



Sacramento County District Attorney's Office  
THIEN HO  
District Attorney

December 11, 2023

SENT VIA EMAIL

Emi MacLean  
American Civil Liberties Union Foundation  
Northern California  
[emaclean@aclunc.org](mailto:emaclean@aclunc.org)

Re: California Public Records Act Request

Dear Ms. MacLean:

The following is in response to your email and accompanying letter of November 17, 2023, requesting various items pursuant to the California Public Records Act (CPRA), California Government Code section 7920.000 *et seq.* Specifically, you have requested:

**A. Prosecutorial Data**

Please provide the following case, individual, and/or charge-level data in the possession or control of the District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to the date of the search. . . .

1. Unique identifier(s) associated with each defendant, each case, and each arrest
  - a. Court case number(s)
  - b. Arresting agency number(s)
  - c. Any other unique identifier(s)
2. Demographic and other information concerning each defendant
  - a. Race
  - b. Ethnicity
  - c. Country of origin or nationality
  - d. Gender/sex
  - e. Age or date of birth
  - f. Prior criminal convictions of a defendant
3. Information regarding each arrest
  - a. Zip code of arrest
  - b. Date of arrest
  - c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)

- d. Arresting agency
- 4. ADA assigned to the case
- 5. Decisions to decline to prosecute
  - a. Date of decision to decline to prosecute
  - b. Identity of person who made final decision to decline prosecution
  - c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)
  - d. Reasons for 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;
    - 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
  - b. Type of diversion offered
  - c. Whether diversion accepted
  - d. Whether diversion completed
- 7. Charges filed
  - a. Statutes (applicable code section)
  - b. Severity (i.e., infraction, misdemeanor, wobbler, felony)
  - c. Any enhancements
  - d. Maximum sentence
- 8. Factors considered in deciding charges to file, and level of charges, including
  - a. Injuries to persons
  - b. Financial loss to persons
  - c. Status of victim (i.e., law enforcement, child, spouse, etc.)
  - d. Prior criminal history of defendant
  - e. Victim's cooperation
- 9. Bail/custody information
  - a. Bail amount requested
  - b. Detention orders sought
  - c. Whether bail was set or denied
  - d. Whether individuals were released on bail or not
  - e. Pre-plea/pre-trial custody status
- 10. Plea offers
  - a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements
  - b. Dates of plea offers
  - c. Sentence(s)/disposition(s) offered
  - d. Records of whether any plea offer was accepted, including date of acceptance
- 11. Case outcomes
  - a. Charges of conviction
  - b. Dismissed charges

- c. Sentences
- 12. Counsel for defendant, whether public defender or private counsel
- 13. Demographic and other information concerning victims
  - a. Race
  - b. Ethnicity
  - c. Gender/sex
- 14. Recommendations regarding parole
- 15. Recommendations regarding pardon or commutation

Each request is addressed below.

Regarding request 1., this office prosecutes more than 20,000 cases per year. As such, your request encompasses more than 180,000 individual criminal cases. We do not keep or maintain an index that identifies the information you seek in request 1.a. – c. The CPRA applies to existing records and does not require a public agency to create a record that does not exist. (Gov’t Code §§ 7920.530, 7920.545.) With regard to 1.a. – c., we could conduct a search of our computerized case management system and create a spreadsheet that would include each defendant’s name, court case number, and primary arresting agency case number. Under the CPRA, a requester is responsible for paying the costs associated with preparing the computer inquiry to retrieve the data. (Gov’t Code § 7922.575(b).) If you are interested in pursuing this matter, please advise me, and I will ask our IT section to prepare an estimate of the amount of programming time required. Once we have the estimate, you would be responsible for paying that cost before we proceed. After the data is assembled, if it took less computer programming time than had been estimated, you would receive a refund; if it took more time, then you would be required to pay the balance before receiving the data. With regard to 1.c., you do not define “unique identifier.” This phrase could include private information such as social security numbers, Criminal Identification Index numbers, drivers’ license numbers, or other information that if released, the public interest served by not disclosing these items outweighs the public interest served by disclosing them. (Gov’t Code § 7922.000.) Further, such information may be prohibited from release to the general public by other state or federal law. (Gov’t Code § 7927.705.) As such, any computer search would not include any “unique identifier” other than a defendant’s name and local identifier (county cross-reference (“x-ref”) number) which are set forth in our criminal complaints and informations filed with the court as public documents.

