

Emi MacLean

From: Heller, Shana <shana.heller@cco.sccgov.org>
Sent: Tuesday, February 6, 2024 4:52 PM
To: Shaila Nathu
Cc: Haazim Amirali; PRA Response; Kory DeClark; Chessie Thacher; Emi MacLean; Kerrigan, Hilary
Subject: RE: California Public Records Act Request

Dear Shaila,

Thank you for your email and we appreciate the ACLU's patience. I assure you the County has not been unnecessarily delaying its response. As the ACLU is aware, the County previously took the position that it would only produce aggregate/statistical data in response to the ACLU's similar prior CPRA request, with respect to Request A. The County has been taking the necessary steps to evaluate the relevant legal authority and consider its previous position. As Request A includes nearly 50 data elements, this has taken time and numerous discussions, and only this week did the County complete that process, and only just earlier today did I receive the cost estimate to pull the data, as described below. We always welcome CPRA requesters to reach out for status updates, particularly if they have not heard from the County when expected, and we are happy to provide updates.

Request A

With respect to Request A, the County has determined that it can provide the following data elements in a spreadsheet, covering the period from 2015-present: ID per case for purposes of this request; Race; Gender/Sex; Year of birth; Zip code of incident; Year of arrest; Arresting agency; Charges filed – Statutes (applicable code section); Charges filed – severity (i.e., infraction, misdemeanor, wobbler, felony); Charges filed – any enhancements; Race of victim; and, Sex of victim.

The County is unable to provide the other requested data elements for the following reasons. Some of the data elements you seek cannot be queried from databases, or cannot be queried in such a way as to provide the information you seek, and compiling the data would require a hand count in which the DA's Office would need to locate, open, and examine a great number of cases. The CPRA does not require the DA's Office to conduct such an individual, case-by-case examination, nor to create a record that does not exist. (Gov. Code, § 7920.530; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665-667.) As to some of the requested elements, the regulatory scheme regarding criminal offender record information, the right to privacy under the California constitution, and applicable case law prohibit disclosure of such information. (Cal. Const., art. 1, § 1; Gov. Code, §§ 7922.000, 7927.705; Pen. Code, §§ 13102, 13201, 13202, 13300, 13303, 13304, 13305; *Craig v. Municipal Court* (1979) 100 Cal.App.3d 69; *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157.) In addition, some of the information you seek constitutes protected attorney work product. (Code Civ. Proc., § 2018.030; Gov. Code, § 7927.705). Further, some of the information you seek is exempt from disclosure pursuant to the official information privilege (Evid. Code, § 1040; 7927.705). Some information could also reveal the deliberative process involved in the County's decision-making and therefore are exempt from disclosure. (See *Times Mirror Co. v. Super. Ct.* (1991) 53 Cal.3d 1325, 1338-39; *Cal. First Amend. Coalition v. Super. Ct.* (1998) 67 Cal.App.4th 159; Evid. Code, § 1040; Gov. Code, § 7922.000.) Finally, the public interest served by nondisclosure of some of the data elements clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.)

The DA's Office estimates the cost of the task, to produce the spreadsheet described above, pursuant to Government Code section 7922.575(b)(2) is \$661.08. If you would like to proceed with the DA's Office pulling the spreadsheet for you, from its database, please follow the below payment instructions to ensure smooth processing of your request:

1. Make payment in the amount indicated above payable to: **County of Santa Clara**

2. Send payment and a copy of this email to: 70 West Hedding Street, West Wing, San Jose, CA 95110,
Attention: Angela Bernhard

We estimate that it will take about three to four weeks from receipt of payment to pull and provide the requested information.

Requests B, C, D, E, and F

As you note, the County has made two productions of disclosable public records. I can confirm that the County has determined that the request seeks copies of disclosable public records. The County continues to review records and will continue to produce responsive, non-exempt and non-privileged records on a rolling basis. The County estimates making its next production in the next three to four weeks.

The County reserves the right to claim and assert any exemptions and all privileges that apply to any of the requested material, and will do so as we produce records.

