



COUNTY OF FRESNO

Lisa A. Smittcamp
District Attorney

June 9, 2022

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Re: Racial Justice Act Implementation/ACLU Follow-up

Dear Ms. Salomon and Ms. Leonida:

The District Attorney's Office ("this Office") send you a letter on April 14, 2022 addressing matters raised during our March 29, 2022 telephone conference. You have since sent two follow-up requests dated April 22, and May 9, 2022, respectively, pertaining to our continued effort toward your public records request concerning the Racial Justice Act and its implementation at this Office.

Specifically, you set forth four points as follows:

1. While we may have a legal disagreement about whether you are required to inform us if any documents are being withheld for category 1 of our request, the issue at hand is one of simple practicality. If you are not withholding any documents, there is no reason for us to litigate over this category of the request. We believe it to be in the interests of both parties not to spend the time and resources litigating over documents that do not exist. You have already informed us that you believe you have "produced all responsive documents" and we are writing to confirm this means no documents are being withheld for any reason. The response in your previous letter indicated that this may not be the case.
2. You asked for legal authority regarding our position that office-wide training materials may not be withheld as attorney work product under the CPRA. This appeal will be produced in a subsequent communication. Again, we ask that you confirm training materials are in fact being withheld as attorney work product. This request is based on the same set of concerns as the above section.
3. Please provide legal authority for your position that your office may withhold trainings developed by individual members of your staff. It may be helpful to provide an example of the type of training (office wide, a subset of the office, etc.)

that would fall into this category. We note that no other District Attorney's office in the state has withheld training materials, or any other documents, on this basis.

4. Category 3 of our request seeks "communications concerning the RJA." This means all communications from any member of your office. We ask you to conduct a more thorough search and inform us of the result. Based on your previous communications, we are under the impression that your previous search did not produce any records (as opposed to you refusing to produce responsive records based on a legal exemption).

With regard to your first point, I can only refer you back to my own and Ms. Peterson's previous letters. We certainly do maintain that we have complied with the Public Records Act ("the Act") and have produced all responsive documents that are not otherwise exempt or privileged.

As for your second point, again, I believe that your question has been answered in previous correspondence authored by Ms. Peterson or myself.

With regard to your third point, I appreciate your observation that this Office is not simply following the crowd. We are attempting to follow the provisions of the Act to the best of our professional abilities. To this end, I reiterate that all presentations are privileged, as previously stated in our correspondence. The decision as to whether and to what extent this Office determines to waive that privilege is entirely within the discretion of this Office, and requires no further citation of legal authority. The rationale, even if a simple matter of courtesy to the author, rests solely with this Office under provisions of the Act.

As to your fourth point, I do appreciate the clarification. I do hope you understand that interpreting a request for records occurs both based on the language of your request as well as the practical limitations involved in seeking responsive records. The best prospect for responsive records to your request for "communications concerning the RJA" was at the administrative level. And we found none during that limited scan. However, at your request, we have made arrangements with the County ISD-IT Department to scan all e-mail accounts in the Office for reference to the "Racial Justice Act," the "RJA," and "AB 2542." I hope to have results of that search shortly and will review any responsive messages for exempt or privileged content and then, I will respond to you as quickly as possible.

In our meeting, I previously explained that I could produce the pull-down menu of reasons for declining to prosecute submitted reports and requested charges. For your convenience, although I will list them here, I will also attach an Excel file for your records. Although the majority are self-explanatory, some were imported from a prior case management system and reflect codes that are not in current use.

