



# COUNTY OF FRESNO

Lisa A. Smittcamp  
District Attorney

April 12, 2024

## **VIA E-MAIL**

Emi MacLean, Senior Staff Attorney  
Shaila Nathu, Staff Attorney  
Haazim Amirali, Legal-Policy Assistant  
Criminal Justice Division  
ACLU Foundation of Northern California

E-Mail Addresses: [emaclean@aclunc.org](mailto:emaclean@aclunc.org); [hamirali@aclunc.org](mailto:hamirali@aclunc.org); [SNathu@aclunc.org](mailto:SNathu@aclunc.org)

RE: Public Records Act Request, received Wednesday January 17, 2024, via e-mail

Dear Ms. MacLean and Ms. Nathu,

This letter follows up on the Fresno County District Attorney's Office (the Department) letters, dated January 29, 2024, and February 12, 2024, and March 12, 2024, in response to your Public Records Act request, dated November 17, 2023, for the period of "2015 through the date of the search" ("the Current Request").

Your Current Request contains six main categories, at least 29 subcategories, each broken down into at least 65 further sub-categories.

Your request is as follows:

### **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. For any data elements the Office does *not* produce, please identify whether the Office: 1) does not collect the data element in a computerized database; 2) is asserting an exemption, and the specific exemption asserted; or 3) is not disclosing for some other reason.

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 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
    - 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)
    - a. Any enhancements<sup>5</sup>
    - b. 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

## **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.

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

Please provide all training agenda, training materials, and recorded trainings which are mandatory or optional for prosecutors.

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

Please provide all records concerning the Office's implementation of and compliance with the RJA.

**E. Communications Concerning the RJA**

Please provide all communications concerning the RJA, including but not limited to email correspondence, and both internal and external communications.

**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.**

In the Department's January 29, 2024 letter to you, the Department extended its time to respond to the current Request to February 12, 2024 pursuant to Gov. Code §7922.535(c)(2), due to the voluminous number of records requested.

In your email on February 9, 2024, you provided clarification indicating that your current Request is a request for records for time periods from 2015 to the date of your Request.

In the Department's February 12, 2024 letter, the Department informed you that it already produced voluminous records for the search period of January 1, 2015 to July 23, 2021 (for categories B-F of your Current Request) and January 1, 2015 through August 12, 2022<sup>1</sup> (for category A of your Current Request) for the two prior requests covering categories that were collectively almost identical to the Current Request, which, as stated above, contains six main categories, at least 29 subcategories, each broken down into at least 51 further sub-categories. As such, the Department informed you that because the Department has already searched for and timely produced voluminous records dating back to January 1, 2015 through July 23, 2021 (for categories B-F of your Current Request) and January 1, 2015 through August 12, 2022 (for category A of your Current Request) for many of the same categories of records, it is overly burdensome for the Department to have to try to discern the differences between your prior requests and the current Request, and then re-search its records for the new categories of records that may not have been covered by your previous requests. The repetitiveness of your request to again search all requests back to January 1, 2015 is unreasonable, especially in light of the Department's limited staffing.

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<sup>1</sup> Even though the date of the prior request was February 18, 2022, the Department provided responsive records as to category A through August 12, 2022.

There is an overarching rule of reasonableness implicit in the Public Records Act (*Rosenthal v. Hansen* (1973), 34 Cal.App.3d 754, 110 Cal. Rptr. 257), and whether the records can be located with reasonable effort (*State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 13 Cal. Rptr. 2d 342).

As stated in the Department's February 12, 2024 letter, the Department is not required to endlessly re-search and re-produce records already searched and produced in response to prior requests from the same requester. The Department let you know that if you have lost or no longer have the records that the Department produced pursuant to the two prior requests, to please let us know, and we may be able to locate the prior transmittals and resend those records to you.

As stated in the Department's February 12, 2024 letter, for the period of January 1, 2015 through the date of your last requests on July 23, 2021 and February 18, 2022, you will need to specify records that you want that were not already produced by the Department pursuant to your prior requests for that time period. You will need to provide that narrowed request for that time period before the Department may search its records from that time period (Gov. Code § 7922.600).

#### March 25, 2024 Email

On March 25, 2024, you sent the Department an email providing additional clarification for the Current Request, responsive to the Department's February 12, 2024 letter.

