



Office of the District Attorney Alameda County

Nancy E. O'Malley
District Attorney
alcoda.org

June 10, 2022

Ellen Leonida
BraunHagey & Borden LLP
Via email: praresponse@braunhagey.com

RE: Your CPRA request dated February 10, 2022

Dear Ellen Leonida:

We are further writing you in response to your enclosed California Public Records Act (CPRA) request of February 10, 2022. In reference to item no. 6 (diversion offers and decisions), we stated in our letter dated April 22, 2022, that we would continue our search for any non-exempt responsive documents, and we would follow up with you on or before June 10, 2022.

We have no readily available documents in response to item no. 6. At present, we do not have the capability to pull accurate data for adult diversion or collaborative court programs. There is a limited exception for data from a misdemeanor diversion program, Pacific Educational Services, Inc. (PES), which you will see tracked in the raw data you requested and will be produced at a later date. Therefore, we decline to provide one subset of data as it will be incomplete and inaccurate in the context of your request for all diversion offers and decisions. If you disagree and want this limited data, we will need to estimate the programming cost and it will take some time. We will wait for further instructions from you.

Very truly yours,

NANCY E. O'MALLEY
District Attorney

By:

/s/ *Catherine H. Kobal*
Catherine H. Kobal, Assistant District Attorney
Custodian of the Record

Enclosure

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

February 10, 2022

SENT VIA U.S. MAIL AND EMAIL

Nancy E. O'Malley
Office of the District Attorney of Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612
Email: Public.records@acgov.org
Askrcd-da@acgov.org

Re: California Public Records Act Request

To the Office of the District Attorney for Alameda County:

Pursuant to the California Public Records Act ("CPRA")¹ and the California Constitution,² I am writing on behalf of the American Civil Liberties Union of Northern California ("ACLU") to request records relevant to the implementation of California's Racial Justice Act ("RJA").³ The RJA was enacted "to eliminate racial bias from California's criminal justice system" and "to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing."⁴ The ACLU submits this CPRA request in the public's interest and as a member of a coalition of community groups, non-profit organizations, academic institutions, and other entities. The records that you produce will help us to implement and realize the objectives of the RJA.

On July 23, 2021, we submitted a CPRA request to your office also seeking records relevant to the implementation of the RJA. This CPRA letter is a further request for the following records regarding relevant case, individual, and/or charge-level data in the possession or control of the Alameda District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

Records Requested:

- 1. Unique identifier(s) associated with each defendant, each case, and each arrest**
 - a. Name of defendant
 - b. Court case number(s)
 - c. Arresting agency number(s)
 - d. Any other unique identifier(s)

¹ Gov't Code §§ 6250 *et seq.*

² Cal. Const., art. I, § 3(b)(2).

³ Pen. Code § 745.

⁴ See AB-2542 *Criminal Procedure: Discrimination*, Stats. 2020, Ch. 317, § 2(i); see also Pen. Code §§ 745, 1473, 1473.7.

2. Demographic and other information concerning each defendant

- a. Race
- b. Ethnicity
- c. Country of origin or nationality
- d. Gender/sex
- e. Age or date of birth
- f. Prior criminal convictions of a defendant

3. Information regarding each arrest

- a. Zip code of arrest
- b. Date of arrest
- c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)

4. ADA assigned to the case

5. Decisions to decline to prosecute

- a. Date of decision to decline to prosecute
- b. Identity of person who made final decision to decline prosecution
- c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)
- 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.

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

- a. Date of diversion offer
- b. Type of diversion offered
- c. Whether diversion accepted
- d. Whether diversion completed

7. Charges filed

- a. Statutes (applicable code section)
- b. Severity (i.e., infraction, misdemeanor, wobbler, felony)
- c. Any enhancements⁵
- d. Maximum sentence

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

- a. Injuries to persons
- b. Financial loss to persons
- c. Status of victim (i.e., law enforcement, child, spouse, etc.)

