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May 12, 2022

Via U.S. Mail & E-mail: praresponse@braunhagey.com

Joshua Wilner
Braun Hagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Act Request (Government Code §6250, et.seq.)
ACLU Requesting Records Relevant to the Implementation of RJA

Dear: Mr. Wilner

Thank you for your follow up regarding the Public Records Act request for various areas of data from the District Attorney's Office. Below please find the County's response to each of the areas of data requested.

Request No. 1: Unique identifier(s) associated with each defendant, each case, and each arrest

a. Name of defendant

Response: This information is generally entered into the District Attorney's case management system; and can be exported digitally. However, this information is exempt from disclosure under California Penal Code section §13300 et. seq. and case of *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 162-167; accordingly, pursuant to California Government Code subsection 6254(c), 6254(f), 6254(k), and 6255(a) no records will be produced for this data field.

b. Court case number(s)

Response: This information is generally entered into the District Attorney's case management system; and can be exported digitally. However, this information is exempt from disclosure under California Penal Code section §13300 et. seq. and case of *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 162-167; accordingly, pursuant to

California Government Code subsection 6254(c), 6254(f), 6254(k), and 6255(a) no records will be produced for this data field.

c. Arresting agency number(s)

Response: Please note that I'm assuming that the "number(s)" of the "arresting agency" refers to a unique agency identification number, but I do not know for certain that this is what is meant. Assuming that this what you are asking for, this information is recorded in the District Attorney's case management system and can be exported digitally. However, this information is exempt from disclosure under California Penal Code section §13300 et. seq. and case of *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 162-167; accordingly, pursuant to California Government Code subsection 6254(c), 6254(f), 6254(k), and 6255(a) no records will be produced for this data field.

d. Any other unique identifier(s)

Response: This information is recorded in the District Attorney's case management system and can be exported digitally. However, this information is exempt from disclosure under California Penal Code section §13300 et. seq. and case of *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 162-167; accordingly, pursuant to California Government Code subsection 6254(c), 6254(f), 6254(k), and 6255(a) no records will be produced for this data field.

Request No. 2: Demographic and other information concerning each defendant

a. Race

Response: This information is recorded in the District Attorney's case management system and can be exported digitally.

b. Ethnicity

Response: This information is not gathered, and does not exist in the District Attorney's Office records.

c. Country of origin or nationality

Response: The District Attorney's Office uses software that has a field for "Place of Birth." Information kept in that field would be retrievable via a

report; however, that field is rarely used and can be expected to have little or incomplete data.

d. Gender/sex

Response: This information is received and kept in the District Attorney's case management system, and can be extracted with a report.

e. Age or date of birth

Response: An individual's date of birth is recorded in the District Attorney's case management system and can be exported digitally. However, this information is exempt from disclosure under California Penal Code section §13300 et. seq. and case of *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 162-167; accordingly, pursuant to California Government Code subsection 6254(c), 6254(f), 6254(k), and 6255(a) no records will be produced for this data field.

f. Prior criminal convictions of a defendant

Response: This information is recorded in the District Attorney's case management system and sometimes may be able to be exported digitally. For true accuracy of this a manual file review would be required, however, this information is exempt from disclosure under California Penal Code section §13300 et. seq. and case of *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 162-167; accordingly, pursuant to California Government Code subsection 6254(c), 6254(f), 6254(k), and 6255(a) no records will be produced for this data field.

Request No. 3: Information regarding each arrest

a. Zip code of arrest

Response: This information is recorded in the District Attorney's case management system and some may be able to be exported digitally. For true accuracy of this a manual file review would be required.

b. Date of arrest

Response: This information is recorded in the District Attorney's case management system and some may be able to be exported digitally. For true accuracy of this a manual file review would be required

- c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)

Response: This information is maintained in the District Attorney's case management system and may be able to be exported digitally.

Request No. 4: ADA assigned to the case

Response: I am assuming that by "ADA" you are referring to "Assistant District Attorney." Please note that the appropriate designation in Merced County would be "Deputy District Attorney." Although there is a field that lists when an attorney is assigned to each case, assignments change frequently. Additionally, attorneys frequently assist on cases without being formally assigned to such a case. Further, "placeholder" identifiers are often used (i.e. "TBA") in the data field for assigned attorney. A manual review of each case file would be required to determine which attorneys had worked on the case, and even then, it is possible that an attorney worked on a case without that work being reflected in the casefile.

