

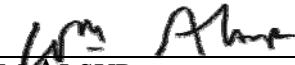
1 reasonable expenses, including attorney’s fees, caused by the failure; (B) may inform the jury of
2 the party’s failure; and (C) may impose other appropriate sanctions.”

3 Here, the City does not dispute that it failed to disclose or produce the files but
4 nevertheless opposes the motion. *First*, the City claims its failure was inadvertent (Dkt. No.
5 131 at 4–5). But inadvertence does not give the City a free pass to use evidence not properly
6 disclosed or produced to the opposing side. *Second*, the City contends the USPS should have
7 deduced the existence of the files and inquired about them because the USPS knew about the
8 underlying Planning Commission meetings (*id.* at 5–7). This is a non sequitur. There is no
9 reason to believe the USPS knew of the existence of the specific files at issue. The City, not the
10 USPS, bore the responsibility for disclosing and producing those files. *Third*, the City seems to
11 complain that the USPS did not describe the progress of document production with sufficient
12 detail at a prior hearing (Dkt. No. 131 at 7–8). This complaint has no discernible relevance to
13 the issue at hand. *Fourth*, the City contends the USPS cannot be prejudiced because, according
14 to the City, the evidence in question “is irrelevant to the Service’s claims” (*id.* at 8–9). Yet the
15 City nevertheless attempts to use that evidence at least to some extent in its opposition brief. To
16 that extent, the prejudice to the USPS remains. *Fifth*, the City baldly asserts that any prejudice
17 could be cured by a short continuance to allow the USPS to file an amended reply brief (*id.* at
18 9–10). As the USPS points out, however, it still did not have the benefit of the evidence in
19 question during discovery or in the preparation of its motion for summary judgment. The City’s
20 proposed remedy provides no answer for this prejudice.

21 Under these circumstances, this order finds that the City’s failure to disclose and
22 produce the evidence in question was not substantially justified or harmless, and accordingly
23 **GRANTS** the USPS’s motion to strike. The Amoroso declaration and its exhibits are **STRICKEN**
24 from the City’s opposition brief. The City will not be permitted to rely on this evidence at trial.

25
26 **IT IS SO ORDERED.**

27
28 Dated: January 23, 2018.


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE