



Office of the District Attorney Alameda County

Nancy E. O'Malley
District Attorney
alcoda.org

August 5, 2022

Kory DeClark
BraunHagey & Borden LLP
Via email: praresponse@braunhagey.com

RE: Your CPRA request dated July 23, 2021

Dear Kory DeClark:

We are in receipt of your letter dated July 25, 2022, and received by email during business hours on July 26, 2022. Your letter seeks clarification on the following grounds.

1. Whether our Office has produced all documents responsive to each topic and subtopic in your CPRA request of July 23, 2021.
2. Whether our Office has withheld any documents on the basis of an exemption, and if so, which exemption.
3. A list that encompasses all the topics and subtopics and states whether production is complete, whether any documents were withheld, and if so, on what grounds.

All the information requested has been addressed in prior correspondence and productions. We understand the complexity of your July 23, 2021 request as it encompasses three requests and each request has various topics and subtopics. In the interest of being helpful, we enclose two items. First, please find a version of our internal index that was created to help us track your request. This index refers to the specific letter and/or production date by topic and subtopic. Second, we enclose a version of our internal production list that is organized by the date of production. This list will direct you to the topics and subtopics that were produced or addressed on a specific date. It also lists the documents provided to you.

We have produced all non-exempt, responsive records sought in your request of July 23, 2021, unless we did not receive a reply to specific inquiries posed by our letters.

This further concludes your CPRA request of July 23, 2021.

Very truly yours,

NANCY E. O'MALLEY
District Attorney

By:

/s/ *Catherine H. Kobal*

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

Enclosures

cc by email:

leonida@braunhagey.com

declark@braunhagey.com

shaw@braunhagey.com

Index 2561

Requester: BraunHagey & Borden LLP OBO ACLU of Northern CA

Subject: 3 in 1 request

Index for July 23, 2021 letter (new request)

Records Requested: 2015 to present	Reference
1. Any and all written policies, memoranda, or guidance documents regarding:	
a. Diversion eligibility and/or programming;	10/28/2021 production & letter; 4/27/2022 production & letter; Points & Authorities ¹
b. Custody and/or bail recommendations;	10/28/2021 production & letter; Points & Authorities ¹
c. Charging recommendations and/or decisions, including, but not limited to:	10/28/2021 production & letter; Points & Authorities ¹
i. Charging recommendations and/or decisions regarding enhancements;	Points & Authorities ¹
ii. Charging recommendations and/or decisions regarding special circumstances; or	Points & Authorities ¹
iii. Charging recommendations and/or decisions regarding wobblers;	We have no records.
d. Compliance with <i>Brady v. Maryland</i> , 373 U.S. 83 (1963);	10/28/2021 production & letter; 2/28/2022 production & letter; Points & Authorities ¹
e. Jury selection;	10/28/2021 production & letter; Points & Authorities ¹
f. Sentencing recommendations	10/28/2021 production & letter; Points & Authorities ¹
g. Prosecution of minors;	10/28/2021 production & letter; Points & Authorities ¹
h. Parole recommendations;	10/28/2021 production & letter; Points & Authorities ¹

¹We began correspondence with you about the training segments on these dates: 8/11/2021, 9/9/2021, 9/29/21, and 10/28/2021. We did not receive a reply to our correspondence about your commitment to pay so these training segments were not produced. Date of correspondence: 12/1/2021, 12/10/2021, 1/28/2022, 1/31/2022, and 2/1/2022.

Index 2561

Requester: BraunHagey & Borden LLP OBO ACLU of Northern CA

Subject: 3 in 1 request

i. Pardon and commutation recommendations	10/28/2021 production & letter
j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;	10/28/2021 production & letter
k. Data collection relating to criminal matters, including demographic data of defendants and victims; or	9/29/2021 production & letter; Points & Authorities ¹
l. Referral of cases for federal prosecution	We have no records.
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;	2/28/2022 production & letter; Points & Authorities ¹
d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or	3/29/2022 letter; Points & Authorities ¹
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).	Points & Authorities ¹
3. Records concerning the Racial Justice Act:	
a. Implementation of and compliance with the RJA	9/29/2021 production & letter; Points & Authorities ¹
b. Communications concerning the RJA; or	9/29/2021 letter
c. Trainings related to the RJA	9/29/2021 production & letter; Points & Authorities ¹

Index 2561

Requester: BraunHagey & Borden LLP OBO ACLU of Northern CA

Subject: 3 in 1 request

4. All investigations into Batson-Wheeler motions, including, but not limited to	
a. Motions filed;	6/29/2022 letter
b. Motions granted	6/29/2022 letter
c. Internal training and/or discipline	2/28/2022 production & letter; Points & Authorities ¹
d. Reports to the State Bar relating to any Batson-Wheeler motions made and granted	6/29/2022 letter

**Index for May 13, 2019 letter (Exhibit 1 to July 23, 2021 letter)
Renewal of Index 1661 request (2019)**

Records Requested: 2017 and 2018	Reference
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 Alameda 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.	We have no updated records.
i. Unique identifiers for each person, charges, and outcomes for all minors prosecuted in adult court in Alameda County after any one of the following:	
1. a judicial certification to adult court following a juvenile transfer	6/29/2022 production & letter

