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Case #25CV478543
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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF SANTA CLARA**

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20 AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, INC. a non-profit
corporation,

21 Petitioner/Plaintiff,

22 v.

23 JEFF ROSEN, in his official capacity as the
24 District Attorney of Santa Clara County,

25 Respondent/Defendant.
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Case No. 25CV478543

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF, WITH EXHIBITS 1 THROUGH
22**

[Cal. Gov't Code § 7920 *et seq.*; Cal. Code
Civ. Proc. §§ 1060, 1085 *et seq.*; Cal. Const.
art. I, § 3]

1 **INTRODUCTION**

2 1. This lawsuit seeks to enforce the California Public Records Act (“PRA”), which
3 ensures public access to government records in the interest of transparency and accountability. The
4 PRA request at issue (the “Request”) is directed at Jeff Rosen, in his official capacity as the Santa
5 Clara County District Attorney (“DA,” or “Respondent”), who is tasked with prosecuting criminal
6 offenses on behalf of the People. Petitioner the American Civil Liberties Union of Northern
7 California (“ACLU”) seeks to compel the DA to disclose records and information essential for the
8 public’s ability to evaluate the application and enforcement of the California Racial Justice Act
9 (“RJA”).

10 2. The California Legislature implemented the RJA “to eliminate racial bias from
11 California’s criminal justice system” and “to ensure that race plays no role at all in seeking or
12 obtaining convictions or in sentencing.” *See* Assemb. B. 2542, § 2(i), 2019-2020, Reg. Sess. (Cal.
13 2020); *see also* Penal Code §§ 745, 1473, 1473.7. The Request is critical for understanding whether
14 the DA is upholding the principles of the RJA and ensuring that prosecutorial practices are fair and
15 equitable across all racial and ethnic groups.

16 3. The Request sought prosecutorial data and training materials relevant to the
17 implementation of the RJA. In response to the Request, the DA has produced only limited data and
18 training materials, and asserted overbroad, general exemptions to justify withholding the remaining
19 responsive materials. By doing so, the DA has shielded itself from public accountability and
20 undermined the objectives of the California Constitution and PRA. It has also undermined the
21 purpose of the RJA.¹

22 4. Together, the PRA and RJA ensure public access to prosecutorial data and training
23 materials to create transparency, enable oversight, and eradicate racial bias in the criminal justice
24

25 ¹ The RJA exists expressly “to provide remedies that will eliminate racially discriminatory practices in the criminal
26 justice system” and “to ensure that individuals have access to all relevant evidence, including statistical evidence,
27 regarding potential discrimination in seeking or obtaining convictions or imposing sentences.” *See* Assemb. B. 2542, §
28 2(j), 2019-2020 Reg. Sess. (Cal. 2020). In 2022, the Legislature further emphasized the importance of prosecutorial
oversight, especially for the purpose of eradicating discriminatory prosecutions, in making the RJA retroactive (*see*
Assemb. B. 256, § 1, 2021-2022 Reg. Sess. (Cal. 2022)), and enacting new legislation, the Justice Data Accountability
and Transparency Act, to require prosecutors to make “complete, accurate, and timely data . . . available to the public”
(Assemb. B. 2418, § 1, art. 9 13370(a), 2021-2022 Reg. Sess. (Cal. 2022)).

1 system. By withholding the requested information, the DA has obstructed the public’s ability to
2 monitor prosecutorial practices, subverted the RJA’s purpose, and weakened efforts to ensure a fair
3 and equitable legal process. The ACLU respectfully requests that the Court issue a writ of mandate
4 compelling the DA to comply with the PRA and the Constitution by immediately producing the
5 data and training materials it is improperly withholding. The ACLU additionally requests
6 declaratory and injunctive relief to ensure compliance.

7 **THE PARTIES**

8 5. Petitioner/Plaintiff the American Civil Liberties Union of Northern California is a
9 non-profit organization under the laws of the state of California and is an affiliate of the national
10 American Civil Liberties Union, a non-profit, non-partisan civil liberties organization with more
11 than 1.3 million members dedicated to the principles of liberty and equality embodied in our civil
12 rights laws and both the United States and California Constitutions. The American Civil Liberties
13 Union of Northern California is actively involved in seeking to ensure implementation of the Racial
14 Justice Act statewide, including by collecting and disclosing information about the policies and
15 practices of District Attorneys throughout the state.² As a member of the public, the ACLU has the
16 legal right under the PRA to inspect public records and seek court relief to enforce that right. Gov’t
17 Code §§ 7920.515, 7920.520, 7922.525, 7922.530, 7923.000, 7923.100.

18 6. Respondent/Defendant Jeff Rosen, in his official capacity as the Santa Clara County
19 District Attorney, is a county official responsible for the prosecution of criminal offenses. Pursuant
20 to state law, the District Attorney has discretion to “initiate and conduct on behalf of the people all
21 prosecutions for public offenses,” or to decline to prosecute offenses. Gov’t Code § 26500. The
22 District Attorney is a local agency within the meaning of the PRA. Gov’t Code §§ 7920.510(h),
23 7920.525(a). The records that the ACLU requested are maintained by the Santa Clara County
24 District Attorney.

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28 ² See *Racial Justice Act Resources*, ACLU of Northern California, <https://perma.cc/LN44-T5SC> (last visited Sep. 23, 2025).

JURISDICTION AND VENUE

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7. This Court has jurisdiction over this lawsuit under Government Code sections 7923.000, 7923.005, 7923.100–7923.115, and 7923.500; Code of Civil Procedure sections 1060 and 1085; and Article VI, section 10 of the California Constitution.

8. Venue is proper in this Court. Respondent and the records in question, or some portion of them, are situated in this County, and the acts and omissions forming the basis of this lawsuit occurred in this County as well. *See* Code Civ. Proc. §§ 394(a), 395(a), 401(1); Gov’t Code §§ 7923.100 and 7923.105.

LEGAL BACKGROUND

A. Statutory and Constitutional Rights to Public Records

9. The California Constitution and the PRA create a presumptive right of access to public records and identify that right as fundamental.

10. The California Constitution provides that “[t]he people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” Cal. Const. art. I, § 3(b)(1). The Constitution further requires that any “statute, court rule, or other authority,” such as the PRA, “be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” *Id.* § 3(b)(2).

11. Under the PRA, “access to information concerning the conduct of the people’s business”—business conducted by public agencies on behalf of the people—is a “fundamental and necessary right of every person in this state.” Gov’t Code § 7921.000.

12. The PRA requires that, in response to records requests from members of the public, public agencies “make the records promptly available,” so long as the records are not expressly exempt. Gov’t Code § 7922.530(a).

13. If an agency denies a request for records in whole or in part, it must issue a denial in writing “demonstrating that the record in question is exempt under [the PRA’s] express provisions ... or that on the facts of the particular case the public interest served by not disclosing the record

1 clearly outweighs the public interest served by disclosure of the record.” Gov’t Code §§
2 7922.540(a), 7922.540(c), 7922.000.

3 **B. The Racial Justice Act**

4 14. In addition to the foregoing constitutional and statutory directives commanding the
5 disclosure of public records, the RJA further reinforces the need for disclosure of the types of
6 records the Request sought.

7 15. The California Legislature enacted the RJA “to eliminate racial bias from
8 California’s criminal justice system,” “to remedy the harm to the defendant’s case and to the
9 integrity of the judicial system,” “to actively work to eradicate” racial disparities in the judicial
10 system, and “to ensure that individuals have access to all relevant evidence, including statistical
11 evidence, regarding potential discrimination in seeking or obtaining convictions or imposing
12 sentences.” Assemb. B. 2542, §§ 2(i), (j), 2019-2020 Reg. Sess. (Cal. 2020). The effective
13 implementation of the RJA and the realization of this legislative intent require that the public be
14 able to access records concerning decisions about whether and how the State prosecutes cases and
15 whether such prosecutions are tainted by bias.

16 16. The RJA specifically provides that a defendant may present evidence of racial bias
17 by showing statistical evidence or aggregate data “demonstrat[ing] a significant difference in
18 seeking or obtaining convictions or in imposing sentences comparing individuals who have
19 engaged in similar conduct and are similarly situated, and the prosecution cannot establish race-
20 neutral reasons for the disparity.” Penal Code § 745(h)(1). In recognizing that the identification of
21 racial and ethnic disparities may depend on statistical evidence or aggregate data, the Legislature
22 has presumed public access to such information, as well as confirmed that access to this
23 information is required to maintain the “integrity of the judicial system.” Assemb. B. 2542, § 2(i),
24 2019-2020 Reg. Sess. (Cal. 2020).