Regards,
Shana



Shana Heller | Deputy County Counsel

Office of the County Counsel, County of Santa Clara

70 West Hedding Street, East Wing, 9th Floor | San José, CA 95110

Office: (408) 299-5949

Pronouns: she/her/hers

shana.heller@cco.sccgov.org | [counsel.sccgov.org](https://www.sccgov.org/counsel)

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From: Shaila Nathu <SNathu@aclunc.org>

Sent: Tuesday, February 6, 2024 3:49 PM

To: Heller, Shana <shana.heller@cco.sccgov.org>

Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Chessie Thacher <CThacher@aclunc.org>; Emi MacLean <EMacLean@aclunc.org>; Kerrigan, Hilary <Hilary.Kerrigan@cco.sccgov.org>

Subject: [EXTERNAL] RE: California Public Records Act Request

Hi Shana,

I am writing with concerns about the prolonged delay from the District Attorney's Office and the County in responding to the ACLU's November 17, 2023 CPRA request, particularly the County's refusal to provide any information as to whether it intends to produce *any* responsive records in response to Request A (for prosecutorial data).

On November 27, 2023, ten days after the ACLU submitted our request for prosecutorial data, policies, and training materials to the District Attorney's Office, you informed us that your office had "identified initial responsive records," was "continuing to search for and collect additional requested records," and was "reviewing the records for applicable exemptions and privileges." In that same correspondence, you stated that "[t]he County anticipates providing an initial batch of records in the next few weeks."

To date, ACLU has received two productions from your office, on January 12, 2024 and February 1, 2024. While these included some records responsive to the non-data portions of our request, neither production included *any* data in response to Request A or confirmation as to whether the County will indeed produce *any* records responsive to Request A. You expressed only that, as of January 12, 2024, you "anticipate[d] being able to follow up [] about that in the next few weeks." You have also not provided a timeline for production of the remainder of the request.

Your response does not meet the requirements of Section 7922.535, subd. (a). First, this response does not contain a “determination.” While it states that “initial responsive records” have been “identified,” it does not confirm whether these records are “disclosable public records in the possession of” your office. Second, and relatedly, because the response does not contain a “determination,” it does not provide the reasons for that determination. Third, stating that production will begin “in the next few weeks” does not fulfill the agency’s obligations to provide “the estimated date and time when the records will be made available.”

The CPRA imposes timelines for responding to public records requests. Government Code section 7922.535, subd. (a) requires that “[e]ach agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor.” (Emphasis added.) “If the agency determines that the request seeks disclosable public records, the agency shall also state the estimated date and time when the records will be made available.” (*Id.*)

This request was submitted nearly three months ago, and it has been several weeks since your communication in which you stated that you would provide a prompt response about the position that you will take with regard to Request A. Yet ACLU has yet to receive your office’s determination or production timeline. Please provide us with an explanation as to this delay and let us know when we should expect a substantive response by **February 13, 2024**.

Thank you,

Shaila



Shaila Nathu

Staff Attorney

Pronouns: she/her/hers

ACLU of Northern California

39 Drumm Street, San Francisco, CA 94111

[\(415\) 316-0600](tel:(415)316-0600) | snathu@aclunc.org

From: Heller, Shana <shana.heller@cco.sccgov.org>

Sent: Wednesday, January 24, 2024 5:00 PM

To: Shaila Nathu <SNathu@aclunc.org>

Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Chessie Thacher <CThacher@aclunc.org>; Emi MacLean <EMacLean@aclunc.org>; Kerrigan, Hilary <Hilary.Kerrigan@cco.sccgov.org>

Subject: RE: California Public Records Act Request

Hi Shaila,

Providing an estimate of when the County anticipates completing production is quite difficult, if not impossible, because each responsive record (each of which varies significantly in length) must be reviewed individually for applicable exemptions and privileges, and withheld or redacted accordingly, if necessary. The County is making progress on reviewing records. I anticipate we’ll be able to make another production in the next week or so, and we will continue making productions on a rolling basis.

