## JONES & MAYER

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July 11, 2019

Kelly Aviles, Esq. LAW OFFICES OF KELLY AVILES 1502 Foothill Blvd, #103-140 La Verne, CA 91750

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: Friends for Fullerton's Future Blog

Dear Ms. Aviles:

As legal counsel for the City of Fullerton, I write, pursuant to California Government Code section 6204 et seq., to notify you, as legal counsel to the owner(s) and/or operator(s) of the Friends for Fullerton's Future (FFFF) blog, that the City of Fullerton has reasonable grounds to believe that owner(s) and/or operator(s) of the FFFF blog are in unlawful possession of records belonging to the City of Fullerton. The records were taken and used by FFFF blog owner(s) and/or operator(s) without the City's authorization and fall within the definition of "record" under California Government Code Section 6204(a)(2), as well as the definition of "public records" under California Government Code § 6252(e), and are described as follows:

Any and all records obtained from the City of Fullerton's Dropbox account (https://cityoffullerton.com/outbox) that were not directly provided by the City to Joshua Ferguson or any of FFFF's agents or associates through an emailed link. including, but not limited to, records contained in a folder named "pr1919 - Josh Ferguson."

Therefore, pursuant to Governmentt Code section 6204, within twenty (20) calendar days of receiving this notice, the owner(s) and/or operator(s) of the Friends for Fullerton's Future blog are hereby directed to either:

- (1) Return the above-referenced records to the City of Fullerton, as previously requested: or
- (2)Respond in writing and declare why the above-referenced records do not belong to the City of Fullerton. If the owner(s) and/or operator(s) of the Friends for Fullerton's Future blog do not deliver the above-described records, or do not respond adequately to this notice and its demand within the required time, we will immediately thereafter petition the Superior Court of Orange County for an order requiring the return of these records.

Cal. Gov't Code § 6204(b).

We further note that the FFFF blog has posted many of the confidential City documents after receipt of our office's June 13, 2019 cease-and-desist email. (A copy of that email is enclosed herein). Many, if not all, of the confidential City records posted to the FFFF blog are explicitly exempted from disclosure under the California Public Records Act, would not have been provided to Mr. Ferguson or FFFF agents or associates in response to a Public Records Act request, and could only have been obtained without the City's express authorization. Such records posted to the FFFF blog are confidential and exempt from disclosure pursuant to the following authorities:

- "Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure." Cal. Gov't Code § 6254(a);
- "Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled." Cal. Gov't Code § 6254(b);
- "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Cal. Gov't Code § 6254(c);
- Law enforcement investigative records. Cal. Gov't Code § 6254(f); and
- "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code § 6254(k), which includes the following privileges:
  - Attorney-client privileged records. Cal. Evid. Code 950 et seq.; Roberts v. City of Palmdale, 5 Cal. 4th 363 (1993);
  - o Attorney work product. Cal. Civ. Proc. Code § 2018.010 et seq.;
  - o Peace officer personnel records. Cal. Penal Code § 832.7 et seq.; and
  - o Confidential closed session information. Cal. Gov't Code § 54963.

FFFF's unauthorized access and misuse of the City's clearly privileged and exempted documents constitute a violation of California Penal Code section 502, which grants civil remedies (including compensatory damages, attorney's fees and potential punitive damages) to any persons or entities injured by any violations thereof. See Cal. Pen. Code § 502(c), (e).

As such, unless FFFF complies with the demands set forth in the City's June 13, 2019 cease and desist letter within 24 hours, the City will have no choice but to pursue all criminal and civil remedies available to it under the law.

We await your response.

Sincerely,

Bruce A. Lindsay

BAL:sks Enclosure

cc: Gary S. Kranker, Esq.

Monica Choi Arredondo, Esq.

Ivy M. Tsai, Esq.

From:

Gregory P. Palmer

To:

team@fullertonsfuture.org; joshua@joshuaferguson.com

Cc:

KDomer@cityoffullerton.com; GretchenB@cityoffullerton.com; Richard D. Jones; Ivy M. Tsai

Subject:

Cease and Desist

Date:

Thursday, June 13, 2019 8:45:46 PM

Joshua Ferguson Friends for Fullerton

## Re: Cease and Desist - City of Fullerton Police Department

Dear Mr. Ferguson,

It has come to the attention of the City of Fullerton that you have recently published on your website documents which have clearly and undoubtedly been sourced from the confidential personnel files of several current and/or former Fullerton Police Officers. The State of California has statutorily recognized this right of confidentiality. (See Penal Code §§ 832.5, 832.7 and 832.8.) Any disclosure of such confidential records is strictly limited and must be authorized by a court order from a Superior Court judge. (See Evidence Code §§ 1043-1047; Pitchess v. Superior Court(1974) 11 Cal.3d 531 and its progeny.) Indeed, the Fullerton Police Department has an affirmative duty to resist attempts at unauthorized disclosure and the officers who are the subject of such records expect their right of privacy will be respected. (See Craig v. Municipal Court for the Inglewood Judicial District et al. (1979) 100 Cal.App.3d 69.) Finally, the improper disclosure of such records is prosecutable as a misdemeanor violation of law under Government Code section 1222 (See Attorney General Opinion, 82 Op. Att'y Gen. 246 (1999).) Any person facilitating the illegal disclosure of such documents in violation of the law may be prosecuted as either a principal in that crime or as an aider and abettor.

For all these reasons the City of Fullerton demands you immediately:

- 1. Remove these Confidential Documents from Your Blog within one hour of your receipt of this e-mailed cease and desist letter;
- 2. Refrain from posting any other Confidential Documents illegally obtained to Your Blog in the future:
- 3. That you immediately send to our office within 24 hours all Confidential Documents you and your employees have in your possession. You are also instructed not to make any copies of the Confidential Documents in any form (including but not limited to electronic, imaged, hard copies, etc.)
- 3. That you immediately delete all electronic copies of the Confidential Documents in your and your employees' possession.

Your failure to follow these instructions can result in legal action being taken against Friends for Fullerton's Future wherein the City will seek all necessary legal remedies.

We require your immediate compliance with this cease and desist letter. Notify the undersigned of your compliance with the above within 24 hours of your receipt of this correspondence.

Thank you for your prompt attention to this matter.

City Prosecutor City of Fullerton

Sent from my iPhone

Gregory P. Palmer