

CITY OF SANTA CLARA:  
PUBLIC RECORDS ACCESS  
THE PAPER CHASE



2018-2019 Civil Grand Jury  
of Santa Clara County

*June 18, 2019*

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## GLOSSARY AND ABBREVIATIONS

<b>Bid</b>	A written offer/proposal made in response to an RFP or RFQ.
<b>City</b>	City of Santa Clara.
<b>CPRA</b>	California Public Records Act.
<b>General Services</b>	Contract for any work performed or services rendered by an independent contractor, with or without the furnishing of materials.
<b>RFP</b>	Request for Proposal: A solicitation seeking consultants/contractors to provide services or public works.
<b>RFQ</b>	Request for Qualifications: A solicitation seeking the qualifications of a consultant/contractor to carry out a service or project.
<b>Stadium Authority</b>	The Santa Clara Stadium Authority is a public body, separate and distinct from the City, established to provide for the development and operation of Levi's Stadium.

## SUMMARY

The California Public Records Act (CPRA)<sup>1</sup>, which provides the public with the right of access to public records, has been in effect for 50-plus years. The City of Santa Clara (City) is in the midst of Silicon Valley with all of the area’s technical acumen and resources available. However, the 2018-19 Santa Clara County Civil Grand Jury (Grand Jury) found the City’s recordkeeping to be disorganized and its staffing levels inadequate to process CPRA requests in compliance with the requirements of the law.

Through the CPRA, accessing public records from government agencies to monitor “the people’s business” should be simple, responsive and without significant delays. However, the Grand Jury found that obtaining public records from the City is a time-consuming and difficult chore.

The Grand Jury encountered non-compliance by the City in response to its CPRA requests. Noncompliance with the CPRA included non-responsive replies to the requests, invalid excuses for extensions of time, and incomplete document production. The City acknowledged its recordkeeping system was disorganized and in need of improvement, but the City did not have an interim solution. However, the City’s progress towards implementation of an existing recordkeeping software has been without a sense of urgency. The Grand Jury finds the City’s non-compliance with CPRA unacceptable and recommends the City implement measures immediately that will ensure compliance with CPRA requests.

## BACKGROUND

The Grand Jury initiated an investigation to review the contracting procedures of the City and the Santa Clara Stadium Authority (Stadium Authority). In furtherance of that investigation, specific contracts and supporting documentation were requested from the City under the CPRA. After encountering numerous obstacles, including inadequate responses from the City to its document requests and a lack of cooperation in scheduling Grand Jury interviews, the Grand Jury turned the focus of its investigation to the City’s handling of requests under the CPRA.

## THE CALIFORNIA PUBLIC RECORDS ACT

### **Access to Public Records**

The CPRA is a state law enacted in 1968 giving individuals the right to inspect and obtain copies of records kept by state and local agencies. The law expressly provides that “access to information

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<sup>1</sup> California Government Code § 6250, et seq.

concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.”<sup>2</sup> This fundamental precept ensures the public access to information enabling them to monitor the operations of their government. Californians felt so strongly about the public having the right of access to information concerning the conduct of the people's business that in November 2004, the voters approved Proposition 59 (Sunshine Amendment), which amended the California Constitution to include the public's right to access public records.<sup>3</sup>

The CPRA in section 6253(e) defines “public records” as “any writing, containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.” When a person requests access to public records under the CPRA, access must be provided, unless a specific exemption is available to the responding agency. Exemptions fall into two main categories: protection of individual privacy interests (e.g. personnel or medical records); and support of effective governmental operation (e.g. pending real estate negotiations or litigation).

The CPRA provides for two different rights of access. First is the right to inspect public records: “Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided.”<sup>4</sup> A person need not give notice to inspect public records at an agency's offices during normal working hours. Second, the CPRA provides the right to obtain copies of public records and requires the public entity to “make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable.”<sup>5</sup>

## **Local Agency's Duty to Respond**

The fundamental purpose of the CPRA is to provide access to information about the conduct of the people's business.<sup>6</sup> This right of access to public information imposes a duty on local agencies to respond to CPRA requests and does not “permit an agency to delay or obstruct the inspection or copying of public records.”<sup>7</sup>

Time is critical in responding to public records requests. A local agency must respond promptly, but no later than 10 calendar days from receipt of a request for copies of public records, to notify the requesting person whether records will be produced.<sup>8</sup> The 10-day time limit may be extended

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<sup>2</sup> Gov. Code § 6250

<sup>3</sup> Cal. Const., Article 1, § 3(b)(1)

<sup>4</sup> Gov. Code § 6253(a)

<sup>5</sup> Gov. Code § 6253(b)

<sup>6</sup> Gov. Code § 6250

<sup>7</sup> Gov. Code § 6253(d)

<sup>8</sup> Gov. Code § 6253(c)

for an additional 14 calendar days by written notice to the requesting person in one of four special circumstances, in which the agency is required:

- to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- to consult with another agency having substantial interest in the request (such as a state agency), or among two or more components of the local agency (such as two city departments) with substantial interest in the request; or
- in the case of electronic records, to compile data, write programming language or a computer program, or to construct a computer report to extract data.<sup>9</sup>

No other reasons justify an extension of time to respond to a request for copies of public records.

