



# Sacramento County District Attorney's Office

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Yoel Haile  
American Civil Liberties Union of Northern California  
39 Drumm Street  
San Francisco, CA 94111

Via U.S. Mail and Email

Re: Public Records Act Request

Dear Mr. Haile—

The following is in response to your request pursuant to the California Public Records Act (CPRA) dated May 13, 2019.

1. Records of prosecution data within your possession for calendar year 2017 and 2018.

Request #1 begins with the language that you are seeking “Records of prosecution data within your possession for calendar year 2017 and 2018.” It follows with “including but not limited to,” and then sets forth more specific sub-requests. The initial language “Records of prosecution data within your possession for calendar year 2017 and 2018” could be interpreted as a standalone request. We believe you instead meant this language to qualify the various sub-requests that follow. Please advise if this is not what you intended.

This language is vague. You do not define what you mean by “prosecution data.” It is not clear whether you are seeking strictly statistical information, or whether you are seeking the entirety of our prosecution file. Government Code section 6254(f) exempts from CPRA disclosure records of investigations conducted by any local police agency, investigatory files compiled by any local police agency, and investigatory files compiled by any other local agency for law enforcement or licensing purposes. Under the California Constitution and by statute, the District Attorney is vested with broad authority to investigate violations of the law, and prosecute such matters in criminal, civil, or administrative actions, as may be appropriate. The District Attorney’s employees include peace officers, attorneys, and other staff who perform such investigations. There can be no question that the District Attorney’s Office is a local agency that conducts police or law enforcement investigations and has complaints and investigatory files within the meaning of section 6254(f). Case law supports this conclusion. (See *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048; *Rackaucas v. Superior Court* (2012) 104 Cal.App.4th 169; *Fagan v. Superior Court* (2003) 111 Cal.App.4th 607; *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4th 1099.) This exemption applies not only to documents generated by the agency, but also to records gathered from victims, witnesses, and others. (See *Haynie v. Superior Court*

(2001) 26 Cal.4<sup>th</sup> 1061.) This exemption continues to apply even if the case is complete and the investigation closed. (See *Rivero v. Superior Court* (1997) 54 Cal.App.4<sup>th</sup> 1048; *Williams v. Superior Court* (1993) 5 Cal.4<sup>th</sup> 337.) Thus, for the requests below, we are interpreting “prosecution data” as seeking records that we have otherwise made public, such as information included on our charging documents filed in adult court. Otherwise, records from our prosecution files are part of our investigatory files, exempt from disclosure under Government Code section 6254(f).

Furthermore, when you reference the period consisting of the calendar years of 2017 and 2018, it is not clear whether you mean cases filed in 2017 and 2018, or cases in which any activity occurred in 2017 and 2018. An electronic search of our computerized case management system would not include all cases in which some activity occurred in 2017 and 2018. Computerized case event histories and/or physical files would need to be individually examined. This would require having to hand search through tens of thousands of files, an unduly burdensome task not required by the CPRA. (See Gov’t Code § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4<sup>th</sup> 588, 600-60; see also *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-454.) On the other hand, cases filed in adult court in 2017 and 2018 can be easily identified by reference to the docket number (which would begin with either “17” or “18”). For the requests below which use this time reference, we are proceeding with the understanding that you are seeking information regarding cases *filed* in 2017 and 2018.

1(a). Unique identifiers for each person, charges, and outcomes for all minors (any person under the age of 18) prosecuted directly in adult court in Sacramento 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 Sacramento 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(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.

Request #1(a) seeks information regarding minors charged in adult court, either directly filed in adult court or cases that were initially filed in juvenile court but later transferred to adult court. With the passage of Proposition 57 in 2016, we have no “direct” file cases for 2017 and 2018. We cannot recall any case in 2017 or 2018 in which a juvenile waived a transfer hearing or stipulated to prosecution in adult court.

