

HALL OF JUSTICE
330 WEST BROADWAY
SAN DIEGO, CA 92101
(619) 531-4040
SanDiegoDA.com



OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

DAVID P. GREENBERG
ASSISTANT DISTRICT ATTORNEY

SUMMER STEPHAN
DISTRICT ATTORNEY

July 23, 2020

Transmitted Via Email

Shilpi Agarwal
Senior Staff Attorney
ACLU Northern California
Email: sagarwal@aclunc.org
cc: TCoughlin@aclunc.org

Re: California Public Records Act Request
DA Reference No. 19-67

Attorney Agarwal:

Thank you for your patience during the processing of this request.

As previously explained, I am the designated custodian of records for the San Diego County District Attorney's Office responsible for compliance with the California Public Records Act (CPRA).

On July 29, 2019, via email, we received your request under the CPRA as follows:

"I seek copies of the following materials in the agency's possession, regardless of who wrote them, from 1990 onwards:

1. Any training materials related to jury selection
2. Any training materials related to the constitutional requirements under *Batson v. Kentucky* and *People v. Wheeler*, including training materials related to handling *Batson-Wheeler* claims or motions."

In my previous correspondence with you, I noted that your request spans 29 years, and that our agency has a professional staff in excess of 1,000 employees working in at least five locations throughout San Diego County. On August 8, 2019, I informed you that we would need additional time to evaluate and respond given the scope of your request.

On August 22, 2019, I informed you that collection and review of the extensive volume of records that fit within the generalized search parameters of your request would take additional time. On that date, I also provided you with access to 468 pages of responsive records that were already in the public domain.

On November 22, 2019, I updated you that we had performed a search that included 264 electronic query hours and were still conducting the initial review of thousands of electronic records that fit within the generalized search parameters of your request. On that same date, Litigation Assistant Tara Coughlin informed me that you did not have the records provided on August 22, 2019, in your files. On November 22, 2019, I resent access to the 468-page record to Ms. Coughlin, who then confirmed receipt.

On February 20, 2020, I updated you that we had completed the initial review of the extensive number of records identified in our original search and had identified records responsive to your request. In my update, I advised that the review of these records for any lawful exemptions and privileges was being undertaken seriously and was an exceptionally time-intensive matter requiring additional time.

On April 24, 2020, I updated you that in light of the rapidly evolving and unprecedented emergency situation concerning the spread of COVID-19, San Diego County had implemented the orders of federal, state, and local officials. Because of the impact of the mandatory safety measures, more time was needed to complete your request. At that time, I estimated a completion date of on or about July 23, 2020.

We have now completed our search and review of potentially responsive records. As noted above, we conducted a reasonable search based upon your expansive request and located responsive records. You were previously provided with records for the years 1990-1994. Additional responsive records for the following years were located: 1993, 1997, and 2000-2019. Accordingly, after our reasonable search, we did not locate responsive records identifiable for the years 1995-1996, and 1998-1999. Please note that there are some responsive records for which the year is not known.

After extensive review of the responsive records, we determined that our training materials are protected in their entirety by the core work product privilege¹, the deliberative process², doctrines of confidentiality³ and/or privacy⁴, and provisions of law prohibiting disclosure of particular types of information such as copyrighted materials⁵, criminal history information⁶ and personal identifying information⁷.

That determination notwithstanding, the District Attorney is aware of the serious concern surrounding the role unconscious and conscious bias play in jury selection. Notably, in January 2020, the Supreme Court of California announced the formation of a work group tasked to study measures that might be needed to guard against impermissible discrimination in jury selection. The court wrote that this work

¹ Code Civ. Pro., § 2018.030; Gov. Code, §6254, subds. (d)(3), (f) and (k); Gov. Code, § 6255, subd. (a); see *Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 381; *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176; *Laguna Beach County Water Dist. v. Superior Court* (2004) 124 Cal.App.4th 1453, 1461; *Aetna Standard & Surety Co. v. Superior Court* (1984) 153 Cal.App.4th 467, 478-479.

² *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1343; *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 170; Gov. Code, § 6255, subd. (a).

³ Gov. Code, § 6254, subd. (k), including, but not limited to, Evid. Code, §§ 1040-1041.

⁴ Gov. Code, § 6254, subd. (k), including, but not limited to, Cal. Const. art 1, § 1; Gov. Code, § 6250.

⁵ Gov. Code, §6254, subd. (k), including, but not limited to, Civ. Code, § 980; Title 17 U.S.C. § 101 et seq.

⁶ Gov. Code, §6254, subd. (k), including, but not limited to, Pen. Code, § 11105.

⁷ Gov. Code, §6254, subd. (k), including, but not limited to, Pen. Code, §§ 530.5-530.55.

group would “undertake a thoughtful, inclusive study of how *Batson/Wheeler* operates in practice in California” and the role that unconscious bias may play in the jury selection process.

Therefore, the District Attorney has directed that she will waive the core work product privilege as well as the deliberative process exemption for the portions of the responsive records that will be provided to you. Those records consist of 1053 pages. We have compiled the redacted records; they are organized and bookmarked by year. Please note that we do not intentionally waive any proscription against disclosure such as copyright infringement or statutory prohibitions to the extent such materials may inadvertently appear in the records disclosed.

Please note that this Office endeavors to provide access to information concerning the conduct of the People’s business. We reserve the right, however, to maintain the lawful confidentiality of our records, and to claim, enforce, and apply any and all applicable exemptions, privileges, and proscriptions against public disclosure of records, including, but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence, Civil Procedure and Penal Codes, the Federal Rules of Evidence, and those established by case law.

Shortly, you will receive a link from a file-share server for the responsive records described above. The link will expire in 7 days. You will receive a separate email with a password. If you are unable to download the records before the expiration of the link, please contact me and I will provide you with another link. If you have any issues with the download, please feel free to contact me.

With the production of these records, your request is now complete and I will close our file accordingly.

Best regards,



Patty Herian
Deputy District Attorney