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COUNTY OF SANTA CLARA**

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March 1, 2019

VIA E-MAIL

Susan Bassi
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Re: Your February 19, 2019 California Public Records Act Request

Dear Ms. Bassi:

I write to provide the County's initial response to your February 19, 2019 California Public Records Act (CPRA) request. The CPRA requests contained in your February 15 email are listed below with responses and requests for clarification where needed:

This request is for the time period of January 1, 2010-production:

1. All records and writings evidencing the county's employment and hiring practices.

Without more specificity, it is not clear what records and writings you are seeking. Some potentially responsive records and writings are exempt or excluded from the CPRA, and will not be provided. For example, individual personnel records are exempt from disclosure under the CPRA under Government Code section 6254(c) as well as protected by individual employees' privacy rights under California Constitution, Article I, Section 1, as well as the right to privacy under state and federal law. Similarly, communications with County Counsel to obtain legal advice about specific personnel issues, and County Counsel's nonpublic legal work product are exempt from production based on the attorney-client privilege and attorney work product doctrine (Gov. Code § 6254(k); Evid. Code §§ 915, 952, 954), and will not be produced.

To the extent you are seeking documents about specific County processes, the following publicly accessible weblinks provide information and documents responsive to your request:

- County Ordinance Code, Division A25: https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nodeId=TITAGEAD_DIVA25PEDE;

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- The County Employee Services Agency website (<https://www.sccgov.org/sites/esa/Pages/Employee-Services-Agency.aspx>), which includes links to aspects of County employment and hiring that may be responsive to what you are seeking. For example, the Job Opportunities tab (<https://www.sccgov.org/sites/esa/employment/Pages/eo.aspx>) has links to job opportunities and information about County employment and hiring practices, and it also includes a link to County-related Human Resources Policies and Procedures (<https://www.sccgov.org/sites/esa/employment/hr/Pages/hrpp.aspx>), including links to the County Merit System Rules, the County Charter, the County's HR Practices Manual, Hiring Options for Managers, Recruitment Process for Managers, HR Policies and Procedures, and Human Resources Forms. Other tabs include links to Classification, Executive Services, Labor Relations, Employee Benefits, and Retiree Benefits.

We believe these links provide the public records you are seeking. If not, please let us know so we can try to assist you to clarify your request.

2. All records and writings related to the county's Whistleblower program.

As drafted, your request seeks many volumes of documents. Please clarify or narrow the request so that we may effectively search for responsive and disclosable records. Please note that some or all of these records, or portions thereof, may be exempt from disclosure under the attorney-client and attorney work product privileges (Gov. Code § 6254(k); Evid. Code §§ 915, 952, 954), the investigative files exemption (Gov. Code § 6254(f)); the official information privilege (Gov. Code § 6254(k); Evid. Code § 1040), and any other applicable exemptions.

3. All records related to a DAO employee known as Sean Webby, including but not limited to Mr. Webby's pre-employment records, interview records and employment records subject to production. This request includes a request for Mr. Webby's job description, complaint history and communications that include coordination of Mr. Rosen's schedule, press conferences, and any interactions with the press and the public related to Mr. Rosen's political campaigns and the campaign of Judge Aaron Persky in 2016-2018. The request is for Mr. Webby's resume.

Attached please find the job specification for Public Communications Officer – District Attorney, Mr. Webby's current position. To the extent this request seeks employment records, including complaints and resumes, those records are exempt from disclosure pursuant to Gov. Code § 6254(c), which protects personnel records from disclosure. To the extent this request

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seeks records relating to Mr. Rosen's campaign, Mr. Rosen's campaign was conducted in his private capacity, not in his capacity as a County employee. Therefore, the District Attorney's Office possesses no disclosable records responsive to this request.

