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To: [Dave Bainbridge](#); [Richard C. Miadich](#); "CommAsst@fppc.ca.gov"
Subject: Comments from CPAA for Today's Law and Policy Meeting
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EXTERNAL EMAIL

Hi All,

Unfortunately, I will not be able to attend the Law and Policy Meeting today but wanted to submit these comments on behalf CPAA.

CPAA appreciates the Committee and the staff's willingness to consider and address CPAA's concerns with the proposed regulations. CPAA fully supported the Committee's direction at the last Committee meeting to provide full disclosure during Probable Cause hearings. We think this would address not only our concerns about being provided exculpatory and mitigating evidence, but also concerns about having the hearing officer address discovery disputes and the need for rebuttal of evidence submitted after the hearing. However, in reviewing the current version of proposed regulation 18361.4 (b)(2)(C)(3) there are 2 remaining issues that are of serious concern.

First, the exclusion of all records "received in response to an administrative subpoena" is overly broad. Not only would this eliminate from discovery a significant portion of evidence collected, but it could result in no exculpatory evidence being provided to the Respondent if that evidence was obtained via subpoena. If this exclusion is necessary in some form, it should be limited to truly confidential information (i.e. bank account numbers and personal addresses) and provide a mechanism by which such information can be provided to Respondents to ensure that confidentiality is preserved. However, the wholesale exclusion of documents obtained by subpoena is overly restrictive.

Second, the reference to "publicly available" records is also overly broad, and imposes an unnecessary burden on Respondents to obtain such information where the FPPC has that information in its possession and has the authority to charge for its duplication. For example, records obtainable by the Public Records Act could be excluded. This would place the burden of respondents to obtain such records through a public records act request from the FPPC or another agency. The timelines articulated for the Probable Cause Hearing would not allow for this. It is an unnecessary exclusion where, again, the FPPC has the information in its possession and the authority to charge for duplication. We urge you to revisit this exclusion.

If these items can be addressed, the remaining issues regarding discovery disputes, timing of the probable cause conference, and the submission of additional evidence

following the probable cause hearing should be resolved.

Thank you so much for your continued work on these issues – it is much appreciated.

Elli

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