

FAX COVER SHEET

TO	Mendicino County
COMPANY	
FAX NUMBER	17074634687
FROM	BraunHagey and Borden LLP
DATE	2021-12-08 23:21:24 GMT
RE	UNKNOWN

COVER MESSAGE

Hi,

Please see the attached pertaining to our CPRA request.

BRAUNHAGEY & BORDEN LLP

San Francisco & New York

Ellen Leonida, Esq.

Partner

leonida@braunhagey.com

December 8, 2021

SENT VIA U.S. MAIL AND EMAIL

David Eyester
Office of the District Attorney of Mendocino County
100 North State Street, Room G-10 (PO BOX 1000)
Ukiah, CA 95482
Email: da@mendocinocounty.org
eysterd@co.mendocino.ca.us

Re: California Public Records Act Request

To the Office of the District Attorney of Mendocino County:

I am writing today regarding your refusal to respond to our CPRA requests dated July 23, 2021 and September 7, 2021. As you no doubt are aware, the CPRA imposes timelines for responding to requests and mandates that all state and local agencies, upon receipt of a request for public records, (1) determine whether the requested records are “disclosable”—in whole or in part—and (2) “promptly notify” the requestor of that determination “within 10 days from receipt of the request.”¹ You have not done so and have not contacted our office regarding any type of extension.

Our office attempted to reach you by phone on October 25, 2021 and November 8, 2021. We left voicemails on both occasions. We also attempted to contact you by email on November 15, 2021.

If you do not respond immediately and signal your intention to produce the requested documents in a timely manner, we will have no choice but to initiate litigation at your expense to obtain the documents we have requested.²

Thank you for your immediate attention to this matter.

Sincerely,



Ellen Leonida

¹ Gov’t Code § 6253(c).

² Cal. Gov’t Code §6259(d).

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

September 7, 2021

SENT VIA U.S. MAIL AND EMAIL

David Eyester
Office of the District Attorney of Mendocino County
100 North State Street, Room G-10 (PO BOX 1000)
Ukiah, CA 95482
(707) 463-4211
da@mendocinocounty.org
eyesterd@co.mendocino.ca.us

Re: California Public Records Act Request

To the Office of the District Attorney for Mendocino County:

Pursuant to the California Public Records Act (“CPRA”)¹ and the California Constitution,² I am writing on behalf of the American Civil Liberties Union of Northern California (“ACLU”) to request records relevant to the implementation of California’s Racial Justice Act (“RJA”).³ The RJA was enacted “to eliminate racial bias from California’s criminal justice system” and “to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing.”⁴ The ACLU submits this CPRA request in the public’s interest and as a member of a coalition of community groups, non-profit organizations, academic institutions, and other entities. The records that you produce will help us to implement and realize the objectives of the RJA.

On July 23, 2021, we submitted a CPRA request to your office also seeking records relevant to the implementation of the RJA. This CPRA letter is a further request for the following records regarding relevant case, individual, and/or charge-level data in the possession or control of the Mendocino District Attorney’s Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

Records Requested:

- 1. Unique identifier(s) associated with each defendant, each case, and each arrest**
 - a. Name of defendant
 - b. Court case number(s)

¹ Gov’t Code §§ 6250 *et seq.*

² Cal. Const., art. I, § 3(b)(2).

³ Pen. Code § 745.

⁴ See AB-2542 *Criminal Procedure: Discrimination*, Stats. 2020, Ch. 317, § 2(i); *see also* Pen. Code §§ 745, 1473, 1473.7.

- 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 enhancements⁵
 - d. Maximum sentence
- 8. Factors considered in deciding charges to file, and level of charges, including**
 - a. Injuries to persons

⁵ Conduct enhancements, including but not limited to PC Section 12022.53 (gun), PC Section 186.22 (gang); Status enhancements including but not limited to PC Section 667.5 (prison prior), PC Section 667(a) (serious felony prior), PC Section 1170.12 and 667(b)-(i) (strike prior), PC Section 11370.2 (drug prior), PC Section 12022.1 (committed while on bail/OR); Special circumstances (PC Section 190.2); Any other modifications or enhancements

- 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**

In responding to this request, please note that the CPRA broadly defines the term “record.” Specifically, the term includes “any writing containing information relating to the conduct of the people’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁶ The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”⁷ The present request therefore applies to *all* paper documents, as well as to *all* emails, videos, audio recordings, text messages, social media, or other electronic records within the Mendocino District Attorney’s Office’s possession or control. Even if a record was created by a member of another government agency, a member of the public, or a private entity, it still must be produced so long as it is (or was) “used” or “retained” by the Mendocino District Attorney’s Office.⁸

⁶ Gov’t Code § 6252(e).

