

Eric Havens
County Counsel



Mistelle Abdelmagied
Assistant County Counsel

County Counsel

County Administration Center
940 West Main Street, Suite 205
El Centro, CA 92243
Telephone (442) 265-1120
Fax No. (760) 353-9347
countycounsel@co.imperial.ca.us

August 8, 2022

Via Electronic Mail

Kory DeClark
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104
Wilner@braunhagey.com

Re: California Public Records Act Request follow up response

Dear Mr. DeClark:

Thank you for teleconferencing with administrative analyst Jose Flores with the Imperial County District Attorney's Office (ICDA) and myself on July 21, 2022. Per our discussion, I worked with Mr. Flores to confirm, with reasonable certainty and to the best of his knowledge, the below amended table of categories listing whether or not the requested data: "(1) exists and is digitally accessible for 2015 to present; (2) exists, but is not digitally accessible, and so would require someone to manually pull the data from each case file; or (3) does not exist because it is not tracked in any form by your office."

Specifically, I confirmed with Mr. Flores that, with reasonable certainty and to the best of his knowledge, all the cells marked as "3" are properly marked as "3s", and I worked with Mr. Flores to subcategorize all categories properly marked as "2," as either: "'2.A.' (which means that the IT department (or third-party vendor) can write a code (or create a similar automated process) to pull the data) or '2.B.' (which means that the data can only be pulled manually)." In the event an outside vendor were to be contracted to program or extract the requested data points, there is a possibility the category assigned to the data point could prove to be different.

Please keep in mind also, Imperial County is a poor, underserved county lacking in many resources. ICDA has only recently installed and started to operate a new data management system. Many of the data points requested are either not digitally accessible from the old database or were not tracked. In addition, ICDA reports that it continues to be extremely short-staffed.

With this preface, for category 2.A., pursuant to Government Code subsection 6253.9(b)(2) and consistent with *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, the costs for data extraction and programming are the responsibility of the requester. The

County IT Department has inquired with an outside vendor, which estimates the time needed to program and extract items marked 2.A. will be approximately 8 hours at \$200/hr plus a 20% management fee, resulting in an estimated total cost of \$1820.

For category 2.B., please be aware that the rights provided pursuant to the California Public Records Act (“CPRA”) are to inspect public records and/or to obtain a copy of those records. California Government Code §§ 6250 *et seq.* The CPRA does not compel a public agency to create lists or reports in response to questions.

In regards to your proposal to withdraw your request for names/birthdates so that the County can provide the remaining statistical demographic data, County is not asserting any exemptions from disclosure for the demographic items listed in Request #2, namely, race, ethnicity, country of origin or nationality, or gender/sex—so long as defendants remain unidentifiable. However, the County maintains its objections in producing court case numbers, arresting agency numbers, and other “unique identifiers,” since a spreadsheet containing court case numbers together with corresponding names of defendants could potentially be obtained from the court, and then merged with a spreadsheet provided here by ICDA containing the same court case numbers.

To reiterate, “local summary criminal history information” is made confidential pursuant to sections 13300 – 13305 of the Penal Code, Government Code sections 6254(c), (f), (k), 6276.28, and 6255. Penal Code section 13300 defines such information as “the master record of information compiled by any local criminal justice agency ... pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.” Section 13302 provides that an employee of a local criminal justice agency who knowingly furnishes a record reflecting such local summary criminal history information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor. Sections 13305 and 13300(h) clarify that, “It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed,” and section 13302 does not “prohibit a public prosecutor from accessing and obtaining information from the public prosecutor’s case management database to respond to a request for publicly disclosable information pursuant to the California Public Records Act.”

There are important privacy reasons to prohibit public access to every person’s criminal history information in a single place. In addition to the statutory prohibition under section 13300, the “state constitutional right of privacy extends to protect defendants from unauthorized disclosure of criminal history records.” *Westbrook v. County of Los Angeles* (1994) 27 Cal. App. 4th 157, 165; 89 Ops. Cal. Atty. Gen. 204 (2006). “In *Westbrook*, a person in the business of selling criminal offender background information brought an action to compel a municipal court to sell him computer tapes containing copies of the court's information system. The system contained a plethora of information obtained from criminal case files, including not only information concerning the charges and their disposition but also personal identifying information such as the date of birth, race, sex, personal description, and Social Security number of each defendant. [citations] The Court of Appeal concluded that the distribution of such

information would violate Penal Code section 13300, which generally prohibits a local criminal justice agency, including a court, from distributing information that relates a person's criminal history. The court reasoned that although the public was entitled to access individual court files, providing electronic access in the form of the court's information system would permit the compilation and distribution of criminal histories, in violation of the statute.” *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 339.

