March 18, 2022

Via email only to: *praresponse@braunhagey.com*
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Re: Ms. Leonida's Letter of January 5, 2022 re PRA Request to Kern County District Attorney's Office

Dear Ms. Leonida,

I am responding to Ms. Leonida's letter dated January 5, 2022, (1/5/22 Letter) wherein she set forth her positions concerning alleged inadequacies regarding the Kern County District Attorney's (District Attorney) Public Records Act (PRA) Response letter sent on August 16, 2021 (8/16/21 Response Letter). This letter will be organized in roughly the same order as the 1/5/22 Letter, with references to the 8/16/21 Response Letter as needed for clarification.

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I. Response to General Statements in 1/5/22 Letter

A. Claim that Exemptions Are Overbroad and Unsupported.

To begin with, the 1/5/22 Letter asserts in the opening paragraph that the District Attorney's exemptions are "overbroad and unsupported for the reasons elaborated below." The District Attorney disagrees with that generalization. Some of the reasons for that disagreement are enumerated below.

B. Claim that Exemptions are Permissive—Not Mandatory.

While the District Attorney recognizes that the exemptions provided by Penal Code section 6254 are generally permissive, the 1/5/22 Letter broadly claims, "exemptions are permissive and not mandatory." That generalization is inaccurate because it does not take into account mandatory withholdings required by state and federal laws.

The District Attorney is aware of several California appellate cases stating, "the exemptions from disclosure *provided by section 6254* are permissive, not mandatory…" (See, e.g., *Associated Chino Teachers v. Chino Valley Unified School Dist.* (2018) 30 Cal.App.5th 530, 537 (emphasis added).) Nevertheless, even those cases recognize that mandatory exemptions exist where disclosure is prohibited by law. (See, e.g., *Marken v. Santa Monica-Malibu School Dist.* (2012) 202 Cal.App.4th 1250, 1262, quoting Gov. Code, § 6254 ["Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, *unless disclosure is otherwise prohibited by law*"].) Moreover, Government Code section 6254, subdivision (k), makes "[r]ecords, the disclosure of which is exempted or *prohibited* pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege" exempt from disclosure.

Examples where the release of records is *prohibited* by other state or federal laws include the following:

- Juvenile Case Information (Welf. & Inst. Code § 827),
- Mental Health Treatment Records (Welf. & Inst. Code § 5328),
- Social Service Program Eligibility Records (Welf. & Inst. Code § 10850)
- Elder Abuse Investigation Records (Welf. & Inst. Code § 15633, et seq.),
- Substance Abuse Treatment Records (42 C.F.R. § 2.2, subd. (b).)

Accordingly, exemptions under Government Code section 6254 are permissive except where disclosure is otherwise prohibited by state or federal law, in which case they are mandatory.

C. District Attorney Declines to Withdraw Properly Asserted Exemptions.

As to the discretionary exemptions asserted in the 8/16/21 Response Letter, the District Attorney respectfully declines to withdraw any of its properly asserted exemptions. The legitimacy of those exemptions will be one topic of discussion in this letter.

Additionally, the District Attorney agrees that the PRA imposes an obligation on agencies to segregate non-exempt portions of records from exempt portions if the agency can *reasonably* do so. (Cal. Gov. Code, § 6253 subd. (a)).Therefore, this letter will also discuss whether line-by-line redactions for records is reasonable.

D. Request to Identify Specific Records.

The 1/5/22 Letter requests, "If there are responsive records for which you intend to continue asserting exemptions, please let us know to which records those exemptions apply." The 8/16/21 Response Letter identified specific records that were available in a file or hard record and it itemized the applicable claimed exemptions per document.

Notably, some of the information sought by the original PRA requests (and the 1/5/22 Letter), is in not in a record form. Rather, it is information in the form of data within CJIS. CJIS was not designed to produce reports containing the information you seek. Thus, the information or data you seek must be extracted from the antiquated CJIS computer system. As to CJIS, It is not possible to identify specific records for which exemptions are claimed until the programming you have so far declined to pay for has been created and the records extracted.

