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October 4, 2021

Via U.S. Mail

Ellen Leonida – PRA Responses
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: California Public Records Act Request

Dear Ms. Leonida:

Thank you for your recent requests for the following:

“...records regarding relevant case, individual, and/or charge-level data in the possession or control of Imperial District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

- 1. Unique identifier(s) associated with each defendant, each case, and each arrest a. Name of defendant b. Court case number(s) c. Arresting agency number(s) d. Any other unique identifier(s)*
- 2. Demographic and other information concerning each defendant a. Race b. Ethnicity c. Country of origin or nationality d. Gender/sex e. Age or date of birth f. Prior criminal convictions of a defendant*
- 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)*
- 4. ADA assigned to the case*
- 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 persons 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.

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

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

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

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

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

11. Case outcomes a. Charges of conviction b. Dismissed charges c. Sentences

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

13. Demographic and other information concerning victims a. Race b. Ethnicity c. Gender/sex

14. Recommendations regarding parole

15. Recommendations regarding pardon or commutation”

The Imperial County Office of the District Attorney (ICDA) is in receipt of your request to inspect public records. Please be aware that some records otherwise responsive to this request may not be subject to disclosure pursuant Government Code sections 6254(k) and 6276.04 [privilege]. Other records may not subject to disclosure pursuant to Government Code section 6255 and relate to the deliberative process reflecting predecisional opinions and recommendations by which local prosecutors determine whether charges will be filed. To the extent the request seeks documents that are protected by the deliberative process privilege, the

attorney-client privilege, the work product doctrine, or other applicable privilege or protection, such information is exempt from production pursuant to California Government Code sections 6254(k) and 6276.04, Evidence Code sections 952, 954, 1040, and 1060, Business and Professions Code section 6068, and Code of Civil Procedure sections 2018.010 *et seq.*

Further, the California Public Records Act (CPRA) does not compel disclosure of a district attorney's criminal investigation files. Government Code § 6254(f) [exempting investigatory records for law enforcement purposes including district attorneys' offices]; Government Code § 25303; California Penal Code § 1054 *et seq.*; *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1050; 1-2 California Criminal Discovery § 2:33; 85 Ops. Cal. Atty. Gen. 123; *Williams v. Superior Court* (1993) 5 Cal.4th 337; *Fagan v. Superior Court* (2003) 111 Cal.App.4th 607; *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4th 1099; and *Rackaucas v. Superior Court* (2012) 104 Cal.App.4th 169. Section 6254(f) of the Government Code provides that records of investigations conducted by a local police agency are exempt from disclosure. *Haynie v. Superior Court* (2001) 26 Cal.4th 1061. Here, any responsive records would constitute records of investigations undertaken for purposes of determining whether a violation of law had occurred and uncovering information surrounding the commission of the violation. Government Code § 6254 (k) exempts records exempted or prohibited pursuant to federal or state law, including provisions of the Evidence Code relating to privilege. Penal Code §§ 832.7 and 832.8 [continued confidentiality of peace officer personnel records outside of limited categories]; Penal Code § 1054.6 [attorney work product privilege]; Code of Civil Procedure § 2018.030 [attorney work product privilege]; and Evidence Code § 1043 [confidentiality of officer personnel records].

In addition, ICDA casefiles dating back seven (7) years would contain confidential criminal history records enumerated in Government Code sections 6276.01, 6276.02, 6276.06, 6276.12, 6276.16, 6276.28, 6276.30, 6276.40, and 6276.42 that would have to be redacted. For example, local summary criminal history information is made confidential pursuant to sections 13300 and 13305 of the Penal Code, and state summary criminal history information is made confidential pursuant to sections 11105, 11105.1, 11105.3, and 11105.4 of the Penal Code. Juvenile criminal records are made confidential pursuant to section 828.1 of the Welfare and Institutions Code, and developmentally disabled offenders' criminal histories are made confidential pursuant to section 1620 of the Penal Code. Indigent defendants' requests for funds for investigators and experts are made confidential pursuant to section 987.9 of the Penal Code, and other offender record information is made confidential pursuant to sections 11076 and 13202 of the Penal Code. Records regarding crime victims are made confidential pursuant to The Victims' Bill of Rights Act of 2008: Marsy's Law, Section 28 of Article I of the California Constitution.