25 **C. The Justice Data Accountability and Transparency Act**

26 17. The Legislature also expressly recognized the importance of collecting and
27 publishing prosecutorial data like that at issue here when it passed prosecutorial data transparency
28 reforms in 2022. Assemb. B. 2418, 2021-2022 Reg. Sess. (Cal. 2022) The Justice Data

1 Accountability and Transparency Act was enacted to “require state and local prosecution offices to
2 collect and transmit data elements. . . . for each criminal case to the [Department of Justice].” In
3 passing this law, the Legislature affirmed that “it is an important state interest to implement a data
4 collection, aggregation, and publishing process for criminal prosecutions to promote criminal
5 justice data transparency.” *Id.*

6 **FACTUAL BACKGROUND**

7 **A. Racial Disproportionality in Prosecutions by the DA**

8 18. The limited data publicly available from the DA shows that Hispanic, Latine, and
9 Black individuals are disproportionately prosecuted for felony offenses at rates significantly higher
10 than their share of the County population. *Race and Prosecutions*, Santa Clara County District
11 Attorney’s Office, at 5 (2022), [https://archive.org/details/race-prosecutions-2022-report-combined-
12 with-appendix_202509](https://archive.org/details/race-prosecutions-2022-report-combined-with-appendix_202509) (last visited September 23, 2025). In 2021, Hispanic and Latine individuals
13 comprised 53 percent of all felony prosecutions, despite making up approximately 25 percent of the
14 population. *Id.* Black individuals accounted for 13 percent of felony prosecutions yet constituted
15 only 2 percent of the population. *Id.* In contrast, white individuals made up 22 percent of felony
16 cases, while accounting for 31 percent of the County population. The RJA’s stated goal is to end
17 such disparities.

18 **B. Petitioner’s CPRA Request and County Counsel’s Response**

19 19. On November 17, 2023, the ACLU requested, pursuant to the PRA, that the DA
20 produce certain “records relevant to the implementation of [the RJA].” The Request sought records
21 in six categories, only two of which are at dispute in this litigation: prosecutorial data and training
22 materials.³ A true and correct copy of the Request is attached as **Exhibit 1**.

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26 _____
27 ³ The Request also sought records in four additional categories, not subject to this litigation: prosecutorial policies,
28 memoranda, and guidance documents; records concerning implementation of, and compliance with, the RJA;
communications concerning the RJA, including but not limited to email correspondence, and both internal and external
communications; and 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.

1 20. On November 29, 2023, the ACLU conferred with the Office of the County Counsel
2 (“County Counsel”)⁴ to discuss the DA’s compliance with the Request. In hopes of reducing the
3 burden on the DA, the ACLU proposed over email on November 22, 2023, that records already
4 produced in response to the ACLU’s prior public records requests (that are not subject to this
5 litigation) and responsive to the Request would not need to be reproduced. A true and correct copy
6 of the ACLU’s correspondence is attached as **Exhibit 3**.

7 21. Almost two months later, on January 12, 2024, County Counsel provided its first
8 formal response to the Request. As to data, County Counsel stated that it was “continuing to
9 evaluate” “which data elements are queryable” and “whether it can produce anonymized, line-item
10 data.” Presumably in response to the request for training materials, County Counsel produced a
11 guide on existing and new laws on discrimination in prosecution and sentencing, a slide deck from
12 the professional organization California District Attorneys Association (“CDAA”) titled “New
13 Laws for Prosecutors 2020,” and CDAA’s 2020 Legislative Digest. County Counsel stated that it
14 “continue[d] to review records responsive to” the non-data portions of the Request and intended to
15 produce non-exempt records “on a rolling basis.” A true and correct copy of County Counsel’s
16 response is attached as **Exhibit 4**.

17 22. When asked by the ACLU when the DA expected to complete its production,
18 County Counsel stated that it could not provide any date. True and correct copies of this
19 correspondence are attached hereto as **Exhibit 5**.

20 23. On February 1, 2024, County Counsel produced additional records, including a
21 handful of training agendas and slide decks. A true and correct copy of County Counsel’s response
22 is attached as **Exhibit 6**. Certain records contained redactions, none of which were justified or
23 otherwise explained by County Counsel. *See, e.g., Exhibit 7* (a true and correct copy of a portion
24 of the DA’s production at ACLU 11.17.2023_CPRA 000798– ACLU 11.17.2023_CPRA 000804).

25 24. On February 6, 2024, the ACLU e-mailed County Counsel expressing concerns
26 about the prolonged delay in production. While acknowledging receipt of the January 12 and

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28 ⁴ In an email dated November 21, 2023, County Counsel represented to the ACLU that it “coordinates the County of Santa Clara’s responses to [PRA] requests.” A true and correct copy of this correspondence is attached hereto as **Exhibit 2**.

1 February 1, 2024 productions, the ACLU emphasized that County Counsel had been silent on
2 whether it had located and intended to produce any responsive data. A true and correct copy of this
3 correspondence is attached hereto as **Exhibit 8**.

4 25. Later that day, County Counsel responded via e-mail, stating that it had determined
5 it could provide a small fraction of data sought (11 of the 49 data elements) at a cost of \$661.08.⁵
6 As justification for withholding the rest of the data, County Counsel asserted: (1) “[s]ome of the
7 data elements” sought could not be queried from databases and that it did not have to conduct “an
8 individual, case-by-case examination” or “create a record that does not exist”; (2) it was prohibited
9 from disclosing “some” of the data under “the regulatory scheme regarding criminal offender
10 record information, the right to privacy under the California constitution, and applicable case law”;
11 (3) “some of the information” sought “constitute[d] protected attorney work product”; (4) “[s]ome
12 information could also reveal the deliberative process involved in the County’s decision-making
13 and therefore are exempt from disclosure”; and (5) that “the public interest served by nondisclosure
14 of some of the data elements clearly outweighs the public interest served by disclosure.” As to the
15 non-data portions of the Request, County Counsel stated that it would continue producing
16 responsive records on a rolling basis and “reserve[d] the right to claim and assert any exemptions
17 and all privileges that apply to any of the requested material.” A true and correct copy of this
18 correspondence is attached hereto as **Exhibit 9**.

19 26. On February 15, 2024, County Counsel produced two internal policies responsive to
20 a category of the Request not subject to this litigation. A true and correct copy of the
21 correspondence providing these records is attached hereto as **Exhibit 10**.

22 27. In response to County Counsel’s February 15, 2024 production, the ACLU stressed
23 that the blanket style in which County Counsel asserted its exemptions and reasons for withholding
24 was inadequate under the PRA and left the ACLU with no sense of which information the DA
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27 ⁵ The County Counsel stated that it could produce “ID per case for purposes of this request, Race; Gender/Sex; Year of
28 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.” Ex. 9.

1 claimed was subject to each exemption and being withheld on that basis. A true and correct copy of
2 this correspondence is attached hereto as **Exhibit 11**.

3 28. On March 18, 2024, County Counsel produced additional training materials,
4 including a bench memorandum concerning defense requests and a template reply brief for
5 defending against discovery requests for evidence relevant to a potential violation of Penal Code
6 section 745(a) of the RJA, as well as a training outline and slide deck. A true and correct copy of
7 the correspondence providing these records is attached hereto as **Exhibit 12**.

8 29. On April 24, 2024, the ACLU agreed to pay, under protest, \$661.08 for the portion
9 of the data that County Counsel was willing to produce. A true and correct copy of this
10 correspondence is attached hereto as **Exhibit 13**.

11 30. On June 26, 2024, the ACLU inquired about the status of production. The ACLU
12 sought confirmation as to the timing of the agreed-upon data production. As to the non-data
13 portions of the Request, the ACLU noted that it had not received any production since March 18,
14 2024, and requested confirmation as to whether production was ongoing or complete, or a clear
15 assertion of exemptions. A true and correct copy of the ACLU's correspondence is attached as
16 **Exhibit 14**.

17 31. County Counsel produced the data it was willing to produce on July 1, 2024, and
18 informed the ACLU that it considered the data portion of the Request "closed." A true and correct
19 copy of the County Counsel's correspondence providing the subset of data is attached as **Exhibit**
20 **15**.

21 32. On August 1, 2024, County Counsel produced additional records responsive to
22 categories of the Request not subject to this litigation, the majority of which were non-substantive
23 email communications pertaining to RJA-related trainings, as well as three native Excel sheets. A
24 true and correct copy of County Counsel's correspondence is attached as **Exhibit 16**.