Prop 47
Prop 64
Always Select a Turndown Reason From This List

Banked Case
City Attorney Jurisdiction
Case Consolidated
Completed Diversion
Certified as Juvenile
Case Civil in Nature
Conflict
Court Rejects Plea Agreement
CYA Discharge
Duplicate Case
Defendant Deceased/Dying
Direct File in Adult Court Under W&I707(d)
Deferred Entry of Judgment
Extradition waived or Defn appeared voluntarily
Extradited
Further investigation needed
Federal Prosecution
Guilty/Future Dismissal
Insufficient Corroborating Evidence
Insufficient Evidence of Identity
Need victim to provide photo of suspect for ID purposes
Insufficient Evidence
Indictment Filed
Incomplete Filing Packet
In the Interest of Justice
Infraction Submitted as Misdemeanor
Suspect's Statement Inadmissible
Informal Probation (Juvenile)
Lack of Evidence Suspect Aided and Abetted
Lack of Corpus
Lack of Intent
Lack of jurisdiction / Concurrent jurisdiction
Lack of Knowledge
Lack of Possession
Minor held accountable through the school district
Mutual Combat
Suspect Mentally Ill
Mere presence is not a crime
Minor unfit for Juvenile Court; case certified to
Minor is on W&I 707(b) probation, case will be handled as a VOP
No charges requested by agency
Complaint Never Filed
Not Filed in Information
4.7/Other Jurisdiction

Pled to Another Charge or Case
Police Witness Failed to Appear
Prosecutor's Request
Recused
Refused to Extradite/Prosecute
Refer to Probation
Refiled as Felony
Refiled as Misdemeanor
Restitution Paid in Full
Reversed on Appeal
No added sentence benefit
Suspect Acted in Self-Defense
Statutory Eligibility (PC 1203.4)
Suspect's Acts Legally Justified
Statute of Limitations Problem
State/Federal Prison/Other Charges
Search/Seizure Problem
Speedy Trial Issues
Victim Failed to Appear
Victim of Identity Theft
Violation of Probation/Parole
Victim Refuses/Reluctant/Recanted
Victim Not Served/Located
Witness Credibility
Witness Deceased/Dying
Waived extradition
Witness Failed to Appear
Witness Refuses to Testify
Witness Not Served/Located
Youth Court Referral
Defendant Deceased/Dying
Defense Request
Defendant FTA BW
Joint Motion
Mentally Ill
Not Applicable
Under Advisement
Waived Extradition
DA Clerk Declined
Reason-FF

Also, for your understanding, there is an area for explanation and the declination memo that allow for an explanation of reasoning in the event that this rather extensive list does not include the reason in a sufficiently clear way.

Finally, your follow-up request refers back to the February 18, request, and seeks clarification of what will be included in the electronic query. In my letter describing the design of a query, I explained that the information we are willing to attempt to retrieve is likely partially or entirely exempted under the Act or privileged. This Office is certainly willing to gather recorded information and determine if its release will be in the public interest. However, I mentioned that it is possible that information retrieved will be so incomplete or misleading as to require this Office to assert an exemption or privilege, essentially determining that the release of misleading or inaccurate data is not in the public interest. I have previously outlined those categories for which this potential determination is most and least likely.

But the question you appear to be posing, which of the categories this Office is not claiming an exemption or privilege versus which categories you would like to include in the query, are two different issues. This Office is, as stated, tentatively willing to waive its attorney work product privilege as to some records. However, until a determination can be made by a review of the information retrieved, this Office can only describe its tentative position. If the description and reservations I have outlined previously require some discussion or clarification, I would be happy to engage in that discussion.


But I am not able to make the determination of which categories should be included in the query other than to inform you of which of the categories we are not presently asserting a privilege because of that tentative willingness to consider a waiver. But, as represented repeatedly, if privileged information should end up in a format that is misleading, inaccurate, incomplete, or otherwise injurious to the public or this Office because of those characteristics, this Office will not waive the privilege, resulting in a denial of your request for records under provisions of the Act.

Although you suggested the possibility of another meeting, I do not believe a meeting will be helpful until we have fully responded with the materials we are still gathering on your behalf. Unfortunately, because of my contracting COVID, this letter and that review have been delayed. However, once that is completed, if you have further questions, perhaps a meeting or further correspondence would be helpful. I hope you find this clarification of assistance. Of course, feel free to call or e-mail should you have any questions or concerns with regard to this reply, and do feel free to contact me at your convenience.

Sincerely,

Lisa A. Smittcamp
District Attorney

By



Douglas O. Treisman

Senior Deputy District Attorney, Ret.

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