

FILED

2015 SEP 30 PM 3:14

CLERK OF THE SUPERIOR COURT  
COUNTY OF STANISLAUS

*Ana Valencia*  
DEPUTY

1 BIRGIT FLADAGER  
2 District Attorney  
3 Stanislaus County  
4 832 12<sup>th</sup> Street, Suite 300  
5 P.O. Box 442  
6 Modesto, CA 95353  
7 Telephone: (209) 525-5550  
8 Facsimile: (209) 558-4027

9 Attorney for the Plaintiff

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF STANISLAUS

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 vs.

15 FRANK CLIFFORD CARSON,  
16 BALJIT ATWAL,  
17 DALJIT ATWAL,  
18 WALTER WESTLEY WELLS,  
19 GEORGIA DEFILIPPO,  
20 EDUARDO QUINTARA AND  
21 SCOTT MCFARLANE,

22 Defendants.

CASE NO.: 1490969

NOTICE OF MOTION AND MOTION  
TO QUASH DEFENDANT'S  
SUBPOENA DUCES TECUM FOR  
RECORDS OF THE OFFICE OF THE  
DISTRICT ATTORNEY OF  
STANISLAUS COUNTY

Date: October 1, 2015

Time: 10:00 a.m.

Dept. 26

The Honorable Barbara Zuñiga

23 TO DEFENDANTS AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that at the above-stated date and time or as soon thereafter as  
25 the matter may be heard in the above-named court the People of the State of California, by and  
26 through their attorney, BIRGIT FLADAGER, District Attorney, will move the court to quash the  
27 service of defendant's subpoenas for District Attorney records for failing to comply with Penal  
28 Code section 1054 et. seq.

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1 This motion is based upon this notice of motion, the attached Memorandum of Points and  
2 Authorities, as well as any oral and documentary evidence and argument of counsel that may be  
3 presented at the hearing on the motion.

4 Dated this 30th day of September, 2015, at Modesto, California.

5 Respectfully submitted,

6 BIRGIT FLADAGER  
7 District Attorney

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9 MARLISA A. FERREIRA  
10 Chief Deputy District Attorney  
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1 BIRGIT FLADAGER  
District Attorney  
2 Stanislaus County  
832 12<sup>th</sup> Street, Suite 300  
3 P.O. Box 442  
Modesto, CA 95353  
4 Telephone: (209) 525-5550  
Facsimile: (209) 558-4027

5 Attorney for the Plaintiff  
6  
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF STANISLAUS

10 THE PEOPLE OF THE STATE OF CALIFORNIA,

CASE NO.: 1490969

11 Plaintiff,

12 vs.

13 FRANK CLIFFORD CARSON,  
14 BALJIT ATWAL,  
15 DALJIT ATWAL,  
16 WALTER WESTLEY WELLS,  
17 GEORGIA DEFILIPPO,  
EDUARDO QUINTARA AND  
SCOTT MCFARLANE,

Defendants.

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PEOPLE'S MOTION TO QUASH  
DEFENDANT'S SUBPOENA DUCES  
TECUM FOR RECORDS OF THE  
OFFICE OF THE DISTRICT  
ATTORNEY OF STANISLAUS  
COUNTY

18  
19 Comes now the People of the State of California, by and through its attorney, BIRGIT  
20 FLADAGER, District Attorney, and respectfully submits the folloinwg Points and Authorities in  
21 Support of Motion to Quash Subpoena Duces Tecum.

22 **STATEMENT OF THE CASE AND FACTS**

23  
24 The Stanislaus County District Attorney's Office is the prosecuting agency for offenses  
25 occurring in Stanislaus County. Defendants are charged with the murder

26 On September 29, 2015, the Office of the District Attorney of Stanislaus County was served  
27 with a Subpoena Duces Tecum on behalf of defendant. (Subpoena attached in Exhibit #1.)

1 **LAW AND ARGUMENT**

2 **I. THE CHANGE TO DISCOVERY RULES IN CALIFORNIA**

3 With the exception of evidence that tends to exculpate a defendant or reduce penalty, the  
4 Due Process clause of the Fourteenth Amendment imposes no burden of discovery upon the  
5 prosecution. (*Wardius v. Oregon* (1973) 412 U.S. 470, 474.) Under the United States Constitution,  
6 there is no general constitutional right to discovery in a criminal case. (*Weatherford v. Bursey*  
7 (1977) 429 U.S. 545, 559.)