Furthermore, we are assuming that your request only seeks information regarding cases prosecuted in adult court (adult defendants or minors prosecuted in adult court) and not minors prosecuted in juvenile court in Sacramento County. We would not be able to provide information regarding minors prosecuted in juvenile court because of the privacy and confidentiality concerns that make juvenile case records exempt from disclosure under the CPRA. (See Gov’t Code §§ 7922.000, 7927.700, 7927.705.) Dissemination of information from juvenile case files is limited by Welfare and Institutions Code section 827. Records may be sealed pursuant to Welfare and Institutions Code sections 781 and 786. We assume you recognized these limitations and intended your request accordingly.

For request 2.a. – f., we do not keep or maintain an index that identifies any of the information you seek, nor is the information maintained by this office in our computerized case management

system. While the information may exist to some extent within our physical case files, this request would require us to hand search more than 180,000 individual case files to retrieve all such information that may exist. Such a request is unduly burdensome, something not required under the CPRA. Even if such a search was conducted, Government Code section 7923.600(a) exempts from CPRA disclosure records of complaints to or investigations conducted by any local police agency, investigatory files compiled by any local police agency, and investigatory files compiled by any other local agency for law enforcement or licensing purposes. Under the California Constitution and by statute, the District Attorney is vested with broad authority to investigate violations of the law, and prosecute such matters in criminal, civil, or administrative actions, as may be appropriate. The District Attorney's employees include peace officers, attorneys, and other staff who perform such investigations. There can be no question that the District Attorney's Office is a local agency that conducts police or law enforcement investigations and has complaints and investigatory files within the meaning of section 7923.600(a). Case law supports this conclusion. (See *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048; *Rackaucas v. Superior Court* (2012) 104 Cal.App.4th 169; *Fagan v. Superior Court* (2003) 111 Cal.App.4th 607; *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4th 1099.) This exemption applies not only to documents generated by the agency, but also to records gathered from victims, witnesses, and others. (See *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.) This exemption continues to apply even if the case is complete, and the investigation closed. (See *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048; *Williams v. Superior Court* (1993) 5 Cal.4th 337.) To the extent that we may be in possession of some of the materials you seek, such materials are part of our investigatory files and are thus exempt from production under the CPRA.

Further, you specifically ask for "prior criminal convictions" of all defendants without limitation. To the extent that a prior conviction was charged on a complaint or information, the computerized search of our case management system could identify cases in which we charged any prior convictions but would not include any prior conviction not charged. Not only would the non-charged prior convictions be exempt from CPRA production under Government Code section 7923.600(a) because they would come from our investigatory files, your request constitutes an undue burden as it would require a hand search of more than 180,000 criminal case files. Also, this request, as phrased, would require us to make public the entire criminal history without limitation of all persons who were charged over a nine-year period, and the information would come from documents restricted from public dissemination by other laws within the meaning of Government Code section 7927.705 and thus is exempt from production. (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157.) Depending on the information and its source, knowing disclosure to an unauthorized person may in fact be a crime. (Penal Code §§ 13302 – 13304.) Finally, the public interest served by not disclosing these items outweighs the public interest served by disclosing them. (Gov't Code § 7922.000.)

For request 3.a. – d., we do not keep or maintain an index that identifies the information you seek. As with requests 1. and 2. above, to the extent we possess the arrest information you seek, it would require a hand search of more than 180,000 case files, as well as tens of thousands of additional case files for which we declined to file charges, to identify all documents relevant to this request. Such a task is unduly burdensome. Moreover, the information would come from

our investigatory files which are exempt from production under Government code section 7923.600(a).

For request 4., by “ADA” it appears you mean the name of the deputy district attorney assigned to the case. A search of our computerized case management system could potentially supply this information. However, please note that it is common for a case to be assigned to multiple prosecutors throughout various stages of criminal proceedings and that the number of prosecutors generally increases the longer a case takes to make its way from initial filing to its completion. Also note that our computerized case management system does not always indicate that a case was assigned to a particular prosecutor, and to thoroughly identify all assigned prosecutors to any particular case would require an unduly burdensome hand search as described above. Should you wish to proceed with a computerized search for the readily accessible records in our possession, please advise me. The payment requirements are the same as described above.

