

1 ZACH COWAN, City Attorney (SBN 96372)  
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3 CITY OF BERKELEY  
4 2180 Milvia Street, Fourth Floor  
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TEL.: (510) 981-6998  
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6 ROGER B. MOORE (SBN 159992)  
7 [AR@landwater.com](mailto:AR@landwater.com)  
8 [RBM@landwater.com](mailto:RBM@landwater.com)  
9 ROSSMANN AND MOORE, LLP  
2014 Shattuck Avenue  
Berkeley, CA 94704  
TEL: (510) 548-1401  
FAX: (510) 548-1402

Attorneys for Plaintiffs  
CITY OF BERKELEY, et al.

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 CITY OF BERKELEY; MAYOR AND  
16 MEMBERS OF THE CITY COUNCIL  
OF THE CITY OF BERKELEY,

17 Plaintiff,

18 vs.

19 UNITED STATES POSTAL SERVICE; PATRICK R.  
20 DONAHOE AS POSTMATER GENERAL OF THE  
21 UNITED STATES POSTAL SERVICE; TOM A.  
22 SAMRA, VICE PRESIDENT-FACILITIES OF THE  
UNITED STATES POSTAL SERVICE; DIANA  
ALVARADO, DIRECTOR, REAL ESTATE, USPS  
PACIFIC REGION;

23 Defendants.

NO. CV14-04916 WHA

DECLARATION OF ZACH  
COWAN IN OPPOSITION TO  
MOTION TO DISMISS

DATE: Mar. 19, 2015  
TIME: 8:00 am  
CTRM: 8, 19<sup>th</sup> Flr., SF

24 I, Zach Cowan, declare:

25 1. I am, and at all times relevant have been, the City Attorney for the City of  
26 Berkeley (City). As such, I have monitored and to some extent participated in proceedings  
27 related to, first, the proposed relocation of the Main Berkeley Post Office, and then the sale of  
28 the building at 2000 Allston Way in Berkeley in which it was, and still is, located.



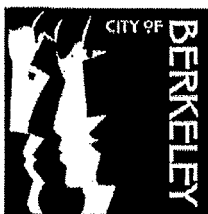
CV14-04916 WHA

EXHIBITS A – F

TO

DECLARATION OF ZACH COWAN  
IN OPPOSITION TO MOTION TO DISMISS

Exhibit A



Office of the City Attorney

October 23, 2014

Manager Records Office US Postal Service  
475 L'Enfant Plaza SW Rm. 9431  
Washington, DC 20260

*submitted online via  
<https://pfoi.apal.usps.com>*

Sharon K. Freiman  
Chief Counsel  
Procurement and Property Law  
Room 6249  
475 L'Enfant Plaza SW  
Washington, D.C. 20260-1127

*sharon.k.freiman@usps.gov*

## **FREEDOM OF INFORMATION ACT REQUEST**

### **REQUESTER**

Zach Cowan  
City Attorney  
2180 Milvia Street, Fourth Floor  
Berkeley, CA 94704  
Tel. (510) 981-6983

### **INFORMATION REQUESTED**

Documents and correspondence, both electronic and written, specific to United States Postal Service (USPS) services and property located at Berkeley Main Post Office, 2000 Allston Way, Berkeley, California, 94704.

The requested documents specifically include, but are not limited to those relevant to:

- Relocation or discontinuance of postal services;
- Sale, lease or relocation of real property;
- Official notifications re: status change of services or property;
- Public notifications re: status change of services or property;
- Actions taken in connection with the execution of or compliance with Federal or State law related to the Berkeley Main Post Office, such as:

Manager, Records Office US Postal Service

October 23, 2014

Page 2 – Freedom of Information Act Request for Berkeley Main Post Office

- Proposed or executed contracts, leases or deeds associated with the Berkeley Main Post Office;
- Property assessments, valuations, or descriptions;
- Surveys, descriptions, analyses of recognized historic features, such as murals, bas reliefs, artwork, architectural features.
- Correspondence with Hudson/McDonald LLC concerning the Berkeley Main Post Office.
- Correspondence with Dharma College (2222 Harold Way, Berkeley) or any representative thereof concerning the Berkeley Main Post Office.