⁵ Conduct enhancements, including but not limited to PC Section 12022.53 (gun), PC Section 186.22 (gang); Status enhancements including but not limited to PC Section 667.5 (prison prior), PC Section 667(a) (serious felony prior), PC Section 1170.12 and 667(b)-(i) (strike prior), PC Section 11370.2 (drug prior), PC Section 12022.1 (committed while on bail/OR); Special circumstances (PC Section 190.2); Any other modifications or enhancements

- d. Prior criminal history of defendant
- e. Victim's cooperation

9. Bail/custody information

- a. Bail amount requested
- b. Detention orders sought
- c. Whether bail was set or denied
- d. Whether individuals were released on bail or not
- e. Pre-plea/pre-trial custody status

10. Plea offers

- a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements
- b. Dates of plea offers
- c. Sentence(s)/disposition(s) offered
- d. Records of whether any plea offer was accepted, including date of acceptance

11. Case outcomes

- a. Charges of conviction
- b. Dismissed charges
- c. Sentences

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

13. Demographic and other information concerning victims

- a. Race
- b. Ethnicity
- c. Gender/sex

14. Recommendations regarding parole

15. Recommendations regarding pardon or commutation

In responding to this request, please note that the CPRA broadly defines the term “record.” Specifically, the term includes “any writing containing information relating to the conduct of the people’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁶ The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”⁷ The present request therefore applies to *all* paper documents, as well as to *all* emails, videos, audio recordings, text messages, social media, or other electronic records within the Marin District Attorney’s Office’s possession or control. Even if a record was created by a member of another government agency, a member of the public, or a private entity, it still must be produced so long as it is (or was) “used” or “retained” by the Marin District Attorney’s Office.⁸

As permitted by the CPRA, this request sets forth the specific categories of information

⁶ Gov’t Code § 6252(e).

⁷ *Id.* § 6252(g).

⁸ *Id.* § 6252(e); see *California State Univ. v. Superior Ct.*, 90 Cal. App. 4th 810, 824–25 (2001) (concluding that documents which were “unquestionably ‘used’ and/or ‘retained’ by [an agency]” were public records); see also *Cty. of Santa Clara v. Superior Ct.*, 170 Cal. App. 4th 1301, 1334 (2009) (“[W]hile section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.”).

that we are seeking, rather than asking for documents by name.⁹ It is your obligation to conduct record searches based on the criteria identified herein.¹⁰ But if you believe the present request is overly broad, you are required to: (1) offer assistance in identifying responsive records and information; (2) describe “the information technology and physical location in which the records exist;” and (3) provide “suggestions for overcoming any practical basis” that you assert as a reason to delay or deny access to the records or information sought.¹¹

The CPRA requires that you respond to this request in ten (10) days.¹² If you contend that an express provision of law exempts a responsive record from disclosure, either in whole or in part, you must make that determination in writing. Such a determination must specify the legal authority on which you rely, as well as identify both the name and title of the person(s) responsible for the determination not to disclose.¹³ Additionally, even if you contend that a portion of a record requested is exempt from disclosure, you still must release the non-exempt portion of that record.¹⁴ Please note that the CPRA “endows” your agency with “discretionary authority to override” any of the Act’s statutory exemptions “when a dominating public interest favors disclosure.”¹⁵

Because the ACLU is a non-profit organization and because these requests pertain to matters of public concern, we kindly request a fee waiver. None of the information obtained will be sold or distributed for profit. We also request that, to the extent possible, documents be provided in electronic format. Doing so will eliminate the need to copy the materials and provides another basis for the requested fee-waiver.

If, however, you are unwilling to waive costs and anticipate that costs will exceed \$100, and/or that the time needed to copy the records will delay their release, please contact us so that we can arrange to inspect the documents or decide which documents we wish to have copied and produced. Otherwise, please copy and send all responsive records as soon as possible and, if necessary on a rolling basis, to: preresponse@braunhagey.com or to Ellen Leonida – PRA Responses, BraunHagey & Borden LLP, 351 California Street, 10th Floor, San Francisco, CA 94104.

Thank you in advance for your assistance with this request. We look forward to receiving your response within 10 days. And once again, if you require any clarification on this request, please let us know.

⁹ Gov’t Code § 6253(b).

¹⁰ *See id.* §§ 6253–6253.1.

¹¹ *Id.* § 6253.1(a).

¹² *Id.* § 6253(c).

¹³ *Id.* § 6255; *see also id.* § 6253(d)(3).

¹⁴ *Id.* § 6253(a), (c).

¹⁵ *CBS, Inc. v. Block*, 42 Cal. 3d 646, 652 (1986); *see also Nat’l Conference of Black Mayors v. Chico Cmty. Publ’g, Inc.*, 25 Cal. App. 5th 570, 579 (2018) (construing the CPRA’s exemptions as “permissive, not mandatory—they allow nondisclosure but do not prohibit disclosure”).

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Sincerely,

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Ellen Leonida.

Ellen Leonida