

Dear John,

Thank you for reaching out. I reached out to Mr. Valenzuela to get some assistance requesting BOE records that are stored in the personal email accounts of several Directors on the Board. I recognize this is a sensitive matter due to the privacy interests of the Directors so I thought to ask for guidance from the Ombudsperson. Your office has been extremely professional and helpful in processing my requests.

My request is for certain email records concerning OUSD business, as described in Section I. Section II offers some examples where Directors used their personal email accounts for BOE business. I included this second section so that you know I am making this request in good faith, based upon the email records that your office has already disclosed to me. Section III relates to guidance on conducting these searches after *City of San Jose v. Superior Court of Santa Clara County* (2017).

Section I

I am requesting an opportunity to inspect or obtain copies of public records that relate to email correspondence as described below under the California Public Records Act § 6250 et seq.:

Request 1:

All email correspondence between 1/1/16 - 11/19-18 from james@mmgsf.com to any of the following email addresses:

shanthigonzales@gmail.com
ninasenn1@gmail.com
oaklandjody@gmail.com
r.torreslaw@gmail.com
rosie_esq@gmail.com
aimeesuekoeng@gmail.com
jumokehinton@gmail.com
hintonhodge4oakland@gmail.com

Request 2:

All email correspondence between 1/1/16 - 11/19-18 from shanthigonzales@gmail.com to any of the following email addresses:

james@mmgsf.com
ninasenn1@gmail.com
oaklandjody@gmail.com
r.torreslaw@gmail.com
rosie_esq@gmail.com
aimeesuekoeng@gmail.com
jumokehinton@gmail.com
hintonhodge4oakland@gmail.com

Request 3:

All email correspondence between 1/1/16 - 11/19-18 from ninasenn1@gmail.com to any of the following email addresses:

james@mmgsf.com
shanthigonzaless@gmail.com
oaklandjody@gmail.com
r.torreslaw@gmail.com
rosie_esq@gmail.com
aimeesuekoeng@gmail.com
jumokehinton@gmail.com
hintonhodge4oakland@gmail.com

Request 4:

All email correspondence between 1/1/16 - 11/19-18 from oaklandjody@gmail.com to any of the following email addresses:

james@mmgsf.com
shanthigonzaless@gmail.com
ninasenn1@gmail.com
r.torreslaw@gmail.com
rosie_esq@gmail.com
aimeesuekoeng@gmail.com
jumokehinton@gmail.com
hintonhodge4oakland@gmail.com

Request 5:

All email correspondence between 1/1/16 - 11/19-18 from r.torreslaw@gmail.com to any of the following email addresses:

james@mmgsf.com
shanthigonzaless@gmail.com
ninasenn1@gmail.com
oaklandjody@gmail.com
aimeesuekoeng@gmail.com
jumokehinton@gmail.com
hintonhodge4oakland@gmail.com

Request 6:

All email correspondence between 1/1/16 - 11/19-18 from rosie_esq@gmail.com to any of the following email addresses:

james@mmgsf.com
shanthigonzaless@gmail.com
ninasenn1@gmail.com
oaklandjody@gmail.com
aimeesuekoeng@gmail.com
jumokehinton@gmail.com
hintonhodge4oakland@gmail.com

Request 7:

All email correspondence between 1/1/16 - 11/19-18 from aimeesuekoeng@gmail.com to any of the following email addresses:

james@mmgsf.com
shanthigonzaes@gmail.com
ninasenn1@gmail.com
oaklandjody@gmail.com
r.torreslaw@gmail.com
rosie_esq@gmail.com
jumokehinton@gmail.com
hintonhodge4oakland@gmail.com

Request 8:

All email correspondence between 1/1/16 - 11/19-18 from jumokehinton@gmail.com to any of the following email addresses:

james@mmgsf.com
shanthigonzaes@gmail.com
ninasenn1@gmail.com
oaklandjody@gmail.com
r.torreslaw@gmail.com
rosie_esq@gmail.com
aimeesuekoeng@gmail.com

Request 9:

