

Kory DeClark
declark@braunhagey.com

December 6, 2022

VIA EMAIL

Catherine H. Kobal
Assistant District Attorney
Office of the District Attorney of Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612
Email: Public.Records@acgov.org

Re: California Public Records Act Request-July 23, 2021

Dear Ms. Kobal:

Thank you for your continued assistance with our CPRA requests. I write today regarding our July 23, 2021 (“policy”) request. As noted in previous correspondence, you have produced several sets of materials responsive to categories 1 (policies, memoranda, and guidance documents) and 2 (training materials) of the request. However, we are still unclear about whether you have withheld responsive documents, so we would like to address that now. We ask that you respond as soon as possible, but in any event no later than **December 19, 2022**.

In May 2022, our office sought a phone meeting to determine if you were withholding any documents responsive to categories 1 and 2 of the July request. You declined, asking us to first identify our areas of concern, which we did in a letter dated July 25, 2022. You replied and provided two indexes of the responsive documents produced to us over the previous 13 months. While we appreciate your productions and the indexes, they do not answer our specific question: Which types of documents are being withheld? It is critical that we receive an answer to this question, for it is impossible for us to determine whether we agree with your application of any exemption—and, thus, impossible to make an educated determination about whether to litigate to obtain any allegedly exempted document—without knowing how you’ve applied that exemption.

To streamline this discussion, we’ve summarized below our understanding of your withholdings and our response.

For Category 1 of the request, seeking policies, memoranda, and guidance documents regarding 12 topics, we have no record of you asserting any legal exemptions to justify any withholdings. **Please confirm that you have produced *all* responsive policies, memoranda, and guidance documents and are withholding no records responsive to this category of the request for any reason.** If you have withheld records, please identify which were withheld and provide a legal justification for the withholding.

For Category 2 of the request, seeking training materials, the only legal justification you have provided pertains only to materials copyrighted by a third party. **For materials copyrighted by CDAA, we ask that you contact CDAA and request permission to provide us with those materials.** (To our knowledge, CDAA has granted this request for every county that has asked.) **If you have withheld any other copyrighted materials, please provide a list that includes the title of the training, the author, and the author's organizational affiliation.**

For Category 3 of the request, seeking communications regarding the Racial Justice Act, you claim in your September 29, 2021 letter that this section of the request is “overbroad and potentially encompasses internal communications that fall within attorney work product and deliberative process privileges.” This is not a legally adequate response.

First, you must apply a specific legal exemption to specific records. The fact that a search you have not conducted “potentially encompasses” exempt materials is not enough to relieve you of your obligations under the CPRA. Your obligation is to run the search and then identify any responsive records to which you believe an exemption applies.

Second, even if the request is overbroad—a point we do not concede—a government agency must offer an opportunity to cure. Specifically, you must (1) “[a]ssist” in the identification of records or refining of the request; (2) “[p]rovide suggestions for overcoming any practical basis for denying access to the records or information sought,” and (3) “mak[e] a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.” Gov’t Code §§ 6253.1(a)–(b). You have not done this. If you continue to contend that compliance with the original requests would be unduly burdensome, please provide practical alternatives to create a request that would be less burdensome. We, again, are happy to speak on the phone about this

Thank you, again, for your assistance with our requests. Please respond no later than December 19, 2022. After receiving your response, we are happy to schedule a phone meeting to resolve any outstanding issues.

Very truly yours,



Kory DeClark