

From: [Ebersole, Thomas E.](#)
To: [Josh Wilner](#); [Forte, Sandra](#); [PRA Response](#)
Subject: RE: 20400-140 RE: California Public Records Act Request
Date: Monday, December 5, 2022 10:57:33 AM

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

Josh

Thank you for this follow up – I have a meeting with the new Deputy DA handling this matter. I will discuss these issues with him and get back to you shortly

Tom

Thomas E. Ebersole
Assistant County Counsel
Merced County Counsel
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From: Josh Wilner <Wilner@braunhagey.com>
Sent: Friday, December 2, 2022 10:31 AM
To: Forte, Sandra <Sandra.Forte@countyofmerced.com>; PRA Response <praresponse@braunhagey.com>
Cc: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>
Subject: Re: 20400-140 RE: California Public Records Act Request

Hi Tom,

Thanks for all your help with this and we look forward to your first round of production. I want to respond to some of the exemptions asserted in the letter below. I am happy to speak with you on the phone about these, if that would be helpful.

Regarding Date of Birth (category 2e): We do not believe the individual is able to be identified by their DOB if the names and unique identifiers are not produced. This information is therefore not able to be withheld as summary criminal history information. We are amendable to receiving the age instead of the DOB.

Regarding Diversion (category 6): We ask explicitly whether diversion was completed. This appears to satisfy the Penal Code section you cite.

Regarding Plea offers (category 9): The protection offered by the work product privilege can be waived by the attorney's "disclosure to a person, other than the client, who has no interest in maintaining the confidentiality of a significant part of the work product." OXY Res. California LLC v. Superior Ct., 115 Cal. App. 4th 874, 891, 9 Cal. Rptr. 3d 621, 636 (2004) (quoting 2 Jefferson, Cal. Evidence Benchbook (3d ed. 2003) § 41.6) (alteration omitted). This is because disclosure to a third party is inconsistent with the purpose of the work product protection, "which is to safeguard the attorney's work product and trial preparation." Raytheon Co. v. Superior Ct., 208 Cal. App. 3d 683, 689 (1989). Disclosure to a party that has "an interest in maintaining confidentiality exists when the parties are aligned on the same side in the litigation and have a similar stake in the outcome." McKesson HBOC, Inc. v. Superior Ct., 115 Cal. App. 4th 1229, 1240 (2004). A prosecutor and the target of the prosecution are not aligned in litigation, "and they do not share the same stake or have the same goal." Id. (providing document to U.S. Attorney's Office and Securities and Exchange Commission waived work-product protection). Because the plea offers are shared with defendants, that material is not protected by the work-product privilege.

Regards,

Joshua Wilner

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From: Forte, Sandra <Sandra.Forte@countyofmerced.com>
Sent: Thursday, November 10, 2022 4:20 PM
To: Josh Wilner <Wilner@braunhagey.com>; PRA Response <praresponse@braunhagey.com>
Cc: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>
Subject: RE: 20400-140 RE: California Public Records Act Request

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

Mr. Wilner,

See attached letter.

Sandra Forte

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