

From: [Eric Havens](#)
To: [Josh Wilner](#); [Kory DeClark](#)
Cc: [PRA Response](#); [Caitlin Shaw](#)
Subject: RE: Summary of 7/21/21 call
Date: Tuesday, January 3, 2023 10:33:18 AM

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

Good morning Mr. Wilner and Happy New Year,

I apologize for the delay in my responding to your last several emails over the holidays.

My previous contacts Senior Deputy District Attorney Kevin Cayton, Assistant District Attorney Heather Trapnell, and Interim Assistant District Attorney Martin Gonzalez, have all moved on from the District Attorney's Office, which also has a new incoming elected District Attorney, so the DA's office may be undergoing some reorganization over the next few months, and I must establish a new point of contact there.

I did check in with County IT regarding the vendor's quoted fee of \$1,820 for the data extraction, but IT informs me tentatively that this price is set. However, I will attempt to work with IT and/or the vendor to see if the fee can possibly be reduced.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Eric Havens

County Counsel

County of Imperial

940 W. Main St., Suite 205

El Centro, CA. 92243

Telephone: (442) 265-1120 / 1121

Facsimile: (760) 353-9347

E-mail: erichavens@co.imperial.ca.us



This e-mail message (including any attachments) contains privileged and confidential information intended to be conveyed only to the named or designated recipient within the message. If you are not an intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination or copying of this communication is strictly prohibited, not authorized and may be unlawful. If this communication was received in error, please notify us by replying to this e-mail and delete the original message from your system.

From: Josh Wilner <Wilner@braunhagey.com>

Sent: Monday, December 26, 2022 9:23 AM

To: Eric Havens <EricHavens@co.imperial.ca.us>; Kory DeClark <declark@braunhagey.com>

Cc: PRA Response <praresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>

Subject: Re: Summary of 7/21/21 call

CAUTION: This email originated outside our organization; please use caution.

Mr. Havens,

As you know, an estimate for cost shifting under the CPRA must be necessary and reasonable. An estimate for \$200/hour exceeds what is reasonable in these circumstances. Further, the additional 20 percent fee is simply adding cost to the public's right to access records and does not cover any actual work performed. This is clearly not necessary. Please request that your vendor waive this fee and provide a more reasonable rate. Alternatively, we ask that you do not shift the cost to us, as it is not necessary or reasonable.

We also object to your withholding of diversion and plea offers as work product. 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 *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. We ask that you produce this data.

Let me know if you have any questions.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP
San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104
Tel: (415) 599-0210

New York

7 Times Square
27th Floor
New York, NY 10036-6524

Tel: (646) 829-9403

From: Josh Wilner <Wilner@braunhagey.com>

Sent: Tuesday, December 20, 2022 3:32 PM

To: Eric Havens <EricHavens@co.imperial.ca.us>; Kory DeClark <declark@braunhagey.com>

Cc: PRA Response <preresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>

Subject: Re: Summary of 7/21/21 call

Mr. Havens,

We would like to schedule a phone meeting with you regarding the cost estimate in the letter below. Are you available to speak with us Thursday (12/22) at 10am? If not, please provide three times next week you are available.

Thanks, again, for your help with our request.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor

San Francisco, CA 94104

Tel: (415) 599-0210

New York

7 Times Square

27th Floor

New York, NY 10036-6524

Tel: (646) 829-9403

From: Eric Havens <EricHavens@co.imperial.ca.us>

Sent: Monday, August 8, 2022 5:16 PM

To: Kory DeClark <declark@braunhagey.com>

Cc: PRA Response <preresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>; Winni Yan <yan@braunhagey.com>

Subject: FW: Summary of 7/21/21 call

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

Dear Mr. DeClark,

Please find correspondence attached in response to the data request.