For request 5.a. – d.i. – vi., documentation regarding a decision by the District Attorney’s Office not to file criminal charges is confidential. These records are exempted from disclosure by the deliberative process privilege, and also on the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. (Gov’t Code § 7922.000. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) Moreover, records reflecting an attorney’s mental impressions, legal considerations, opinions, and conclusions are considered privileged work product. In addition, because a decision was made in a case not to file charges, no proceedings occurred in court and thus are not otherwise public. Furthermore, this information, including the identify of the particular prosecutor who declined to file charges, would come from our investigatory files which are exempt from production pursuant to Government Code section 7923.600(a).

For request 6.a. – d., we do not have an index of any of this information. The only way to identify this information would be to conduct a hand search of over 180,000 cases which is unduly burdensome, and the contents are exempt from production pursuant to Government Code section 7923.600(a) as they are part of our investigatory files.

For request 7.a. – c., this information would be provided to you should you elect to pursue the computerized case management system search as described above. For request 7.d., we do not have an index identifying the “maximum sentence” of any particular case, nor is that calculation stored in our computerized case management system. Should you proceed with the search described above, you would have the necessary information to calculate the maximum sentence for any one of, or all of, the cases. Also, you would need to identify at what stage of the proceedings you are seeking the charges. Charges are sometimes amended as a case progresses. In felony cases charges are initially filed via complaint. Following a preliminary hearing or indictment, charges are filed by information or indictment. When requesting “charges filed,” you would need to specify whether you mean by the initial charging document, what the charges were at the time of resolution, or all charges at any stage of the proceedings.

For request 8.a. – e., we do not have an index of this information nor is it stored in our computerized case management system. Further, documentation regarding a filing decision by

the District Attorney's Office is confidential. These records are exempted from disclosure by the deliberative process privilege, and also on the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. (Gov't Code § 7922.000. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) Moreover, records reflecting an attorney's mental impressions, legal considerations, opinions, and conclusions are considered privileged work product.

For request 9.a. – e., we do not have an index of this information. This request is extremely vague and broad. For example, by "bail amount requested" do you mean the law enforcement agency, the probation department, the District Attorney's Office, or the defendant? It is not clear what is meant by "detention orders sought," as that could include a Governor's Warrant, a writ to obtain a federal prisoner for appearance in state court, an order setting bail, or a material witness hold. "Whether bail was set or denied" is vague in that orders setting bail commonly are revisited as a case makes its way through the court process and bail can be set, revoked, or modified during the pendency of a case; the same is true for "whether individuals were released on bail or not" and "pre-plea/pre-trial custody status." That said, the information you seek would come from over 180,000 of our investigatory files and to obtain the information is not only unduly burdensome but would retrieve records exempt from production pursuant to Government Code section 7923.600(a).

For request 10.a. – d., this request is also vague and broad. As cases progress through the court process, plea offers are commonly revised upward and/or downward with respect to both sentence, charge, and disposition specifics in general. We do not have an index of this information. The information you seek would come from over 180,000 of our investigatory files and to obtain the information is not only unduly burdensome but would retrieve records exempt from production pursuant to Government Code section 7923.600(a).

For request 11.a. – c., we do not have an index of this information. It would come from our investigatory files which are exempt from production pursuant to Government Code section 7923.600(a).

For request 12., we do not have an index of this information. Please note that is not uncommon for a defendant to have multiple defense attorneys either assigned or retained, or a combination of both, throughout the pendency of a case. To identify any or all counsel would require a search of over 180,000 of our investigatory files, and to obtain the information is not only unduly burdensome but would retrieve records exempt from production pursuant to Government Code section 7923.600(a).

For request 13.a. – c., we do not have an index of this information. Further, to identify this information would require a search of over 180,000 of our investigatory files, which is not only unduly burdensome, but would retrieve records exempt from production pursuant to Government Code section 7923.600(a).