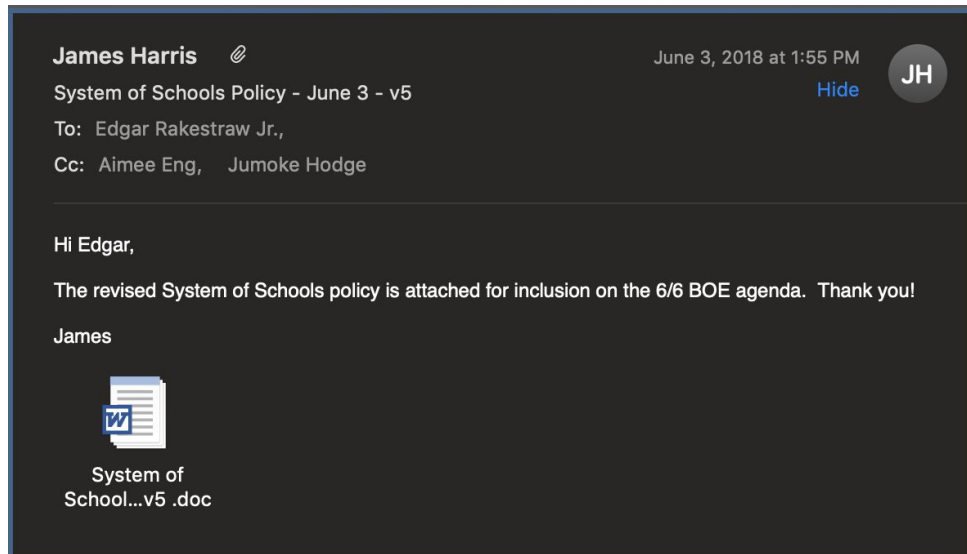
All email correspondence between 1/1/16 - 11/19-18 from hintonhodge4oakland@gmail.com to any of the following email addresses:

james@mmgsf.com
shanthigonzaes@gmail.com
ninasenn1@gmail.com
oaklandjody@gmail.com
r.torreslaw@gmail.com
rosie_esq@gmail.com
aimeesuekoeng@gmail.com

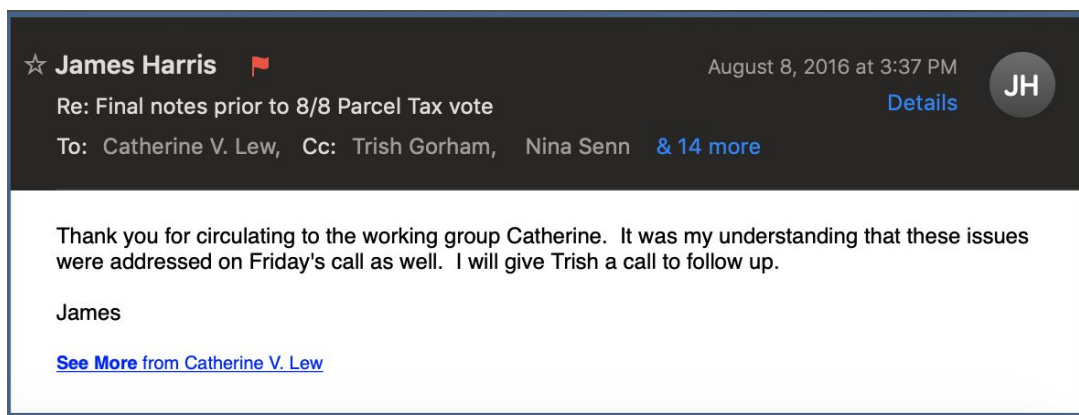
Section II

I received more than 10,000 email records from my previous CPRA requests. The partial list of examples included in this section demonstrate the use of personal email accounts to conduct BOE business. Considering the email set as a whole, it is clear that: (a) certain directors use their personal email accounts *very frequently*; (b) one director uses their personal email account almost *exclusively*; (c) some directors have directed communications relating to a particular topics to a private email accounts.