25 33. On August 9, 2024, the ACLU demanded that County Counsel confirm its
26 commitment to complete the production within 60 days and provide a list of all exemptions it
27 intended to rely on to withhold responsive documents, including a detailed description of the
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1 categories of documents and information being withheld. A true and correct copy of the ACLU's
2 correspondence is attached as **Exhibit 17**.

3 34. On August 12, 2024, County Counsel stated, for the first time, that it was
4 withholding records responsive to every category of the Request except for that seeking data,
5 stating that “applicable exemptions include” “personal privacy (Gov’t Code § 7927.705; Cal.
6 Const. art. 1, § 1),” “criminal offender record information (Gov’t Code § 7927.705; Penal Code §§
7 13102, 13300.),” “core work product privilege (Gov’t Code § 7927.705; Civ. Proc. Code §
8 2018.030(a).),” and “investigatory records (Gov’t Code §§ 7923.600-7923.630.)” A true and
9 correct copy of County Counsel’s correspondence is attached as **Exhibit 18**.

10 35. Because County Counsel again provided a list of exemptions without explaining
11 what information was subject to each exemption and being withheld on that basis, the ACLU
12 repeated its unrefuted argument that County Counsel did not meet its burden to justify withholding.
13 A true and correct copy of the ACLU’s correspondence is attached as **Exhibit 19**.

14 36. On August 19, 2024, County Counsel stated that its production of training materials
15 was complete and that it was withholding responsive records under the “core work product
16 privilege.” A true and correct copy of County Counsel’s correspondence is attached as **Exhibit 20**.

17 37. On April 17, 2025, the ACLU sent a letter to County Counsel summarizing the
18 history of the parties’ correspondence regarding the Request and asked that County Counsel
19 confirm that the summary accurately represented the facts. It also requested, once again, that
20 County Counsel provide more detailed information on its assertions to justify withholding. A true
21 and correct copy of the ACLU’s correspondence is attached as **Exhibit 21**.

22 38. County Counsel responded to the letter on May 1, 2025. As to the data portion,
23 County Counsel provided, for the first time, an element-by-element explanation for some of its
24 improper assertions. Without any explanation, County Counsel newly asserted that the prior
25 criminal convictions of a defendant could not be disclosed under the California Law Enforcement
26 Telecommunications System (“CLETS”) policies and procedures. County Counsel stated it was
27 withholding, as criminal record information under Penal Code sections 13102 and 13300, (1)
28 unique identifier(s) associated with each defendant, each case, and each arrest, (2) prior criminal

1 convictions of a defendant, and (3) data concerning decisions to decline to prosecute. It asserted
2 that data concerning decisions to decline to prosecute and diversion offers and decisions were
3 investigatory records under Government Code section 7923.600 and core attorney work product.
4 And it asserted that prior criminal convictions of a defendant and data concerning diversion offers
5 and decisions would be extremely burdensome. County Counsel refused to provide any further
6 specific justification for withholding six subcategories of data: (1) factors considered in deciding
7 charges to file, and level of charges, (2) bail/custody information, (3) plea offers, (4) case
8 outcomes, (5) recommendations regarding parole, and (6) recommendations regarding pardon or
9 commutation. As to these subcategories collectively, County Counsel stated only: “some of the
10 material would be exempt under Penal Code Section 13102 and 13300, as investigative records
11 under Government Code 7923.600, and or as core attorney work product” and would be extremely
12 burdensome to produce. As to training materials, County Counsel re-asserted that it was
13 withholding responsive records as core attorney work product. A true and correct copy of County
14 Counsel’s correspondence is attached as **Exhibit 22**.

15 **CAUSE OF ACTION**

16 **For Violation of Government Code §§ 7920.000 *et seq.*; Government Code § 7923.000; Article I, §
17 3 of the California Constitution; and Code of Civil Procedure § 1085**

18 39. The ACLU incorporates by reference the foregoing paragraphs as though fully set
19 forth herein.

20 40. Public entities, including the DA, are obligated to respond to requests for public
21 records, and search for and disclose all nonexempt records, pursuant to the PRA, Gov’t Code §§
22 7920.000 *et seq.*, and the California Constitution, Article I, Section 3.

23 41. The DA has failed to fulfill its obligations under the PRA and the California
24 Constitution to timely search for and promptly produce prosecutorial data and training materials in
25 response to the Request.

26 42. The DA has failed to provide all nonexempt records responsive to the Request. The
27 DA cannot demonstrate that the responsive records it is withholding are exempt under the express
28 provisions of the PRA, or any authority, nor on the facts of this particular case can the DA
demonstrate that the public interest served by not disclosing these records clearly outweighs the

1 public interest served by disclosing the records. Thus, the DA has failed to satisfy its obligations
2 under the PRA to produce all non-exempt records responsive to the Request.

3 43. Issuance of a writ of mandate compelling the DA to perform its duties under the
4 PRA and the California Constitution is required because there exists no plain, speedy, and adequate
5 remedy in the ordinary course of law that would protect the ACLU's rights and interests to the
6 information sought here.

7 44. A declaration that the DA has violated the PRA and the California Constitution by
8 failing to promptly disclose records is therefore appropriate and an injunction should issue
9 compelling the DA to produce all responsive records forthwith.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioner/Plaintiff the ACLU prays for judgment as follows:

12 1. For issuance of a peremptory writ of mandate compelling the DA to immediately
13 disclose and produce all non-exempt, requested public records in its possession;

14 2. For a declaratory judgment that the DA's conduct violates the PRA and the
15 California Constitution in failing to timely disclose all non-exempt, requested public records in its
16 possession, and in improperly redacting information from the records it did produce;

17 3. For an injunction requiring the DA to produce all non-exempt, requested public
18 records;

19 4. For attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5 and
20 Government Code section 7923.115(a); and

21 5. For such other and further relief as the Court may deem just and proper.

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1 Dated: October 29, 2025

Respectfully submitted,

2 BRAUNHAGEY & BORDEN LLP

3 AMERICAN CIVIL LIBERTIES UNION
4 FOUNDATION OF NORTHERN
5 CALIFORNIA, INC

6 By: /s/ Kory DeClark

7 Kory DeClark

8 H. Chelsea Tirgardon

9 Jacqueline Wu

10 BRAUNHAGEY & BORDEN LLP

11 Shaila Nathu

12 Chessie Thacher

13 Emi MacLean

14 AMERICAN CIVIL LIBERTIES UNION

15 FOUNDATION OF NORTHERN

16 CALIFORNIA, INC

17 *Attorneys for Petitioner/Plaintiff*

18 *American Civil Liberties Union of Northern*

19 *California*

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VERIFICATION

I, Abdi Soltani, am the Executive Director of the American Civil Liberties Union of Northern California (“ACLU”), Petitioner/Plaintiff in this action.

I have read the foregoing VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof. I am informed and believe and, on that ground, allege that the matters stated in the foregoing document are true. I have authorization to verify such facts on behalf of the ACLU.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 28, 2025


Abdi Soltani

EXHIBIT 1



November 17, 2023

SENT VIA EMAIL

Jeffery Rosen
Office of the District Attorney of Santa Clara County
70 West Hedding - West Wing
San Jose, CA 95110
publicinformation@dao.sccgov.org
jrosen@dao.sccgov.org

Re: California Public Records Act Request

To the Office of the District Attorney:

Pursuant to the California Public Records Act (“CPRA”)¹ and the California Constitution,² I am writing on behalf of the American Civil Liberties Union of Northern California (“ACLU”) to request records relevant to the implementation of California’s Racial Justice Act (“RJA”).³ The RJA was enacted “to eliminate racial bias from California’s criminal justice system” and “to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing.”⁴ The ACLU submits this CPRA request in the public’s interest and as a member of a coalition of community groups, non-profit organizations, academic institutions, and other entities. The records that you produce will help us to implement and realize the objectives of the RJA.

On July 23, 2021 and February 10, 2022, we submitted CPRA requests to your office also seeking 1) policies, training materials and communications related to the RJA; and 2) prosecutorial data relevant to the implementation of the RJA. This is a renewed request for this information. Unless otherwise specified, this request seeks records from 2015 to the date of the search.

Records 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. For any data elements the

¹ Gov’t Code §§ 6250 *et seq.*

² Cal. Const., art. I, § 3(b)(2).

³ Pen. Code § 745.

⁴ See AB-2542 *Criminal Procedure: Discrimination*, Stats. 2020, Ch. 317, § 2(i); see also Pen. Code §§ 745, 1473, 1473.7.

