

December 13, 2021

**VIA EMAIL AND MAIL**

Anastasia M. Sullivan  
Office of the County Counsel of Yuba County  
915 8th Street, Suite 111  
Marysville, CA 95901  
Email: [asullivan@co.yuba.ca.us](mailto:asullivan@co.yuba.ca.us)

**Re: California Public Records Act Request**

Dear Ms. Sullivan:

I write in response to your September 17, 2021 response to our CPRA Request. Thank you for your response.

At the beginning of your response letter, you write:

*Please note that the County will not produce privileged records or documents that are otherwise exempt from disclosure pursuant to California Government Code section 6254(k), including, but not limited to, the deliberative process privilege; preliminary notes, drafts and memoranda exemption (Gov. Code §6254(a)); investigative records (Gov. Code §6254(f)); attorney-client privilege and/or attorney work product (Gov. Code §6254(k)); official information privilege (Evid. Code §1040; Gov. Code §6254(k)); permit applicant's personal financial data information (Gov. Code § 6254(n)); and the public interest exemption (Gov. Code §§ 6254(a); 6255). Further, as we gather the records for production, we may discover other applicable privileges or exemptions or both under Government Code sections 6254, 6255, 6256, or other applicable state or federal laws, and we reserve any and all rights to assert such privileges or exemptions at any time.*

You go on to assert the following for each category of information we request:

*To the extent this request seeks records containing identifying information that constitutes criminal history information that is protected under the Penal Code, the request is denied and the County will not provide such records.*

*The County may be able to extract some of this information through data extraction, compilation or programming. Under Gov. Code §6253.9(b), the requester is responsible for costs related to extraction, compilation or programming. Please let us know if you wish us to pursue this possibility. Your request for a fee waiver is respectfully declined.*

**San Francisco**

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*The County has not yet identified responsive records but if such data extraction, compilation, or programming is possible and requested, the County will disclose so long as such records are not exempt from disclosure. The County would also need additional time to apply appropriate redactions prior to disclosing this information.*

*To the extent the requested data is not otherwise maintained by the County and/or would require the County to create a new record in order to respond to this request, the request is denied and no records will be disclosed. (Sander v. Superior Court, 26 Cal. App. 5th 651, 669 (2018).)*

These responses lack sufficient justification and do not comply with the requirements set forth in the CPRA. To the extent you intend to deny access to a requested record, you must justify that denial by demonstrating either (1) that the “record in question” – that is, the particular record we have requested – falls under a specific legal exemption, which you must cite, or (2) that the public interest served by your denial for that particular record “clearly outweighs” the public interest that would be served by its disclosure.<sup>1</sup> You must also provide the names and titles or positions of each person responsible for the denial.<sup>2</sup>

The County’s response letter also contains conditional objections, asserting not that an exemption applies to a particular record we requested – as required by law – but rather that, as a general matter, you will not produce records that fall under particular exemptions *if* our request seeks such records. Because we are not able to effectively respond to these objections without the more specific information described above and required by law, we ask that you provide it now.

Regarding the data you assert is barred from disclosure under Penal Code §§ 13300-13305, Penal Code § 13302 explicitly states “nothing in this section shall prohibit a public prosecutor from accessing and obtaining information from the public prosecutor’s case management database to respond to a request for publicly disclosable information pursuant to the California Public Records Act.” We ask that you disclose this data.

Regarding the data for which you assert that you would need to create a new record, please note that the CPRA requires public agencies to “gather and segregate disclosable electronic data [] and to that end perform data compilation, extraction or computer programming if ‘necessary to produce a copy of the record.’”<sup>3</sup> We are not asking for the production of a new record, we are asking for the data. Alternatively, we ask that you provide all data in your database in its present form, with confidential information redacted, and we will find the responsive data ourselves.<sup>4</sup>

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<sup>1</sup> Cal. Gov. Code § 6255(a).

<sup>2</sup> Cal. Gov. Code § 6253(d)(3).

<sup>3</sup> Cal. Gov. Code § 6253.9(b), quoted in *Sander v. Superior Court*, 26 Cal. App. 5th 651, 669 (2018).

<sup>4</sup> *N.L.G., San Francisco Bay Area Chapter v. City of Hayward*, 9 Cal. 5th 488 (2020).

Per your question, we do wish to pursue the collection of any responsive data. Please note that Government Code § 6253.9 does not allow fees for time spent searching for responsive records, redacting information, or other actions that would limit the furtherance of the people's right of access.<sup>5</sup> Please also note that the cost for duplication under Government Code § 6253.9 must be necessary and reasonable. Please provide a cost estimate for the duplication, including a detailed description of the files that must be searched, the process of compilation, the title of the person doing the compiling, the number of hours being charged, and the rate per hour. Please also explain why the work is necessary and why the cost is reasonable.

Your letter indicates that your office would be concluding their record review process within 60 days and that you "will provide non-exempt records as soon as they are available." Our office has not yet received these records. To the extent that you have not yet produced any records for which you do not claim an exemption and/or for any records that you are providing voluntarily, please let us know the status of these records and produce them promptly, including on a rolling basis if necessary.

Please also let us know at your earliest convenience if you intend to stand on your exemptions as grounds for withholding certain records, or whether 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 an amenable solution.

However, if you do not believe further discussions would be helpful, 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.<sup>6</sup>

Thank you again for your response to our earlier letter 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

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<sup>5</sup> *N.L.G., San Francisco Bay Area Chapter*, 9 Cal. 5th 488 at 506.

<sup>6</sup> Cal. Gov. 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).