For requests 14. and 15., this information would come from our investigatory files which are exempt from CPRA production pursuant to Government Code section 7923.600(a). That said, our practice is to make public many of our decisions relating to these requests. These documents can be found on our website at <https://www.sacda.org/early-prison-releases/early-prison-releases-opposition-letters/>.

## **B. Prosecutorial Policies, Memoranda or Guidance Documents**

Please provide policies, memoranda, or guidance documents considered or relied on by the Office. This includes, but is not limited to, policies, memoranda, or guidance documents concerning:

- a. Diversion eligibility and/or programming;
- b. Custody and/or bail recommendations;
- c. Charging recommendations and/or decisions
- 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;
- l. Referral of cases for federal prosecution;
- m. Training; and
- n. Compliance with the RJA.

Each request for policies, memoranda, or guidance documents is addressed below.

### **a. Diversion eligibility and/or programming**

This request seeks various information regarding diversion programs. We are interpreting your request for “diversion eligibility and/or programming” to apply to defendants charged with a crime, as the Sacramento County District Attorney’s Office does not itself utilize pre-filing diversion programs.

Your request does not clarify what you consider “diversion.” California Penal Code section 1000 *et seq.* provides several statutory diversion programs. As for the documents you seek regarding eligibility for such programs, the various criteria are set forth by statute and thus this information is already available to you publicly. Multiple diversion eligibility and programming information is available to you publicly and can be found on the Sacramento Superior Court’s website at <https://www.saccourt.ca.gov/criminal/collaborative-courts.aspx>.

In 2018, AB 1810 added Penal Code sections 1001.35 and 1001.36, which created the mental health diversion program. Similarly, the requirements for this diversion are set forth by statute.



We previously provided your organization on August 16, 2021, documents responsive to an identical request.

In Sacramento County, we have several collaborative courts, which involve partnerships between our office, the Superior Court, the Probation Department, the Public Defender's Office, and sometimes community-based organizations to provide services and avoid incarceration for certain offenders. These programs do not fall within the statutory definition of diversion as set forth in Penal Code section 1000 et seq. However, successful completion of some of these programs may result in a dismissal of charges, similar to the effect of a statutory diversion program. We are interpreting your request as including within your definition of "diversion" those programs where dismissal is available. Information regarding these, and other collaborative courts in Sacramento County, are provided on our website at [www.sacda.org](http://www.sacda.org) under the "In the Courtroom" heading by clicking on the link "Collaborative Courts." Further documents were previously provided.

General information related to diversion eligibility and/or programs can be found in our Legal and Case Prosecution Policy Manual, which we previously provided to you and is publicly available on our website, [www.sacda.org](http://www.sacda.org), under the "How Do I" heading by clicking on the "Policies" link.

As your organization is already in possession of these documents from the previous production, there is no need to provide them again. However, we are producing newer versions of some of the documents, which have since been updated. These consist of the following:

- 2023 Collaborative Courts Referral Quick Reference Guide
- Citizen's Academy Coll Court 2023
- How to Guide\_Collaborative Courts\_Rev Oct 2023
- General\_Office\_brochure-web
- Final\_CGR\_brochure

The following responsive documents are additionally being provided:

- Chronic Nuisance Offender Case Referral – Arrest Procedures
- Chronic Nuisance Offender Program
- The Chronic Offender Rehabilitation Effort Program

Please note that our Chronic Nuisance Offender (CNO) Program was recently renamed the Chronic Offender Rehabilitation Effort (CORE) Program. Some of the documents still bear the previous program name.

Otherwise, we do not have an index that identifies all documents relevant to this response. The CPRA applies to existing records and does not require a public agency to create a record that does not exist. (Gov't Code §§ 7920.530, 7920.545.) Further, such a request is unduly burdensome, as it would require us to hand search tens of thousands of files and over 400 employees' offices to locate potentially responsive documents, something not required under the CPRA.



Furthermore, additional documents identifying office policies or guidelines regarding diversion courts are, pursuant to the law, the types of policy documents exempt from disclosure under the CPRA by the deliberative process privilege. (Gov't Code § 7922.000. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) In addition, the courts have ruled that written policies concerning how prosecutors exercise their discretion in charging and sentencing are not subject to discovery. (*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478.) Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code section 7927.705. Other notations regarding specific cases are also exempt as privileged attorney work product.

