

# LAW OFFICES OF DONALD B. MOONEY

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September 28, 2007

**VIA FACSIMILIE (916.440.7708)  
AND U.S. MAIL**

Roscoe L. Barrow II  
Senior Staff Counsel  
California Department of Public Health  
MS0506  
P.O. Box 997377  
Sacramento, CA 95899-7377

**Re: Public Records Act Request**

Dear Mr. Barrow:

I am in receipt of your letter dated September 28, 2007, stating that the California Department of Public Health ("DPH") has no documents responsive to the request set forth in my letter dated September 12, 2007. DPH's refusal to acknowledge the existence of the requested documents is the most egregious violation of the Public Records Act that I have ever encountered. In response to the original August 8, 2007, request, DPH finally produced the draft report entitled *Efficacy of aerial mosquito adulticiding in reducing human cases of West Nile Virus in Sacramento County, California 2005 ("Draft Report")*. The September 12, 2007, Public Records Act request sought the following documents with respect to the Draft Report:

1. Any and all documents including, but not limited to, correspondence, phone logs, phone conversation notes, files, memos, meeting notes, photographs, minutes, agenda, electronic records, computer records, raw data, files or associated communications relied upon in drafting of the paper/report Vicki Kramer showed to Councilmember Fong in the meeting in his office on the morning of July 27, 2007.
2. Any and all documents including, but not limited to, correspondence, phone logs, phone conversation notes, files, memos, meeting notes, photographs, minutes, agenda, electronic records, computer records, raw data, files or associated communications referenced in the paper/report Vicki Kramer showed to Councilmember Fong in the meeting in his office on the morning of July 27, 2007.

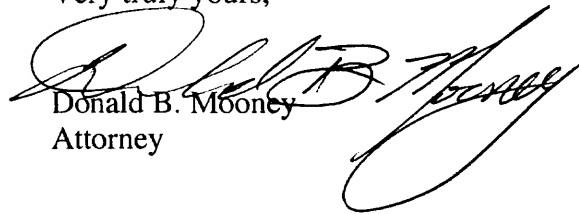
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Pages 15-19 of the Draft Report lists 39 documents referenced in the Draft Report. Moreover, the primary authors are all identified as DPH employees. Yet, according to your letter, DPH has none of the referenced documents in its files. That seems a bit incredulous.

The September 12<sup>th</sup> request also sought all documents, including raw data, relied upon in preparing the Draft Report. The Draft Report contains several tables and graphs, yet according to your September 28<sup>th</sup> letter, DPH has no documents relied upon in developing those tables and graphs. I find it rather surprising that state employees with doctorates and masters in public health are drafting reports, developing tables and graphs, do not have any data or documents to support or backup the creation of the graphs and tables. Again, to state that DPH has no documents responsive to the request is simply not believable.

As it appears that DPH will only comply with its obligations under the Public Records Act under the threat of litigation, if the requested documents are not made available by 12:00 noon on October 8, 2007, my clients will be left with no choice but to file a Petition for Writ of Mandate in Sacramento County Superior Court. The Petition will seek a Court order directing DPH to comply with the Public Records Act and to pay petitioners' attorney's fees and costs.

Very truly yours,

  
Donald B. Mooney  
Attorney