



OCTOBER

COUNTY OF FRESNO

NATIONAL DOMESTIC VIOLENCE
AWARENESS MONTH

LISA A. SMITTCAMP
DISTRICT ATTORNEY

October 15, 2021

VIA E-MAIL

Ellen Leonida, Esq.
Braunhagey & Borden, LLP
351 California Street, 10th Floor
San Francisco, CA 94101
E-Mail Address: leonida@braunhagey.com

RE: *Public Records Act Request, received July 23, 2021*

Dear Ms. Leonida:

This letter follows up on the County of Fresno (County) District Attorney's Office (Department) letters, dated August 13, 2021, August 2, 2021, and September 16, 2021, and October 15, 2021 in response to your Public Records Act request, dated July 23, 2021, and received by the Department that same date (the July 23, 2021 Letter Request).

After sending out the letter today, I realized the letter contained a mistake with respect to category 1. The County will not produce records that are exempt from disclosure by federal or state law. (Gov Code, § 6254, subd. (k).) To the extent your request seeks records that have been created by the County's District Attorney's Office that have been prepared by our attorneys for legal guidance on issues facing prosecutors and/or to prepare prosecutors for trial, these are protected from disclosure by the attorney work product doctrine. (Ibid.; Code Civ.Proc., § 2018.030, subd. (c) ["A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances."].) Such records reflect an attorney's impressions, conclusions, opinions, or legal research or theories and are considered core work product and as such they are protected and privileged writings whether created by County's District Attorney's Office in anticipation of litigation or for legal advice when no litigation is threatened. (See *League of California Cities v. Superior Court* (2015) 41 Cal.App.4th 976; 71 Ops.Cal.Atty.Gen. 5, 7.)

Many of these records are exempt from disclosure under Section 6254(k) also pursuant to the deliberative process privilege, and also on the grounds that the public interest served by not disclosing these records outweighs the public interest served by disclosing them. (Code of Civil Procedure §2018.02, Government Code §6255; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136).

The deliberative process privilege protects materials reflecting deliberative or decision-making processes (*Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136). Disclosure of these emails would expose the decision-making process of the District Attorney's Office in such a way as to discourage candid discussion in District Attorney staff, and thereby undermine the ability of the District Attorney's Office to perform its function of ensuring the fair administration of justice by effectively selecting juries (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325).

Specifically, as to subcategories (h) and (i), all records which involve parole, reprieve, pardon, or commutation are exempt under Government Code 6254(f). It is this Department's position that our assessment and response to parole and clemency requests are part-and-parcel of our investigative file compiled for law enforcement purposes in the underlying case, and thus every record associated with our investigation and determination of the Department's position on a request for parole, reprieve, pardon, or commutation shall, in the absence of contrary law, be deemed under Government Code section 6254(f).

In addition, any correspondence the Department sends to the Governor or employees of the Governor's Office in response to a defendant's request for commutation of sentence or pardon, etc. should be separately exempt under the Public Records Act. (see Gov. Code, § 6254(e), *Calif. First Amend. Coalition v. Sup. Ct.* (1998) 67 Cal. App.4th 159, 166-167.). Therefore, these records are exempt from disclosure, and we deny your request as to this subcategory.

Lastly as to category 1, subcategory (l), of your request, launched in 2001, the Project Safe Neighborhoods (PSN) program is a nationwide initiative that brings together federal, state, local, and tribal law enforcement officials, prosecutors, community leaders, and other stakeholders to identify the most pressing violent crime problems in a community and develop comprehensive solutions to address them. A major goal of PSN is to incorporate research and data analysis, and lessons learned from other violent crime reduction initiatives, to inform its decision-making on the most effective violence reduction strategies. This includes whether state or federal prosecution is better on a case by case basis. This Department adheres by PSN and has no further records regarding this subcategory (l); please see the grant itself for further information.

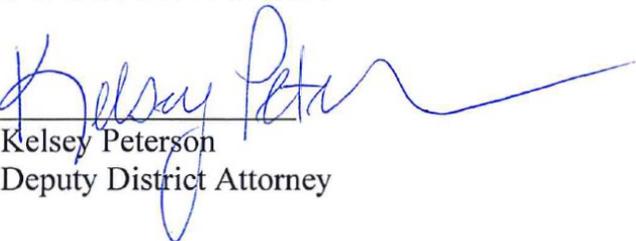
It appears that the purpose of the request is to indirectly discover the tools and the legal strategy that the District Attorney's office uses to prosecute crime. Accordingly, the public interest served in not disclosing these records outweighs the public interest served by disclosing them, because of the potential detrimental effects of disclosure on the District Attorney's Office's ability to candidly and effectively train its members, and perform its function of ensuring the fair administration of justice (Gov Code § 6255).

However, it is the goal of this Office to provide public record responses, to the extent that materials are not privileged or exempt from the Act. Therefore, attached are all records responsive to your request in Category 1.

I apologize for the oversight in regard to this category. If you have any questions regarding the foregoing, please contact me.

Sincerely,

LISA A. SMITTCAMP
DISTRICT ATTORNEY

By 
Kelsey Peterson
Deputy District Attorney