



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

GEORGE GASCÓN • District Attorney
JOSEPH F. INIGUEZ • Interim Chief Deputy District Attorney

DORINNE JORDAN
Chief Administrative Officer

VIA ELECTRONIC MAIL

leonida@braunhagey.com

May 16, 2022

Ellen Leonida
ACLU Northern California

Dear Ms. Leonida:

CALIFORNIA PUBLIC RECORDS ACT REQUEST

The Los Angeles County District Attorney's Office (LADA) is in receipt of your California Public Records Act (PRA) request dated July 23, 2021, seeking:

"This CPRA letter constitutes a renewal of the ACLU's two prior requests (as relevant, updated to the present day) and also a request for the additional following records in the possession or control of the Office of the District Attorney of Los Angeles for the time-period 2015 to Present:

1. *Any and all written policies, memoranda, or guidance documents regarding:*
 - a. *Diversion eligibility and/or programming;*
 - b. *Custody and/or bail recommendations;*
 - c. *Charging recommendations and/or decisions, including, but not limited to:*
 - i. *Charging recommendations and/or decisions regarding enhancements;*
 - ii. *Charging recommendations and/or decisions regarding special circumstances; or*
 - iii. *Charging recommendations and/or decisions regarding wobblers;*
 - d. *Compliance with Brady v. Maryland, 373 U.S. 83 (1963);*
 - e. *Jury selection;*
 - f. *Sentencing recommendations;*
 - g. *Prosecution of minors;*
 - h. *Parole recommendations;*
 - i. *Pardon and commutation recommendations;*
 - j. *Reports to the State Bar relating to discipline and/or prosecutorial misconduct;*
 - k. *Data collection relating to criminal matters, including demographic data of defendants and victims; or*
 - l. *Referral of cases for federal prosecution.*

Hall of Justice
211 West Temple Street
Suite 1200
Los Angeles, CA 90012
(213) 257-2905

2. *Any and all policies regarding training as well as any training materials, recorded trainings, or related materials:*
 - a. *Which are mandatory for prosecutors;*
 - b. *Which are optional for prosecutors;*
 - c. *Which relate to jury selection;*
 - d. *Which relate to bias, implicit bias, unconscious bias, and/or racism; or*
 - e. *Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).*
3. *Records concerning the Racial Justice Act:*
 - a. *Implementation of and compliance with the RJA;*
 - b. *Communications concerning the RJA; or*
 - c. *Trainings related to the RJA.*
4. *All investigations into Batson-Wheeler motions, including, but not limited to:*
 - a. *Motions filed;*
 - b. *Motions granted;*
 - c. *Internal training and/or discipline; or*
 - d. *Reports to the State Bar relating to any Batson-Wheeler motions made and granted.”*

The ACLU’s two prior requests referenced herein were attached as Exhibits 1 and 2 to the current request and are dated May 13, 2019 and July 29, 2019, and indicated, “This CPRA letter constitutes a renewal of the ACLU’s two prior requests (as relevant, updated to the present day.” The requests relating to the May 13, 2019 items and July 29, 2019 were interpreted as requesting updated items from the time of the 2019 disclosures.

The LADA has made prior disclosures related to this request on September 20, 2021, October 18, 2021, November 4, 2021 and December 13, 2021. The records referenced below represent the final responsive items for each item unless specifically identified.

The relevant General Office Memoranda (GOMs), Special Directives, sections of the Legal Policy Manual and/or Personnel Policies Handbook, topical Office Manuals, and Official Press Statements constitute the written policies, memoranda, or guidance documents for the LADA and will be disclosed pursuant to this request. Please note, some of the requests are duplicative, therefore the responsive records will be produced in one disclosure.

However, some of the records and information you request are exempt from disclosure under the Public Records Act and will not be released. The following records are exempt from disclosure for each item requested in your July 23, 2021 requests, incorporating your May 13, 2019 and July 29, 2019 requests:

Preliminary drafts, notes, interagency or intra-agency memoranda. See Government Code § 6254(a), which separately exempts “preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.”

Records containing attorney work product and the official information privilege, including attorney work product found in memoranda discussing case issues or office policy and relating to questions of concern pertaining to the DA's prosecutorial function. See Government Code §§ 6254, subdivisions (a) and (k), and 6255; Pen. Code § 1054.6; Evidence Code § 1040.

Records containing discussions implicating the deliberative process. See Government Code § 6255; (California First Amendment Coalition v. Superior Court (1998) 67 Cal.App.4th 159)

Records in which the public interest in non-disclosure of the record clearly outweighs the public interest served by disclosure. See Government Code, § 6255(a); (L.A. Unified School District v. Superior Court (2014) 228 Cal.App.4th 222.) Specifically, records that would reveal the thought process or "decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its function." Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325, 1342, quoting Dudman Communications v. Dept. of Air Force (D.C. 1987) 815 F.2d 1565, 1568.)