E. Cost Shifting Claim.

The 1/5/22 Letter asserts that the District Attorney is "cost shifting" on your public records act request. That is simply untrue. It is well known that Kern County currently operates on an antiquated system. The California State Auditor has noted in Report No. 2019-116, Recommendation #14, "The current [Kern County] CMS system is within the county-wide Criminal Justice Information System (CJIS) which is over 30 years old, *with limited functionality and limited enhancement capabilities*. For several years, the County has been working toward a replacement for CJIS with a CMS component with no success at this time. Kern County continues to research options toward obtaining a fully competent CMS solution." (https://www.auditor.ca.gov/reports/responses/2019-116/14."

It is not surprising—and certainly not cost shifting—that it will require significant time to research how to extract the information have requested from an antiquated system, which was not designed to create your desired report. Nick Carney from Kern County IT Services has stated, "This type of request cannot be completed by querying the database. A custom program will have to be written to extract the data." This will require research time in addition to the time to write the code to accomplish the desired extraction. A 16-hour time estimate from IT Services is entirely reasonable.

In fact, a Cobalt program would have to be created to extract information from disparate data tables, where no common link is necessarily established. Moreover, some aspects of CJIS required to develop your requested reports are dynamic. That is, the information calculated by a function in real time rather than stored in a table. In short, the 16-hour time estimate is very reasonable.

The costs cited for production of a report to extract your requested records is authorized under Government Code 6253.9, subd. (b). The County's IT Department's estimate of 16 hours to write the code to extract your requested data from CJIS is well within reason.

II. Clarifications re Prior Statements in 8/16/21 Response Letter.

The 1/5/22 Letter seeks clarification on some of the statements made in 8/16/21 Response Letter. It should be noted that County Counsel represents the District Attorney's office in this matter. The undersigned is therefore interpreting the 1/5/22 Letter's use of the pronoun, "you," as being intended to refer to the District Attorney rather than County Counsel.

Initially, the 1/5/22 Letter sought clarification on the following points (your requests are in **bold**):

A. "Please inform us which categories of data you [the District Attorney] do and do not have access to."

- The CJIS System is separated into modules for the Courts, the District Attorney, the Public Defender, the Sheriff, and the Probation Department.
- Additionally, there is a central module containing information such as the defendant name and identifying information. All entities draw information from this central module for use within their separate modules.
- None of the modules in CJIS were set up with the specific intent of tracking demographic information in mind. Nevertheless, some records may contain demographic information about individual defendants, but not the attorneys involved in the proceedings.
- The District Attorney has access to the information in its own module. (Access rights vary dependent upon the level of rights assigned to each specific user.)
    - As to the Court's Module, the District Attorney has the ability to access anything except for sealed records. (Again, access rights vary dependent upon the level of rights assigned to each specific user.)

- As to the Public Defender's Module, the District Attorney has no access to any information in the Public Defender's Module.
- As to the Sherriff's module the District Attorney has the ability to access the inmate record, in-custody list, and warrants. (Again, access rights vary dependent upon the level of rights assigned to each specific user.)
- As to the Probation Department's Module, the District Attorney has a right to access a probationer's case record, which includes probation terms and related cases.

- The District Attorney does not have access to other information in CJIS other than the categories identified above.

B. "For records you [the District Attorney] assert you [the District Attorney] do not have access to through the CJIS database, please confirm that no one in your [the District Attorney's] office has access to them. Please produce the data if your [the District Attorney's] office does have access to that data outside of the CJIS database."

- All of the foregoing responses are stated from the standpoint of a user in the District Attorney's Office with highest level of access rights allowable to that office. Thus, for those portions of CJIS that the District Attorney's Office does not have access to, no person in that office has the right to access those records.
- Such information is not available elsewhere to the District Attorney's Office.

C. "Please confirm that the District Attorney does not have individual case level data concerning diversion programming."