Given the broad scope of your request, to the extent that we may possess materials related to diversion that may be contained in any of our investigatory files, such materials are exempt under Government Code section 7923.600(a).

Further, we would not necessarily be able to identify documents related to diversion programs simply from searching outcomes in the computerized case management system. We would have to examine the case event history or our physical files for notations. Given the time frame you have identified and the number of cases that would be involved, this would require a hand search of voluminous materials and would be unduly burdensome.

b. Custody and/or bail recommendations

We do not have an index that identifies documents relevant to this response. The CPRA applies to existing records and does not require a public agency to create a record that does not exist. (Gov't Code §§ 7920.530, 7920.545.) Further, to locate all materials relevant to this request would require us to examine all of our investigatory files for the time period you specify. As noted above, those files are exempt from production under the CPRA. Further, such a request is unduly burdensome, as it would require us to hand search tens of thousand of files, something not required under the CPRA. Depending on the content of any such materials, other exemptions such as the deliberative process privilege and attorney work product could apply.

In addition, these types of policy documents are exempted from disclosure under the CPRA by the deliberative process privilege. (Gov't Code § 7922.000. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136. The courts have ruled that written policies concerning how prosecutors will exercise their discretion in charging and sentencing are not subject to discovery. (*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478.) Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code section 7927.705.

That said, some information related to this request can be found in our Legal and Case Prosecution Policy Manual, which we have provided to you as noted above and is currently available on our website.

c. Charging recommendations and/or decisions

Given the broad scope of this request (including all sub-requests), to the extent that we may possess relevant materials in our investigatory files, such materials are exempt from production under Government Code section 7923.600(a). Further, these types of policy documents are exempt from disclosure under the CPRA by the deliberative process privilege. (Gov't Code § 7922.000. *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) In addition, the courts have ruled that written policies concerning how prosecutors exercise their discretion in charging and sentencing are not subject to discovery. (*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576; *People v. Keenan* (1988) 46 Cal.3d 478.) Thus, these documents are exempted from disclosure not only by the deliberative process privilege but also by Government Code section 7927.705.

That being said, some information related to this request can be found in our Legal and Case Prosecution Policy Manual, which we have provided to you as noted above and is currently available on our website.

d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963)

The Sacramento County District Attorney's Office trains its attorneys on federal and California cases regarding ethical discovery practices, including those set forth in *Brady v. Maryland*. However, these types of training materials are exempt from disclosure by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these outweighs the public interest served by disclosing them. (Gov't Code § 7922.000; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) These records reflect the thought processes of those whose responsibility it is to interpret the law and train our attorneys on the ethical administration of justice. Training discussions include tactical and strategic information. Disclosure would expose the decision-making process in such a way as to discourage candid discussion and thereby undermines the ability of the District Attorney's Office to perform its function of ensuring the fair administration of justice.

Furthermore, under Government Code section 7927.705, the release of records is restricted if doing so would violate any federal or state law, including laws relating to privileges. Code of Civil Procedure section 2018.030(a) provides a work product privilege for any "writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories." This privilege provides an absolute protection against disclosure. Such a writing is not discoverable under any circumstances. (*Id.*) Our *Brady* and discovery policies in general are stated in our Legal and Case Prosecution Policy Manual and are encompassed in that document's statement that "It is the policy of the Sacramento County District Attorney's Office to promptly provide all discoverable materials in criminal cases in accordance with the law. Prosecutors shall follow all constitutional, statutory, and ethical discovery obligations." As noted, we have provided that manual to you and it is available on our website.

Finally, we do not have an index identifying all the materials specified in this request, to conduct a search for them would be unduly burdensome, and any such materials contained within our investigatory files are exempt from CPRA production previously detailed.

e. Jury selection

The Sacramento County District Attorney's Office trains its attorneys on federal and California cases regarding the ethical selection of jurors. These types of training materials are exempt from disclosure by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these outweighs the public interest served by disclosing them. (Gov't Code § 7922.000; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) These records reflect the thought processes of those whose responsibility it is to interpret the law and train our attorneys on the ethical administration of justice. Training discussions include tactical and strategic information. Disclosure would expose the decision-making process in such a way as to discourage candid discussion and thereby undermines the ability of the District Attorney's Office to perform its function of ensuring the fair administration of justice.

