



November 1, 2016

VIA EMAIL

William Schweiss

RE: Public Records Act Request Received October 24, 2016

Dear Mr. Schweiss:

This letter responds to your request for records under the California Public Records Act (Gov. Code §§ 6250 – 6276.48), received via email on October 24, 2016. You requested the following information:

“For computer options invoice#21723 serial#153906 specifically involving all contract labor referenced by "saved recorded video from 7-2-16" tech bryan”:

1. *“any record held by consultant authorizing referenced contract labor. Include authorizing district employee, date of order and the order itself”.*

In response to item #1, the District is providing a copy of the District’s Professional Services Agreement with Computer Options and the Ninth Amendment to the agreement, which were previously provided to you on September 22, 2016. The District has no other existing documents regarding the section of the invoice indicated in your request. We have previously explained to you that no “order” was created for the work indicated on Invoice #21723. As explained below in the response for item #2, the work referenced in your request (“saved recorded video from 7-2-16”) was the result of a telephone conversation between District staff and Computer Options. The District does not have any documents regarding that telephone conversation.

Regarding “any record held by consultant...,” Computer Options is a private company and is not subject to the Public Records Act. The District does not have control over, or custody of, any internal records of Computer Options. The California Court of Appeal has stated that the term “possession” in the Public Records Act (“...copies of disclosable records in possession of the agency...” (Gov. Code § 6253, subd. (c)) means both actual and constructive possession. A public agency has constructive possession of records if it

has the right to control the records, either directly or through another person.” (*Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal. App. 4th 697, 710.) The District does not have actual or constructive possession of Computer Options’ internal records.

Also, the District’s agreement with Computer Options creates for the District “...a non-exclusive and perpetual license for the District to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, **which are prepared or caused to be prepared by Consultant under this Agreement...**” The “license” created by the District’s agreement with Computer Options is for records and documents specifically prepared by Computer Options for the District in its performance of the services under the agreement. The “license” created by the agreement does not provide to the District any possession or control of Computer Options’ internal records. Therefore, such internal records are not subject to the Public Records Act and the District has no legal right or obligation to obtain them for a Public Records Act request.

2. *“any record held by consultant of instructions given to it by the district. How did consultant know what to do and when to do it?”*

In response to item #2, a District employee contacted Computer Options by telephone to request to save the recorded video from July 2, 2016. The District has no written record, or recording, or document of any kind regarding that telephone conversation. Therefore, the District has no documents responsive to this item of your request.

3. *“consultant’s transmittal documentation when video or results/product of contract labor was forwarded to district. Include date, addressee and accompanying letter”.*

In response to item #3, the District does not have “consultant’s transmittal documentation.” Computer Options performed the work onsite at Lake Arrowhead Community Services on a regularly scheduled day. The only record that references the “video or results/product” of the “contract labor” described in your request is an email dated July 7, 2016, which states the file name of the saved video. The District is providing with this letter a copy of that email, which has the following subject line: “Bernina Video.”

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4. *“all records held by consultant of communications to/from any person or entity including telephone, face-to-face, email or remote session from july2,16 to aug3,16”.*

As explained above, Computer Options is a private company and is not subject to the Public Records Act. The District does not have control over, or custody of, any internal records of Computer Options. The District’s agreement with Computer Options does not create any actual or constructive possession for the District regarding Computer Options’ communications with “any person or entity.” Therefore, the District does not have any records responsive to this item of your request.

Sincerely,

Kathleen Field

Kathleen Field
Executive Assistant

Attachments

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