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March 8, 2022

VIA ELECTRONIC EMAIL

Ellen Leonida
Braun Hagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104
leonida@braunhagey.com

Re: Public Records Act Request dated September 7, 2021
File No. 21-507

Dear Ms. Leonida,

I write in response to your January 18, 2022 letter regarding the ACLU's September 7, 2022 PRA request for "case, individual, and/or charge-level data in the possession or control of the Marin District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present."

In your request, you seek many categories of data for all cases considered for prosecution or prosecuted by the D.A.'s Office during a six-and-a-half year period.

A number of the requested categories of data are not maintained in the District Attorney's Office's case management system, called Darwin, and therefore cannot be extracted through a computer query. Specifically, those categories are as follows:

- ethnicity
- country of origin
- nationality
- prior criminal convictions
- date of arrest¹
- zip code of arrest
- diversion offers and decisions
- maximum sentence of the charges filed

¹ While the Marin County District Attorney's office does not track date of arrest, as you will see below it does track date of booking.

- factors considered in deciding whether to file charges
- bail/custody information requested
- plea offers
- case outcomes
- ethnicity of the victim
- recommendations regarding parole, pardon, or commutation

There were approximately 43,000 cases referred for prosecution from 1/1/2015 to 9/7/2021 and 24,000 cases filed. To review every file for all cases considered for prosecution or prosecuted by the D.A.’s Office during a six-and-a-half year period to locate documents that indicate this information, would be unduly burdensome. Under applicable California law, even a focused, specific request, when it would require an agency to search volumes of documents or to produce a large volume of material can be objectionable as “unduly burdensome.” (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166; citing *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.)

However, as mentioned in our previous letter the following categories can be extracted and compiled from the DA Office’s case management system:

- Arresting agency
- Race
- Gender/sex
- Age or date of birth
- Date of booking
- Charges the individual was referred under by law enforcement
- ADA assigned to the case²
- Charges filed, including statutes, severity, and any enhancements
- Counsel for defendant
- Victim’s race and gender/sex

Your letter states that you need additional information to evaluate whether the cost estimate provided falls within the scope of Government Code section 6253.9. Specifically, you request that the County provide a detailed description of the files that must be searched, the process of compilation, and the title of the person doing the compiling. In order for the County to respond to your request, without having to look through more than 40,000 physical files to locate and copy documents that indicate the requested information which would be unduly burdensome, it needs to extract and compile data that has been entered into the DA’s case management software system, called Darwin. As stated in our response, we estimated that it

² Please note, the District Attorney’s case management software only tracks the last assigned Deputy and there are often multiple assignments over the life of a case – assignment changes are not tracked. Additionally, some cases do not have an assigned Deputy in the case management software.

would take the Technology Systems Coordinator 9 hours to extract and compile the requested information. Their hourly rate is \$69.38. Therefore, we are estimating it will cost \$624.42 to extract the requested data out of Darwin.

In your letter you requested more details regarding which categories were exempt and under which exemptions.

It is the DA's Office's position that the following information constitutes criminal offender record information for which it would be in violation of the law if it were to release and therefore finds them exempt from disclosure:

- Name of defendant/arrestee
- Court case number
- Date of birth
- Any other unique identifiers
- Prior criminal history of defendant

See Gov. Code § 6254(k), (c), (f); Penal Code §§ 13300-13302; Weaver v. Superior Court, 224 Cal. App. 4th 746, 751 (2014); 89 Ops. Cal. Atty. Gen. 204, 212 (2006).

Additionally, it is the DA's Office's position that the following information is protected work product and is therefore exempt from disclosure under Government Code section 6254(k) and Evidence Code section 950 et seq:

- The reasons for declining to prosecute a particular case;
- Factors considered in deciding charges to file, and level of charges;

The persons responsible for the decision to withhold exempt records are Dori Ahana, Chief Deputy District Attorney and Sarah Anker, Deputy County Counsel.

Sincerely,



Sarah B. Anker
Deputy County Counsel