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November 10, 2022

*Via E-mail:* [Wilner@braunhagey.com](mailto:Wilner@braunhagey.com)  
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Joshua Wilner  
Braunhagey & BordenLLP  
351 California Street, 10th Floor  
San Francisco, CA 94104

**Re: Public Records Act Request (Government Code § 6250, et. seq.)**

Mr. Wilner:

As part of our discussions regarding your Public Records Act request of February 18, 2022 and the records that the Merced County District Attorney will be providing when the appropriate report is run from its Karpel system you graciously indicated a willingness to work with us on the timing of the providing of such a report, but you asked that I specifically identify the exemptions that the County will be asserting for any subset of the requested data and an estimated time to produce a preliminary report containing areas of data that don't need a manual redaction and an estimated timeframe for a final report. Please accept this letter as the position of the County with respect to the different subset of requested data that the County believes to be exempted from disclosure under the Public records Act, and the estimate for production of the two reports.

First, the preliminary report should be completed after the Thanksgiving Holiday. My estimate is November 29. Once that initial report has been run and the County has had the opportunity to determine the extent of redaction needing to be made, the final reports should be provided by mid-January. The County is willing to keep you in the loop as to its efforts on running those reports.

Please note that if you disagree with my position on any of the articulated exemptions protecting the requested subset of data from being disclosed, I am willing to consider any authority you have to the contrary and discuss further whether such data might still be exempted from disclosure.

I believe that I have previously articulated the County's position with respect to the areas of data that is available, and whether the data was subject to an exemption in my letter of

May 12, 2022. That said, our discussion might best be advanced by converting that into a table so that we can address the areas of data that the County still believes are exempted from disclosure. That table is as follows:

Data requested	Claimed Applicable exemptions (if any)
1. Unique identifiers	
a. Name of defendant	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).
b. Court case number(s)	
c. Arresting agency number(s)	
d. Any other unique identifier(s)	
2. Demographic and other information	
a. Race	None
b. Ethnicity	None
c. Country of origin or nationality	None
d. Gender/sex	None
e. Age or date of birth	Date of Birth is exempt from disclosure pursuant to 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	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).
3. Arrest Information	
a. Zip code of arrest	None
b. Date of arrest	None
c. Charge identified by law enforcement...	None
4. ADA Assigned to Case	None

5. Decisions to Decline to Prosecute	None
a. Date of decision to decline to prosecute	None
b. Identity of person who made final decision to decline prosecution	None
c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case level where available)	None
d. Reasons for the declinations to prosecute, including but not limited to:	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.4th 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.
i. police misconduct involved in case;	
ii. injuries to persons involved;	
iv. financial loss to persons involved;	
v. prior criminal record of suspect;	
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	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 diversion has been successfully completed or the individual was exonerated."
b. Type of diversion offered	
c. Whether diversion accepted	
d. Whether diversion completed	

7. Charges filed	
a. Statutes (applicable code section)	None
b. Severity (i.e., infraction, misdemeanor, wobbler, felony)	None
c. Any enhancements	None
d. Maximum sentence	None
8. Factors considered in deciding charges to file, and level of charges, including	
a. Injuries to persons	None
b. Financial loss to persons	None
c. Status of victim (i.e., law enforcement, child, spouse, etc.)	None
d. Prior criminal history of defendant	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).
e. Victim's cooperation	None
9. Bail/custody information	
a. Bail amount requested	None
b. Detention orders sought	None
c. Whether bail was set or denied	None
d. Whether individuals were released on bail or not	None
e. Pre-plea/pre-trial custody status	None
10. Plea offers	
a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements	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	None
c. Sentence(s)/disposition(s) offered	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	None
11. Case Outcomes	
a. Charges of conviction	None
b. Dismissed charges	None
c. Sentences	None
12. Counsel for defendant, whether public defender or private counsel	None
13. Demographic and other information concerning victims	None
a. Race	None
b. Ethnicity	None
c. Gender/sex	None
14. Recommendations regarding parole	None
15. Recommendations regarding pardon or commutation	None

As you are aware, California Penal Code section 13300 et seq defines each local criminal justice agency’s master record of information. This record is called the “Local Summary Criminal History Information.” The statute clearly prohibits dissemination of such information except in certain circumstances. Merced County’s position is that this Public Records Act request does not fit within any articulated allowable use of the Local Summary Criminal History Information, and is therefore not disclosable – that said, certain requested data may be released in the Karpel Report that I discussed above. In preparing the above-referenced report it is important to note that the above-articulated subsets of data not subject to any exemption are labeled “none” and those subsets, to the extent that they are tracked, *will be* included in the report. The subsets of data that will not be included in the report have the legal reason for their exclusion.

The subsets of data that can be released pursuant to the Public Records Act without linking that data to any individual or otherwise infringing on the privacy rights of the arrestee will be produced. The County 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).) of those subsets of data that could easily lead to the “identity of the subject of the record” therefore the County 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).

With respect to the subsets of data identified above that constitute attorney work product (including the decisions on what to charge, and any pleas offers) the County’s position is that 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 that would include any analysis of the District Attorney or any of the Deputies in the office, 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 decision not to bring charges prepared as part of a criminal investigation is exempt if it contains his “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.

As indicated above, should you have authority to the contrary of the above exemptions from disclosure I am happy to consider the same. I again thank you for your courtesy and cooperation throughout this process.

Sincerely,

Forrest W. Hansen  
Merced County Counsel



Thomas E. Ebersole  
Assistant County Counsel