



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

Via Email Transmission: praresponse@braunhagey.com

August 19, 2021

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

I am the designated representative of the Orange County District Attorney's Office ("OCDA") assigned to handle your California Public Records Act (Gov. Code § 6250 et seq.) request (the "Request") that is dated July 23, 2021, received by our office on July 26, 2021, and that I previously replied to on August 5, 2021. In compliance with Government Code § 6253, This letter constitutes our formal response, which is made within that statutorily required time, to your public record demand. We will produce what records we have as of the date of this response. We continue to search for additional responsive records, and will make responsive non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

In the Request, you also reference a May 13, 2019 and a July 29, 2019 Public Records Act request to this office. and request additional records for the time-period 2015 to Present. Please find below your requests and our responses to those requests:

Request No. 1: We are interpreting this request to be for the following data for the years 2019-2021 as stated in Request number 1 from the May 13, 2019 Public Records Act request to this office:

"Records of prosecution data within your possession for calendar year 2017 and 2018, including but not limited to,

a. Unique identifiers for each person, charges, and outcomes for all minors (any persons under

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

☒ MAIN OFFICE
300 N. FLOWER ST.
SANTA ANA, CA 92703
PO. BOX 808 (92702)
(714) 834-3600

☐ NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92832
(714) 773-4480

☐ WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7261

☐ HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92660
(949) 476-4650

☐ JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

☐ CENTRAL OFFICE
300 N. FLOWER ST.
SANTA ANA, CA 92703
PO. BOX 808 (92702)
(714) 834-3952

the age of 18) prosecuted directly in adult court in Orange County (adult court is defined as a court of criminal jurisdiction) (otherwise known as “pipeline” or “direct file” cases) under Welfare and Institutions Code section 707.

- i. Unique identifiers for each person, charges, and outcomes for all minors prosecuted in adult court in Orange County after any one of the following:
 1. a judicial certification to adult court following a juvenile transfer hearing under the newly amended Welfare and Institutions Code section 707 subsection (a);
 2. a juvenile defendant’s waiver of transfer hearing or stipulation to adult court following the District Attorney’s motion to transfer to adult court.
- b. Unique case identifiers, charges, and outcomes for all minors prosecuted in juvenile court in County, including, but not limited to demographic data, charges filed, and case outcomes during the calendar year of 2017 and 2018.
- c. Unique case identifiers, charges, and outcomes (including diversion) of ***all*** misdemeanor charges for minors and adults in Orange County.
- d. Unique case identifiers, charges, enhancements and outcomes (including diversion) of ***all*** felony charges for minors and adults in Orange County.” [*Emphasis added*]

Response: In this request, you have requested more than 2 years of records of prosecution data of *all misdemeanor and felony charges* from this agency under the California Public Records Act.

Your request calls for a compilation of information not existing within the Orange County District Attorney’s Office. The Public Records Act applies to existing records and does not require a public agency to create a record that does not exist. (Gov. Code § 6252 (e) and (f); *Sander v. State Bar of California* (2013) 58 Cal. 4th 300.)

Your request is overbroad and unduly burdensome. “[A] request which compels the production of a huge volume of material may be objectionable as unduly burdensome.” (*California First Amendment Coal. v. Superior Court* (1998) 67 Cal.App.4th 159) Additionally, any compilation of the requested data is unreasonable in light of the volume of the requested data, programming needed to extract it and the public interest served by disclosure of such records. The term “public interest” encompasses “public concern and the cost and efficiency of government.” (*North County Parents Org. v. Dep’t of Education* (1994) 23 Cal.App.4th 144, 152; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 600-601; *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353.) The Public Records Act is to be interpreted through the lens of reasonableness noting the “press of business of public agencies, particularly in these difficult fiscal times.” (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 229.)

Finally, please note that you have requested records of data of minors charged in juvenile court. Records of this data is exempt from disclosure pursuant to Government Code section 6254, subsection (k); specifically Welfare & Institutions Code section 827 and cannot be disclosed without a court order.