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. Diversions 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 enhancements⁵
- 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

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;

⁵ Conduct enhancements, including but not limited to PC Section 12022.53 (gun), PC Section 186.22 (gang); Status enhancements including but not limited to PC Section 667.5 (prison prior), PC Section 667(a) (serious felony prior), PC Section 1170.12 and 667(b)-(i) (strike prior), PC Section 11370.2 (drug prior), PC Section 12022.1 (committed while on bail/OR); Special circumstances (PC Section 190.2); Any other modifications or enhancements

- 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 responding to this request, please note that the CPRA broadly defines the term "record." Specifically, the term includes "any writing containing information relating to the conduct of the people's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."⁶ The CPRA defines, in turn, a "writing" as any "means of recording upon any tangible thing any form of communication or representation."⁷ The present request therefore applies to *all* paper documents, as well as to *all* emails, videos, audio recordings, text messages, social media, or other electronic records within the District Attorney's Office's possession or control. Even if a record was created by a member of another

⁶ Gov't Code § 7920.530(a).

⁷ *Id.* § 7920.545.

government agency, a member of the public, or a private entity, it still must be produced so long as it is (or was) “used” or “retained” by the District Attorney’s Office.⁸

As permitted by the CPRA, this request sets forth the specific categories of information that we are seeking, rather than asking for documents by name.⁹ It is your obligation to conduct record searches based on the criteria identified herein.¹⁰ But if you believe the present request is overly broad, you are required to: (1) offer assistance in identifying responsive records and information; (2) describe “the information technology and physical location in which the records exist;” and (3) provide “suggestions for overcoming any practical basis” that you assert as a reason to delay or deny access to the records or information sought.¹¹

The CPRA requires that you respond to this request in ten (10) days.¹² If you contend that an express provision of law exempts a responsive record from disclosure, either in whole or in part, you must make that determination in writing. Such a determination must specify the legal authority on which you rely, as well as identify both the name and title of the person(s) responsible for the determination not to disclose.¹³ Additionally, even if you contend that a portion of a record requested is exempt from disclosure, you still must release the non-exempt portion of that record.¹⁴ Please note that the CPRA “endows” your agency with “discretionary authority to override” any of the Act’s statutory exemptions “when a dominating public interest favors disclosure.”¹⁵

Because the ACLU is a non-profit organization and because these requests pertain to matters of public concern, we kindly request a fee waiver. None of the information obtained will be sold or distributed for profit. We also request that, to the extent possible, documents be provided in electronic format. Doing so will eliminate the need to copy the materials and provides another basis for the requested fee-waiver.

If, however, you are unwilling to waive costs and anticipate that costs will exceed \$100, and/or that the time needed to copy the records will delay their release, please contact us so that

⁸ *Id.* § 7920.530; *see California State Univ. v. Superior Ct.*, 90 Cal. App. 4th 810, 824–25 (2001) (concluding that documents which were “unquestionably ‘used’ and/or ‘retained’ by [an agency]” were public records); *see also Cty. of Santa Clara v. Superior Ct.*, 170 Cal. App. 4th 1301, 1334 (2009) (“[W]hile section 6254.9 recognizes the availability of copyright protection for software in a proper case, it provides no statutory authority for asserting any other copyright interest.”).

⁹ Gov’t Code § 7922.530(a).

¹⁰ *See id.* §§ 7922.525-7922.545, 7922.600-7922.605.

¹¹ *Id.* § 7922.600(a).

¹² *Id.* § 7922.535(a).

¹³ *Id.* § 7922; *see also id.* § 7922.540.

¹⁴ *Id.* § 7922.525(b), 7922.535(a).

¹⁵ *CBS, Inc. v. Block*, 42 Cal. 3d 646, 652 (1986); *see also Nat’l Conference of Black Mayors v. Chico Cmty. Publ’g, Inc.*, 25 Cal. App. 5th 570, 579 (2018) (construing the CPRA’s exemptions as “permissive, not mandatory—they allow nondisclosure but do not prohibit disclosure”).

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we can arrange to inspect the documents or decide which documents we wish to have copied and produced. Otherwise, please copy and send all responsive records as soon as possible and, if necessary on a rolling basis, to Haazim Amirali at hamirali@aclunc.org.

Thank you in advance for your assistance with this request. We look forward to receiving your response within 10 days. And once again, if you require any clarification on this request, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Emi MacLean". The signature is fluid and cursive, with a long horizontal stroke at the end.

Emi MacLean
Senior Staff Attorney, ACLU of Northern California
emaclean@aclunc.org

EXHIBIT 2

From: [Heller, Shana](#)
To: EMacLean@aclunc.org
Cc: HAmirali@aclunc.org; [PRA Response](#)
Subject: RE: California Public Records Act Request
Date: Tuesday, November 21, 2023 3:47:47 PM
Attachments: [image001.png](#)

***** EXTERNAL MESSAGE *****

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
Office of the County Counsel, County of Santa Clara
70 West Hedding Street, East Wing, 9th Floor | San José, CA 95110
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EXHIBIT 3

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 Thacher <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

ACLU of Northern California

39 Drumm Street, San Francisco, CA 94111

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

EXHIBIT 4

From: [Heller, Shana](#)
To: [Shaila Nathu](#)
Cc: [Haazim Amiralji](#); [PRA Response](#); [Kory DeClark](#); [Chessie Thacher](#); [Emi MacLean](#)
Subject: RE: California Public Records Act Request
Date: Friday, January 12, 2024 4:17:42 PM
Attachments: [image001.png](#)
[image002.png](#)
[ACLU 11.17.2023 CPRA 000001-487.zip](#)

***** EXTERNAL MESSAGE *****

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



Shana Heller | Deputy County Counsel
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EXHIBIT 5

From: [Heller, Shana](#)
To: [Shaila Nathu](#)
Cc: [Haazim Amirali](#); [PRA Response](#); [Kory DeClark](#); [Chessie Thacher](#); [Emi MacLean](#); [Kerrigan, Hilary](#)
Subject: RE: California Public Records Act Request
Date: Wednesday, January 24, 2024 5:00:01 PM
Attachments: [image001.png](#)
[image002.png](#)

***** EXTERNAL MESSAGE *****

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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70 West Hedding Street, East Wing, 9th Floor | San José, CA 95110
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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 Thacher <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
ACLU of Northern California

39 Drumm Street, San Francisco, CA 94111
[\(415\) 316-0600](tel:(415)316-0600) | snathu@aclunc.org

EXHIBIT 6

From: [Kerrigan, Hilary](#)
To: [Shaila Nathu](#)
Cc: [Haazim Amirali](#); [PRA Response](#); [Kory DeClark](#); [Chessie Thacher](#); [Emi MacLean](#); [Heller, Shana](#)
Subject: RE: California Public Records Act Request
Date: Thursday, February 1, 2024 4:36:49 PM
Attachments: [image001.png](#)
[image002.png](#)
[ACLU 11.17.2023 CPRA 000488-1069.zip](#)

***** EXTERNAL MESSAGE *****

Hello Shaila,

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

The County continues to review records and will continue 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.



Hilary Kerrigan | Deputy County Counsel
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EXHIBIT 7

From: "dangel@dao.sccgov.org" <dangel@dao.sccgov.org>

To: "Rubin, Jeff" <jrubin@dao.sccgov.org>

Cc: "Gibbons-Shapiro, James" <jgibbonsshapiro@dao.sccgov.org>, "Bernhard, Angela" <abernhard@dao.sccgov.org>

Subject: Re: Training on new law

Date: Tue, 22 Dec 2020 13:42:10 -0800

Importance: Normal

Perfect!

David Angel

On Dec 22, 2020, at 1:19 PM, Rubin, Jeff <jrubin@dao.sccgov.org> wrote:

Thank you all for the review! You get to see the sausage being prepared. I've pared back the presentation and tidied up the language. However, I was planning on providing answers to some of the questions posed to you at the end for the audience. Most are questions that the audience is going to be most concerned about -and will be asked by the audience anyway. Below are proposed answers (or really lack of answers) for public consumption. -



From: Angel, David <dangel@dao.sccgov.org>

Sent: Tuesday, December 22, 2020 12:41 PM

To: Rubin, Jeff <jrubin@dao.sccgov.org>

Cc: Gibbons-Shapiro, James <jgibbonsshapiro@dao.sccgov.org>; Bernhard, Angela <abernhard@dao.sccgov.org>

Subject: Training on new law

Jeff,

We all got a chance to review your draft. It is just excellent. We all talked about how constantly amazed we are with your capacity to throw yourself into a complex task and then come out with an engaging training about it. It is superb.