⁷ *Id.* § 6252(g).

⁸ *Id.* § 6252(e); see *California State Univ. v. Superior Ct.*, 90 Cal. App. 4th 810, 824–25 (2001) (concluding that documents which were “unquestionably ‘used’ and/or ‘retained’ by [an agency]” were public records); see also *Cty. of Santa Clara v. Superior Ct.*, 170 Cal. App. 4th 1301, 1334 (2009) (“[W]hile section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.”).

As permitted by the CPRA, this request sets forth the specific categories of information that we are seeking, rather than asking for documents by name.⁹ It is your obligation to conduct record searches based on the criteria identified herein.¹⁰ But if you believe the present request is overly broad, you are required to: (1) offer assistance in identifying responsive records and information; (2) describe “the information technology and physical location in which the records exist;” and (3) provide “suggestions for overcoming any practical basis” that you assert as a reason to delay or deny access to the records or information sought.¹¹

The CPRA requires that you respond to this request in ten (10) days.¹² If you contend that an express provision of law exempts a responsive record from disclosure, either in whole or in part, you must make that determination in writing. Such a determination must specify the legal authority on which you rely, as well as identify both the name and title of the person(s) responsible for the determination not to disclose.¹³ Additionally, even if you contend that a portion of a record requested is exempt from disclosure, you still must release the non-exempt portion of that record.¹⁴ Please note that the CPRA “endows” your agency with “discretionary authority to override” any of the Act’s statutory exemptions “when a dominating public interest favors disclosure.”¹⁵

Because the ACLU is a non-profit organization and because these requests pertain to matters of public concern, we kindly request a fee waiver. None of the information obtained will be sold or distributed for profit. We also request that, to the extent possible, documents be provided in electronic format. Doing so will eliminate the need to copy the materials and provides another basis for the requested fee-waiver.

If, however, you are unwilling to waive costs and anticipate that costs will exceed \$100, and/or that the time needed to copy the records will delay their release, please contact us so that we can arrange to inspect the documents or decide which documents we wish to have copied and produced. Otherwise, please copy and send all responsive records as soon as possible and, if necessary on a rolling basis, to: preresponse@braunhagey.com or to Ellen Leonida – PRA Responses, BraunHagey & Borden LLP, 351 California Street, 10th Floor, San Francisco, CA 94104.

Thank you in advance for your assistance with this request. We look forward to receiving your response within 10 days. And once again, if you require any clarification on this request, please let us know.

⁹ Gov’t Code § 6253(b).

¹⁰ *See id.* §§ 6253–6253.1.

¹¹ *Id.* § 6253.1(a).

¹² *Id.* § 6253(c).

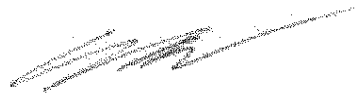
¹³ *Id.* § 6255; *see also id.* § 6253(d)(3).

¹⁴ *Id.* § 6253(a), (c).

¹⁵ *CBS, Inc. v. Block*, 42 Cal. 3d 646, 652 (1986); *see also Nat’l Conference of Black Mayors v. Chico Cmty. Publ’g, Inc.*, 25 Cal. App. 5th 570, 579 (2018) (construing the CPRA’s exemptions as “permissive, not mandatory—they allow nondisclosure but do not prohibit disclosure”).

September 7, 2021
Page 5

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ellen Leonida', with a long, sweeping horizontal stroke extending to the right.

Ellen Leonida

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

July 23, 2021

SENT VIA U.S. MAIL AND EMAIL

David Eyester
Office of the District Attorney of Mendocino County
100 North State Street, Room G-10 (PO BOX 1000)
Ukiah, CA 95482
(707) 463-4211
da@mendocinocounty.org
eyesterd@co.mendocino.ca.us

Re: California Public Records Act Request

To the Office of the District Attorney of Mendocino County:

Pursuant to the California Public Records Act (“CPRA”)¹ and the California Constitution,² I am writing on behalf of the American Civil Liberties Union of Northern California (“ACLU”) to request records relevant to the implementation of California’s Racial Justice Act (“RJA”).³ The RJA was enacted “to eliminate racial bias from California’s criminal justice system” and “to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing.”⁴ The ACLU submits this CPRA request in the public’s interest and as a member of a coalition of community groups, non-profit organizations, academic institutions, and other entities. The records that you produce will help us to implement and realize the objectives of the RJA.