Documents provided to our office by a governmental agency which we agreed to treat as confidential. See Gov. Code § 6254.5, subd. (e);

Juvenile court records. See Welf. & Inst. Code, § 827; Gov. Code § 6254, subd. (k);

Burdensome requests. See American Civil Liberties Union v. Deukmejian (1982) 32 Cal.3d 440, 452-453; County of Los Angeles v. Superior Court (Kusar) (1993) 18 Cal.App.4th 588, 591-592.

Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. See Gov. Code § 6254, subd. (k);

The public interest in non-disclosure of the record clearly outweighs the public interest served by disclosure. (Gov. Code, § 6255(a); (L.A. Unified School District v. Superior Court (2014) 228 Cal.App.4th 222.)

Instances in which we have determined that there is no existing record that contains all the information you requested. Please note that the LADA is not required to create a record that does not exist at the time of the request. (Gov. Code section 6252, subd. (e); Haynie v. Superior Court (2001) 26 Cal.4th 1061, 1075.)

July 23, 2021 Request:

1. Any and all written policies, memoranda, or guidance documents regarding:

a. Diversion eligibility and/or programming:

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 31

b. Custody and/or bail recommendations:

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 32

- c. Charging recommendations and/or decisions, including, but not limited to:
- i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decisions regarding wobblers:

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 33

d. Compliance with Brady v. Maryland, 373 U.S. 83 (1963):

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 34

e. Jury selection:

Subject to the exemptions outlined herein the LADA has produced all responsive, non-privileged and non-exempt records in prior disclosures.

f. Sentencing recommendations:

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 35

g. Prosecution of minors:

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 36

h. Parole recommendations:

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 37

i. Pardon and commutation recommendations:

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 38

- j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;

Subject to the exemptions outlined herein the LADA has produced all responsive, non-privileged and non-exempt records in prior disclosures.

- k. Data collection relating to criminal matters, including demographic data of defendants and victims:

The LADA has performed a diligent search of our records and have found no records that are responsive to your request.

Notwithstanding the above, the LADA began capturing race and ethnicity data in PIMS for defendants in August 2021. Race and ethnicity data is not captured for victims.

- l. Referral of cases for federal prosecution.

Subject to the exemptions outlined herein the LADA has produced all responsive, non-privileged and non-exempt records in prior disclosures.

- 2. Any and all policies regarding training as well as any training materials, recorded trainings, or related materials:

- a. Which are mandatory for prosecutors;
- b. Which are optional for prosecutors;
- c. Which relate to jury selection;
- d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
- e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).

Policies and notices regarding training will be disclosed, however any and all videos and written materials regarding training seminars hosted by LADA are exempt and will not be disclosed for the previously stated reasons and for the following reasons:

The LADA hosts training seminars, some of which are exclusively available to current and retired criminal prosecutors and peace officers but are not open to the public. Pending and closed criminal cases, on-going investigations, legal theories

and arguments, confidential law enforcement techniques and other matters necessary for the candid discussion within the agency are contained within the training seminars and are exempt pursuant to the reasons stated herein.

Records containing attorney work product and the official information privilege, including attorney work product found in memoranda discussing case issues or office policy and relating to questions of concern pertaining to the DA's prosecutorial function. See Government Code §§ 6254, subdivisions (a) and (k), and 6255; Pen. Code § 1054.6; Evidence Code § 1040.

Records containing discussions implicating the deliberative process. See Government Code § 6255; (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159)

Records in which the public interest in non-disclosure of the record clearly outweighs the public interest served by disclosure. See Government Code, § 6255(a); (*L.A. Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222.) Specifically, records that would reveal the thought process or "decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its function." *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342, quoting *Dudman Communications v. Dept. of Air Force* (D.C. 1987) 815 F.2d 1565, 1568.)

Documents provided to our office by a governmental agency which we agreed to treat as confidential. See Gov. Code § 6254.5, subd. (e);

Records relating to investigative files and pending cases, related on-going investigations or closed investigations and are exempt. *Williams v. Superior Court* (1993) 5 Cal.4th 337, 349; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; Gov. § 6254, subd. (f).

Additionally, your request for any and all policies regarding training as well as any training materials, recorded trainings, or related materials is unduly burdensome and is respectfully declined. See *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-453; *County of Los Angeles v. Superior Court* (*Kusar*) (1993) 18 Cal.App.4th 588, 591-592. Your request is too expansive and will result in a voluminous number of records. Each of the records would need to be individually reviewed to ensure that they were responsive and not a "false positive." A further review would be necessary to ensure that privileged, confidential, and otherwise exempt materials contained therein are redacted. Therefore, your request for any and all policies regarding training as well as any training materials, recorded trainings, or related materials is unduly burdensome and we are unable to produce those records.

