

From: [Ebersole, Thomas E.](#)
To: [Kory DeClark](#)
Cc: [Josh Wilner](#); [Forte, Sandra](#); [PRA Response](#); [Caitlin Shaw](#)
Subject: Re: 20400-140 RE: California Public Records Act Request
Date: Thursday, January 26, 2023 12:30:56 PM

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

Kory

Thank you for your response. I am confirming your two points in your email particularly that the report generated by the DA's office includes the information that they have that would be responsive to the request, and absent the names of the individuals being charged (which I believe Mr Wilner and I had come to an accord that they are no longer requested) the DA's office is not withholding information from its case management system on the basis of an exemption

Thanks again

Tom

Sent from my iPhone

On Jan 26, 2023, at 12:20 PM, Kory DeClark <declark@braunhagey.com> wrote:

Hi Tom,

Thanks for your call. I just received your message. My understanding from your message is:

1. You'll need to miss our meeting today due to your responsibilities surrounding the flooding in Merced.
2. You will be sending over a full report—presumably from both the DA's internal records and Karpel—later today. That report includes all data the county has that is responsive to our data request. You are not withholding any data based on exemptions.

Please confirm point 2, when you have a moment. Assuming both points are correct, that sounds great. I'm sorry you're still dealing with the flooding issues, and I hope everyone is OK.

Thanks,

Kory DeClark

BRAUNHAGEY & BORDEN LLP

Direct: (415) 869-6487
braunhagey.com/impact

From: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>
Sent: Thursday, January 12, 2023 2:37 PM
To: Kory DeClark <declark@braunhagey.com>; Josh Wilner <Wilner@braunhagey.com>; Forte, Sandra <Sandra.Forte@countyofmerced.com>; PRA Response <praresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>
Subject: RE: 20400-140 RE: California Public Records Act Request

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

Kory

A two week extension would be welcome, and appears to be sufficient to get the information to you.

Thank you

Tom

Thomas E. Ebersole
Assistant County Counsel
Merced County Counsel
2222 M Street
Merced, CA 95340
Tel: (209) 385-7564 Ext. 4479
Fax: (209) 726-1337

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From: Kory DeClark <declark@braunhagey.com>
Sent: Thursday, January 12, 2023 2:17 PM
To: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>; Josh Wilner <Wilner@braunhagey.com>; Forte, Sandra <Sandra.Forte@countyofmerced.com>; PRA Response <praresponse@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>

Subject: RE: 20400-140 RE: California Public Records Act Request

Hi Tom,

Thanks for your email. I'm very sorry to hear about the situation there and hope everyone is OK.

As we expressed on our most recent call, we're concerned about the extensive delays to date, but we also understand that the current circumstances are urgent and unavoidable, and we appreciate (and are relying on) your representation that the DA's office was, prior to the flooding, working diligently to run the required reports.

How would you feel about a two-week extension, for a new deadline of January 26?

Stay safe out there.

Kory DeClark

BRAUNHAGEY & BORDEN LLP

Direct: (415) 869-6487

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From: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>

Sent: Thursday, January 12, 2023 9:56 AM

To: Josh Wilner <Wilner@braunhagey.com>; Forte, Sandra

<Sandra.Forte@countyofmerced.com>; PRA Response

<praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>

Subject: RE: 20400-140 RE: California Public Records Act Request

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

Joshua and Kory

I am following up on this email. As you may be aware, Merced County has been on a declared local emergency due to flooding. As a result of this emergency, I have been engaged with our County Emergency Operations Center and been out of the office this week. Additionally, the Courts have had to close due to local flooding as well. That has impacted the District Attorney's office. I have not been available to meet with them to discuss the reports that have been run, and ensure that the reports contain the information requested. In my communications with the DA's office they have been diligently working with Karpel to run all of the required reports – However, the flooding has impacted the ability to finalize the work.

