SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

20STCP01226 April 7, 2022
GOVERNMENT ACCOUNTABILITY & OVERSIGHT, P.C. 1:30 PM
vs THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Judge: Honorable Mary H. Strobel
Judicial Assistant: N DiGiambattista
Courtroom Assistant: R Monterroso

CSR: Cindy Cameron/CSR 10315
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): James K.T. Hunter (Telephonic) (X)

For Respondent(s): Raymond A. Cardozo and Corrie Buck (X) (Telephonic)

NATURE OF PROCEEDINGS: HEARING ON PETITION FOR WRIT OF MANDATE

Matter comes on for hearing and is argued.

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The court adopts its tentative ruling as the order of the court and is set forth in this minute order.

Petitioner Government Accountability & Oversight, P.C. ("Petitioner" or "GAO") petitions for a writ of mandate directing Respondent The Regents of the University of California ("Respondent" or "Regents") to provide copies of all documents requested by Petitioner pursuant to its requests for records dated November 14, 2019, and December 18, 2019, pursuant to the California Public Records Act ("CPRA"). (See First Amended Verified Petition ("FAP") Prayer ¶ 2.) Petitioner also prays for a judicial declaration that Respondent violated the CPRA by failing to provide timely responses to the CPRA requests, failing to produce records, and improperly redacting certain records. (Id. Prayer ¶ 1.)

The petition came for hearing before the court on January 20, 2022, after which the court issued a minute order partially adopting the court's tentative ruling as modified. The court denied the petition as to the Pre-Publication Documents and attachments (AR 197-198, Documents Nos. 108-120). The court granted the petition as to Documents Nos. 7-14 in the amended privilege log, except the court permitted Respondent to redact student names from those documents. Counsel stipulated that the Campbell Hall documents (Nos. 116-129) need not be produced. With respect to the remaining documents, the court ordered Respondent to provide a supplemental declaration and "log information" to the court by February 10, 2022. The court ordered Respondent to lodge document 5 for in camera review. The court permitted Petitioner to file a response not to exceed 20 pages.

On February 10, 2022, Respondent filed its notice of supplemental evidence and supplemental declarations of Ann Carlson, Jennifer Mnookin, and Cara Horowitz. On February 16, 2022,

Respondent filed its notice of lodging of Document No. 5. On February 23, 2022, Petitioner filed its supplemental reply trial brief. On March 30, 2022, the court denied Respondent's ex parte application to file a reply to Petitioner's supplemental brief. However, the court ruled that it would treat the privilege log attached to the ex parte application as a late-filed document.

The court now rules on the remaining documents at issue in the petition, and also Petitioner's prayer for declaratory relief. Factual and legal discussion from the court's minute order dated January 20, 2022, is not repeated here, but is incorporated by reference.

Analysis

Standard of Review; and Burden of Proof

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Article I, Section 3(b) of the Constitution affirms that "[t]he people have the right of access to information concerning the conduct of the people's business." The Constitution mandates that the CPRA be "broadly construed," while any statute "that limits the right of access" must be "narrowly construed." (See Nat'l Lawyers Guild v. City of Hayward (2020) 9 Cal.5th 488, 507.) The CPRA "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure." (Gov. Code § 6257.5.)

Section 6253(a) also states: "Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law."

While the CPRA provides express exemptions to its disclosure requirements, these exemptions must be narrowly construed and the agency bears the burden of showing that a specific exemption applies. (Sacramento County Employees' Retirement System v. Superior Court (2013) 195 Cal.App.4th 440, 453.)

A public agency also has the burden to demonstrate that it properly withheld records on the grounds they are non-responsive to a CPRA request or do not constitute public records. (ACLU of Northern Cal. v. Sup.Ct. (2011) 202 Cal.App.4th 55, 83-86.) "Because the agency has full knowledge of the contents of the withheld records and the requester has only the agency's

affidavits and descriptions of the documents, its affidavits must be specific enough to give the requester 'a meaningful opportunity to contest' the withholding of the documents." (Id. at 83; see also Getz v. Sup.Ct. (2021) 72 Cal.App.5th 637.)

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Fundraising Documents

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The privilege log shows that Respondent withheld 95 records that are responsive to the November 2019 Request based on the deliberative process privilege. Eighty-six of these documents, numbers 1, 3, 15-31, 33, 35-37, 39, 40, 42-62, 64-84, 87, 88, 90, 91, and 93-107, were "email threads" withheld on the grounds that they include pre-decisional "internal fundraising discussions" (hereafter "Fundraising Documents".) Multiple attachments to these emails were also withheld based on the stated ground that they are "attachment[s] to email." (See OB 5-9; AR 8-53, 145-198.)

The California Supreme Court has held that there is a CPRA exemption for "'not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated.'" (Golden Door Properties, LLC v. Sup.Ct. (2020) 53 Cal.App.5th 733, 789; see Times Mirror Co. v. Sup. Ct. (1991) 53 Cal.3d 1325, 1344.) The party claiming this deliberative process exemption must show that on the facts of a particular case "the public interest in nondisclosure clearly outweighs the public interest in disclosure." (Citizens for Open Government v. City of Lodi (2012) 205 Cal.App.4th 296, 306; see Gov. Code § 6255.) The public agency "must describe the justification for nondisclosure with reasonably specific detail and demonstrate that the information withheld is within the claimed privilege or exemption." (Golden Door Properties, supra, 53 Cal.App.5th at 790.)

Respondent's citation to Fresno in the privilege log also suggests that Respondent may rely on the general catch-all exemption in section 6255 to withhold the Fundraising Documents. (See California State University, Fresno Assn., Inc. v. Superior Court (2001) 90 Cal. App. 4th 810, 833 [holding that the requested documents were not exempt under the catchall exemption in Government Code section 6255].) Under section 6255, as with the deliberative process exemption, "[t]he burden of proof is on the proponent of nondisclosure, who must demonstrate a 'clear overbalance' on the side of confidentiality." (City of San Jose v. Sup. Ct. (1999) 74 Cal.App.4th 1008, 1017-1018.) Because the balancing test under section 6255 also applies to the deliberative process privilege, the court's analysis of these two privileges below is the same.

Guidance from Court in January 20, 2022, Minute Order

In its minute order dated January 20, 2022, the court provided "general observations" concerning the parties' evidence for the first trial date related to the Fundraising Documents. The court stated:

The declarations summarized above, as well as the privilege log, suggest that some or all of the 86 Fundraising Documents, or some material in them, may fall within the deliberative process privilege. While none of the parties to the emails (including Professor Carlson) have described the emails in any detail, the privilege log provides some basis to conclude that the emails involve pre-decisional internal discussions about fundraising strategies. The Carlson, Mapes, and Mnookin declarations also provide some evidence that disclosure of such emails could be against the public interest. Disclosure could discourage candid discussion among public university decisionmakers regarding fundraising strategies and could also embarrass donors and thereby discourage donations to public universities.

However, as noted by Professor Lindzen, the public interests involved "depends on what is found" in the withheld emails and attachments. The emails requested by the November 2019 Request necessarily involve persons in the UCLA School of Law, Emmett Institute on Climate Change & the Environment, including Professor Carlson and Dan Emmett. There is a strong public interest in the topic of climate change, including a public interest in learning about the "Climate Litigation/Regents Interface," as described by Petitioner in the November 2019 Request. Professors Happer and Lindzen also provide some evidence that there is a public interest in the financing of the Emmett Institute because it engages in climate change related research and litigation and is based at a public university. The withheld emails about "fundraising strategies" would appear to have some relevance to that general topic of public interest.

