



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

Office of the General Counsel

March 11, 2016

James J. Taylor, Esq.  
General Counsel  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, California 92123-1233

Dear Mr. Taylor:

**Further Response to Public Records Act Request Dated February 18, 2016**

This letter follows up on our letter dated February 26, 2016 regarding San Diego County Water Authority's ("SDCWA") February 18, 2016 Public Records Act ("PRA") request and responds to your further letter dated March 4, 2016.

In our February 26 letter, we stated that we would notify you within 14 days of the date Metropolitan will produce disclosable records responsive to SDCWA's PRA request. We will provide disclosable responsive records to you on DVD(s) by March 18, 2016. This production will not include records already provided to: (1) the Metropolitan Board of Directors, and/or (2) SDCWA in response to its prior PRA requests or in connection with the *SDCWA v. MWD* litigation. Given the voluminous amount of information requested, Metropolitan reserves the right to make supplemental productions of any records it is unable to collect and prepare by March 18.

In your March 4 letter, you objected again to Metropolitan's longstanding position that its financial planning model is exempt from the PRA. As we have previously stated many times, the Metropolitan financial planning model is exempt from disclosure as a proprietary software program developed by Metropolitan that contains nondisclosable formulas and programming code. In your letter, you argued that as a result of the decision in *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, SDCWA is entitled to disclosure of the "current financial planning model, in a fully functional electronic format . . . ." However, in *Sierra Club*, the California Supreme Court held that raw data *used* in a computer software program is not exempt from the PRA, as it is not itself "computer software." *Id.* at 170-171; *see also*, *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 234-235; *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1426. As the California Court of Appeal recently explained, "the computer software required to manipulate the database remained properly exempt from disclosure" and the *Sierra Club* decision "illustrates that the statutory scheme requires a case-by-case balancing process." *Fredericks*, 233 Cal.App.4th at 235.

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Notably, you concede the limitation of the *Sierra Club* decision in your letter, stating that it means that *data* contained within MWD's financial planning model is a disclosable public record. However, you then state the unsupported and erroneous conclusion that as a result, SDCWA may properly "ask again that MWD immediately provide [SDCWA] with its current financial planning model, *in a fully functional electronic format . . .*" (Emphasis added.) Your request for the proprietary software that runs the database remains unsupported by the law and in fact is contradicted by the authority you have cited.

Thus, Metropolitan maintains its position that its financial planning model is exempt from disclosure under the PRA. As Metropolitan has done in the past in response to prior PRA requests, Metropolitan will produce responsive spreadsheets containing financial data used in the financial planning model. Metropolitan will remove the proprietary formulas and code from the spreadsheets.

As you know, Metropolitan has made a significant amount of information and documents available to Metropolitan's Board, the member agencies, and the public since the initiation of the current budget and rates process on January 28, 2016, when staff distributed the proposed biennial budget and ten-year financial forecast. Since that date, Metropolitan has made additional information and documents available through meetings of the Board's Finance and Insurance Committee, the three budget and rates workshops held so far, and one public hearing. Next week, staff plans to post Metropolitan's cost of service report and further material on Metropolitan's website for review by the Board, member agencies, and the public.

Should you have any further questions regarding Metropolitan's response to SDCWA's PRA request, please feel free to contact me.

Very truly yours,



Marcia Scully  
General Counsel