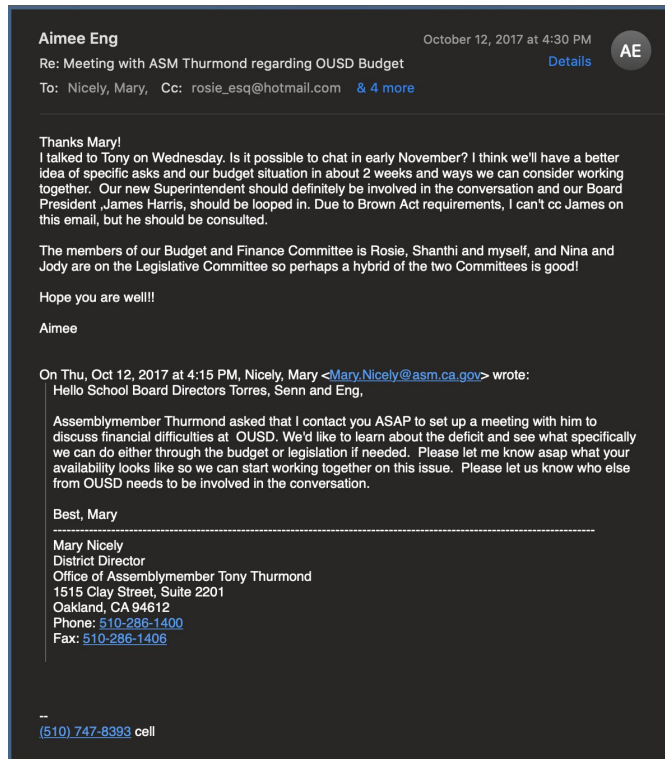
Director Harris using james@mmgsf.com to submit the BOE agenda to Mr. Rakestraw, Directors Eng and Hodge.



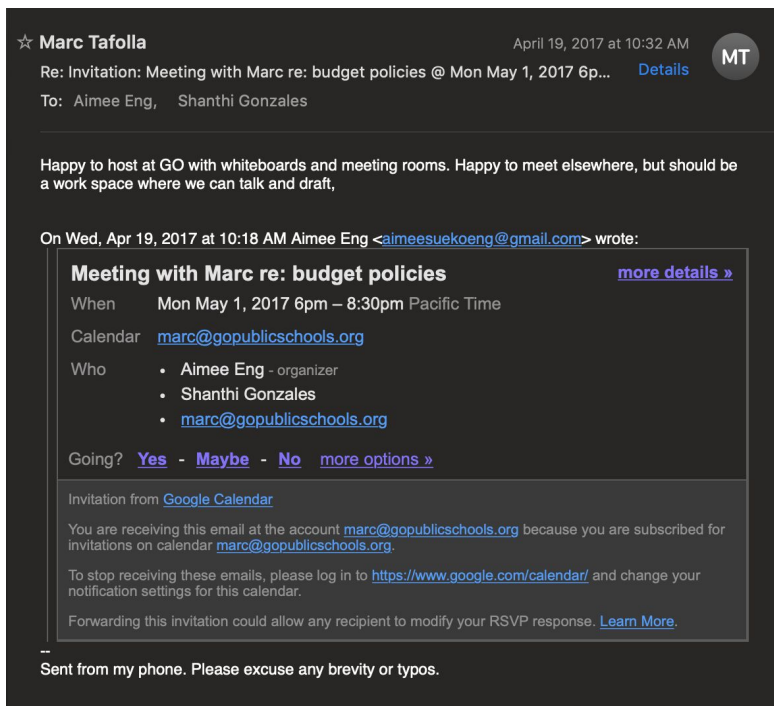
Director Harris using james@mmgsf.com to communicate with Director London, Director Senn's personal email (ninasenn1@gmail.com), Marion McWilliams, and labor.



Director Eng using aimeesuekoeng@gmail.com to communicate with Directors Torres and Senn. Also a note that Director Harris should be looped in and consulted but was excluded in email due to Brown Act.



Director Eng using her personal account (aimeesuekoeng@gmail.com) to invite Director Gonzales, at her personal account (shanthigonzales@gmail.com), to a meeting occurring at 1000 Broadway to relating to BOE budget policies.



Communications to Directors Harris and Senn regarding the parcel tax measure. Former Superintendent Wilson and General Counsel Marion McWilliams are copied.