However, other than these general observations, the court cannot weigh the public interests involved on this record. Respondent, which has the burden, has not provided a sufficient evidentiary record for CPRA review….

Respondent provides no specific context of the fundraising discussions or why disclosure of the specific discussions at issue would be harmful to the public. The court cannot say, in the abstract, that the balancing of interests necessarily tilts in favor of non-disclosure of internal emails about fundraising strategies that may support climate change research or advocacy at a public

university. Given the relatively large number of documents at issue (86 emails plus attachments), more detailed evidence was required for Respondent to meet its burden of showing a "clear overbalance" on the side of confidentiality. For example, the court might view an email that discusses strategies to target a named potential donor differently than one which discusses donation strategies in general.

Finally, Petitioner contends that inclusion of Dan Emmett in many of the fundraising emails at issue waived the privilege because it was not an "internal" deliberation. (OB 7; see Ardon v. City of Los Angeles (2016) 62 Cal. 4th 1176, 1190.) As Respondent concedes, Emmett is "a third party who is not a University employee." (Oppo. 12.) Courts have also held that the inclusion of interested third parties does not necessarily preclude application of the catchall exemption in section 6255. (See Humane Society of U.S. v. Sup.Ct. (2013) 214 Cal.App.4th 1233, 1242, 1263-64.) Emmett appears to be an interested third party in the alleged fundraising discussions at issue. On this record, the court cannot conclude that inclusion of Emmett in the emails waived the deliberative process privilege. However, the court cannot make any final determination of that issue without more specific information about each email.

On this record, Respondent does not meet its burden to prove that it properly withheld any of the Fundraising Documents as exempt. There appears to be some, reasonable probability that Respondent could meet its burden through supplemental declarations. For example, the chilling effect of disclosing the names and personal identifying information of targeted potential donors may be stronger than that involved in disclosure of a discussion of fund-raising activities in general, or those targeted to groups of persons not identified by name. (Minute Order dated 1/20/22 at 12-14.)

After the continuance of the writ hearing, Respondent submitted supplemental declarations of Dean Mnookin and Professors Carlson and Horowitz that provide some additional information about each of the withheld Fundraising Documents. Petitioner contends that Respondent has still failed to meet its burden of proof with respect to the asserted exemptions for the Fundraising Documents. (Suppl. Reply 5-9.) The court addresses that issue next for various categories of Fundraising Documents.

Documents Nos. 1, 2, 15, 16, and 17-24

The privilege log describes Documents Nos. 1, 2, 15, 16, and 17-24 as email threads, along with attachments, between various persons including Sean Hecht, Cara Horowitz, Edward Parson, Daniel Melling, Ann Carlson, and the email address demmett@douglasemmett.com. The subject

lines include "Climate Ride 2017" and "Emmett Institute anniversary hike?" (AR 145-154.)

In her supplemental declaration, Professor Carlson describes these documents as follows: "Exempt Documents 1, 2, 15, 16, and 17-24 contain variations of a single email thread wherein other UCLA employees, a private donor, and me discussed the planning of a fundraising event. The records concern pre-decisional internal discussions in which people shared ideas and concerns about the proposed event. The records are internal discussions regarding how to raise private funds and include at least one email that explicitly identifies targeted individual potential donors by name. The emails include deliberations before any decisions were made of what type of private fundraising event should be arranged to commemorate the 10th anniversary of the Emmett Institute, and scheduling/coordinating a private fundraising event that would involve a hike/bike private ride. I understand that after decisions were made following the pre-decisional deliberations, any actual donations made and any terms applicable to such donations are disclosable to the public. These emails relate to the internal discussions that occurred before any decisions were made."

In her first declaration, Professor Carlson also provided the following general testimony relevant to these and other Fundraising Documents: "Sometimes, when engaging in pre-decisional deliberations about donors or fundraising, it is useful to consult knowledgeable and trusted advisors who are not University employees…. For example, Daniel Emmett is a strong supporter of and deeply knowledgeable with regard to the Emmett Institute. To brainstorm fundraising ideas for the Institute, I have consulted Mr. Emmett on occasion to get input on fundraising ideas. I understand several of the documents that Information Practices withheld as exempt involved such deliberative emails with Mr. Emmett." (AR 606.) Dean Mnookin also provided a general discussion of the how "[d]isclosure of internal communications that reflect discussions about fundraising strategy that occur before a decision is made would also impair the Law School's relationship with donors." (AR 755; see also AR 751-752 [Mapes declaration].)

As discussed in the January 20, 2022, minute order, Petitioner also submitted declarations supporting that "[t]here is a strong public interest in the topic of climate change, including a public interest in learning about the 'Climate Litigation/Regents Interface,' as described by Petitioner in the November 2019 Request. Professors Happer and Lindzen also provide some evidence that there is a public interest in the financing of the Emmett Institute because it engages in climate change related research and litigation and is based at a public university." (Minute Order dated 1/20/22 at 12; see AR 236-263, 296-345.) Moreover, since UCLA is a public university and receives funding from public taxes, there is also a public interest in learning about the internal fundraising activities of the UCLA School of Law.

Weighing all of the evidence, the court finds that Respondent has not met its burden to prove that Documents Nos. 1, 2, 15, 16, and 17-24 are exempt from disclosure under the deliberative process privilege and Government Code section 6255. As the court indicated in its January 20, 2022, ruling, this continued hearing was Respondent's opportunity to provide evidence concerning the "specific context of the fundraising discussions" and "why disclosure of the specific discussions at issue would be harmful to the public." (Minute Order dated 1/20/22 at 13.)

Carlson states that the emails include "deliberations before any decisions were made of what type of private fundraising event should be arranged to commemorate the 10th anniversary of the Emmett Institute, and scheduling/coordinating a private fundraising event that would involve a hike/bike private ride." (Suppl. Carlson Decl. ¶ 2.) Carlson states that "[t]he records are internal discussions regarding how to raise private funds and include at least one email that explicitly identifies targeted individual potential donors by name." (Suppl. Carlson Decl. ¶ 2.) Respondent provides no specific explanation of adverse consequences that would result if such discussions were disclosed publicly. Carlson does not show, for instance, that the discussion of "scheduling/coordinating" involved any sensitive or embarrassing information that would be harmful to UCLA or the private donors if disclosed publicly. Carlson does not show that the internal discussions relate to sensitive or proprietary fundraising strategies that might be less effective if disclosed publicly. Nor can the court make such inference from context for these emails.

Respondent makes generalized assertions that public disclosure would impair "the ability of senior University officials to consult with knowledgeable persons who can provide helpful and valuable input." (See e.g. AR 606, 754-755.) Such generalized statements, standing alone, are insufficient to meet Respondent's burden. "While the policy behind the privilege makes sense, invoking the policy is not sufficient to explain the public's specific interest in nondisclosure of the documents in this case." (Golden Door Properties, LLC v. Sup. Ct. (2020) 53 Cal.App.5th 733, 791.) Respondent seems to assert that any internal deliberations about fundraising for a public university are subject to non-disclosure under the deliberative process privilege. The court disagrees with that assertion because, as already stated, the specific circumstances matter to the court's balancing of public interests.