Request No. 2: We are interpreting this request to be for the following records for the years 2019-2021 as stated in Request number 2 for the May 13, 2019 Public Records Act request to this office:

“All documents and records related to all diversion programs offered or used by the DA’s office, how many people utilized those programs, demographics of those people, the charges they were

facing, outcomes of those cases, requirements for completing diversion, and any charges or costs associated with those diversion programs for calendar years 2017 and 2018.”

Response: We have identified records responsive to your request for “documents and records related to all diversion programs offered or used by the DA’s office” that will be disclosed with this response.

Your request for “how many people utilized those programs, demographics of those people, the charges they were facing, outcomes of those cases, requirements for completing diversion, and any charges or costs associated with those diversion programs” calls for a compilation of information not existing within the Orange County District Attorney’s Office. The Public Records Act applies to existing records and does not require a public agency to create a record that does not exist. (Gov. Code § 6252 (e) and (f); *Sander v. State Bar of California* (2013) 58 Cal. 4th 300.)

Request No. 3: We are interpreting this request to be for the following records for the years 2019-2021 as stated in Request number 3 for the May 13, 2019 Public Records Act request to this office:

“All records relating to how many parole hearings the office attended, how many hearings your office opposed, and how many parole hearings when the next of kin took no position in the calendar years of 2017 and 2018.”

Response: A representative from our office attended the following number of parole hearings for the years listed.

2019: 227 hearings

2020: 265 hearings

2021: 162 hearings (as of July 27, 2021)

Your request for “how many hearings your office opposed, and how many parole hearings when the next of kin took no position” calls for a compilation of information not existing within the Orange County District Attorney’s Office. The Public Records Act applies to existing records and does not require a public agency to create a record that does not exist. (Gov. Code § 6252 (e) and (f); *Sander v. State Bar of California* (2013) 58 Cal. 4th 300.)

Request No. 4: We are interpreting this request to be for the following data for the years 2019-2021 as stated in Request number 4 for the May 13, 2019 Public Records Act request to this office:

“Copies of all office policies, including but not limited to policies regarding the death penalty and when its sought, charging and plea deal offer policies, pardons and commutations, etc. Request #3 is not limited to calendar year 2017 and 2018.

Response: Internal office policies are exempt from disclosure under the attorney work product privilege and the deliberative process privilege. “Any writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.” (Code Civ. Proc. § 2018.030 (a) and Gov. Code § 6254 (k).) The core work product privilege is not limited to writings made in preparation for litigation, but also to protected writings not made in preparation for trial. (*Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810.) The deliberative process exemption protects from disclosure records reflecting the thought processes or “deliberative thought” of elected officials and employees of a government agency, whose responsibility it is to decide how prosecutors should proceed given various circumstances. (Gov. Code § 6255, subd. (a); *California First Amendment Coalition v. Superior Court* (1998) 67

Cal.App.4th 159, 170.) Disclosing such materials would expose the District Attorney's decision making process in such a way as to discourage candid discussion within the office and thereby undermine the District Attorney's ability to ensure the fair administration of justice. The public interest in nondisclosure, that is, the interest in ensuring that those who are involved in formulating such policies and directions have the freedom to engage in open dialogue, debate and deliberation with other attorneys in order to create effective and efficient policies and procedures, clearly outweighs the interest of the public in disclosing those thought processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.)

Request No. 5: We are interpreting this request to be for the following records for the years 2019-2021 as stated in Request number 5 for the May 13, 2019 Public Records Act request to this office:

"Copies of all office policies that relate to immigration including but not limited to:

- a. Records that refer to office efforts to implement its obligations under Penal Code 1016.3(b).
- b. Records that refer to office efforts to implement its obligations under Penal Code 1473.7.
- c. Records, memoranda, and emails that relate to the creation and development of an immigration policy for the office.
- d. Request #5 is not limited to calendar year 2017 and 2018.

