



OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE

MICHAEL A. HESTRIN
DISTRICT ATTORNEY

July 18, 2022

Ellen Leonida, Esq.
Braun Hagey & Borden LLP
leonida@braunhagey.com

Subject: California Public Records Act Request

Dear Ms. Leonida:

The Riverside County District Attorney's Office received your letter dated February 18, 2022, in which you request "[r]ecords regarding relevant case, individual, and/or charge-level data in the possession or control of Riverside District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present." Your letter requests the following 15 items of information:

- 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)

- 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 enhancements:
 - 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.)
 - 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

Enclosed are Excel spreadsheets with data responsive to your requests for 2016 through the date of your request in 2022. Each column in the spreadsheets is labeled according to the number of your request. At the outset, we reiterate our exemptions applicable to the totality of your requests discussed in our letter dated May 9, 2022.

As previously stated, your request seeks information related to “all cases considered for prosecution.” In Items 1 through 3, you request specific information about each defendant and arrest. This information is exempt from disclosure because it seeks information related to arrests where charges were not filed by the Riverside County District Attorney’s Office. When criminal charges are not filed, the police reports/facts underlying the incident in question do not become public records because they are not filed with the court. And, since your request is seeking seven years of data as opposed to contemporaneous arrest information, this type of information is prohibited from disclosure under Penal Code section 13300 as local summary criminal history information as that term is defined in Penal Code section 13102, which includes the defendant’s name, date of birth, physical description, dates of arrests, arresting agencies, booking numbers, charges, dispositions, and similar data about the person. (Pen. Code, §

13300, subd. (a)(1); *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164.) For this reason, improperly providing criminal history records will also violate Government Code section 6254, subdivision (k), and may violate the defendant's privacy rights under the California Constitution. (Cal. Const., art. I, § 1; see *Westbrook, supra*, and *Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 76-77; *Kinney v. Superior Court of Kern County* ([Apr. 7] 2022) __ Cal.App.5th __ [2022 WL 1043448][CPRA mandates regarding arrests are limited to information pertaining to "contemporaneous" police activity.]

Even more significantly, arrested individuals can petition the court to seal records related to their arrest pursuant to Penal Code section 851.91 when charges are not filed, and the statute of limitations has run. (Pen. Code, § 851.91, subd. (a)(1).) While we update our records in compliance with Penal Code section 851.92, given the limited accuracy of our current records as stated in our letters dated April 13, 2022, and May 9, 2022, we could potentially violate a court order by inadvertently releasing information about a sealed arrest to the public.

Based on the foregoing two paragraphs, the District Attorney respectfully denies your request(s) for any information related to arrests where charges were not filed or otherwise did not result in a conviction of any kind. This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

Moreover, the scope of your request ostensibly encompasses juvenile adjudications. To the extent you are seeking information and/or records related to juvenile adjudications, we respectfully deny your request. As set forth above, these records are confidential pursuant to Welfare and Institutions Code sections 827 through 832. For this additional reason, the District Attorney denies your request to the extent it seeks information regarding juvenile adjudications. This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

And, as discussed in our letter dated April 13, 2022, legitimate analyses cannot currently be performed on our data at this time given the inaccuracy and omission rate discovered in our recent audit. We are working to correct this problem and anticipate the first part of our data audit will be updated in approximately August 2022. To the extent that you wish that this office conducts a hand search of every case file to verify the accuracy of our data, we decline to do so as a hand search of case files would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

Accordingly, the enclosed spreadsheets are limited to adult prosecutions where criminal charges were filed for the reasons set forth above. Each of your requests will be discussed in turn.