As the court noted in the January 20, 2022, minute order, the court perceives a potential public interest in non-disclosure of internal strategy emails that "target a named potential donor." (Minute Order dated 1/20/22 at 13-14.) However, the court did not conclude that any internal

discussion about a target donor was automatically exempt from disclosure. The court made clear that it could not conduct the balancing of interests under section 6255 without more detailed evidence about the "specific context of the fundraising discussions" and "why disclosure of the specific discussions at issue would be harmful to the public." (Minute Order dated 1/20/22 at 13.)

Carlson states that "at least" one email within Documents Nos. 1, 2, 15, 16, and 17-24 discusses a targeted individual." Respondent fails to identify the email at issue. Respondent should have identified the specific email that discusses a targeted specific donor by date and time, the persons who were included in the email, and other relevant log information so the court could make an informed decision. (See Golden Door Properties, supra, 53 Cal.App.5th at 792; see also Osborn v. Internal Revenue Service (6th Cir. 1985) 754 F.2d 195, 198.) If all Documents Nos. 1, 2, 15, 16, and 17-24 include the email (which is unclear), then that should have been explained clearly. Respondent also should have addressed the issue of severability. Section 6253(a) states: "Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law."

More importantly, Carlson provides no details about the one email in Documents Nos. 1, 2, 15, 16, and 17-24 that explicitly identified a target potential donor. For instance, she does not state that the discussion included any sensitive or embarrassing statements about the targeted individual. Nor can the court make such inference from context for these emails. Without further detail, it would be speculative to find any specific or substantial harm to the public interest from disclosure of the one email identified by Carlson that identifies a target donor by name.

At the hearing, Respondent's counsel should address whether the withheld email discussing a targeted donor includes any other information that may be relevant to the balancing of interests. Even if some discussion of a targeted donor could be withheld, Respondent would also need to show that such discussion could not be segregated and redacted from these public records.

While Petitioner does not show that these emails relate to the "Climate Litigation/Regents Interface," the emails do relate generally to fundraising activities of the Emmett Institute and the law school at a public university. There is a general public interest in public records related to such fundraising at a public university and the Emmett Institute, as discussed above. Because Respondent does not show any specific harms from disclosure of these emails, the court cannot conclude that there is a "clear overbalance" on the side of confidentiality.

Should Respondent show at the hearing that the balancing of interests weighs for non-disclosure

of any specific emails, the court tentatively concludes that inclusion of Dan Emmett did not waive the privilege. While counsel should address this issue, it appears that Dan Emmett may have been the only non-UCLA employee included in these emails and other Fundraising Documents at issue. The evidence suggests that Dan Emmett would have been an interested third party. (See e.g. AR 606.) Thus, if the court otherwise found a "clear overbalance" on the side of confidentiality, the inclusion of Emmett as an interested third party would not necessarily waive the deliberative process privilege. (See Humane Society of U.S. v. Sup.Ct. (2013) 214 Cal.App.4th 1233, 1242, 1263-64.)

Subject to further argument regarding the email that explicitly discusses a targeted individual potential donor, the petition is GRANTED as to Documents Nos. 1, 2, 15, 16, and 17-24.

Documents Nos. 3-4, 25, 28-30, 35, 49-51; and Documents Nos. 35-36, 40-41, 48, and 52

The privilege log describes Documents Nos. 3-4, 25, 28-30, 35, 49-51 as email threads, along with attachments, with subject line "UCLA Draft" and between Professor Carlson, Dean Mnookin, Dan Emmett, Cara Horowitz, Nicholette Fuhrman, and Amy White. (AR 145-169.)

In her supplemental declaration, Professor Carlson describes these documents as follows: "Exempt Documents 3-4, 25, 28, 29, 30, 35 49, 50, and 51 contain variations of a single email thread between other UCLA employees, a private donor, and me and corresponding email attachments concerning internal discussions regarding how to raise private funds. These records include deliberations before any decision was made regarding both how to raise such private funds and how to use such funds most effectively to support UCLA programs. These email threads also contain multiple emails negotiating the potential donation of private funds by an individual private donor, who is identified by name, including identification of specific amounts and timing of potential donations." (Suppl. Carlson Decl. ¶ 3.)

Documents Nos. 35-36, 40-41, 48, and 52 are also emails with subject line "UCLA Draft" between Professor Carlson, Dan Emmett, Cara Horowitz, Nicholette Fuhrman, and Amy White. Cara Horowitz provides a similar explanation for withholding the emails as the explanation of Carlson, quoted above. (Suppl. Horowitz Decl. ¶ 3; AR 145-169.)

The court's analysis for these documents is largely the same as that stated above for Documents Nos. 1, 2, 15, 16, and 17-24. Carlson and Horowitz provide no detail or context that would show a public harm that would result from disclosure of the internal fundraising discussions in the withheld documents. Simply invoking the policy underlying the deliberative process privilege is

not sufficient to sustain the government's burden to withhold otherwise public records.

There is a general public interest in records related to such fundraising at a public university and the Emmett Institute, as discussed above. While the terms of any actual donations may be made public (see Suppl. Horowitz Decl. ¶ 3), that fact does not prove a lack of public interest in the internal fundraising discussions of the Emmett Institute or law school. Thus, it was incumbent on Respondent to show, with specific evidence, how the public interest would be harmed by disclosure.

The court finds a potential public interest against disclosure of those emails showing a negotiation of private funds with an individual private donor. Depending on the circumstances, public disclosure of negotiations about a potential donation could have a chilling effect on such donations to a public university. However, as the court stressed in its prior ruling, the specific circumstances matter to the court's weighing of the interests involved. The court does not conclude that any negotiation with a potential donor about a donation to a public university is automatically subject to non-disclosure under the deliberative process privilege or section 6255. A factor that could impact the court's balancing of interests is whether any sensitive terms were included in the negotiations that might be harmful to the university or donor if disclosed publicly. In the supplemental declarations, Carlson and Horowitz do not provide any specific context or detail from which the court could conclude the public interest against non-disclosure "clearly outweighs" the public interest in disclosure with respect to any part of Documents Nos. 3-4, 25, 28-30, 35, 49-51 and Documents Nos. 35-36, 40-41, 48, and 52. Nor does Respondent address the issue of severability. While counsel should further address at the hearing those documents that disclose negotiations with specific individuals, the court cannot conclude on the present record that there is a "clear overbalance" on the side of confidentiality.

The petition is GRANTED as to Documents Nos. 3-4, 25, 28-30, 35, 49-51 and Documents Nos. 35-36, 40-41, 48, and 52.

Document No. 26

The privilege log describes Document No. 26 as an email thread written by Ann Carlson, sent to Dan Emmett and Dean Mnookin, and copied to Bill Kisliuk and Cara Horowitz. The subject line was "Re: Announcing your gift." (AR 156.)

In relevant part, Dean Mnookin describes this document as follows: "Document 26 contains email discussions between me, other UCLA employees, and a private donor and discusses a draft

of a donation announcement that will later be published. These emails occurred before a decision was made on the content of the announcement and the purposes of the emails was to discuss the draft and decide what the final announcement would be…. With regard to Document 26, the final announcement is fully available to the public and thus serves all of the public's interest in disclosure, without burdening the pre-final drafting process in a way that disclosure of drafts and discussions of drafts would impose." (Suppl. Mnookin Decl. ¶ 5.)

