



Californians Advocating  
Responsible Rail Design

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**SENT BY EMAIL ONLY**

Mr. Thomas Fellenz  
Chief Counsel  
California High-Speed Rail Authority

Subject: Public Records Act Request for PMT Progress Reports

Dear Mr. Fellenz,

This is concerning your letter stating that CARRD's Public Records Act request would not be fulfilled because, "The PMT Progress Reports and Executive Summaries for October, November, and December of 2012 are still in draft form and are not being released under Government Code section 6254(a)."

We would make three points.

1. The Progress Reports are a key deliverable from the Project Management Team. As per the Parsons Brinckerhoff contract, "The Consultant shall submit progress reports at least once a month to the Executive Director and the Authority's Program Management Oversight contractor. The report should be sufficiently detailed for the Executive Director to determine if the Consultant is performing to expectations and is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so remedies can be developed." Are you suggesting that PB has failed to achieve this requirement or is submitting these reports only in draft form?
2. That the reports are still in draft is irrelevant. Government Code section 6254(a) applies to preliminary drafts "that are not retained by the public agency in the ordinary course of business." Obviously the progress reports are an integral part of your business; therefore they are not exempt from the Public Records Act.

To further underscore this point, according to the Attorney General's Office publication, "Summary of the California Public Records Act of 1994," the draft exemption is narrowly defined as follows:

**EXEMPTION FOR PRELIMINARY NOTES, DRAFTS AND MEMORANDA  
(Gov. Code, § 6254(a))**

Under this exemption, materials must be (1) notes, drafts or memoranda (2) which are not retained in the ordinary course of business (3) where the public interest in nondisclosure clearly outweighs the public interest in disclosure.

3. The HSRA is inappropriately relying on the "draft" exemption for many PRA requests. For example,
  - In 2010 and 2011 CARRD requested the Technical Memos (requests are attached); after nearly a year the Authority eventually agreed those documents were not covered under the draft exemption and we received copies.

- In April of 2012 Ms. Kathy Hamilton requested the data and analysis behind the reported 3:00 trip times which were approved by the HSRA Board in the Final 2012 Business Plan; she is still being told it is in draft.
- Ms. Elizabeth Alexis of CARRD requested a related memo which was said to be on Mr. Hans van Winkle's desk in May 2012 and promised to Ms. Hamilton within days; on February 4, 2013 you replied to Ms. Alexis that it was still in draft.

We would also like to remind you that, according to that same Attorney General's Office publication, "If an agency improperly withholds records, a member of the public may enforce, in court, his or her right to inspect or copy the records and receive payment for court costs and attorney's fees."

We again ask that you promptly release the October, November and December PMT reports and executive summaries, regardless of their draft condition.

Sincerely,

Rita M. Wespi  
Co-founder, CARRD

cc: Records Department