- The District Attorney does not track individual case level data concerning diversion programming.
- County IT indicates it may be possible to extract some information from CJIS from the Court side. They would request permission from the Superior Court prior to accessing such data. That would further be contingent on your payment of the estimated programming fees.

D. "Please provide an explanation regarding what code needs to be written to run searches in your databases, and why this effort would require 16 hours of programming time."

- It will would take a significant time for an IT data analyst to research how to extract the information you are requesting from the antiquated

CJIS system. CJIS was not designed to create your desired report, and it was not designed with some of the types of information you seek in mind.

- Nick Carney from Kern County IT Services has stated, "This type of request cannot be completed by querying the database. A custom program will have to be written to extract the data." This will require research time in addition to the time to write the code to accomplish the desired extraction. A 16-hour time estimate from IT Services is entirely reasonable.
- To generate a report containing your requested information, a Cobalt program would have to be created to extract information from disparate data tables. Moreover, CJIS uses a dynamic process regarding some of its information. For example, when calculating custody time, such information is never written into a table. Rather, the generation of such information is are dynamic. That is, the information is calculated by a function in real time rather than stored in a table.
- In short, the 16-hour time estimate is very reasonable.

III. Claims of Exemption in 8/16/21 Response Letter Are Proper.

A. Attorney Work Product Exemption

Your 1/5/22 Letter fails to present any convincing authority for your proposition that the District Attorney has improperly asserted the attorney work product exemption. California has codified the attorney work product privilege as follows: "A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances." (Code Civ. Proc., § 2018.030; Penal Code § 1054.6.) The attorney work product exemption applies to the District Attorney's policies and trainings that were withheld form the PRA request.

The cases cited in the 1/5/22 Letter, as to this point, were decided under the federal Freedom of Information Act (FOIA) rather than the PRA. The District Attorney appreciates that interpretations of the FOIA in the federal courts may be used to construe the PRA. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 283; *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1400.) Nevertheless, " '[T]he extent of the CPRA's coverage is a matter to be developed by the courts on a case-by-case basis. [Citations.]' [Citation.] This decision-making process is an unavoidable consequence resulting from the 'Myriad organizational arrangements adopted for getting the business of the government done. [Citation.] Therefore, each arrangement must be examined in its own context. [Citation.]' " (*Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 588 [internal quotation marks removed].) The federal cases cited in the 1/5/22 Letter actually support he District Attorney's position.

First, the 1/5/22 Letter cites to *ACLU of N. Cal. v. United States Dep't of Justice* (9th Cir. 2018) 880 F.3d 473, 484-89 ("*ACLU*") for the proposition that "agency manuals, guidance documents, and other materials conveying agency policy fall outside work product protection." As the court in *ACLU* acknowledges, "Exemption 5 [of FOIA] encompasses records 'normally privileged in the civil discovery context.' [Citation.] These include records that would be protected in litigation by the attorney work-product, attorney-client, and deliberative process privileges. [Citation.]" (*ACLU, supra*, 880 F.3d at p. 483.) Notably, *ACLU* holds,

> [T]he portions of the USABook that present legal arguments supporting the agency's positions on the type of authorization necessary to obtain electronic information *are attorney work product*. These portions of the documents reflect the legal theories of DOJ's attorneys. They are included in the USABook to assist prosecutors faced with defending in court the government's position on the authorization necessary to obtain certain types of evidence. See *Delaney, Migdail & Young, Chartered v. IRS*, 826 F.2d 124, 127 (D.C. Cir. 1987) (holding that internal agency memoranda that "advise the agency of the types of legal challenges likely to be mounted against a proposed program, potential defenses available to the agency, and the likely outcome" *are attorney work product properly withheld under Exemption 5 of FOIA*). (*ACLU*, *supra*, 880 F.3d at p. 486.)

The District Attorney sees no reason to change its position based on *ACLU*, which supports application of attorney work product protection to policy documents containing legal arguments and theories.