Dean Mnookin does not describe any specific harm or adverse consequence that would result from disclosure of this document. While she points out that the emails show discussions of a draft and "before a decision was made on the content," that observation simply refers to the nature of a document that might be subject to the deliberative process privilege. "While the policy behind the privilege makes sense, invoking the policy is not sufficient to explain the public's specific interest in nondisclosure of the documents in this case." (Golden Door Properties, LLC v. Sup. Ct. (2020) 53 Cal.App.5th 733, 791.) Respondent still needs to show that the public interest balancing under section 6255 weighs for non-disclosure. Petitioner has shown some public interest in internal fundraising documents of the Emmett Institute and of a law school at a public university. Respondent's generalized evidence does not show a clear overbalance on the side of confidentiality.

The petition is GRANTED as to Document No. 26.

Document No. 27

The privilege log describes Document No. 27 as an email thread written by Ann Carlson, sent to Dan Emmett and Cara Horowitz, and copied to Dean Mnookin, Amy White, and Nicholette Fuhrman. The subject line was "Re: Attached Image." (AR 156.)

Carlson declares that "Document 27 contains a short email thread between a private donor and UCLA employees that includes discussions regarding a draft pledge agreement from the donor. The communication occurred before a decision was made on the pledge agreement or the donation. The email also contains a draft document with internal comments." (Suppl. Carlson Decl. ¶ 4.)

Carlson does not describe any specific harm or adverse consequence that would result from disclosure of this document. Petitioner has shown some public interest in internal fundraising documents of the Emmett Institute and of a law school at a public university. Respondent's generalized evidence does not show a clear overbalance on the side of confidentiality.

The petition is GRANTED as to Document No. 27.

Document No. 46

The privilege log describes Document No. 46 as an email thread with the subject line "Re: Emmett Proposal – 03-19-18" and sent from Dean Jennifer Mnookin to Dan Emmett and Cara Horowitz. (AR 166.) In her supplemental declaration, Dean Mnookin states:

Document 46 contains email discussions between me, UCLA employees, and a potential donor of private funds to the school prior to the donor's decision on whether to donate such private funds to the school. The email discusses a potential donation of private funds to the school, including potential specifics of the proposed private gift. There is nothing particularly sensitive about this particular email …. While UCLA has no particular concerns about disclosure of this particular document, its concerns arise from two public interests that would be adversely implicated by the disclosure of discussions that occur before a potential donor of private funds decides whether to make the private donation…. (Suppl. Mnookin Decl. ¶ 6 [bold italics added].)

In the supplemental declaration, Dean Mnookin explains that Document 46 involved a discussion with a private donor about a potential donation, but she provides no further context and she concedes little public interest against disclosure of this document. Because Dean Mnookin states there "is nothing particularly sensitive about this particular email" and "UCLA has no particular concerns about [its] disclosure," Respondent necessarily does establish a "clear overbalance" on the side of confidentiality for Document 46.

Dean Mnookin also discusses how she believes the CPRA should be applied with respect to "the disclosure of discussions that occur before a potential donor of private funds decides whether to make the private donation" to a public university. (Suppl. Mnookin Decl. ¶ 6.) Dean Mnookin's legal opinions about how the CPRA should be applied, while considered, do not prove a "clear overbalance" on the side of confidentiality for Document No. 46 or any specific document.

The petition is GRANTED as to Document No. 46.

Documents Nos. 31-32 and 45; Nos. 37-39, 42-45, 47, and 53; No. 54; Nos. 71 and 77; Nos. 72-73 and 75-76; and Nos. 74 and 78

The court's analysis for these documents is largely the same as that stated above for other

Fundraising Documents. The supplemental evidence regarding these records is very general in nature. For instance, the supplemental declarations describe Documents 72, 73, 75, and 76 as "emails that include internal strategy deliberations before a meeting with a potential donor," with no further context. Documents 37-39, 42-45, 47, and 53 and 74 and 78 identify potential donors by name, but no additional detail is provided in the declarations or log. Carlson and Horowitz do not describe any specific harm or adverse consequence that would result from disclosure of these documents. The fact that some records include "internal strategy deliberations" or "identify an individual targeted donor by name" does not, without any further context, prove a public interest in non-disclosure. (Suppl. Horowitz Decl. ¶¶ 4-6, 8; Suppl. Carlson Decl. ¶¶ 6-9.)

Petitioner has shown some public interest in internal fundraising documents of the Emmett Institute and of a law school at a public university. Respondent's generalized evidence does not show a clear overbalance on the side of confidentiality.

The petition is GRANTED as to Documents Nos. 31-32 and 45; Nos. 37-39, 42-45, 47, and 53; No. 54; Nos. 71 and 77; Nos. 72-73 and 75-76; and Nos. 74 and 78.

Documents Nos. 55-57 and 59; Nos. 58, 62-64, and 70; Nos. 60, 61, 66, 67, 68, and 69; and No. 65

"Exempt Documents 55, 56, 57, and 59 include an email thread containing predecision deliberations regarding a potential scholarship fund. The deliberations included whether the Emmett Institute should set up the fund, if so, how much the fund should include with negotiations of specified numbers, and the identification of potential donors for the fund, including identification of specific individuals by name. This email thread took place before the scholarship was approved and before any person had committed to donating to the potential fund." (Suppl. Carlson Decl. ¶ 5.)

The privilege log states that Ann Carlson, Cara Horowitz, Anthony Escobar, Sean Hecht, and Dan Emmett were included in these emails. The subject line for some was redacted, while the subject line for Document 59 was "Fwd: Paul Witt Solicitation Draft." (AR 171-173.)

Documents Nos. 58, 62-64, and 70; Nos. 60, 61, 66, 67, 68, and 69; and No. 65 are also emails containing pre-decisional deliberations regarding a potential scholarship fund. "The deliberations included discussion of how much private funding should be raised, negotiations of specified private donation amounts, and the identification of potential private donors for the scholarship fund, including identification of specific private individuals by name." (Suppl. Horowitz Decl. ¶

7; see also Id. ¶¶ 8, 9.) The privilege log states that demmett@douglasemmett.com, Ann Carlson, Cara Horowitz, Anthony Escobar, Sean Hecht, Dean Mnookin, and/or Dan Emmett were included in these emails. The subject lines included "Scholarship Matching Funds" and "Paul Witt Scholarship Announcement". (AR 171-178.)

Respondent has met its burden of proof under section 6255 with respect to all of these documents. The court finds sufficient evidence in the Carlson and Horowitz declarations and privilege log of a specific public interest in non-disclosure of these internal deliberations. Significantly, Carlson and Horowitz explain that the internal discussions related to a potential scholarship fund. They also explain that the deliberations identified both potential donors by name and also discussed dollar amounts for the fund. Thus, Respondent provides evidence concerning the specific context of the withheld emails.

It may be reasonably inferred that public disclosure of these emails could harm the fundraising activities of the UCLA School of Law and the Emmett Institute. A decision to establish a scholarship fund appears to be part of the law school's overall fundraising strategies. (See e.g. AR 754-755.) Internal deliberations about whether to establish a scholarship fund would require discussion of specific fundraising strategies related to a scholarship fund, which could be more effective if kept confidential. Individual donors could be embarrassed by disclosure of internal discussions of how to solicit funds from such donors for a potential scholarship fund. (AR 751-752.) There could be a chilling effect on private donations to public universities if the internal deliberations at issue are disclosed publicly.

Petitioner has shown a public interest in internal fundraising documents of the Emmett Institute and of a law school at a public university, as discussed above. Weighing the interests, the court finds a clear overbalance on the side of confidentiality.

