

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

SUMMER STEPHAN
DISTRICT ATTORNEY

March 18, 2022

Ellen Leonida
leonida@braunhagey.com

Re: California Public Records Act Request
Reference No. 22-14 PRA
Response Letter #1

Dear Ellen Leonida,

I am a designated custodian of records for the Office of the San Diego County District Attorney responsible for compliance with the California Public Records Act (CPRA). On February 10, 2022, this office received your emailed CPRA request on behalf of the American Civil Liberties Union of Northern California (ACLU).

You requested the following records for the time-period of 2015 to the 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

On February 18, 2022, this office extended the response time to March 4, 2022, pursuant to Government Code section 6253, subdivision (c). On March 4, 2022, this office notified you via email that an additional 14 days were needed to determine whether certain requested data points could be extracted from our case management system with additional computer programming by our IT department. That determination has been made and is discussed in the response below.

On March 8, 2022, I spoke on the phone with attorney Kory DeClark and Joshua Wilner from your office. They requested that, in our response, we identify whether a requested data point falls within four categories: (1) data not possessed by this office; (2) data possessed by this office and maintained in our case management system that can be extracted using pre-written computer programming code; (3) data possessed by this office and contained in our case management system that would require additional computer programming to extract; and (4) data possessed by this office but not within our case management system, which would require sorting through physical files to collect. I have complied with this request to the best of my ability.

Response for Items 1-13 and 15:

The requests in Items 1-13 and 15 require data compilation, extraction, and programming to construct the records you seek. Please note, however, that not all of the requested data will be provided. The limitations are discussed below.

For the producible data that is not subject to limitations, programming, data extraction, and computer services for this request are estimated to take a total of 5 hours to complete. Pursuant to Government Code section 6253.9, subdivisions (a) and (b)(2), “the requestor shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record,” where the request “would require data compilation, extraction, or programming to produce the record.” The cost for this portion would be \$317.20. This figure includes the salary of the employee who will program, extract, and compile the data multiplied by the time it will take to do so (\$63.44/hour x 5 hours). Please note that there are certain data points that will require additional cost, as detailed below, depending upon whether you seek certain additional records.

Two data points you requested require significant additional computer programming to extract, and it is not known to what extent data can be extracted. If you wish to pursue those extractions, additional payment will be required. See footnotes 3 and 5 for further explanation.

With respect to **Items 1-5 and 7-13**, the data provided will consist of a list of cases that were submitted to this office between January 1, 2015 and February 10, 2022. Data for each case will be extracted from this office’s internal electronic case management system (CMS). The following data points will be provided:

- **2.a** – Race of defendant¹

¹ The defendant race information is obtained from police reports and is not independently determined or verified by this office.

- **2.d** – Gender of defendant²
- **2.e** – Age of defendant (at the time of the offense)
- **2.f** – Prior Criminal Convictions of a defendant³
- **3.c** – Charge identified by law enforcement referring individual⁴
- **5.a** – Date of decision to decline to prosecute
- **7.a** – Statutes of charges filed (on the latest complaint filed)
- **7.b** – Severity⁵
- **7.c** – Any enhancements filed (on the latest complaint filed)
- **11.a** – Charges of conviction
- **11.c** – Sentences
- **12** – Whether counsel for defendant is a public defender or private counsel⁶

² The defendant gender information is obtained from police reports and is not independently determined or verified by this office.

³ This office possesses some prior criminal conviction information for defendants. However, much of that data is not readily extractable from CMS. The only data contained in CMS that can be extracted without significant computer programming is the total number of prior felony convictions and total number of prior misdemeanor convictions of a defendant. That data will be provided to you. Beyond that, it is unclear what additional data regarding prior convictions can be extracted. Such extraction would require significant computer programming. We estimate a minimum of 8 hours to complete such work, if not longer. And there is no guarantee that such extraction efforts will produce useful data. Additionally, any data extracted would be limited to the information contained within CMS, which is manually inputted and may not be a complete record of the defendant's actual criminal conviction history. If you would like to pursue exploration and potential extraction of this additional data, please contact me at kimberly.roth@sdcda.org to discuss the parameters of this request.

⁴ The data to be produced will be the first listed booking charge. When a case is submitted to this office for a charging decision, only the first listed booking charge is input into CMS. CMS does not track every charge for which a defendant is booked.