Section 6255 of the California Government Code provides that where the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record, the records are exempt from disclosure. *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325. Here, the burden on ICDA in searching through almost seven (7) years of cases and redacting exempted portions of the record to comply with the criminal history statutes and to protect victim and witness identities is unduly onerous as it

would require a large number of hours and personnel to complete. Much of the ICDA casefiles would be exempt from disclosure as security, investigatory, intelligence, law enforcement, and/or personnel files, among other exemptions. As a result, copies of the redacted documents would ultimately provide very little non-redacted information, would be similar to pleadings and other records from the public docket already obtainable from the Imperial County Superior Court, and thus would be of minimal public interest. Accordingly, the undue burden on ICDA to produce the requested records creates a public interest in nondisclosure that clearly outweighs the public's interest in disclosure pursuant to section 6255.

Government Code § 6255 also underpins a deliberative process privilege, which exempts records under express provisions or where the public interest served by nondisclosure clearly outweighs the public interest served by disclosure. Given exposure of confidential and sensitive factors considered in deciding whether or not to file charges to potential future offenders and public interest in effective law enforcement, the interests involved here support nondisclosure. Government Code § 6254(c); *Los Angeles School District v. Superior Court* (2014) 228 Cal.App.4th 222; *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759; and *Eskaton Monterey Hospital v. Meyers* (1982) 134 Cal.App.3d 788 [no public interest in disclosing information that may assist violators in evading detection.] Moreover, such records, if any, would reflect the thought processes of those whose responsibility it was to decide whether or not to file charges; thus, disclosure would expose the decision-making process in such a way as to discourage candid discussion, and thereby undermine the ability of local prosecutors to perform their functions.

Finally, please be informed that the timeframe of your request of almost seven (7) years coupled with your declination to name any particular criminal case and/or to include all criminal cases considered whether or not charges were ever filed, results in an overbroad, vague, and burdensome request involving the need to search for, identify, and select thousands of physical records by hand. The California Supreme Court has held that even a clearly-framed public records request which requires an agency to search an enormous volume of data for a "needle in a haystack" or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome. See *California First Amendment Coalition v. Superior Court of Sacramento* (1998) 67 Cal.App.4th 159, 166; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal. 3d 440, 463; *Rosenthal v. Hansen* (1973) 34 Cal. App. 3d 754, 761; 64 Ops. Cal. Atty. Gen. 186, 190; 9 Witkin Cal. Proc. Admin Proc § 5.

With this preface, ICDA staff are currently searching through their records management database to locate responsive aggregate information. Staff are working diligently to locate, identify, and produce the requested records as soon as possible; however, due to the volume of casefiles to search through, compile in a compatible electronic format, and review for pertinent exemptions, it is anticipated that production will take some months.

Please also bear in mind that public records request must reasonably describe identifiable records and be specific, focused, and reasonably clear, so that the public agency is able to find what you are looking for. A request so broad that it amounts to asking for all of ICDA's casefiles is not reasonable. I welcome you to contact me directly at (442) 265-1120 so that we

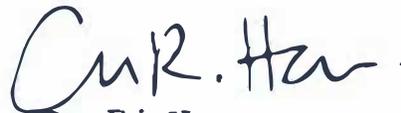
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may work together to formulate a focused and effective request that reasonably describes identifiable records.

If you have any questions regarding this response, please contact me at (442) 265-1120.

Sincerely,

ADAM G. CROOK
COUNTY COUNSEL

A handwritten signature in black ink that reads "Eric Havens". The signature is written in a cursive style with a period at the end.

By: Eric Havens
Assistant County Counsel