



COUNTY OF SAN BERNARDINO
Office of the District Attorney
Appellate Services Unit
MICHAEL A. RAMOS
DISTRICT ATTORNEY

June 27, 2013

Omar Figueroa
7770 Healdsburg Ave., Ste. A
Sebastopol, CA 95472

Re: Your California Public Records Act Request (undated, but postmarked June 12, 2013).

Mr. Figueroa,

In an undated letter, you requested inspection and copies of the following under the California Public Records Act (CPRA):

Any and all documents or information concerning medical marijuana, Proposition 215 (codified as Health and Safety Code § 11362.5) and/or Senate Bill 420 (codified as Health and Safety Code §§ 11362.7-11362.83), including, but not limited to, any and all guidelines, bulletins, orders, directives, policies, and/or protocols. Please provide any and all documents or information concerning medical marijuana doctors, patients, caregivers, dispensaries, collectives, cooperatives and/or associations.

Unfortunately we must deny disclosure for several reasons.

1. Attorney Work Product

The District Attorney's general practice is to seek justice and redress for victims such that the evidence will bear. Any sort of written "guidelines," internal policy writings, or training materials are exempt from disclosure as attorney work product. Code of Civil Procedure section 2018.030(a) (as incorporated by Govt. Code § 6254(k)) should make this clear:

A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.

Prosecutors, as with all attorneys, are not required to impair their chances at litigation by disclosing how they are taught to think about evaluating, charging and prosecuting their cases.

2. The Catchall Exemption and Law Enforcement Materials

We also invoke the catchall exemption under Government Code section 6255 because the public interest in disclosure of "law enforcement materials" is outweighed by the public interest in nondisclosure. (See *Eskaton Monterey Hospital v. Myers* (1982) 134 Cal.App.3d 788 [denying disclosure of Medical's fiscal auditing manual].) Assuming any such materials exist as you seek, it would be harmful to future investigations and prosecutions to publish how the District Attorney thinks about drug crimes. "It is an unassailable proposition that disclosure of law enforcement materials which when revealed assist in thwarting and circumventing the law is not in the public interest." (Id. at 793.)

3. Unduly Burdensome, etc.

We again assert Government Code section 6255 as allowing nondisclosure where a CPRA request is unduly burdensome. (See *American Civil Liberties Union v. George Deukmejian* (1982) 32 Cal.3d 440, 453-454.) You seek disclosure of "any and all documents or information concerning medical marijuana..." Such a request is far too vague and large. It extends by its terms to criminal case files, to emails, to attorney notes, and so on. Moreover, the request has no date range. We need not comply with such a request. One court held:

A clearly framed request which requires an agency to search an enormous volume of data for a "needle in the haystack" or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome...

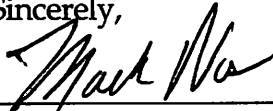
(*California First Amendment Coalition v. Superior Court (Wilson, Governor)* (1998) 67 Cal.App.4th 159, 166.).

4. Investigatory File Exemption

To the extent that the broad request seeks materials that are in District Attorney criminal case files, we assert the investigatory files exemption under Government Code section 6254(f), which exempts “any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes ...” The type of information requested falls within this exemption because the District Attorney prepares it in the course of investigation and prosecution. (See, e.g., *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.) Moreover, courts have interpreted the “investigatory file” exemption to extend indefinitely, even after an investigation is closed. (*Williams v. Superior Court* (1993) 5 Cal.4th 337; *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048; *Rackaukas v. Superior Court* (2002) 104 Cal.App.4th 169.)

Finally, because of the breadth and wording of your request, we must: assert the “deliberative process” facet of the catchall exemption under Government Code section 6255; assert the pending litigation exemption under Government Code section 6254(b); remind you that criminal history information is off limits under CPRA. ((Penal Code §§ 11140, 11141, 11142, 13200, 13300, 13301, 13302, 13303.)

Sincerely,



MARK A. VOS

Deputy District Attorney
Appellate Services Unit