



OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE

MICHAEL A. HESTRIN
DISTRICT ATTORNEY

September 15, 2021

Ellen Leonida
Attorney for ACLU of
Northern California
Leonida@braunhagey.com

Subject: California Public Records Act Request

Dear Ms. Leonida:

The Riverside County District Attorney's Office received your California Public Records Act (CPRA) request dated July 23, 2021 on behalf of your client, the ACLU of Northern California.

You should be aware that under the CPRA, many documents contained in our files, law enforcement files, our Case Management System, and our internal policy records are exempt from disclosure, including:

- 1) Investigative files compiled by local agencies for law enforcement purposes, such as police reports or investigative summaries, pursuant to Government Code section 6254, subdivision (f), and the holdings of *Williams v. Superior Court* (1993) 5 Cal.4th 337, 351, 354, 362 and *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1059. This includes an investigative file including police reports, medical/autopsy reports, witness and victim statements, evidence reports, photos, audio/video, investigative notes, laboratory/forensic reports, 911 recordings, and any other investigative reports contained within our investigative file.
- 2) Personnel and medical records, the disclosure of which would constitute an unwarranted invasion of personal privacy. (Gov. Code, § 6254, subd. (c).) This includes any medical files of a suspect, officer, or other involved individual.

- 3) Attorney work product, incorporated in section 6254, subdivision (k), of the Government Code. (*Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 128-135; *Fellows v. Superior Court (Los Angeles County)* (1980) 108 Cal.App.3d 55, 63.) This includes any internal memoranda or notes of the District Attorney's Office.
- 4) Records protected by the deliberative process privilege, pursuant to Government Code section 6255. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.)
- 5) Documents provided to one governmental agency by another with an agreement to treat them as confidential, pursuant to Government Code section 6254.5, subdivision (e).
- 6) Documents which are determined to be within the "catchall" exemption, Government Code section 6255, wherein the public interest served by disclosure is outweighed by the public interest served by non-disclosure. (*Wilson v. Superior Court* (1997) 51 Cal.App.4th 1136, 1139-43.)
- 7) Documents exempted pursuant to other statutes or statutory privileges. (Gov. Code, § 6254, subd. (k).) Probation reports, official information, summary histories of criminal information, reporter's transcripts, and confidential juvenile records fall within this category. (Evid. Code, § 1040 et seq. [official information privilege]; Gov. Code § 69954, subd. (d) [prohibiting transfer or selling of reporter's transcripts]; Pen. Code, § 1203.05 [availability of probation report for inspection or copying]; Pen. Code, § 13300 et seq. [summary criminal history information]; Welf. & Inst. Code, § 827 [juvenile files]; *People v. Connor* (2004) 115 Cal.App.4th 669.)
- 8) Information contained from summary criminal history information, which includes our Case Management System, that would identify the holder of the record, is restricted to authorized individuals for authorized purposes only. (Pen. Code, §§ 11105 et seq. and 13300 et seq.) Local summary criminal history information means "the master record of information compiled by any local agency [including District Attorney's offices – see Penal Code section 13101] pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person." (Pen. Code, § 13300, subd. (a)(1) [bracketed portions added.]) The Penal Code makes it a

misdemeanor to improperly provide criminal history information from state or local sources to those persons who are not specifically authorized by law to receive it. (Pen. Code §§ 11140, subd. (b), 11141, 11142, 13302, 13303; see also *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166 and 89 Ops.Cal.Atty. Gen. 204, 215 (2006). Improperly providing criminal history records will also violate Government Code section 6254, subdivision (k), and may violate the defendant's privacy rights under the California Constitution. (Cal. Const., art. I, § 1; see *Westbrook, supra*, and *Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 76-77.)

- 9) Juvenile Court delinquency records are prohibited from disclosure absent specific order of the Juvenile Court (Welf. & Inst. Code, §§ 827-832).
- 10) Internal office policies and internal training materials are exempt from production as preliminary drafts, notes, internal memoranda (Gov. Code, § 6254, subd. (a)), attorney work product of the District Attorney's Office (Gov. Code, §§ 6254, subds. (a) & (k), 6255; Pen. Code, § 1054.6; Code Civ. Proc., § 2018.30), official information (Gov. Code, § 6254, subd. (k); Evid. Code, § 1040), and/or records for which the public's interest in non-disclosure clearly outweighs the public's interest in disclosure (Gov. Code, § 6255; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 [deliberative process]; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136); see also *People v. Keenan* (1988) 46 Cal.3d 478 and *Keenan v. Superior Court* (1981) 126 Cal.App.3d 576 [policies or documents reflecting how prosecutors exercise their discretion are not subject to discovery]).

These exemptions apply to District Attorney case files and continue to apply even if the investigation is closed and even if the documents were disclosed pursuant to criminal discovery obligations or presented as exhibits in court. Government Code section 6254.5, specifically subdivisions (a) and (b), state that there is no waiver for disclosures made pursuant to "discovery proceedings" (subdivision (a)) or "[m]ade through other legal proceedings or as otherwise required by law" (subdivision (b)).

