



# Sacramento County District Attorney's Office

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June 3, 2022

Kory DeClark  
351 California Street, 10<sup>th</sup> Floor  
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[declark@braunhagey.com](mailto:declark@braunhagey.com)

Re: Public Records Act Request

Dear Mr. DeClark:

On May 3, 2022, you sent a letter via email in which you revisited your original request for records under the California Public Record Act (CPRA). That original request was dated February 18, 2022, and our response was sent February 24, 2022.

In your most recent letter, you write the following in sections I, II, and II:

**“I. Summary of Responses**

We understand that you have asserted the following:

**A. You have in a searchable format, and intend to produce,** the following subcategories of records, presuming we can reach an agreement concerning the cost of programming time:

- 1(a)-(d) – unique identifiers
- 4 – ADA identified (noting that this might not include *all* prosecutors involved in a particular prosecution)
- 7(a)-(c) – charges filed

**B. You have, but are unwilling to produce, the following subcategories of records for which you have asserted exemptions:**

- 5(a)-(d) – decisions to decline to prosecute (asserting exemptions on the grounds of: deliberative process privilege; public interest; privileged work product; investigatory files exemption)
- 9(a)-(e) – bail/custody information (asserting investigatory files exemption and undue burden)

- 10(a)-(e) – plea information requested (asserting investigatory files exemption and undue burden)
- 11(a)-(c) – case outcomes (asserting investigatory files exemption)
- 12 – counsel for defendant (asserting investigatory files exemption and undue burden)
- 13(a)-(c) – demographic information concerning victim (asserting investigatory files exemption and undue burden)
- 14 & 15 – parole and pardon recommendations (asserting investigatory files exemption)

**C. You have, but are unwilling to produce, the following subcategories of records because you assert that to do so would be unduly burdensome as the records would need to be hand searched.** You have asserted that *none* of the requested records could be produced through a search of your computerized case management system.

- 2(a)-(e) – demographic information

In addition to asserting undue burden, you asserted Gov't Code 6254(f) (investigatory files).

- 2(f) – prior criminal convictions of a defendant

In addition to asserting undue burden, you asserted the following exemptions: Gov't Code 6254(f) (investigatory files), 6254(k) (federal or state law protections, citing PC §§ 13302-04), 6255 (public interest).

- 3(a)-(c) – zip code of arrest, date of arrest, law enforcement referring charge

In addition to asserting undue burden, you asserted Gov't Code 6254(f) (investigatory files).

- 6(a)-(d) – diversion offers and decisions

In addition to asserting undue burden, you asserted Gov't Code 6254(f) (investigatory files).

- 8(a)-(e) – factors considered in deciding charges, filing

In addition to asserting undue burden, you asserted the following exemptions: deliberative process privilege; public interest; privileged work product.

**D. You do not have, and could not produce, the following subcategories of records:**

- 7(d) – maximum sentence possible for filed charge

In particular, please confirm that all of the information for which you have asserted is unduly burdensome to produce (subsection D, above) is not searchable in any way through your computerized case management system.

Further, with regard to Requests 9(a)-(e) (bail/custody information), 10(a)-(e) (plea information), 11(a)-(c) (case outcomes), 12 (counsel for defendant), and 13(a)-(c) (victim demographic information), you noted that you “do not have an index of [the requested] information.” However, you did not identify whether any of the requested information is searchable in your computerized case management system. Please confirm whether any of the records requested in Requests 9(a)-(e), 10(a)-(e), 11(a)-(c), 12, and 13(a)-(c) are searchable in your computerized case management system.

## **II. Response to Inquiries, Assertions of Vagueness**

With regard to the subcategories you identified as “vague”, we provide the following clarifications:

- For 9(a) (bail amount requested), this refers to any requests for bail by the District Attorney’s Office.
- For 9(b) (detention orders sought), this refers to requests by the District Attorney to maintain a defendant in custody.
- For 9(c) (whether bail was set or denied), this refers to any bail orders made by the court at any stage of the proceedings.
- For 9(d) (whether individuals released on bail), this refers to any bail releases made by the court at any stage of the proceedings.
- For 9(e) (pre-plea/pre-trial custody status), this refers to the custody status at the time an individual defendant makes a plea or goes to trial.
- For 10(a)-(d) (plea offers), this refers to all plea offers during the course of a defendant’s proceedings.

## **III. Information in Sacramento County Sheriff’s Department Database**

You represented that some of the data we request is contained in a database owned and managed by the Sacramento County Sheriff’s Department. At the March 4 meeting, you expressed that you were not sure if you were able to share that data. We have since also sent a CPRA request to the Sacramento County Sheriff’s Department seeking the same information. We ask that in your next response regarding our February 18, 2022 request, you identify whether there are specific subcategories of data that you are not willing to produce because the data is managed by the Sacramento County Sheriff’s Department and you are taking the position that you are not entitled to, or not willing to, produce the data for that reason. We also ask you to confirm whether the requested information, which is in your custody, is being produced by the Sheriff’s Department.”

I address each request individually. Each response incorporates any response included in our February 24, 2022, letter referenced above. You begin Section I A-C with the phrase “you have” and you begin Section I D with the phrase “you do not have.” In our February 24, 2022, letter we indicated in several areas that we may have certain records, but not in every case. For example, the zip code of arrest may be in some files but not others, and the maximum sentence for a particular charge or case may be noted in some cases but not others. Rather than repeat this below, I refer you to our February 24, 2022, letter on that topic.

