrictions on end users of public records). In
25 *County of Santa Clara*, the Court of Appeal held that California law barred the imposition of end
26 user restrictions on public records. This policy, the court reasoned, “effectuates the purpose of the

27 ⁵ To avoid the restrictions, a user must pay these private entities a fee ranging from approximately
28 \$66 (for a paper copy of the swimming code from IAPMO) to \$865 (for a yearly electronic subscription to all of the codes published by the ICC).

1 statute, which is increasing freedom of information by giving members of the public access to
2 information in the possession of public agencies.” *Id.* The court explained that the same policy “is
3 enshrined in the Constitution” and “would be undercut by permitting the County to place extra-
4 statutory restrictions on the records that it must produce, through the use of end user agreements.”
5 *Id.* (citations and quotations omitted). So too here. Current electronic versions of the CCR are
6 subject to a litany of contractual and technological restrictions. *See, e.g.,* West TOS Copyright
7 Policy, <https://legal.thomsonreuters.com/en/legal-notices/contacts> (requiring express permission
8 to copy and distribute cases and statutes electronically) (last visited on Mar. 11, 2021); ICC Title
9 24, Part I <https://codes.iccsafe.org/content/CAAC2019> (read-only version, technologically
10 incapable of copying/pasting on browser) (last visited on Mar. 11, 2021); IAPMO Title 24, Part 4
11 (mechanical code) <http://epubs.iapmo.org/2019/CMC/index.html#p=1> (read-only version,
12 technologically incapable of copying/pasting on browser) (last visited on Mar. 11, 2021). These
13 private versions are inadequate under the CPRA because of these end user restrictions.

14 51. Second, the availability of paper copies at certain libraries does not free agencies
15 from their responsibility to produce electronic copies in response to CPRA requests. (Exhibit G.)
16 The CPRA is clear that “any agency that has information that constitutes an identifiable public
17 record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make
18 that information available in an *electronic format* when requested by any person.” Cal. Gov’t Code
19 § 6253.9(a) (emphasis added). Paper copies do not satisfy this requirement.

20 52. Finally, OAL’s offer to scan paper copies of the CCR similarly misses the mark.
21 (Exhibit D at 35.) OAL must provide the records in an electronic format. Cal. Gov’t Code §
22 6250(a)(1)–(2) (agencies must provide records in electronic formats that they hold, use, or provide
23 to other agencies).

24 *No Exemption Applies.*

25 53. The CPRA carries a “presumption in favor of access.” *Am. Civil Liberties Union*
26 *Found. v. Super. Ct.*, 3 Cal. 5th at 1040. Agencies can overcome that presumption only by showing
27 that one of the *over 100* statutory exemptions applies. *Long Beach Police Officers Ass’n v. City of*
28 *Long Beach*, 59 Cal. 4th 59, 67 (2014) (“The act has certain specific exemptions (Cal. Gov’t Code

1 §§ 6254–6254.30), but a public entity claiming an exemption must show that the requested
2 information falls within the exemption.”); *City of San Jose*, 2 Cal. 5th at 616 (“Every such record
3 must be disclosed unless a statutory exception is shown.”); Cal. Gov’t Code § 6255 (a) (“The
4 agency shall justify withholding any record by demonstrating that the record in question is exempt
5 under express provisions of this chapter or that on the facts of the particular case the public interest
6 served by not disclosing the record clearly outweighs the public interest served by disclosure of the
7 record.”).

8 54. In their letters to Public Resource, neither Respondent invoked *a single one* of the
9 exemptions listed in the CPRA. (Exhibits D, G & I.) By failing to do so, they have waived the
10 ability to claim any exemption under the CPRA. *Haynie v. Super. Ct.*, 80 Cal. App. 4th 603, 611
11 (2000) (“The public agency has the burden of establishing an exemption before records are
12 provided, and exemptions not then asserted are waived.”).

13 CPRA PROCEDURE FOR WRIT OF MANDATE

14 55. When a verified petition to the superior court of the county where the records or
15 some part thereof are situated establishes that certain public records are being improperly withheld
16 from a member of the public, the court shall order the public official to disclose the public record,
17 or show cause as to why he or she should not do so. Cal. Gov’t Code § 6259(a). The court shall
18 decide the case after examining the record in camera (if permitted by the Evidence Code), papers
19 filed by the parties, and any oral argument and additional evidence as the court may allow. *Id.*

20 56. If the Court finds that failure to disclose is not justified, it shall order the public
21 official to disclose the record. *Id.* § 6259(b).

22 57. To ensure that access to public records is not delayed or obstructed, the CPRA
23 requires that “[t]he times for responsive pleadings and for hearings in this proceedings shall be set
24 by the judge of the court with the object of securing a decision as to these matters at the earliest
25 possible time.” Cal. Gov’t Code § 6258.

26 58. The CPRA and the California Constitution embody and protect the “fundamental
27 and necessary right of every person in this state” to access the information concerning the conduct
28 of the people’s business. The Constitution animates this right even further by guiding courts’

1 interpretations: “A statute, court rule, or other authority . . . shall be broadly construed if it furthers
2 the people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const. Art.
3 I § 3(b)(2). Respondents cite no exemption or public interest that justifies their withholding here.
4 And indeed, it is difficult to fathom a more classic and fitting invocation of the CPRA than Public
5 Resource’s request to access core public records—the very laws which govern virtually every
6 aspect of private and business life in this state. As the United States Supreme Court said last year:
7 “Every citizen is presumed to know the law, and it needs no argument to show . . . that all should
8 have free access to its contents.” *Georgia*, 140 S. Ct. at 1507 (internal quotations omitted). In
9 California, citizens do not have “free access” to the contents of the CCR. This writ seeks to remedy
10 that.

11 **FIRST CAUSE OF ACTION**
12 **For Violation of the California Public Records Act &**
13 **Article I § 3 of the California Constitution**
(Against Respondent OAL)

14 59. Petitioner Public Resource incorporates herein by reference the allegations of
15 paragraphs 1-59 above, as if set forth in full.

16 60. Respondent OAL’s refusal to release public records and its insufficient responses to
17 lawful requests violate the CPRA and Article I § 3 of the California Constitution.

18 **SECOND CAUSE OF ACTION**
19 **For Violation of the California Public Records Act &**
20 **Article I, §3 of the California Constitution**
(Against Respondent BSC)

21 61. Petitioner Public Resource incorporates herein by reference the allegations of
22 paragraphs 1-59 above, as if set forth in full.

23 62. Respondent BSC’s refusal to release public records and its insufficient responses to
24 lawful requests violate the CPRA and Article I § 3 of the California Constitution.

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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays as follows:


63. That the Court issue a peremptory writ of mandate directing Respondents to provide Petitioner with the requested records;

64. That Petitioners be awarded attorney's fees and costs pursuant to Cal. Gov't Code § 6259(d); and

65. For such other and further relief as the Court deems proper and just.

Dated: March 17, 2021

COOLEY LLP

By: 
Matthew D. Caplan

Attorneys for Plaintiff
Public.Resource.Org, Inc.