Your March 25 email addresses three points:

1. As to Category A, you requested the Department produce the responsive data for January 1, 2015 through August 12, 2022 (for category A of your current Request). You clarified that you need the Department to re-produce this Data because the Current Request does not seek the names of defendants, and the Current request does seek the name of the arresting agency. For these two reasons, you are asking us to produce data as to Category A, for the time periods of January 1, 2015 through January 17, 2024, the date of the Current Request.

In the Department's response to the February 18, 2022 Request, the Department transmitted to you two spreadsheets including data from the period of January 1, 2015 through August 12, 2022. If you review those spreadsheets, you will see that the defendant's name was not included (the names were redacted, and an explanation was provided.) Further, in those spreadsheets, the name of the arresting agency was provided. So, the records that you seek have already been produced by the County. The Department will not re-search and re-produce records already searched and produced in response to your prior request. **For the time period of January 1, 2015 through August 12, 2022, the requested data as to Category A, Prosecutorial Data has been provided.** The Department previously let you know that if you have lost or no longer have the records that the Department produced pursuant to the two prior requests, to please let us know, and we may be able to locate the prior transmittals and resend those records to you. **The Department will be able to produce**

**additional data subject to any costs to run that data, and subject to legal exemptions, for Category A, Prosecutorial Data for the time period of August 13, 2022 through January 17, 2024, the date of the Current Request, which will be discussed further in this correspondence.**

2. The second point of your email addresses Categories B through F of the Current Request. In your email you state that in the Current Request, Category B, section (n), policies, memoranda or guidance documents concerning compliance with the RJA were not included in the July 23, 2021 Request. We interpret this to mean that you are requesting policies, memoranda, or guidance documents concerning compliance with the RJA from January 1, 2015 through January 17, 2024, the date of the Current Request. While the Racial Justice Act was not enacted until 2020, we searched our records prior to the Act's inception, and through the date of the Current Request, January 17, 2024, for any policies, memoranda, or guidance documents that you seek for Category B, section (n). **As such, a response to this request, as it pertains to Category B, section (n), is provided below.**

Further, in the July 23, 2021 request, you requested "Records concerning the racial justice act, implementation of and compliance with the Racial Justice Act; or trainings related to the Racial Justice Act." On September 9, 2022, the Department sent you a response to this request. In your Current Request, you are requesting the same information, however, that information appears to be reorganized into Category C, Category D, and Category F, of the Current Request. **Therefore, in regard to the records responsive to the Current Request for the time period from July 24, 2021 through the date of your Current Request, January 17, 2024, regarding categories C-F of your Current Request, the Department is searching its records.**

3. In your third point of your March 25 email, you clarify that the Current Request clarifies that you seek *all* training materials within the time period of January 1, 2015 to the date of the Current Request, including agenda, training materials and recorded trainings, and regardless of the subject matter. (Compare Section C of the November 17, 2023 request with Section 2 of the July 23, 2021 request.)

**The Department will address this response at the time that the Department addresses Category C of your Current Request, which will occur by June 4, 2024. The Department reserves any response on this point.**

The Department will now address the specific categories in the Current Request, as follows:

#### **A. Prosecutorial Data**

Much of the records being requested in categories 1-15 and the sub-categories within 1-15 are records derived from the investigative reports submitted to the Department; this is data entered into our case management system, but not records that our case management system was designed to retrieve, and not in the format of a spreadsheet

or other data file. The Department does not maintain a record in response to this question, in the format you are seeking. (Gov. Code § 7920.530.) However, it is our purpose to provide assistance to you therefore, we will provide an explanation explaining how queries apply to our case management system.

The Department uses a case management system called eProsecutor. The primary purpose of this management system is for case management and workload distribution, and to share and store case information across the District Attorney's office. Over the years the capability has been developed to be able to design a query within our eProsecutor case management system to retrieve data from designated fields within the system. A query can be designed for our eProsecutor case management system to retrieve data from designated fields. What fields of information were created has evolved over time. Historically, there have been no specific requirements for data collection. So, to the extent we were able, we have attempted to create fields most helpful to the prosecution of crimes. But, the information entered has changed over time and the data entry has been lacking in uniformity and consistency. As a result, the information that we are able to retrieve can be inaccurate and varied in regard to reliability. While the information can serve our Office interests well, the information was not intended for statistical or certifiable record purposes.

It is possible to retrieve some of the records you have identified in your current Request. To proceed, in the following paragraphs I will outline those categories which are available for retrieval, those which are not available because they do not exist, and those that are exempt under the PRA.

