



County of Santa Cruz

District Attorney's Office

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JEFFREY S. ROSELL
DISTRICT ATTORNEY

August 15, 2022

Ellen Leonida
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

RE: California Public Records Act Request, Dated September 7, 2021

Dear Ms. Leonida:

Thank you for the opportunity to respond to the California Public Records Act (CPRA) request, dated September 7, 2021, on behalf of the American Civil Liberties Union of Northern California. Our office has reviewed each subset of data requested, for the period 2015 through the date of your letter and indicated whether (1) the data exists and can be extracted via a report; (2) the data does not exist in the District Attorney's records; or (3) the data exists in the District Attorney's records but would require a manual review of each file or programming to extract. Please find the table below providing this information. For all the requested, non-exempt data, the County of Santa Cruz ("County") is providing the report that includes the disclosable data extracted through the District Attorney's Office case management system, which utilizes software provided by Equivant ("DAMION"), implemented in June 2003.

As set forth in the table below, some of the requested data was not tracked within the District Attorney's Office's case management system but may exist within a document in the related paper file. The County is not aware of a method to extract this data through programming and believes a manual review of each file would be necessary to obtain each subset of data. Compliance with your requests as to this data would require the review of a voluminous amount of paper files, an unreasonable amount of effort, take our staff away from other required duties, likely take years and years to complete, and thus be overly burdensome. Therefore, the public interest in nondisclosure outweighs the public interest served by disclosure. (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166; Gov. Code, § 6255.)

If you have information about programming that could extract data that was not tracked in a case management system, the County is willing to try to obtain the data through such programming. Pursuant to Government Code subsection 6253.9(b)(2) and *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, the costs for this data extraction and programming would be the responsibility of the requester.

The chart below identifies the exemptions the County anticipates asserting for any subset of data.

After the chart, you will also find a more detailed analysis of why the District Attorney, and I have determined that each exemption asserted is appropriate. The County remains willing to discuss these exemptions and any authority or analysis you provide. The County also reserves the right to assert any additional exemptions or privileges regarding data that is not released in the DAMION report.

Data Requested	Existence of Data	Exemptions
1. Unique identifier(s) associated with each defendant, each case, and each arrest		
a. Name of defendant	(1) Data exists and can be extracted via report.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4 th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
b. Court case number(s)	(1) Data exists and can be extracted via report.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4 th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
c. Arresting agency number(s)	(1) Data exists and can be extracted via report.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4 th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
d. Any other unique identifier(s)	(1) Unique data exists such as "DA Log Number," "CII #" (rap sheet), "FBI No.," "S#" and "Docket Number" and can be extracted via report.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4 th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
2. Demographic and other information concerning each defendant		
a. Race	(1) Data exists and can be	

Data Requested	Existence of Data	Exemptions
	extracted via report. Not consistently tracked.	
b. Ethnicity	(2) Data does not exist in records.	
c. Country of origin or nationality	(2)(3) Data may exist in records but would require manual review of file or programming to extract if applicable.	
d. Gender/sex	(1) Data exists and can be extracted via report.	
e. Age or date of birth	(1) Data exists and can be extracted via report.	Date of birth is exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
f. Prior criminal convictions of a defendant	(3) Partial/incomplete data exists in records but would require manual review of file or programming to extract.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal. App.4 th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
3. Information regarding each arrest		
a. Zip code of arrest	(3) Data exists in records but would require manual review of file or programming to extract.	
b. Date of arrest	(3) Data exists in records but would require manual review of file or programming to extract.	
c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)	(1) Data exists and can be extracted via report.	
4. ADA assigned to the case	(1) Data exists and can be extracted via report.	
5. Decisions to decline to prosecute		
a. Date of decision to decline to prosecute	(1) Data exists and can be extracted via report.	
b. Identity of person who made final decision to decline prosecution	(3) Data exists in records but would require manual review of file or programming to extract.	

