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**OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO**
**SUMMER STEPHAN
DISTRICT ATTORNEY**

DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

May 27, 2022

Ellen Leonida
leonida@braunhagey.com

Re: California Public Records Act Request
Reference No. 21-104 PRA
Response Letter #3

Dear Ellen Leonida,

As explained in previous correspondence, I am a designated custodian of records for the San Diego County District Attorney's Office responsible for compliance with the California Public Records Act (CPRA). I am handling your July 23, 2021, three-part CPRA request made on behalf of the American Civil Liberties Union of Northern California (ACLU).

On August 2, August 16, September 20, and November 18, 2021, this office provided you updates on our progress processing your request. On February 28, 2022, this office emailed you a response letter (dated February 25, 2022) and a Serv-U link to download responsive records. The response letter also stated that there are additional records that were still being reviewed, and that a further update or additional responsive records would be provided by April 29, 2022.

On March 8, 2022, I had a telephone conversation with your colleagues Kory DeClark and Joshua Wilner. They stated they would provide a written response to my February 25 letter the following week. On March 29, 2022, this office received your letter which contained your objections to my February 25 letter and requested a response by April 13, 2022. On April 13, 2022, I emailed you to inform you that we were considering the legal arguments asserted in your letter and that we would respond by April 29, 2022.

On April 29, 2022, this office provided you with Response Letter 2 and additional responsive records. In that letter, we responded to your legal arguments regarding the core work product protection of the guidance documents requested in Part 1, Request 1, and your legal arguments regarding the overbreadth and overburdensome nature of a portion of your request in Part 1, Request 2.

In Response Letter 2, we indicated that we were still reconsidering your legal arguments regarding the disclosure of "written policies" requested in Part 1, Request 1, and that we would provide a response by May 27, 2022. This office herein responds.

Part 1, Request 1 (for the time-period of 2015 to the present)

Any and all written policies, memoranda, or guidance documents regarding:

- a. Diversion eligibility and/or programming;
- b. Custody and/or bail recommendations;
- c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decisions regarding wobblers;
- d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
- e. Jury selection;
- f. Sentencing recommendations;
- g. Prosecution of minors;
- h. Parole recommendations;
- i. Pardon and commutation recommendations;
- j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;
- k. Data collection relating to criminal matters, including demographic data of defendants and victims; or
- l. Referral of cases for federal prosecution.

Response

This office did not locate written policies responsive to the following:

- (e) Jury selection
- (i) Pardon and commutation recommendations
- (k) Data collection relating to criminal matters, including demographic data of defendants and victims
- (l) Referral of cases for federal prosecution

On February 28, 2022, you were provided a copy of this office's December 2021 Legal Policies Guide. Today, this office is also providing you with a copy of the June 2021 Legal Policies Guide. To the extent that these two records contain core work product or information protected under the deliberative process exemption, the District Attorney has waived those privileges. The two disclosed records contain policies responsive to the following:

- (a) Diversion eligibility and/or programming;
- (b) Custody and/or bail recommendations;
- (c) Charging recommendations and/or decisions;
- (d) Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
- (f) Sentencing recommendations;
- (g) Prosecution of minors;

- (h) Parole recommendations; and
- (j) Reports to the State Bar relating to discipline and/or prosecutorial misconduct.

This office is now disclosing policies from our Legal Policies Guide in existence between 2015 and June 2021. These policies are responsive to the following:

- (a) Diversion eligibility and/or programming;
- (c) Charging recommendations and/or decisions;
- (d) Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
- (f) Sentencing recommendations; and
- (g) Prosecution of minors.

Prior to 2021, this office's Legal Policies Guide was mainly comprised of legal and practical guidance for attorneys regarding all phases of criminal litigation. Office policies were intertwined throughout the legal and practical guidance.

As discussed in this office's April 29, 2022 response letter, documents created by our attorneys that provide legal or practical guidance constitute core work product. This office adopts the analysis explained in our April 29, 2022 response regarding core work product. The responsive sections of our pre-2021 Legal Policies Guide that contain core work product are thus exempt from disclosure. (Gov. Code, § 6254, subd. (k); Code Civ. Proc., § 2018.020; Pen. Code, § 1054.6.)

Where policies and core work product are intertwined, the CPRA does not require parsing "line-by-line" or "segregating material 'dispersed throughout the document'" in order to disclose the policies. (*National Association of Criminal Defense Lawyers v. Dept. of Justice Exec. Office for United States Attorneys* (D.C. Cir. 2016) 844 F.3d 246, 257.) Rather, the CPRA only requires segregating "non-exempt material found in 'logically divisible sections.'" (*Ibid.*) Pursuant to this guidance, this office extracted the reasonably segregable sections containing responsive policies from our pre-2021 Legal Policies Guide, which are being disclosed to you today.

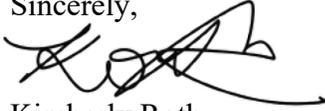
Additionally, the District Attorney is aware of the public concern regarding the fair disposition of felony cases. Therefore, the District Attorney has directed that she will waive the core work product privilege and deliberative process exemption for the legal and practical guidance on felony dispositions contained in this office's pre-2021 Legal Policies Guide. That record is being disclosed to you today.

This letter concludes our response and production of records for PRA 21-104. If you would like to discuss any aspect of this request, the records, or our responses further, please feel free to reach me at Kimberly.Roth@sdceda.org or on my direct phone line at 619-531-3029. We welcome the opportunity to discuss and attempt to resolve your concerns or questions.

This office endeavors to provide access to information concerning the conduct of the People's business. We reserve the right, however, to maintain the lawful confidentiality of our records,

and to claim and enforce any and all applicable exemptions, privileges, and proscriptions against public disclosure of records, including, but not limited to, those listed in Article 2 of the Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence Code, Civil Procedure and Penal Codes, the Federal Rules of Evidence, and those established by case law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberly Roth', with a stylized flourish at the end.

Kimberly Roth
Deputy District Attorney
Appellate and Training Division