Response: Internal office policies are exempt from disclosure under the attorney work product privilege and the deliberative process privilege. "Any writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances." (Code Civ. Proc. § 2018.030 (a) and Gov. Code § 6254 (k).) The core work product privilege is not limited to writings made in preparation for litigation, but also to protected writings not made in preparation for trial. (*Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810.) The deliberative process exemption protects from disclosure records reflecting the thought processes or "deliberative thought" of elected officials and employees of a government agency, whose responsibility it is to decide how prosecutors should proceed given various circumstances. (Gov. Code § 6255, subd. (a); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 170.) Disclosing such materials would expose the District Attorney's decision making process in such a way as to discourage candid discussion within the office and thereby undermine the District Attorney's ability to ensure the fair administration of justice. The public interest in nondisclosure, that is, the interest in ensuring that those who are involved in formulating such policies and directions have the freedom to engage in open dialogue, debate and deliberation with other attorneys in order to create effective and efficient policies and procedures, clearly outweighs the interest of the public in disclosing those thought processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.)

Request No. 6: We are interpreting this request to be for the following records for the years 2019-2021 as stated in Request number 6 for the May 13, 2019 Public Records Act request to this office:

"All records concerning implementation of SB 1421, including copies of any new policies, training manuals or procedures regarding SB 1421, including any policies, procedures or training manuals for making SB 1421 requests, maintaining SB 1421 records, disclosures of SB 1421 requests to criminal defendants, revisions of any *Brady* policies in light of SB 1421, and all policies and procedures for reviewing all criminal convictions, arrests and charging decisions, in view of SB

1421. Request #4 is not limited to calendar year 2017 and 2018.”

Response: Internal office policies are exempt from disclosure under the attorney work product privilege and the deliberative process privilege. “Any writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.” (Code Civ. Proc. § 2018.030 (a) and Gov. Code § 6254 (k).) The core work product privilege is not limited to writings made in preparation for litigation, but also to protected writings not made in preparation for trial. (*Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810.) The deliberative process exemption protects from disclosure records reflecting the thought processes or “deliberative thought” of elected officials and employees of a government agency, whose responsibility it is to decide how prosecutors should proceed given various circumstances. (Gov. Code § 6255, subd. (a); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 170.) Disclosing such materials would expose the District Attorney’s decision making process in such a way as to discourage candid discussion within the office and thereby undermine the District Attorney’s ability to ensure the fair administration of justice. The public interest in nondisclosure, that is, the interest in ensuring that those who are involved in formulating such policies and directions have the freedom to engage in open dialogue, debate and deliberation with other attorneys in order to create effective and efficient policies and procedures, clearly outweighs the interest of the public in disclosing those thought processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.)

Request No. 7: We are interpreting this request to be for the following records for the years 2019-2021 as stated in Request number 1 for the July 29, 2019 Public Records Act request to this office:

I seek copies of the following materials in the agency’s possession, regardless of who wrote them, from 1990 onwards: 1. Any training materials related to jury selection

Response: We previously responded to this request on August 29, 2019 and disclosed responsive records. We continue to search for additional responsive records, and will make responsive, non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Request No. 8: We are interpreting this request to be for the following records for the years 2019-2021 as stated in Request number 2 for the July 29, 2019 Public Records Act request to this office:

I seek copies of the following materials in the agency’s possession, regardless of who wrote them, from 1990 onwards: 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.

Response: We previously responded to this request on August 29, 2019 and disclosed responsive records. We continue to search for additional responsive records, and will make responsive, non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Request No. 9a: “Any and all written policies, memoranda, or guidance documents regarding:
a. Diversion eligibility and/or programming;”

Response: Please see our response to Request No. 2.

Request No. 9b: “Any and all written policies, memoranda, or guidance documents regarding:
b. Custody and/or bail recommendations;”

Response: We have identified records responsive to this request. Please see the attached “2020 Uniform Bail Schedule (Felony and Misdemeanor).”

Request No. 9c: “Any and all written policies, memoranda, or guidance documents regarding:
Charging recommendations and/or decisions, including, but not limited to:

- i. Charging recommendations and/or decisions regarding enhancements;
- ii. Charging recommendations and/or decisions regarding special circumstances; or
- iii. Charging recommendations and/or decisions regarding wobblers;”

Response: Please see our response to Request No. 4.