Data Requested	Existence of Data	Exemptions
c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)	(3) Data exists in records but would require manual review of file or programming to extract charge-level information.	
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 victim's level of cooperation in prosecuting case	(1) Some of the data exists in records and can be extracted via report. (3) For any additional data or analysis, the data may exist in records but would require manual review of file or programming to extract. Additional analysis is <u>exempt from disclosure</u> .	Exempt from disclosure under Government Code subsections 6254(f), 6254(k), 6254(p)(2), and 6255(a); <i>Rackauckas v. Superior Court</i> (2002) 104 Cal.App.4 th 169, 176-178; Government Code section 6276.04; Business and Professions Code section 6202; and Code of Civil Procedure sections 2018.010 to 2018.080.
6. Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)		
a. Date of diversion offer	(3) Data exists in records but would require manual review of file or programming to extract.	Penal Code subsection 13300(n) provides: "Notwithstanding subdivision (l) or (m), a local criminal justice agency shall not release information under the following circumstances: (1) Information concerning an arrest for which diversion, or a deferred entry of judgment program has been ordered without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed. (2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated. (3) Information concerning an arrest without a disposition without attempting to determine whether
b. Type of diversion offered	(3) Data exists in records but would require manual review of file or programming to extract.	
c. Whether diversion accepted	(3) Data exists in records but would require manual review of file or programming to extract.	
d. Whether diversion completed	(3) Data exists in records but would require manual review of file or programming to extract.	

Data Requested	Existence of Data	Exemptions
		diversion has been successfully completed or the individual was exonerated.”
7. Charges filed		
a. Statutes (applicable code section)	(1) Data exists and can be extracted via report.	
b. Severity (i.e., infraction, misdemeanor, wobbler, felony)	(1) Data exists and can be extracted via report; however may be incomplete based on individual case.	
c. Any enhancements	(1) Data exists and can be extracted via report.	
d. Maximum sentence	(3) Data exists in records but would require manual review of file or programming to extract.	
8. Factors considered in deciding charges to file, and level of charges, including		
a. Injuries to persons	(3) Data exists in records but would require manual review of file or programming to extract.	
b. Financial loss to persons	(3) Data exists in records but would require manual review of file or programming to extract.	
c. Status of victim (i.e., law enforcement, child, spouse, etc.)	(3) Data exists in records but would require manual review of file or programming to extract.	
d. Prior criminal history of defendant	(3) Data exists in records but would require manual review of file or programming to extract.	Exempt from disclosure under Penal Code sections 13300-13305; <i>Westbrook v. County of Los Angeles</i> (1994) 27 Cal.App.4 th 157, 162-167; and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).
e. Victim’s cooperation	(3) Data exists in records but would require manual review of file or programming to extract.	
9. Bail/custody information		
a. Bail amount requested	(2)/(3): Data may exist in some files, but would require manual review of file or programming to extract.	
b. Detention orders sought	(2)/(3): Data may exist in some files, but would require manual	

Data Requested	Existence of Data	Exemptions
	review of file or programming to extract.	
c. Whether bail was set or denied	(2)/(3): Data may exist in some files, but would require manual review of file or programming to extract.	
d. Whether individuals were released on bail or not	(2)/(3): Data may exist in some files, but would require manual review of file or programming to extract.	
e. Pre-plea/pre-trial custody status	(2)/(3): Data may exist in some files, but would require manual review of file or programming to extract.	
10. Plea offers		
a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements	(3) Data exists in records but would require manual review of file or programming to extract.	Exempt from disclosure under Government Code subsections 6254(p)(2), 6254(k), and 6255(a); Evidence Code section 1153; Government Code section 6276.04; Business and Professions Code section 6202; and Code of Civil Procedure sections 2018.010 to 2018.080.
b. Dates of plea offers	(3) Data exists in records but would require manual review of file or programming to extract.	
c. Sentence(s)/disposition(s) offered	(3) Data exists in records but would require manual review of file or programming to extract.	Exempt from disclosure under Government Code subsections 6254(p)(2), 6254(k), and 6255(a); Evidence Code section 1153; Government Code section 6276.04; Business and Professions Code section 6202; and Code of Civil Procedure sections 2018.010 to 2018.080.
d. Records of whether any plea offer was accepted, including date of acceptance	(3) Data exists in records but would require manual review of file or programming to extract.	
11. Case outcomes		
a. Charges of conviction	(1) Data exists and can be extracted via report.	
b. Dismissed charges	(1) Data exists and can be extracted via report.	
c. Sentences	(3) Data exists in records but would require manual review of	

Data Requested	Existence of Data	Exemptions
	file or programming to extract.	
12. Counsel for defendant, whether public defender or private counsel	(1) Data exists and can be extracted via report.	
13. Demographic and other information concerning victims		
a. Race	(1) Data exists and can be extracted via report.	
b. Ethnicity	(2) Data does not exist in records.	
c. Gender/sex	(1) Data exists and can be extracted via report.	
14. Recommendations regarding parole	(3) Data exists in records but would require manual review of file or programming to extract.	
15. Recommendations regarding pardon or commutation	(3) Data exists in records but would require manual review of file or programming to extract.	