Second, the 1/5/22 Letter cites to *Jordan v. U.S. Dep't. of Justice* (D.C. Cir. 1978) 591 F.2d 753, 774, (*Jordan*) claiming that instructions, guidelines, and effective policies relating to the exercise of prosecutorial discretion by the United States Attorney for the District of Columbia and his assistants is not protected by work-product privilege. The 1/5/22 Letter fails to note that FOIA was amended, in response to that now defunct holding;

> "The amendment to Exemption 7(E) was 'intended to address some confusion created by the D.C. Circuit's en banc holding in *Jordan v. U.S. Dep't. of Justice*, 591 F.2d 753 (D.C. Cir. 1978), denying protection for prosecutorial discretion guidelines under [FOIA Exemption 2].' S. Rep. No. 98-221, at 25S. Rep. No. 98-221, at 25 (1983); see also *Tax Analysts*, 294 F.3d at 79 (quoting 5 U.S.C. § 552(b)(7)(E)) ("Congress also amended Exemption 7(E) to *permit withholding of 'guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law*,' thus giving further indication that the statutory threshold was not limited to records or information addressing only individual violations of the law.") (*ACLU*, *supra*, at p. 780.)

The holding in *Jordan* is at best unpersuasive. Concerning your PRA Requests, the District Attorney has properly asserted Attorney Work Product Protection as to policy documents containing legal arguments and theories.

Third, the 1/5/22 Letter cites to *Judicial Watch, Inc. v. U.S. Dep't of Homeland Sec.* (D. D.C. 2013) 926 F.Supp.2d 121, 142-44 (*Judicial Watch*) for the proposition that "memoranda communicating policies, guidelines, and 'general standards' to ICE staff attorneys is not protected by work-product privilege. It is notable that the Court, in the interest of judicial economy, did not address the propriety of DHS's assertion of the work-product privilege with respect to documents on which it had already found other exemptions were proper. (*Id*., at p., 138.) As to the remaining documents, the *Judicial Watch* found that the exemption was properly claimed as to some and improperly claimed as to others. (*Id*. at pp. 137 et seq.) *Judicial Watch* does not stand for the proposition stated in the 1/5/22 letter.

"The work-product doctrine protects materials 'prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent).' [Citation.]" (*Id*. at p. 137.) The purpose of the work-product privilege is to ensure that

> 'a lawyer [can] work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel,' and to permit attorneys to 'assemble information, sift what [they] consider[ ] to be the relevant from the irrelevant facts, prepare [their] legal theories and plan [their] strateg[ies] without undue and needless interference.' (*Hickman v. Taylor* (1947) 329 U.S. 495, 510–11.

Importantly, California's codification of the attorney work product privilege is broader than its federal equivalent in that it does not require that the attorney's writing be prepared in anticipation of litigation. (Code Civ. Proc., § 2018.030; Penal Code § 1054.6.) The District Attorney is prepared to show that the policy manuals and training materials have been properly withheld as each document is a "writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories."

B. Deliberative Process Privilege

The 1/5/22 Letter does not adequately address the legitimacy of the deliberative process privilege asserted by the District Attorney. For the reasons stated below, the District Attorney claims the deliberative process privilege as initially asserted.

First, the 1/5/22 Letter cites to *American Civil Liberties Union of Northern California v. Superior Court* (2011) 202 Cal.App.4th 55 ("*ACLU II*"), where the requestor sought the names of pharmaceutical companies from the California Department of Corrections and Rehabilitation. The *ACLU II Court* found the privilege did not apply based on a lack of evidence, noting as follows:

> Neither the record nor CDCR's briefs explain how revelation of the names of the pharmaceutical companies and others from whom CDCR sought to acquire sodium thiopental would disclose the mental processes of any government employee or the substance of deliberations relating to the formulation of any government policy, or undermine CDCR's ability to perform its functions. (*ACLU II*, *supra*, at p. 76.)