Your request specifically seeks “Unique identifiers for each person, charges, and outcomes.” You do not define what you mean by “unique identifiers” or outcomes. We have tracked cases of minors charged in Juvenile Court who were thereafter transferred to adult court pursuant to a motion granted under Welfare and Institutions Code section 707. Because this group is narrow, we can identify not only cases filed in 2017 and 2018, but also cases that were filed before 2017 in which court activity occurred in 2017 and 2018. We are providing information regarding

these cases that would be part of the public record in adult court, in particular the defendant's name, county cross-reference number, docket number, DA case number (primary law enforcement report number), charges, and disposition. See the attachment titled "Juvenile Transfers 2017-2018." Other information from these cases that are part of our investigatory files, are privileged attorney work product, or are otherwise not responsive to your request are not being provided. It is possible the list we are providing is not exhaustive. Because we do not otherwise normally track cases by age of defendant, we would have to hand search tens of thousands of case files to identify if there are any other minors who were charged as adults during this time period, an unduly burdensome task not required by the CPRA.

Please note there were additional minors who were under the age of 16 at the time of their offenses for which 707 motions were granted and they were prosecuted in adult court. However, their cases were transferred back to Juvenile Court pursuant to SB 1391. Because of the privacy protections afforded to minors in Juvenile Court (see further explanation in response to Request #1(b), below), we are not providing the identity or case information regarding these minors at this time.

1(b). Unique case identifiers, charges, and outcomes for all minors prosecuted in juvenile court in Sacramento county, including, but not limited to demographic data, charges filed, and case outcomes during the calendar year of 2017 and 2018.

Request #1(b) seeks information regarding minors prosecuted in juvenile court in Sacramento County. We are not able to provide you the information you seek because of the privacy and confidentiality concerns that makes juvenile case records exempt from disclosure under the CPRA. (See Gov't Code §§ 6542(c), 6254(k), 6255(a).) Dissemination of information from juvenile case files is limited by Welfare and Institutions Code section 827. Records may be sealed pursuant to Welfare and Institutions Code sections 781 and 786. Furthermore, the information you seek regarding juvenile cases comes from our investigatory files, which are exempt from disclosure as previously noted, and is not part of a charging document filed in a court accessible to the general public.

1(c). Unique case identifiers, charges, and outcomes (including diversion) of all misdemeanor charges for minors and adults in Sacramento county.

1(d). Unique case identifiers, charges, enhancements and outcomes (including diversion) of all felony charges for minors and adults in Sacramento county.

Requests #1(c) and #1(d) seek unique case identifiers, charges, and outcomes of all misdemeanor and felony charges for minors and adults in Sacramento County. As previously noted in response to Request #1(b), we cannot provide you information regarding cases involving minors filed in Sacramento County Juvenile Court. As for adult defendants, your request does not clarify what you mean by "unique case identifiers." We understand that language to mean docket number and DA case number. Furthermore, as previously noted, we understand your request to be narrowed to the time frame of cases filed in 2017 and 2018. With those understandings, we can provide you the requested information regarding adult cases.

However, we do not already possess a report with the specific information you are seeking. Our IT department could run a report listing all adult cases filed in 2017 and 2018, which would include the defendant's name, the defendant's county cross-reference number, docket number, DA case number (the primary law enforcement report number), and the charges. Although our computer case management system does not store outcome information, and instead pulls that information from other agencies' electronic sources, we could request that IT include that information when running this report. This would result in the report taking additional time to prepare.

However, outcome information would not necessarily identify diversion cases on this type of search. We can provide ultimate case disposition, indicating which charges the defendant was convicted of, the level of each charge (felony or misdemeanor), and the sentence imposed (e.g., if a prison commitment was ordered, then the length of that commitment, or if probation was ordered, then the length of probation and any jail term), or whether the case was dismissed. Typically, with diversion, if the defendant successfully completes the conditions of diversion, the charges are dismissed. If the defendant fails to complete the conditions of diversion, a sentence is imposed. The report we can compile would only show the ultimate outcome of the case (i.e., charges dismissed or sentence imposed). To determine whether a case involved diversion would require a hand search of the case's event history, which would be unduly burdensome given the tens of thousands of cases involved.

