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Joshua Wilner
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Posted on NextRequest and sent via email to praresponse@braunhagey.com

RE: PRA 21-268

Dear Mr. Wilner:

Thank you for your time on February 18, 2022 to discuss the Public Records Act request (PRA 21-268) on behalf of the American Civil Liberties Union of Northern California. During that conversation, I agreed to review each subset of data requested and indicate whether (1) the data exists and can be extracted via a report; (2) the data does not exist in the District Attorney's records; or (3) the data exists in the District Attorney's records, but would require a manual review of each file or programming to extract. Please find the table below providing this information. For all data in the first category, the County of San Benito ("County") is providing the report that includes the disclosable data extracted through the District Attorney's Office case management system, which utilizes software provided by Karpel Solutions ("Karpel report"). You will find that the County was able to provide a substantial amount of the requested data through the Karpel report. The District Attorney's Office began using Karpel Solutions in August or September 2016 and some cases were migrated over, but not all cases and data were migrated. The District Attorney's Office did not use a case management system prior to Karpel Solutions and thus data prior to the use of Karpel Solutions cannot be similarly extracted. Therefore, for some data prior to implementation of Karpel Solutions, a manual review of each file would be required.

For items in the third category, the data was not tracked within a case management system, but exists or likely exists within a document in the file. The County is not aware of a method to extract this data through programming and believes a manual review of each file would be necessary to obtain each subset of data. If you have information about programming that could extract data that was not tracked in a case management system, the County is willing to try to obtain the data through such programming. Pursuant to Government Code subsection 6253.9(b)(2) and consistent with *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, the costs for this data extraction and programming would be the responsibility of the requestor.

I also agreed to identify the exemptions the County anticipates asserting for any subset of data. The chart below includes this information. After the chart, you will also find a more detailed analysis of why the District Attorney and I have determined that each exemption asserted is appropriate. The County remains willing to discuss these exemptions and any authority or analysis you provide. The County also reserves the right to assert any additional exemptions or privileges regarding data that is not released in the Karpel report.

Data Requested	Existence of Data	Exemptions
1. Unique identifier(s) associated with each defendant, each case, and each arrest		
a. Name of defendant	(1) Data exists and can be extracted via report.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
b. Court case number(s)	(1) Data exists and can be extracted via report.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
c. Arresting agency number(s)	(1) Data exists and can be extracted via report.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
d. Any other unique identifier(s)	(1) Unique data exists for “File Number,” “Defendant SID” (rap sheet), and “Person Number” and can be extracted via report.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).

2. Demographic and other information concerning each defendant		
a. Race	(1) Data exists and can be extracted via report.	
b. Ethnicity	(2) Data does not exist in records.	
c. Country of origin or nationality	(3) Data exists in records, but would require manual review of file or programming to extract. (1) Defendant's "State" exists in records and can be extracted via report.	
d. Gender/sex	(1) Data exists and can be extracted via report.	
e. Age or date of birth	(1) Some data exists as to age and can be extracted via report, but for any age not provided in the report, (3) data exists in records as to date of birth, but would require manual review of file or programming to extract.	Date of birth is exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
f. Prior criminal convictions of a defendant	(3) Data exists in records, but would require manual review of file or programming to extract.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
3. Information regarding each arrest		
a. Zip code of arrest	(3) Data exists in records, but would require manual review of file or programming to extract.	
b. Date of arrest	(3) Date of arrests exists in records, but would require manual review of file or programming to extract. (1) Data exists for the referral date and incident date and can be extracted via report.	
c. Charge identified by law enforcement referring	(1) Data exists and can be extracted via report.	

individual (including top charge by law enforcement referring)		
4. ADA assigned to the case	(3) Data exists in records, but would require manual review of file or programming to extract.	
5. Decisions to decline to prosecute		
a. Date of decision to decline to prosecute	(1) Data exists and can be extracted via report.	
b. Identity of person who made final decision to decline prosecution	(3) Data exists in records, but would require manual review of file or programming to extract.	
c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)	(1) Data exists and can be extracted via report.	
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	(1) Some of the data exists in records and can be extracted via report and is released (column AM). (3) For any additional data or analysis, the data may exist in records, but would require manual review of file or programming to extract. Additional analysis is exempt from disclosure.	Exempt from disclosure under Government Code subsections 6254(f), 6254(k), 6254(p)(2), and 6255(a); <i>Rackauckas v. Superior Court</i> (2002) 104 Cal.App.4th 169, 176-178; Government Code section 6276.04; Business and Professions Code section 6202; and Code of Civil Procedure sections 2018.010 to 2018.080.
6. Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)		
a. Date of diversion offer	(2)/(3): Data may exist in some files, but diversion is a new program and it was rare that it was maintained as part of file.	Penal Code subsection 13300(n) provides: "Notwithstanding subdivision (l) or (m), a local criminal justice agency shall not release information under the following circumstances: (1) Information concerning an arrest for which diversion or a
b. Type of diversion offered	(2)/(3): Data may exist in some files, but diversion is a new program and it was rare that it was maintained as part of file.	