#### Category A, subcategory (1)

Within subcategory (1), "Unique Identifier(s) associated with each defendant, each case, and each arrest," all three sub-categories identified, court case number, arresting agency number, and unique identifier are available. Regarding agency report numbers, the Department is only able to provide the agency report number of cases that are filed in court. The agency report number associated with cases that are not filed in court are not public record and thereby exempt from disclosure under the PRA as records of investigation. (Gov. Code section 7923.600; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068-1071.) Further, releasing the agency report number for unfiled cases along with personal identifying information may improperly result in the release of arrest record or criminal history information which is exempt from disclosure under Penal Code section 11140, et seq. and incorporated into the PRA under Government Code Section 7927.705. Although Penal Code section 13300, subdivision (h), allows dissemination of statistical case information, it prohibits providing information that reveals the identity of the subject of the record. Accordingly, providing an agency report number, along with other personal identifying information such as arrest date, and defendant's demographic information would improperly disclose criminal history information that could be used to identify the holder of the record, in violation of state law. (Gov. Code, § 7927.705; Pen. Code, §§ 11141, 11142, 13300-13303; *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166; see *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 450 ["Not only names, aliases, addresses, and telephone numbers must be excluded, but also information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question"].) As such,

the court case number and agency report number of filed cases can be provided. The unique identifier requested in (c) is a computer-generated number assigned to the suspect by the computer at the time of data entry, which will also be provided.

#### Category A, subcategory (2)

Under subcategory (2), "Demographic and other information concerning each defendant," all of the sub-categories are available with the exception of (c) country of origin or nationality, and (f) Prior criminal convictions of a defendant. Country of origin or nationality is not a data field available in our management system. "Prior criminal convictions of a defendant" is a request for privileged personal criminal history records, exempt from disclosure under Penal Code section 11140, et seq. and incorporated into the PRA under Government Code Section 7927.705. As such, your request as to (c) and (f) would have to be denied. **This concludes the Department's response to your Request in regard to Category A, Subcategories 2(c), and 2(f).**

As to date of birth, although Penal Code section 13300, subdivision (h), allows dissemination of statistical case information, it prohibits providing information that reveals the identity of the subject of the record. Accordingly, this office is prohibited from disclosing both the case number, defendant name, or other personal identifying information such as date of birth, along with the defendant's demographic information. Providing a combination of this data would improperly disclose criminal history information that could be used to identify the holder of the record, in violation of state law. (Gov. Code, § 7927.705; Pen. Code, §§ 11141, 11142, 13300-13303; *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166; see *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 450 ["Not only names, aliases, addresses, and telephone numbers must be excluded, but also information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question"].) Therefore, a date of birth will not be provided.

The defendant/suspect's age can be provided. However, the Department does not store a defendant or suspects age as a data point that can be retrieved. Providing a defendant/suspect's age would require a calculation on every case. If an age calculation is done, it would be based on when the case is submitted to our office by the submitting agency. Further, a case may be initiated up to 3 years after it is received by the Department. Therefore, the resulting age calculation could be off by 1-3 years.

Defendant/suspect race can be provided. However, race codes are provided to the Department by law enforcement using the codes and descriptions set forth in the California Department of Justice Disposition Reporting Guide (JUS 8715/8716), without additional verification by the Department. Therefore, there is potential in the entries for transcription error, source error, and omission error in any query.

#### Category A, subcategory (3)

Under sub-category 3, "Information Regarding Each Arrest," subcategory 3(a) "Zip code of arrest" is not available, as it is a data field that is not contained in the management system. Regarding 3(b), date of arrest is available in some instances, but it is not available in many. If available, it can be provided.

Under subcategory 3(c), the charge identified by law enforcement referring individual (including the top charge by law enforcement referring), these records are entered directly from the reports of the investigation, a document exempted from disclosure by the PRA under Government Code Section 7923.600. While records required for disclosure under Government Code sections 7923.610 and 7923.615 are set out by the PRA, the source of those records would be the referring (arresting) agency and not the Department, for whom the referring reports remain exempted under the PRA as records of an investigation and request for a complaint and prosecution. Finally, regarding 3(d), the Department only stores the name of the submitting/referring agency. While the identity of the submitting agency and the date of the arrest may be disclosed as to filed and unfiled cases, the other portions of this request would have to be denied. **This concludes the Department's response to your Request in regard to Category A, Subcategories 3(a) and 3(c).**