Request No. 5: Decisions to decline to prosecute

- a. Date of decision to decline to prosecute

Response: This information is recorded in the District Attorney's office; and may be exported digitally.

- b. Identity of person who made final decision to decline prosecution

Response: This information is recorded in the District Attorney's Office, but a manual review of each casefile would be required to produce accurate information.

- c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)

Response: This information is in the District Attorney's file management system and can be extracted via a 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.

Response: This information generally is recorded in the District Attorney's case management system and some may be able to be obtained digitally. A manual review of each case file would need to occur in order to more accurately determine what data may exist in the file. However, this information is exempt from disclosure under California Government Code subsection 6254(f), 6254(k), 6254 (p)(2), and 6255(a); *Rackauckas v. Superior Ct.* (2002) 104 Cal. App. 4th 169; California Government Code §6276.04; California Business and Professions Code §6202, and California Code of Civil Procedure §§2018.010, 2018.030, and 2018.080, therefore no records will be produced for this data field.

Request No. 6: Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)

- a. Date of diversion offer

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. To the extent that some data concerning this filed may be obtained, the data would be exempt from disclosure pursuant to California Penal Code 13300.

- b. Type of diversion offered

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. To the extent that some data concerning this filed may be obtained, the data would be exempt from disclosure pursuant to California Penal Code 13300.

- c. Whether diversion accepted

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. To the extent that some data concerning this filed may be obtained, the data

would be exempt from disclosure pursuant to California Penal Code 13300.

d. Whether diversion completed

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. To the extent that some data concerning this filed may be obtained, the data would be exempt from disclosure pursuant to California Penal Code 13300.

Request No. 7: Charges filed

a. Statutes (applicable code section)

Response: This information generally is recorded in the District Attorney's case management system and some may be able to be obtained digitally

b. Severity (i.e., infraction, misdemeanor, wobbler, felony)

Response: This information generally is recorded in the District Attorney's case management system and some may be able to be obtained digitally.

c. Any enhancements

Response: This information generally is recorded in the District Attorney's case management system. A manual review of the file would be required to extract the data.

d. Maximum sentence

Response: This information generally is recorded in the District Attorney's case management system. A manual review of the file would be required to extract the data.

Request No. 8: Factors considered in deciding charges to file, and level of charges, including

a. Injuries to persons

Response: This information, to the extent it is reported to, are contained in reports submitted to the District Attorney's Office, generally is recorded in the District Attorney's case management system. A manual review of the file would be required to extract the data.

b. Financial loss to persons

Response: This information, to the extent it is reported to or contained in reports submitted to the District Attorney's Office, generally is recorded in the District Attorney's case management system. A manual review of the file would be required to extract the data.

c. Status of victim (i.e., law enforcement, child, spouse, etc.)

Response: This information is not generally recorded in the District Attorney's case management system, as all victims of crime are generally given the distinction of "victim" or "victim's family member" such that the data concerning unique victim status is not expected to be available. A manual review of the file would be required to extract what data may exist.

d. Prior criminal history of defendant

Response: This information is recorded in the District Attorney's office a manual file review would be required to retrieve this information, however, this information is exempt from disclosure under California Penal Code section §13300 et. seq. and case of *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 162-167; accordingly, pursuant to California Government Code subsection 6254(c), 6254(f), 6254(k), and 6255(a) no records will be produced for this data field.

e. Victim's cooperation

Response: This information is not generally recorded in the District Attorney's case management system, as all victims of crime are generally given the distinction of "victim" or "victim's family member" and whether they are cooperative or not with prosecution is not an identifier logged in a data field. A manual review of the file would be required to extract what data may exist.