**DESIRED FORMAT**

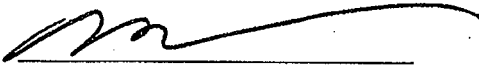
Electronic Records – CD-ROM

Paper Records – Hard copy or CD-ROM

**REQUEST FOR EXPEDITED SERVICE**

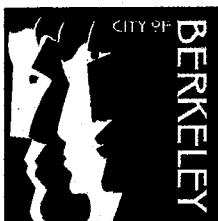
I understand that the Berkeley Main Post Office is currently under contract for sale, even though the Section 106 process is not yet complete. The City and other interested parties need the requested information, all of which should be readily available, as soon as possible in order to seek judicial relief. In the event that *all* of the requested documents are not immediately available, I specifically request that the documents that *are* immediately available, such as a purchase contract, escrow instructions, and undoubtedly numerous other documents, be provided immediately.

Thank you for your kind consideration.



Zach Cowan  
City Attorney

Exhibit B



Office of the City Attorney

October 27, 2014

Sharon K. Freiman  
Chief Counsel  
Procurement and Property Law  
Room 6249  
475 L'Enfant Plaza SW  
Washington, D.C. 20260-1127

*sharon.k.freiman@usps.gov*

Re: Berkeley Main Post Office, 2000 Allston Way

Dear Sharon:

We are disappointed in your response of October 22<sup>nd</sup>, in which you declined to confirm or deny that the postal service has entered escrow for sale of the Berkeley Main Post office, and decline to further consider the form of covenant that the City of Berkeley and National Trust have proposed.

We are now in receipt of the October 24<sup>th</sup> letter from the Advisory Council on Historic Preservation in which it concludes that that the USPS-proposed covenant does not remove adverse effect within the meaning of Section 106, and the Advisory Council's invitation for USPS to produce an agreeable covenant. The City of Berkeley views the Advisory Council's condition that there be an appropriate covenant holder other than the USPS as necessary but not sufficient to resolve the impasse; the Advisory Council addressed the fundamental inability of USPS to serve as covenant holder, and left unaddressed the additional grounds of adverse effect that the City identified in its October 14, 2014 letter to the Advisory Council.

More immediately, we are disappointed that USPS continues to treat its proposed sale of the Berkeley Main Post Office as a private transaction in which that post office's own city and public are not deemed qualified for access to information about it. The sale of this important and historic federal building in our city is a quintessentially public matter.

The failure to respond to our requests has created uncertainty in the community, leading to rumors among the City Council, City staff, and citizens, which waste the time of all in a to-date fruitless effort to secure information to which all are entitled. The poisonous

Sharon K. Freiman

October 27, 2014

Page 2 – Berkeley Main Post Office, 2000 Allston Way

result of this uncertainty and lack of information creates an atmosphere in which the City's ability to negotiate cooperatively with USPS has been severely compromised.

Although the City has authorized litigation against USPS in light of its failure to provide readily information to which the public is entitled, we prefer to avoid litigation and certainly avoid unnecessary litigation.

To secure that result we separately request *immediate* disclosure of any and all contracts, escrow instructions, sale contingencies, or other documents between the USPS and any prospective purchaser of the Berkeley Main Post Office, including documents now in existence and new ones that come into existence as they are generated or received by USPS in the future. As you know, the City filed a FOIA request for this and other information last week. As you are no doubt also aware, the FOIA process is not a speedy one. Documents responsive to a FOIA request concerning the Somerville, Massachusetts post office that was filed on April 1<sup>st</sup> have still, as of last week, not been produced. FOIA is clearly not an adequate means of obtaining critical time-sensitive information.

We also request *immediate* electronic transmission of any response USPS makes to the Advisory Council's October 24<sup>th</sup> letter.

Finally, in order to avoid needless litigation, we request your written commitment that USPS will not enter into a sale of the Berkeley Main Post Office without 30 days' notice to the City, a request we have several times made to your outside counsel Clark Morrison, without success. Specifically, we request 30 days notice *before* any action that would prejudice the City's and public's interests in a fair and timely resolution of the legal disputes between the parties, such as execution of a contract for sale, opening of an escrow, proposed date for close of escrow, and any proposed conveyance. The City notes that in the Somerville Post Office matter, sale did not occur until more than a month after USPS termination of the Section 106 review. Since that termination has not yet occurred here, the 30 days' advance notice should not prove burdensome to the postal service.

The City will view USPS's failure to honor these requests as evidence that a judicial restraining order will be necessary to preserve the status quo pending determination of any legal claims that the City may assert against the sale of the post office.

Very truly yours,



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Zach Cowan  
City Attorney



Exhibit C

VIA EMAIL AND EXPRESS MAIL/DELIVERY RECEIPT

October 29, 2014  
Mr. Zach Cowan, City Attorney  
City of Berkeley  
2180 Milvia Street, Fourth Floor  
Berkeley, CA 94704

Received  
OCT 31 2014  
City Attorney

RE: Berkeley Main Post Office, 2000 Allston Way

Dear Mr. Cowan:

This letter is in response to your letter of October 27, 2014 and is intended to address what seem to be the City's main issues.

