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October 12, 2021

Ellen Leonida

Braun Hagey & Borden LLP

leonida@braunhagey.com

RE: Public Records Act (PRA) Request from Braun Hagey & Borden, LLP for Racial Justice Act (RJA) records
Our File No.: 20211143

Dear Ms. Leonida:

This correspondence serves as an update to our letter of September 28, 2021. Please be advised that nothing in this response should be considered as a waiver of the right of the County to assert any and all claims of exemptions or privileges to the inspection of the whole or any part of the records. Your requests and our responses are set forth below.

A. In regard to the following requests:

1. Unique identifier(s) associated with each defendant, each case, and each arrest

a. Name of defendant

3. Information regarding each arrest

b. Date of arrest

c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)

Response: The Department has identified records that are partially responsive to your request. Please note, the Department is producing records in the format they are maintained, which may not precisely align with the parameters you requested. Under the Public Records Act, the County is not obligated to create records which do not exist. It only requires a public agency to provide records existing within its files. (See Govt. Code §§ 6252(e) and 6253(b); and *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754).

B. In regard to the following requests:

1. Unique identifier(s) associated with each defendant, each case, and each arrest

c. Arresting agency number(s)

d. Any other unique identifier(s)

3. Information regarding each arrest

- a. Zip code of arrest

7. Charges filed

- b. Severity (i.e., infraction, misdemeanor, wobbler, felony)

11. Case outcomes

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

Response: We are providing you notice that some portions of the records the Department identified as responsive to these requests have been withheld pursuant to:

- Gov. Code, §§ 6254 (k)
- Penal Code § 13300 et seq

C. In regard to the following requests:

1. Unique identifier(s) associated with each defendant, each case, and each arrest

- b. Court case number(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

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)
- 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

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

Response: The Department does not maintain this information in an electronic case management system. Responding to these requests would require staff to manually pull and examine thousands of case files to search potentially responsive records and constitute an undue burden on Department resources. A requester's right to records under the Public Records Act is not absolute and is subject to an implied rule of reasonableness (*Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754). The system utilized by the District Attorneys' office does not keep records in a manner that allows for staff to respond to your requests with reasonable effort. As such, the Department is exempt from responding to these requests pursuant to Gov. Code § 6255.

This completes our review. If you disagree with our assessment, and have statutory authority to support your position, please provide this information and we will reevaluate our response. Should you have any questions, please do not hesitate to contact the undersigned at 559-636-4950, or by e-mail at cwfelix@tularecounty.ca.gov.

Pursuant to *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, inadvertent disclosure of documents in response to Public Records Act requests do not waive attorney-client and work product privileges.

Very truly yours,
JENNIFER M. FLORES
County Counsel

By Charles W. Felix
Charles W. Felix
Deputy County Counsel

cc. Daniel Underwood

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