The County Registrar of Voters keeps records of campaign finance disclosures are available at: <https://public.netfile.com/pub2/?aid=SCC&AspxAutoDetectCookieSupport=1>. Numerous public records relating to Mr. Rosen's campaigns are available at the link. The Registrar of Voters also has filings and communications relating to processes and procedures for Mr. Rosen to appear on the ballot. These may include, for example, ballot designation worksheets or other routine candidate filings. However, these records do not appear to be responsive to your request.

Regarding the campaign of Judge Aaron Persky, this request appears duplicative of your February 15, 2019 request. We are currently conducting a search and will provide you with copies of all responsive and disclosable records.

The County is unable to fully respond to this request as drafted. Please clarify which "interview records" you are seeking by identifying a time frame and/or subject matter. Please clarify what you mean by "pre-employment information."

Please note that some or all of these records, or portions thereof, may be exempt from disclosure under the attorney-client and attorney work product privileges (Gov. Code § 6254(k); Evid. Code §§ 915, 952, 954), the investigative files exemption (Gov. Code § 6254(f)), the official information privilege (Gov. Code § 6254(k); Evid. Code § 1040), and any other applicable exemptions.

4. All records of communications between Mr. Webby and Mr. Benjamin Rada, the PIO for the county courts.

As drafted, your request seeks many volumes of documents. Please clarify or narrow the request by providing key words and/or subject matter so that we may effectively search for responsive and disclosable records. Please note that some or all of these records, or portions thereof, may be exempt from disclosure under the official information privilege (Gov. Code § 6254(k); Evid. Code § 1040), and any other applicable exemptions.

5. All communications Mr. Rosen has had with organizations and religious groups during the time period where he campaigned for DAO, and including communications, video and information related to any presentations, semi public presentations, made to any religious organizations located in Santa Clara County.

As explained above, Mr. Rosen pursues his campaign efforts in his personal capacity and not in his capacity as District Attorney. Further, this request is vague as to whether you are seeking communications during Mr. Rosen's campaign that were related to his campaign, or all communications during the timeframe of his campaign. We are currently conducting a search for records during the time period of Mr. Rosen's campaign that reference his campaign to determine if there are any County records responsive to this item, and will provide you with copies of responsive and disclosable records.

Please note that some or all of these records, or portions thereof, may be exempt from disclosure under the attorney-client and attorney work product privileges (Gov. Code § 6254; Evid. Code §§ 915, 952, 954), the official information privilege (Gov. Code § 6254(k); Evid. Code § 1040), and any other applicable exemptions.

6. All records related to the planning and notice of any and all press conferences Mr. Rosen held, including a press conference held related to the changing of laws for cyberbullying and sexual assault from 2010 to present.

We are currently conducting a search regarding press conferences Mr. Rosen held related to the changing of laws for cyberbullying and sexual assault from 2010 to present and will provide you with copies of all responsive and disclosable records. To the extent you are requesting more records, please clarify or narrow the request so that we may effectively search for responsive and disclosable records.

7. All records related to Mr. Rosen's travel out of country, and to San Quentin prison. This includes travel logs, expense records, emails, phone records, and communications.

We are currently conducting a search and will provide you with copies of all responsive and disclosable records.

Please note that some or all of these records, or portions thereof, may be exempt from disclosure under the attorney-client and attorney work product privileges (Gov. Code § 6254;

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Evid. Code §§ 915, 952, 954), the official information privilege (Gov. Code § 6254(k); Evid. Code § 1040), and any other applicable exemptions.

8. All records to and from any employee of the DAO and a person known as Michele Landis Dauber, and Ken Dauber. This includes social media connections, emails, phone records, letters, calendars, notes, invitations or communications.

Attached is a zip folder (“Emails”) and two additional attachments (“dauber to 201511 Redacted” and “CPRA_Redacted”) containing many email documents responsive to your request. Although your request seeks correspondence and communications dating back to January 1, 2015, please note that by virtue of the County’s retention policies, emails are generally only retained for two years.

