

From: [Eric Havens](#)
To: [Kory DeClark](#); [Josh Wilner](#)
Cc: [PRA Response](#); [Caitlin Shaw](#)
Subject: RE: Summary of 7/21/21 call
Date: Thursday, January 19, 2023 9:24:53 AM

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

Dear Mr. DeClark,

I was able to get a reply from the vendor last week, paraphrasing:

The 8 hours quoted is already at a reduced charge, and the project could actually take longer than 8 hours to complete.

I knew you were looking for a firm / definite quote, so I followed up this week and asked whether the \$1,820 is a set, not-to-exceed amount, or is the total price anticipated to increase? The reply is that:

An "official price quote" is only available when the scope of the project is defined and documented and sent off to the sales department for an official price quote.

A project manager did clarify the rates as follows: Development work 195.00 per hour, PM Management Services 25% of the price. In this case: $8 \times 195 = 1560.00$ plus 25% 390.00 total of \$1950.00.

The contact at the vendor cannot give a do not exceed amount at this time as this is not her area of expertise; she can only convey the information she receives from the sales department.

Please let me know what your client is willing to pay up front to get the data extraction started. Then, I can work with our IT Department and the vendor to obtain a firm not to exceed cost.

If you wish to discuss further, please do not hesitate to contact me.

Thank you,

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



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From: Kory DeClark <declark@braunhagey.com>
Sent: Monday, January 16, 2023 2:37 PM
To: Eric Havens <EricHavens@co.imperial.ca.us>; Josh Wilner <Wilner@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.

Thanks for your January 11, 2023 letter, Mr. Havens.

Regarding the cost quote, thank you for reaching out to the vendor. You said you would try to get us a new quote by today, but that you couldn't guarantee that was possible. We understand and appreciate your efforts. Please let us know when you speak with them and what the new quote is. If we haven't heard from you by January 20, we'll reach out again.

Regarding plea offers, we respectfully disagree with the arguments in your letter, but understand that you will not be producing this data. Our client has yet to decide whether it would like to litigate to resolve this impasse.

Regarding diversion, we understand that you plan to review the data once it's extracted pursuant to Penal Code section 13300(n). We can discuss the validity of any redactions if you decide to make some under this (or any) statute.

Thank you again and we look forward to hearing from you regarding the quote.

Kory DeClark
BRAUNHAGEY & BORDEN LLP
Direct: (415) 869-6487
braunhagey.com/impact

From: Eric Havens <EricHavens@co.imperial.ca.us>
Sent: Wednesday, January 11, 2023 11:55 AM
To: Kory DeClark <declark@braunhagey.com>; Josh Wilner <Wilner@braunhagey.com>
Cc: PRA Response <praresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>
Subject: RE: Summary of 7/21/21 call

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

Dear Mr. DeClark,

Please find correspondence attached.

Thank you,

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



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From: Kory DeClark <declark@braunhagey.com>

Sent: Monday, January 9, 2023 10:30 AM

To: Eric Havens <EricHavens@co.imperial.ca.us>; Josh Wilner <Wilner@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,

Thanks for your email. While we appreciate that the District Attorney's office is experiencing some turnover, this request is now over a year old. We're going to need final responses soon. We propose that your client respond regarding these final two issues—a firm data cost quote and the diversion and plea offer exemptions—by January 16. Please let us know if there is a good reason that cannot happen.

We appreciate your efforts on this.

Kory DeClark

BRAUNHAGEY & BORDEN LLP

Direct: (415) 869-6487

braunhagey.com/impact

From: Eric Havens <EricHavens@co.imperial.ca.us>
Sent: Tuesday, January 3, 2023 10:33 AM
To: Josh Wilner <Wilner@braunhagey.com>; Kory DeClark <declark@braunhagey.com>
Cc: PRA Response <praresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>
Subject: RE: Summary of 7/21/21 call

***** 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



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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 <praresponse@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 <praresponse@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

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



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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:



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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

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