From: "Palmer, John" <jpalmer@Orrick.com>
To: James Harris <james@mmsgsf.com>; Nina Senn <ninasenn1@gmail.com>; "Appel, Doug" <DAppel@cta.org>; Gene Zahas <gene@johnstone23.com>; "oaklandepresident@yahoo.com" <oaklandepresident@yahoo.com>; Patrick Walsh <pw Walsh@ccsa.org>; Jonathan Klein <jonathan@gopublicschools.org>; Ash Solar <ash@gopublicschools.org>; Jo Bates <jo.bates@ca.afscme57.org>; Catherine <catherine@lewedwardsgroup.com>; Emily Salgado <emily@lewedwardsgroup.com>; Antwan Wilson <antwan.wilson@ousd.org>; "junji@ebayc.org" <junji@ebayc.org>; "afitzgerald@oaklandcommunity.org" <afitzgerald@oaklandcommunity.org>
Cc: "marion.mcwilliams@ousd.org" <marion.mcwilliams@ousd.org>; "jacqueline.minor@ousd.k12.ca.us" <jacqueline.minor@ousd.k12.ca.us>
Sent: Saturday, July 30, 2016 6:20 PM
Subject: RE: Revised Parcel Tax Resolution & Measure

Good Evening,

Attached please find a revised draft of the parcel tax resolution and measure, and a copy marked to show changes from the draft I distributed last Tuesday. We need to post the document tomorrow evening, so your comments are appreciated by 4 pm tomorrow. If you need more time, please let me know. If I haven't heard from you by 4 p.m. tomorrow, I will assume you are signed off on this draft.

Please also review the list of addressees, and if you see anyone who I should have copied but didn't, please let me know. I apologize in advance for anyone I may have omitted – any omissions are (1) mine only, and (2) unintentional.

Thank you in advance for your willingness to review over the weekend.

John

Director London using oaklandjody@gmail.com to tell Directors Harris and Senn, as well as former Superintendent Wilson, to use her personal email address for any further correspondence relating to the parcel tax measure.

☆ Jody London - Political

August 10, 2016 at 6:26 AM



Re: Invitation: Retain and Recruit Parcel Tax Meeting #9; conf call in in... @... [Details](#)

To: James Harris, Cc: Katy Nunez-Adler, Emma Paulino & 17 more



Please use this address, oaklandjody@gmail.com, going forward for anything about the parcel tax.
Thanks, Jody

Sent from my iPhone

On Aug 9, 2016, at 11:40 PM, James Harris <james.harris@ousd.org> wrote:

Retain and Recruit Parcel Tax Meeting #9; conf call in [more details »](#)
info: 712 770 4700,,,165772#