Furthermore, under Government Code section 7927.705, the release of records is restricted if doing so would violate any federal or state law, including laws relating to privileges. Code of Civil Procedure section 2018.030(a) provides a work product privilege for any "writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories." This privilege provides an absolute protection against disclosure. Such a writing is not discoverable under any circumstances. (*Id.*) Our policy regarding jury selection is stated in our Legal and Case Prosecution Policy Manual and is encompassed in that document's statement that "The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion not to pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants." As noted, we have provided that manual to you and it is available on our website.

Additionally, in our June 3, 2022, response to a previous identical request from your organization, we noted the policy our office adopted discouraging the use of peremptory challenges. Pursuant to that policy, no prosecutor may exercise a peremptory challenge unless that prosecutor has completed 40 or more felony trials to verdict, has attended specific training related to AB 3070 and has been approved by the Chief Deputy, Assistant District Attorney, or an Assistant Chief Deputy District Attorney to use peremptory challenges.

Finally, we do not have an index identifying all the materials specified in this request, to conduct a search for them would be unduly burdensome, and any such materials contained within our investigatory files are exempt from CPRA production as previously detailed.

f. Sentencing recommendations

Please see responses to b., c., d., and e. above.

g. Prosecution of minors

Our policy regarding this topic can be found in our Legal and Case Prosecution Policy Manual, which we have provided to you and is available on our website. Your request for records on this topic is broad and could encompass a wide variety of materials that are not required to be produced due to the deliberative process and work product privileges, the investigatory file exemption, and other exemptions depending on the content of such materials. Furthermore, privacy and confidentiality concerns make juvenile case records exempt from disclosure under the CPRA. (See Gov't Code §§ 7922.000, 7927.700, 7927.705.) Dissemination of information from juvenile case files is limited by Welfare and Institutions Code section 827. Records may be sealed pursuant to Welfare and Institutions Code sections 781 and 786.

h. Parole recommendations

To the extent we may possess any such materials within our investigatory files, such materials are exempt from production pursuant to Government Code section 7923.600(a) as detailed above.

i. Pardon and commutation recommendations

Please see the response to h., above.

j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct

Our Legal and Case Prosecution Policy Manual includes information responsive to this request. We have provided that to you, and it is available on our website.

k. Data collection relating to criminal matters, including demographic data of defendants and victims

This language is vague. You do not define what you mean by "data collection." It is not clear whether you are seeking statistical information from our prosecution files, or only written policies, memoranda, or guidance documents related to that topic. If you seek statistical information from our prosecution files, such information would necessarily come from our investigation files and thus is exempt under Government Code section 7923.600(a), as noted above.

If you are seeking "written policies, memoranda, or guidance documents" regarding "data collection" of the type you identify, we have no responsive documents.

l. Referral of cases for federal prosecution

Any cases we have referred for federal prosecution would be part of our investigatory files exempt from disclosure under Government Code section 7923.600(a), as noted above. Otherwise, we have no responsive documents.

m. Training

This language is vague. If you are referring to any policies, memoranda, or guidance documents on trainings we conduct for our attorneys, we follow MCLE requirements for providers as set forth by the California State Bar, which can be found on its website: <https://www.calbar.ca.gov/Attorneys/MCLE-CLE/MCLE-Providers>.

n. Compliance with the RJA

It appears by “RJA” you are referring to the “Racial Justice Act” as codified in Penal Code section 745. Please see our Legal and Case Prosecution Policy Manual, which we have provided to you and is available on our website, and the discussions in d. and e., above.