We have applied exemptions narrowly to redact the following information in the attached documents:

- Private personal contact information, and in two instances private medical information, both of which are exempt from disclosure under sections 6254(c) and 6255 of the Government Code, and non-responsive to your request in any event.
- The name of the victim in the Brock Turner case, which was kept confidential during the case and is exempt from disclosure under the official information privilege (Gov. Code, § 6254(k); Evid. Code, § 1040).
- Preliminary drafts that the District Attorney’s Office does not retain in the ordinary court of business (Gov. Code, § 6254, subd. (a)).
- Records discussing or containing prosecution strategy and/or non-public details about specific criminal prosecutions, which are protected by the attorney-client privilege and/or attorney work-product protection, and are subject to the investigative exemption (Gov. Code, § 6254, subds. (f), (k); Evid. Code, § 952; Civ. Proc. Code, § 2018.030). This includes all records from the District Attorney’s Office’s internal case management system.
- Records of communications between the District Attorney’s Office and the Office of the County Counsel attorney Kavita Narayan concerning civil legal matters, which are protected by the attorney-client privilege (Gov. Code, § 6254, subd. (k); Evid. Code, § 952).
- Communications with crime victims regarding their cases, which are protected by the official information privilege (Gov. Code, § 6254, subd. (k); Evid. Code, § 1040).
- Records containing internal discussions and deliberations prior to formulation of policies and official decisions, which are protected by the deliberative process privilege (Gov. Code, § 6255; *Regents of Univ. of Cal. v. Super. Court* (1999) 20 Cal.4th 509, 540).

9. The formal calendars, with notes, vacation time, travel, press conferences, meetings and public appearances for Mr. Rosen for the years 2016, 2017, 2018, and 2019.

Your request may include documents that are not subject to exemption, however based on the request as stated, it is unclear what records you are specifically seeking. Please clarify and narrow your request to non-exempt records.

The records you seek may reveal criminal investigations and strategies, and deliberative processes. Therefore, the records are exempt from disclosure pursuant to Government Code § 6254(p), which protects records revealing deliberative processes such as calendars, notes, and meetings. Records are also exempt pursuant to Government Code § 6254(k) and Evidence Code §§ 915, 952, and 954, prosecutors' and defense attorneys' records are exempt from disclosure under the attorney-client privilege and/or attorney work product protection. Investigative and security files maintained by the Office of the District Attorney are also exempt from disclosure under Government Code § 6254(f).

10. All records evidencing the policies and procedures of the DAO and Victim Witness Services related to the privacy of victims. This includes policies about redaction of victim names from court file and information about internal conflicts of interest.

In response to your August 23, 2018 request and October 22, 2018 request, we provided a complete copy of the District Attorney's Policies and Procedures Manual, as well as various Victim Services Unit's policies, where any such policies and procedures would be located.

11. All records evidencing memos, communications and writings as to how county employees, the DAO and VWS were informed that PIO Sean Webby was subject to a 2016 restraining order.

The District Attorney's Office has not located any responsive records.

12. All policies and procedures of the DAO and VWS for checking conflicts of interest.

In response to your August 23, 2018 request and October 22, 2018 request, we provided a complete copy of the District Attorney's Policies and Procedures Manual, as well as various Victim Services Unit's policies, where any such policies and procedures would be located.

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13. All invoices, costs and records related to the county investigation of and representation of Mr. Webby in 2016 and 2017 related to a restraining order requested by an individual known as Stephen Patrick White.

Attached please find a zip folder (“White v Webby”) containing court filing records from the representation of Mr. Webby in the White matters. We have no responsive invoices or cost records. Other records you have requested, including County Counsel communications with the District Attorney’s Office, the case file, and other records relating to investigation and representation are exempt from disclosure under the attorney-client and attorney work product privileges (Gov. Code § 6254; Evid. Code §§ 915, 952, 954), the official information privilege (Gov. Code § 6254(k); Evid. Code § 1040), the investigation files exemption (Gov. Code § 6254(f)), and any other applicable exemptions.

Very truly yours,

JAMES R. WILLIAMS
County Counsel

HAYLEY A. REYNOLDS
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