Request No. 9d: “Any and all written policies, memoranda, or guidance documents regarding:
d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);”

Response: We previously responded to this request on July 19, 2016, and disclosed responsive records. We have identified records responsive to this request. Please see the attached “OCDA Discovery and Brady Obligations.” For publicly available records responsive to this request, please see this office’s website at: <http://orangecountyda.org> for the following records:

- “OCDA Bureau Policy Manual” at <http://orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23790>
- “OCDA Informant Policy Manual” at <http://www.orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23866>

Request No. 9e: “Any and all written policies, memoranda, or guidance documents regarding:
e. Jury selection;”

Response: Please see our response to Request No. 7.

Request No. 9f: “Any and all written policies, memoranda, or guidance documents regarding:
f. Sentencing recommendations;”

Response: Please see our response to Request No. 4.

Request No. 9g: “Any and all written policies, memoranda, or guidance documents regarding:
g. Prosecution of minors;”

Response: Internal office policies are exempt from disclosure under the attorney work product privilege and the deliberative process privilege. “Any writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.” (Code Civ. Proc. § 2018.030 (a) and Gov. Code § 6254 (k).) The core work product privilege is not limited to writings made in preparation for litigation, but also to protected writings not made in preparation for trial. (*Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810.) The deliberative process exemption protects from disclosure records reflecting the thought processes or “deliberative thought” of elected officials and employees of a government agency, whose responsibility it is to decide how prosecutors should proceed given various circumstances. (Gov. Code § 6255, subd. (a); *California First Amendment Coalition v. Superior Court* (1998) 67

Cal.App.4th 159, 170.) Disclosing such materials would expose the District Attorney's decision making process in such a way as to discourage candid discussion within the office and thereby undermine the District Attorney's ability to ensure the fair administration of justice. The public interest in nondisclosure, that is, the interest in ensuring that those who are involved in formulating such policies and directions have the freedom to engage in open dialogue, debate and deliberation with other attorneys in order to create effective and efficient policies and procedures, clearly outweighs the interest of the public in disclosing those thought processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.)

Request No. 9h: "Any and all written policies, memoranda, or guidance documents regarding: h. Parole recommendations;"

Response: We do not have a record responsive to your request. Parole recommendations are reviewed, evaluated, and made on a case-by-case basis.

Request No. 9i: "Any and all written policies, memoranda, or guidance documents regarding: i. Pardon and commutation recommendations;"

Response: Please see our response to Request No. 4.

Request No. 9j: "Any and all written policies, memoranda, or guidance documents regarding: j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;"

Response: We have identified records responsive to this request. Please see the attached "OCDA POLICY FOR REPORTING STATE BAR CONTACTS, FINDINGS OF PROSECUTORIAL MISCONDUCT AND REQUESTS FOR REPRESENTATION."

Request No. 9k: "Any and all written policies, memoranda, or guidance documents regarding: k. Data collection relating to criminal matters, including demographic data of defendants and victims; or"

Response: We do not have a record responsive to your request.

Request No. 9l: "Any and all written policies, memoranda, or guidance documents regarding: l. Referral of cases for federal prosecution."

Response: We do not have a record responsive to your request. Referral of cases for federal prosecution are reviewed and evaluated on a case-by-case basis.

Request No. 10a: "Any and all policies regarding training as well as any training materials, recorded trainings, or related materials: a. Which are mandatory for prosecutors;"