**C. Any and All Training Agendas, Training Materials, and Recorded Trainings**

The documents you seek are exempt from disclosure by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these outweighs the public interest served by disclosing them. (Gov’t Code § 7922.000; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) These records reflect the thought processes of those whose responsibility it is to interpret the law and train our attorneys on the ethical administration of justice. Training discussions include tactical and strategic information. Disclosure would expose the decision-making process in such a way as to discourage candid discussion and thereby undermines the ability of the District Attorney’s Office to perform its function of ensuring the fair administration of justice. Further, under Government Code section 7927.705, the release of records is restricted if doing so would violate any federal or state law, including laws relating to privileges. Code of Civil Procedure section 2018.030(a) provides a work product privilege for any “writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories.” This privilege provides an absolute protection against disclosure. Any such writing is not discoverable under any circumstances. (*Id.*)

In addition, this office employs over 170 attorneys and possesses a large amount of material in the form of books, treatises, memoranda, publications, and other documents that could be considered within the scope of your request for “all training materials.” A large amount of these materials has been purchased or received by this office, and a large number of materials have been purchased or received by individual members of this office. Given the nature of criminal case litigation, the materials or portions of materials could be located in individual offices, online, in criminal case files, and elsewhere. To locate all such materials would be unduly

burdensome, as it would require us to hand search hundreds of employees' offices, computers, and tens of thousands of files, something not required under the CPRA.

Further, a significant number of such documents are subject to United States copyright law. Legal publications and treatises – all within the scope of your request – and other non-agency publications used in the education and training of our staff are controlled by federal copyright law. (See, e.g., 17 U.S.C. sections 102, 103.) Release of such copyrighted materials would similarly violate Government Code section 7927.705. Additionally, the public interest served by not disclosing these items outweighs the public interest served by disclosing them. (Gov't Code § 7922.000.) Copyrighted materials produced by an outside source which this office has are not the type of public records contemplated for release within the meaning of the CPRA.

That being said, we previously provided you on June 3, 2022, with certain training materials that we provided to our attorneys. We do not have updated materials to produce on this topic.

#### **D. Records Concerning Implementation of, and Compliance with, the Racial Justice Act**

To the extent that our investigatory files potentially contain materials related to the implementation of, compliance with, or communications concerning Penal Code section 745, such materials are exempt from production pursuant to Government Code section 7923.600(a).

Furthermore, “records concerning” the implementation of, compliance with, or communications concerning this law could potentially be located in the office of any attorney and could be in various form. We do not have an index that identifies the records you seek and are not required under the CPRA to create one. To search over 170 attorneys' offices and potentially over 170 computers and thousands of criminal case files is unduly burdensome and not required under the CPRA.

Further, depending on the content of any such materials, multiple exemptions and/or privileges could apply including the deliberative process privilege, attorney work product privilege, confidentiality under Government Code section 7921.505(c)(5), or would violate state or federal law to release under Government Code section 7927.705. Additionally, the public interest served by not disclosing these outweighs the public interest served by disclosing them. (Gov't Code § 7922.000; *Times Mirror Co. v Superior Court* (1991) 53 Cal.3d 1325; *Rogers v Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.)

That being said, this year the Sacramento County District Attorney's Office contracted with Sicuro Data Analytics (SDA) to review the content of our case management system, obtain any additional information needed from other sources, and provide statistical analysis of charging decisions and outcomes. SDA has not completed its analysis yet, so we have no further information to provide in that regard at this time. However, we are providing a copy of the signed contract with SDA, as well as documents that went to the Sacramento County Board of Supervisors for their approval, namely, the Board letter, the proposed resolution (a copy of the signed resolution can be found on the County's website under the Board's agendas), and the draft contract. These documents further explain the work SDA is conducting.

**E. Communications Concerning the RJA**

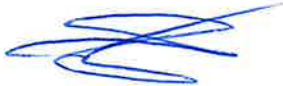
See response to D., above.

**F. All investigations into *Batson-Wheeler* motions, including, but not limited to motions filed and/or granted, internal discipline, and/or reports to the State Bar.**

We do not track such motions in our computerized case management system, nor do we have an index that identifies them. The only means to identify documents relative to motions being filed and/or granted would be to hand search tens of thousands of files, which again is unduly burdensome. Further, except for motions filed in court by this office, any other documents relevant to this request would come from our investigatory files, which are exempt from production pursuant to Government Code section 7923.600(a).

Sincerely,

THIEN HO  
DISTRICT ATTORNEY



Michael Blazina  
Assistant District Attorney