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COUNTY OF MARIPOSA
OFFICE OF COUNTY COUNSEL

January 5, 2018

Via Email (president@ncfm.org) and First Class Mail

Harry Crouch, President
National Coalition for Men
932 C Street, Suite B
San Diego, California 92101
president@ncfm.org

Subject: **Final Response to Public Records Act Request Dated December 12, 2017**

Dear Mr. Crouch:

The County of Mariposa ("County") received your Public Records Act ("PRA") request dated December 12, 2017 ("Request"). On December 22, 2017, the County sent you an initial response stating it would provide this response on or before January 5, 2018. This letter constitutes the County's determination regarding your Request.

As an initial matter, your Request does not include any time limitations, and is vague and unfocused. A request for public records must be focused and specific. (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481.)

Notwithstanding the above, the County hereby provides this letter in response to your Request. As the County understands it, your Request contains five individual requests. The County responds to each individual request as follows:

Request No. 1

Request:

“Any and all communications, to include electronic mail communications, memos, written correspondence, records of phone calls to include landline and cellular phone calls produced, initiated or received from county issued cellular phones or cellular phones paid by taxpayer funds concerning any and all matters related to both matters pertaining to Mr. Cox including the criminal case and the receivership case, by any and all county officials, including any and all personnel from the Sheriff’s Department, the District Attorney’s Office, any planning or building department personnel, any personnel from the fire department or any other state agency who participated or assisted in these matters, or persons acting on behalf of, or at the direction of any county official, to exclude communications that are deemed protected by the attorney client privilege. If there are communications that are deemed protected by the attorney-client privilege, then it is requested that a list of any all communications of that type be included that indicated who the sender of the message was, who the recipient of the message was, and the date and time of the message and the message or communication type, of course without divulging the content of the protected message.”

Response:

The records you appear to be requesting are exempt from disclosure under the PRA pursuant to Government Code section 6254(b), which exempts “[r]ecords pertaining to pending litigation to which the public agency is a party...until the pending litigation or claim has been finally adjudicated or otherwise settled.” (See *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420–1421 [exemption applies to documents prepared for use in existing or anticipated litigation].) In addition, the disclosure of the documents you appear to request would constitute an unwarranted invasion of privacy. Privacy rights are protected by the California Constitution and are a fundamental interest recognized by the PRA. (Cal. Const., Art. 1, §1; Gov. Code, § 6254(c) and (k); Gov. Code, § 6255.) Furthermore, the County is justified in withholding these documents (if any exist) because they are exempt from disclosure as the public interest served by not disclosing them clearly outweighs the public interest served by their disclosure. (Gov. Code, § 6255.) Also, to the extent your Request is seeking records regarding the “criminal case” against Mr. Cox, your Request should be directed to the District Attorney’s office (not the County) since the District Attorney’s office would be the public agency in possession of any such records.

Notwithstanding these objections, the County reads your first request as requesting communications and other documents concerning **both** “the criminal case” against Mr. Cox **and** the “receivership case” involving Mr. Cox’s property. The County does not possess any records regarding both the criminal case against Mr. Cox and the receivership action involving Mr. Cox’s property. Accordingly, the County has determined that there are no documents responsive to your first request.

Request No. 2

Request:

“Any and all communications of any type, to and from any county employee or persons acting on their behalf or direction, to and from any social media organization such as Facebook or Instagram or any such similar social media organization, concerning any issue involving the infringement of Mr. Cox’s First Amendment Rights through social media postings.”

Response:

The disclosure of the records you have requested (if any exist) would constitute an unwarranted invasion of privacy. Privacy rights are protected by the California Constitution and are a fundamental interest recognized by the PRA. (Cal. Const., Art. 1, §1; Gov. Code, § 6254(c) and (k); Gov. Code, § 6255.) In addition, the County is justified in withholding these documents (if any exist) because they are exempt from disclosure as the public interest served by not disclosing them clearly outweighs the public interest served by their disclosure. (Gov. Code, § 6255.)

Notwithstanding these objections, as written, your second request is vague and ambiguous. Specifically, the County reads your second request as requesting communications between the County and “Facebook or Instagram or any such similar social media organization” regarding an alleged infringement of Mr. Cox’s First Amendment rights, and not whether any social media postings occurred on any of these social media organizations. The County does not possess any communications between the County and any social media organization regarding any alleged infringement of Mr. Cox’s First Amendment rights. It is the County’s position that Mr. Cox’s First Amendment rights have not been infringed in any manner.

Thus, the County has determined that there are no documents responsive to your second request for communications involving any alleged infringement of Mr. Cox’s First Amendment rights.

Request No. 3

Request:

“The name of outside legal counsel or law firm and the dollar amount of taxpayer funds spent on any legal counsel or law firm who has been retained or is already on retainer, contacted or counseled with regard to any issue involving Mr. Cox, not to include outside legal counsel retained for the purposes of the receivership action.”

Response:

Your third request appears to seek information protected by the attorney client privilege, and therefore any responsive documents would be exempt under the PRA. The PRA exempts certain types of documents from disclosure, such as documents the disclosure of which is exempted or prohibited pursuant to federal or State law, including, but not limited to, provisions of the Evidence Code relating to privilege, such as the attorney client privilege. (Gov. Code, § 6254(k); Evid. Code, § 954 [attorney-client privilege].)