The response to a request for copies of public records must either produce all of the records sought, seek a refinement of the request or suggest an agreeable timeframe for production. The agency may only charge the requesting person for the direct cost of duplicating the records or a statutory fee, if applicable.

## METHODOLOGY

The Grand Jury reviewed public records obtained from the City and the Stadium Authority, received both in person and by email. Several visits to the City took place to inspect and obtain public records. The Grand Jury also interviewed previous and current City employees.

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<sup>9</sup> Gov. Code §6253(c)

## DISCUSSION

### First CPRA Request

The Grand Jury began an investigation of the City's contracting procedures by reviewing the City and Stadium Authority<sup>10</sup> purchasing policies and by submitting a CPRA request on December 3, 2018, to view the following public records:

- All "General Services" Bids, RFPs, RFQs for the City of Santa Clara and Santa Clara Stadium Authority within the last five years in the amount of \$40,000.00 or more.
- All "General Services" contracts (excluding utility contracts) for the City of Santa Clara and Santa Clara Stadium Authority awarded within the last five years.
- All invoices for "General Services" contracts (excluding utility contract invoices) awarded in 2017 and 2018 for the City of Santa Clara and Santa Clara Stadium Authority.

The City responded in writing to the request on December 13, 2018. The response failed to state whether the records would be produced and invoked a 14-day extension to December 28, 2018, without citing a permissible reason as required by the CPRA. The response explained that City Hall would be closed for the holidays from December 25, 2018 to January 1, 2019, that City staff was working diligently on the request, and that it *hoped* to have documents available for review by December 21, 2018, or sooner.

Closure of city offices other than for recognized holidays does not extend or excuse compliance with the time for response under the CPRA.

The Grand Jury received a second response on December 17, 2018, containing a list of 377 documents that appeared to be all of the City's RFPs, RFQs, and bid postings for the last five years. In that response, the City asked the Grand Jury to narrow its request to a specific project, stating that each appropriate City department would need to retrieve the documents sought. The City explained that it had a decentralized recordkeeping system, which made the Grand Jury's request challenging, requiring many hours of staff time to fulfill. No actual documents were produced at this time nor did the City state whether any of the documents would be produced as required by the CPRA.

Working with the City Clerk's Office, the Grand Jury agreed to revise its original request and seek only General Services contracts entered into during the past 12 months. An appointment was made

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<sup>10</sup> City officials staff the Stadium Authority. The custodian of public records for the City is the custodian for the Stadium Authority.

for members of the Grand Jury to visit City Hall before it closed for the holidays to view the documents.

Prior to its visit, the Grand Jury received an email from City staff with an attachment entitled “City Clerk Contracts” listing 66 contracts. Again, the list did not identify documents that were responsive to the Grand Jury’s initial CPRA request. The list of 66 contracts referenced only five that were entered into within the revised time frame the Grand Jury had specified, at the request of the City.

Upon arrival at City Hall on December 24, 2019, the Grand Jury was shown numerous boxes containing all types of contracts and invited to sort through the boxes and view the documents. The Grand Jury observed that the City employees appeared to be eager to assist; however, they indicated they were recent hires and were unfamiliar with where documents were stored. The City further stated that they lacked a record management system to identify and locate City documents. After searching through the boxes for two hours, the Grand Jury was unable to find the documents it was seeking. This was surprising since the Grand Jury had previously obtained copies of several of the requested documents from other sources. It was observed that the contracts had attached blue routing sheets that are used within the City to help ensure that all necessary City Departments, such as the Finance Department or the City Attorney, review and sign off on pending contracts.

Unable to obtain the information sought by the CPRA request, the Grand Jury scheduled interviews with current and former City employees and a City contractor. The contractor had recently obtained a general service contract via the City and Stadium Authority bid processes and would have knowledge of the steps leading up to securing the contract. The contractor had agreed to the interview but subsequently cancelled, refusing to reschedule. City staff was unresponsive to multiple requests to meet, forcing the Grand Jury to seek legal assistance to facilitate the interviews. The Grand Jury learned that the City had recently hired several new staff members who had limited knowledge of purchasing policies and practices.