Response: We have identified records responsive to this request, but the records will not be disclosed because we object to the Request pursuant to Government Code section 6255 as being unduly burdensome and overbroad. "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 Coal v. Superior Court* (1998) 67 Cal.App.4th 159.) The OCDA has training materials for over 3,000 trainings from 2015 to the present. Much of the information contained within the training materials constitute attorney work product and are also exempt from

disclosure pursuant to the deliberative process privilege. The training materials also include records created by attorneys from other counties and government agencies and are subject to the Federal/State Law Copyright Exemption (Government Code section 6254, subdivision (k); Civil Code section 980.) Therefore, the training materials would also have to be reviewed and redacted to exclude information that is exempt from disclosure. The time, expense and resources including attorneys and staff dedicated to such an undertaking would be staggering. The public interest served by nondisclosure of the records clearly outweighs the public interest served by disclosure of the records. The term “public interest” encompasses “public concern and the cost and efficiency of government.” (*North County Parents Org. v. Dep’t of Education* (1994) 23 Cal.App.4th 144, 152.) The financial aspect of a requested disclosure is a factor to be considered in determining whether a request is reasonable. (See *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 600-601; *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353.) The Fourth District Court of Appeal has recognized the Rule of Reasonableness: the PRA should be interpreted through the lens of reasonableness noting the “press of business of public agencies, particularly in these difficult fiscal times.” (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 229.)

Request No. 10b: “Any and all policies regarding training as well as any training materials, recorded trainings, or related materials: b. Which are optional for prosecutors;”

Response: We have identified records responsive to this request, but the records will not be disclosed because we object to the Request pursuant to Government Code section 6255 as being unduly burdensome and overbroad. “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 Coal v. Superior Court* (1998) 67 Cal.App.4th 159.) The OCDA has training materials for over 3,000 trainings from 2015 to the present. Much of the information contained within the training materials constitute attorney work product and are also exempt from disclosure pursuant to the deliberative process privilege. The training materials also include records created by attorneys from other counties and government agencies and are subject to the Federal/State Law Copyright Exemption (Government Code section 6254, subdivision (k); Civil Code section 980.) Therefore, the training materials would also have to be reviewed and redacted to exclude information that is exempt from disclosure. The time, expense and resources including attorneys and staff dedicated to such an undertaking would be staggering. The public interest served by nondisclosure of the records clearly outweighs the public interest served by disclosure of the records. The term “public interest” encompasses “public concern and the cost and efficiency of government.” (*North County Parents Org. v. Dep’t of Education* (1994) 23 Cal.App.4th 144, 152.) The financial aspect of a requested disclosure is a factor to be considered in determining whether a request is reasonable. (See *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 600-601; *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353.) The Fourth District Court of Appeal has recognized the Rule of Reasonableness: the PRA should be interpreted through the lens of reasonableness noting the “press of business of public agencies, particularly in these difficult fiscal times.” (*Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 229.)

Request No. 10c: “Any and all policies regarding training as well as any training materials, recorded trainings, or related materials: c. Which relate to jury selection;”

Response: Please see our response to Request No. 7.

Request No. 10d: “Any and all policies regarding training as well as any training materials, recorded trainings, or related materials: d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or”

Response: We continue to search for responsive records, and will make responsive, non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Request No. 10e: “Any and all policies regarding training as well as any training materials, recorded trainings, or related materials: e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).”

Response: We continue to search for responsive records, and will make responsive, non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Request No. 11a: “Records concerning the Racial Justice Act: a. Implementation of and compliance with the RJA;”

Response: For publicly available records responsive to this request, please see this office’s website at: <http://orangecountyda.org> for the following records:

- “Role of a Prosecutor and the Guiding Principles for the Orange County District Attorney’s Office” at <http://orangecountyda.org/civica/press/display.asp?layout=15&Entry=6110>

Request No. 11b: “Records concerning the Racial Justice Act: b. Communications concerning the RJA; or;”

Response: We have identified records responsive to this request that will be produced with this response. The records have been redacted to exclude attorney work product and information protected by the “deliberative process” privilege.