Request No. 9: Bail/custody information

a. Bail amount requested

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. This requested data is not commonly recorded as part of the file.

b. Detention orders sought

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. This requested data is not commonly recorded as part of the file. To the extent this request seeks information on juvenile delinquency matters, juvenile matters are protected and may only be obtained through petition to the Juvenile Court. Govt. Code §§ 6254(k), 6276.28; 6276.46; Cal. Welf. & Inst. Code §§ 204.5, 389, 781, 827, 827.6, 828, 828.1, 828.3; Cal Rules of Court rule 5.552.

c. Whether bail was set or denied

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. This requested data is not commonly recorded as part of the file.

d. Whether individuals were released on bail or not

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. This requested data is not commonly recorded as part of the file.

e. Pre-plea/pre-trial custody status

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. This requested data is not commonly recorded as part of the file.

Request No. 10: Plea offers

a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. This requested data is not uniformly recorded as part of the file by the various attorneys. Further, this information is exempt from disclosure under California Government Code subsection 6254(f), 6254(k), 6254 (p)(2), and 6255(a); *Rackauckas v. Superior Ct.* (2002) 104 Cal. App. 4th 169; California Government Code §6276.04; California Business and Professions Code §6202, and California Code of Civil Procedure §§2018.010-2018.080.

b. Dates of plea offers

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. This requested data is not uniformly recorded as part of the file by the various attorneys.

c. Sentence(s)/disposition(s) offered

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. This requested data is not uniformly recorded as part of the file by the various attorneys. Further, this information is exempt from disclosure under California Government Code subsection 6254(f), 6254(k), 6254 (p)(2), and 6255(a); *Rackauckas v. Superior Ct.* (2002) 104 Cal. App. 4th 169; California Government Code §6276.04; California Business and Professions Code §6202, and California Code of Civil Procedure §§2018.010 – 2018-080.

d. Records of whether any plea offer was accepted, including date of acceptance

Response: Some data may exist in some files, but a manual file review would need to occur in order to make an accurate determination. This requested data is not uniformly recorded as part of the file by the various attorneys.

Request No. 11: Case outcomes

a. Charges of conviction

Response: This information is generally entered into the District Attorney's case management system and can be exported digitally.

b. Dismissed charges

Response: This information is generally entered into the District Attorney's case management system, but a manual review of each file would need to occur to extract the data.

c. Sentences

Response: This information is generally entered into the District Attorney's case management system and can be exported digitally.

Request No. 12: Counsel for defendant, whether public defender or private counsel

Response: This information is generally entered into the District Attorney's case management system, but a manual review of each file would need to occur to extract the data as often different attorney's represent defendant's without the attorney name being updated in the case management system, such as when a defendant violates probation and is appointed a public defender but had private counsel for the pre-judgement proceedings, or when a private attorney is retained only through preliminary hearing and a public defender is assigned after that hearing for the trial portion.

Request No. 13: Demographic and other information concerning victims

a. Race

Response: This information is generally entered into the District Attorney's case management system and can be exported digitally.

b. Ethnicity

Response: This information is not gathered, and does not exist in the District Attorney's Office records.

c. Gender/sex

Response: This information is generally entered into the District Attorney's case management system and can be exported digitally.

Request No. 14: Recommendations regarding parole

Response: This information may exist in some files, however there is no uniform policy on gathering or tracking this information. Determining the amount of information requested here would require a manual review of the files to extract.

Request No. 15: Recommendations regarding pardon or commutation

Response: This information may exist in some files, however there is no uniform policy on gathering or tracking this information. Determining the amount of information requested here would require a manual review of the files to extract.

As indicated in my letter of April 4, 2022, the County is prohibited from producing the data requested that falls within the local summary criminal history information which is precluded from disclosure pursuant to California Penal Code §13302. The County recognizes that certain data from the local summary criminal history information may be released by running a report generated through the District Attorney's case management system (Karpel). The report providing statistical or research information may only be provided as long as the identity of the individual is not disclosed. Further, the County is also protected from disclosing records that constitute attorney work product, or are part of the deliberative process. Examples of such records would be plea offers (additionally the District Attorney believes that releasing plea offers would negatively impact her ability to negotiate plea agreements in the future, and as such the public interest in releasing the plea offer information is outweighed by the public interest in not doing so).

Very truly yours,

Forrest W. Hansen
Merced County Counsel



Thomas E. Ebersole
Assistant County Counsel

TEE/tee

cc: Merced Co. District Attorney