1) *Unique identifier(s) associated with each defendant, each case, and each arrest*

The data you have requested in Item 1a (defendant's name) is exempt from disclosure under the California Public Records Act (CPRA) as local summary criminal history information. As explained above in greater detail, relevant case and statutory authority prevent the disclosure of this information to protect a criminal defendant's privacy rights. (Pen. Code, § 13300, subd. (a)(1); Gov. Code, § 6254, subd. (k); *Westbrook v. County of Los Angeles*, *supra*, 27 Cal.App.4th at p. 164; *Kinney v. Superior Court of Kern County*, *supra*, __ Cal.App.5th __ [2022 WL 1043448]; see also Cal. Const., art. I, § 1; *Craig*, *supra*, 100 Cal.App.3d at pp. 76-77.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

We also cannot provide data responsive to your request in Item 1d (other unique identifiers). As stated in our letter dated May 6, 2022, the term "any other unique identifier," is too vague for us to meaningfully comply. A request must be sufficiently specific so that a reasonable check for the records can be made. (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.) If you clarify what specific case and defendant identifiers you would like disclosed, we are willing to search for potentially responsive and disclosable records.

In summary, with respect to Item 1, we have provided the court case number and the arresting agency case number for each year requested.

2) *Demographic and other information concerning each defendant*

As stated in our letter dated May 6, 2022, we can provide the race of a defendant; however, we do not track the defendant's "gender," as requested in Items 2d (defendants' gender/sex). We assume by your request for "gender" you mean "gender identity," which is a person's sense or personal understanding of their own gender, which may or may not correlate with their assigned sex at birth. We do not currently track defendants' gender identity. We only track the defendants' sex assigned at birth or recorded in an official government document like a state-issued identification card. Please be advised that a defendant's sex assigned at birth, along with a defendant's race/ethnicity are manually entered into our electronic Case Management System based solely on what is set forth in the investigative reports submitted by local law enforcement agencies, so any information we provide would have been derived from those reports. You should also be aware that our office has a blind-charging protocol that prohibits the consideration of such personal identifying information, i.e., race/ethnicity, sex, gender, etc., in charging

decisions, absent direct relationship to the crime committed. Any information that would be provided pursuant to your request, is provided by securing special approvals to access and correlate the requested information.

Furthermore, our CMS does not have a separate data file for “ethnicity” as requested in Item 2b and we do not electronically track in our CMS the information you have requested in Item 2c (country of origin or nationality). Race and ethnicity are grouped into one field. The available fields in our CMS are as follows: Asian, Black/African-American, Hispanic, American Indian or Alaska Native, Multiple Races, Some Other Race, Native Hawaiian or Other Pacific Islander, Unknown/Refuse to State, and White/Caucasian. Nevertheless, the Race field is not a required field in our system. To the extent that you wish that this office conducts a hand search of every case file in order satisfy your request, we decline to do so as a hand search of case files would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) Furthermore, under the CPRA, we are not required to create a record that is not currently in existence. (Gov. Code, § 6253, subd. (b), *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

Finally, as stated in our letters dated May 6, 2022, and May 19, 2022, the data you have requested in Item 2f (prior criminal convictions of a defendant) is exempt from disclosure under the California Public Records Act as local summary criminal history information. Relevant case and statutory authority, as explained above, prevent the disclosure of this information to protect a criminal defendant’s privacy rights. (Pen. Code, § 13300, subd. (a)(1); Gov. Code, § 6254, subd. (k); *Westbrook v. County of Los Angeles*, *supra*, 27 Cal.App.4th at p. 164; *Kinney v. Superior Court of Kern County*, *supra*, __ Cal.App.5th __ [2022 WL 1043448]; see also Cal. Const., art. I, § 1; *Craig*, *supra*, 100 Cal.App.3d at pp. 76-77.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

Regardless, as discussed in more detail in our letter dated May 19, 2022, we do not electronically track the totality of each criminal defendant’s criminal history, and thus, cannot comply with your request absent a hand search of every case file, which we decline to do so as a hand search of case files would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

In summary, with respect to Item 2, we can provide the defendants' race and sex assigned at birth. We have included data for each year requested in the enclosed spreadsheets.

3) *Information regarding each arrest*

We do not electronically track in our CMS the information you have requested in Item 3a (zipcode), and thus, cannot comply with your request absent a hand search of every case file in order to satisfy your request. As repeatedly emphasized, we decline to conduct hand search of our cases because it would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

The enclosed spreadsheets contain data responsive to 3b (date of arrest) and 3c (requested charged) for the years requested.

