

Ellen Leonida, Esq.

Partner

leonida@braunhagey.com

November 10, 2021

VIA EMAIL AND MAIL

Birgit Fladager
District Attorney
Office of the District Attorney of Stanislaus County
832 12th Street, Suite 300
Modesto, CA 95354
Email: birgit.fladager@standa.org
brenda.cramton@standa.org
mark.zahner@standa.org

Re: California Public Records Act Request

Dear Ms. Fladager:

I write in response to your September 27, 2021 letter regarding our CPRA Request. Thank you for your letter.

Regarding the requested records (or portions of records) you have identified and asserted clear grounds for withholding, we would like to know if you would consider waiving any, or all, of the asserted exemptions. Exemptions, as you know, are permissive, not mandatory, and it is our goal – and yours, we imagine – to avoid unnecessary litigation, which can be costly and time consuming. If you are open to this possibility, please let us know. We would be happy to discuss this matter over the phone if you believe we may be able to find a solution that satisfies everyone. We would also be willing to provide further legal support and explanation for why we do not believe that the exemptions you have asserted are legally sound in this instance.

However, if you do not believe further discussions would be helpful and intend to deny some of our requests, please advise us of this position and tell us whether your office has adopted a formal process for an administrative appeal. Should we determine that we are entitled to documents you have refused to produce – whether before an administrative appeal or after – we may litigate to obtain them. In that event, we will seek all attorney's fees and costs for the litigation.¹

In connection with certain requested records (or portions of records), you have asserted that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” As you know, the agency bears the burden of demonstrating,

¹ Gov't Code § 6259(d). We note that courts have awarded costs and fees if even a single document was improperly withheld. *See, e.g., Los Angeles Times v. Alameda Corridor Transp. Auth.*, 88 Cal. App. 4th 1381, 1391 (2001).

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104
Tel. & Fax: (415) 599-0210

New York

7 Times Square, 27th Floor
New York, NY 10036-6524
Tel. & Fax: (646) 829-9403

November 10, 2021

Page 2

“on the facts of the particular case,” the overriding public interest in withholding agency records.² We request the identification of the specific records or categories of records you are seeking to withhold, and a specific explanation as to why the public interest clearly favors withholding the requested records here.

To the extent you have not yet produced any records for which you do not claim an exemption, please let us know the status of these records and produce them promptly and on a rolling basis.

Thank you again for your responses to our earlier letters and, generally, for your assistance with our requests. We look forward to any further discussion and your production of records.

Very truly yours,



Ellen V. Leonida

² Gov't Code § 6255(a). *Michaelis, Montanari & Johnson v. Superior Ct.*, 38 Cal. 4th 1065, 1071 (2006) (“this provision contemplates a case-by-case balancing process, with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality”).