Under the CPRA, we are not required to prepare a log or create a record that is not currently in existence. (Gov. Code, § 6253, subd. (b), *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.)

In light of the above legal principles, we have attached what we believe are the disclosable records that are responsive to your requests. You have requested a renewal

of two prior CPRA requests (attached as Exhibits 1 and 2) as well has four additional requests. I will address each in turn.

Renewal of May 13, 2019 Request (Exhibit 1)

Yoel Haile of the ACLU Foundation of Northern California has already requested an update of the records requested Exhibit 1. Documents were provided to your client on April 22, 2021 and June 17, 2021 in response to this CPRA request.

Renewal of July 29, 2019 Request (Exhibit 2)

Enclosed with this letter are the documents responsive to your request that can be released under the CPRA. The documents have been redacted for attorney work product as defined in Government Code section 6254, subdivision (k).

July 23, 2021 Request

Request 1: You have requested “written policies, memoranda, or guidance documents” regarding twelve separate categories. Please note that the Riverside County District Attorney’s Office does not have written policies regarding all of the categories you have requested. The Office does have a Policy Committee made up of seasoned prosecutors from various disciplines throughout the Office. This Committee meets regularly to implement new policies and to update former policies. This includes updating existing policies to comply with changes in the law. To the extent any policy conflicts with the law based on recent changes, the law is always followed.

You have requested policies regarding diversion eligibility and programming. This Office formerly had a policy regarding prosecutor-initiated diversion for certain misdemeanors. That policy was superseded by the enactment of Penal Code section 1001.95, court-initiated diversion. No internal policies exist regarding Penal Code section 1001.95 and the Office follows the requirements of the law. This Office also participates in various collaborative courts programs, including veterans court and mental health court, both of which offer diversion programs. Again, this Office does not have a policy regarding these diversion programs, and follows the requirements of the applicable statutes.

I am providing a copy, redacted for attorney work product as defined in Government Code section 6254, subdivision (k), of the Office’s policies regarding custody and bail recommendations, charging recommendations, compliance with *Brady v. Maryland*, prosecution of minors, parole recommendations, and State Bar reporting. The Office does not have responsive documents regarding the remaining categories that you have sought.

Request 2: You have requested policies regarding training and training materials regarding five separate categories. The Office does not have any responsive policies regarding training. In the first two categories of trainings that you seek, you request trainings that are mandatory and trainings that are optional. As explained in my email dated August 12, 2021, this Office does not maintain a record of which trainings are mandatory and which are optional and the nature of the deputy district attorney's assignment and supervision may dictate which trainings they are required to attend. In your email dated August 16, 2021, you acknowledged the above and requested that all trainings responsive to the remaining requests be provided regardless of whether they were mandatory.

I have provided copies of the responsive trainings that were presented by this Office's Training and Recruitment Division. The documents have been redacted for attorney work product as defined in Government Code section 6254, subdivision (k). Please note, this Office did not have any trainings provided by the Training and Recruitment Division responsive to the request in category 2.e.

Request 3: You have requested records "concerning the Racial Justice Act" (RJA). Enclosed with this letter are the documents responsive to your request that can be released under the CPRA. The documents have been redacted for attorney work product as defined in Government Code section 6254, subdivision (k).

Please note that this Office has adopted a blind charging policy. This means that race is not considered when making a determination regarding criminal charges. With regard to the implementation of the RJA, this Office is actively working with a third-party research group to prepare and analyze data relevant to implementation and execution of the RJA. With no funding attached to the RJA, this work is being done at the expense of the County. Due to limited resources, this work has not been completed and no responsive documents exist to date.

Request 4: You have requested documents related to *Batson-Wheeler* motions, including motions filed, motions granted, internal training and/or discipline, and reports to the State Bar. Our Case Management System (CMS) does not record when *Batson-Wheeler* motions are filed or granted in a case. If data is present in CMS as a database element or field (such as the Penal Code sections charged, the demographic information of the defendants), we can retrieve the data. If the information is not in the database and thus cannot be retrieved by reference to a database element or field, the only way to retrieve this information would be by a hand search of case files. Because we file and dispose of tens of thousands of cases every year, a hand search of our criminal case files would be unduly burdensome, and thus not in the overall public interest, and we will not undertake a hand search of the case files to retrieve

the data. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.)

Training regarding *Batson-Wheeler* is included within the enclosed documents, redacted for attorney work product as defined in Government Code section 6254, subdivision (k). To the extent you seek “[r]eports to the State Bar relating to any *Batson-Wheeler* motions made and granted” any such documents constitute confidential personnel information and are exempt under the CPRA (see exemption # 2 above).

If you have any questions or concerns or would like to discuss any of our exemption claims, please contact my direct line at (951) 955-6419.

Very truly yours,

MICHAEL A. HESTRIN
District Attorney

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EMILY R. HANKS
Deputy District Attorney