



OFFICE OF THE DISTRICT ATTORNEY  
CONTRA COSTA COUNTY

*Mark A. Peterson*  
DISTRICT ATTORNEY

June 27, 2013

Omar Figueroa  
Law Offices of Omar Figueroa  
7770 Healdsburg Ave., Suite A  
Sebastopol, CA 95472

Re: Public Records Act Request for Medical Marijuana Documentation

Dear Mr. Figueroa:

You requested documents concerning medical marijuana, including training materials, bulletins, directives, orders, policies, and/or guidelines.

To the extent that your request asks for documents contained within our investigatory case files, they are exempt from disclosure under Government Code Section 6254(f), which applies to district attorney case files. (*Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1059.) The Public Records Act does not require us to provide you with unfettered access to our case files. "Once an investigation . . . has come into being because there is a concrete and definite prospect of enforcement proceedings at that time, materials that relate to the investigation and, thus, properly belong in the file, remain exempt subject to the terms of the statute." (*Ibid.*; *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174.) The exemption from disclosure continues to apply even after the investigation is closed. (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 355-362; *Rivero v Superior Court, supra*, 54 Cal.App.4th 1048, 1052.)

In addition, state law specifically prohibits disclosure of a wide variety of documents found in many of our case files. Government Code Section 6254(k) grants an exemption from disclosure for "records the disclosure of which is exempted or prohibited pursuant to federal or

state law.” Multiple prohibitions and exemptions apply to a large number of documents in our misdemeanor archives: state summary criminal history information (Pen. Code, § 11140 et seq.); local summary criminal history information (Pen. Code, § 13100 et seq.); criminal offender record information (Pen. Code, § 11075 et seq.; Title 11, CCR § 703; probation reports (Pen. Code, § 1203.05); confidential information concerning victims and witnesses (Pen. Code, §§ 841.5, 964; confidential informants and other sources of information subject to the official information privilege (Evid. Code, § 1040 et seq.); attorney work product (Code Civ. Proc., § 2018); and sealed juror information (Code Civ. Proc., § 237.)

This Office has no disclosable written bulletins, directives, orders, policies, and/or guidelines regarding medical marijuana to disclose. I do not believe that we possess any such documents. Even if we did, they would be nondisclosable for a variety of reasons. “[A] clearly framed request which requires an agency to search an enormous volume of data for a ‘needle in the haystack’ . . . may be objectionable as unduly burdensome.” (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.) We would deny your request because “on the facts of [this] particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.” (Gov. Code, § 6255, subd. (a).) Government Code section 6255 imposes on the courts of this state a duty to weigh the benefits and costs of disclosure in each particular case. (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 452.)

Any internal documents regarding written bulletins, directives, orders, policies, and/or guidelines regarding medical marijuana would be nondisclosable under the work product doctrine. “A writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories is *not discoverable under any circumstances*.” (Code Civ. Proc., § 2018.030, subd. (a), italics added [formerly § Code Civ. Proc., § 2018, subd. (c)].) “[T]he work-product doctrine is not limited to formal discovery” (*People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 718, fn. 5), and it absolutely bars the use of statutory procedures to obtain core work product that reflects counsel’s impressions, conclusions, opinions, or legal research or theories. (*People v. Coddington* (2000) 23 Cal.4th 529, 603-606, disapproved on other grounds by *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13; see Code Civ. Proc., § 2018.020, subd. (a)

[“It is the policy of the state to . . . [p]reserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases[, and to p]revent attorneys from taking undue advantage of their adversary’s industry and efforts.”].)

To the extent you are requesting records that were produced from county sources, the items you are requesting are exempted from disclosure by the deliberative process privilege. Government Code Section 6255; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136. In addition, the courts have ruled that written policies concerning how prosecutors will exercise their discretion in charging and sentencing are not subject to discovery. *Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478. Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code Section 6254(k).

To the extent this office maintains training materials, policies, and guidelines regarding medical marijuana, such documents are copyrighted materials and not county public records for purposes of production under the Public Records Act. The District Attorney’s Office has prepared no training manuals and materials regarding the use of medical marijuana, but does have such materials that were produced by the California District Attorneys Association (CDAA). These materials are covered by copyrights held by CDAA. CDAA objects to the documents being copied and released, so we cannot copy them for you without violating federal law. Thus, we are unable to duplicate these documents for you.

In addition, we are informed by CDAA that these materials are included among a group of CDAA publications and materials that are produced specifically for use by prosecutors and law enforcement agencies, and include tactical and strategic information. Consequently, it is the position of CDAA, with which we concur, that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. They are therefore exempt from PRA disclosure under Government Code section 6255. You may wish to contact CDAA directly to determine whether they are willing to make copies of these items available to you. Advising CDAA of the purpose behind your request and the use you plan to make of the material may lead

that organization to conclude that it will release the material to you. You should contact Thomas Toller, Director of Publications, at CDAA, 731 K Street, 3rd Floor, Sacramento, CA 95184, telephone (916) 443-2017.

Further, to the extent you seek this material for use in some litigation, it should be sought through the discovery process in that litigation, rather than through a PRA request. The PRA should not be used to obtain items from a party that cannot be obtained through the discovery procedures in the litigation. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.)

If you disagree, we are willing to reconsider our views, provided that you can present us with persuasive legal authority to support your contentions. But for the foregoing reasons, your request for release of information is denied. We reserve the right to present additional theories and authority for non-disclosure in the future.

Sincerely,



Jennifer Tompkins  
Deputy District Attorney