

**From:** [Kory DeClark](#)  
**To:** [Ryan Thompson](#); [Emi MacLean](#)  
**Cc:** [Ellen Leonida](#); [Caitlin Shaw](#); [Nessa Wright](#); [PRA Response](#); [Sewit Beraki](#)  
**Subject:** RE: ACLU v. County of Santa Cruz (22 CV 00970)  
**Date:** Wednesday, April 26, 2023 11:57:15 AM  
**Attachments:** [image001.png](#)

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Hi Ryan,

Thanks for talking with me last week. I'm following up on what I think are the two final outstanding issues: 1) the copyright assertion as related to CDAA trainings in the County's possession; and 2) pending issues related to data.

### 1. Copyright as applied to CDAA trainings in the custody of the District Attorney

As we discussed on the phone, ACLU does not believe that the County can withhold the CDAA trainings identified in your February 3 letter on the basis of CDAA's copyright, for two reasons.

First, the County's position undermines the purpose of the PRA—transparency—as it would “allow an agency ‘to mask its processes or functions from public scrutiny’ simply by asserting a third party's copyright.” *Weisberg v. U.S. Dep't of Just.*, 631 F.2d 824, 828 (D.C. Cir. 1980) (rejecting the County's position as it applies to FOIA requests).

Second, relevant caselaw supports ACLU's position. *ACLU of Utah Foundation, Inc. v. Davis County*, No. 180700511, 2021 WL 1215891 (Utah Dist.Ct. Mar. 25, 2021) is particularly on point. In that case—which is materially identical to this one—the court held that the government agency was required to turn over the copyrighted work because it fell under the fair-use exception. We are confident that, if forced to litigate this issue, the Court here will reach the same conclusion for the same reasons. *See also Lindberg v. Cnty. of Kitsap*, 133 Wash. 2d 729, 747 (1997) (“Respondents Richard E. Lindberg and his daughter, Ms. Evelyn C. Lindberg, requested copies of [copyrighted] engineering drawings from Petitioner Kitsap County to be used by them in preparation for their comments and criticism in public hearings and appeals on proposed residential developments in Kitsap County. The use of the documents for that purpose is a reasonable ‘fair use’ qualifying as an exception to the exclusive right of the copyright owner of the materials.”)

You said that you would look at *ACLU of Utah Foundation*, talk to your client, and then get back to us on this issue.

You also said that you would confirm that CDAA has, in fact, copyrighted these three trainings. As I mentioned, the caselaw reveals that copyrights are often asserted over materials that are not, in fact, copyrighted. If these materials are not copyrighted, then the County obviously cannot stand on that objection.

Finally, I asked you whether you believed that copyright, even if it does apply, would bar ACLU from inspecting these trainings without copying them. You said you would get back to me.

### 2. Pending issues related to requested data

I said during our call that ACLU was reviewing the data you provided and that we'd let you know whether it was complete. We've reviewed it now and, unfortunately, we still have a problem: We can't analyze the data because of how it was produced. Specifically, we can't link the data in different datasets.

For example: the new tables you produced on March 6 are not "updated" tables as your accompanying letter states but just new tables that include *only* victim information. There is no way to link the data included in these tables with the already produced data. (For instance, the dataset titled "Filing Defendant Victim List" includes *only* "filing date," "victim sex" and "victim race." The other newly produced dataset – entitled "report log victim list" – has the DA log number, but that is not a unique identifier that is present for some or all of the preexisting data.)

Given how productive our call was last week, I think it would be more efficient to jump on a short call to discuss this rather than go back and forth via email. My colleague Emi MacLean, from ACLU, is happy to join the call so that we can get hopefully get everything resolved at once.

**We are both free tomorrow (Thursday) from 10-11 and 2-3.** If neither of those times work for you, please let us know what does.

Thanks again for your time. We look forward to hearing from you.