8 In California, prior to the passage of Proposition 115, discovery in criminal cases had  
9 developed through common law rather than constitutional interpretation or legislative enactment.  
10 "Unlike the statutory development of civil discovery in California, the right of an accused to seek  
11 discovery in the course of preparing his defense to a criminal prosecution is a judicially created  
12 doctrine evolving in the absence of guiding legislation." (*Pitchess v. Superior Court* (1974) 11  
13 Cal.3d 531, 535.)

14 With the adoption of Proposition 115, the Crime Victims Justice Reform Act, however,  
15 criminal discovery is now governed by constitutional and statutory enactment. Article I, section  
16 30, subdivision (c), of the California Constitution provides, "In order to provide for fair and speedy  
17 trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or  
18 by the people through the initiative process."

19 Proposition 115 also added a chapter to the Penal Code setting forth both substantive and  
20 procedural rules for discovery. One of the stated purposes of this chapter is, "[t]o provide that no  
21 discovery shall occur in criminal cases except as provided by this chapter, other express statutory  
22 provisions, or as mandated by the Constitution of the United States." (Pen. Code, ' 1054, subd.  
23 (e).) Similarly, Penal Code section 1054.5, subdivision (a), now states:

24 No order requiring discovery shall be made in criminal cases except as  
25 provided in this chapter. This chapter shall be the only means by which the  
26 defendant may compel the disclosure or production of information from  
27 prosecuting attorneys, law enforcement agencies which investigated or prepared  
28 the case against the defendant, or any other persons or agencies which the  
prosecuting attorney or investigating agency may have employed to assist them in  
performing their duties.

(See also, Pen. Code, ' 1054, subd. (e); see generally, *In re Littlefield* (1993) 5 Cal.4th

1 122, 129.) Hence, prior decisions of the California appellate courts no longer have force where  
2 inconsistent with the California Constitution and statutes regarding discovery in criminal cases.

3  
4 **B. A SUBPOENA MAY NOT BE SERVED ON THE PROSECUTION**

5 Cal. Pen. Code §1054.5, subdivision (a), reads: No order requiring discovery shall be made  
6 in criminal cases except as provided in this chapter. This chapter shall be the only means by which  
7 the defendant may compel the disclosure or production of information from prosecuting attorneys,  
8 law enforcement agencies which investigated or prepared the case against the defendant, or any  
9 other persons or agencies which the prosecuting attorney or investigating agency may have  
10 employed to assist them in performing their duties. The procedural mechanisms of the discovery  
11 statutory scheme (Cal. Pen. Code §1054 et seq.) are exclusive—that is, the parties to a criminal  
12 proceeding may not employ discovery procedures other than those authorized by Chapter 10. (Cal.  
13 Pen. Code §1054.5, subd. (a).) (See *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305,  
14 1312-1313.) A subpoena duces tecum is not authorized by the Discovery Act, except for third  
15 parties, and the District Attorney is clearly not a third party witness as envisioned by case law.

16 *Barrett* goes further and holds, Chapter 10 also controls the substance of criminal discovery  
17 in California except for discovery that is mandated by the United States Constitution and discovery  
18 that is expressly provided in other statutes. Thus, unless a requested item is authorized by other  
19 statutes or is constitutionally required, the parties to a criminal proceeding are entitled to obtain  
20 disclosure of only those items listed in Cal. Pen. Code §1054.1 and §1054.3. *Id.*, at page 1313.

21 **C. The Requested Information is Privileged**

22 Article I, section 1 of the California Constitution secures to all people the right to privacy.  
23 The 'inalienable right' of privacy is a 'fundamental interest' of our society, essential to those  
24 rights 'guaranteed by the First, Third, Fourth, Fifth and Ninth Amendments to the U.S.  
25 Constitution.' " (*El Dorado Savings and Loan Assn. v. Superior Court* (1987) 190  
26 Cal.App.3d 342, 345.)

27 California law has long recognized the importance of maintaining privacy rights with  
28 respect to criminal investigative files. Among the statutory protections is California's Public

1 Records Act which exempts from disclosure criminal investigative files. (Cal. Gov. Code, § 6254,  
2 subd. (f).) As a result, law enforcement criminal investigations are not available as public records.

3 Cal. Evid. Code §1040 provides as follows,

4 (b) A public entity has a privilege to refuse to disclose official information, and to  
5 prevent another from disclosing official information, if the privilege is claimed by a  
6 person authorized by the public entity to do so and either of the following apply:

7 ...  
8 (2) Disclosure of the information is against the public interest because there is a  
9 necessity for preserving the confidentiality of the information that outweighs the  
10 necessity for disclosure in the interest of justice; but no privilege may be claimed  
11 under this paragraph if any person authorized to do so has consented that the  
12 information be disclosed in the proceeding. In determining whether disclosure of the  
13 information is against the public interest, the interest of the public entity as a party  
14 in the outcome of the proceeding may not be considered.