First, you express concerns about the fact that the United States Postal Service ("Postal Service") will not discuss with the City of Berkeley the details regarding the status of properties being offered for sale by the Postal Service, including the Berkeley Main Post Office, beyond what is already publicly available at <http://uspspropertiesforsale.com/>. The Postal Service needs to continue to keep confidential that information, which under good business practice, would not be disclosed.

Second, your request for *immediate* disclosure of information from me, for which you have already submitted a FOIA request, is not acceptable. As you know, the Postal Service, like other entities of the Federal government, follows the requirements of, the Freedom of Information Act (FOIA). The Postal Service will follow those requirements in response to your previous FOIA request for documents.

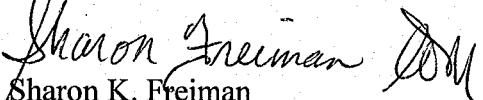
Third, the Postal Service will provide you with a copy of our response to the October 24, 2014 letter from the Advisory Council on Historic Preservation (ACHP). The Postal Service will do so in accordance with the requirements of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA). Although the NHPA does not specify a mode of transmission of such information to consulting parties such as the City of Berkeley, we will send it to you by email.

Fourth, with respect to your request that the Postal Service provide the City with 30 days' prior notice before taking actions with respect to the Berkeley Main Post Office, we cannot agree to do so, as that would be contrary to good business practice. The Postal Service has engaged with the City of Berkeley in the Section 106 process with the desire to reach a satisfactory agreement. It is unfortunate that we have been unable to reach such an agreement in large part due to the City's insistence that the Postal Service include in any preservation covenant a requirement that the Postal Service lease space in the Berkeley Main Post Office for the operation of a postal facility with specifically



detailed services listed in the covenant, such as bulk mail pick up, for a period of fifty years. This appears to the Postal Service to be an attempt to use the consultative process under Section 106 of the NHPA to coerce or force the Postal Service to change how it operates its business, which is not the intent of the Section 106 process. This is not acceptable.

Very truly yours,

  
Sharon K. Freiman  
Chief Counsel, Property Law  
United States Postal Service

Received

NOV 03 2014

RECORDS OFFICE

Exhibit D

City Attorney



October 30, 2014

Zach Cowan  
City Attorney  
City of Berkeley  
2180 Milvia Street, Fourth Floor  
Berkeley, CA 94704

RE: FOIA Case No. 2015-FPRO-00055

Dear Mr. Cowan:

This responds to your Freedom of Information Act (FOIA) request, dated October 23, 2014, in which you seek access to Postal Service records.

Based on the information provided by you, the agency official having jurisdiction over the subject matter of your request is the Vice President, Facilities and Supply Management, 475 L'Enfant Plaza, SW, Washington, DC 20260-1862.

I have forwarded your request to these offices for action and direct response to you. You may contact us at 202-268-2608 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Nancy P. Chavannes-Battle". The signature is written in a cursive style.

Nancy P. Chavannes-Battle  
Consumer Research Analyst

FACILITIES

Received

Exhibit E

DEC 5 2014



City Attorney

December 1, 2014

Zach Cowan  
City Attorney  
2180 Milvia Street, Fourth Floor  
Berkeley, CA 94704

RE: Freedom of Information Act Request dated October 23, 2014  
USPS FOIA Tracking Number: 2015-FPRO-00055

Dear Mr. Cowan:

This responds to your Freedom of Information Act (FOIA) request dated October 23, 2014 in which you seek access to Postal Service records related to Berkeley Main Post Office, 2000 Allston Way.

The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records, and consultation with other components of the Postal Service having substantial subject matter interest in the types of records involved. We are therefore extending the response period to ten (10) working days from the date of this letter until December 15, 2014 (title 39 CFR 265.7(b)(5)(iii)(B)).

You will be contacted on or immediately after that date.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Ruffing".

James M. Ruffing  
Real Estate Specialist  
Facilities Real Estate and Assets - HQ

cc: HQ Records

FACILITIES

Received

Exhibit F

DEC 18 2014



City Attorney

December 15, 2014

Zach Cowan  
City Attorney  
2180 Milvia Street, Fourth Floor  
Berkeley, CA 94704

RE: Freedom of Information Act Request dated October 23, 2014  
USPS FOIA Tracking Number: 2015-FPRO-00055

Dear Mr. Cowan:

This responds to your Freedom of Information Act (FOIA) request dated October 23, 2014 in which you seek access to United States Postal Service (Postal Service) records related to Berkeley Main Post Office, 2000 Allston Way.