While counsel should address this issue, it appears from the declarations and log that Dan Emmett may have been the only non-UCLA employee included in these emails. The evidence suggests that Dan Emmett would have been an interested third party. (See e.g. AR 606.) The court finds a "clear overbalance" on the side of confidentiality, and the inclusion of Emmett as an interested third party did not waive the deliberative process privilege. (See Humane Society of U.S. v. Sup.Ct. (2013) 214 Cal.App.4th 1233, 1242, 1263-64.)

The petition is DENIED as to Documents Nos. 55, 56, 57, and 59; Nos. 58, 62-64, and 70; Nos. 60, 61, 66, 67, 68, and 69; and No. 65.

Documents Nos. 79-82, 88-90, 93, 96, 101, 103, 105, and 107; Nos. 83-87, 94-95, 97-100, 102, 104, and 106; Nos. 91 and 92

"Exempt Documents 79-82, 88-90, and 93, 96, 101, 103, 105, and 107 are various iterations of a single email thread. This record includes strategy deliberations regarding how to solicit a donation from an individual before any decisions on such solicitation were made. This record also includes deliberations regarding specific dollar amounts for private donations the Emmett Institute may seek or require for particular programs, such as scholarships." (Suppl. Carlson Decl. ¶ 9.) "Exempt Documents 83-87, 94-95, 97-100, 102, 104, and 106 are various iterations of a single email thread. This record includes internal deliberations regarding how to best solicit a donation from a targeted individual before any decisions on such solicitation were made. This record also includes deliberations regarding specific dollar amounts for private donations the fundraisers debated seeking or requiring for particular programs, such as for scholarships." (Suppl. Horowitz Decl. ¶ 10.) "Exempt Documents 91 and 92 are a variation of the above email thread, but include additional private individuals. This record includes deliberations regarding how to best solicit a donation from a targeted individual before any decisions on such solicitation were made." (Id. ¶ 11.)

The privilege log states that Ann Carlson, Cara Horowitz, Dan Emmett, and other persons were included in these emails. The subject lines included "Emmett Institute" and attachments had titles such as "Funding wishlist – Nov. 2016." (AR 178-196.)

Respondent has met its burden of proof under section 6255 with respect to all of these documents. For reasons discussed above as to Documents 55, 56, 57, and 59, the court finds a specific public interest in non-disclosure of internal deliberations relating to the soliciting of donations from targeted individuals with respect to scholarship funds. Moreover, individual donors could be embarrassed by disclosure of internal discussions of how to "best" solicit funds from such donors. (See AR 751-752.) There could be a chilling effect on private donations to public universities if the internal deliberations at issue are disclosed publicly.

Petitioner has shown a public interest in internal fundraising documents of the Emmett Institute and of a law school at a public university, as discussed above. Weighing the interests, the court finds a clear overbalance on the side of confidentiality.

While counsel should address this issue, it appears from the declarations and log that Dan Emmett may have been the only non-UCLA employee included in these emails. The evidence suggests that Dan Emmett would have been an interested third party. (See e.g. AR 606.) The

court finds a "clear overbalance" on the side of confidentiality, and the inclusion of Emmett as an interested third party did not waive the deliberative process privilege. (See Humane Society of U.S. v. Sup.Ct. (2013) 214 Cal.App.4th 1233, 1242, 1263-64.)

The petition is DENIED as to Documents Nos. 79-82, 88-90, 93, 96, 101, 103, 105, and 107; Nos. 83-87, 94-95, 97-100, 102, 104, and 106; and Nos. 91 and 92

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Anti-Semitic Harassment (Documents 5 and 6)

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The privilege log describes Document 5 as an email thread with attachment dated September 5, 2016, from Ann Carlson to Lindsey Williams, and with Dean Mnookin, Donna Colin, and Cara Horowitz copied. The subject line is redacted. Document 6 is an attachment to the email. (AR 146.)

Dean Mnookin describes these records as follows: "These emails consist of internal discussions between me and trusted advisors before I decided how to respond publicly to a news story forwarded to me and others (including Daniel Emmett) relating to a former student, Milan Chatterjee. Much like the deliberative process records that have been held exempt in the settled case law, these emails discussed what my response should be, and sought advice from trusted members of my team, prior to my response. This was a sensitive issue in which my public response could either inflame or soothe tensions among multiple constituents in the University community. I thus felt it was important that my public response strike the right note, and I wanted to have the benefit of candid feedback and deliberative advice. Accordingly, I reached out to select internal members of my leadership team by email to solicit their input on the response. If these emails within this category were made public, it would not only alter my expectations at the time of these emails—since I assumed these pre-decisional deliberations would be private based on the settled deliberative process case law—but that disclosure would also prompt me to completely rethink and alter how I operate, communicate and deliberate prior to making the numerous decisions that I must make daily in my leadership role. I believe such alteration in my regular and well-established processes would greatly harm the public while delivering few, if any, comparable public benefits." (Suppl. Mnookin Decl. ¶ 2.)

The court has reviewed Document 5, lodged by Respondent, in camera. Based on the court's review of Document 5, the privilege log, the supplemental Mnookin declaration, and Petitioner's supplemental reply, the court finds a clear overbalance on the side of confidentiality for

Documents 5 and 6. Documents 5 and 6 show internal law school deliberations of how to respond to a claim of anti-Semitic harassment. Disclosure of these emails and attachment would harm the public interest, including by hindering the ability of Dean Mnookin to receive candid advice from other university officials regarding the proper response to sensitive claims of harassment. (Suppl. Mnookin Decl. ¶ 2.) For the reasons articulated by Petitioner and Chatterjee, there is a public interest in disclosure of this email, including to learn how law school faculty and administration at a public university dealt with an allegation of anti-Semitic harassment. However, that public interest in disclosure is limited to some degree because the law school's ultimate response will already be public knowledge. Having reviewed Documents 5 and 6, the court finds a clear overbalance on the side of confidentiality.

The petition is DENIED as to Documents 5 and 6.

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Erroneously Coded "NPR" Documents

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Professor Carlson declares: "Eleven (11) pages of the NPR Documents were erroneously coded as NPR, but should have been identified as exempt pursuant to the pre-decisional deliberative privilege. These emails consist of internal discussions between me and other UCLA stakeholders before I decided how to respond publicly to a news story forwarded to me and others (including Dan Emmett) relating to a former student." (Suppl. Carlson Decl. ¶ 16.)

The court cannot identify these withheld emails from Respondent's ex parte log or any prior log. Carlson does not identify the subject lines, senders or recipients, or dates of the emails. She does not provide any detail about the "news story" or explain with sufficient detail how the public interest would be harmed by disclosure of these emails. For these reasons, Respondent does not prove that the balancing of interests under section 6255 weighs for non-disclosure.

The petition is GRANTED as to the erroneously coded NPR documents identified at paragraph 16 of Carlson's supplemental declaration.

Additional Redactions to Documents Nos. 7-14

On January 20, 2022, the court granted the petition as to Documents Nos. 7-14 in the amended privilege log, except the court permitted Respondent to redact student names from those documents. On February 10, 2022, Respondent provided Petitioner with redacted copies of the

FERPA Documents. Each of the Redacted FERPA Documents, however, includes not only redactions of "student names" but also other redactions. Respondent accompanied the Redacted FERPA Documents with a cover letter purporting to ground the redactions based on (1) FERPA and (2) Government Code section 6254(c). (Suppl. Reply 11-13; Suppl. Horner Decl. ¶¶ 3-4, Exh. 1-2.)