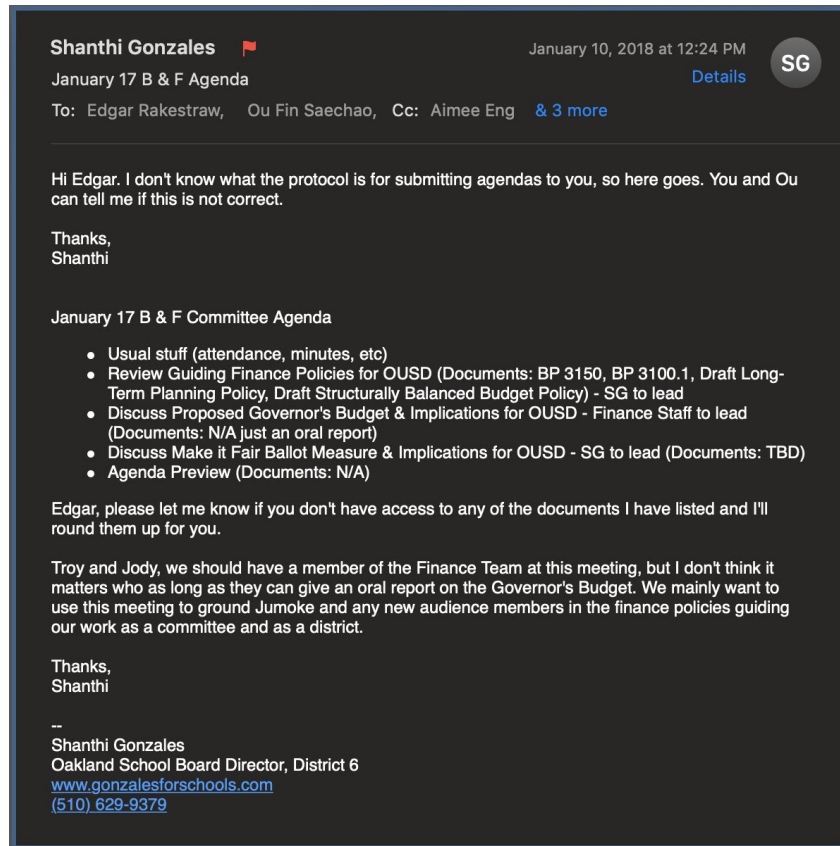
See More

notification settings for this calendar.

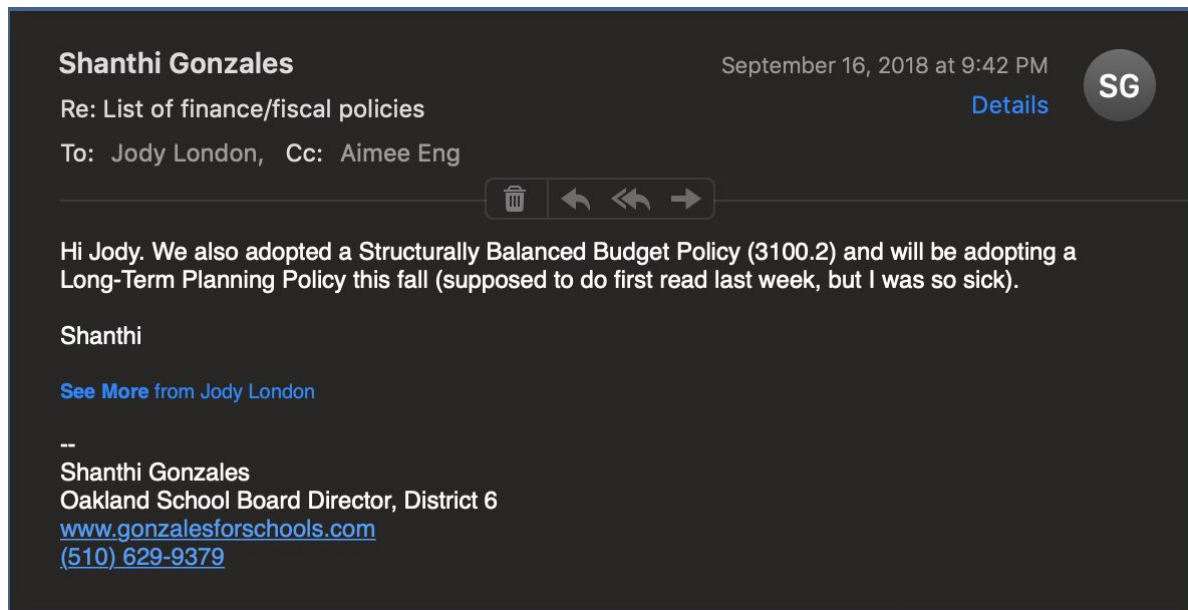
Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More.](#)