**Section I.A.:**

- 1(a)-(d): We are able to search for this information. The “unique identifier” would include the defendant’s name and local identifier, known as an “x-ref.”
- 4: The Deputy District Attorney assigned to a specific case is searchable and identifiable, with the caveats noted in our February 24, 2022, letter.
- 7(a)-(c): We are able to search for and identify the charges filed.

For each of the above, should you wish to proceed with the search, the process is outlined in our February 24, 2022, letter.

In addition, subsequent to our February 24, 2022, letter, I become aware of a relatively recent case. *All of Us or None – Riverside Chapter v. Hamrick* (2021) 64 Cal.App.5<sup>th</sup> 751 discussed the general prohibition of providing information that would enable a member of the public to create a local criminal history within the meaning of Penal Code section 13000 et seq. Relying in part on that prohibition, the Court reversed the trial court’s order sustaining a demurrer and ruled that the plaintiffs had properly alleged a cause of action in their attempt to enjoin the superior court from permitting the public to conduct criminal case searches by date of birth and driver’s license numbers. We have concerns that by producing the local identifier known as an “x-ref” we would violate the holding of *All of Us or None* and Penal Code section 13000 et seq and cannot commit to providing that identifier at this time. I recognize that the *All of Us or None* case was not in the context of a CPRA, and that the ruling of the appellate court related to a demurrer, but the language and reasoning would seem to apply to several of your requests. I ask that you review it and indicate to me whether you wish to proceed with any searches that could enable the creation of a local criminal history.

**Section I.B.:**

- 5(a)-5(d): Our response to these has not changed.
- 9(a)-(e): Our response to these has not changed. I note that we informed you that we do not have an index of this information.
- 10(a)-(e): Our response to these has not changed. I note that in your current letter you phrase this as plea “information,” but in your February 18, 2022, letter

you phrased it as plea “offers.” I assume your original phrasing remains the request. I also note that we informed you we do not have an index of this information.

11(a)-(c): Our response to these has not changed. I note that we informed you we do not have an index of this information. As such, aside from the investigatory file exemption, this would require us to search over 140,000 files which is an undue burden.

12: Our response to this has not changed.

13(a)-(c): Our response to these has not changed. I note that we do not necessarily have this information in every case given the vast number of cases we handle.

14 and 15: Our response to these has not changed. I note that we provided you with a substantial amount of these materials that we previously made public via a web link.

#### **Section I.C.:**

2(a)-(e): Our response to these has not changed.

2(f): Our response to this has not changed.

3(a)-(c): Our response to this has not changed.

6(a)-(d): Our response to this has not changed.

8(a)-(e): Our response to this has not changed.

#### **Section I.D.:**

7(d): Our response to this has not changed. I note that we informed you that should you proceed with the computer search as referenced above, you would have the necessary information to calculate the maximum sentence for any, or all of, the cases.

Regarding the final paragraph of Section I, I refer you to my response to Section III below.

## **Section II:**

You provide several clarifications as follows:

- “• For 9(a) (bail amount requested), this refers to any requests for bail by the District Attorney’s Office.
- For 9(b) (detention orders sought), this refers to requests by the District Attorney to maintain a defendant in custody.
- For 9(c) (whether bail was set or denied), this refers to any bail orders made by the court at any stage of the proceedings.
- For 9(d) (whether individuals released on bail), this refers to any bail releases made by the court at any stage of the proceedings.
- For 9(e) (pre-plea/pre-trial custody status), this refers to the custody status at the time an individual defendant makes a plea or goes to trial.
- For 10(a)-(d) (plea offers), this refers to all plea offers during the course of a defendant’s proceedings.”

Given these clarifications of 9(a), 9(b), 9(c), and 9(d), that information is not in our possession outside of our investigatory file and is exempt from production under Gov. Code section 6254(f) and would be unduly burdensome to produce given that we have no index that identifies it.

9(e) is still vague in that “makes a plea” could mean when a defendant pleads guilty, no contest, not guilty, or other type of plea. That said, I understand you to mean when a defendant pleads guilty or no contest. Whether that interpretation is accurate or not, to the extent we possess this information, it is contained within our investigatory files and is exempt from production under Gov. Code section 6254(f) and would be unduly burdensome to produce given that we have no index that identifies it.

10(a)-(d) clarifies the time frame for which you seek records. I note that a “plea offer” can be made by the defense and can be made by the court, but I understand you to mean plea offers made by the prosecution. Whether that interpretation is accurate or not, to the extent we possess plea offer information, it is contained within our investigatory files and is exempt from production under Gov. Code section 6254(f) and would be unduly burdensome to produce given that we have no index that identifies it.

## **Section III:**

As I explained to you, certain data available to us is stored in our own case management system. Other data to which we may have access given our role in the criminal justice system is not stored or retained our case management system. For example, DMV and CLETS information is available to us but not stored in our system. Also, certain court data and sheriff’s data is

available to us but not stored in our system. I have identified the data requested by you that is stored in our system in our February 24, 2022, letter and in this letter as well. During our March 4, 2022, telephone conversation I further explained that our position is that the CPRA applies to records that we possess, not records that we could access.

As such, I can inform you that we do not store the following in our case management system. To the extent we may in possession of this information it would come from our investigatory files:

- 9(a)-(e) (bail/custody information)
- 10(a)-(e) (plea information) [I note that there was no 10(e) requested in your initial request]
- 11(a)-(c) (case outcomes)
- 12 (counsel for defendant)
- 13(a)-(c) (victim demographic information)

Sincerely,

ANNE MARIE SCHUBERT  
DISTRICT ATTORNEY



Richard Miller  
Assistant Chief Deputy District Attorney