

# MONTEREY COUNTY

## OFFICE OF THE DISTRICT ATTORNEY

JEANNINE M. PACIONI, DISTRICT ATTORNEY



October 1, 2021

### *VIA Electronic Mail*

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Re: California Public Records Act Request

Dear Ms. Leonida:

This is our first supplemental response to your request for records, dated September 7, 2021, requesting various records pertaining to all cases prosecuted and considered for prosecution from 2015 to present.

To the extent that there are responsive documents in our criminal files, you should be aware that under the CRPA, many documents contained in our law investigative files, our case files and our Case Management System 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.4<sup>th</sup> 337, 351, 354, 362, and *Rivero v. Superior Court* (1997) 54 Cal.App.4<sup>th</sup> 1048, 1059. This includes 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 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.4<sup>th</sup> 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.

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4. Records protected by the deliberate process privilege, pursuant to Government Code section 6255. (*Rogers v. Superior Court* (1993) 19 Cal.App.4<sup>th</sup> 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 clearly outweighed by the public interest served by non-disclosure. (*Wilson v. Superior Court* (1997) 51 Cal.App.4<sup>th</sup> 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 § 13300 et seq. [summary criminal history information]; Welf. & Inst. Code § 827 [juvenile files]; *People v. Connor* (2004) 115 Cal.App.4<sup>th</sup> 669.)
8. 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) and (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 [deliberate process]; *Rogers v. Superior Court* (1993) 19 Cal.App.4<sup>th</sup> 469; *Wilson 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)).

Regarding your specific requests:

1. *Unique identifier(s) associated with each defendant, each case, and each arrest*
  - a. *Name of defendant*
  - b. *Court case number*
  - c. *Arresting agency number(s)*
  - d. *Any other unique identifier(s)*

Responsive documents have been identified. We are able to run a “screened case statistics report” (hereafter “Screened Case Report”) in our case management system, for all cases reviewed for filing between 1/1/2015 and 8/31/2021. Here is an example of the case entry that is generated:

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File number	Screening Attorney	Case Status	Referral Date	Report Received	Screening Complete			
<a href="#">053-799707</a>	Hornik Todd	Accepted	01-02-2015		01-02-2015			
<a href="#">Looney, Carleen</a>		W / F	DOB: 03-10-1959	Arrest ed:	By SPD 59156			
Arrest Charge	AFIS	Item	A/R Code	Date	Field Charge	Cls	Court#	Div
10869	14121611		A AHSETPG	01-02-2015	10869		MS326871A	D8

The Screened Cases Report for the time period requested is approximately 25,000 pages long. Before we begin the process of generating and downloading this report, I wanted to confirm that this is something that you would want to receive as part of this request for documents. If so, please let me know and we will begin the process of downloading this report onto a thumb drive.

The Screened Cases Report includes all four of the “unique identifiers” requested in your request #1.

*2. Demographic and other information concerning each defendant*

- a. Race*
- b. Ethnicity*
- c. County or origin or nationality*
- d. Gender/sex*
- e. Age or date of birth*
- f. Prior criminal convictions of a defendant*

Regarding demographic and “other” information concerning each defendant, the Screened Cases Report includes race, gender and age information for each defendant. Our case management system does not track ethnicity, country of origin or nationality separately from race, so there are no records responsive to that portion of your request.

Regarding the request for the prior criminal convictions of a defendant, it is illegal for us to provide criminal histories to the public. (See California Penal Code Section 13300.)