The court's January 20, 2022, ruling was final. The court did not grant Respondent leave to assert new exemptions for the FERPA documents or to redact information other than student names. If Respondent believed additional information was exempt under CPRA, that argument should have been made at the January 20, 2022, hearing and in the briefing for the writ petition. Respondent did not move for reconsideration under CCP section 1008. The court declines to reconsider its prior ruling sua sponte. For these reasons, Respondent waived any other CPRA exemptions for Documents Nos. 7-14. The court will issue a writ directing Respondent to produce Documents 7-14 without any redactions other than student names.

180 Pages of Documents for Which Respondent Submits No Supplemental Evidence

In its Notice of Supplemental Evidence filed February 10, 2022, Respondent states that "there are 180 pages of documents not described in the supplemental evidence." (Notice of Suppl. Evid. 1.) Respondent concedes that "these documents would qualify as public records if, following the continued hearing, the Court adopts the definition it indicated in its January 20, 2022, Minute Order it was likely to apply." (Ibid.) "Respondent urges the Court not to adopt its expansive definition…." (Ibid.)

The court's discussion of the definition of "public records" in the January 20, 2022, minute order was adopted as a final ruling of the court. Respondent did not move for reconsideration pursuant to CCP section 1008. The court declines to reconsider its prior ruling sua sponte. As the court previously ruled, the definition of "public records" is "broad and intended to cover every conceivable kind of record that is involved in the governmental process." (Board of Pilot Commissioners v. Sup.Ct. (2013) 218 Cal.App.4th 577, 592.) Because Respondent concedes that these 180 pages of records are "public records" within that definition, and because Respondent submits no evidence to prove any exemption, the petition is GRANTED with respect to these records.

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Professor Carlson's Records Withheld as "Not Public Records"

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As discussed in the January 20, 2022, ruling, Respondent withheld about 308 documents on the grounds that they constitute "purely personal conversation." (Minute Order dated 1/20/22 at 24.) Also, Respondent withheld 170 documents on the grounds that Carlson or Horowitz sent or received the email in the capacity as a board member or supporter of a private entity unaffiliated with UCLA. (Id. at 25.)

The court stated that "[t]he privilege log provides no further information about these emails, such as the senders or recipients, the subject lines, dates, or general topic of discussion" and "neither the privilege log nor Respondent's declarations provide sufficient information about the contents of the withheld documents to support a public records determination." (Id. at 24.) The court stated that "the court will continue the hearing for supplemental declarations and supplemental information regarding the documents withheld. At a minimum, Respondents should provide further information about the emails including senders or recipients, the subject lines, dates, and general topic of discussion." (Id. at 25.)

For the documents withheld as "not public records," Respondent failed to comply with the court's January 20, 2022, ruling because the supplemental declarations do not identify all senders or recipients, subject lines, dates, or general topic of discussion for each of the documents withheld. With the ex parte filed March 16, 2022, Respondent filed a log that does provide some of this information (hereafter "ex parte log"). The ex parte log does not fully comply with the January 20, 2022, ruling, including because each document is not numbered and because some senders or recipients are listed only as "non-UCLA employee," without further identification. Nonetheless, while the ex parte log was untimely and incomplete, the court exercises its discretion to consider this log as it does provide further context for Respondent's supplemental evidence, discussed below. Petitioner may respond orally to the ex parte log at the hearing.
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Los Angeles Waterkeeper Documents
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Professor Carlson declares: "Three hundred and fifty-six (356) pages of the NPR Documents are emails sent or received by me in my capacity as a volunteer and board member of the Los Angeles Waterkeeper, a non-profit entity dedicated to protecting Los Angeles waterways. I, along with Dan Emmett, served on the board of this group in my capacity as a private citizen, not as a UCLA employee. My position with UCLA reflects my wider interest in environmental causes, so it is logical that my private endeavors similarly reflect this passion. The emails at issue

largely consist of meeting agendas and meeting reminders, logistics of meetings and discussions concerning attending or not attending meetings, and privileged materials relating to litigation that LA Waterkeeper was involved in. There are also a number of emails discussing a fundraising event and encouraging me and other LA Waterkeeper members to continue fundraising. These emails also include internal discussions among me and other UCLA employees as to who will attend the fundraiser. If records relating to entirely private pursuits and organizations are accessible to the public through the PRA merely because they reside in a public employee's email account, I and other public employees would be less likely to participate in such activities." (Suppl. Carlson Decl. ¶ 12.)

These 356 pages of documents are not numbered in the ex parte log or in Professor Carlson's supplemental declaration, which hinders analysis by this court. The ex parte log does refer to numerous documents that appear to have been sent or received by Carlson in connection with "LA Waterkeeper" or "LAW."

As Petitioner points out, the supplemental evidence and ex parte log do not identify by name all senders and recipients of the Los Angeles Waterkeeper documents. (Suppl. Reply 3-4.) However, the ex parte log does identify whether Dan Emmett sent or received the emails. Petitioner does not fully develop an argument of how additional information about "non-UCLA employees" could prove that the withheld documents involve governmental business. It would appear that determination would be made largely from the subject lines.

While Petitioner's counsel should address this issue at the hearing, the court in its independent review has not located any documents in the ex parte log involving "LA Waterkeeper" or "LAW" that would appear from the subject line to relate to governmental functions of UCLA. The subject lines in the ex parte log, such as "LAW Litigation Committee Settlement Approval" and "LAW Board meeting reminder," suggest that the withheld emails do not involve UCLA business, regardless of the specific identities of the non-UCLA employees included in the emails.

Professor Carlson's supplemental declaration corroborates the ex parte log and suggests that all of the documents sent or received by her in connection with "LA Waterkeeper" or "LAW" did not involve government business. Significantly, Carlson declares that she "along with Dan Emmett, served on the board of this group in [her] capacity as a private citizen, not as a UCLA employee." Since Carlson's connection with LAW was private, her emails sent in her capacity as a LAW board member would not involve governmental business of UCLA.

Subject to argument on the issues outlined above, the petition is DENIED as to the Los Angeles

Waterkeeper Documents. (See Suppl. Carlson Decl. ¶ 12.)

Environmental Law Institute Documents

Professor Carlson declares: "Twenty-six (26) pages of the NPR Documents are emails in which I communicate with Emmett in my capacity as a board member of the Environmental Law Institute ('ELI'). The emails discuss a donation made by Mr. Emmett to ELI, as well as discussions regarding Mr. Emmett's attendance at an ELI fundraiser in which his friend was being honored. Like my involvement with LA Waterkeeper, my participation in ELI is as a private citizen and not as a UCLA representative, and making these emails disclosable just because they reside in my UCLA email account would greatly deter me from participating in such private, outside activities." (Suppl. Carlson Decl. ¶ 14.)

The court has reviewed the ex parte log and has not identified a document by subject line involving ELI that appears to involve governmental UCLA business. Carlson's declaration also supports that all of the ELI documents were sent or received by her in a private capacity and do not relate to UCLA business. Petitioner may respond to these issues and the ex parte log at the hearing.

Subject to argument, the petition is DENIED as to the Environmental Law Institute documents. (Suppl. Carlson Decl. ¶ 14.)

Emails Between "Environmentally-Minded Friends"

Professor Carlson declares: "Three hundred and eighty-five (385) pages of the NPR Documents are emails between a group of environmentally-minded friends. The majority of these emails are from a single individual with links to articles, memes, and other items of interest. These emails are between a group of friends who share an interest in environmental and climate issues, and contain personal discussions. All participants in these emails understood that I was participating in my personal capacity as a friend and fellow environmentalist, and not speaking on behalf of UCLA." (Suppl. Carlson Decl. ¶ 13.)