1. Unique identifier(s) associated with each defendant, each case, and each arrest			Status
a. Name of defendant	1	Local summary criminal history information is made confidential pursuant to sections 13300 and 13305 of the Penal Code, Government Code sections 6254(c), (f), (k), 6276.28, and 6255.	Exempt from disclosure
b. Court case number(s)	1	Local summary criminal history information is made confidential pursuant to sections 13300 and 13305 of the Penal Code, Government Code sections 6254(c), (f), (k), 6276.28, and 6255.	Exempt from disclosure
c. Arresting agency number(s)	1	Local summary criminal history information is made confidential pursuant to sections 13300 and 13305 of the Penal Code, Government Code sections 6254(c), (f), (k), 6276.28, and 6255.	Exempt from disclosure
d. Any other unique identifier(s)	3	Local summary criminal history information is made	Exempt from disclosure

		confidential pursuant to sections 13300 and 13305 of the Penal Code, Government Code sections 6254(c), (f), (k), 6276.28, and 6255.	
<i>2. Demographic and other information concerning each defendant</i>			
<i>a. Race</i>	2.A.		
<i>b. Ethnicity</i>	2.A.		
<i>c. Country of origin or nationality</i>	2.A.		
<i>d. Gender/sex</i>	2.A.		
<i>e. Age or date of birth</i>	2.A.	Date of birth is made confidential pursuant to sections 13300 and 13305 of the Penal Code, Government Code sections 6254(c), (f), (k), 6276.28, and 6255.	Exempt from disclosure
<i>f. Prior criminal convictions of a defendant</i>	3	Local summary criminal history information is made confidential pursuant to sections 13300 and 13305 of the Penal Code, Government Code sections 6254(c), (f), (k), 6276.28, and 6255.	Exempt from disclosure
<i>3. Information regarding each arrest</i>			
<i>a. Zip code of arrest</i>	2.A.		
<i>b. Date of arrest</i>	2.A.		
<i>c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)</i>	1		Produced
<i>4. ADA assigned to the case</i>			
<i>5. Decisions to decline to prosecute</i>	2.A.		
<i>a. Date of decision to</i>	2.A.		

<i>decline to prosecute</i>			
<i>b. Identity of person who made final decision to decline prosecution</i>	2.A.		
<i>c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)</i>	2.A.		
<i>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.</i>	3	Exempt from disclosure pursuant to Government Code subsections 6254(f), (k), (p), and 6255(a); <i>Rackauckas v. Superior Court</i> (2002) 104 Cal.App.4th 169; Government Code § 6276.04; Business and Professions Code § 6202; and Code of Civil Procedure §§ 2018.010 to 2018.080.	Exempt from disclosure
<i>6. Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)</i>			
<i>a. Date of diversion offer</i>	2.A.	Some diversion information is made confidential pursuant to Penal Code section 13300(n)	
<i>b. Type of diversion offered</i>	2.A.	Some diversion information is made confidential pursuant to Penal Code section 13300(n)	
<i>c. Whether diversion accepted</i>	2.A.	Some diversion information is made confidential pursuant to Penal Code section 13300(n)	
<i>d. Whether diversion completed</i>	2.A.	Some diversion information is made confidential pursuant	

		to Penal Code section 13300(n)	
7. Charges filed			
<i>a. Statutes (applicable code section)</i>	1		Produced
<i>b. Severity (i.e., infraction, misdemeanor, wobbler, felony)</i>	2.A.		Produced
<i>c. Any enhancements</i>	3		
<i>d. Maximum sentence</i>	3		
8. Factors considered in deciding charges to file, and level of charges, including			
<i>a. Injuries to persons</i>	3		
<i>b. Financial loss to persons</i>	3		
<i>c. Status of victim (i.e., law enforcement, child, spouse, etc.)</i>			
<i>d. Prior criminal history of defendant</i>	3	Local summary criminal history information is made confidential pursuant to sections 13300 and 13305 of the Penal Code, Government Code sections 6254(c), (f), (k), 6276.28, and 6255.	Exempt from disclosure
<i>e. Victim's cooperation</i>	3		
9. Bail/custody information			
<i>a. Bail amount requested</i>	3		
<i>b. Detention orders sought</i>	3		
<i>c. Whether bail was set or denied</i>	3		
<i>d. Whether individuals were released on bail or not</i>	3		
<i>e. Pre-plea/pre-trial custody status</i>	3		
10. Plea offers			
<i>a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements</i>	2.A.	Exempt from disclosure pursuant to Government Code §§ 6254(f), (k), (p), and 6255(a); Evidence Code § 1153;	Exempt from disclosure

		Government Code § 6276.04; Business and Professions Code § 6202; and Code of Civil Procedure §§ 2018.010 to 2018.080.	
<i>b. Dates of plea offers</i>	3		
<i>c. Sentence(s)/disposition(s) offered</i>	2.A.	Exempt from disclosure pursuant to Government Code §§ 6254(f), (k), (p), and 6255(a); Evidence Code § 1153; Government Code § 6276.04; Business and Professions Code § 6202; and Code of Civil Procedure §§ 2018.010 to 2018.080.	Exempt from disclosure
<i>d. Records of whether any plea offer was accepted, including date of acceptance</i>	3		
11. Case outcomes			
<i>a. Charges of conviction</i>	1		Produced
<i>b. Dismissed charges</i>	2.A.		
<i>c. Sentences</i>	1		Produced 5/24/22
12. Counsel for defendant, whether public defender or private counsel	2.A.		
13. Demographic and other information concerning victims			
<i>a. Race</i>	1		Produced
<i>b. Ethnicity</i>	1		Produced
<i>c. Gender/sex</i>	1		Produced
14. Recommendations regarding parole			
15. Recommendations regarding pardon or commutation			

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At this time, it appears that production of non-protected data in category “(1) exists and is digitally accessible for 2015 to present” has been completed. Please let us know if you wish to proceed with hiring an outside vendor to program and extract the remaining existing and non-protected data points, and I will provide further payment instructions upon consultation with the IT Department.

If you have any questions regarding this response, please contact me at (442) 265-1120.

Sincerely,

A handwritten signature in cursive script that reads "Eric Havens".

Eric Havens
County Counsel