#### Category A, subcategory (4)

Under subcategory (4), "ADA assigned to the case," these records may be retrieved and made available through a query search, but with a caveat. The Department designates most of our line deputies as Deputy District Attorneys (DDA), or Senior Deputy District Attorneys (SDDA). Our ADAs, or Assistant District Attorneys, are generally management/supervision level and are not usually the face seen in court with reference to a particular case. As such, to the extent that the records can be retrieved, we can provide the name of the individual attorney (whether it be a DDA, SDA, or ADA), who may have appeared on a case at a given time, but the individual listed may not be the assigned attorney in each case. The vast majority of our cases are prosecuted by a team of prosecutors. Moreover, even those cases are subject to reassignment and coverage by fellow team members at any level of prosecution, including trial, so it would be misleading to identify a particular DDA or SDDA as the "assigned" attorney.

#### Category A, subcategory (5)

Under subcategory (5), "Decisions to decline to prosecute," there are several subcategories that present issues with regard to compliance. Subcategory 5(a) requests the date of decision to decline to prosecute. To the extent that this is recorded within the management system, the date can be provided. Subcategory 5(b) requests the identity of the person that made the final decision to decline prosecution. Declination memoranda are not public records, within the meaning of Government Code section 7927.705, which incorporates into the PRA the traditional exemption for a prosecutor's work product privileged materials. The PRA authorizes the prosecutor to exempt from public records production of those materials that reflect his or her "impressions, conclusions, opinions, or legal research or theories ..." (Code of Civ. Proc., § 2018.030, subd. (a); Pen. Code, § 1054.6 [specifically protecting prosecutorial work product]; *Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810,816 [work product also includes materials prepared in non-litigation context].) And for this reason, the name of the prosecutor that generated and signed the declination memorandum is also exempted. However, as stated, the fact or conclusion that the Department declined a prosecution is not exempted, which records would be responsive to subcategory 5(a). Subcategory 5(c) requests the charges declined to prosecute. As discussed above, the requested charges by a submitting (arresting) agency are not public records under the PRA.

Therefore, a determination to decline to prosecute a case is distinct from the charge(s) requested that are declined.

Finally, subcategory 5(d), requesting the reasons for declinations, and specifying several options in Roman numerals i through vi, requests records that are exempt under the PRA. The legal and practical reasoning of the prosecutor is traditional work product, as set forth above, and exempt from disclosure under the PRA. The declination date can be provided, but the remainder of your request under category (5) is denied. **This concludes the Department's response to your Request in regard to Category A, Subcategories 5(b), (c), and (d).**

#### Category A, subcategory (6)

Under subcategory "6," requesting "Diversion offers and decisions," the Department's electronic case management system does not contain these records. Because we have transitioned to a paperless system for prosecution, there is no practical way to retrieve records concerning diversion of criminal defendants. The Department does not maintain a separate list or gather statistics concerning diversion. To the extent that a prosecutor may have attended a hearing and recorded in the case file a referral to diversion, a review of all case files would be overly burdensome and time consuming. (Government Code § 7922.000.) In addition, notations and case entries of the events occurring in court as observed by our prosecutors and noted for the benefit of the Department and further action by the Department are traditional work product and exempt from disclosure by the PRA. **This concludes the Department's response to your Request in regard to Category A, Subcategory 6.**

#### Category A, subcategory (7)

Under subcategory "7," requesting "Charges filed," subcategories 7(a), (b), and (c), requesting the statute charged, its designation as a felony, misdemeanor, or infraction, and any enhancements charged, are available within the case management database. The hybrid or wobbler character of a particular charge will not be designated other than the level of the charges issued. However, subcategory (d), requesting the maximum sentence, seeks a calculation. This calculation is not recorded in the case management system as a data field. Moreover, to the extent that it may be calculated by an individual deputy district attorney addressing a case on any particular occasion, that calculation is a privileged determination under attorney work product. As discussed above, because the PRA incorporates traditional work product privilege, even were such a calculation notated and available, this Department would decline to produce privileged records. **This concludes the Department's response to your Request in regard to Category A, Subcategory 7(d).**

The Department's case management system does generally store a charge or enhancement's statutory exposure. To the extent that this information is available, it can be provided. However, a result may not be produced in every case.