c. Whether diversion accepted	(2)/(3): Data may exist in some files, but diversion is a new program and it was rare that it was maintained as part of file.	deferred entry of judgment program has been ordered without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed. (2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated. (3) Information concerning an arrest without a disposition without attempting to determine whether diversion has been successfully completed or the individual was exonerated.”
d. Whether diversion completed	(2)/(3): Data may exist in some files, but diversion is a new program and it was rare that it was maintained as part of file.	
7. Charges filed		
a. Statutes (applicable code section)	(1) Data exists and can be extracted via report.	
b. Severity (i.e., infraction, misdemeanor, wobbler, felony)	(1) Data exists and can be extracted via report.	
c. Any enhancements	(3) Data exists in records, but would require manual review of file or programming to extract.	
d. Maximum sentence	(3) Data exists in records, but would require manual review of file or programming to extract.	
8. Factors considered in deciding charges to file, and level of charges, including		
a. Injuries to persons	(3) Data exists in records, but would require manual review of file or programming to extract.	
b. Financial loss to persons	(3) Data exists in records, but would require manual review of file or programming to extract.	
c. Status of victim (i.e., law enforcement, child, spouse, etc.)	(3) Data exists in records, but would require manual review of file or programming to extract.	
d. Prior criminal history of defendant	(3) Data exists in records, but would require manual review of file or programming to extract.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government

		Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
e. Victim's cooperation	(3) Data exists in records, but would require manual review of file or programming to extract.	
9. Bail/custody information		
a. Bail amount requested	(2)/(3): Data may exist in some files, but it was rare that requested data was maintained as part of file.	
b. Detention orders sought	(2)/(3): Data may exist in some files, but it was rare that requested data was maintained as part of file.	
c. Whether bail was set or denied	(2)/(3): Data may exist in some files, but it was rare that requested data was maintained as part of file.	
d. Whether individuals were released on bail or not	(2)/(3): Data may exist in some files, but it was rare that requested data was maintained as part of file.	
e. Pre-plea/pre-trial custody status	Data may exist in some files, but it was rare that requested data was maintained as part of file.	
10. Plea offers		
a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements	(2)/(3): Data may exist in some files, but may not have been recorded in writing and would require manual review of file or programming to extract.	Exempt from disclosure under Government Code subsections 6254(p)(2), 6254(k), and 6255(a); Evidence Code section 1153; Government Code section 6276.04; Business and Professions Code section 6202; and Code of Civil Procedure sections 2018.010 to 2018.080.
b. Dates of plea offers	(2)/(3): Data may exist in some files, but may not have been recorded in writing and would require manual review of file or programming to extract.	
c. Sentence(s)/disposition(s) offered	(2)/(3): Data may exist in some files, but may not have been recorded in writing and would	Exempt from disclosure under Government Code subsections 6254(p)(2), 6254(k), and 6255(a);

	require manual review of file or programming to extract.	Evidence Code section 1153; Government Code section 6276.04; Business and Professions Code section 6202; and Code of Civil Procedure sections 2018.010 to 2018.080.
d. Records of whether any plea offer was accepted, including date of acceptance	(1) Data regarding acceptance of plea offer exists and can be extracted via report. (2) Data regarding the date of acceptance of the offer may exist in some files, but may not have been recorded in writing and would require manual review of file or programming to extract.	
11. Case outcomes		
a. Charges of conviction	(1) Data exists and can be extracted via report.	
b. Dismissed charges	(3) Data exists in records, but would require manual review of file or programming to extract.	
c. Sentences	(1) Data exists and can be extracted via report.	
12. Counsel for defendant, whether public defender or private counsel	(3) Data exists in records, but would require manual review of file or programming to extract.	
13. Demographic and other information concerning victims		
a. Race	(1) Data exists and can be extracted via report.	
b. Ethnicity	(2) Data does not exist in records.	
c. Gender/sex	(1) Data exists and can be extracted via report.	
14. Recommendations regarding parole	(2)/(3): Data may exist in some files, but may not have been recorded in writing and would require manual review of file or programming to extract.	
15. Recommendations regarding pardon or commutation	(2)/(3): Data may exist in some files, but may not have been recorded in writing and would require manual review of file or programming to extract.	