Regards,

Shana



Shana Heller | Deputy County Counsel

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From: Shaila Nathu <SNathu@aclunc.org>

Sent: Wednesday, January 17, 2024 2:02 PM

To: Heller, Shana <shana.heller@cco.sccgov.org>

Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Chessie Thatcher <CThacher@aclunc.org>; Emi MacLean <EMacLean@aclunc.org>

Subject: [EXTERNAL] RE: California Public Records Act Request

Thank you, Shana. When does your office anticipate completing production?

Best,

Shaila



Shaila Nathu

Staff Attorney

Pronouns: she/her/hers

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39 Drumm Street, San Francisco, CA 94111

[\(415\) 316-0600](tel:(415)316-0600) | snathu@aclunc.org

From: Heller, Shana <shana.heller@cco.sccgov.org>

Sent: Friday, January 12, 2024 4:17 PM

To: Shaila Nathu <SNathu@aclunc.org>

Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Chessie Thatcher <CThacher@aclunc.org>; Emi MacLean <EMacLean@aclunc.org>

Subject: RE: California Public Records Act Request

Dear Shaila,

I write in further response to the ACLU's November 17, 2023 CPRA request. Attached is the County's first production in response to the CPRA request.

The County continues to review records responsive to Requests B, C, D, E, and F and will to produce responsive, non-exempt and non-privileged records on a rolling basis. The County reserves the right to claim and assert any exemptions

and all privileges that apply to the requested material, and will do so as we produce records. With respect to Request A, the County is continuing to evaluate the request, which data elements are queryable, and whether it would again produce only aggregate/statistical data or whether it can produce anonymized, line-item data. I anticipate being able to follow up with you about that in the next few weeks.

Regards,
Shana



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From: Heller, Shana
Sent: Friday, January 5, 2024 1:49 PM
To: Shaila Nathu <SNathu@aclunc.org>
Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Chessie Thacher <CThacher@aclunc.org>; Emi MacLean <EMacLean@aclunc.org>
Subject: RE: California Public Records Act Request

Hi Shaila,

My apologies for the delay. We anticipate being able to send a response next week, including an initial production.

Regards,
Shana



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From: Shaila Nathu <SNathu@aclunc.org>
Sent: Wednesday, January 3, 2024 1:53 PM
To: Heller, Shana <shana.heller@cco.sccgov.org>
Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Chessie Thacher <CThacher@aclunc.org>; Emi MacLean <EMacLean@aclunc.org>
Subject: [EXTERNAL] RE: California Public Records Act Request

Hi Shana,

Hope your new year is off to a good start. When you have a moment, can you please provide us with an update on when we should expect a substantive response to our November 17, 2023 CPRA request, including the initial batch of responsive records?

Thanks!

Shaila



Shaila Nathu

Staff Attorney

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[\(415\) 316-0600](tel:(415)316-0600) | snathu@aclunc.org

From: Heller, Shana <shana.heller@cco.sccgov.org>

Sent: Monday, November 27, 2023 1:39 PM

To: Shaila Nathu <SNathu@aclunc.org>

Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Chessie Thacher <CThacher@aclunc.org>; Emi MacLean <EMacLean@aclunc.org>

Subject: RE: California Public Records Act Request

Hi All,

In addition to my email about scheduling, to comply with the CPRA, I am providing an initial response to your November 17, 2023 request. The County of Santa Clara's Office of the District Attorney has identified initial responsive records and is continuing to search for and collect additional requested records. It is reviewing the records for applicable exemptions and privileges. The County anticipates providing an initial batch of records in the next few weeks.

I look forward to speaking with you all on Wednesday.

Regards,
Shana



Shana Heller | Deputy County Counsel

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From: Shaila Nathu <SNathu@aclunc.org>

Sent: Wednesday, November 22, 2023 5:39 PM

To: Heller, Shana <shana.heller@cco.sccgov.org>

Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark

<declark@braunhagey.com>; Chessie Thatcher <CThacher@aclunc.org>; Emi MacLean <EMacLean@aclunc.org>

Subject: [EXTERNAL] RE: California Public Records Act Request

Hi Shana,

To clarify, this is a separate and new request from the requests previously sent on behalf of ACLU NorCal by BraunHagey & Borden on July 23, 2021 and February 10, 2022. We are nonetheless aware of those requests, and the related correspondence. The County need not re-produce records previously produced in response to those requests, even if the records are also responsive to the current request. Here, we ask that the County 1) produce any responsive records not previously produced to ACLU NorCal and 2) confirm the positions that the County is taking in response to each of the requests for records to the extent that the County *has* responsive records which it is *not* producing here.