On July 29, 2019, the ACLU submitted an initial CPRA request to your office seeking training materials concerning (1) jury selection and/or (2) constitutional requirements under *Batson v. Kentucky*, 476 U.S. 79 (1986) and *People v. Wheeler*, 4 Cal. 4th 284 (1993). That request also sought training materials related to the handling of *Batson-Wheeler* claims or motions. (See **Exhibit 1**, attached.) You did not respond.

This CPRA letter constitutes a renewal of the ACLU’s prior requests (as relevant, updated to the present day) and also a request for the additional following records in the possession or control of the Office of the District Attorney of Mendocino County for the time-period 2015 to present:

¹ Gov’t Code §§ 6250 *et seq.*

² Cal. Const., art. I, § 3(b)(2).

³ Pen. Code § 745.

⁴ See AB-2542 *Criminal Procedure: Discrimination*, Stats. 2020, Ch. 317, § 2(i); see also Pen. Code §§ 745, 1473, 1473.7.

Records Requested:

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.
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).
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.
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.

In responding to this request, please note that the CPRA broadly defines the term “record.” Specifically, the term includes “any writing containing information relating to the conduct of the people’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁵ The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”⁶ The present request therefore applies to *all* paper documents, as well as to *all* emails, videos, audio recordings, text messages, social media, or other electronic records within the Office of the District Attorney of Mendocino County’s possession or control. Even if a record was created by a member of another government agency, a member of the public, or a private entity, it still must be produced so long as it is (or was) “used” or “retained” by the Office of the District Attorney of Mendocino County.⁷

As permitted by the CPRA, this request sets forth the specific categories of information that we are seeking, rather than asking for documents by name.⁸ It is your obligation to conduct record searches based on the criteria identified herein.⁹ But if you believe the present request is overly broad, you are required to: (1) offer assistance in identifying responsive records and information; (2) describe “the information technology and physical location in which the records exist;” and (3) provide “suggestions for overcoming any practical basis” that you assert as a reason to delay or deny access to the records or information sought.¹⁰

The CPRA requires that you respond to this request in ten (10) days.¹¹ If you contend that an express provision of law exempts a responsive record from disclosure, either in whole or in part, you must make that determination in writing. Such a determination must specify the legal authority on which you rely, as well as identify both the name and title of the person(s) responsible for the determination not to disclose.¹² Additionally, even if you contend that a portion of a record requested is exempt from disclosure, you still must release the non-exempt portion of that record.¹³ Please note that the CPRA “endows” your agency with “discretionary authority to override” any of the Act’s statutory exemptions “when a dominating public interest favors disclosure.”¹⁴

⁵ Gov’t Code § 6252(e).

⁶ *Id.* § 6252(g).

⁷ *Id.* § 6252(e); see *California State Univ. v. Superior Ct.*, 90 Cal. App. 4th 810, 824–25 (2001) (concluding that documents which were “unquestionably ‘used’ and/or ‘retained’ by [an agency]” were public records); see also *Cty. of Santa Clara v. Superior Ct.*, 170 Cal. App. 4th 1301, 1334 (2009) (“[W]hile section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.”).

⁸ Gov’t Code § 6253(b).

⁹ See *id.* §§ 6253–6253.1.

¹⁰ *Id.* § 6253.1(a).

¹¹ *Id.* § 6253(c).

¹² *Id.* § 6255; see also *id.* § 6253(d)(3).

¹³ *Id.* § 6253(a), (c).

¹⁴ *CBS, Inc. v. Block*, 42 Cal. 3d 646, 652 (1986); see also *Nat’l Conference of Black Mayors v. Chico Cmty. Publ’g, Inc.*, 25 Cal. App. 5th 570, 579 (2018) (construing the CPRA’s exemptions as “permissive, not mandatory—they allow nondisclosure but do not prohibit disclosure”).