ACLU II is a fact-specific case that has no relevance to the District Attorney's assertion of the deliberative process privilege here. The policies and training materials sought in your PRA requests are part of the decision-making process in the numerous cases covered by these policies on an ongoing basis.

The 1/5/22 Letter claims, without citation to authority, "[T]he deliberative process] exemption applies only to "predecisional" and "deliberative" documents." In an apparent attempt to bolster that assertion, the 1/5/22 Letter cites to *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342 (*Times Mirror Co.*). At page 1342, *Times Mirror Co*. discusses FOIA cases that address Exemption 5. (*Ibid*.) Importantly, the idea that the deliberative process exemption applies to only predecisional documents has been rejected by a California case as follows:

> "In *Times Mirror Co.*, the Supreme Court expressly stated that past events could be privileged and *the federal FOIA cases enforcing its "predecisional" requirement were not controlling*. (*Times Mirror Co. v. Superior Court*, *supra*, 53 Cal.3d at p. 1344, fn. 13, 283 Cal.Rptr. 893, 813 P.2d 240.) Moreover, the Governor made no showing in Times Mirror Co. that all of the appointments were predecisional. In Times Mirror Co., the Supreme Court concluded that the focus of the privilege was whether the public interest in nondisclosure clearly outweighed the public interest in disclosure. In the case of five years of the Governor's calendars and schedules, the Supreme Court answered this question in the affirmative. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 480, as modified (Oct. 13, 1993).)

Accordingly, there is no predecisional requirement for a deliberative privilege claim under the PRA.

C. Catchall Exemption (Gov. Code § 6255.)

The 1/5/22 Letter additionally claims the District Attorney has erroneously asserted the catchall exemption under Government Code § 6255. The District Attorney disagrees for the following reasons. The catchall exemption has been described as follows:

> "Section 6255[, subdivision](a)—[PRA's] catchall provision ... — permits an agency to withhold a public record if the agency demonstrates 'that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the

> public interest served by disclosure of the record.' (§ 6255[, subd.](a).) ... 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.' ... Whether such an overbalance exists may depend on a wide variety of considerations, including privacy ...; public safety ...; and the 'expense and inconvenience involved in segregating nonexempt from exempt information.' ... In balancing the interests for and against disclosure, we review the public interest factors de novo but accept the trial court's factual findings as long as substantial evidence supports them." [Citation.] "As the party seeking to withhold the record, the County bears the burden of justifying nondisclosure." [Citation.] (*Voice of San Diego v. Superior Court of San Diego County* (2021) 66 Cal.App.5th 669, 684, as modified (July 27, 2021), review denied (Oct. 27, 2021).)

Upon review and balancing of the respective interests in this case, the District Attorney is confident it has properly asserted this exemption.

To determine the public interest in disclosure under the Government Code section 6255 balancing test, courts employ the following test:

> "If the records sought pertain to the conduct of the people's business there is a public interest in disclosure. The weight of that interest is proportionate to the gravity of the governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate." [Citation.] "[I]n assigning weight to the general public interest in disclosure, courts should look to the 'nature of the information' and how disclosure of that information contributes to the public's understanding of government." (*Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1268, 155 Cal.Rptr.3d 93, original italics; see also *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 616, 65 Cal.Rptr.2d 738 ["The existence and weight of [the] public interest are conclusions derived from the nature of the information"].) (*Getz v. Superior Court* (2021) 72 Cal.App.5th 637.)

The records sought by your PRA requests do pertain to the District Attorney's conduct of the people's business, so there is a public interest in disclosure. While the gravity of the governmental tasks sought to be illuminated is significant, disclosure of the District Attorney's policies and procedures and training materials would not directly illuminate the District Attorney's conduct of the people's business.