*3. Information regarding each arrest*

- a. Zip code of arrest*
- b. Date of arrest*
- c. Charge identified by law enforcement referring individual  
(including top charge by law enforcement referring)*

Our case management system does not track the zip code where each suspect is arrested. The only way to obtain that information would be to manually access the associated police report for the more than 50,000 cases involved, find the address of the arrest location (if any) and determine the zip code. As the information would have to be obtained from the police reports, the information sought is part of our investigative file, compiled by local agencies for law enforcement purposes and is not subject to disclosure, as outlined above. Even if the information was not exempt, it would take thousands of man hours to access the more than 50,000 cases involved and then individually review each police report to

determine the zip code of the arrest location. This is an overly burdensome request under Government Code section 6255(a), such that the public interest in nondisclosure clearly exceeds the public interest in disclosure. The information provided in the Screened Cases Report will provide the agency that arrested the suspect, which should indicate the zip code or, at the very least, narrow it down to a few zip codes in the case of a larger jurisdiction like the City of Salinas. The public interest in knowing the exact zip code is very small considering that police agency information will largely provide this information. Finally, the process described would amount to the creation of a new record, which the Public Records Act does not require.

The date of arrest (in those cases in which the suspect was arrested) is included in the Screened Cases Report.

Regarding the request for “the charge identified by law enforcement referring individual,” the Screened Cases Report will show one charge (generally the top charge) referred by law enforcement. Our practice is to only input one charge when the case is entered into our system, and any additional charges filed are entered by the filing attorney. The only way to provide all charges requested by law enforcement would be to manually access the more than 50,000 individual police reports and/or citations and create a new record of all charges requested. This is an overly burdensome request under Government Code section 6255(a), such that the public interest in nondisclosure clearly exceeds the public interest in disclosure. The process described would also amount to the creation of a new record, which the Public Records Act does not require

#### *4. ADA assigned to the case*

The Screened Cases Report identifies the screening attorney, which is the attorney that reviewed the case and determined whether or not to file charges in the case. With the exception of some of our vertical prosecution units, the screening attorney generally is not the Deputy District Attorney assigned to the case.

My understanding is that there is no other report that will show the attorney who ultimately handled the case, but I will confirm this information and supplement my response.

#### *5. Decisions to decline to prosecute*

- a. Date of decision to decline to prosecute*
- b. Identity of person who made final decision to decline prosecution*
- c. Charges declined to prosecute (charge-level declinations as opposed to individual – or case-level where available)*
- d. Reasons for the declinations to prosecute, including but not limited to:*
  - i. Police misconduct involved in case;*
  - ii. Injuries to person involved;*
  - iii. Injuries to suspect;*
  - iv. Financial loss to persons involved;*

- v. *Prior criminal record of suspect; and*
- vi. *Victim's level of cooperation in prosecuting case*

As to those cases that were rejected for filing, the Screened Cases Report will show the date of the decision to decline to prosecute, the name of the Deputy District Attorney who rejected the case for filing, and the charge that was initially entered at the time of referral to our office. As discussed above, only the top charge is entered into our case management system when a case is submitted to our office for filing.

The reasons why a particular case was rejected is not subject to disclosure under the Act as it constitutes attorney work product and is also exempt under the deliberative process exception. (See *Wilson v. Superior Court* [policies or documents reflecting how prosecutors exercise their discretion are not subject to discovery].)

- 6. *Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)*
  - a. *Date of diversion offer*
  - b. *Type of diversion offered*
  - c. *Whether diversion accepted*
  - d. *Whether diversion completed*

I am still reviewing the reports that might be available to show cases that were diverted, and the information those reports might contain. I will supplement my response on this topic.

- 7. *Charges filed*
  - a. *Statutes (applicable code section)*
  - b. *Severity (i.e. infraction, misdemeanor, wobbler, felony)*
  - c. *Any enhancements*
  - d. *Maximum sentence*

The Screened Cases Report shows the charges filed using our case management system's internal code, rather than the applicable code section. We will provide a conversion key, which will show the applicable statute filed and the severity of the charge filed.

Our case management system does not calculate the maximum sentence on our cases. There is no report that we can run that would be responsive to this request. To the extent that individual attorneys calculated the maximum exposure in their cases, that information would not be disclosable under the act, as it is attorney work product.