<[mime-attachment.ics](#)>
<[invite.ics](#)>

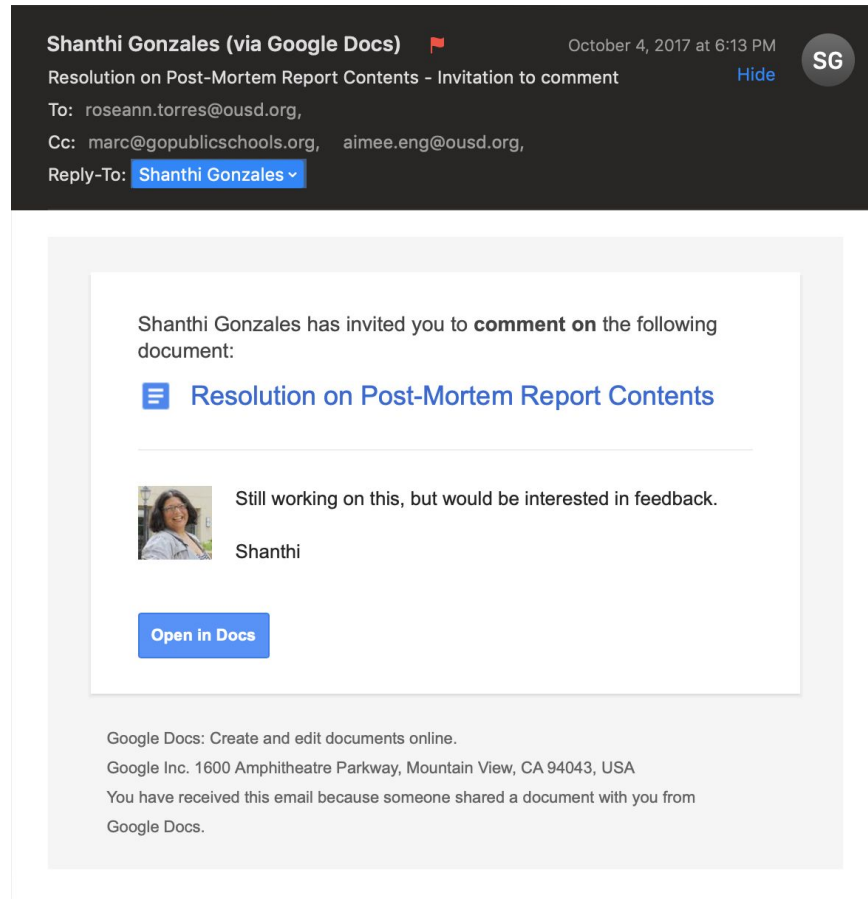
Director Gonzales using shanthigonzales@gmail.com to submit BOE agendas to Mr. Rakestraw and the other Directors.



Director Gonzales using shanthigonzales@gmail.com to communicate with Directors London and Senn about BOE policies.



Director Gonzales using shanthigonzales@gmail.com to share and edit Google Docs with Directors Eng and Torres relating to BOE business.



Section III

California's Supreme Court in *City of San Jose v. Superior Court of Santa Clara County* (2017) held that when public employees use personal accounts to communicate about the conduct of public business the writings may be subject to disclosure under the CPRA.

In a previous CPRA request, I asked the District for any internal policies relating to records stored on BOE personal email accounts, but there were no responsive records. OUSD will undoubtedly develop their own internal policies for conducting searches of records stored on personal accounts and devices of its employees. *City of San Jose* recommends an affidavit procedure to strike an appropriate balance between privacy and transparency, allowing OUSD to "fulfill its responsibility to search for and disclose public records without unnecessarily treading on the constitutional rights of its employees."

1. As to requests seeking public records held in employees' nongovernmental accounts, an agency's first step should be to communicate the request to the employees in question. The agency may then reasonably rely on these employees to search their own personal files, accounts, and devices for responsive material. (*City of San Jose*, at p. 19)

2. Individual employees may conduct their own searches and segregate public records from personal records, so long as the employees have been properly trained in how to distinguish between the two. (*Ethyl Corp. v. U.S. Environmental Protection Agency*, 25 F.3d 1241, 1247.)
3. Public employees who withhold documents identified as potentially responsive may submit an affidavit providing the agency, and a reviewing court, “with a sufficient factual basis upon which to determine whether contested items are ‘agency records’ or personal materials.” (*Grand Cent. Partnership, Inc. v. Cuomo*, 166 F.3d 473, 481.)
4. Public employees who withhold personal records from their employer “must submit an affidavit with facts sufficient to show the information is not a ‘public record’” under the PRA. So long as the affidavits give the requester sufficient factual basis to determine that withheld material is indeed nonresponsive, the agency has performed an adequate search under the PRA.” (*Nissen*, 357 P.3d 45, 57.)

If you do have an internal policy I request that you please let me know what it is. I also ask that you please let me know how the request is framed to the directors so I know how to understand the results. Thank you very much for your help in this matter. Please let me know if I can clarify my request in any way or answer any questions.