We have identified additional records responsive to this request that will not be produced because they contain core work product and are protected by the “deliberative process” privilege. (Gov. Code § 6254, subdivision (k); Code Civ. Proc. § 2018.030(a); Gov. Code § 6255, subdivision (a). “Any writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.” (Code Civ. Proc. § 2018.030 (a) and Gov. Code § 6254 (k).) The core work product privilege is not limited to writings made in preparation for litigation, but also to protected writings not made in preparation for trial. (*Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810.) The deliberative process exemption protects, from disclosure, records reflecting the thought processes or “deliberative thought” of those, in our case elected members and employees of a government agency, whose responsibility it is to decide how prosecutors should proceed given various circumstances. (See *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 170.) Disclosing such materials would expose the OCDA’s decision making process in such a way as to discourage candid discussion within the office and thereby undermine our office’s ability to ensure the fair administration of justice. The public interest in nondisclosure, the interest in ensuring that those who are involved in formulating such policies and directions have the freedom from criticism to engage in open dialogue, debate and deliberation with other attorneys in order to create effective and efficient policies and procedures clearly outweighs the interest of the public in disclosing those thought processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Rogers v. Superior Court*

(1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.)

We continue to search for additional responsive records, and will make responsive, non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Request No. 11c: “Records concerning the Racial Justice Act: c. Trainings related to the RJA.”

Response: We have identified records responsive to this request that will be produced with this response.

We have identified additional records responsive to this request that will not be produced because they contain core work product and are protected by the “deliberative process” privilege. (Gov. Code § 6254, subdivision (k); Code Civ. Proc. § 2018.030(a); Gov. Code § 6255, subdivision (a). “Any writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.” (Code Civ. Proc. § 2018.030 (a) and Gov. Code § 6254 (k).) The core work product privilege is not limited to writings made in preparation for litigation, but also to protected writings not made in preparation for trial. (*Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810.) The deliberative process exemption protects, from disclosure, records reflecting the thought processes or “deliberative thought” of those, in our case elected members and employees of a government agency, whose responsibility it is to decide how prosecutors should proceed given various circumstances. (See *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 170.) Disclosing such materials would expose the OCDA’s decision making process in such a way as to discourage candid discussion within the office and thereby undermine our office’s ability to ensure the fair administration of justice. The public interest in nondisclosure, the interest in ensuring that those who are involved in formulating such policies and directions have the freedom from criticism to engage in open dialogue, debate and deliberation with other attorneys in order to create effective and efficient policies and procedures clearly outweighs the interest of the public in disclosing those thought processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.)

We continue to search for additional responsive records, and will make responsive, non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Request No. 12a: “All investigations into *Batson-Wheeler* motions, including, but not limited to: a. Motions filed;”

Response: We have identified records responsive to your request. Please see the following:

- *People v. Gonzalez* (Jan. 15, 2019, No. G055157) ___ Cal.App.5th ___ [2019 Cal. App. Unpub. LEXIS 376.]
- *People v. Munoz* (July 30, 2019, No. G056052) ___ Cal.App.5th ___ [2019 Cal. App. Unpub. LEXIS 5069.]
- *People v. Penaloza* (Sep. 6, 2019, No. G055244) ___ Cal.App.5th ___ [2019 Cal. App. Unpub. LEXIS 5964].

Request No. 12b: “All investigations into *Batson-Wheeler* motions, including, but not limited to: b. Motions granted;”

Response: We do not have any records responsive to your request.

Request No. 12c: “All investigations into *Batson-Wheeler* motions, including, but not limited to:
c. Internal training and/or discipline; or”

Response: We do not have any records responsive to your request. In regards to *Batson-Wheeler* training, please see our response to Request No. 8.

Request No. 12d: “All investigations into *Batson-Wheeler* motions, including, but not limited to:
d. Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.”

Response: We do not have any records responsive to your request.

In conclusion, the OCDA claims for its records, such as might exist, all applicable exemptions from the California Public Records Act disclosure. In maintaining the lawful confidentiality of these records, the OCDA claims, enforces, and applies all applicable exemptions, privileges, and proscriptions against public disclosure or records, including but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence and Penal Codes, and the Federal Rules of Evidence.

While we have set forth our reasons for our denials, we reserve the right to present additional theories, and authority for non-disclosure in the future.

Sincerely,

Johanna Kim

Johanna Kim
Deputy District Attorney
Special Prosecutions Unit