#### Category A, subcategory (8)

Under subcategory "8," requesting factors considered in deciding charges to file, I would refer you to the discussion above as to subcategory 5(d). The factors considered and the "impressions, conclusions, opinions, or legal research or theories ... " of our

deputies are all within the ambit of attorney work product and exempt from compulsory disclosure as a public record under the PRA. (Government Code § 7927.705.) As such, this request is denied. **This concludes the Department's response to your Request in regard to Category A, Subcategory 8.**

Category A, subcategory (9)

Under subcategory "9," "Bail/custody information," the case management system does not contain these records in any of its data fields. As such, the records are not available for disclosure. To the extent that attorneys may make entries into the case management system by way of notations concerning bail, such notations are work product as they reflect the thoughts, impressions, and opinions, as well as legal interpretation to any issues pertaining to bail, and are not required to be provided in response to a request under the PRA. (Gov. Code § 7927.705, and § 7922.000.) And to any extent that seeking such bail information from case files might be made, in so far as such entries exist, such an inquiry would be unduly time consuming and burdensome. (Gov. Code § 7927.705. See *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) **This concludes the Department's response to your Request in regard to Category A, Subcategory 9.**

Category A, subcategory (10)

Under subcategory "10" requesting "Plea offers," the case management system does have a field for offers. However, in our case management system, the field for "offers" is often used by our attorneys to explain and document the reasoning behind an offer rather than simply a description of the offer and if the offer was extended. Moreover, even if the offer is recorded, those records are taken from the attorney notes within the case file, reflecting impressions and legal conclusions. As such, the record of the offer, even if it was extended in court, is privileged as attorney work product. (Gov. Code § 7927.705.) Because our records do not allow for a separation of the offer from the reasoning behind it, and because in many instances we cannot confirm that the offer was even extended, we have concluded that the records we have in this regard are privileged and that any effort to cull the offer itself from the reasoning would be unreasonably burdensome and time consuming. (Gov. Code § 7927.705. See *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588.) **This concludes the Department's response to your Request in regard to Category A, Subcategory 10.**

Category A, subcategory (11)

Under subcategory "11," requesting "Case outcomes," in determining the source of data available for (a) Charges of convictions, and (b), dismissed charges, and (c) sentences, the data entered into the case management system which would be pulled by the query is almost entirely sourced from the attorney's own entry, pulled from their own case notes and impressions, prepared by that attorney. Because these records would come from the attorney's own case entries they are privileged as attorney work product and are not required to be provided in response to a request under the PRA. (Gov. Code § 7927.705), and § 7922.000.)

In some cases after August 2023, the Department's case management system interfaces with the Superior Court's case management system to retrieve sentencing information. To the extent that some sentence information may be derived directly from

the court's interface, such records are prohibited from disclosure by law. (Gov. Code, § 7927.705; Pen. Code, §§ 11141, 11142, 13300-13303; *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166; see *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 450 ["Not only names, aliases, addresses, and telephone numbers must be excluded, but also information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question"].) The Department is prohibited from disclosing both the case number, agency number and other identifying information, along with sentencing information or case disposition information, as such data would improperly disclose criminal history information that could be used to identify the holder of the record, in violation of state law. **This concludes the Department's response to your Request in regard to Category A, Subcategories 11(a), (b) and (c).**

#### Category A, subcategory (12)

Under subcategory "12," "Counsel for defendant, whether public defender or private counsel," a result can be produced, but it may be misleading. This is in part due to a replacement of our case management system over time, and most recently in 2020. The 2020 system altered the method of data collection concerning our internal record of defense counsel. Our current case management system is intended to work with less reliance upon clerical data entry. The system primarily uses electronic discovery to track defense attorneys through the discovery process, but it is designed to allow for manual entry in addition to discovery. In doing so, the system defaults to the Public Defender for purposes of providing electronic discovery, as that office is the most frequently appointed. When a different attorney subsequently requests discovery, the default entry is altered. However, as the collected data reveals, not every attorney takes advantage of electronic discovery. Moreover, due to conflicts and other occurrences (such as failures to appear), discovery may have been initially accepted by the Public Defender but later (due to conflict or other occurrence) transferred to another office. This transfer is not necessarily reported to the Department or entered in the case management system, so there may be some gaps in the data. However, this term may be included in the Department's query.

#### Category A, subcategory (13)

Under subcategory "13," requesting "Demographic and other information concerning victims," the data is directly and solely derived from the records of investigation submitted by the arresting and investigative agencies. Because records of an investigation are exempt from the PRA, and the records containing demographic information of a victim or victims are not made public in any charging document, these records are exempt under Government Code section 7927.705 and we deny your request as to this category. **This concludes the Department's response to your Request in regard to Category A, Subcategory 13.**

#### Category A, subcategories (14) and (15)

Finally, under subcategories "14" and "15," which address "Recommendations regarding parole" and "Recommendations regarding pardon and commutation," respectively, the Department does not maintain records concerning either of these within our case management system. The Department does participate in Life Parole Suitability Hearings and does comment and make recommendations in response to

gubernatorial pardon and commutation letters. But post-conviction litigation is not documented in the same way as prospective case prosecutions in the Department in our case management system, and is not retrievable. For example, the Department does not maintain a list or record documenting that position. As such, we are under no obligation to create a record in order to respond to a public records request. (Gov. Code §7920.530.) In addition, to determine what took place at any given hearing would require the Department to cull through each case file to determine the position taken by a prosecutor as to a particular inmate's hearing. Such an effort by the Department would take an inordinate amount of time, and as such, this portion of your Request is overbroad and unduly burdensome and time consuming. (Gov. Code § 7922.000. See *County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4<sup>th</sup> 588.)

Moreover, all records which involve parole, reprieve, pardon, or commutation are exempt under Government Code section 7923.600. It is this Department's position that our assessment and response to parole and clemency requests are part-and-parcel of our investigative file compiled for law enforcement purposes in the underlying case, and thus every record associated with our investigation and determination of the Department's position on a request for parole, reprieve, pardon, or commutation is, in the absence of contrary law, exempt under Government Code section 7923.600. In addition, any correspondence the Department sends to the Governor or employees of the Governor's Office in response to a defendant's request for commutation of sentence or pardon, etc. is separately exempt under the PRA. (see Gov. Code, § 7927.300, *Calif. First Amend. Coalition v. Sup. Ct.* (1998) 67 Cal. App.4th 159, 166-167.). Therefore, these records are exempt from disclosure, and we deny your request as to Category A, subcategories (14) and (15). **This concludes the Department's response to your Request in regard to Category A, Subcategories 14 and 15.**

As to any of the Category A, subcategories 1-15 listed above, to the extent that the work product privilege might be waived, the Department does not choose to selectively waive a privilege and find itself precluded from exerting that privilege in the future. While it is always the intention of the Department to respond to requests for records the fullest extent required by law, exemptions and privileges are implicated by your Request in many of the categories listed above. As stated, the Department is not choosing to waive any privilege or exercise a waiver of any exemption, as the public interest in maintaining the privileges and exemptions clearly outweighs any public interest in disclosure. (Gov. Code §7927.500.) Moreover, while local agencies such as the Department retain discretion to produce certain records for inspection or copying in the absence of other restrictions, once discretion is exercised in favor of producing a given record, it must be provided to all who request it, and the Department, as mentioned above, elects not to bind itself to such a determination. (Gov. Code § 7921.505; see, e.g., *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1018; *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 657; 86 Ops.Cal.Atty.Gen. 132, 137 (2003).)

Based on what is explained above, a query can be designed to retrieve records from the following categories, for the period August 13, 2022 to the date of your current Request, January 17, 2024: **Unique Case ID, Submitting Agency, Submitting Agency Report Number, Court Number, Unique Defendant / Suspect ID, Race, Ethnicity, Gender, Age, Unique Arrest ID, Arrest Date, Declination Date, Charge**

**Filed, Severity, Exposure, Enhancement, Enhancement Exposure, Disposition Date , Sentence Date, Assigned Attorney, and Defense Attorney.**

I am advised that it will take approximately ten hours to design the query, run it, and compile the gathered records into a usable format. The Department's staff member who is able to create such a query has a salary rate of \$53.381/hour. For ten hours at his rate, the estimated amount to generate the lists you have requested will be **\$533.81**. Because this portion of your Request requires data extraction, compilation or programming, and are not records that we produce on a regular basis, Government Code section 7922.575(b) provides that the requestor shall bear the cost of producing the cost to construct the record.