4) *ADA assigned to the case*

The enclosed spreadsheets contain data responsive to Item 4 (assigned prosecutor) for the years requested.

5) *Decisions to decline to prosecute*

Your request is exempt from disclosure as phrased. While we can generate the statistical information requested in Items 5a through 5c so long as the request does not seek to identify the suspect(s) or reference the arresting agency report number, you have also asked for demographic information about individual defendants for "all cases considered for prosecution," in Items 1 through 3, which is exempt from disclosure as local summary criminal history information for the reasons stated above. For these reasons, we deny your request for data as phrased. This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose. We have included, however, limited information regarding charged cases.

The information requested in 5d is also exempt from disclosure under the CPRA because it appears to request a summary narrative of the facts underlying the charged crime and/or the notes and rationale of the reviewing prosecutor tasked with making the filing decision. The facts underlying the case are part of our investigative file and thus exempt from disclosure under the CPRA. (Gov. Code, § 6254, subd. (f).) Courts have expressly held, "[o]nce an investigation . . . has come into being because there is a concrete and definite prospect of enforcement proceedings at that time, materials that

relate to the investigation and thus, properly belong in the file, remain exempt subject to the terms of the statute.” (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 362.)

Furthermore, the information requested ostensibly encompasses attorney work product because it seeks our internal notes. Also, the information you seek could potentially allude to an attorney’s impressions, opinions and/or conclusions. (Gov. Code, § 6254, subd. (k); *Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 128-135; *Fellows v. Superior Court (Los Angeles County)* (1980) 108 Cal.App.3d 55, 63, disapproved on other grounds by *Coito v. Superior Court* (2012) 54 Cal.4th 480.)

Based on the foregoing two paragraphs, the District Attorney respectfully denies your request for information in Item 5d. This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

However, even if the information in Items 5di through 5dvi, was not exempt from disclosure under the CPRA, our CMS does not track the information in the detail you seek. For example, if this office decides not to file charges after reviewing a case, our CMS provides for specific options including, among others, referred to the attorney general, returned for further investigation, lack of sufficient evidence, lack of corpus, referred for diversion. As such, specific details about the decision not to file would require a hand search of each case. Once again, to the extent that you wish that this office undertakes a hand search, we decline to do so as a hand search of case files would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) Furthermore, under the CPRA, we are not required to create a record that is not currently in existence. (Gov. Code, § 6253, subd. (b), *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

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

With respect to Items 6a and 6b, we do not track the information electronically in our CMS; however, with respect to Items 6c (whether diversion accepted) and 6d (whether diversion completed), we are able to generate the information from our CMS. This information is provided in the enclosed spreadsheets for the years requested.

To the extent that you wish that this office undertakes a hand search of every case file, we decline to do so as a hand search of case files would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) Furthermore, under the CPRA, we are not required to create a record that is not currently in existence. (Gov. Code, § 6253, subd.

(b), *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

7) *Charges filed*

We can generate the information requested in Items 7a through 7c. This information is provided in the enclosed spreadsheets for the years requested. However, we do not electronically track the information requested in Item 7d (maximum exposure), and we do not consistently track this information in our physical files.

As noted above, to the extent that you wish that this office undertakes a hand search of every case file to satisfy your request in Item 7d, we decline to do so as a hand search of case files would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) Furthermore, under the CPRA, we are not required to create a record that is not currently in existence. (Gov. Code, § 6253, subd. (b), *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

8) *Factors considered in deciding charges to file and level of charges.*

The information you seek is exempt from disclosure under the CPRA. Item 8 appears to request a summary narrative of the facts underlying the charged crime and/or the notes and rationale of the reviewing prosecutor tasked with making the filing decision. The facts underlying the case are part of our investigative file and thus exempt from disclosure under the CPRA. (Gov. Code, § 6254, subd. (f); *Williams v. Superior Court, supra*, 5 Cal.4th at p. 362.)

Even more significantly, your request is not limited to resolved criminal cases. Disclosing information about ongoing criminal cases to the public risks compromising the integrity of a pending investigation or prosecution and therefore the public's interest in nondisclosure outweighs the public's interest in disclosure. (Gov. Code, § 6255.)

