



County of San Bernardino
Office of the District Attorney
JASON ANDERSON, District Attorney

July 31, 2019

Shilpi Agarwal
ACLU of Northern California
39 Drumm St.
San Francisco, CA 94111

sagarwal@aclunc.org

Re: Your California Public Records Act (CPRA) request dated July 29, 2019.
Batson-Wheeler training materials.

Ms. Agarwal:

You seek disclosure of:

[f]rom 1990 onwards:

1. Any training materials related to jury selection
2. Any training materials related to the constitutional requirements under *Batson v. Kentucky* and *People v. Wheeler*, including training materials related to handling *Batson- Wheeler* claims or motions.

Batson v. Kentucky (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258. This request construes "materials" to mean any records, publications, memoranda, writings, electronic data, mail, media files, nonstandard documents, or other forms of communication.

Our Response

Unfortunately, we will not be able to disclose the requested records.

First, these records are not disclosable as public records because they are privileged as attorney work product. (Cal. Code Civ. Pro. § 2018.030 (a) and (b), made operative by Gov. Code § 6254(k).) Although such records may be of general application within this Office, we are a litigation firm and these materials are prepared, maintained, and constantly updated by attorneys for attorneys in preparation for ongoing and future litigation. Moreover, even generalized statements of law expressed within these records are inextricably integrated with discussions of specific trial tactics

and strategies. These factors make these records nondisclosable as absolutely privileged attorney work product. (Cal. Code of Civ. Pro. § 2018.030, subd. (a).)

Second, we invoke the pending litigation exemption for the same reasons. (Gov. Code § 6254, subd. (b).)

Third, because of the breadth of your request, we must also invoke the deliberative process privilege, another facet of CPRA's catchall exemption. (Gov. Code § 6255; *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 170-172.)

Fourth, because the request seeks nearly thirty years' worth of materials, and because this Office presumably has created and acquired many records over the years possibly relating to your requested subject matter and has maintained these records if at all in various formats and in sundry locations, uncatalogued, we must invoke the "overly burdensome" facet of CPRA's "catchall" exemption. (Gov. Code § 6255.) For example, "[a] clearly framed request which requires an agency to search an enormous volume of data for a 'needle in the haystack' or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome." (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.)

Finally, here, we cannot duplicate for you copyrighted materials which this Office consults but did not write, ourselves. (Gov. Code § 6254(k).)

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Vos", written over a horizontal line.

Mark Vos

Deputy District Attorney
Appellate Services Unit