**In regard to the records responsive to the current Request for the time period from August 13, 2022 to the date of your current Request, January 17, 2024, regarding category A of your current Request, the Department requires that you provide payment in advance for the Department's performance of data extraction necessary to produce those records. In the event fewer hours are expended in performing such data extraction, the Department will notify you of the updated total, and refund the overpayment. If more hours are expended in performing such data extraction, the Department will notify you of the updated total and request payment of the additional amount required.**

**After we receive payment, it is anticipated that the query will be completed within thirty (30) days of the project's commencement. The Department will not begin this data extraction query until it receives the advance payment of \$533.81.**

In the following section, the Department will address Category B, Prosecutorial Policies, Memoranda, or Guidance Documents; including subcategories (a) through (n) listed above.

As to all subcategories (a) through (n) listed above, the Department will not produce records that are exempt from disclosure by federal or state law. (Gov. Code § 7927.705.) To the extent that your request seeks records that have been created by the Department's attorneys for legal guidance on issues facing prosecutors and/or to prepare prosecutors for trial, these are protected from disclosure by the attorney work product doctrine. (Ibid.; Code Civ.Proc., § 2018.030, subd. (c) ["A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances."].) Such records reflect an attorney's impressions, conclusions, opinions, or legal research or theories and are considered core work product and as such they are protected and privileged writings whether created by County's District Attorney's Office in anticipation of litigation or for legal advice when no litigation is threatened. (See *League of California Cities v. Superior Court* (2015) 41 Cal.App.4th 976; 71 Ops.Cal.Atty.Gen. 5, 7.)

Many of these subcategory records are also exempt from disclosure under Government Code section 7927.705, and pursuant to the deliberative process privilege, and also on the grounds that the public interest served by not disclosing these records outweighs the public interest served by disclosing them. (Code of Civil Procedure §2018.02,

Government Code § 7922.000; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136). The deliberative process privilege protects materials reflecting deliberative or decision-making processes. (*Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.)

Disclosure of these records would expose the decision-making process of the District Attorney's Office in such a way as to discourage candid discussion in District Attorney staff, undermining the ability of the District Attorney's Office to perform its function of ensuring the fair administration of justice by effectively selecting juries (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325).

(a) Diversion Eligibility and/or programming

Please see attached records. **This concludes the Department's response to your Request in regard to Category B, Subcategory (a).**

(b) Custody and/or bail recommendations

Please see attached records. **This concludes the Department's response to your Request in regard to Category B, Subcategory (b).**

(c) Charging recommendations and/or decisions

Please see attached records. **This concludes the Department's response to your Request in regard to Category B, Subcategory (c).**

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

Please see attached records. In regard to the memorandum dated 10/27/21, provided within the attachment, the District Attorney has agreed to waive the core work product privilege, as well as the deliberative process exemption for this record, for the Current Request, and this responsive record is being provided to you. **This concludes the Department's response to your Request in regard to Category B, Subcategory (d).**

(e) Jury Selection

To the extent your request seeks records that have been created by or relied upon by the Department for legal guidance on issues facing prosecutors and/or to prepare prosecutors for trial, these are protected from disclosure by the attorney work-product doctrine. (Ibid.; Code Civ.Proc., § 2018.030, subd. (c) ["A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances."].) Such records reflect an attorney's impressions, conclusions, opinions, or legal research or theories and are considered core work product and as such they are protected and privileged writings whether created by the County's District Attorney's Office in anticipation of litigation or for legal advice when no litigation is threatened. (See *League of California Cities v. Superior Court* (2015) 41 Cal.App.4th 976; 71 Ops.Cal.Atty.Gen. 5, 7.)

Many of these records are exempt from disclosure under Government Code section 7927.705 pursuant to the deliberative process privilege, and also on the grounds that the public interest served by not disclosing these records outweighs the public interest served by disclosing them. (Code of Civil Procedure §2018.02, Government Code

§7922.000; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136).

The deliberative process privilege protects materials reflecting deliberative or decision-making processes. (*Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136). Disclosure of these records would expose the decision-making process of the District Attorney's Office in such a way as to discourage candid discussion in District Attorney staff, and thereby undermine the ability of the District Attorney's Office to perform its function of ensuring the fair administration of justice by effectively selecting juries. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325).

