



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Rod Norgaard
Chief Deputy

Michael M. Blazina
Assistant District Attorney

February 4, 2022

Kory DeClark
BraunHagey & Borden
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Act Request

Dear Mr. DeClark:

This is in response to your letter dated December 28, 2021, which followed our December 20, 2021, telephone conference in which we discussed our response to your July 23, 2021, request under the California Public Records Act (CPRA).

Your letter addresses four topics, which I address here individually. The first topic set forth is:

“No. 1 (Policies, memoranda, or guidance documents)”

The primary sticking point for document production was the vagueness of the terms in our request. We write to clarify that, by “policies, memoranda, or guidance documents,” we mean documents that reflect a policy decision by the office to handle all cases of a particular type in a particular way. Thus, we are not seeking any documents that concern a particular case, or that reflect only a discussion about the creation of a policy, rather than the final policy itself.”

With that clarification, I believe we have fulfilled this request in our August 16, 2021, response to your original request wherein we provided the requested documents.

The second topic set forth is:

“No. 2 (training materials)”

Here, too, we are seeking only materials that were/are provided by the office to train attorneys on the office’s policies and practices—i.e., that instruct the attorneys to handle all cases of a particular type in a particular way. Again, we are not seeking notes on particular cases (e.g., instructions on how to handle a particular cross examination) or discussions about which trainings should be created to be given. We are after only the final product—the presentation decks, training manuals, how-to handouts, etc.—that your office has used in the specified time period.”

With regard to training materials in general, our position on this issue, as stated in our August 16, 2021, response to your original CPRA request, is as follows. The documents you seek are exempt from disclosure by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these outweighs the public interest served by disclosing them. (Gov't Code section 6255; *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.) These records reflect the thought processes of those whose responsibility it is to interpret the law and train our attorneys on the ethical administration of justice. Training discussions include tactical and strategic information. Disclosure would expose the decision-making process in such a way as to discourage candid discussion and thereby undermines the ability of the District Attorney's Office to perform its function of ensuring the fair administration of justice.

Further, under Government Code section 6254(k), the release of records is restricted if doing so would violate any federal or state law, including laws relating to privileges. Code of Civil Procedure section 2018.030(a) provides a work product privilege for any "writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories." This privilege provides an absolute protection against disclosure. Such a writing is not discoverable under any circumstances. (*Id.*) For example, our *Brady* and discovery policies in general are stated in our Legal and Case Prosecution Policy Manual and are encompassed in that document's statement that "It is the policy of the Sacramento County District Attorney's Office to promptly provide all discoverable materials in criminal cases in accordance with the law. Prosecutors shall follow all constitutional, statutory, and ethical discovery obligations."

That said, I note that we provided to you our Legal and Case Prosecution Policy Manual on August 16, 2021. It is the same document we provide to all our attorneys, and it is the document we use to train our attorneys on this office's policies and practices. While this is not a waiver of the exemptions set forth above as to any other training materials on any topic that we may possess, or any other exemptions set forth in our August 16, 2021, response, our provision of that document appears to satisfy your request on this topic.

The third topic set forth is:

"No. 3 (records concerning the Racial Justice Act)

We discussed this section less than the others. We do not believe this request is unduly burdensome for any materials that can be located with relatively simple searches of computers or servers (such a keyword searches). Please let us know if you disagree. We of course reserve the right to challenge any exemption based on undue burden for searches of paper files, too."

Our response to this request, has not changed from that stated in our August 16, 2021, response. To answer your specific question, I do think you underestimate the amount of material that would be retrieved on computers and servers searching for such common words as racial, justice, and act. Those terms are in common use in any criminal law practitioner's office.

The fourth topic set forth is:

“No. 4 (Batson-Wheeler)

You were going to give this section more thought in light of our conversation—particularly, any documents that relate to internal trainings and/or discipline.”

Our response to this request has not changed from that stated in our August 16, 2021, response.

If you believe that further discussion may prove useful to find further common ground, please feel free to contact me.

Sincerely,

ANNE MARIE SCHUBERT
DISTRICT ATTORNEY

A handwritten signature in black ink, appearing to read 'R. Miller', with a long horizontal flourish extending to the right.

Richard Miller
Assistant Chief Deputy District Attorney