Professor Carlson does not identify these 385 pages of records by document number, date, subject line, or senders or recipients. The court cannot determine from the ex parte log which withheld "NPR" documents correspond to those referred to in paragraph 13 of the supplemental Carlson declaration. Thus, the ex parte log provides little or no corroboration for Carlson's discussion in paragraph 13 of her declaration.

Especially without corroboration in a privilege log, the general description of these withheld documents in the supplemental Carlson declaration is inadequate to prove that the documents, or any specific pages or excerpts, do not involve governmental business of UCLA. Carlson is an environmental law professor. Dan Emmett, a major donor to an environmental law/climate change institute at the law school, was apparently included in these emails. Carlson's email discussions of environmental and climate issues using her governmental email address would presumably relate in some general sense to her public duties as a law professor. Carlson's supplemental declaration and the ex parte log are not "specific enough to give the requester 'a meaningful opportunity to contest' the withholding of the documents." (ACLU of Northern Cal. v. Sup.Ct. (2011) 202 Cal.App.4th 55, 83-86; Getz v. Sup.Ct. (2021) 72 Cal.App.5th 637.) Respondent was already given an opportunity to address this deficiency in its evidence.

Respondent does not prove that the documents referred to at paragraph 13 of Professor Carlson's declaration, or any parts thereof, do not relate to governmental business of UCLA. Respondent has not withheld these documents based on any specific CPRA exemption. The petition is GRANTED as to those documents.

Other Carlson Emails For Which Respondent Does Not Meet Its Burden of Proof

In relevant part, Professor Carlson declares:

"Ninety-six (96) pages of the NPR Documents are an email chain between me and a private individual who is unaffiliated with UCLA discussing a possible contact in the federal government. Although we were introduced via email by Daniel Emmett, Jr., the vast majority of this email correspondence is between only me and this private individual. I volunteered my time to speak with this person about his policy effort because I share a common interest in the environment. My primary motive in participating in this discussion was my own private interests as a citizen in good environmental policy. Given the complete attenuation from Emmett Jr. and donation, this was a personal endeavor unrelated to my scholarship or teaching." (Suppl. Carlson Decl. ¶ 15.)

"Thirty-two (32) pages of the NPR Documents are emails between me, Dan Emmett, and others discussing my appearance on a 60 Minutes segment. The emails are congratulatory and comments on the appearance made by friends and colleagues." (Id. ¶ 18.)

"Seventeen (17) pages of the NPR Documents are emails coordinating a lunch meeting with me,

Professor Cara Horowitz, Dan Emmett, and others who are involved in environmental causes but are not affiliated with UCLA or the Emmett Institute. This was a social outing, and the lunch was unrelated to my teaching or scholarship." (Id. ¶ 19.)

"Seventeen (17) pages of the NPR Documents are emails between me and Dan Emmett sharing news articles that we think the other would enjoy." (Id. ¶ 20.)

"Eighteen (18) pages of the NPR Documents are a single email chain in which Dan Emmett asks my personal opinion on a request for support he received by an outside organization." (Id. ¶ 21.)

"Twenty-one (21) pages are emails between me and a group of friends discussing our thoughts on new political appointments in 2016. These emails are between people who have common interests who are sharing their thoughts on a subject that is not UCLA business, but of common interest, i.e. who will be the new EPA administrator." (Id. ¶ 23.)

"Two (2) pages of the NPR Documents are emails in which I share my opinion on the Union of Concerned Scientists, a nonprofit entity unaffiliated with UCLA." (Id. ¶ 26.)

The court's analysis for these records is similar to that set forth above for paragraph 13 of the supplemental Carlson declaration. As with the documents referred in paragraph 13, it appears that these emails include discussions of environmental and climate matters. The general descriptions of these withheld documents in the supplemental Carlson declaration are inadequate for the court to determine that the emails did not include any discussion related to public UCLA business. Carlson's email discussions of environmental and climate issues using her governmental email address presumably relate in some general sense to her public duties as a law professor. The inclusion of a major donor to the law school (Emmett) or his son also suggests the emails relate generally to fundraising efforts of the law school and therefore relate to public business.

The court cannot identify all of the withheld documents from Respondent's ex parte log. Significantly, Respondent does not identify the private individuals with whom Carlson corresponded in some of these emails. Carlson's supplemental declaration and the ex parte log are not "specific enough to give the requester 'a meaningful opportunity to contest' the withholding of the documents." (ACLU of Northern Cal. v. Sup.Ct. (2011) 202 Cal.App.4th 55, 83-86; Getz v. Sup.Ct. (2021) 72 Cal.App.5th 637.) Respondent was already given an opportunity to address this deficiency in a continued hearing.

With respect to the "60 Minute" and lunch meeting discussions referred to in paragraphs 18 and 19, Carlson does not sufficiently explain why these emails would not involve public business. For instance, she does not show that her appearance on 60 Minutes did not relate to her work as an environmental law professor at UCLA. The lunch meeting also included Cara Horowitz, a law professor, and Dan Emmett, a major donor to UCLA School of Law.

Without further context or detail, the court cannot conclude that other emails involving Dan Emmett did not relate, at least in part, to the fundraising relationship between Carlson and Emmett. (See e.g. Suppl. Carlson Decl. ¶¶ 20, 21.)

Based on the foregoing, the petition is GRANTED as to those documents referred to in paragraphs 15, 18-21, 23, and 26 of Carlson's supplemental declaration.

Carlson's Communications with the Emmetts re: Former UCLA Employee

Professor Carlson declares: "Seventeen (17) pages of the NPR Documents are emails between me, Dan Emmett and Daniel Emmett Jr. discussing materials sent to the Emmetts by a former UCLA employee who had complaints about the Emmett Institute's positions on climate change. Both Dan Emmett and Daniel Emmett Jr. notified me of the former employee's overtures, and I thanked them, then discussed the situation with other UCLA employees." (Suppl. Carlson Decl. ¶ 17.)

From this description, the withheld documents appear to involve UCLA business, namely notification to Carlson, from a major donor to the law school, of a former UCLA employee's "complaints about the Emmett Institute's positions on climate change." The court cannot determine from Carlson's declaration why Respondent believes these emails did not involve UCLA business. Respondent has not shown that any CPRA exemption applies.

The petition is GRANTED as to the documents referred to at paragraph 17 of Carlson's supplemental declaration.

Emails re: Miscellaneous Personal Matters

Professor Carlson provides sufficient evidence that certain other emails involved purely personal conversations concerning logistics about personal trips; the passing of a friend; a group picture from an event; and informal pleasantries with Dan Emmett that appear to have no connection to fundraising or UCLA business. (Suppl. Carlson Decl. ¶¶ 22, 24, 25, 27-30.) Dan Emmett was

apparently included in all of these emails, but the description provided by Carlson sufficiently proves that the emails did not relate to fundraising or public UCLA business.

Carlson declares that she has built personal friendships with the Emmett family. (Suppl. Carlson Decl. ¶ 11.) The court does not rely on that statement generally to find emails with Emmett are not public records, as the personal relationship with the Emmetts apparently overlaps with a professional, fundraising relationship. However, the court does credit that statement for emails that otherwise appear personal in nature.

The petition is DENIED as to the documents referred to at paragraphs 22, 24, 25, and 27-30 of the supplemental Carlson declaration.