Pursuant to Handbook AS-353, Guide to Privacy, the Freedom of Information Act, and Records Management (the "Handbook"), the Postal Service is entitled to compensation for the time spent locating and reviewing responsive material. Costs are calculated under our fee regulations (Title 39, Code of Federal Regulations, section 265.9) Under those regulations, fees for the first two hours of professional search and the first 100 pages of duplication are waived for this category of requester. Additional time for review is charged at \$32.00 an hour and at a rate of \$0.15 per page for additional copies. See Handbook 4-6.5(b).

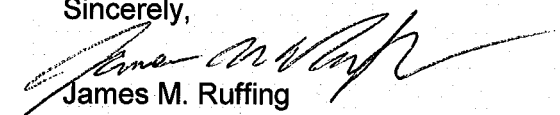
The majority of this search for records was a manual search for records, so no fees for computer searches were assessed. Multiple persons and departments within the organization conducted the records search and review which totaled 21 hours invested in locating and redacting the records. Subtracting the 2 hours, the Postal Service only charged for 19 hours, resulting in a search and redaction cost of \$608.00.

The search and review located approximately 1,697 pages of documents responsive to your request. The duplication fee as applied to other requestors is \$0.15 per page after the first 100. As a result, the duplication costs are \$239.55; and, the total cost is \$847.55. When the estimated cost is in excess of \$250, section 265.9(f)(3) of our regulations permit us to require payment of an amount up to the full estimated charge before commencing work on the request. We must caution you that you are liable for the fee even if records found are withheld in accordance with regulations.

If you wish to receive the documents located that are responsive to your request, please make the check or money order out to the "United States Postal Service" and send it to my attention at:

USPS Facilities  
Attn. James Ruffing  
475 L' Enfant Plaza, SW, Room 6670  
Washington, DC 20260-1862

Sincerely,



James M. Ruffing  
Real Estate Specialist  
Facilities Real Estate and Assets - HQ

cc: HQ Records

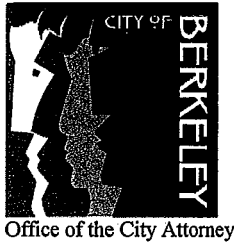


Exhibit G

December 30, 2014

James M. Ruffing  
Real Estate Specialist  
USPS Facilities  
475 L'Enfant Plaza, SW, Room 6670  
Washington, DC 20260-1862

Re: USPS FOIA Tracking Number: 2015-FPRO-00055  
Berkeley, California Main Post Office, 2000 Allston Way

Mr. Ruffing:


Pursuant to your letter dated December 15, 2014 regarding the above FOIA, attached is our check in the amount of \$847.55.

Please forward the documents as soon as possible.

Happy New Year.

Very truly yours,

Zach Cowan  
City Attorney

By:   
Joanna K. Rudy, Secretary to  
Zach Cowan

PLEASE DETACH THIS REMITTANCE  
ADVICE BEFORE DEPOSITING CHECK

CITY OF BERKELEY  
BERKELEY, CALIFORNIA

THE ATTACHED CHECK IN PAYMENT  
OF THE ITEMS LISTED BELOW

170023

DATE	P.O. NUMBER	REFERENCE	INVOICE AMOUNT
12/15/14	103562	2015-FPRO-00055 TRACKING #	847.55
			<b>REDACTED</b>
<b>CITY OF BERKELEY</b>			
			*****847.55
FOR OUT OF STATE VENDORS ONLY - CA. USE TAX DIRECT PAYMENT PERMIT NO.: SR CH 21-047058 DP			

THIS CHECK IS VOID WITHOUT A MAROON BACKGROUND AND AN ARTIFICIAL WATERMARK - HOLD AT ANGLE TO VIEW WATERMARK ON BACK OF CHECK



11-24  
1210(8)

**CITY OF BERKELEY**  
BERKELEY, CALIFORNIA

Control No. 170023

WELLS FARGO BANK

VOID AFTER 180 DAYS

DATE	CHECK NUMBER	PAY EXACTLY
12/30/2014	170023	\$*****847.55

PAY TO THE ORDER OF

UNITED STATES POSTAL SERVICE  
CMRS-POC  
P. O. BOX 894715  
LOS ANGELES CA 90189-4715

*Christine DeL...*  
CITY MANAGER

*Ann-Marie Hogan*  
CITY AUDITOR

170023