Notwithstanding the above, it is the County's position that no documents exist that are responsive to this request. A "name" and a "dollar amount" are not a "document" subject to disclosure under the PRA. Please note that the PRA does not cover "names" or "dollar amounts," but solely documents. In any event, the County's position is that, besides the outside legal counsel retained for the purposes of the receivership action, it has not hired any other legal counsel with regard to a legal issue regarding Mr. Cox. Since your PRA request specifically excludes outside legal counsel retained for the purposes of the receivership action, the County has determined that there are no documents responsive to your third request.

Request No. 4

Request:

"Any and all records and documents related or connected to the alleged civil inspection search warrant that was served on Mr. Cox's property on October 14, 2016, to include; notes, reports, photographs, video or audio recordings, names of persons who participated in any manner in the preparation or service of the inspection search warrant, the search warrant, the search warrant affidavit, the search warrant return, the court stamped and signed declaration or affidavit of the person or persons or affiant who requested that the search warrant be sealed, the reasons or justification for the request for the sealing of the search warrant affidavit, and any and all documents, reports, notes, court records, official forms, detailing why the County of Mariposa is in violation of California Rules of Court sections 2.550 & 2.551. Additionally, it is requested, that if the records requested pursuant to California Rules of Court sections 2.550 & 2.551 exist, and are provided, that they be accompanied by an affidavit, sworn under penalty of perjury that the records are true, were produced at or around the time of the service of the inspection warrant, and that the sworn affidavit provide information as to the exact location(s) of the electronic device(s) that produced those records and a confirmation that those devices will be protected from tampering, hacking, or destruction, so the veracity of the initial construction of those documents can be verified by an electronic forensic examination if warranted. Since this correspondence is being presented to Mr. Steven Dahlem, County Counsel for the County of Mariposa California, it is respectfully requested that this accompanying affidavit, sworn under penalty of perjury come directly from and is signed by Mr. Steven Dahlem. If the sworn affidavit is provided or signed by another person other than Mr. Dahlem, then a legitimate reason or reasons shall be included in such sworn affidavit."

Response:

Your fourth request is overbroad in time and overbroad in scope. It also impermissibly seeks information and documents protected by the official information privilege under Evidence Code section 1040. (See *City & County of San Francisco v. Superior Court in and for City and County of San Francisco* (1951) 38 Cal.2d 156, 162 [the right of inspection may be curtailed where public policy demands that disclosure be prohibited]; *People v. Superior Court* (1971) 19 Cal.App.3d 522, 526 [Evidence Code section 1040 establishes governmental privilege barring evidence of official information whose disclosure is against public interest]; *Michael P. v. Superior Court* (2001) 92 Cal.App.4th 1036, 1042–1043 [public entity may assert claim of government privilege under official information privilege].)

Additionally, any warrant documents are sealed pursuant to California Rules of Court (“CRC”), rules 2.550 and 2.551, and are not subject to disclosure under the PRA. (See *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 69 [no presumption of public access]; *People v. Jackson* (2005) 128 Cal.App.4th 1009, 1024 [appropriate to seal certain records].)

Also, these records are exempt from disclosure under the PRA pursuant to Government Code section 6254(b), which exempts “[r]ecords pertaining to pending litigation to which the public agency is a party ... until the pending litigation or claim has been finally adjudicated or otherwise settled.” (See *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420–21 [exemption applies to documents prepared for use in existing or anticipated litigation].)

In addition, the disclosure of the documents you have requested would constitute an unwarranted invasion of privacy. Privacy rights are protected by the California Constitution and are a fundamental interest recognized by the PRA. (Cal. Const., Art. 1, §1; Gov. Code, § 6254(c) and (k); Gov. Code, § 6255.) Furthermore, the County is justified in withholding these documents because they are exempt from disclosure as the public interest served by not disclosing them clearly outweighs the public interest served by their disclosure. (Gov. Code, § 6255.)

Request No. 5

Request:

“Any records, court records, litigation records, communications of any type of any county official or anyone who has made prior complaints against any employee of the County of Mariposa, or any agency or entity of the County of Mariposa that involves the failure of the County of Mariposa, in any form and in any venue, to produce any record, or who has lodged any complaint or official court filing of the failure of the County of Mariposa to comply with discovery requests in any and all venues.”

Response:

Your fifth request is vague and ambiguous, overbroad in scope, and overbroad in time. Responding to your request will also cause the County unwarranted annoyance, oppression, and undue burden and expense. In addition, the disclosure of the documents you have requested would constitute an unwarranted invasion of privacy. Privacy rights are protected by the California Constitution and are a fundamental interest recognized by the PRA. (Cal. Const., Art. 1, §1; Gov. Code, § 6254(c) and (k); Gov. Code, § 6255.) Also, these records are exempt from disclosure under the PRA pursuant to Government Code section 6254(b), which exempts “[r]ecords pertaining to pending litigation to which the public agency is a party ... until the pending litigation or claim has been finally adjudicated or otherwise settled.” (See *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420–21 [exemption applies to documents prepared for use in existing or anticipated litigation].) Furthermore, the County is justified in withholding these documents because they are exempt from disclosure as the public interest served by not disclosing them clearly outweighs the public interest served by their disclosure. (Gov. Code, § 6255.) Please clarify your fifth request, so that the County may provide responsive records (if any exist).

Please be assured that the County has made every reasonable effort to provide a complete response to your Request.

Very truly yours,



Steven W. Dahlem