The 1/5/22 Letter claims that public interest in the release of the District Attorney's policies and training is strengthened by language in the Racial Justice Act (RJA) (Stats.2020, c. 317 (A.B.2542)), which added Penal Code section 475, and amended Penal Code sections 1473 and 1473.7. The RJA provides its own

procedural mechanisms to defendants for making claims of racially discriminatory practices and for discovery of relevant material. The District Attorney maintains that the passage of the RJA does not increase the public interest in disclosure for the following reasons.

Section 1, subdivision (j) of the RJA provides the Legislative intent concerning enactment of the RJA as follows:

> It is the further intent of the Legislature to provide remedies that will eliminate racially discriminatory practices in the criminal justice system, in addition to intentional discrimination. It is the further intent of the Legislature to ensure that individuals have access to all relevant evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining convictions or imposing sentences.

The Legislature thus intended to provide remedies that were adequate to eliminate discrimination by enacting the RJA.

The first remedy provided by the RJA for criminal defendants is as follows: "A defendant may file a motion in the trial court or, if judgment has been imposed, may file a petition for writ of habeas corpus or a motion under Section 1473.7 in a court of competent jurisdiction, alleging a violation of subdivision (a)." (Penal Code § 745, subd. (b).) There is no reference to the PRA in Penal Code section 745, subdivision (b).

The second remedy provided to criminal defendants by the RJA is a mechanism for access to relevant information as follows:

> A defendant may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state. A motion filed under this subdivision shall describe the type of records or information the defendant seeks. Upon a showing of good cause, and if the records are not privileged, the court shall order the records to be released. Upon a showing of good cause, the court may permit the prosecution to redact information prior to disclosure. (Penal Code § 745, subd. (d).)

Again, there is no reference to the PRA in Penal code section 745, subdivision (d). The Legislature intended for non-privileged records to be made available to criminal defendants through the criminal proceedings to prove their claims of racially discriminatory practices.

While eradicating racism from the criminal justice system is an important goal that serves the public interest, an even greater public interest is served by withholding the District Attorney's policies and training materials. On the facts of

this case, "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

First, there is a "strong government interest in preventing and prosecuting criminal activity, whether street crime, white-collar crime or governmental corruption." (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1064, 112 Cal.Rptr.2d 80, 31 P.3d 760 [recognizing certain CPRA exemptions "for reasons of privacy, safety, and efficient governmental operation"].) The significance of this government interest has been recognized in various contexts. One court, in considering a separation of powers argument, noted:

> The prosecutor's authority stems from the executive branch of government (Cal. Const., art. III, § 3), and the investigation and gathering of evidence relating to criminal offenses is the prosecutor's responsibility and rests solely within his or her discretion. [Citation.] The discretionary authority vested in the district attorney to investigate and prosecute criminal conduct is considered too vital to the interest of public order to be subjected to prior restraint by the courts except under extraordinary circumstances. [Citations.] 'The balance between the Executive and Judicial branches would be profoundly upset if the Judiciary assumed superintendence over the law enforcement activities of the Executive branch upon nothing more than a vague fear or suspicion that its officers will be unfaithful to their oaths or unequal to their responsibility.' [Citation.]" [Citation.] (*California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294, 311.)

Second, county district attorneys are constitutionally-mandated elected officials. (Cal. Const. Art. 11, § 1, subd. (b) and § 4, subd. (c).) One court has observed:

> It is also well-settled that lawyers who prosecute actions, in an exercise of a public entity's police power, occupy a unique position in this context. For example, a district attorney "is not an 'attorney' who represents a 'client' as such. He is a public officer, under the direct supervision of the Attorney General [citation], who 'represents the sovereign power of the people of the state, by whose authority and in whose name all prosecutions must be conducted.' " [Citation.] "The prosecutor is a public official vested with considerable discretionary power to decide what crimes are to be charged and how they are to be prosecuted. [Citations.] In all his activities, his duties are conditioned by the fact that he 'is the representative not of any ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.' " [Citation.] (*Wood v. Superior Court of San*

Diego County (2020) 46 Cal.App.5th 562, 577, as modified (Apr. 8, 2020), review denied (Jan. 20, 2021).)