⁵ While this office possesses information about whether an offense was charged as a felony, misdemeanor, or infraction, the only data that is extractable from CMS without significant computer programming is whether the complaint filed is a felony complaint (contains at least one felony charge and may also contain misdemeanor or infraction charges) or a misdemeanor complaint (contains at least one misdemeanor charge and may also contain infraction charges). It may be possible to extract the severity of each charge filed on the complaint. However, that extraction requires significant additional computer programming that will take a minimum of 8 hours to complete, if not longer. If you would like to pursue this additional data extraction, please contact me at kimberly.roth@sdcda.org to discuss.

⁶ Please note that the defense counsel information is manually inputted into CMS and is not automatically updated to reflect changes in counsel throughout the pendency of the case.

- **13.a** – Race of victim⁷
- **13.c** – Gender of victim⁸

The CPRA only requires this office to disclose information in its possession. (Gov. Code, § 6253, subd. (c).) The following data points are not in the possession of this office, and thus, they will not be included in the extracted data:

- **2.b.** – Ethnicity of defendant
- **2.c.** – Country of origin or nationality of defendant
- **13.b** – Ethnicity of the victim

Although Penal Code section 13300, subdivision (h), allows dissemination of statistical case information, it prohibits providing information that reveals the identity of the subject of the record. Accordingly, this office is prohibited from disclosing both the case number, defendant name, or other identifying number *and* the case disposition, sentence information, or defendant demographic information. Providing a combination of this data would improperly disclose criminal history information that could be used to identify the holder of the record, in violation of state law. (Gov. Code, § 6254, subd. (k); Pen. Code, §§ 11141, 11142, 13300-13303; *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166; see *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 450 [“Not only names, aliases, addresses, and telephone numbers must be excluded, but also information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question”].) Thus, the following data points will not be included in the extracted data:

- **1.a** – Name of defendant
- **1.b** – Court case number(s)
- **1.c** – Arresting agency number(s)
- **1.d** – Any other unique identifier

Although the data requested in **Items 3.a and 3.b** is possessed by this office, this data is not maintained in CMS, is not extractable through computer programming, and thus, will not be included in the extracted data. To manually search each case file over a seven-year period for this information would be unduly burdensome. (Gov. Code, § 6255, subd. (a); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.) And, producing this information would require this office to create a new record, which is not required under the

⁷ Please note that victim race information is not always collected or input into CMS for every case. If this information was input into CMS for a case, it will be provided in the extracted data. The victim race information is obtained from police reports and is not independently determined or verified by this office. The victim demographic information maintained in CMS is only as to the primary victim.

⁸ Please note that victim gender information is not always collected or input into CMS for every case. If this information was input into CMS for a case, it will be provided in the extracted data. The victim gender information is obtained from police reports and is not independently determined or verified by this office. The victim demographic information maintained in CMS is only as to the primary victim.

CPRA. (*Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665-667 [court distinguished between “searching, extracting, compiling or redacting electronically stored data, which our state . . . public access laws require, and creating new records, which they do not”]. Additionally, such information is exempt from disclosure under Government Code section 6254, subdivision (f).

- **3.a** – Zip code of arrest
- **3.b** – Date of arrest

The following data points are not maintained in CMS. Additionally, they refer to information that this office generally does not maintain a record of. While it is possible that some case files contain the requested information, to manually search every case file over a seven-year period for information that may not exist in the case file is unduly burdensome and not required under the CPRA. (Gov. Code, § 6255, subd. (a); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166 [searching “an enormous volume of data for a ‘needle in the haystack’” is objectionable as unduly burdensome].) Accordingly, the following data points will not be provided:

- **5.c** – Charges declined to prosecute (other than the first listed booking charge)
- **7.d** – Maximum sentence
- **9.a** – Bail amount requested
- **9.b** – Detention orders sought
- **9.c** – Whether bail was set or denied
- **9.d** – Whether individuals were released on bail or not
- **9.e** – Pre-plea/pre-trial custody status⁹
- **11.b** – Dismissed charges

With respect to **Item 8**, this office does not keep a record of the factors considered in deciding which charges to file or the level of charges to file. To the extent that any specific case file may contain an incidental attorney notation regarding a charging decision, it is exempt from disclosure as it contains core work product, investigative case file information, and information that would reveal the deliberative processes of this office. (Gov. Code, §§ 6254, subd. (f) and (k); § 6255, subd. (a).) Moreover, to manually search every case file over a seven-year period for information that may not exist in the case file is unduly burdensome and not required under the CPRA. (Gov. Code, § 6255, subd. (a); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166 [searching “an enormous volume of data for a ‘needle in the haystack’” is objectionable as unduly burdensome].) Accordingly, the data requested in **Items 8.a-8.e** will not be provided.