Kory DeClark

**BRAUNHAGEY & BORDEN LLP**

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**From:** Ryan Thompson <Ryan.Thompson@santacruzcounty.us>

**Sent:** Friday, April 14, 2023 5:24 PM

**To:** Kory DeClark <declark@braunhagey.com>

**Cc:** Ellen Leonida <Leonida@braunhagey.com>; Caitlin Shaw <Shaw@braunhagey.com>; Nessa Wright <Nessa.Wright@santacruzcounty.us>; PRA Response <praresponse@braunhagey.com>

**Subject:** RE: ACLU v. County of Santa Cruz (22 CV 00970)

**\*\*\* EXTERNAL MESSAGE \*\*\***

Hello,

Yes, I can give you a call on Wednesday, April 19 at 2:30pm if that works for you. Thanks and have a nice weekend.



**Ryan Thompson | Assistant County Counsel**

Santa Cruz County Counsel's Office

701 Ocean Street, Room 505, Santa Cruz, CA 95060

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**From:** Kory DeClark <[declark@braunhagey.com](mailto:declark@braunhagey.com)>

**Sent:** Friday, April 14, 2023 3:41 PM

**To:** Ryan Thompson <[Ryan.Thompson@santacruzcounty.us](mailto:Ryan.Thompson@santacruzcounty.us)>

**Cc:** Ellen Leonida <[Leonida@braunhagey.com](mailto:Leonida@braunhagey.com)>; Caitlin Shaw <[Shaw@braunhagey.com](mailto:Shaw@braunhagey.com)>; Nessa Wright <[Nessa.Wright@santacruzcounty.us](mailto:Nessa.Wright@santacruzcounty.us)>; PRA Response <[praresponse@braunhagey.com](mailto:praresponse@braunhagey.com)>

**Subject:** RE: ACLU v. County of Santa Cruz (22 CV 00970)

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Counsel,

Thanks for your letter and enclosures. I've spoken with the ACLU about the issues you address in your letter and would like to schedule a time to speak with you about the few remaining matters. Are you available on Wednesday, April 19 from 2-4pm, or Thursday, April 20 from 10a-12p or 2-4p?

Thanks,

Kory DeClark

**BRAUNHAGEY & BORDEN LLP**

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**From:** Nessa Wright <[Nessa.Wright@santacruzcounty.us](mailto:Nessa.Wright@santacruzcounty.us)>

**Sent:** Monday, March 6, 2023 9:36 AM

**To:** Kory DeClark <[declark@braunhagey.com](mailto:declark@braunhagey.com)>

**Cc:** Ryan Thompson <[Ryan.Thompson@santacruzcounty.us](mailto:Ryan.Thompson@santacruzcounty.us)>; Ellen Leonida <[Leonida@braunhagey.com](mailto:Leonida@braunhagey.com)>; Caitlin Shaw <[Shaw@braunhagey.com](mailto:Shaw@braunhagey.com)>

**Subject:** RE: ACLU v. County of Santa Cruz (22 CV 00970)

**\*\*\* EXTERNAL MESSAGE \*\*\***

Dear Kory DeClark –

Please see the attached correspondence of this date and enclosures from Ryan Thompson in the above-referenced matter.

Respectfully,



**Nessa Wright | Legal Secretary II**

Santa Cruz County Counsel's Office

701 Ocean Street, Room 505, Santa Cruz, CA 95060

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Email: [Nessa.Wright@santacruzcounty.us](mailto:Nessa.Wright@santacruzcounty.us)

My schedule is: Monday through Friday, 8am to 5pm.

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**From:**

**Sent:** Friday, February 3, 2023 1:46 PM

**To:** Ryan Thompson <[Ryan.Thompson@santacruzcounty.us](mailto:Ryan.Thompson@santacruzcounty.us)>

**Cc:** Kory DeClark <[declark@braunhagey.com](mailto:declark@braunhagey.com)>; Ellen Leonida <[Leonida@braunhagey.com](mailto:Leonida@braunhagey.com)>

**Subject:** ACLU v. County of Santa Cruz (22 CV 00970)

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Counsel,

Attached please find correspondence on behalf of Kory DeClark.

Regards,

Caitlin Shaw

Litigation Legal Assistant

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