Regarding the policy request, the DA's Office stands by the response of December 2021 and is not

aware of any other responsive documents created between then and now.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Eric Havens

County Counsel

County of Imperial

940 W. Main St., Suite 205

El Centro, CA. 92243

Telephone: (442) 265-1120 / 1121

Facsimile: (760) 353-9347

E-mail: erichavens@co.imperial.ca.us



This e-mail message (including any attachments) contains privileged and confidential information intended to be conveyed only to the named or designated recipient within the message. If you are not an intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination or copying of this communication is strictly prohibited, not authorized and may be unlawful. If this communication was received in error, please notify us by replying to this e-mail and delete the original message from your system.

From: Eric Havens

Sent: Thursday, July 21, 2022 3:44 PM

To: Kory DeClark <declark@braunhagey.com>

Cc: PRA Response <praresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>; Winni Yan <yan@braunhagey.com>

Subject: RE: Summary of 7/21/21 call

Thank you Kory, I will follow up.

Sincerely,

Eric Havens

County Counsel

County of Imperial

940 W. Main St., Suite 205

El Centro, CA. 92243

Telephone: (442) 265-1120 / 1121

E-mail:



This e-mail message (including any attachments) contains privileged and confidential information intended to be conveyed only to the named or designated recipient within the message. If you are not an intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination or copying of this communication is strictly prohibited, not authorized and may be unlawful. If this communication was received in error, please notify us by replying to this e-mail and delete the original message from your system.

From: Kory DeClark <declark@braunhagey.com>
Sent: Thursday, July 21, 2022 11:29 AM
To: Eric Havens <EricHavens@co.imperial.ca.us>
Cc: PRA Response <praresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>; Winni Yan <yan@braunhagey.com>
Subject: RE: Summary of 7/21/21 call

CAUTION: This email originated outside our organization; please use caution.

Eric,

Sorry—I forgot to include:

4. You will discuss with your client our proposal to withdraw our request for names/birthdates so that the county can provide the remaining statistical demographic data we request.

Kory DeClark
BRAUNHAGEY & BORDEN LLP
Direct: (415) 869-6487

From: Kory DeClark
Sent: Thursday, July 21, 2022 11:27 AM
To: Eric Havens <EricHavens@co.imperial.ca.us>
Cc: PRA Response <praresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>; Winni Yan <yan@braunhagey.com>
Subject: Summary of 7/21/21 call

Eric,

Thanks to you and Jose for talking today. To summarize:

Data Request

We looked over the table you provided in your 5/24 letter to our office, in response to our 9/7/21 data request. After talking with Jose, we learned that some of the categories marked as “3” should in fact be “2,” since the information is collected but is not easily accessible.

For next steps, you said that by **August 8**, you will:

1. Review the table with Jose (a staff person at the DA’s office) to confirm that all the cells

marked as “3” are in fact “3s.”

2. For all categories properly marked as “2,” you will subcategorize them as either “2.A.” (which means that the IT department (or third-party vendor) can write a code (or create a similar automated process) to pull the data) or “2.B.” (which means that the data can only be pulled manually).
3. You will provide a cost estimate and estimated production deadline for all data that falls into the “2.A.” category.

Policy Request

Regarding our 7/23/21 policy request, it appears from our records that you provided a letter on 12/10/21 claiming to provide all responsive records in the county’s possession. However, that production included a single email with a one-page attachment. It seems implausible that a county of any size would have zero records responsive to the request we sent. Can you please confirm?

Thanks,

Kory DeClark

BRAUNHAGEY & BORDEN LLP

Direct: (415) 869-6487

San Francisco (Main Office)

351 California Street, 10th Floor

San Francisco, CA 94104

Tel. & Fax: (415) 599-0210

New York

118 W 22nd Street, 12th Floor

New York, NY 10011

Tel: (646) 829-9403

This message is intended only for the confidential use of the intended recipient(s) and may contain protected information that is subject to attorney-client, work product, joint defense and/or other legal privileges. If you are not the intended recipient, please contact me immediately at the phone number listed above and permanently delete the original message and any copies thereof from your email system. Thank you.