8. *Factors considered in deciding charges to file, and level of charges, including*
  - a. *Injuries to persons*
  - b. *Financial loss to persons*
  - c. *Status of victim (i.e. law enforcement, child, spouse, etc.)*
  - d. *Prior criminal history of defendant*
  - e. *Victim's cooperation*

The reasons why a particular case/charge was filed is not subject to disclosure under the Public Records Act, as it is attorney work product. This information is also exempt under the deliberative process exception.

9. *Bail/custody information*
  - a. *Bail amount requested*
  - b. *Detention orders sought*
  - c. *Whether bail was set or denied*
  - d. *Whether individuals were released on bail or not*
  - e. *Pre-plea/pre-trial custody status*

Our case management system does not track any of the bail/custody information sought and we are therefore unable to run any kind of report to extract the requested data. The only way to obtain the requested information would be to individually access the more than 50,000 cases involved and then manually review the notes of each and every case to see if such information was noted. This is an overly burdensome request under Government Code section 6255(a), such that the public interest in nondisclosure clearly exceeds the public interest in disclosure. It would also amount to the creation of a new record, which the Act does not require.

10. *Plea offers*
  - a. *Charge(s) offered, including severity (i.e. infraction, misdemeanor, felony), including enhancements*
  - b. *Dates of plea offers*
  - c. *Sentence(s)/disposition(s) offered*
  - d. *Records of whether any plea offer was accepted, including date of acceptance*

Our case management system does not track any of the plea offer information sought and we are therefore unable to run any kind of report to extract the requested data. The only way to obtain the requested information would be to individually access the more than 50,000 cases involved and then manually review the notes of each and every case to see if such information was noted and create a new document with that information. This is an overly burdensome request under Government Code section 6255(a), such that the public interest in nondisclosure clearly exceeds the public interest in disclosure. It would also require the creation of a new record, which the Public Records Act does not require.

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*11. Case outcomes*

- a. Charges of conviction*
- b. Dismissed charges*
- c. Sentences*

My understanding is that a separate report can be generated which will show the disposition of each case filed during the relevant time period. However, that report will not show the sentences imposed. I will get additional information on the exact information included in this report and supplement my response on this topic.

*12. Counsel for defendant, whether public defender or private counsel*

We can provide a separate report showing counsel for each defendant. However, if the individual is represented by the Public Defender, our report will either indicate that they are represented by Susan Chapman, the Public Defender or by Jeremy Dzubay, the Assistant Public Defender. This is how we track public defender cases, as it assists us with discovery. So, it is likely that the specific Deputy Public Defender assigned will not appear on this report.

*13. Demographic and other information concerning victims*

- a. Race*
- b. Ethnicity*
- c. Gender/sex*

The demographic information of the victims in these cases is part of the investigative file, as that information is only contained in the police report and is therefore exempt from disclosure under Government Code Section 6254(f). In addition, there is no report that will extract this information, so the only way to obtain the requested information would be to individually access the more than 50,000 cases involved and then manually review police reports for each and every case to determine if there is a victim, and then to locate the above information. This is an overly burdensome request under Government Code section 6255(a), such that the public interest in nondisclosure clearly exceeds the public interest in disclosure. It would also require the creation of a new record, which the Public Records Act does not require.

*14. Recommendations regarding parole*

I am still looking into what, if any, records we have regarding parole recommendations. Is this request also limited to cases that were filed after January 1, 2015? If so, I don't believe there will be many potential records, if any, due to the recency of that date. I will supplement my response on this topic.

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*15. Recommendations regarding pardon or commutation*

As with the parole recommendations request, I am still looking into what, if any, records we might have regarding pardons or commutations. I will supplement my response on this topic.

I am happy to discuss this supplemental response, and also to clarify any of the requests that are still in progress at your convenience. If you wish to dispute any determination contained in this response, please advise us of your legal argument. If you would also provide us with a citation or legal authority which supports your argument, we are willing to reconsider our opinion

Sincerely.

A handwritten signature in black ink, appearing to read 'C. Johnson', with a long, sweeping horizontal stroke extending to the right.

Cristina Johnson  
Deputy District Attorney