



COUNTY OF FRESNO

Lisa A. Smittcamp
District Attorney

August 2, 2021

VIA E-MAIL

Ellen Leonida, Esq.
Braunhagey & Borden, LLP
351 California Street, 10th Floor
San Francisco, CA 94101
E-Mail Address: leonida@braunhagey.com

RE: *Public Records Act Request, received July 23, 2021*

Dear Ms. Leonida:

The County of Fresno (County) District Attorney's Office (Department) writes in response to your Public Records Act request, received by the Department on July 23, 2021.

Your letter is a request for the following records in the possession or control of the Office of the District Attorney for Fresno County for the time-period 2015 to present:

1. Any and all written policies, memoranda, or guidance documents regarding:
 - a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendations;
 - c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decisions regarding wobblers;
 - d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
 - e. Jury selection;
 - f. Sentencing recommendations;
 - g. Prosecution of minors;
 - h. Parole recommendations;
 - i. Pardon and commutation recommendations;
 - j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;
 - k. Data collection relating to criminal matters, including demographic data of defendants and victims; or
 - l. Referral of cases for federal prosecution.
2. Any and all policies regarding training as well as any training materials, recorded trainings, or related materials:

- a. Which are mandatory for prosecutors;
 - b. Which are optional for prosecutors;
 - c. Which relate to jury selection;
 - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
 - e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).
3. Records concerning the Racial Justice Act:
- a. Implementation of and compliance with the RJA;
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA.
4. All investigations into Batson-Wheeler motions, including, but not limited to:
- a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or
 - d. Reports to the State Bar relating to any Batson-Wheeler motions made and granted.

Your letter also states that it constitutes a renewal of two prior requests by the American Civil Liberties Union Foundation of Northern California (ACLU), "as relevant, updated to the present day." It is not clear to the Department what "renewal" means here, but the Department assumes it means you are seeking documents for the periods after what those prior requests covered. If that is not what you intended, please contact me.

The Public Records Act Request issued by Yoel Haile of the ACLU to the Department, dated May 13, 2019, requested records as follows:

- 1. Records of prosecution data within your possession for calendar year 2017 and 2018, including but not limited to,
 - a. Unique identifiers for each person, charges, and outcomes for all minors (any persons under the age of 18) prosecuted directly in adult court in Fresno County (adult court is defined as a court of criminal jurisdiction) (otherwise known as "pipeline" or "direct file" cases) under Welfare and Institutions Code section 707.
 - i. Unique identifiers for each person, charges, and outcomes for all minors prosecuted in adult court in Fresno County after any one of the following:
 - 1. a judicial certification to adult court following a juvenile transfer hearing under the newly amended Welfare and Institutions Code section 707 subsection (a);
 - 2. a juvenile defendant's waiver of transfer hearing or stipulation to adult court following the District Attorney's motion to transfer to adult court.
 - b. Unique case identifiers, charges, and outcomes for all minors prosecuted in juvenile court in Fresno county, including, but not limited to demographic data, charges filed, and case outcomes during the calendar year of 2017 and 2018.
 - i. Unique case identifiers, charges, and outcomes (including diversion) of all misdemeanor charges for minors and adults in Fresno county.
 - c. Unique case identifiers, charges, enhancements and outcomes (including diversion) of all felony charges for minors and adults in Fresno county.

2. All documents and records related to all diversion programs offered or used by the DA's office, how many people utilized those programs, demographics of those people, the charges they were facing, outcomes of those cases, requirements for completing diversion, and any charges or costs associated with those diversion programs for calendar years 2017 and 2018.
3. All records relating to how many parole hearings the office attended, how many hearings your office opposed, and how many parole hearings your office opposed when the next of kin took no position in the calendar years of 2017 and 2018.
4. Copies of all office policies, including but not limited to Brady compliance policy, charging and plea deal offer policies, pardons and commutations, etc. Request #3 is not limited to calendar year 2017 and 2018.
5. Copies of all office policies that relate to immigration including but not limited to:
 - a. Records that refer to office efforts to implement its obligations under Penal Code 1016.3(b).
 - b. Records that refer to office efforts to implement its obligations under Penal Code 1473.7.
 - c. Records, memoranda, and emails that relate to the creation and development of an immigration policy for the office.
 - d. Request #5 is not limited to calendar year 2017 and 2018.
6. All records concerning implementation of SB 1421, including copies of any new policies, training manuals or procedures regarding SB 1421, including any policies, procedures or training manuals for making SB 1421 requests, maintaining SB 1421 records, disclosures of SB 1421 requests to criminal defendants, revisions of any Brady policies in light of SB 1421, and all policies and procedures for reviewing all criminal convictions, arrests and charging decisions, in view of SB 1421. Request #4 is not limited to calendar year 2017 and 2018.

As stated above, the Department assumes that, by your "renewed" request, you are requesting records from the years 2019 through 2021. Please contact me if that assumption is not correct.

The Public Records Act Request issued by Shilpi Agarwal of the ACLU to the Department, dated July 29, 2019, requested records from 1990 onwards as follows:

1. Any training materials related to jury selection
2. Any training materials related to the constitutional requirements under Batson v. Kentucky and People v. Wheeler, including training materials related to handling Batson-Wheeler claims or motions.

As stated above, the Department assumes that, by your "renewed" request, you are requesting records from 2019 through the present. Please contact me if that assumption is not correct.

You have submitted three requests, which request records from twelve broad categories of records, each with numerous subparts, which will include records from a time period covering at least several years. As a result, Department staff must search for records and determine responsiveness in regard to each portion of your detailed request, and must redact any privileged information, all of which will likely take a significant amount of time to complete.

The Department has determined that responding to your request will require the need to search for, collect, and examine a voluminous amount of separate and distinct records. Based on the foregoing, the Department has determined that unusual circumstances exist which necessitate the extension of the Department's time to respond to your records request by fourteen (14) additional days. (Government Code section 6253, subdivision (c)(2).)

The Department will notify you in writing on or before **August 16, 2021** whether the request, in whole or in part, seeks copies of disclosable public records, and of the estimated dates when any records which are subject to disclosure under the Public Records Act will be made available to you.

Because your request seems to seek a voluminous number of records, any production may need to be over a period of time, and we may need to ask you whether you wish certain records to be made available before others.

To provide all responsive documents, it might be necessary for the Department to compile data, write programming language or a computer program, or construct a computer report to extract data from the Department's electronic records to respond to your request, at a cost to you. That would take additional time as well. If it appears that such work is necessary, we will contact you before incurring those costs, to see whether you wish for the Department to proceed with that work.

In addition, the Department is not required to create a record in order to comply with your request. (Gov. Code, § 6252, subd. (e); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.)

At the time records responsive to each category of records are produced, if any records are to be withheld, the Department will demonstrate that the records in question are exempt under express provisions of the Public Records Act, or that on the facts present, that the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records. (Gov. Code, § 6255, subd. (a).)

If you have any questions regarding the foregoing, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelsey Peterson", followed by a long horizontal flourish line.

Kelsey Peterson
Deputy District Attorney