The topic is huge, as you said. We all think that we should have more than one training. At least two and perhaps more. With that in mind, you might want to hack back some of the details as a bit too much for folks to absorb on a first training. And, I assume the sections at the end in italics were for our consideration and not for the actual lecture. Please do not include the italic parts at the end if that is not what you meant!

Finally, we agree that we will need a point person and a standing committee on this issue for at least the first part of 2021. We will meet with the DA about that as well as trying to find an expert.

Thanks,

David

David A. Angel
Assistant District Attorney
Office of the District Attorney
408/792-2857
Pronouns: he/him/his
[Why Pronouns Matter](#)

From: "scapps@dao.sccgov.org" <scapps@dao.sccgov.org>

To: "Rubin, Jeff" <jrubin@dao.sccgov.org>

Subject: Re: Draft

Date: Tue, 22 Dec 2020 16:54:48 -0800

Importance: Normal

Jeff,

I'm not sure if you had responded from Angel or JGS but I think we should be cautious in giving definitive answers until we've met with Rosen to vet our policy and procedures. I think it's fine to say TBD but will be able to be more definitive very soon. We will not be able to absorb this level of review and redaction on the paralegal unit. There is no way. I'm happy to chat more tomorrow before the training before 9:30 or at 11:30.

Sent from my iPhone

On Dec 18, 2020, at 4:37 PM, Rubin, Jeff <jrubin@dao.sccgov.org> wrote:

David

I will get you a written-out script of all the questions and what answers I plan to give for the presentation by then. The presentation itself will not necessarily be verbatim from the script but you will have an extraordinarily accurate preview of what information is going to be conveyed. (David – it will be akin to what we I did for you in preparation for the discovery webinar -though the answers will be more precise.) I am planning on distributing a blown-up copy of the law for distribution. I expect to put in around 35 hours between now and noon on Monday, but the IPG and bench memo will not be finished by Monday. (I anticipate it will be in final form before the New Year -that is what I told CDAA.

Based on the CDAA presentation and discussions with several other prosecutors throughout the state , we will need to be able to answer the following questions prior to the training: (Suggestions as to how we answer are respectively provided)





From: Angel, David <dangel@dao.sccgov.org>

Sent: Friday, December 18, 2020 1:48 PM

To: Rubin, Jeff <jrubin@dao.sccgov.org>

Cc: Gibbons-Shapiro, James <jgibbonsshapiro@dao.sccgov.org>; Bernhard, Angela <abernhard@dao.sccgov.org>

Subject: Draft

Hi Jeff,

I know you are working furiously, but when do you think you can get us a draft? It doesn't have to be the final product, but can you get us something by noon on Monday?

Thanks,

David

David A. Angel

Assistant District Attorney

Office of the District Attorney

408/792-2857

Pronouns: he/him/his

[Why Pronouns Matter](#)

EXHIBIT 8

From: [Shaila Nathu](#)
To: [Heller, Shana](#)
Cc: [Haazim Amirali](#); [PRA Response](#); [Kory DeClark](#); [Chessie Thacher](#); [Emi MacLean](#); [Kerrigan, Hilary](#)
Subject: RE: California Public Records Act Request
Date: Tuesday, February 6, 2024 3:49:35 PM
Attachments: [image001.png](#)
[image002.png](#)

***** EXTERNAL MESSAGE *****

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

EXHIBIT 9

From: [Heller, Shana](#)
To: [Shaila Nathu](#)
Cc: [Haazim Amiralji](#); [PRA Response](#); [Kory DeClark](#); [Chessie Thacher](#); [Emi MacLean](#); [Kerrigan, Hilary](#)
Subject: RE: California Public Records Act Request
Date: Tuesday, February 6, 2024 4:52:04 PM
Attachments: [image001.png](#)
[image002.png](#)

***** EXTERNAL MESSAGE *****

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

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EXHIBIT 10

From: [Kerrigan, Hilary](#)
To: [Shaila Nathu](#)
Cc: [Haazim Amirali](#); [PRA Response](#); [Kory DeClark](#); [Chessie Thacher](#); [Emi MacLean](#); [Heller, Shana](#)
Subject: RE: California Public Records Act Request
Date: Thursday, February 15, 2024 2:46:31 PM
Attachments: [image001.png](#)
[image002.png](#)
[article-v section 5.02.b.iii.1--procedural-responsibilities \(1\).pdf](#)
[article-v section 5.01.b.iii.6-employee-obligations.pdf](#)

***** EXTERNAL MESSAGE *****

Hello Shaila,

Attached is the County's third production in response to your November 17, 2023 records request, item B. Consistent with previous discussions, the attached pdfs contain all of the updates and additional responsive documents created since this class of documents was produced to you via a previous request in 2021, and do not duplicate documents previously produced. With the attached production, there are no further documents responsive to request B. The County continues to review records responsive to your requests C, D, E, and F and will release non-privileged, non-exempt responsive records on a rolling basis going forward. With regards to request A, all pertinent information about the available records and the steps for obtaining them can be found in Shana Heller's February 6 email.



Hilary Kerrigan | Deputy County Counsel
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EXHIBIT 11

From: [Shaila Nathu](#)
To: [Heller, Shana](#)
Cc: [Haazim Amiralji](#); [PRA Response](#); [Kory DeClark](#); [Chessie Thacher](#); [Emi MacLean](#); [Kerrigan, Hilary](#)
Subject: RE: California Public Records Act Request
Date: Tuesday, February 20, 2024 5:20:19 PM
Attachments: [image001.png](#)
[image002.png](#)

***** EXTERNAL MESSAGE *****

Hi Shana,

Thank you for your February 6 email. Our review of your response to Request A has surfaced two primary concerns. *First*, your blanket assertion of exemptions and reasons for withholding is inadequate under the CPRA because it lacks the specificity necessary to justify withholding. *Second*, it is not clear from your email that disclosure of the eleven data elements that your office is able to provide would “require data compilation, extraction, or programming to produce the record” under Government Code section 7922.575, subd. (b)(2) and therefore be subject to cost-shifting to the requester. These concerns are described further below.

In response to Request A, you state that the County can provide eleven of the data elements that we requested, namely, “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.”

You also state that the other requested data elements cannot be provided for the following reasons:

1. “Some of the data elements...cannot be queried from databases, or cannot be queried in such a way as to provide the information” sought by the ACLU.
2. “As to some of the requested elements, the regulatory scheme regarding criminal 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.)”
3. “[S]ome of the information you seek constitutes protected attorney work product. (Code Civ. Proc., § 2018.030; Gov. Code, § 7927.705).”
4. “[S]ome of the information you seek is exempt from disclosure pursuant to the official information privilege (Evid. Code, § 1040; 7927.705).”
5. “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.)”
6. “[T]he public interest served by nondisclosure of some of the data elements clearly outweighs the public interest served by disclosure. (Gov. Code, § 7922.000.)”

This response fails to specify which documents and/or information are subject to each exemption and being withheld on that basis. As the agency opposing disclosure, your office bears the burden of proving that an exemption applies. (Gov. Code, § 7922.000 [an “agency *shall* justify withholding any record”]; *see also Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 914.) While the CPRA permits agencies to withhold certain types of records subject to a statutory exemption, when it does so, “the agency . . . must disclose that fact.” (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1072.) “Conclusory or boilerplate assertions that merely recite statutory standards”—like those quoted above—“are not sufficient” to justify non-disclosure. (*ACLU of N. Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 67.) Instead, your office is required to justify nondisclosure through a factual showing that is “specific enough to give the requester a meaningful opportunity to contest the withholding of the documents.” (*Ibid.*; *see also* Gov. Code, § 7922.000.) To justify withholding, an agency must describe each document or portion withheld, and “for each withholding it must discuss the consequences of disclosing the sought-after information.” (*Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 790. You have not done so here. Moreover, we contest that all of the elements that you have withheld categorically satisfy the exemptions asserted.

In addition, you estimate that “the cost of the task, to produce the spreadsheet described above, pursuant to Government Code section 7922.575(b)(2) is \$661.08.” Government Code section 7922.575, subd. (b)(2) states that “the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services **necessary** to produce a copy of the record when” “[t]he request would **require** data compilation, extraction, or programming to produce the record.” (Emphasis added.) Your February 6, 2024 correspondence does not provide sufficient information to confirm whether “data compilation, extraction, or programming” under Government Code section 7922.575, subd. (b)(2) is necessary to produce responsive records or whether the work involved is more akin to “searching the records, reviewing records for information exempt from disclosure under law, and deleting such exempt information.” (*Nat'l Laws. Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal.5th 488, 506, *quoting North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 146.) Work that falls into the latter category is not subject to cost-shifting to the requester. (*Id.*)

Because we do wish to pursue collection of any responsive data, we request that you provide further detail on this estimate, including the title of the employee tasked with compiling, the number of hours being charged, the rate per hour, and an explanation of why the work is necessary so that it can confirm whether the cost-shifting your office deems necessary to produce the record is permitted by statute.

