

August 16, 2021

Ellen Leonida
leonida@braunhagey.com

Re: California Public Records Act Request
Reference No. 21-104 PRA
Response Update #1

Dear Ellen Leonida,

As previously explained, I am a designated custodian of records for San Diego County District Attorney's Office responsible for compliance with the California Public Records Act (CPRA). On July 23, 2021, we received your emailed CPRA request on behalf of the American Civil Liberties Union of Northern California (ACLU). Your request contained three distinct parts.

Part 1: You requested the following records for the time-period of 2015 to the present:

- **Request 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.
- **Request 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).
- Request 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.
 - Request 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.

Part 2: Renewal of the ACLU's request from a letter dated May 13, 2019, seeking the following records, "updated to the present day":

- Request 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 San Diego 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 San Diego 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 San Diego county, including, but not limited to demographic data, charges filed, and case outcomes during the calendar year of 2017 and 2018.
 - c. Unique case identifiers, charges, and outcomes (including diversion) of all misdemeanor charges for minors and adults in San Diego county.
 - d. Unique case identifiers, charges, enhancements and outcomes (including diversion) of all felony charges for minors and adults in San Diego county.

- **Request 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.**
- **Request 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.**
- **Request 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.**
- **Request 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.**
- **Request 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.**

Part 3: You renewed the ACLU's prior request from PRA reference number 19-67, "updated to the present day." PRA 19-67 sought the following:

- **[C]opies of the following materials in the agency's possession, regardless of who wrote them, from 1990 onwards:**
 - **Any training materials related to jury selection**
 - **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.**

On August 2, 2021, this office emailed you to extend the response time to August 16, 2021, pursuant to Government Code section 6253, subdivision (c).

Request for Clarification:

As submitted, Part 2, Request 1 of your CPRA request does not sufficiently identify or describe records in a way that allows this office to conduct a reasonable search. A request for records must reasonably describe an identifiable record. (Gov. Code, § 6253, subd. (b).) It must be sufficiently specific so that a reasonable search for the records can be made. (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.)

Please find below the clarification needed. Please email your clarifications to me at kimberly.roth@sdcda.org.

Part 2, Request 1:

- Please clarify two terms used in this request: “unique identifiers” and “demographic data.” Demographic data may include a large number of criteria and it is unclear which data you specifically seek.

- Your request also states that you are seeking “records of prosecution data” “including but not limited to” the specific categories of cases listed in subdivisions (a) through (d). This request is too vague, and we are unable to conduct a reasonable search for records. If you are seeking data for cases outside of the categories listed in subdivisions (a) through (d), please specify what data you are requesting.

Request for Payment:

Payment is required for Part 2, Request 1. Your request for records of prosecution data requires programming and data extraction to produce the records you seek. Pursuant to Government Code section 6253.9, subdivisions (a) and (b)(2), “the requestor shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record,” where the request “would require data compilation, extraction, or programming to produce the record.”

The programming, extraction, and computer services are estimated to take a total of 5 hours to complete. The total charge for your request is \$354.76 to conduct programming and extraction. This figure includes the salaries of the employee who will conduct the programming multiplied by the estimated time it will take to do so (\$63.44/hour X 1 hour + \$72.83/hour X 4 hours).

If you would like us to proceed with your request, please inform me of that at kimberly.roth@sdcda.org. Additionally, please make your check for \$354.76 payable to the “San Diego County District Attorney’s Office” and mail to:

San Diego County District Attorney’s Office
Attention: Adriana Gonzalez
330 W. Broadway, Suite 860
San Diego, CA 92101

The programming, extraction, and computer services for Part 2, Request 1, will not be conducted until your payment is received.

Response Update

Given the breadth of the remainder of your request, additional time is needed to collect and review records that are potentially responsive. A further update will be provided to you by September 20, 2021.

This Office endeavors to provide access to information concerning the conduct of the People's business. We reserve the right, however, to maintain the lawful confidentiality of our records, and to claim, enforce, and apply any and all applicable exemptions, privileges, and proscriptions against public disclosure of records, including, but not limited to, those listed in Article 2 of the Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence Code, Civil Procedure and Penal Codes, the Federal Rules of Evidence, and those established by case law.

Your patience is appreciated as we continue to process your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberly Roth', with a stylized flourish at the end.

Kimberly Roth
Deputy District Attorney
Appellate and Training Division