We are happy to jump on the phone to discuss any further questions you may have. We are available on Wednesday, November 29th between 9 to 11a and 3 to 5p. If you would like to set up a time, let me know what works best on your end and I can send a calendar invite.

Best,

Shaila



Shaila Nathu

Staff Attorney

Pronouns: she/her/hers

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[\(415\) 316-0600](tel:(415)316-0600) | snathu@aclunc.org

From: Heller, Shana <shana.heller@cco.sccgov.org>

Sent: Wednesday, November 22, 2023 7:30 AM

To: Emi MacLean <EMacLean@aclunc.org>

Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Chessie Thatcher <CThacher@aclunc.org>; Shaila Nathu <SNathu@aclunc.org>

Subject: RE: California Public Records Act Request

Hi Emi,

Sounds good. For scheduling on my end, I'm available:

- Monday, from 8:30-10:30am, 12:30-2:30pm, and after 3:30pm
- Tuesday, all day
- Wednesday, from 9-11am, after 2pm

Regards,
Shana



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From: Emi MacLean <EMacLean@aclunc.org>
Sent: Wednesday, November 22, 2023 6:55 AM
To: Heller, Shana <shana.heller@cco.sccgov.org>
Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Chessie Thatcher <CThacher@aclunc.org>; Shaila Nathu <SNathu@aclunc.org>
Subject: [EXTERNAL] RE: California Public Records Act Request

Hello Shana,

Thank you for your message. I will check in with my colleagues and get back to you, but it would be best on our side to find a time to speak early next week. We'll follow up later today with some possible times. And I hope you and your family have a restful holiday weekend.

Best,
Emi

From: Heller, Shana <shana.heller@cco.sccgov.org>
Sent: Tuesday, November 21, 2023 3:48 PM
To: Emi MacLean <EMacLean@aclunc.org>
Cc: Haazim Amirali <HAmirali@aclunc.org>; PRA Response <praresponse@braunhagey.com>
Subject: RE: California Public Records Act Request

Dear Emi MacLean,

Our office coordinates the County of Santa Clara's responses to California Public Records Act (CPRA) requests. As you note in your letter, this request is a follow up to some previous CPRA requests submitted by the ACLU of Northern California to the County of Santa Clara Office of the District Attorney ("DA's Office"). As the DA's Office has submitted records responsive to those prior requests, and as there has been significant communication between my office and Braun Hagey attorneys regarding those requests, it would be very helpful to schedule a call to discuss the request so that the DA's Office can appropriately respond and so that we do not produce records that you already have (unless you would like the DA's Office to do that).

I have some availability tomorrow, between 11:30am and 3pm, and am available much of next week as well.

Thanks so much. I look forward to connecting.

Regards,
Shana



Shana Heller | Deputy County Counsel
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From: Haazim Amirali <HAMirali@aclunc.org>
Sent: Friday, November 17, 2023 2:03:04 PM
To: DAO Webmaster <webmaster@dao.sccgov.org>; Rosen, Jeff <jrosen@dao.sccgov.org>
Cc: Emi MacLean <EMacLean@aclunc.org>; praresponse@braunhagey.com <praresponse@braunhagey.com>
Subject: [EXTERNAL] California Public Records Act Request

Dear Counsel,

Please see the attached request for additional records pursuant to California's Public Records Act (Gov't Code §§ 7290 et seq.).

Regards,
Haazim Amirali

Haazim Amirali (he/him)
Legal-Policy Assistant, Criminal Justice Division
ACLU Foundation of Northern California
Email: Hamirali@aclunc.org | 415-316-0396