We are continuing to review your production of records responsive to Requests C, D, E, and F and reserve the right to object to any justification your office asserts to support withholding records responsive to those requests.

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

EXHIBIT 12

From: [Kerrigan, Hilary](#)
To: [Shaila Nathu](#)
Cc: [Haazim Amiralji](#); [PRA Response](#); [Kory DeClark](#); [Chessie Thacher](#); [Emi MacLean](#)
Subject: RE: California Public Records Act Request
Date: Monday, March 18, 2024 9:03:52 AM
Attachments: [image001.png](#)
[image002.png](#)
[Production 4 Bates 001070-001558.zip](#)

***** EXTERNAL MESSAGE *****

Hello Shaila,

Attached is the County's fourth production in response to your November 17, 2024 records request. We continue to review records and will continue to produce responsive non-exempt, non-privileged records on a rolling basis.



Hilary Kerrigan | Deputy County Counsel
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Hilary.Kerrigan@cco.sccgov.org | counsel.sccgov.org
Pronouns: she/her/hers

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EXHIBIT 13

From: [Shaila Nathu](#)
To: [Kerrigan, Hilary](#)
Cc: [Chessie Thacher](#); [Emi MacLean](#); [Haazim Amirali](#); [Heller, Shana](#); [PRA Response](#)
Subject: RE: California Public Records Act Request
Date: Wednesday, April 24, 2024 4:22:52 PM
Attachments: [image002.png](#)
[image003.png](#)

Hi Hilary,

Thank you for your office's February 6, 2024 correspondence clarifying that the County is assessing fees against ACLU to run the searches for records responsive to our November 17, 2023 CPRA request concerning implementation of the Racial Justice Act. We object to this fee assessment on the grounds that it is outside the bounds of what the Legislature contemplated in Government Code sections 7922.530, subsection (a) and 7922.575, and also beyond what California courts have permitted. *See, e.g., National Lawyers Guild, San Francisco Bay Area Chapter ("NLG") v. City of Hayward*, 9 Cal. 5th 488 (2020).

Nonetheless, given the significant public interest in obtaining the requested records, we agree to pay the assessed \$ 661.08 under protest. We make this payment without waiver or forfeiture of any rights that we may have to challenge this fee assessment in the future and without waiver of any other rights to challenge the County's overall response to our PRA request. *See NLG*, 9 Cal. 5th at 496-97 (recognizing that payments for the production of public records in response to a PRA request can be made "under protest" without waiver of any right to challenge issues concerning the underlying request).

Please confirm that the following payment instructions are still accurate:

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**

Thanks,

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

EXHIBIT 14

From: Emi MacLean

Sent: Wednesday, June 26, 2024 3:47 PM

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

Cc: Chessie Thacher <CThacher@aclunc.org>; Haazim Amirali <HAmirali@aclunc.org>

Subject: RE: California Public Records Act Request

Hello Hilary and Shana,

I am following up regarding the long overdue production of records responsive to the ACLU of Northern California's November 17, 2023 PRA request for prosecutorial records from the Office of the District Attorney. It has been more than 7 months since we sent this request. However, we have received no data responsive to Request A, seeking prosecutorial data; and very limited productions in response to the remainder of the PRA request, seeking prosecutorial policies, training materials, and other information relevant to the implementation of the California Racial Justice Act.

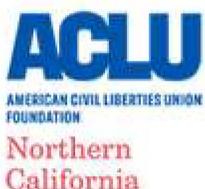
With regard to our request for prosecutorial data (Request A): You determined that the County could only provide a very limited subset of responsive data. You asserted categorical exemptions or unsubstantiated assertions of undue burden for the remainder of the request for prosecutorial data. Without waiving our objection to what we consider to be overbroad and unjustified withholdings, or the fee assessment, we agreed to pay the requested fee of \$661.08 for the limited production you offered. We made the payment on May 8, and you confirmed that you received a check from us more than two months ago. You also asserted that you "anticipate being able to provide" this limited set of responsive data—the only data that you asserted would not be exempt—the first week of June. We have yet to receive any prosecutorial data. Please provide a response to this email by July 5, with the outstanding prosecutorial data you committed to produce.

With regard to the remainder of the request, for e.g., policies, training materials, and RJA-related communications (Requests B-F), we received four productions on January 12, February 1, February 15, and March 18, 2024. You also identified that you anticipate following up with further productions "on a rolling basis." However, we have received nothing further from you since March 18, 2024, more than three months ago. We have also received no definitive confirmation as to whether the DA continues to search for responsive records, or considers production complete. We have also received no clear assertion of any exemptions, but only a general statement that "[t]he 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." Based on the responses from the County, we do not know whether this request remains open. Nor do we know whether the County is asserting any exemptions over responsive records. We thus request within ten days: a) a final determination as to whether the County continues to have responsive records, and the quantity of outstanding responsive records; b) a confirmation as to when the County expects to complete its review and production of any outstanding records, should there be any outstanding records; and c) a determination from the County as to whether it is asserting any exemptions.

We hope to avoid unnecessary litigation, but will be forced to litigate if the County refuses to comply with its obligations pursuant to the state's Public Records Act. Please do not hesitate to let me know if useful to speak further about this request.

Best,

Emi



Emi MacLean

Pronouns: she/her/hers

Senior Staff Attorney

ACLU Foundation of Northern California

39 Drumm St., San Francisco, CA 94111

(929)375-1575 | emaclean@aclunc.org

EXHIBIT 15

From: Kerrigan, Hilary <Hilary.Kerrigan@cco.sccgov.org>

Sent: Monday, July 1, 2024 11:39:41 AM

To: Emi MacLean <EMacLean@aclunc.org>

Cc: Chessie Thacher <CThacher@aclunc.org>; Haazim Amirali <HAmirali@aclunc.org>

Subject: RE: California Public Records Act Request

Good morning,

I apologize for the unexpected delay in delivering the attached spreadsheet of data to you. Once the spreadsheet had been run, some aberrations in the data were noted, and efforts were made to determine the source of those aberrations. Accordingly, please note that there is a sub-set of entries on the attached for which year of birth is not available, or where the context suggests that the year of birth was inaccurately entered into the system. We are nonetheless producing the data as it appears in the District Attorney's Office case management system, observing that such variations are inevitable given the very large scope of data represented by this spreadsheet. This constitutes our fifth production in response to your request.

Here is an overview of the current status of the County's production in response to your request:

- A. The attached document responds to request A, and this item is now closed.
- B. As we informed you on February 15, 2024, all material responsive to this request has been provided, and this item is closed.
- C. We have produced materials responsive to this request, and continue to review potentially responsive documents on this item, and are hopeful we will be able to complete production, or confirm there are no further responsive documents, within the next 60-90 days.
- D. We have produced several batches of documents on this item, and continue to review potentially responsive documents related to this request. This item uncovered an especially voluminous universe of records for review, and it is difficult to estimate when we will complete review of the thousands of documents. We will continue to review and produce documents diligently. We expect to have an additional production on this item within roughly 60 days.
- E. This item overlaps significantly with item D, and we are handling the two items in tandem.
- F. We identified no responsive documents for this item, and it is now closed.

The County will continue to redact personally identifiable information to protect personal privacy, as well as criminal offender record information. (See Art. 1, § 1 of the California Constitution; Gov. Code, § 7922.000; Gov. Code, § 7927.705; Craig v. Municipal Court (1979) 100 Cal.App.3d 69; Westbrook v. County of Los Angeles (1994) 27 Cal.App.4th 157; Penal Code § 13102; and Penal Code § 13300.) If additional exemptions are identified in reviewing future productions, we will assert those in tandem with the production to which they apply.

I'm very happy to discuss any outstanding aspect of this as is useful.



Hilary Kerrigan | Deputy County Counsel

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Pronouns: she/her/hers

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EXHIBIT 16

From: [Tovar, Iris](#)
To: SNathu@aclunc.org
Cc: [Heller, Shana](#); HAmirali@aclunc.org; [PRA Response](#); [Kory DeClark](#); CThacher@aclunc.org; EMacLean@aclunc.org; [Kerrigan, Hilary](#)
Subject: RE: California Public Records Act Request
Date: Thursday, August 1, 2024 12:55:31 PM
Attachments: [image001.png](#)

***** EXTERNAL MESSAGE *****

Good morning,

On behalf of Deputy Counsel Hilary Kerrigan, we've made available to you via Dropbox the County's fifth production of documents responsive to your 11/17/23 CPRA request. You may also access the files through the link below within 14 days.

