



COUNTY OF DEL NORTE

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March 25, 2022

BraunHagey & Borden, LLP
c/o Joshua Wilner
351 California Street, 10th Floor
San Francisco, CA 94104

Sent via email to praesponse@braunhagey.com

Re: Public Records Act Request dated February 10, 2022

Dear Mr. Wilner:

Thank you for your time on March 9, 2022 to discuss the Public Records Act request 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 does not exist in the District Attorney's records; or (2) the data exists in the District Attorney's records, but would require a manual review of each file or the purchasing of a program to extract it. As we discussed, currently the Del Norte District Attorney's Office does not monitor the type of data you are requesting and does not have the ability to extract specific data from their case management system, Karpel Solutions; but, it could purchase software from Karpel Solutions, at a cost of \$1000.00, in order to run a report to extract some of the requested data. According to Karpel Solutions, this report could take up to 60 days to complete. Pursuant to Government Code subsection 6253.9(b)(2) and consistent with *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, it is my position that the costs for this data extraction and programming would be the responsibility of the requestor. The Del Norte District Attorney's Office began using Karpel Solutions in 2017 and no cases or data were migrated over. The Del Norte 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 all of the data prior to 2017, a manual review of each file would be required, if the case file still exists in storage.

RECORDS REQUESTED:

1. *Unique identifier(s) associated with each defendant, each case, and each arrest*
 - a. *Name of defendant:* Data exists, but exempt from disclosure under Penal Code Sections 13300-13305; *Westbrook v. County of Los Angeles* (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):** Data exists, but exempt from disclosure under Penal Code Sections 13300-13305; *Westbrook v. County of Los Angeles* (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):** Data exists, but exempt from disclosure under Penal Code Sections 13300-13305; *Westbrook v. County of Los Angeles* (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):** Data exists for “Rap Sheet” and “Agency Number”, but exempt from disclosure under Penal Code Sections 13300-13305; *Westbrook v. County of Los Angeles* (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:** If recorded by the Officer data exists.
- b. Ethnicity:** If recorded by the Officer data exists.
- c. Country of origin or nationality:** If recorded by the Officer data exists.
- d. Gender/sex:** If recorded by the Officer data exists.
- e. Age or date of birth:** If recorded by the Officer data exists, but date of birth is exempt from disclosure under Penal Code sections 13300-13305; *Westbrook v. County of Los Angeles* (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:** Data exists, but exempt from disclosure under Penal Code sections 13300-13305; *Westbrook v. County of Los Angeles* (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:** Data exists.
- b. Date of arrest:** Data exists.
- c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring):** Data exists.

4. ADA assigned to the case: Data exists.

5. Decisions to decline to prosecute

- a. Date of decision to decline to prosecute:** Data may exist in some files.
- b. Identity of person who made final decision to decline prosecution:** Data exists.
- c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available):** Data exists.
- 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:** Some data exists, but exempt from disclosure under Government Code subsections 6254(f), 6254(k), 6254(p)(2) and 6255(a);

Rackauckas v. Superior Court (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 and 2018.080.

6. ***Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)***

- a. ***Date of diversion offer:*** Data may exist in some files, but is exempt from disclosure. 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 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.”
- b. ***Type of diversion offered:*** Data may exist in some files, but is exempt from disclosure. 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 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.”
- c. ***Whether diversion accepted:*** Data may exist in some files, but is exempt from disclosure. 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 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:*** Data may exist in some files, but is exempt from disclosure. 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 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.”

7. Charges filed

- a. Statutes (applicable code section):** Data exists.
- b. Severity (i.e., infraction, misdemeanor, wobbler, felony):** Data exists.
- c. Any enhancements:** Data exists.
- d. Maximum sentence:** Data does not exist.

8. Factors considered in deciding charges to file, and level of charges, including

- a. Injuries to persons:** Data does not exist and exempt from disclosure under Government Code subsections 6254(f), 6254(k), 6254(p)(2) and 6255(a); *Rackauckas v. Superior Court* (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 and 2018.080.
- b. Financial loss to persons:** Data does not exist and exempt from disclosure under Government Code subsections 6254(f), 6254(k), 6254(p)(2) and 6255(a); *Rackauckas v. Superior Court* (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 and 2018.080.
- c. Status of victim (i.e., law enforcement, child, spouse, etc.):** Data does not exist and exempt from disclosure under Government Code subsections 6254(f), 6254(k), 6254(p)(2) and 6255(a); *Rackauckas v. Superior Court* (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 and 2018.080.
- d. Prior criminal history of defendant:** Data exists but, exempt from disclosure under Government Code subsections 6254(f), 6254(k), 6254(p)(2) and 6255(a); *Rackauckas v. Superior Court* (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 and 2018.080; Penal Code Sections 13300-13305; *Westbrook v. County of Los Angeles* (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:** Data exists.

9. Bail/custody information

- a. Bail amount requested:** Data may exist in some files.

- b. Detention orders sought:* Data may exist in some files.
- c. Whether bail was set or denied:* Data may exist in some files.
- d. Whether individuals were released on bail or not:* Data may exist in some files.
- e. Pre-plea/pre-trial custody status:* Data may exist in some files.

10. Plea offers

- a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements:* Data may exist in some files, but 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 and 2018.080.
- b. Dates of plea offers:* Data may exist in some files.
- c. Sentence(s)/disposition(s) offered:* Data may exist in some files, but 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 and 2018.080.
- d. Records of whether any plea offer was accepted, including date of acceptance:* Data regarding the acceptance of the plea exists; data regarding the date of acceptance may exist in some files.

11. Case outcomes

- a. Charges of conviction:* Data exists.
- b. Dismissed charges:* Data exists.
- c. Sentences:* Data exists.

12. Counsel for defendant, whether public defender or private counsel: Data exists.

13. Demographic and other information concerning victims

- a. Race:* If recorded by the Officer data exists.
- b. Ethnicity:* If recorded by the Officer data exists.
- c. Gender/sex:* If recorded by the Officer data exists.

14. Recommendations regarding parole: Data may exist in some files.

15. Recommendations regarding pardon or commutation: Data does not exist.

Explanation Regarding Exemptions

Most of data requested in this Public Record Act Request 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, subs. (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. 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 available 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 data that exists 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, it is the County’s position that the release of plea offers and reasons for such offers will undermine the District Attorney’s ability to carry out her duties in future criminal cases. Given the ability to use the available 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.

Please feel free to contact me if you have any further questions, comments, or concerns.

Sincerely,

Jacqueline Roberts

Jacqueline Roberts
Assistant County Counsel