

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 11/10/2020

TIME: 11:44:00 AM

DEPT: C-74

JUDICIAL OFFICER PRESIDING: Ronald L. Styn

CLERK: Blanca Delgado

REPORTER/ERM: Not Requested

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2020-00026510-CU-WM-CTL** CASE INIT.DATE: 07/29/2020

CASE TITLE: **Voice of San Diego VS County of San Diego [IMAGED]**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Writ of Mandate

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**APPEARANCES**

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The Court, having taken the above-entitled matter under submission on 11/06/2020, confirms and modifies its tentative ruling.

**The court addresses the evidentiary issues.** Respondent County of San Diego's request for judicial notice is GRANTED. Petitioner Voice of San Diego's reply request for judicial notice is GRANTED.

**The court then rules as follows.** Petitioner Voice of San Diego's petition for writ of mandate is GRANTED.

Plaintiff seeks the following public records from the County under the California Public Records Act (Government Code § 6250, et seq.):

1) "[D]eath certificates... listing Covid-19 or complications from Covid-19 as the cause of death for individuals in San Diego County who resided in a nursing home or assisted living facility." [Petition, Exhibit A]

2) "[A]ll San Diego County death certificates from March 15 to present." [Petition, Exhibit G] or

3) "[A]n index of San Diego County death certificates for deaths related to Covid19." [Petition, Exhibit G].

The general requirements of the CPRA are set forth in Government Code § 6253 [Public records open to inspection; agency duties; time limits]:

(a) 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. 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.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each

state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. . . .

Petitioner submits evidence establishing that Petitioner submitted CPRA requests for the records described above.

Under Health & Safety Code § 102330 "[t]he local registrar shall make a complete and accurate copy of each [death] certificate accepted for registration and shall preserve it in his or her office as the local registrar's copy of the record in the manner directed by the State Registrar." Pursuant to Health & Safety Code § 102875(b)(1), all death certificates are required to state the cause of death. Health & Safety Code § 103526 specifically provides that any member of the public may obtain an "informational certified copy" of a death certificate. The County acknowledges that any member of the public may obtain a copy of a death certificate, upon compliance with the required procedures and upon payment of the required fees.

The County's obligations to maintain indices of birth, death and marriage certificates are set forth in Health & Safety Code § 102230 [Preservation of certificates; indices; exemptions; release to government agencies; noncomprehensive indices; requestors or record indices; annual updates]

(a)(1) The State Registrar shall arrange and permanently preserve the certificates in a systematic manner and shall prepare and maintain comprehensive and continuous indices of all certificates registered.

(2) The birth, death, and marriage record indices prepared pursuant to paragraph (1) and all comprehensive birth, death, and marriage record indices prepared or maintained by local registrars and county recorders shall be kept confidential and shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

. . . .

(b)(1) The State Registrar shall prepare and maintain separate noncomprehensive indices of all California birth, death, and nonconfidential marriage records for public release.

. . . .

(3) For purposes of this section, noncomprehensive death record indices for public release shall be comprised of first, middle, and last name, sex, date of birth, place of birth, place of death, date of death, and father's last name.

The evidence before the court is that the County maintains both the comprehensive and noncomprehensive indices required under Health & Safety Code § 102230. The evidence before the court is also that the County's Health & Safety Code § 102230(b) noncomprehensive index of death

certificates can be searched, by date, to ascertain the name of all individuals for whom a death certificate was issued during the time period at issue – March 15, 2020 to present. The evidence also shows that the County's Health & Safety Code § 102230(a) comprehensive index of death records can be searched, using names and dates of death generated from a search of the noncomprehensive index, to ascertain the cause of death listed on each of the identified death certificates, including whether the cause of death is listed as "COVID-19 or complications from COVID-19." As set forth above, under Health & Safety Code § 102230, the noncomprehensive index is available to the general public and the comprehensive index is confidential and not subject to disclosure in response to the CPRA request.

Considering these circumstances, the court issues a writ of mandate directing the County to:

- 1) conduct a search of the County's Health & Safety Code § 102230(b) noncomprehensive index of death records to ascertain the name and date of death of all individuals for whom a death certificate was issued during the time period at issue – March 15, 2020 to present, and
- 2) using the names and date of death obtained from its search of the noncomprehensive index, conduct a search of the County's Health & Safety Code § 102230(a) comprehensive index, to generate a list of the names and dates of death of all individuals for whom a death certificate was issued listing the cause of death as "COVID-19 or complications from COVID-19"
- 3) provide to Petitioner the names and date of death of the individuals identified via its search of the comprehensive index.

Petitioner may thereafter obtain access to the public records requested by a search the noncomprehensive index using the names and dates of death to be provided by the County and/or by requesting a death certificate of each of the individuals identified using the County's procedures and upon payment of any required fees.

The court is not persuaded by the County's arguments against requiring the County to search the noncomprehensive and comprehensive index. *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, specifically recognizes that "[t]he agency must . . . determine whether it has such writings under its control and the applicability of any exemption" and "[a]n agency is . . . obliged to search for records based on criteria set forth in the search request." Government Code § 6253.1 is specific:

(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

- (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
- (2) Describe the information technology and physical location in which the records exist.
- (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

The County fails to provide any evidence that it is not able to search both its noncomprehensive and

comprehensive indices to provide Petitioner with the ability to request the death certificates it seeks.

Nor is the court persuaded by the County's reliance on 17 C.C.R. § 902. This section specifically provides: "Where the above information is not available, the applicant shall provide whatever information is available, and the State Registrar or local registrar shall make all reasonable effort to locate the requested records." The dates provided by Petitioner in its CPRA request, combined with a search of the noncomprehensive index, provide the County with both the name of the decedent and the date of death. Thus, the court finds Petitioner meets the requirements of this provision. The court also finds "all reasonable effort" includes the County's search of both the noncomprehensive and comprehensive indices.

The County also argues that Health & Safety Code § 102230 eliminates the "wide-scale, public release of birth, death and marriage certificates" and that Petitioner's requests are in violation of this statute because Petitioners seek a "wide-scale dissemination of comprehensive death certificate indices." However, none of the authorities the County relies on prohibit Petitioner's access to the death certificates of multiple individuals. The court finds the County fails to establish that Petitioner's requests are in violation of Health & Safety Code § 102230 or any other statute.

Both sides address the balancing required under Government Code § 6255. Given that death certificates are publically available and considering the seriousness of the circumstances surrounding the coronavirus pandemic and the significant public interest in the County's role in responding to the pandemic, the court finds the County fails to establish that, "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record" so as to justify withholding the records Petitioner seeks under Government Code § 6255.

None of the arguments the County raised at oral argument cause the court to reach a different result. Under the Health & Safety Code statutes set forth above, all death certificates are required to state the cause of death, the County is required to preserve death certificates, and the County is required to provide copies of death certificates to the public. Under the CPRA, the County is required to search its records in response to CPRA requests. While the comprehensive index itself is confidential, there is nothing in Health & Safety Code § 102230 that prohibits the County from searching the comprehensive index in response to a CPRA request. Under the writ procedure above, the only disclosure of information to the public will be information the public is entitled to under the Health & Safety Code.

The court sets a return date of January 16, 2021.

At the County's request, the court stays enforcement of the writ for 20 days to allow the County to seek review. Government Code § 6259(c).



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Judge Ronald L. Styn