<https://www.dropbox.com/scl/fi/lvffqegdh11alrmz97nl4/Production-5-Bates-ACLU-001559-001945.zip?rlkey=iev4jno7d0ykmt4foieabx18a&st=o8ccfpqc&dl=0>

We continue to review records and will produce responsive non-exempt, non-privileged records on a rolling basis.

Thanks,



Iris C. D. Tovar | Paralegal
Office of the County Counsel, County of Santa Clara
70 West Hedding Street, East Wing, 9th Floor | San José, CA 95110
Office: (408) 299-5948 | Facsimile: (408) 292-7240
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EXHIBIT 17

From: Chelsea Tirgardoorn <tirgardoorn@braunhagey.com>

Sent: Friday, August 9, 2024 1:10 PM

To: Kerrigan, Hilary <Hilary.Kerrigan@cco.sccgov.org>

Cc: EMacLean@aclunc.org; Chessie Thacher <CThacher@aclunc.org>; HAmirali@aclunc.org **Subject:**

[EXTERNAL] RE: California Public Records Act Request

Good morning,

It is good to e-meet you. I am an attorney with BraunHagey & Borden and will be working with the ACLU with respect to its November 17, 2023 PRA request.

On July 1, 2024, the County informed us that it intended to complete its rolling production regarding Requests C, D, and E within 60 days and had finalized its production for Requests A, B, and F. We are writing to request an update on the status of this production, as we have not received any documents responsive to Requests C-E since March 18, 2024. When should we expect the County's next production?

Further, despite repeated requests, the County has not disclosed which exemptions, if any, it is invoking for Requests B-F. Instead, the County has reserved the right to claim exemptions as the records are produced. This is insufficient and does not comply with the PRA. There is no justification for waiting to assert exemptions because the County already knows the types of documents ACLU has requested. Please provide a specific list of all exemptions the County is relying on, or intends to rely on, to withhold documents responsive to Requests B-F, as well as a detailed account of the categories of documents and information being withheld. Absent further objections, we will proceed under the assumption, based on the County's February 6, 2024, correspondence, that all exemptions relevant to Request A have been fully disclosed.

Accordingly, by August 16, 2024, please (1) confirm, in alignment with your July 1 proposal, that the County will complete its entire production by August 30, and (2) provide a comprehensive and specific list of all exemptions the County intends to rely on to withhold documents responsive to this request, including a detailed description of the categories of documents and information being withheld.

Happy to chat further.

All rights reserved.

Best,
Chelsea

EXHIBIT 18

From: Kerrigan, Hilary <Hilary.Kerrigan@cco.sccgov.org>
Sent: Monday, August 12, 2024 11:29 AM
To: tirgardoona <tirgardoona@braunhagey.com>
Cc: Emi MacLean <EMacLean@aclunc.org>; Chessie Thacher <CThacher@aclunc.org>; Haazim Amirali <HAmirali@aclunc.org>
Subject: RE: California Public Records Act Request

Hi Chelsea,

In case it's useful, I am attaching the email with the link to our latest production. Please let us know if there are additional recipients who should be given access to the drop box link, which is likely to expire shortly. As I'm sure you can imagine, the review of these documents to prepare them for release is extremely time consuming, and I want to ensure that the ACLU is successfully receiving them.

I would like to clarify that in my July 1, 2024 email, I did not represent that we would complete production within 60-90 days. Rather, I communicated that we would have our next production out to the ACLU within 60 days. Ultimately, we were able to prepare and produce our next production ahead of schedule, within about 30 days, as attached. There are thousands of additional pages of documents requiring review, a process that is underway on a continuous basis through the efforts of both myself and a paralegal assigned to this request. We are working through those documents as quickly as we possibly can given all the factors involved, and will continue to do so until all responsive material has been produced. If you think it would be helpful to meet virtually and discuss the scope of review that is outstanding, so we can prioritize our review according to what is most useful to you, I am happy to do that.

With regards to exemptions, as I have not yet reviewed every potentially responsive document and thus cannot be certain there will not be additional exemptions we have not yet encountered in the documents that have not yet been reviewed, I can tell you that at this point, applicable exemptions include:

personal privacy (Government Code 7927.705; Art. 1, § 1 of the California Constitution.)
criminal offender record information (Government Code 7927.705; Penal Code 13102 and 13300.)
core work product privilege (Government Code 7927.705; Code of Civil Procedure 2018.030(a).)
investigatory records (Government Code 7923.600-7923.630.)



Hilary Kerrigan | Deputy County Counsel
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Pronouns: she/her/hers

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EXHIBIT 19

From: [Shaila Nathu](#)
To: [Kerrigan, Hilary](#)
Cc: [Emi MacLean](#); [Kassie Dibble](#); [Kory DeClark](#); [Chelsea Targardoon](#); [Olivia Smith](#); [PRA Response](#)
Subject: RE: California Public Records Act Request
Date: Monday, August 12, 2024 2:24:07 PM
Attachments: [image001.png](#)
[image002.png](#)

***** EXTERNAL MESSAGE *****

Hi Hilary,

Apologies for the confusion; I am replying as Chelsea is on vacation this week.

We did receive and evaluate the August 1, 2024 production. ACLU also previously received productions from the County on January 12, 2024, February 1, 2024, February 15, 2024, and March 18, 2024 in response to Categories B through F of its November 17, 2023 request, for a total of five non-data productions to date.

As you note in your email from earlier today, we have only received an optimistic estimate for completion of production in response to Category C and an assertion of ongoing production with regard to Categories D and E. These estimates do not qualify as statements of the “estimated date and time when the records will be made available,” as is the County’s obligation when it makes its determination as to whether a request seeks disclosable public records. (Gov. Code § 7922.535.) Given that this request has been outstanding for almost eight months, we thus seek confirmation of the date on which the County expects production to be complete as to the entirety of this request.

Your email today is the first time the County has asserted it was withholding records other than personally identifiable information and criminal record information in response to the non-data portions of the request. Because the government bears the burden of affirmatively showing that withheld materials need not be disclosed (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617, 629; *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1321), stating that “applicable exemptions include” “personal privacy (Government Code 7927.705; Art. 1, § 1 of the California Constitution).[,], criminal offender record information (Government Code 7927.705; Penal Code 13102 and 13300).[,], core work product privilege (Government Code 7927.705; Code of Civil Procedure 2018.030(a).)[,], and] investigatory records (Government Code 7923.600-7923.630.)” is insufficient under the CPRA. An agency is required to “provide the requesting party ‘adequate specificity to assure proper justification by the governmental agency.’” (*ACLU of N. Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 82 [quoting *Vaughn v. Rosen* (D.C. Cir. 1973) 484 F.2d 820, 827].) The government thus bears “the burden of affirmatively showing that withheld materials need not be disclosed.” (*Ibid.*; see also *ibid.* [“[W]e do not believe an agency’s bare conclusion that information is not responsive to a request is any more self-explanatory than its bare conclusion that information is exempt.”].) The County must justify the denial of access to requested records by demonstrating either that the requested records fall under a specific legal exemption, or that the public interest

served by denying disclosure “clearly outweighs” the public interest that would be served by its disclosure. (Gov. Code § 7922.000.) This is so the requester has a meaningful opportunity to contest the withholding of certain documents and to enable a court to determine whether an exemption even applies. (See *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 790 [to justify withholding, an agency must describe each document or portion withheld, and “for each withholding it must discuss the consequences of disclosing the sought after information”].) Because the County’s failure to cite and justify with particularity the exemptions it asserts, and the records for which it is asserting these exemptions, does not satisfy its obligations here, please provide a list of all exemptions the County is relying on, or intends to rely on, to withhold documents responsive to Categories B through F and a detailed account of the categories of documents and information being withheld.

Please provide us with the information requested above by August 16th.

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

EXHIBIT 20

From: [Kerrigan, Hilary](#)
To: [Shaila Nathu](#)
Cc: [Emi MacLean](#); [Kassie Dibble](#); [Kory DeClark](#); [Chelsea Tirgardoan](#); [Olivia Smith](#); [PRA Response](#)
Subject: RE: California Public Records Act Request
Date: Monday, August 19, 2024 1:15:01 PM
Attachments: [image001.png](#)
[image002.png](#)

***** EXTERNAL MESSAGE *****

Hi Shaila,

I'm glad you have our most recent production.

