

From: [Tilak, Karun](#)
To: [Josh Wilner](#); [Ellen Leonida](#)
Cc: [PRA Response](#)
Subject: RE: California Public Records Act Request
Date: Tuesday, May 31, 2022 9:17:58 AM
Attachments: [image001.png](#)
[image002.png](#)
[DAO Issuing Binder.pdf](#)
[Narcotics Public Safety 2019.pdf](#)
[Update from J. Delgado on Court Diversion Restitution .pdf](#)
[policy described.pdf](#)
[Weapon Diversion Program for Women .pdf](#)
[FW Misdemeanor Diversion.pdf](#)
[FW DAO position on cash bail Redacted.pdf](#)
[FW Bail Redacted.pdf](#)
[FW ARC Guidelines Redacted.pdf](#)
[Diversion 2022.pdf](#)

***** EXTERNAL MESSAGE *****

Dear Requestor,

I write in response to your February 10, 2022 letter, which followed up on your July 23, 2021 CPRA request. The DA's Office is providing the attached additional records in response to your CPRA request. Please note that information protected by the attorney-client privilege has been redacted from some of these records.

In addition, you asked for additional information regarding records withheld by the DA's Office. Please note that the CPRA does not require the DA's Office to produce a document-by-document privilege log. (See *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1074 ["What section 6255 does not require . . . is for the agency to go further and describe each of the documents falling within the statutory exemption."].) The California Supreme Court has indicated that an invocation of the applicable exemption is sufficient to discharge an agency's obligations under the CPRA. (*Ibid.* ["When an agency, in compliance with section 6255, articulates one or more of these exemptions, it will necessarily reveal the general nature of the documents withheld."].) Here, the DA's Office's previous responses articulated the applicable exemptions for the withheld documents for each request, which satisfies the agency's CPRA obligations. (See *ibid.* ["County's invocation of section 6254(f)" was sufficient because it "revealed that the withheld documents were records of an investigation."].)

However, the DA's Office can provide the following additional information about the exemptions it previously invoked.

- With respect to policy documents, records that have been withheld are draft versions of policies and pre-decisional communications regarding these policies, including communications that reflect attorney impressions and conclusions. However, from your letter it appears that you are only seeking "finalized decisions." (Feb. 10, 2022 Letter at p.5.) We have previously produced numerous responsive final office policies and guidance and are producing additional records today. Records reflecting final agency policies or guidance have not been withheld under the deliberative process, attorney work product, or official information privilege. However, several of the documents being produced today were not final at the time of the initial request, and thus were exempt from disclosure under, *inter alia*,

the deliberative process privilege.

- With respect to training, the DA's Office has shared numerous training materials. The DA's Office has withheld internal office trainings that reflect attorney impressions and opinions about areas of the law and litigation strategy for prosecution of cases. We have, however, produced a training log of trainings provided between 2015-2021. If you have questions about specific trainings on that log, we would be happy to further consider those particular records.

Sincerely,



Karun Tilak | Deputy County Counsel

Office of the County Counsel, County of Santa Clara

70 West Hedding Street, East Wing, 9th Floor | San José, CA 95110

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From: Tilak, Karun

Sent: Monday, March 21, 2022 11:00 AM

To: 'Josh Wilner' <Wilner@braunhagey.com>; Ellen Leonida <Leonida@braunhagey.com>

Cc: 'PRA Response' <praresponse@braunhagey.com>; Records, Public
<publicrecords@cco.sccgov.org>

Subject: RE: California Public Records Act Request

Good Morning,

I write in regard to your February 10, 2022 letter to our Office, which relates to a July 23, 2021 CPRA request to the County. We previously provided responsive records for this request on August 17, 2021.

The County believes that records previously withheld were appropriately subject to the deliberative process, work product, and official information privileges. For example, many of the withheld documents were internal communications or drafts discussing policies that were not final at the time of the CPRA request. Such communications are precisely the kinds of pre-decisional communications protected by the deliberative process privilege. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1341.) Similarly, to the extent that certain guidance and training records involved expressions of attorney opinions, impressions or legal theories regarding criminal prosecution, they are work product. (See, e.g., *NACDL v. Dep't of Justice* (D.C. Cir. 2016) 844 F.3d 246, 252 [DOJ prosecutors' criminal discovery bluebook, which provided guidance and training on criminal discovery obligations and legal strategies, was work product].) Finally, in certain instances, trainings incorporate specific details from investigations that were provided in confidence to the DA's Office and not made public. (See Evidence Code 1040.)

However, notwithstanding the above, the County remains committed to transparency and the DA's Office is currently reviewing its records to determine if there are any additional documents that can be disclosed. The County anticipates providing a further response in 3-4 weeks with any additional documents identified through this review.



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From: Tilak, Karun

Sent: Thursday, November 18, 2021 4:35 PM

To: Josh Wilner <Wilner@braunhagey.com>

Cc: PRA Response <praresponse@braunhagey.com>

Subject: RE: California Public Records Act Request

Mr. Wilner,

I write in response to your November 15, 2021 letter to the County. In order to better assess your concerns, the County would appreciate if you could identify the specific assertions of privilege or exemption that you are challenging and provide further legal support and explanation for why you believe those assertions are unsupported.

I would be happy to discuss this matter by phone if that would be helpful.

Sincerely,



Karun Tilak | Deputy County Counsel

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karun.tilak@cco.sccgov.org

From: Josh Wilner <Wilner@braunhagey.com>

Sent: Monday, November 15, 2021 2:49 PM

To: Tilak, Karun <karun.tilak@cco.sccgov.org>

Cc: PRA Response <praresponse@braunhagey.com>

Subject: [EXTERNAL] California Public Records Act Request

Counsel,

Please see the attached correspondence regarding our July 23, 2021 CPRA request.

Regards,

Joshua Wilner

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