



**County of San Bernardino
OFFICE OF THE DISTRICT ATTORNEY
JASON ANDERSON, District Attorney**

Appellate Services Unit

August 2, 2021

Ellen Leonida, Esq.
BraunHagey & Borden, LLP
351 California St., 10th Floor
San Francisco, CA 94104

Dear Ms. Leonida:

We are in receipt of *two* separately-mailed California Public Records Act request letters from you dated July 23, 2021. The letters appear identical save for their second paragraphs, addressing the ACLU's 2019 requests to us, which differ in several respects. The shorter version omits all specific discussion of the two responding letters we sent to the first 2019 request, and makes no reference to an "appeal" or a further response from this Office, and is largely accurate. The longer correctly gives the dates of our responses (though does not accurately describe their content) and speaks of an "appeal," with such a response. But we have now satisfied ourselves that there was no "appeal" received by this Office, nor any followup response generated by us.

Accordingly, we suspect the shorter version of the letter is the one you actually intended us to receive, but we must ask you to confirm that before we embark on a response, as the inaccuracies of the second letter would require further (and likely needless) effort to rebut.

To speed that process, kindly attach and forward the intended version of the letter to us by e-mail (eferguson@sbcda.org), and we will respond as promptly as possible. In that we responded to the earlier requests in substantial detail, and little if anything has changed, we would expect to largely reiterate that response to the "renewed" request(s). (We should also note that the claim we did not respond to the second 2019 request is inaccurate, as in fact we did so almost immediately.)

Your new request, of course, will be considered on its own merits. It appears likely that we will decline the request as to sections 1 and 2 on the basis of attorney work-product and the deliberative process privilege, and perhaps also due to its overbreadth, but we have not yet made a final determination. We also can't yet state our formal position on section 3, as it will take some time to determine how many potentially responsive documents exist, and whether such materials are individually privileged.

Before responding, however, we need a clarification regarding the materials sought in section 4. First, it contains no date range whatsoever. And second, the request for "all investigations" leaves unclear the nature of the investigations and the related data you seek. Are you requesting records we may have *internally* kept of *Batson-Wheeler* litigation over whatever the intended time frame may be, if any such records exist, and for any referrals to the State Bar that originated with this office? Or are you seeking any records of *external* investigations, such as by the Bar, or somehow originating with the courts themselves? Naturally, a demand for our own internal documents (which you do explicitly seek at item "c") must be weighed by different standards than a request for third-party documents that may have passed through our hands.

Please do clarify the nature of what you are seeking. If any other narrowing is feasible for you, that also could help us be more precise in our response. In the meantime, we will attempt to determine which sections of the request as worded, if any, will be unopposed, and whether any responsive documents are actually possessed. As the Racial Justice Act is very new, of course, there has been only a short window for discussion and contemplation of it.

Kindly do respond, at your convenience, to the e-mail address given above (eferguson@sbcda.org). Once it's resolved which letter was meant for us and we have received your clarification, we will strive to get you a prompt response.

Yours sincerely,

JASON ANDERSON

District Attorney



ERIC M. FERGUSON

Deputy District Attorney

Appellate Services Unit