

From: [Joseph Charles](#)
To: [PRA Response](#)
Cc: [Sean Gallagher](#); [Shelley Cushere](#)
Subject: RE: 2/10/2022 PRA - San Mateo County District Attorneys' Office
Date: Friday, March 25, 2022 1:03:20 PM

***** EXTERNAL MESSAGE *****

Good morning. As an update to this Public Records Act request, the SMCDAO is still in the process of determining what, if any, information it can extract from the over 146,000 cases the request asks us to review. As noted below, the SMCDAO may be able to provide some of the information requested in request numbers 1, 5, 7, and 11 only. However, we are still attempting to create programs to run that may be able to extract information responsive to the request. We will update you on our progress in two weeks.

On a related matter, Government Code § 6253.9 states that "the requester 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" if "[t]he request would require data compilation, extraction, or programming to produce the record." (Gov't C. § 6253.9(b)(2); see also *Nat'l Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 500-503.) Since responding to this request will require the SMCDAO to create a program as well as to compile and extract data in order to construct a record, and to the extent there are any associated costs with extracting, compiling and/or programming to construct the record you request, please confirm your willingness to pay all costs associated with constructing this record, and the cost of programming and computer services necessary to produce a copy of the requested record.

Joseph F. Charles
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From: PRA Response <praresponse@braunhagey.com>
Sent: Tuesday, March 1, 2022 8:58 AM
To: Joseph Charles <jcharles@smcgov.org>; PRA Response <praresponse@braunhagey.com>
Cc: Sean Gallagher <sgallagher@smcgov.org>; Shelley Cushere <scushere@smcgov.org>
Subject: Re: 2/10/2022 PRA - San Mateo County District Attorneys' Office

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Mr. Charles,

Thank you for your response. Our office agrees to an extension to March 22, 2022. In addition to informing us which categories of data you will produce; we ask that you describe the process for examining the manual case files to extract the data we seek (e.g. paper files must be looked through one by one, the case files are computerized, but the information is not available in a searchable form, the information is available in a searchable form, but code must be written to retrieve it, etc.). The more detail we have, the more easily we can assess your claim of undue burden.

Regards,

Joshua Wilner
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San Francisco

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Regards,

From: Joseph Charles <jcharles@smcgov.org>
Sent: Tuesday, February 22, 2022 4:01 PM
To: PRA Response <praresponse@braunhagey.com>
Cc: Sean Gallagher <sgallagher@smcgov.org>; Shelley Cushere <scushere@smcgov.org>
Subject: 2/10/2022 PRA - San Mateo County District Attorneys' Office

*** EXTERNAL MESSAGE ***

To Whom It May Concern:

This office represents the San Mateo County District Attorneys' Office ("SMCDAO"); please forward all future correspondences to this address. This email shall provide a response to the Public Records Act ("PRA") request by your office dated February 10, 2022, a copy of which is attached. Pursuant to Government Code section 6255(a), this entire PRA constitutes an overly burdensome request and on the facts presented the public interest in nondisclosure of these records clearly outweighs the public served by disclosure of the records. (See, *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.). Your Request seeks all records regarding relevant case, individual, and/or charge-level data "for all cases considered for prosecution and/or prosecuted during 2015 to the present." We read this request to include records from all cases received as well as all cases filed.

Here are the total cases received and cases filed for the SMCDAO for the years 2015-2022:

YEAR	2015	2016	2017	2018	2019	2020	2021	2022	TOTAL
CASES RECEIVED	19946	23474	22924	21749	21472	18429	17080	1804	146,878
CASES FILED	18051	19143	18075	17091	16574	13571	12944	1315	116,764

Information requested is either not recorded as requested or the information requested can only be obtained by a manual review of each of the 146,878 cases received over the requested period. Moreover, a Public Records Act request is limited to writings prepared, owned, used or retained by a local agency. (Gov.C. § 6252(e).) It does not require the agency to create new records. (See, *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665-666; *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1073-1075 [agency not under duty to create log of potentially responsive records].) Further still, this request requires the manual review of an excessive number of documents, records and files (146,878 separate files) and is therefore overly burdensome and the public interest served in non-disclosure outweighs the public interest served by disclosure. (See, *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.).