Index 2561

Requester: BraunHagey & Borden LLP OBO ACLU of Northern CA

Subject: 3 in 1 request

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.	We have no records.
b. Unique case identifiers, charges, and outcomes for all minors prosecuted in juvenile court in Alameda County, including, but not limited to demographic data, charges filed, and case outcomes during the calendar year of 2017 and 2018.	6/1/2022 letter
c. Unique case identifiers, charges, and outcomes (including diversion) of all misdemeanor charges for minors and adults in Alameda County.	6/1/2022 letter
d. Unique case identifiers, charges, enhancements and outcomes (including diversion) of all felony charges for minors and adults in Alameda County.	6/1/2022 letter
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.	4/27/2022 production & letter
3. All records relating to how many parole hearings the office attended, how many	3/29/2022 letter

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.	
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.	10/28/2021 production & letter; 2/8/2022 production & letter
5. Copies of all office policies that relate to immigration including but not limited to:	10/28/2021 production & letter
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.	
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,	2/28/2022 production & letter

Index 2561

Requester: BraunHagey & Borden LLP OBO ACLU of Northern CA

Subject: 3 in 1 request

arrests and charging decisions, in view of SB 1421. Request #4 is not limited to calendar year 2017 and 2018	
--	--

**Index for July 29, 2019 letter (Exhibit 2 to July 23, 2021 letter)
Renewal of Index 1773 request (2019)**

Records Requested: 1990 onwards	Reference
1. Any training materials related to jury selection	2/28/2022 production & letter; Points & Authorities ¹
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.	2/28/2022 production & letter; Points & Authorities ¹

Index 2561

Requester: BraunHagey & Borden LLP OBO ACLU of Northern CA

Subject: 3 in 1 request

Production List

1. 9/29/2021 Production

- Racial Justice Act records
 - Responsive to item 3 in the July 23, 2021 letter.

Documents provided

- AB 2542 language from California Legislative Information
- PC 745 (AB 2542) PowerPoint
- CDAA PowerPoint- Answering the Call: Avoiding Bias in Prosecution, The California Racial Justice Act, dated 12/16/2020
- AB 2542 Summary with Senate Amendments

2. 10/28/2021 Production

- Guidance Documents and Policies
 - Responsive to various subcategories of item 1 in the July 23, 2021 letter.
- Office Policies
 - Responsive to items 4 & 5 in the May 13, 2019 letter.

Documents provided

- Parole Hearing Policy
- Certificate of Rehabilitation of Pardons includes information from our website; instruction on how to apply for a pardon, personal history form, and Petition to Court for Rehabilitation
- Pride and Professionalism Attorney Handbook (November 2019 version). The following pages were produced: page 13(introduction) through page 50 (Chapter 15.2) and page 57 (other sources).
- Workplace Violence and Sexual Harassment Policy
- Inspector's Guide for a Certificate of Pardon Rehabilitation Investigation
- Immigration Guidelines 2020

3. 2/28/2022 Production

- Guidance Documents and Policies
 - Responsive to item 1d in the July 23, 2021 letter.
- Training Materials
 - Responsive to item 2c in the July 23, 2021 letter.
- Office Policies
 - Responsive to item 4 in the May 13, 2019 letter.
- Training materials related to jury selection, *Batson/Wheeler*
 - Responsive to items 1 and 2 in the July 29, 2019 letter.

Index 2561

Requester: BraunHagey & Borden LLP OBO ACLU of Northern CA

Subject: 3 in 1 request

Documents provided

- 1/27/21 New DA Brady Bank training PowerPoint
- 11/13/20 Brady & Pitchess training PowerPoint
- Intro to Batson-Wheeler: A 5-minute Summary
- 2/7/2018 Brady & Pitchess training PowerPoint
- Voir Dire Language Handout
- Inspector Policy Manual
- June 2021 Jury Selection training PowerPoint

4. **3/31/2022 Production** (**actually produced on 3/29/2022**)

- In the letter, referred to the Division of Diversity, Equity and Inclusion (DDEI) section of the Alameda County District Attorney's Office website.
 - Responsive to item 2d in the July 23, 2021 letter.
- In the letter, provided parole hearing numbers.
 - Responsive to item 3 in the May 13, 2019 letter.

5. **4/27/2022 Production**

- Diversion
 - Responsive to item 1a in the July 23, 2021 and item 2 in the May 13, 2019 letter.

Documents provided

- 2020 Alternatives to Incarceration Guidebook
- 2020 Collaborative Courts flier

6. **6/1/2022 Follow-up**

- Prosecution data for adults and minor
 - In the letter, addressed item 1c and 1d from the May 13, 2019 letter.

7. **6/29/2022 Production**

- Minors originally charged in juvenile court and prosecuted in adult court following a transfer hearing.
 - Responsive to item 1(a)(i)(1) in the May 13, 2019 letter.
- In the letter, addressed item 1a and 1(a)(i)(2) from the May 23, 2019 letter.
- In the letter, addressed item 4 in the July 23, 2021 letter.

Documents provided

- List of minors prosecuted in adult court following a transfer hearing.