Additional Explanation Regarding Exemptions

Most of data requested is from the County's local summary criminal history information under Penal Code section 13300. Pursuant to section 13302, "An employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor." Subsection 13300(b) enumerates the list of officials and agencies entitled to access "when needed in the course of their duties," and subsection 13300(c) enumerates a list of officials and agencies entitled to access only upon a showing of "compelling need." (Penal Code, § 13300, subds. (b)-(c).) Neither your client nor your firm come within any of the numerous agencies and officials entitled to local summary criminal history information as a matter of right or upon a showing of compelling need. Nor does the request come within a release permitted under subsection 13300(j) because the "release of the information would enhance public safety, the interest of justice, or the public's understanding of the justice system *and* the person making the request declares that the request is made for a scholarly or journalistic purpose." (Penal Code, § 13300, subds. (j), italics added.) Overall, "[t]he language of Penal Code section 13300 et seq., demonstrates that the Legislature intended nondisclosure of criminal offender record information to be the general rule." (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164.)

The County has nonetheless determined that certain data from the local summary criminal history information may be released in the Karpel report. First, subsection 13300(h) provides, "It is not a violation of this article to disseminate statistical or research information obtained from a record, *provided that the identity of the subject of the record is not disclosed.*" (Penal Code, § 13300, subds. (j), italics added.) Second, section 13302 does not "prohibit a public prosecutor from accessing and obtaining information from the public prosecutor's case management database to respond to a request for *publicly disclosable information* pursuant to the California Public Records Act." (Penal Code, § 13302, italics added.) As recognized in subsection 13300(h), "[t]he state constitutional right of privacy extends to protect defendants from unauthorized disclosure of criminal history records." (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 165-166 [citing *Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 76-77].) Given the ability to use the released data to evaluate any potential claims under Racial Justice Act (Assembly Bill No. 2542) without linking that data to each individual and infringing on the privacy rights of every individual in the County subject to arrest and potential prosecution since 2015, the County also finds that "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255, subd. (a).) The County therefore cannot release data that includes or could easily lead to the "identity of the subject of the record" consistent with Penal Code sections 13300 to 13305 and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).

While not contained in the local summary criminal history information, the request also seeks information in files that constitutes attorney work product, and those records will not be released pursuant to Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080. Any record including the analysis of the District Attorney or a Deputy District Attorney about a decision not to prosecute a case is also exempt under the deliberative process exemption in Government Code subsection 6254(p) and pursuant to Government Code subsection 6254(f). (See *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174-176 [“The investigation exemption does not terminate when the investigation terminates” and a memorandum of a deputy district attorney about his decision not to bring charges prepared as part of a criminal investigation is exempt if it contains his “legal opinions, thoughts, impressions and conclusions.”].) Given the ability to use the released data to evaluate any potential claims under the Racial Justice Act without infringing on the confidential deliberative process of the District Attorney’s Office and thereby hindering future prosecutions, the County also finds that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code, § 6255, subd. (a).) For these reasons, any data or records containing analysis about the reasons for declining to prosecute will not be released under Government Code subsections 6254(f), 6254(p)(2), and 6255(a), Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080.

Lastly, the County will not produce any plea offers made or reasons for plea offers. First, decisions by the District Attorney to offer a plea and the reasons for the offer are exempt from disclosure under the deliberative process exemption in Government Code section 6254(p)(2) and include attorney work product exempt from disclosure under Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080. Second, while this request is made to obtain evidence that may later be used in a challenge under the Racial Justice Act, evidence of plea offers could not be used for that purpose. (See Evid. Code, § 1153 [“Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or to any other crime, made by the defendant in a criminal action is inadmissible *in any action or in any proceeding of any nature*, including proceedings before agencies, commissions, boards, and tribunals.”], *italics added*.) Third, the District Attorney believes that the release of plea offers and reasons for such offers will undermine her ability to carry out her duties in future criminal cases. Given the ability to use the released data to evaluate any potential claims under the Racial Justice Act without hampering the ability of the District Attorney’s Office to seek future plea agreements in the interest of justice, the County also finds that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code, § 6255, subd. (a).) For these reasons, any data or records containing this information will not be released under Government Code sections 6254(p)(2), 6254(k), and 6255(a), Evidence Code section 1153, Government Code

section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080.

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After you have had an opportunity to review the substantial data disclosed through the Karpel report and the grounds for the exemptions asserted, I believe you will find you have the data necessary to evaluate any potential claims under the Racial Justice Act. If that is the case, please let me know so I may close this request. If not, I would suggest we set a time to discuss any remaining data that is not included in the Karpel report. Thank you for working with me to facilitate a response to your request and for your patience while the District Attorney's Office worked with Karpel Solutions to extract the data requested.

Sincerely,



Breann M. Moebius
Deputy County Counsel