15 The official information privilege, as noted in Cal. Evid. Code §1040 has an absolute and  
16 conditional provision to protect private information acquired in confidence by a public employee.  
17 Under the absolute provision, official information that is protected by California statutory law  
18 cannot be disclosed.

19 The People further assert the following privileges apply: Cal. Evid. Code §954 (Attorney-  
20 Client Privilege); Cal. Evid. Code §2018.030 and Cal. Pen. Code §1054.6 (Attorney-Work  
21 Product); Confidential Reports (Cal. Pen. Code §11167.5); Confidentiality of Specified Victim and  
22 Witness Information (Cal. Pen. Code §841.5); Access to Local Summary of Criminal History  
23 Information (Cal. Pen. Code §11105); Authorized Person Furnishing Records or Information to  
24 Unauthorized Person (Cal. Pen. Code §11142); Unauthorized Person Receiving Record or  
25 Information (Cal. Pen. Code §11143) Furnishing to Unauthorized Person (Cal. Pen. Code §13302);  
26 Possession by Unauthorized Person (Cal. Pen. Code §13304); Report of Probation Officer (Cal.  
27 Pen. Code §1203.05); Compelling Attendance of Witness (Cal. Pen. Code §1326); Identity of  
28 Informer (Cal. Evid. Code § 1041). California's Information Practices Act also protects information  
compiled by law enforcement agencies investigating crimes. (Cal. Civ. Code, §1798.40, 1798.41.)

"When compelling disclosure intrudes on constitutionally protected areas, it cannot be  
justified solely on the ground that it may lead to relevant information." (*Board of Trustees v.*  
*Superior Court* (1981) 119 Cal.App.3d 516, 525.) Accordingly, "California courts have generally

1 concluded that the public interest in preserving confidential information outweighs the interest of a  
2 private litigant in obtaining confidential information." (*Harding Lawson Associates v. Superior*  
3 *Court* (1992) 10 Cal.App.4th 7, 10.)

4 In addition to defendant's request not being covered by Cal. Pen. Code §1054, defendant's  
5 request is also hindered by the aforementioned privileges.

6  
7 **CONCLUSION**

8 For the foregoing reasons the People respectfully request the Court to grant the motion to  
9 quash defendant's subpoena duces tecum for the records of the Stanislaus County District Attorney.

10 Dated this 30<sup>th</sup> day of September 2015, at Modesto, California.

11 Respectfully submitted,

12 BIRGIT FLADAGER  
13 District Attorney

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15 Marlisa A. Ferreira  
16 Chief Deputy District Attorney

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**PROOF OF SERVICE BY ELECTRONIC MAIL**

1  
2 STATE OF CALIFORNIA            )  
3 COUNTY OF STANISLAUS        )

4 I, the undersigned, declare as follows:

5 That I am over the age of 18 years and am not a party to this action and I am employed by  
6 the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.

7 That I served a copy of the **People's Notice of Motion and Motion to Quash Defendant's**  
8 **Subpeona Duces Tecum for Records of the Office of the District Attorney of Stanislaus**  
9 **County** on September 30, 2015 pursuant to California Code of Civil Procedure section  
10 1010.6(a)(6) by electronically sending a copy thereof to the offices of Timothy Rien at  
11 rienlaw@sbcglobal.net, Tim Allen Pori at tim@defense-attorney-pori.com, Martha Carlton-  
Magana at carltnm@hotmail.com, Preciliano Martinez at attymartinezp@yahoo.com, Hans  
Hjertonsson at Hans.hjertonsson@gmail.com, Alonzo Gradford at gradfordlaw@gmail.com,  
Lawrence Niermeyer at lniermeyer@aol.com, Ryan Roth at rroth@Roth-LEgal.com, Bruce Perry  
at brucerperry@msn.com and Stephanie Mitchell at stephanie.mitchell@stanct.org.

12 That I placed a hard copy in the box assigned to each attorney located at the District  
13 Attorney's Office at 832 12<sup>th</sup> Street, Suite 300, Modesto, California.

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed this 30th day of September 2015, at Modesto, California.

16  
17   
18 Declarant

19 Case No. 1490969  
20 People v. Carson et al.  
21 Hearing: 10/1/2015  
22 Dept. 26  
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