Additionally, the information requested in Item 8 is also exempt from disclosure as confidential attorney work product because it seeks our internal memoranda, notes, legal impressions, thought processes, and/or strategy. (Gov. Code, § 6254, subd. (k); *Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 128-135; *Fellows v. Superior Court (Los Angeles County)* (1980) 108 Cal.App.3d 55, 63, disapproved on other grounds by *Coito v. Superior Court* (2012) 54 Cal.4th 480.)

Based on the foregoing, the District Attorney thus denies your request in Item 8 in its entirety. This denial has been reviewed and authorized by Chief District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

9) *Bail/custody information*

We can generate the information requested in 9a (bail amount) and 9d (released on bail or not) and that information is included in the enclosed spreadsheets for the years requested. However, we do not actively track the information you have requested in Items 9b, 9c and 9e. To accurately fulfill your request in its entirety would require that our office undertake a hand search of every case filed within the last seven years. A hand search of files spanning almost a decade would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

10) *Plea offers*

With respect to Item 10, we are able to fulfill your request with the exception of Item 10d as we do not actively track this information electronically. To accurately fulfill your request in its entirety would require that our office undertake a hand search of every case filed within the last seven years. A hand search of files spanning almost a decade would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

11) *Case outcomes*

We can retrieve the information you have requested in Item 11 from our electronic database. This information is included in the enclosed spreadsheets for the years requested.

12) *Counsel for the defendant, whether public defender or private counsel*

While our CMS includes a data field to capture “Defense Attorney,” please be aware that it is not used with any consistency and/or reliability. If the information is manually entered and/or updated, we can retrieve the data; however, this field has only been available in our CMS since March 2017. This office does not track whether a defense attorney is public or private. To accurately fulfill your request in its entirety would require that our office undertake a hand search of every case filed within the last seven years. A hand search of files spanning almost a decade would be unduly

burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

We have included whatever information could be extracted from our electronic database on the enclosed spreadsheets for the years requested.

13) *Demographic and other information concerning victims*

The enclosed spreadsheet contains the information requested in Item 13 for the year 2015. However, as explained in our response to Item 2, while we can provide the race of a victim, please be advised we do not track the victim's "gender." Just as we explained in our response to Item 2, we only track victims' sex assigned at birth. Likewise, victims' race and ethnicity are grouped into one as explained in our response to Item 2. More importantly, victims' race and sex assigned at birth are subject to the same caveats with respect to accuracy as discussed in response to Item 2. To the extent that you wish that this office conducts a hand search of every case file in order to satisfy your request, we decline to do so as a hand search of case files would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) Furthermore, under the CPRA, we are not required to create a record that is not currently in existence. (Gov. Code, § 6253, subd. (b), *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

14) *Recommendations regarding parole*

With respect to Item 14, we do not actively track this information electronically. To accurately fulfill your request in its entirety would require that our office undertake a hand search of every case filed within the last seven years. A hand search of files spanning almost a decade would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

15. *Recommendations regarding pardon or commutation*

With respect to Item 15, we do not actively track this information electronically. To accurately fulfill your request in its entirety would require that our office undertake a hand search of every case filed within the last seven years. A hand search of files spanning almost a decade would be unduly burdensome, and thus not in the overall public interest. (Gov. Code, § 6255; *County of Los Angeles v. Superior Court* (1993) 18

Cal.App.4th 588.) This denial has been reviewed and authorized by Chief Deputy District Attorney Kelli M. Catlett as an agent of the District Attorney for this purpose.

The enclosed spreadsheets fulfill our obligation until the data backfill project is completed. That project is scheduled to be completed in late August 2022. Please let us know if the enclosed satisfies your request.

If you have any additional questions or comments, we can be reached directly via email at cpra@rivcoda.org or by calling 951-955-5400.

Very truly yours,

MICHAEL A. HESTRIN
District Attorney

/ s /

NATALIE M. LOUGH
Deputy District Attorney