Because the report you are seeking is not information that we produce on a regular basis, under Government Code section 6253.9, you would be responsible for paying the costs associated with preparing the computer inquiry to retrieve the data. It is estimated it will take our IT Manager two hours of his time to extract, compile, and verify the data, for a total cost of \$199.86. If you wish to proceed, please remit a check for that amount payable to the Sacramento County District Attorney's Office. After the data is assembled, if it took less computer programming time than had been estimated, you would receive a refund; if it took more time, then you would be required to pay the balance before receiving the data.

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 year 2017 and 2018.

Request #2 seeks various information regarding diversion programs. We are interpreting your request for diversion programs "offered or used by the DA's office" to mean programs available through the Sacramento Superior Court to defendants charged with a crime, as the Sacramento County District Attorney's Office does not itself utilize pre-filing diversion programs.

Your request does not clarify what you consider "diversion." California Penal Code section 1000 *et seq.* provides several statutory diversion programs. As for the documents you seek regarding requirements for completing diversion, the various criteria are set forth by statute and thus this information is already available to you publicly. Additionally, we have documents regarding Pacific Educational Services (PES), which is the Deferred Entry of Judgment (DEJ) provider for Sacramento County. Those documents are being provided. See attachments titled "DEJ Form," "PES Class Description 2017," and "PES Class Descriptions."

In 2018, AB 1810 added Penal Code sections 1001.35 and 1001.36, which created the mental health diversion program. Similarly, the requirements for this diversion are set forth by statute. Additionally, we possess a document we received from the Sacramento Superior Court and two versions of a memorandum authored by Judge Richard Couzens (ret.), which we are providing to you. See attachments titled “Mental Health Diversion Process for Felony Cases Only,” “Memorandum – Mental Health Diversion Nov 6 2018,” and “MHDiversion – AB1810 7-13-18.”

In Sacramento County, we have several collaborative courts, which involve partnerships between our office, the Superior Court, the Probation Department, the Public Defender’s Office, and sometimes community-based organizations to provide services and avoid incarceration for certain offenders. These programs do not fall within the statutory definition of diversion as set forth in Penal Code section 1000 *et seq.* However, successful completion of some of these programs may result in a dismissal of charges, similar to the effect of a statutory diversion program. We are interpreting your request as including within your definition of “diversion” those programs where dismissal is available. Information regarding these, and other collaborative courts in Sacramento County, are provided on our website at [www.sacda.org](http://www.sacda.org) under the “Services” heading by clicking on the link “Collaborative Courts.” Further documents we possess relating to those programs are being provided. See attachments titled “Sacramento County District Attorney’s Office,” “Community & Government Relations,” “Citizen Academy-CollCourts2019,” “Collaborative Courts Referral Quick Reference Guide,” and “How To Guide\_Collaborative Courts\_Rev\_Feb 8\_2019.”

As to the Mental Health Treatment Court, we have a draft of an internal procedures guide prepared by court staff. Please note this version is not final and is subject to being changed. See attachment titled “10.29.18 MHC- Procedure Manual.”

With regards to additional documents identifying office policies or guidelines regarding diversion and collaborative courts, it is our practice, pursuant to the law, not to disclose these types of policy documents because they are exempt from disclosure under the CPRA by the deliberative process privilege. (Government Code § 6255. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) In addition, the courts have ruled that written policies concerning how prosecutors exercise their discretion in charging and sentencing are not subject to discovery. (*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478.) Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code section 6254(k). Other notations regarding specific cases are also exempt as privileged attorney work product.

With regards to the information you seek regarding the number of individuals who have utilized these programs, the demographics of those individuals, the charges they were facing, and the outcomes of those cases, we can advise you of the following.

Mental Health Diversion – In July of 2018, we began a list of defendants referred to Mental Health Diversion. This list was then divided into two parts: (1) active cases, and (2) closed, failed to appear, or withdrawn cases. We are providing the portions of this list that contain

publicly accessible information. See attachments titled “Mental Health Diversion Chart – Open Cases” and “Mental Health Diversion Chart – Closed Cases.”

CSEC – The court has provided us with a table showing demographic information that includes the time period covered by your request. We also have two documents outlining the criteria for the program. We are providing these documents. See attachments titled “CSEC Demographics,” “Sac Court Dedicated Cal 2.26.19,” and “Sac County CSEC MOU-5.4.19.”