With respect to **Item 10**, plea offers and negotiation is a fluid process. While some plea offer information is manually inputted in CMS, it may not reflect the actual or final offer extended. Moreover, this data is exempt from disclosure because it contains core work product,

⁹ This office does not keep a record of the custody status of defendants pre-plea or pre-trial. CMS can only obtain the “current” custody status of the defendant from JIMS (Jail Information Management System) – that is, the status at the time the data is extracted from CMS. However, CMS cannot obtain the custody status from a historical date or particular phase of the criminal prosecution.

investigative case file information, and information that would reveal the deliberative processes of this office. (Gov. Code, §§ 6254, subd. (f) and (k); § 6255, subd. (a).) Furthermore, to manually sort through and redact the exempt information for every case issued by this office over a seven-year period would be unduly burdensome. (Gov. Code, § 6255, subd. (a); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.) Accordingly, the plea offer information requested in **Items 10.a-10.d**, will not be provided.

Similarly, in **Item 5.d**, the reasons for the declination to prosecute will not be provided. This data contains core work product, investigative case file information, and information that would reveal the deliberative processes of this office. Such information is exempt from disclosure under the CPRA. (Gov. Code, §§ 6254, subd. (f) and (k); § 6255, subd. (a).)

With respect to **Items 4 and 5.b** regarding identity information, pursuant to Government Code section 6255, subdivision (a), section 6254, subdivision (k), and Article 1, section 1 of the California Constitution, those data points will not be included in the extracted data. The public interest is not served by generating a list of deputy district attorneys assigned to every case over a seven-year period. Nor is it served by generating a list of deputy district attorneys who declined to issue charges over a seven-year period. (Gov. Code, § 6255, subd. (a).) Significantly, disclosure of the names of the prosecutors would not reveal any additional information about the operations of the San Diego County District Attorney's Office. (See *Sheet Metal Workers v. Dept. of Veterans Affairs* (3d Cir. 1998) 135 F.3d 891, 903.) Additionally, producing the requested information would be overly burdensome and disclosure of such information would constitute an unwarranted invasion of privacy (Cal. Const., Art. I, § 1; Gov. Code, §§ 6254, subd. (k), 6255, subd. (a).)

With respect to **Item 6**, this office does not track when a diversion offer is made (**Item 6.a**), the type of diversion offer made (**Item 6.b**), or whether the diversion offer was accepted (**Item 6.c**). Producing that information would require this office to create a new record, which is not required under the CPRA. (*Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665-667 [court distinguished between “searching, extracting, compiling or redacting electronically stored data, which our state . . . public access laws require, and creating new records, which they do not”].) Additionally, to manually search each case file for this information for all cases received by this office over a seven-year period would be unduly burdensome. (Gov. Code, § 6255, subd. (a); *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.)

This office maintains some data in CMS regarding diversion programs, collaborative court programs, and deferred prosecution programs. Each program has different hearings and requirements, and thus, is tracked differently within CMS. The only way to provide the data from CMS is to extract data from specific hearings associated with each program.

Below is a list of specific diversion, collaborative court, and deferred prosecution program hearings within CMS, along with the potential substantive results for each hearing. As indicated in the list below, some results indicate whether the program was successfully completed, data responsive to **Item 6.d**.

The responsive records for this portion of the request will consist of a list of cases where one of the listed hearings occurred between January 1, 2015 and February 10, 2022. Each case in this list will contain the same data inclusions and exclusions as explained above for Items 1-5 and 7-13. Each case will also include the result of the specific hearing.