Additional Explanation Regarding Exemptions

Most of data requested is from the County's local summary criminal history information under Penal Code section 13300. Pursuant to section 13302, "An employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor." Subsection 13300(b) enumerates the list of officials and agencies entitled to access "when needed in the course of their duties," and subsection 13300(c) enumerates a list of officials and agencies entitled to access only upon a showing of "compelling need." (Penal Code, § 13300, subds. (b)-(c).) Neither your client nor your firm come within any of the numerous agencies and officials entitled to local summary criminal history information as a matter of right or upon a showing of compelling need. Nor does the request come within a release permitted under subsection 13300(j) because the "release of the information would enhance public safety, the interest of justice, or the public's understanding of the justice system *and* the person making the request declares that the request is made for a scholarly or journalistic purpose." (Penal Code, § 13300, subds. (j), italics added.) Overall, "[t]he language of Penal Code section 13300 et seq., demonstrates that the Legislature intended nondisclosure of criminal offender record information to be the general rule." (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164.)

The County has nonetheless determined that certain data from the local summary criminal history information may be released from DAMION. First, subsection 13300(h) provides, "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.*" (Penal Code, § 13300, subds. (j), italics added.) Second, 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." (Penal Code, § 13302, italics added.) As recognized in subsection 13300(h), "[t]he 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, 165-166 [citing *Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 76-77].) Given the ability to use the released data to evaluate any potential claims under Racial Justice Act (Assembly Bill No. 2542) without linking that data to each individual and infringing on the privacy rights of every individual in the County subject to arrest and potential prosecution since 2015, the County also finds that "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255, subd. (a).) The County therefore cannot release data that includes or could easily lead to the "identity of the subject of the record" consistent with Penal Code sections 13300 to 13305 and Government Code subsections 6254(c), 6254(f), 6254(k), and 6255(a).

While not contained in the local summary criminal history information, the request also seeks information in files that constitutes attorney work product, and those records will not be released pursuant to Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080. Any record including the analysis of the

District Attorney or a Deputy District Attorney about a decision not to prosecute a case is also exempt under the deliberative process exemption in Government Code subsection 6254(p) and pursuant to Government Code subsection 6254(f). (See *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174-176 [“The investigation exemption does not terminate when the investigation terminates” and a memorandum of a deputy district attorney about his or her decision not to bring charges prepared as part of a criminal investigation is exempt if it contains his or her “legal opinions, thoughts, impressions and conclusions.”].) Given the ability to use the released data to evaluate any potential claims under the Racial Justice Act without infringing on the confidential deliberative process of the District Attorney’s Office and thereby hindering future prosecutions, the County also finds that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code, § 6255, subd. (a).) For these reasons, any data or records containing analysis about the reasons for declining to prosecute will not be released under Government Code subsections 6254(f), 6254(p)(2), and 6255(a), Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080.

Lastly, the County will not produce any plea offers made or reasons for plea offers. First, decisions by the District Attorney to offer a plea and the reasons for the offer are exempt from disclosure under the deliberative process exemption in Government Code section 6254(p)(2) and include attorney work product exempt from disclosure under Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080. Second, while this request is made to obtain evidence that may later be used in a challenge under the Racial Justice Act, evidence of plea offers could not be used for that purpose. (See Evid. Code, § 1153 [“Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or to any other crime, made by the defendant in a criminal action is inadmissible *in any action or in any proceeding of any nature*, including proceedings before agencies, commissions, boards, and tribunals.”], italics added.) Third, the District Attorney believes that the release of plea offers and reasons for such offers will undermine his ability to carry out the Office’s duties in future criminal cases. Given the ability to use the released data to evaluate any potential claims under the Racial Justice Act without hampering the ability of the District Attorney’s Office to seek future plea agreements in the interest of justice, the County also finds that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code, § 6255, subd. (a).) For these reasons, any data or records containing this information will not be released under Government Code sections 6254(p)(2), 6254(k), and 6255(a), Evidence Code section 1153, Government Code section 6276.04, Business and Professions Code section 6202, and Code of Civil Procedure sections 2018.010 to 2018.080.

Sincerely,



Eric P. Seib
Chief of Administration