## **Second CPRA Request**

On February 6, 2019, the Grand Jury made a second CPRA request focusing on three specific General Services contracts and the purchasing process used in entering into these contracts. These contracts were not obscure agreements but involved contractual dealings between the City and the Stadium Authority.

The documents requested were:<sup>11</sup>

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<sup>11</sup> See Appendix 1 for the text of the second CPRA request

- Three specific contracts and their blue routing sheets;
- Invoices and payments associated with the three contracts;
- RFQs and RFPs associated with the procurement of the three specified contracts; and
- City and Stadium Authority purchasing policies and directives.

The timeline below outlines the dates and responses to the Grand Jury's second request:

- On February 11, 2019, the City responded stating, "The City will provide a further response to your request on or before February 16, 2019."
- On February 19, 2019 (two days beyond the 10-day CPRA response period), the City responded with an update stating the City was "...in the process of compiling responsive records to several items of your request and will be providing, at a minimum a partial response to 50% of your request by end of day tomorrow (February 20, 2019)."
- On February 21, 2019, the City provided some documents and stated that, pursuant to Government Code Section 6253(c), the City would respond further by March 1, 2019. The City also provided an email with a link to an electronic copy of some of the requested documents. The link did not work.
- On February 27, 2019, the City provided a working link to the electronic documents.
- On March 1, 2019, the Grand Jury received the additional documents.

The City did not produce the blue routing sheets even though the Grand Jury specifically referenced these documents in the second CPRA request. The City also did not provide some of the payment documents associated with two of three contracts. After almost three months of seeking purchasing and procurement records, the Grand Jury still could not get a complete set of documents that should have been easily retrievable and disclosed.

### **Grand Jury Changes Focus to CPRA**

Due to the City's non-responsiveness to its CPRA requests after three months, the Grand Jury concluded that its investigation into the City's procurement process had become futile. Accordingly, the Grand Jury changed the focus of its investigation to the City's compliance with the CPRA.

The Grand Jury interviewed City staff to understand the City's current method of responding to CPRA requests. After more than a year of discussing the need to (a) centralize and streamline the public records process; (b) achieve higher quality and due diligence on records; and (c) modernize administrative procedures, the City Manager reported at the January 31, 2019 Council Goal and Priority Setting Session that the City had hired a Public Records Manager.

The Grand Jury learned that the City had been trying for over 18 months to implement a records management system and had procured two software systems: Lazerfiche®, a records management system to track records; and NextRequest, a software system used to trace record requests. To date, these systems are not operational and the City could not estimate when they would be.

The Grand Jury also learned that the recently hired Public Records Manager is responding to approximately 40 to 50 pending CPRA requests using the 14-day extension as a triage. At the same time, the Public Records Manager is also tasked with implementing the new records management software. The City Manager reported to the City Council, that the City still did not have adequate staff to properly process CPRA requests nor to implement the software systems. The City Council recently authorized the hiring of a part-time employee to assist the Public Records Manager, but that position remains unfilled.

The Grand Jury learned that the City currently has no city-wide process or written procedures in place for complying with CPRA requests and that the Public Records Manager is the only CPRA-trained City employee.

The Grand Jury learned that the City's current method of responding to in-person and written CPRA requests is to first notify the Public Records Manager for manual tracking of requests on a spreadsheet. Requests are then forwarded to the appropriate City departments, which are responsible for gathering and producing the requested information within the CPRA timelines. If the responsible department does not respond within the 10-day time period, its staff communicates with the Public Records Manager on how to resolve the request and assert a 14-day extension.

### **Third CPRA Request**

The Grand Jury decided to test the City's CPRA compliance with a third request on April 3, 2019. This request sought three items: the missing payment documents and routing sheets that had not been provided in response to the second request, and copies of the City's CPRA tracking logs for the past year.<sup>12</sup>

On April 10, 2019, the City responded to the third CPRA request, stating it had records responsive to the request and again invoked a 14-day extension contending the request was "voluminous" and citing the need to search for and collect the requested records from field facilities. The Grand Jury had obtained two of the three requested items five days earlier on April 5, 2019, during a visit to City Hall. At that visit it turned out the missing payment documents and routing sheets were stored at the City Clerk's Office and Finance Department, not at field facilities. These two items were

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<sup>12</sup> See Appendix 2 for the text of the third CPRA request

produced within minutes. Moreover, the entire request consisted of only three items totaling seven pages plus five logs. The Grand Jury's third request was not "voluminous."