Otherwise, we do not regularly track the type of information you are seeking. To determine racial or ethnic background, gender, age, or other demographic data would require us to obtain that information from our investigatory files, which, as previously noted, are exempt from disclosure. Furthermore, as explained in response to Requests #1(c) and #1(d), we would not necessarily be able to identify diversion programs and collaborative courts just from searching outcomes in the computerized case management system. We would have to examine the case event history or our physical files for notations, and given the time frame you have identified and the number of cases that would be involved, this would require a hand search of voluminous materials and would be unduly burdensome, something not required under the CPRA. (See Gov’t Code § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 600-60; see also *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-454.)

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.

For inmates convicted by this office, in 2017 there were 139 parole hearings, and in 2018 there were 151 parole hearings. To the best of our knowledge, someone from our office attended each of these hearings, either in person or via video connection. We are aware that we did not oppose release at two hearings in 2018. It is possible we did not oppose additional releases; however, we do not have this information available. We are aware of one hearing in 2017 in which the next of kin supported release of the offender on parole, but our office opposed. A spreadsheet with data regarding parole hearings from 2016-2018 is attached, as well as documents we obtained from the California Department of Corrections and Rehabilitation. See attachments titled “LIFERGrantStatisticsTablefor2016-2018 (updated)” and “LIFER-BPHStatistics2016thru2018.” Additional records we possess relating to the parole hearings our office attended are part of our investigatory files and are privileged attorney work product, which, as previously noted, are exempt from disclosure.

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 [sic] 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 [sic] is not limited to calendar year 2017 and 2018.

Requests #4, #5, and #6 seek various policies, training manuals, and internal procedures. You have requested copies of all of our policies and positions, including, but not limited to, office policies on *Brady* compliance, charging decisions, dispositions, and disclosure of records. At the Sacramento County District Attorney's Office, our mission is to "Seek Justice, Serve Justice, Do Justice." The interest of our prosecutors is not that we shall win convictions, but that justice shall be done. This means not only holding the guilty accountable, but also protecting the rights of the innocent and all participants in the criminal justice system. It is our policy that we maintain the highest standards of ethics, civility, and professionalism. It is our practice, and we train our deputy district attorneys accordingly, to promptly provide all discoverable materials in criminal cases in accordance with the law. Deputy district attorneys must provide all materials subject to California's criminal discovery statutes (see Penal Code section 1054 *et seq.*). Further, pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, material evidence favorable to the accused must be disclosed.

To achieve these standards, we have a variety of policies and procedures in place for the proper handling of cases. In addition, we have a unit dedicated to promoting these standards within our office. The Justice, Training, and Integrity (JTI) Unit is comprised of experienced management and trial attorneys, well respected in the legal community. The JTI Unit oversees the development of guidelines for the ethical handling of cases during all stages, from investigation to post-conviction. The JTI Unit also provides training on professional standards and assists prosecutors with ethical issues. This unit enhances our commitment to ensure not only that justice prevails, but that we achieve it with integrity.

As for our internal policies or positions, we are unable to provide you copies of these specific documents. It is our practice, pursuant to the law, not to release these types of internal policy documents, which are exempted from disclosure under the CPRA by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these outweighs the public interest served by disclosing them. (Gov't Code § 6255; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) These records reflect the thought processes of those whose responsibility it is to decide whether or not particular evidence must be discovered, how prosecutors will handle their cases, and how prosecutors should proceed given various circumstances. Disclosure would expose the decision-making process in such a way as to discourage candid discussion, and thereby undermines the ability of the District Attorney's Office to perform its function of ensuring the fair administration of justice. In addition, the courts have ruled that written policies concerning how prosecutors will exercise their discretion in charging and sentencing are not subject to discovery. (*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478.) Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code section 6254(k).

Because we were able to provide copies of the attached documents to you electronically, there is no charge.

If you have any questions regarding our response or the documents being provided, please let me know.

Sincerely,

ANNE MARIE SCHUBERT  
DISTRICT ATTORNEY

A handwritten signature in blue ink, appearing to read 'Michael Blazina', with a stylized, looping flourish.

Michael Blazina  
Assistant Chief Deputy District Attorney

Attachments provided electronically