However, the SMCDAO may be able to disclose some information responsive to five of the Requests: nos. 1, 2, 5, 7, and 11. We need at least one month to investigate whether we actually have these records and, if so, we are able to create a program to run that will capture the discrete information requested by these five requests from our database. As such, you will need to check back with the undersigned in one month's time for an update.

Otherwise, the SMCDAO responds to the individual requests as follows:

Request No. 1 – the SMCDAO may be able to disclose some information responsive to this request however we will need to create and run a program to determine what, if any, responsive information can be gathered from 146,878 files; this could take weeks if not months;

Request No. 2 - the SMCDAO may be able to disclose some of the information requested but likely not all however we will need to create and run a program to determine what, if any, responsive information can be gathered from 146,878 files; this could take weeks if not months. You should also know that the SMCDAO does not include prior criminal convictions in its files so that information cannot be produced and country of origin is not likely to be included in any of the files;

Request No. 3 – the only way for the SMCDAO to gather this information is to manually review each of the 146,878 files. That is overly burdensome and as such the public interest served in non-disclosure outweighs the public interest served by disclosure. (See, Gov't C. § 6255(a); *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) Further, the Public Records Act does not require the agency to create new records. (See, *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665-666; *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1073-1075 [agency not under duty to create log of potentially responsive records].) This request arguably requires the public agency to create a new record for which it already does not maintain.

Request No. 4 – there is not one single DDA assigned to any one case and no accessible logs are kept showing who handled a case at any given time. Therefore, the only way for the SMCDAO to gather this information is to manually review each of the 146,878 files. That is overly burdensome

and as such the public interest served in non-disclosure outweighs the public interest served by disclosure. (See, Gov't C. § 6255(a); *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) Further, the Public Records Act does not require the agency to create new records. (See, *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665-666; *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1073-1075 [agency not under duty to create log of potentially responsive records].) This request arguably requires the public agency to create a new record for which it already does not maintain.

Request No. 5 – as noted above, the SMCDAO may be able to disclose some of the information requested but likely not all however it will take some time to create and run a program to see what information can be captured from 146,878 files. We request at least one month to review.

Request No. 6 – the SMCDAO does not keep, maintain or track this information. As such, there are no records to disclose.

Request No. 7 - as noted above, the SMCDAO may be able to disclose some of the information requested but likely not all however it will take some time to create and run a program to see what information can be captured from the 146,878 files to be reviewed. We request at least one month to review.

Request No. 8 - the SMCDAO does not keep, maintain or track this information. As such, there are no records to disclose.

Request No. 9 - the SMCDAO does not keep, maintain or track this information. Further, the SMCDAO's database cannot search records based on bail criterion. Therefore, the only way for the SMCDAO to gather this information is to manually review each of the 146,878 files. That is overly burdensome and as such the public interest served in non-disclosure outweighs the public interest served by disclosure. (See, Gov't C. § 6255(a); *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) Further, the Public Records Act does not require the agency to create new records. (See, *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665-666; *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1073-1075 [agency not under duty to create log of potentially responsive records].) This request arguably requires the public agency to create a new record for which it already does not maintain.

Request No. 10 - the SMCDAO does not keep, maintain or track this information. As such, there are no records to disclose.

Request No. 11 - as noted above, the SMCDAO may be able to disclose some of the information requested but likely not all however it will take some time to create and run a program to see what information can be captured from the 146,878 files to be reviewed. We request at least one month to review.

Request No. 12 - the SMCDAO does not keep, maintain or track this information. While some of this information may be included in the 146,878 paper files, the only way for the SMCDAO to gather this information is to manually review each of the 146,878 files. That is overly burdensome and as such the public interest served in non-disclosure outweighs the public interest served by disclosure. (See, Gov't C. § 6255(a); *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) Further, the Public Records Act does not require the agency to create new records. (See, *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665-666; *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1073-1075 [agency not under duty to create log of potentially responsive records].) This request arguably requires the public agency to create a new record for which it already does not maintain.

Request No. 13 - the SMCDAO may be able to disclose some public records that are responsive to this request however it will take some time to create and run a program to see what information can be captured from the 146,878 files to be reviewed. We request at least one month to review.

Request No. 14 - the SMCDAO does not keep, maintain or track this information. As such, there are no records to disclose.

Request No. 15 - the SMCDAO does not keep, maintain or track this information. As such, there are no records to disclose.

Please check back with the undersigned in one month's time for an update as to any disclosable public records.

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