1. **Auto Insurance Fraud Diversion:** Diversion Completed
2. **Behavioral Health Court (BHC) Hearing:** Continued Screening; Contract Signed; Found Ineligible
3. **BHC Diversion Hearing:** Diversion Denied; Diversion Denied – Accepted into BHC Probation; Diversion Granted; Withdraw
4. **BHC Diversion Review Hearing:** Diversion Completed; In Compliance; Not in Compliance
5. **BHC Diversion Revocation Hearing:** Admits – Criminal Proceedings Reinstated; Admits – Remains in Diversion; Not True Finding; True Finding – Criminal Proceedings Reinstated; True Finding – Remains in Diversion;
6. **Criminal Justice Initiative (CJI) Program:** Accepted
7. **CJI Review Hearing:** Completed – Case Dismissed; Failed
8. **Homeless Court:** Dismissed; Fines and Fees Deemed Satisfied; Pled Guilty
9. **Mental Health Div. EH:** Eligible; Not Eligible; Withdraw
10. **Mental Health Diversion Initial Hearing:** Not Eligible; Prima Facie Showing Made; Withdraw
11. **Mental Health Diversion Review Hearing:** Diversion Completed; In Compliance; Not In Compliance
12. **PAF Diversion Program:** Accepted; In Compliance; Completed
13. **PAF Diversion Program Hearing:** In Compliance; Diversion Completed; Diversion Failure
14. **PC 1001.80 Veterans Diversion Program:** Denied Entry; Granted Entry
15. **PC 1001.80 Veterans Diversion Review Hearing:** In Compliance; Completed – Case Dismissed; Failed – Criminal Proceedings Reinstated; Terminated
16. **PC 1001.95 Misdemeanor Court Diversion:** Denied; Diversion Completed – Case Dismissed; Granted; In Compliance; Not In Compliance; Terminated – Criminal Proceedings Reinstated
17. **PC 1170.9 (Veterans Treatment Court Hearing):** Denied; Granted – Case Dismissed
18. **Review Hearing (Behavioral Health Court):** Graduated; In Compliance; Not In Compliance; Terminated
19. **Review Hearing (Drug Court):** Accepted; Dismissed – Drug Court Successful; In Compliance; Not Accepted; Not In Compliance; Probation Terminated Early – Drug Court Successful; Terminated
20. **Review Hearing (PC 1000):** Case Dismissed; In Compliance; Not In Compliance – Criminal Proceedings Reinstated; Not In Compliance – Reassigned to Program; Probation Terminated

21. **Review Hearing (Prop 36):** Admits Drug Related Violation; In Compliance; Case Dismissed; Terminated
22. **Review Hearing (Reentry Court):** Admits Violation; Graduated; In Compliance; Terminated
23. **Review Hearing (Veterans Treatment Court):** Found Unsuitable; Granted – Case Dismissed; In Compliance; Not In Compliance
24. **Veterans Treatment Court Hearing:** Contract Signed; Found Ineligible; Found Unsuitable; Offer Declined

For **Item 15**, the recommendations regarding pardon or commutation requested in Item 15 will consist of a list of cases where a Notice of Intent to Apply for Clemency¹⁰ was received by this office between January 1, 2015 and February 10, 2022. Each case in this list will contain the same data inclusions and exclusions as explained above for Items 1-5 and 7-13. It will also indicate whether this office sent a letter to the Governor opposing the application for clemency.

Please note that this data is manually inputted into CMS so the extracted data is only as accurate as the data input into the system.

If you would like us to proceed with Items 1-13 and 15 of this request for production of the data not subject to the identified limitations and exemptions, please inform me via email at kimberly.roth@sdcdca.org. Additionally, please let me know if you would like the \$158.32 balance from PRA 21-104 applied to this request. If so, a remaining balance of \$158.88 will be due for this request. Please make your check payable to the “San Diego County District Attorney’s Office” and mail to:

**San Diego County District Attorney’s Office
Attention: Adriana Gonzalez
330 W. Broadway, Suite 860
San Diego, CA 92101**

The requested record will not be created until payment is received. If we do not receive confirmation and payment by April 15, 2022, we will assume you have withdrawn this portion of your request. Should you wish to proceed with your request after that date, you may send us a renewed request. If you wish to proceed with any of the other data points that require significantly more computer programming as identified in footnotes 3 and 5 of this letter, please let me know before we proceed with this request.

Response for Item 14

This office does not track the recommendations it makes for parole suitability hearings. Under the CPRA, an agency does not have an obligation to create a new record in order to satisfy a CPRA request. (*Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665-667.)

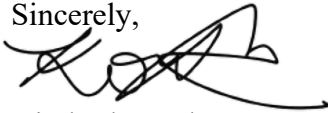
¹⁰ Clemency includes both pardons and commutations of sentence.

However, this office does track cases where the Board of Parole hearings granted an inmate parole and whether this office sent a letter to the Governor opposing that parole grant. The only case information contained in this document is whether the commitment offense is for a violation of Penal Code section 187. As discussed above, the inmate's name and case number are exempt from disclosure under Government code, section 6254(k), and thus, will not be provided. (See Pen. Code, §§ 11141, 11142, 13300-13303; *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166.)

The responsive record for **Item 14** is attached.

This Office endeavors to provide access to information concerning the conduct of the People's business. We reserve the right, however, to maintain the lawful confidentiality of our records, and to claim, enforce, and apply any and all applicable exemptions, privileges, and proscriptions against public disclosure of records, including, but not limited to, those listed in Article 2 of the Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence Code, Civil Procedure and Penal Codes, the Federal Rules of Evidence, and those established by case law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberly Roth', with a stylized, flowing script.

Kimberly Roth
Deputy District Attorney
Appellate and Training Division