The training announcements via GOMs, flyers, or other written notification have been disclosed for this response. Training announcements hosted by the

Prosecutors Alliance of California events are included in this disclosure because LADA staff received approval to attend the training seminars.

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 39

Based upon a discussion regarding the request for PowerPoint or presentation records regarding training events, LADA reiterates the response provided to date, however LADA will continue to consult with staff regarding this item.

3. Records concerning the Racial Justice Act:
 - a. Implementation of and compliance with the RJA;
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA.

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 40

Based upon a discussion regarding the request for communications, LADA reiterates the response provided to date, however LADA will conduct an email search regarding this item.

4. All investigations into Batson-Wheeler motions, including, but not limited to:
 - a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or
 - d. Reports to the State Bar relating to any Batson-Wheeler motions made and granted.

Your request for all investigations into Batson-Wheeler motions, including, but not limited to, motions filed and motions granted is unduly burdensome and is respectfully declined. See *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-453; *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, 591-592. Your request is too expansive and will result in a voluminous number of records. Each of the records regarding a jury trial conducted from 2015 to the present would need to be individually and manually reviewed to ensure that they were responsive and not a “false positive.” A further review would be necessary to ensure that privileged, confidential, and otherwise exempt materials contained therein are redacted. Therefore, your request for all investigations into Batson-Wheeler motions, including, but not limited to, motions filed and motions granted is unduly burdensome and we are unable to produce those records.

Regarding your request for internal training and/or discipline, subject to the exemptions outlined herein the LADA has produced all responsive, non-

privileged and non-exempt records regarding training in prior disclosures. Records regarding discipline would be contained personnel files and are exempt. See Gov. Code, §§ 6254, subd. (c) (unwarranted invasion of personal privacy) and 6254, subd. (k) (privileged material under Evid. Code § 994);

Regarding your request for reports to the State Bar relating to any Batson-Wheeler motions made and granted, State Bar investigations are confidential and exempt from disclosure pursuant to Business and Professions Code 6086.1 until discipline is actually imposed.

Notwithstanding the above, and subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. The LADA needs additional time to complete its search for records of discipline imposed by the State Bar. To the extent these records exist, the LADA will respond on or before May 16, 2022.

The LADA has conducted a search to determine whether there are reports of discipline imposed by the State Bar on LADA employees and have found no records responsive to this request.

May 13, 2019 - Request for Updated Information:

1. Records of prosecution data within your possession for calendar year 2017 and 2018, including but not limited to,
 - a. Unique identifiers for each person, charges, and outcomes for all minors (any persons under the age of 18) prosecuted directly in adult court in Los Angeles County (adult court is defined as a court of criminal jurisdiction) (otherwise known as “pipeline” or “direct file” cases) under Welfare and Institutions Code section 707.
 - i. Unique identifiers for each person, charges, and outcomes for all minors prosecuted in adult court in Los Angeles County after any one of the following:
 1. a judicial certification to adult court following a juvenile transfer hearing under the newly amended Welfare and Institutions Code section 707 subsection (a);
 2. a juvenile defendant’s waiver of transfer hearing or stipulation to adult court following the District Attorney’s motion to transfer to adult court.
 - b. Unique case identifiers, charges, and outcomes for all minors prosecuted in juvenile court in Los Angeles county, including, but not limited to demographic data, charges filed, and case outcomes during the calendar year of 2017 and 2018.
 - c. Unique case identifiers, charges, and outcomes (including diversion) of all misdemeanor charges for minors and adults in Los Angeles county.
 - d. Unique case identifiers, charges, enhancements and outcomes (including diversion) of all felony charges for minors and adults in Los Angeles county.

On August 13, 2021, you confirmed that you were seeking the same data fields that were disclosed in 2019 and this data was provided to you in a prior disclosure.

2. All documents and records related to all diversion programs offered or used by the DA's office, how many people utilized those programs, demographics of those people, the charges they were facing, outcomes of those cases, requirements for completing diversion, and any charges or costs associated with those diversion programs for calendar years 2017 and 2018.

The records you are requesting are exempt and will not be disclosed, because in this instance which we have determined that there is no existing record that contains all the information you requested. Please note that the LADA is not required to create a record that does not exist at the time of the request. (Gov. Code section 6252, subd. (e); Haynie v. Superior Court (2001) 26 Cal.4th 1061, 1075.)

Subject to the exemptions outlined herein the LADA has produced all responsive, non-privileged and non-exempt records in prior disclosures.

3. All records relating to how many parole hearings the office attended, how many hearings your office opposed, and how many parole hearings your office opposed when the next of kin took no position in the calendar years of 2017 and 2018.

