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August 8, 2011

SENDER'S E-MAIL:
ATAYLOR@awattorneys.com

SENT VIA EMAIL

[REDACTED]
The Banning Informer.Com

Re: *Your Public Records Request Dated July 18, 2011*

Dear [REDACTED]:

This office serves as the City Attorney for the City of Banning ("Banning"); I am preparing this letter on behalf of City Attorney David Aleshire. This letter provides a determination on the Public Records Act request that you made to Banning on July 18, 2011 (the "Request").

Banning objects to your Request to the extent that it calls for the production of privileged information and records that are protected from disclosure by the attorney-client and attorney work product privileges. (*See, e.g. Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 372-73 [holding that the attorney-client privilege may be asserted under the Public Records Act]; *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 118, 129-130 [applying the attorney-client privilege and attorney work product doctrine to attorney billing statements].) Importantly, these privileges serve as exemptions under the Public Records Act *even if there is no pending or actual litigation* (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 371-72 [privileged communications by City Attorney retain their exemption under the Public Records Act even if there is no litigation].)

In particular, we note that your Request appears to be particularly aimed at an alleged "list" from Fire Marshal Doug Clark to the City. We are aware of only one document that may fit this description. Such document, however, was drafted by the Fire Marshall to our office and at the specific direction of the City Attorney for purposes of assisting our legal analysis of code compliance issues involving the Banning White House. Indeed, the opening section of the document expressly states that it is a report "written on the request of the City of Banning's attorney." As such, this document not only qualifies as an attorney-client communication, but also as privileged attorney work product. Please note that it is clearly established under California law that privileged work product includes reports and writings drafted by a third party at the request of an attorney for purposes of facilitating the attorney's legal analysis. (*People v. Collie* (1981)



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30 Cal.3d 43, 59 ["the [work product] privilege should extend not just to the attorney's work product, but to the efforts of those who work with him."].)

Without waiving the above-described privileges, and in order to provide a more meaningful response, we have enclosed the non-privileged items from the City's files on the Banning White House. Please note that privileged communications between the City Attorney and Banning have been redacted or removed from these documents.

If you have any questions or wish to further discuss this matter, you may contact the City Attorney, Dave Aleshire, directly at (949) 250-5409 or DAleshire@awattorneys.com.

Sincerely,
ALESHIRE & WYNDER, LLP

A handwritten signature in black ink, appearing to read 'Lona N. Laymon', written over a large, loopy scribble.

Lona N. Laymon
Assistant to City Attorney David Aleshire

Enclosures:

cc: Mr. Andy Takata, City Manager
Ms. Zai Abu-Bakar, Community Development Director
Ms. Marie Calderon, City Clerk