On April 19, 2019, 16 days after its third request, the Grand Jury received the City's written response. It included five CPRA logs, three blue routing sheets and four invoices. The payment documents requested were not included in its written response, as they had already been produced by the Finance Department at the April 5, 2019 visit. However, at that visit, the Finance Department had produced additional payment documents that the Grand Jury had not previously been provided through the City's CPRA responses. This alerted the Grand Jury to seek the missing invoices that coincided with the payment documents. These invoices were included in the April 19, 2019 response.

After a review of the documents produced in response to the April 3, 2019, records request, the Grand Jury determined that the City had finally produced all the requested documents. Although the City stated all CPRA requests now go through the Public Records Manager to be logged, the Grand Jury found this not to be the case. The Public Records Manager was apparently unaware that the routing slips in the Grand Jury's request had been previously provided by the City Clerk's Office and duplicated work by producing them again.

The 14-day extension provision provided by Government Code Section 6253 was intended to be the exception not the rule. When invoking the 14-day extension, the City is required to state the reason for the extension. The City's responses to the initial CPRA requests did not state whether the records would be provided or cite a reason for invoking the 14-day extension. City staff gave the Grand Jury repeated excuses for the City's failure to produce requested documents in a timely manner. Documents were provided as they were found, not all at once. For example, a staff member stated that the requested routing sheets did not exist, even though the Grand Jury had two of them in its possession. During the April 5, 2019, visit to City Hall, the City staff was able, within minutes, to provide the routing sheets that had not previously been produced. At the same visit, the Finance Department produced the missing payment documents and missing invoices from the previous response, also within minutes.

The Grand Jury's experience in obtaining requested documents seems to be consistent with the City's general CPRA practices, as verified by the CPRA logs kept by the City. For the year 2018, the average response time for all CPRA requests was 10.6 days. For the first quarter of 2019, the average ballooned to 23.8 days. The Grand Jury was told that this increase in response time had been due to an increase in the number and type of document requests as well as to the fact that the City had not kept accurate records. However, the CPRA requires the City to timely respond to document requests regardless of the number received or the state of the City's record management system and does not permit extensions based merely on a spike in the number of requests.

## CONCLUSIONS

The City's disorganized recordkeeping is hindering its ability to do the people's business in a transparent fashion. The City knew that the requester was the Grand Jury. Given the Grand Jury's statutory ability to investigate and report on the City, it can be assumed that the City gave the Grand Jury heightened attention. The Grand Jury is concerned because it has greater access to public records than a private citizen does, yet it had significant trouble obtaining documents despite multiple requests.

The City has acknowledged its shortcomings in complying with CPRA requests, and that its efforts during the past 18 months to address CPRA management have been unsuccessful. Not having a functional records management system in place to locate public records is an unacceptable excuse for noncompliance with the CPRA. The CPRA does not provide for exceptions for compliance due to seasonal City Hall closures, employee turnover, lack of training, organizational structure, understaffing or lack of adequate records and CPRA management systems.

The City is in the process of installing a new records management system which, when fully implemented, presumably will improve its ability to comply with the CPRA on a consistent basis. However, until such time as a records management system is implemented, the City must employ an interim method to comply with the CPRA.

## FINDINGS AND RECOMMENDATIONS

### **Finding 1**

The City does not properly respond to CPRA requests because it: (a) does not indicate if it will respond; (b) does not respond within 10 days; (c) overutilizes the 14-day extension; (d) invokes the need for a 14-day extension for reasons beyond those permitted in the statute; and (e) fails to provide all documentation responsive to the request.

### **Recommendation 1**

The City should train staff responsible for responding to CPRA requests to timely indicate if the City will respond to the request and, further, only invoke the 14-day extension where permissible.

### **Finding 2**

The City lacks a written policy to guide staff in responding to CPRA requests in a manner that complies with the law.

## **Recommendation 2**

The City should create and implement a written policy, by October 31, 2019, to guide City staff in complying with the CPRA.

## **Finding 3**

The City's disorganized recordkeeping and lack of a functional records management system hinders its ability to timely and accurately comply with CPRA requests. Although the City purchased records and CPRA management systems 18 months ago, it has yet to implement those systems.

## **Recommendation 3a**

The City of Santa Clara should implement its records management and CPRA management systems by December 31, 2019.

## **Recommendation 3b**

In the absence of an operational CPRA and records management system, the City of Santa Clara should create and immediately implement interim procedures to comply with the CPRA.

## **Finding 4**

The City's Public Records Manager is the only staff member trained to respond to CPRA requests, yet the records are decentralized requiring the Records Manager to rely on other staff within multiple departments to search for and obtain the documents responsive to the CPRA requests.

## **Recommendation 4**

The City should identify and train necessary staff on compliance with the CPRA by October 31, 2019.

## REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

Responding Agency	Finding	Recommendation
The City of Santa Clara	1, 2, 3, 4	1, 2, 3a, 3b, 4

## REFERENCES

*The People's Business: A Guide to the California Public Records Act*, League of California Cities, Revised April, 2017.

<http://www.cacities.org/CPRAGuide> (link active as of June 2019)

## APPENDIX 1: Second CPRA Request, 2/6/2019

1. All documents, including RFQ/RFPs, solicitations, and proposals re the City of Santa Clara's hiring a public affairs/media relations consultant issued in 2017.
2. All documents, including RFQ/RFPs, solicitations, and proposals re the City of Santa Clara's hiring a public affairs/media relations consultant issued in 2018.
3. All documents, including RFQ/RFPs, solicitations, and proposals re the Santa Clara Stadium Authority's hiring a public affairs/media relations consultant for the Stadium Authority issued in 2017.
4. All documents, including RFQ/RFPs, solicitations, and proposals re the Santa Clara Stadium Authority's hiring a public affairs/media relations consultant for the Stadium Authority issued in 2018.
5. "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC." (2018) including any Blue Routing Sheet.
6. "AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC." (2018), including any Blue Routing Sheet.
7. "AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA, AND BANNER PUBLIC AFFAIRS" (2017), including any Blue Routing Sheet.
8. All City of Santa Clara policies, procedures and directives pertaining to the purchasing process for "general services as defined in city code 2.105.320."
9. All City of Santa Clara policies, procedures and directives pertaining to the RFP/RFQ bid process for "general services as defined in city code 2.105.320."
10. All Santa Clara Stadium Authority policies, procedures and directives associated with the purchasing process for "general services as defined in city code (Stadium Authority Procurement Policy) Chapter 17.30.120."

11. All documents (including invoices and payments) pertaining to the “AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC.”
12. All documents (including invoices and payments) pertaining to the “AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC.”
13. All documents (including invoices and payments) pertaining to the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND BANNER PUBLIC AFFAIRS.”
14. All invoices and related payment documents for services provided under “AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC.”
15. All invoices and related payment documents for services provided under the “AGREEMENT FOR THE PERFORMANACE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC.”

## APPENDIX 2: Third CPRA Request, 4/3/2019

1. The blue routing sheet for the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC.” 2018. (Item No 5 of Civil Grand Jury’s 2/6/19 records request.)
2. The blue routing sheet for the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC.” 2018. (Item No 6 of Civil Grand Jury’s 2/6/19 records request.)
3. The blue routing sheet for the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND BANNER PUBLIC AFFAIRS.” 2017. (Item No 7 of Civil Grand Jury’s 2/6/19 records request.)
4. All invoices and payments pertaining to the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE CITY OF SANTA CLARA AND SINGER ASSOCIATES, INC.” (Item No 11 of Civil Grand Jury’s 2/6/19 records request.)


\*Note: The Civil Grand Jury received the following invoices and payments in your 3/21/19 response. Invoice No. 131921, 132001, 132062, 132137, 132204, 132427, 132344. Voucher Id No. 0424655, 00424656, 00425758, 00425758, 00425759, 00427659, 00429807. To clarify, we are requesting all additional invoices and payments not previously received that track the outstanding \$7,812.50 balance (shown by the records) still owed to Singer & Associates.

5. All invoices and payments pertaining to the “AGREEMENT FOR THE PERFORMANCE OF SERVICES BY AND BETWEEN THE SANTA CLARA STADIUM AUTHORITY AND SINGER ASSOCIATES, INC.” (Item No 12 of Civil Grand Jury’s 2/6/19 records request.)

\*Note: The Civil Grand Jury received the following invoices and payments in your 3/21/19 response. Invoice No. 132002, 132138, 132205, 132273 and Purchase Order No. SCSA048 for \$100,000.00. To clarify, we are requesting all additional invoices and payments not previously received that track the \$85,888.87 balance from the \$100,000.00 purchase order to Singer & Associates. More specifically, I am requesting all documents that indicate where the \$85,888.87 went? Was it utilized, refunded, etc.?

6. All documents, logs, tracking systems, notes, etc. indicating the number of public record requests received from 4/1/18 to 4/1/19.
7. All documents, logs, tracking systems, notes, etc. including but not limited to, the number of public records request responsive within 10 days, within 24 days, or requiring a time extension to complete, from 4/1/18 to 4/1/19.

This report was **ADOPTED** by the 2018-2019 Santa Clara County Civil Grand Jury on this 18<sup>th</sup> day of June 2019.



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John Pedersen  
Foreperson