

# LAW OFFICES OF DONALD B. MOONEY

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## VIA ELECTRONIC MAIL AND U.S. MAIL

Alana K. McKinzie  
Legal Liaison  
Division of Communicable Disease Control  
Center for Infectious Disease  
California Department of Public Health  
Vector-Borne Disease Section, MS7307  
P.O. Box 997377  
Sacramento, CA 95899-7413

### **Re: Failure to Comply with Public Records Act**

Dear Ms. McKinzie:

On behalf of the Coalition for Safe West Nile Virus Control and its members, including Stop West Nile Spraying Now, on August 8, 2007, I sent to the California Department of Public Health ("CDPH") a request under the Public Records Act that included the following request:

A copy of the paper Vicki Kramer showed to Councilmember Fong in the meeting in his office on the morning of July 27, 2007, as proof that the aerial spraying of Sacramento in 2005 was successful, including any correspondence regarding submission of the paper or any previous versions for publication in any journal.

By email correspondence on August 20, 2007, Department of Public Health denied the request stating that these prepublication drafts are exempt from disclosure pursuant to Government Code section 6255 on the ground that the public interest in withholding this draft from public scrutiny prior to its publication outweighs the public's interest in disclosure of the draft."

Dr. Kramer and the CDPH have already disclosed the requested documents. At a recent meeting with Councilmember Fong, Dr. Kramer allowed Mr. Fong and others present at the meeting to review and read the document. Moreover, while Mr. Fong and the other meeting participants were reviewing the document, Dr. Kramer attempted to explain the graphs to the meeting participants. Dr. Kramer relied upon the "draft document" to support her argument and apparently the State of California's position regarding the effectiveness of aerial spraying to control mosquitoes infected with the West Nile Virus. Additionally, in December 2005, Dr. Kramer and Dave Brown of the Sacramento-Yolo Mosquito Vector Control District released a

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statement to the press describing a "study" performed by CDHS proving the efficacy of the spray. Thus, the requested study and/or studies whether draft or final have already been released and disclosed to another agency. Additionally, in August 2006, Dr. Kramer made a statement to the Davis City Council claiming a "study" proved the spray completely effective at eliminating transmission. My clients seek copies of those studies the CDPH have relied upon to support its position regarding aerial spraying.

As the documents sought in the August 8<sup>th</sup> request have been disclosed to parties outside your department and have been relied upon to support the CDPH's position regarding aerial spraying, they are public records subject to disclosure under the Public Records Act. (Gov't Code, § 6254.5.) Section 6254.5 provides that:

Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

Thus, no legal basis exists for withholding the requested documents. (See *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 658 (the Public Records Act does not authorize selective disclosure).) If Dr. Kramer and CDPH did not want the documents released, then they should not have intentionally provided the document to others for their review and CDPH should not be relying upon these documents to support the State's controversial position to continue aerial spraying in an effort to control mosquitoes infected with West Nile virus.

As no legal basis exists for withholding the requested document, CDPH must immediately release the requested document. I expect the document to be provided to me office no later than September 7, 2007. If you have any questions regarding this matter, I can be reached at 530-758-2377. In the meantime, I look forward to CDPH prompt compliance with the requirements of the Public Records Act.

Very truly yours,

Donald B. Mooney  
Attorney