



Office of the District Attorney Alameda County

Nancy E. O'Malley
District Attorney
alcoda.org

December 19, 2022

Kory DeClark
BraunHagey & Borden LLP
Via email: praresponse@braunhagey.com

RE: Letter of December 6, 2022, related to CPRA 2561.

Dear Kory DeClark:

The Alameda County District Attorney's Office is in receipt of your letter dated December 6, 2022, and received by email the same day. Your letter addressed some follow up concerns you had with the CPRA request originally submitted to our office on July 23, 2021. I address those concerns here.

As you know, your original CPRA request was extremely lengthy, requesting materials in four different areas, each with numerous subsections. Additionally, your request incorporated by reference two previous requests and asked for updated materials from the previous requests. Your request was the most complicated, time consuming, and resource intensive request our office has ever received. On June 29, 2022, we sent a final letter listing the 17 dates when we had sent correspondence related to this request as well as the five dates when we produced records on a rolling basis. We considered the request closed. On September 23, 2022, your office requested 51 specific training materials that had previously been offered to you a year before, in correspondence dated September 9, 2021. As a courtesy we provided these trainings to you on November 3, 2022.

Your current letter makes a number of requests. First, you request a list of what types of documents were withheld. This is a request you have made previously. On May 10, 2022, your office asked for a phone meeting. We did not decline the invitation, but on May 13, 2022 we asked you to identify the areas of discussion as your request was so voluminous. On June 1, 2022, we followed up and again asked you to identify your areas of concern. Two months after your request for a call, after we had completed the request, you wrote on July 25, 2022, asking us if we had "(1) produced all documents responsive to each topic and subtopic listed in the request and (2) whether we have withheld any documents on the basis of an exemption, and if so, which exemption." Instead of a call, you suggested we create a list for you stating whether any documents have been withheld and on what grounds.

We responded on August 5, 2022, and told you that we have carefully described what we were providing and the listed reasons for any exemptions by topic in our extensive prior

correspondence and productions. As a courtesy, along with our August 5, 2022 letter, we enclosed 2 items: 1) a version of our internal index that was created to keep track of your request and 2) a version of our internal production list organized by the date of production. We did not create a privilege or exemption log, nor do we have any obligation to do so. (*People v. Haynie* (2001) 26 Cal.4th 1061, 1074-75.) We decline to do so and to add to our burden in responding to your request.

Second, your current letter asks us to confirm that we produced all responsive materials for Category 1 of the request, seeking policies, memoranda, and guidance documents regarding 12 topics. We have been clear that we have “produced all non-exempt, responsive records sought in your request of July 23, 2021, unless we did not receive a reply to specific inquiries posed by our letters.” (August 5, 2022 letter.) We have responded to a very complex request. We did not withhold any documents under Category 1 except drafts, exempt under Government Code section 6254(a).

Third, the current letter requests that we contact CDAA to request permission to provide copyrighted materials. We decline to do so. CDAA requires a paid membership and many of the materials are obtained in trainings that cost the office or the individual an additional fee to attend. The CPRA was not intended to circumvent copyright laws. Again, we decline to create an exemption log.

Your current letter objects to our statement in our September 29, 2021 letter that your request for “communications regarding the Racial Justice Act” was “overbroad and potentially encompasses internal communications that fall within attorney work product and deliberative process privileges.” We objected to your request fourteen months ago and this is the first time your office has objected to our response. However, in the intervening time, we have worked with another requestor who made a similarly overbroad request. After clarification, she narrowed her request to “any internal memos, emails or other communication amongst the members of the District Attorney’s office regarding the new Racial Justice Act. This could include, for instance, information about trainings or advisory statements or information related to attorneys in your office about defendants filing motions in court that pertain to the RJA.” In further clarification, we agreed to an email search including the terms “PC 745”, “Penal Code 745”, “Penal Code § 745”, “Penal Code section 745”, “Racial Justice Act”, “AB 2542”, “racial bias,” and “*Young v. Superior Court of Solano County*.” We have since produced responsive non-exempt documents to this requestor. The time frame was 2000 to October 10, 2022. If you would like, we can give you the same documents. If you prefer to tailor a different request, please resubmit your request so we can open a new file.

Our office has worked extremely hard complying with your request. We have attempted to respond to each request, subrequest, and renewal of previous requests. As you know, we are continuing to work diligently to respond to a separate related request from your office for data.

With the exception of providing the copies of the correspondence related to the Racial Justice Act referred to above, if you request them, we deem this CPRA request closed.

Very truly yours,

NANCY E. O'MALLEY
District Attorney

By:

/s/ *Catherine H. Kobal*

Catherine H. Kobal, Assistant District Attorney
Custodian of the Record

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