



SOUTHWESTERN COLLEGE

DIVISION OF HUMAN RESOURCES

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Director of Employee Relations  
and Title IX

Governing Board  
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June 12, 2019

**via email, certified mail # 7019 0140 0000 6769 2600/2617, and hand-delivery/Branscomb**

The SWC Sun  
Editorial Board and Advisor(s)  
900 Otay Lakes Road  
Chula Vista, CA 91910  
EIC@theswcsun.com

**RE: Public Records Act Request of May 23, 2019**

Dear Dr. Branscomb and Mr. Washburn:

Pursuant to the California Public Records Act (Government Code § 6250 *et seq.*), I requested to obtain a copy of the video footage, including audio, taken during the public meeting of the Southwestern Associated Student Organization on May 2, 2019 - a record I have reason to believe is maintained by The Sun. I am in receipt of your correspondence of June 4, 2019, and your denial of the public records request sent on May 23, 2019.

As a threshold matter, the Southwestern Community College District has a legal obligation to fully and fairly investigate any and all claims of discrimination in programs receiving financial assistance from the State of California. (5 C.C.R. § 59300 *et seq.*) The production of the requested public record is intended to assist the District in discharging this duty, and is in furtherance of the Board Policies and Administrative Procedures adopted by the Governing Board of the Southwestern Community College District. (*See e.g.* Board Policy 3410.)

Please be further advised that the Southwestern Community College District is a "local agency" as defined by the Public Records Act, and is bound to comply with the Public Records Act. (Govt. Code § 6252(a).) The Sun operates as a student news media publication and student organization of the Southwestern Community College District, as authorized by Education Code § 76062 and the Governing Board. As you know, student media organizations are "an integral part of the instruction" of the Southwestern Community College District, engaged in activities "funded by the College District, and produced by students." (Board Policy 4500.) Accordingly, because The Sun operates as an entity that is part of the larger Southwestern Community College District, it is thus subject to the California Public Records Act. Records created and maintained in furtherance of the activities authorized by Board Policy 4500 are public records. (Govt. Code § 6252(e).)

In your response, you cited to the California Constitution as authority for your refusal to produce the requested record. Please be advised that the Public Records Act is itself authorized and mandated by the California Constitution in order to provide open access to public records and the right of the people to access their government. (Cal. Const. Art. I § 3.) The Constitutional authorization for public access expressly provides that a "statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it

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further the people's right of access, and narrowly construed if it limits the right of access." (Cal. Const. Art. I § 3(b)(2).) Here, the right of access must be interpreted broadly, both to ensure the District can adequately investigate this matter, and to ensure the District is in compliance with the California Constitution.

You further cited to Evidence Code Section 1070 and Government Code Section 6254(k) to indicate that the requested records are exempt from disclosure. Your reliance on this authority is mistaken. Evidence Code Section 1070 (also known as the "Shield Law") does not create an evidentiary "privilege" incorporated by Section 6254(k). Instead, it confers a conditional immunity from one being found in contempt of court for refusing to identify a source. Nor does the cited Evidence Code exempt public records from disclosure under the Public Records Act. Your denial of a public record based on inapplicable authority is inconsistent with your obligation to "broadly construe" the Constitutional right to access, and instead attempts to subvert it. This subversion of the public's right to access further appears to directly violate one of the Society of Professional Journalists Code of Ethics, to which student news media participation is bound via Southwestern Community College District Administrative Procedure 4500.

Finally, you have indicated that you received legal counsel indicating that the requested records are exempt from production. As it appears that further action will be required, upon receipt of this letter, please provide me with the contact information for your legal representative so that I can put them in contact with our College District's legal counsel to further discuss this matter.

In the meantime, please feel free to contact me if you have any questions or concerns.

Sincerely,



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GYC/kh

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