I know that we agreed to have the reports to you today, however, I am unable to deliver those. I am again in the County EOC today, please feel free to call me on my cell number (209.446.2856) at your convenience and we can discuss next steps.

Thank you for your continued courtesy and cooperation

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From: Josh Wilner <Wilner@braunhagey.com>
Sent: Thursday, December 29, 2022 4:28 PM
To: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>; Forte, Sandra <Sandra.Forte@countyofmerced.com>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>
Subject: Re: 20400-140 RE: California Public Records Act Request

Tom,

Thanks for a productive call. I am writing to memorialize what was agreed on.

By January 12, you will:

1. List in detail what data is tracked by the DA's office. If the data is tracked digitally—that is, uploaded somewhere—you will note whether the data can be produced in a report by the DA's office or must be produced by Karpel.
2. Produce all data that can be produced by the DA's office.
3. For data that only Karpel can provide, report back on the conversation between the DA's office and Karpel—which will take place between now and January 12—regarding what needs to happen to produce the data.

4. Provide a full and final response to our December 2 appeal letter regarding your exemptions.

Regards,

Joshua Wilner

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Tel: (646) 829-9403

From: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>

Sent: Wednesday, December 21, 2022 4:06 PM

To: Josh Wilner <Wilner@braunhagey.com>; Forte, Sandra

<Sandra.Forte@countyofmerced.com>; PRA Response

<praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>

Subject: RE: 20400-140 RE: California Public Records Act Request

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

Joshua and Kory

I'm happy to schedule a call for next week. Next Thursday at 3:00 works best for me. I have some flexibility on Tuesday and Friday afternoons as well.

Thanks

Tom

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From: Josh Wilner <Wilner@braunhagey.com>
Sent: Wednesday, December 21, 2022 4:02 PM
To: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>; Forte, Sandra <Sandra.Forte@countyofmerced.com>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>
Subject: Re: 20400-140 RE: California Public Records Act Request

Hi Tom,

Thanks for the update. I will actually be leaving the firm at the end of the year. Would it be possible for us to hop on a quick call next week? Kory DeClark (copied here) will be taking over the requests and I think it would be helpful to get an update from you and get him up to speed while I'm still in the office.

Let me know what time next week works for you. Thanks, again, for your help with this request.

Joshua Wilner
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San Francisco, CA 94104

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From: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>

Sent: Wednesday, December 21, 2022 3:39 PM

To: Josh Wilner <Wilner@braunhagey.com>; Forte, Sandra

<Sandra.Forte@countyofmerced.com>; PRA Response

<praresponse@braunhagey.com>

Subject: RE: 20400-140 RE: California Public Records Act Request

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

Josh

Thank you for the follow up., I have been working with Tom Pfeiff of the District Attorney's office on the request, and he expects to have an idea on what our report will look like early in January (He's currently working on a remote courtroom assignment)

Can I schedule a call with you sometime early in January once Tom and I have met and determined what the report looks like and then you and I can agree on next steps?

Thanks

Tom

Thomas E. Ebersole

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Merced County Counsel

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From: Josh Wilner <Wilner@braunhagey.com>

Sent: Tuesday, December 20, 2022 9:38 AM

To: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>; Forte, Sandra <Sandra.Forte@countyofmerced.com>; PRA Response <praresponse@braunhagey.com>

Subject: Re: 20400-140 RE: California Public Records Act Request

Hi Tom,

Please provide an update on your response. I'm happy to speak on the phone today or later this week.

Regards,

Joshua Wilner

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From: Ebersole, Thomas E. <Thomas.Ebersole@countyofmerced.com>

Sent: Monday, December 5, 2022 10:57 AM

To: Josh Wilner <Wilner@braunhagey.com>; Forte, Sandra
<Sandra.Forte@countyofmerced.com>; PRA Response
<praresponse@braunhagey.com>
Subject: RE: 20400-140 RE: California Public Records Act Request

***** 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
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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
Legal Assistant, Merced County Counsel
2222 M Street, Room 309
Merced, CA 95340
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