The records you are requesting are exempt and will not be disclosed, because in this instance which we have determined that there is no existing record that contains all the information you requested. Please note that the LADA is not required to create a record that does not exist at the time of the request. (Gov. Code section 6252, subd. (e); Haynie v. Superior Court (2001) 26 Cal.4th 1061, 1075.)

Subject to the exemptions outlined herein the LADA has produced all responsive, non-privileged and non-exempt records in prior disclosures.

4. Copies of all office policies, including but not limited to Brady compliance policy, charging and plea deal offer policies, pardons and commutations, etc. Request #3 is not limited to calendar year 2017 and 2018.

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. Refer to Prior Disclosures and See Attachment 41

5. Copies of all office policies that relate to immigration including but not limited to:
a. Records that refer to office efforts to implement its obligations under Penal Code 1016.3(b).

- b. Records that refer to office efforts to implement its obligations under Penal Code 1473.7.
- c. Records, memoranda, and emails that relate to the creation and development of an immigration policy for the office.
- d. Request #5 is not limited to calendar year 2017 and 2018.

Subject to the exemptions outlined herein the LADA has produced all responsive, non-privileged and non-exempt records in prior disclosures.

6. All records concerning implementation of SB 1421, including copies of any new policies, training manuals or procedures regarding SB 1421, including any policies, procedures or training manuals for making SB 1421 requests, maintaining SB 1421 records, disclosures of SB 1421 requests to criminal defendants, revisions of any *Brady* policies in light of SB 1421, and all policies and procedures for reviewing all criminal convictions, arrests and charging decisions, in view of SB 1421. Request #4 is not limited to calendar year 2017 and 2018.

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. See Attachment 42

July 29, 2019 - Request for Updated Information:

I seek copies of the following materials in the agency's possession, regardless of who wrote them, from 1990 onwards:

1. Any training materials related to jury selection
2. Any training materials related to the constitutional requirements under *Batson v. Kentucky* and *People v. Wheeler*, including training materials related to handling *Batson-Wheeler* claims or motions. *Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258. This request construes "materials" to mean any records, publications, memoranda, writings, electronic data, mail, media files, nonstandard documents, or other forms of communication.

Policies and notices regarding training will be disclosed, however any and all videos and written materials regarding training seminars hosted by LADA are exempt and will not be disclosed for the previously stated reasons and for the following reasons:

The LADA hosts training seminars, some of which are exclusively available to current and retired criminal prosecutors and peace officers but are not open to the public. Pending and closed criminal cases, on-going investigations, legal theories and arguments, confidential law enforcement techniques and other matters necessary for the candid discussion within the agency are contained within the training seminars and are exempt pursuant to the reasons stated herein.

Records containing attorney work product and the official information privilege, including attorney work product found in memoranda discussing case issues or

office policy and relating to questions of concern pertaining to the DA's prosecutorial function. See Government Code §§ 6254, subdivisions (a) and (k), and 6255; Pen. Code § 1054.6; Evidence Code § 1040.

Records containing discussions implicating the deliberative process. See Government Code § 6255; (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159)

Records in which the public interest in non-disclosure of the record clearly outweighs the public interest served by disclosure. See Government Code, § 6255(a); (*L.A. Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222.) Specifically, records that would reveal the thought process or "decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its function." *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342, quoting *Dudman Communications v. Dept. of Air Force* (D.C. 1987) 815 F.2d 1565, 1568.)

Documents provided to our office by a governmental agency which we agreed to treat as confidential. See Gov. Code § 6254.5, subd. (e);

Records relating to investigative files and pending cases, related on-going investigations or closed investigations and are exempt. *Williams v. Superior Court* (1993) 5 Cal.4th 337, 349; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; Gov. § 6254, subd. (f).

Additionally, your request for any training materials related to jury selection and *Batson v. Kentucky* and *People v. Wheeler* dating back to 1990 is unduly burdensome and is respectfully declined. See *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-453; *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, 591-592. Your request is too expansive and will result in a voluminous number of records. Each of the records would need to be individually reviewed to ensure that they were responsive and not a "false positive." A further review would be necessary to ensure that privileged, confidential, and otherwise exempt materials contained therein are redacted. Therefore, your request for any training materials related to jury selection and *Batson v. Kentucky* and *People v. Wheeler* dating back to 1990 is unduly burdensome and we are unable to produce those records.

The training announcements via GOMs, flyers, or other written notification have been disclosed for this response. Training announcements hosted by the Prosecutors Alliance of California events are included in this disclosure because LADA staff received approval to attend the training seminars.

Subject to the exemptions outlined herein the LADA has produced all responsive, non-privileged and non-exempt records in prior disclosures.

As previously stated, unless specifically identified the records disclosed herein represent the final responsive documents for this request. See Attachments 43 – 44 for updated information.

Very truly yours,

GEORGE GASCÓN
District Attorney

By *Kimberly Toney*

Kimberly Toney
Special Assistant
Administration