



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

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VIA ELECTRONIC MAIL

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November 19, 2022

Ellen Leonida
ACLU Northern California

Dear Ms. Leonida:

CALIFORNIA PUBLIC RECORDS ACT REQUEST

The Los Angeles County District Attorney's Office (LADA) is in receipt of your California Public Records Act (PRA) request dated July 23, 2021, seeking:

"This CPRA letter constitutes a renewal of the ACLU's two prior requests (as relevant, updated to the present day) and also a request for the additional following records in the possession or control of the Office of the District Attorney of Los Angeles for the time-period 2015 to Present:

1. *Any and all written policies, memoranda, or guidance documents regarding:*
 - a. *Diversion eligibility and/or programming;*
 - b. *Custody and/or bail recommendations;*
 - c. *Charging recommendations and/or decisions, including, but not limited to:*
 - i. *Charging recommendations and/or decisions regarding enhancements;*
 - ii. *Charging recommendations and/or decisions regarding special circumstances; or*
 - iii. *Charging recommendations and/or decisions regarding wobblers;*
 - d. *Compliance with Brady v. Maryland, 373 U.S. 83 (1963);*
 - e. *Jury selection;*
 - f. *Sentencing recommendations;*
 - g. *Prosecution of minors;*
 - h. *Parole recommendations;*
 - i. *Pardon and commutation recommendations;*
 - j. *Reports to the State Bar relating to discipline and/or prosecutorial misconduct;*
 - k. *Data collection relating to criminal matters, including demographic data of defendants and victims; or*
 - l. *Referral of cases for federal prosecution.*

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211 West Temple Street
Suite 1200
Los Angeles, CA 90012
(213) 257-2905

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;*
 - d. *Which relate to bias, implicit bias, unconscious bias, and/or racism; or*
 - 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).*
3. *Records concerning the Racial Justice Act:*
 - a. *Implementation of and compliance with the RJA;*
 - b. *Communications concerning the RJA; or*
 - c. *Trainings related to the RJA.*
4. *All investigations into Batson-Wheeler motions, including, but not limited to:*
 - a. *Motions filed;*
 - b. *Motions granted;*
 - c. *Internal training and/or discipline; or*
 - d. *Reports to the State Bar relating to any Batson-Wheeler motions made and granted.”*

The ACLU’s two prior requests referenced herein were attached as Exhibits 1 and 2 to the current request and are dated May 13, 2019 and July 29, 2019, and indicated, “This CPRA letter constitutes a renewal of the ACLU’s two prior requests (as relevant, updated to the present day.” The requests relating to the May 13, 2019 items and July 29, 2019 were interpreted as requesting updated items from the time of the 2019 disclosures.

The LADA has made prior disclosures related to this request on August 19, 2021, September 20, 2021, October 18, 2021, November 4, 2021, December 13, 2021, May 6, 2022, and May 16, 2022. Several discussion have been held regarding additional requests for items or a clarification of outstanding items.

Some of the records and information you request are exempt from disclosure under the Public Records Act and will not be released. The following records are exempt from disclosure for each item requested in your July 23, 2021 requests, incorporating your May 13, 2019 and July 29, 2019 requests:

Preliminary drafts, notes, interagency or intra-agency memoranda. See Government Code § 6254(a), which separately exempts “preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.”

Records containing attorney work product and the official information privilege, including attorney work product found in memoranda discussing case issues or office policy and relating to questions of concern pertaining to the DA’s prosecutorial function. See Government Code §§ 6254, subdivisions (a) and (k), and 6255; Pen. Code § 1054.6; Evidence Code § 1040.

Records containing discussions implicating the deliberative process. See Government Code § 6255; (California First Amendment Coalition v. Superior Court (1998) 67 Cal.App.4th 159)

Records in which the public interest in non-disclosure of the record clearly outweighs the public interest served by disclosure. See Government Code, § 6255(a); (L.A. Unified School District v. Superior Court (2014) 228 Cal.App.4th 222.) Specifically, records that would reveal the thought process or “decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its function.” Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325, 1342, quoting Dudman Communications v. Dept. of Air Force (D.C. 1987) 815 F.2d 1565, 1568.)

Documents provided to our office by a governmental agency which we agreed to treat as confidential. See Gov. Code § 6254.5, subd. (e);

Juvenile court records. See Welf. & Inst. Code, § 827; Gov. Code § 6254, subd. (k);

Burdensome requests. See American Civil Liberties Union v. Deukmejian (1982) 32 Cal.3d 440, 452-453; County of Los Angeles v. Superior Court (Kusar) (1993) 18 Cal.App.4th 588, 591-592.

Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. See Gov. Code § 6254, subd. (k);

The public interest in non-disclosure of the record clearly outweighs the public interest served by disclosure. (Gov. Code, § 6255(a); (L.A. Unified School District v. Superior Court (2014) 228 Cal.App.4th 222.)

Instances in which we have determined that there is no existing record that contains all the information you requested. Please note that the LADA is not required to create a record that does not exist at the time of the request. (Gov. Code section 6252, subd. (e); Haynie v. Superior Court (2001) 26 Cal.4th 1061, 1075.)

July 23, 2021 Request:

1. 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;
- d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
- 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).

Policies and notices regarding training will be disclosed, however any and all videos and written materials regarding training seminars hosted by LADA are exempt and will not be disclosed for the previously stated reasons and for the following reasons:

The LADA hosts training seminars, some of which are exclusively available to current and retired criminal prosecutors and peace officers but are not open to the public. Pending and closed criminal cases, on-going investigations, legal theories and arguments, confidential law enforcement techniques and other matters necessary for the candid discussion within the agency are contained within the training seminars and are exempt pursuant to the reasons stated herein.

Records containing attorney work product and the official information privilege, including attorney work product found in memoranda discussing case issues or office policy and relating to questions of concern pertaining to the DA's prosecutorial function. See Government Code §§ 6254, subdivisions (a) and (k), and 6255; Pen. Code § 1054.6; Evidence Code § 1040.

Records containing discussions implicating the deliberative process. See Government Code § 6255; (*California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159)

Records in which the public interest in non-disclosure of the record clearly outweighs the public interest served by disclosure. See Government Code, § 6255(a); (*L.A. Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222.) Specifically, records that would reveal the thought process or "decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its function." *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342, quoting *Dudman Communications v. Dept. of Air Force* (D.C. 1987) 815 F.2d 1565, 1568.)

Documents provided to our office by a governmental agency which we agreed to treat as confidential. See Gov. Code § 6254.5, subd. (e);

Records relating to investigative files and pending cases, related on-going investigations or closed investigations and are exempt. *Williams v. Superior Court* (1993) 5 Cal.4th 337, 349; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; Gov. § 6254, subd. (f).

Additionally, your request for any and all policies regarding training as well as any training materials, recorded trainings, or related materials is unduly burdensome and is respectfully declined. See *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-453; *County of Los Angeles v. Superior Court* (Kusar) (1993) 18 Cal.App.4th 588, 591-592. Your request is too expansive and will result in a voluminous number of records. Each of the records would need to be individually reviewed to ensure that they were responsive and

not a “false positive.” A further review would be necessary to ensure that privileged, confidential, and otherwise exempt materials contained therein are redacted. Therefore, your request for any and all policies regarding training as well as any training materials, recorded trainings, or related materials is unduly burdensome and we are unable to produce those records.

The training announcements via GOMs, flyers, or other written notification have been disclosed for this response. Training announcements hosted by the Prosecutors Alliance of California were previously disclosed because LADA staff received approval to attend the training seminars.

Subject to the exemptions outlined herein the LADA will produce all responsive, non-privileged and non-exempt records. As stated during discussions, LADA will gather the presentation materials and provide them on a rolling basis. Refer to Prior Disclosures and See Attachments 45-51

2. Records concerning the Racial Justice Act:

- a. Implementation of and compliance with the RJA;
- b. Communications concerning the RJA; or
- c. Trainings related to the RJA.

The LADA has previously provided disclosable records related to the implementation of the RJA and training related to the RJA. However, recent developments require an additional update:

- The LADA previously advised that the communications related to the RJA were exempt because they were overly burdensome due to the volume. Continued discussions concerning the emails were held, and the ACLU indicated it would continue to evaluate solutions for narrowing the requested search for records.
- However, on October 20, 2022, the LADA announced the creation of a new Section within the HABLIT Unit of the LADA Writs & Appeals Division. See Attachment 52
- Additionally, a forthcoming RJA training session is currently being developed.
- These developments mean that communications regarding the RJA continue to grow exponentially beyond what was previously identified, and your request for communications related to the RJA is unduly burdensome and is respectfully declined. See *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-453; *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, 591-592. Your request is too expansive and will result in a voluminous number of records. Each of the records would need to be individually reviewed to ensure that they were responsive and not a “false positive.” Also, a further review would be necessary to ensure that privileged, confidential, and otherwise exempt materials contained therein are redacted.

Therefore, your request for communications related to the RJA is unduly burdensome and we are unable to produce those records.

Very truly yours,

GEORGE GASCÓN
District Attorney

By *Kimberly Toney*

Kimberly Toney
Special Assistant
Administration