July 23, 2021

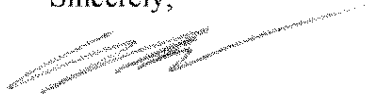
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Because the ACLU is a non-profit organization and because these requests pertain to matters of public concern, we request a fee waiver. None of the information obtained will be sold or distributed for profit. We also request that, to the extent possible, documents be provided in electronic format. Doing so will eliminate the need to copy the materials and provides another basis for the requested fee-waiver.

If, however, you are unwilling to waive costs and anticipate that costs will exceed \$100, and/or that the time needed to copy the records will delay their release, please contact us so that we can arrange to inspect the documents or decide which documents we wish to have copied and produced. Otherwise, please copy and send all responsive records as soon as possible and, if necessary, on a rolling basis, to: praresponse@braunhagey.com or to Ellen Leonida – PRA Responses, BraunHagey & Borden LLP, 351 California Street, 10th Floor, San Francisco, CA 94104.

Thank you in advance for your assistance with this request. We look forward to receiving your response within 10 days. And once again, if you require any clarification on this request, please let us know.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ellen Leonida", written over a series of horizontal lines.

Ellen Leonida

EXHIBIT 1



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Northern
California

July 29, 2019

Transmitted by email

Mendocino County District Attorney's Office
100 North State Street, Room G-10
(PO BOX 1000)
Ukiah, CA 95482
Email: da@mendocinocounty.org;
eysterd@co.mendocino.ca.us;
triggd@mendocinocounty.org

Re: Request for Records Pursuant to the California Public Records Act

To Whom it May Concern:

I am writing on behalf of the American Civil Liberties Union of Northern California to request records pursuant to the California Public Records Act, California Government Code sections 6250 to 6270 and article 1 section 3(b) of the California Constitution.

I seek copies of the following materials in the agency's possession, regardless of who wrote them, from 1990 onwards:

1. Any training materials related to jury selection
2. 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.

Batson v. Kentucky (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258. This request construes "materials" to mean any records¹, publications, memoranda, writings, electronic data, mail, media files, nonstandard documents, or other forms of communication.

¹ The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Gov't Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Gov't Code § 6252, subsection (g).

American Civil Liberties Union Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Sottani • BOARD CHAIR Magan Pritam Ray

SAN FRANCISCO OFFICE: 39 Drumm St., San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

In the case that this request is found to be insufficiently focused or effective, California Government Code Section 6253.1(a) requires (1) Assistance in identifying the records and information that are responsive to this request or to the purpose of this request; (2) Description of the information technology and physical location in which the records exist; and (3) that suggestions be provided for overcoming any practical basis for denying access to the records or information sought.

Pursuant to Government Code Section 6253(b), the requested records must be "promptly available," for inspection and copying, based on payment of "fees covering direct costs of duplication, or statutory fee, if applicable." No express provisions of law exist that exempt the record(s) from disclosure. As it is determined whether this request seeks copies of disclosable public records, be mindful that Article I, Section 3 (b)(2) of the California Constitution requires that a statute, court rule, or other authority be broadly construed if it furthers the right of access to the information requested and that a statute, court rule, or other authority limiting right of access be narrowly construed.

If a portion of the information requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released. If it is determined that an express provision of law exists to exempt from disclosure all or a portion of the material requested, Government Code Section 6253(c) requires notification of the reasons for the determination not later than 10 days from receipt of this request. Moreover, Government Code Section 6253(d) prohibits the use of the 10-day period, or any provisions of the Public Records Act "to delay access for purposes of inspecting public records."

Please send copies of the requested records to me at the address shown above or email them to me at sagarwal@aclunc.org. We request that you waive any fees that would be normally applicable to a Public Records Act request. In addition, if you have the records in electronic form you can simply email them to me without incurring any copying costs. *See* Gov't. Code § 6253.9. Should you be unable to do so, however, the ACLU will reimburse your agency for the direct costs of copying these records plus postage. *See* Gov't. Code § 6253(b). To assist with the prompt release of responsive material, we ask that you make records available to me as you locate them, rather than waiting until all responsive records have been collected and copied.

If you have any questions regarding this request, please feel free to contact me at (415) 621-2493 or at sagarwal@aclunc.org. Thank you in advance for your time and attention to this request.

Sincerely,



Shilpi Agarwal
Senior Staff Attorney

American Civil Liberties Union Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Magan Pritam Ray
SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707
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