(f) Sentencing Recommendations

Please see attached records. **This concludes the Department's response to your Request in regard to Category B, Subcategory (f).**

(g) Prosecution of Minors

Please see attached records. In regard to the New Juvenile Attorney Memorandum, dated June 2018, provided within the attachment, the District Attorney has agreed to waive the core work product privilege, as well as the deliberative process exemption, for the Current Request as to this record, and this responsive record is being provided to you. **This concludes the Department's response to your Request in regard to Category B, Subcategory (g).**

(h) Parole Recommendations

**The Department has searched its records and has found no records responsive to this request. This concludes the Department's response to your Request in regard to Category B, Subcategory (h).**

All records which involve parole, reprieve, pardon, or commutation are exempt under Government Code section 7923.600. It is this Department's position that our assessment and response to parole and clemency requests are part-and-parcel of our investigative file compiled for law enforcement purposes in the underlying case, and thus every record associated with our investigation and determination of the Department's position on a request for parole, reprieve, pardon, or commutation is, in the absence of contrary law, exempt under Government Code section 7923.600. In addition, any correspondence the Department sends to the Governor or employees of the Governor's Office in response to a defendant's request for commutation of sentence or pardon, etc. is exempt under the PRA. (see Gov. Code, § 7927.300, *Calif. First Amend. Coalition v. Sup. Ct.* (1998) 67 Cal. App.4th 159, 166-167.).

(i) Pardon and commutation recommendations

**The Department has searched its records and has found no records responsive to this portion of your request. This concludes the Department's response to your Request in regard to Category B, Subcategory (i).**

All records which involve parole, reprieve, pardon, or commutation are exempt under Government Code section 7923.600. It is this Department's position that our assessment and response to parole and clemency requests are part-and-parcel of our

investigative file compiled for law enforcement purposes in the underlying case, and thus every record associated with our investigation and determination of the Department's position on a request for parole, reprieve, pardon, or commutation is, in the absence of contrary law, exempt under Government Code section 7923.600. In addition, any correspondence the Department sends to the Governor or employees of the Governor's Office in response to a defendant's request for commutation of sentence or pardon, etc. is exempt under the PRA. (see Gov. Code, § 7927.300, *Calif. First Amend. Coalition v. Sup. Ct.* (1998) 67 Cal. App.4th 159, 166-167.).

(j) Reports to the state bar relating to discipline and/or prosecutorial misconduct

Please see attached records. **This concludes the Department's response to your Request in regard to Category B, Subcategory (j).**

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

**The Department has searched its records and has found no records responsive to this request. This concludes the Department's response to your Request in regard to Category B, Subcategory (k).**

(l) Referral of cases for federal prosecution

**The Department has searched its records and has found no records responsive to this request. This concludes the Department's response to your Request in regard to Category B, Subcategory (l).**

(m) Training

Please see attached records. **This concludes the Department's response to your Request in regard to Category B, Subcategory (m).**

(n) Compliance with RJA

**The Department has searched its records and has found no records responsive to this request. This concludes the Department's response to your Request in regard to Category B, Subcategory (n).**

**In regard to the records responsive to the Current Request for the time period from July 24, 2021 through the date of your current Request, January 17, 2024, regarding category B, including subcategories (a) through (m), of your Current Request, and from January 1, 2015 through January 17, 2024, of subcategory (n) of your Current Request, this concludes the Department's response to this portion of your request for records.**

**In regard to the records responsive to the Current Request for the time period from July 24, 2021 through the date of your current Request, January 17, 2024 regarding categories C-F of your Current Request, the Department is searching its records. Due to the voluminous amount of records to be reviewed, the Department now expects that any responsive public records will be provided by June 4, 2024, subject to any exemptions under the PRA.**

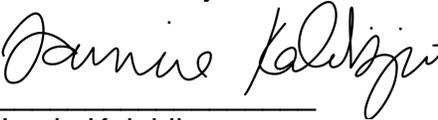
Because the Current Request, for the time period from August 13, 2022 to January 17, 2024 regarding Category A of your current Request, and for the time period from July 24, 2021 through January 17, 2024 regarding Categories C-F of your current Request, seeks a voluminous number of records, any production may need to be over a period of time, and we may need to ask you whether you wish certain records to be made available before others.

To provide all responsive documents, it might be necessary for the Department to compile data, write programming language or a computer program, or construct a computer report to extract data from the Department's electronic records to respond to your request, at a cost to you. That would take additional time as well. If it appears that such work is necessary, we will contact you before incurring those costs, to see whether you wish for the Department to proceed with that work.

In addition, the Department is not required to create a record in order to comply with your request. (Gov. Code, § 7920.530; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.)

Sincerely,

Lisa A. Smittcamp  
District Attorney

By   
\_\_\_\_\_  
Jamie Kalebjian  
Deputy District Attorney