Professor Horowitz's Records Withheld as "Not Public Records"

Appearance on BBC Program; Center for Public Integrity

Professor Horowitz declares in relevant part: "Four (4) pages of the NPR Documents are emails between me, Dan Emmett, his wife Rae Emmett, and a third individual who was not a UCLA employee, discussing my appearance on a BBC program. These emails were personal conversations between friends." (Suppl. Horowitz Decl. ¶ 13.) "Seven (7) pages of the NPR Documents are emails from or about the Center for Public Integrity ('CPI'), an investigative news organization, in which CPI shares general announcements and updates relating to its blog and advocacy work." (Id. ¶ 14.)

Horowitz does not explain if her appearance on the BBC program related to her work as an environmental law professor. No detail is provided about the emails related to CPI. Given the lack of detail or context, and the professional fundraising relationship with the Emmetts, Respondent does not meet its burden to prove these emails do not relate to public UCLA business. The petition is GRANTED as to these documents.

Logistics for Institute of the Environment and Sustainability Event

Professor Horowitz declares: "Ninety (90) pages are emails between me, Mr. Emmett, and his assistant discussing logistics for an Institute of the Environment and Sustainability ('IOES') event which I and others attended as Mr. Emmett's personal guests. The emails discuss event logistics like parking information and guest names. Although IOES is a UCLA program and I am an affiliated faculty member, I played no role in organizing or putting on the fundraiser, and the

Emmett Institute did not receive any funds from the fundraiser. These emails relate solely to my attendance at the event as Mr. Emmett's personal guest." (Suppl. Horowitz Decl. ¶ 15.)

Horowitz's declaration suggests these emails relate to public business of UCLA, not the opposite. Horowitz admits IOES is a UCLA program and she is "an affiliated faculty member." She also admits she attended the IOES "fundraiser" with Emmett, a major donor to the UCLA School of Law. Respondent does not prove these emails fall outside the broad definition of "public records" that applies. The petition is GRANTED as to these documents.

Scheduling Email

Horowitz refers to an email with Emmett's assistant "telling me that Mr. Emmett's wife will not be able to attend a planned meeting/dinner due to illness, but Dan Emmett will be there." (Suppl. Horowitz Decl. ¶ 17.) Since no further detail about the meeting is provided, and since Horowitz has a professional, fundraising relationship with the Emmetts, the court cannot determine that the meeting did not relate to UCLA business. The petition is GRANTED as to these documents.

Other Horowitz Emails

Respondent sufficiently proves that two emails described by Professor Horowitz were personal, specifically an email congratulating Dan Emmett Jr. for his company receiving a government award and email about the passing of a friend of Emmett. (Suppl. Horowitz Decl. ¶¶ 16, 18.) The petition is DENIED as to these documents.

Petitioner's Request for Judicial Declaration

In the supplemental reply, Petitioner seeks a judicial declaration that Respondent violated the CPRA by "(1) its unpermitted redactions of the Redacted FERPA Documents based on untimely, bad faith exemption claims, (2) its failure to provide the NPR Documents to GAO despite Regents' refusal to provide the log details required by the 1/20/22 Minute Order for any of the NPR Documents and (3) with respect to 180 pages of the NPR Documents, Regents' refusal to provide not only the required log details, but any factual basis whatsoever which could possibly support a finding that those pages are not public records." (Suppl. Reply 1-2.)

Relatedly, Petitioner contends that one of the redacted FERPA documents refers to Sher Edling, which "is the law firm with whom Carlson and her colleagues have consulted regarding climate litigation being pursued by various municipalities represented by Sher Edling against the fossil

fuel industry, about which Carlson wrote Dan Emmett as part of the CCI Introduction/Solicitation quoted in GAO's Revised Opening Trial Brief." (Suppl. Reply 13.) Petitioner states that "any response by Horowitz to the request for guidance regarding Sher Edling would almost certainly have described the nature and extent of Carlson's and the Emmett Center's relationship with Sher Edling and discussed the nature of the related litigation." (Id. at 13-14.) Thus, Petitioner contends that Respondent did not conduct a complete search for records responsive to the November 2019 Request. (Ibid.)

In the January 20, 2022, ruling, the court stated that "[b]ased on the court's review of the record before it, ... the court has insufficient reason to conclude that Respondent did not conduct a reasonable search for records, ... [but i]t is possible that the court's views on these issues could change depending on the results of the supplemental proceedings required for the documents specified in the privilege log." (Minute Order dated 1/20/22 at 29.)

In the supplemental reply, Petitioner has not shown that the court should change its views and grant any declaratory relief. The court is not persuaded that Horowitz would have responded to the student's inquiry about Sher Edling (see Suppl. Horner Decl. Exh. 2) with a discussion relevant to the CCI Introduction/Solicitation or Climate Litigation/Regents Interface. Such inference seems speculative.

While Respondent did not meet its burden of proof as to many documents in the supplemental evidence, Respondent did meet its burden of proof as to many others. The existence of an ongoing legal dispute regarding Respondent's duties to produce certain documents suggests that a judicial declaration stating that Respondent violated the CPRA is not a necessary or appropriate remedy. A writ directing Respondent to produce further records is a sufficient remedy in this case. The court incorporates its prior discussion regarding declaratory relief from the January 20, 2022, ruling.

The request for declaratory relief is DENIED.

In Camera Review

The court already granted Respondent an opportunity to submit supplemental evidence and also to submit Document 5 for in camera review. After hearing argument, the court concludes that Respondent has not proven that additional in camera review should be permitted.

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Conclusion - After Hearing Argument

The petition is GRANTED as to the 180 pages of documents for which Respondent submitted no supplemental evidence. (See Notice of Suppl. Evid. 1.)
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After hearing argument, the petition is GRANTED as to Documents:
• Nos. 1, 2, 15, 16, and 17-24
• Nos. 3-4, 25, 28-30, 35, 49-51; and Nos. 35-36, 40-41, 48, and 52
• No. 26
• No. 27
• No. 46
• Nos. 31-32 and 45; Nos. 37-39, 42-45, 47, and 53; No. 54; Nos. 71 and 77; Nos. 72-73 and 75-76; and Nos. 74 and 78
• All documents referred to at paragraphs 13, 15, 16, 17, 18-21, 23, and 26 of Professor Carlson's supplemental declaration
• All documents referred to at paragraphs 13, 14, 15, and 17 of Professor Horowitz's supplemental declaration
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After hearing argument, the court orders Respondent to produce all of these documents without any redactions.
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After hearing argument, the petition is DENIED as to Documents:

• Nos. 55, 56, 57, and 59; Nos. 58, 62-64, and 70; Nos. 60, 61, 66, 67, 68, and 69; and No. 65
• Nos. 79-82, 88-90, 93, 96, 101, 103, 105, and 107; Nos. 83-87, 94-95, 97-100, 102, 104, and 106; and Nos. 91 and 92
• Nos. 5 and 6
• All documents referred to at paragraphs 12, 14, 22, 24, 25, and 27-30 of Professor Carlson's supplemental declaration

• All documents referred to at paragraphs 16 and 18 of Professor Horowitz's supplemental declaration

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Petitioner's request for declaratory relief is DENIED IN FULL.

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The court orders Respondent to produce Documents 7-14 without any redactions other than student names.

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After hearing argument, the request for further in camera review is DENIED.

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This is the court's final order. Respondent is to comply within fifteen days.

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DATED: JUNE 7, 2022

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Mary H. Strobel

MARY H. STROBEL
JUDGE OF THE SUPERIOR COURT
Mary H. Strobel / Judge

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Counsel for petitioner is to give notice.