The District Attorney submits that not releasing its policies and procedures and training materials relating to prosecution of criminal defendants is necessary to protect the District Attorney's vital and essential government function, which therefore weighs heavily in favor of nondisclosure.

The 1/5/22 Letter generally cites to *Weaver v. Superior Court* (2014) 224 Cal.App.4th 746 (*Weaver*), stating as follows: " 'it is inconceivable to us that any countervailing interest the District Attorney could assert outweighs the magnitude of the public's interest' in the death penalty where a petitioner was seeking to find evidence of selective prosecution." The 1/5/22 letter is obviously referring to language on page 752. The *Weaver* case is distinguishable on several grounds. First, the records sought were the charging documents in murder cases over a 16-year period. (*Id*. at pp. 748-749.) All of these charging documents had been publicly filed. (*Id*. at pp. 750-751.) The District Attorney objected under Government Code section 6255 that retrieving the responsive documents would be unduly burdensome as it would cost an employee's weekly salary to produce the records. (*Id*. at p. 752.) The Court determined there were reasons to "accord little weight to the financial concerns" asserted by the district attorney.

In the present case, the documents sought have never been made public. Instead of charging documents, your PRA request seeks policies and training materials that are integral to the District Attorney's strategy in prosecuting cases. Unlike the documents sought in *Weaver*, these have never been made public. Additionally, the District Attorney is not limiting its public policy objection to a financial burden argument.

The 1/5/22 Letter also cites to *Brodheim v. Cal. Dep't of Corrections & Rehabilitation* (Cal. Superior July 16, 2020) 2020 WL 4558319 [requiring the disclosure of individual data concerning race and ethnicity of all parole applicants over an extended period of time and rejecting an asserted public interest exemption by the California Department of Corrections and Rehabilitation].) The District Attorney will be happy to run the relevant query to provide a similar report to the one ordered in that case upon your payment of the fee for the IT Department to create code to extract that information from CJIS.

III. Batson/Wheeler Materials

Your PRA Request included a request for "All investigations into Batson-Wheeler motions, including, but not limited to:

a. Motions filed;
b. Motions granted;
c. Internal training and/or discipline; or

d. Reports to the State Bar relating to any Batson-Wheeler motions made and granted.

As a matter of practical experience, such motions are generally made orally at trial. There are no case-specific written motions in the District Attorney's files or electronic system responsive to your request. There have been no Batson/Wheeler motions granted in the relevant time period. There have been no disciplinary proceedings relating to Batson/Wheeler in the relevant time period. There are no reports to the State Bar relating to Batson/Wheeler in the relevant time period.

Nevertheless, the District Attorney has searched for "Batson" in its computer files, and the following documents were identified.

Document Name	Exemptions Claimed
Batson-Wheeler Checklist-2	Attorney Work Product; Deliberative Process Privilege; Catchall Exemption
Wheeler-Batson AB 3070 reference guide 01.01.22	Attorney Work Product; Deliberative Process Privilege; Catchall Exemption
BATSON-WHEELER.OUTLINE_II_P&A	Attorney Work Product; Deliberative Process Privilege; Catchall Exemption
04-25-16 (Batson-Wheeler) P&A_1.doc	Attorney Work Product; Deliberative Process Privilege; Catchall Exemption

Additionally, IT Services has indicated that the CJIS Courts Module does not have a specific Event-Code that references Batson/Wheeler motions. However, there are "generic" events where the clerk can type in any text they would like. IT services ran a preliminary search for Batson or Wheeler which resulted in 529 court-events with either Batson or Wheeler in them. It Services has generated a repport, exported to a spreadsheet format, and I am attaching that to this reponse.

I hope that you find the above information helpful. Please feel free to contact me so that we can discuss.

Respectfully,

Margo A. Raison
Kern County Counsel

By DocuSigned by: Bryan Walters AE387199A6D64A5...
Bryan C. Walters, Deputy