As to request C, we have now reviewed the outstanding training materials and determined that all materials not yet produced are exempt from disclosure under the core work product privilege. The exempt documents are training materials consisting of legal impressions, legal research, and legal conclusions of DAO attorneys. Our production as to request C is now complete.

The remaining items pending review are responsive to requests D and E. We conducted a search of our district attorney's office emails to identify correspondence related to implementation of the RJA. That search returned 16,145 documents. Following the review and productions we have already completed on these two items, we have roughly 10,000 documents remaining to review. Some large portion of those are likely to consist of core work product or exempt investigatory records on individual cases, but we won't know how many until we have worked through them. Focusing our work on this request only on these two remaining items, we will endeavor to review 1,000 documents per month. We cast a broad net in our search, so if you have direction about a narrower sub-set of the documents to search to meet the objectives of your request, we are very open to that.



Hilary Kerrigan | Deputy County Counsel
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70 West Hedding, East Wing, 9th Floor | San José, CA 95110
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EXHIBIT 21

From: Chelsea Tirgardoorn <tirgardoorn@braunhagey.com>

Sent: Thursday, April 17, 2025 3:16 PM

To: Kerrigan, Hilary <Hilary.Kerrigan@cco.sccgov.org>

Cc: RJA_Litigation <RJA_Litigation@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Jacqueline Wu <jwu@braunhagey.com>; EMacLean <emaclean@aclunc.org>; Chessie Thacher <CThacher@aclunc.org>; Shaila Nathu <SNathu@aclunc.org>

Subject: RE: California Public Records Act Request

Good afternoon Hilary,

Attached is a final letter regarding Santa Clara County District Attorney's outstanding obligations. Thank you for your attention to this matter.

Best,
Chelsea

H. Chelsea Tirgardoorn

BRAUNHAGEY & BORDEN LLP

Direct: (415) 489-7673

H. Chelsea Tirgardoon, Esq.
tirgardoon@braunhagey.com

April 17, 2025

VIA EMAIL

Hilary Kerrigan | Deputy County Counsel
Office of the County Counsel, County of Santa Clara
70 West Hedding, East Wing, 9th Floor
San José, CA 95110
(408) 299-5925
Email: hilary.kerrigan@cco.sccgov.org

Re: November 17, 2023 California Public Records Act Request

Dear Counsel:

We write on behalf of the American Civil Liberties Union of Northern California (“ACLU”) regarding Santa Clara County’s (the “County”) continued and unlawful failure to comply with its obligations under the California Public Records Act (“PRA”) (Gov. Code, §§ 7920.000 *et seq.*) with respect to the ACLU’s November 17, 2023 PRA request for records relevant to the implementation of the Racial Justice Act (“RJA”).

The purpose of the PRA is to foster transparency and accountability in government by ensuring the public’s right to access government records, subject only to specific exemptions. As you are aware, the PRA mandates that public agencies, such as the County, disclose non-exempt records, provide clear justifications for any withholdings, and make a good-faith effort to assist requesters. The County has failed to fulfill these obligations by improperly invoking broad, vague, and inapplicable exemptions to withhold essential public information.

On November 17, 2023, the ACLU requested, pursuant to the PRA, that the Santa Clara County District Attorney (the “DA’s Office”) disclose certain “records relevant to the implementation of [the RJA].” The Request sought records in five categories: (A) prosecutorial data (“Category A”); (B) prosecutorial policies, memoranda, or guidance documents (“Category B”); (C) any and all training agendas, training materials, and recorded trainings (“Category C”); (D) records concerning implementation of, and compliance with, the RJA (“Category D”); (E) communications concerning the RJA (“Category E”); and (F) all investigations into *Batson-Wheeler* motions (“Category F”).

The following briefly summarizes the history of the Request. The ACLU asks that the County provide clarification where requested and confirm whether the below accurately represents the facts to date. The ACLU will consider any failure by the County to provide clarification on or respond to any assertion below as the County’s agreement that the assertion is accurate.

San Francisco

747 Front Street, 4th Floor
San Francisco, CA 94111
Tel.: (415) 599-0210
Fax: (415) 276-1808

New York

118 W 22nd Street, 12th Floor
New York, NY 10011
Tel.: (646) 829-9403
Fax: (646) 403-4089

I. CATEGORY A: PROSECUTORIAL DATA

Category A sought anonymized individual and charge-level data for all cases the DA considered for prosecution and prosecuted since 2015. This data includes records reflecting charging decisions, plea bargaining practices, case dispositions, and sentencing recommendations.

On February 6, 2024, the County stated that it could produce 11 of the 49 data elements sought by Category A, namely: “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.” To complete this production, the County required that the ACLU remit payment of \$661.08 under Government Code section 7922.575, subd. (b)(2).

As justification for its failure to provide the remaining 38 elements of Category A data, the County stated:

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.)

On February 20, 2024, the ACLU responded to the County’s February 6th correspondence to surface two broad concerns. First, it raised that the County’s blanket assertion of exemptions and reasons for withholding was inadequate under the PRA because it lacked the specificity necessary to justify withholding. Second, it pointed out that the County had not demonstrated that disclosure of the 11 data elements would “require data compilation, extraction, or programming to produce the record” under Government Code section 7922.575, subd. (b)(2) and therefore be subject to cost-shifting to the requester.

On February 28, 2024, the County provided further detail on its cost estimate. The County did not, however, respond to the ACLU's arguments that the County had failed to adequately assert exemptions and justify withholding the remaining requested data.

The ACLU agreed to pay the assessed \$661.08 under protest on April 24, 2024. Citing *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal.5th 488, the ACLU stated that it was "mak[ing] this payment without waiver or forfeiture of any rights that [it] may have to challenge this fee assessment in the future and without waiver of any other rights to challenge the County's overall response to" the Request. On July 1, 2024, the County produced a spreadsheet containing the 11 data elements. On August 1, 2024, the County produced three more spreadsheets. It is, however, unclear which part of the Request these three spreadsheets are intended to address. Accordingly, the ACLU requests that the County provide a description of these records and specify the Category (and sub-Category, if applicable) under which it deems them responsive.

The ACLU still does not know what exemptions the County claims support withholding each of the 38 data elements and requests that the County confirm its position.

II. PROSECUTORIAL POLICIES, MEMORANDA OR GUIDANCE DOCUMENTS (CATEGORY B)

Category B sought all policies, memoranda, and guidance documents considered or relied on by the DA, including, but not limited to, those concerning: (1) diversion eligibility and/or programming; (2) custody and/or bail recommendations; (3) charging recommendations and/or decisions; (4) compliance with *Brady v. Maryland* (1963) 373 U.S. 83; (5) jury selection; (6) sentencing recommendations; (7) prosecution of minors; (8) parole recommendations; (9) pardon and commutation recommendations; (10) reports to the State Bar relating to discipline and/or prosecutorial misconduct; (11) data collection relating to criminal matters, including demographic data of defendants and victims; (12) referral of cases for federal prosecution; (13) training; and (14) compliance with the RJA.

On February 15, 2024, the County produced two internal policies and stated that these two documents "contain all of the updates and additional responsive documents created" since the County produced records in response to a similar PRA request by the ACLU in 2021. Thus, the County noted, its production in response to Category B was complete. Because the County never asserted exemptions in response to Category B, it is the ACLU's understanding that the County is not withholding any documents responsive to this category.

III. ANY AND ALL TRAINING AGENDAS, TRAINING MATERIALS, AND RECORDED TRAININGS (CATEGORY C)

Category C sought all training agendas, training materials, and recorded trainings which are mandatory or optional for prosecutors in the DA's Office.

On January 12, 2024, the County produced three responsive documents. On February 1, 2024, the County produced a few training presentations, but the bulk of the production consisted of non-substantive correspondence, such as meeting invites and emails concerning planning and coordination. On March 18 and August 1, 2024, the County made similar limited productions of responsive documents.

On August 19, 2024, the County represented that it had "reviewed the outstanding training materials and determined that all materials not yet produced are exempt from disclosure under the core work product privilege." The County asserted that it was withholding the

remaining responsive records as “training materials consisting of legal impressions, legal research, and legal conclusions of” attorneys at the DA’s Office. It further stated that its “production as to request C is now complete.” The ACLU requests that the County confirm that it does not possess any additional records responsive to Category C.

IV. RECORDS CONCERNING IMPLEMENTATION OF, AND COMPLIANCE WITH, THE RJA AND COMMUNICATIONS CONCERNING THE RJA (CATEGORIES D & E)

The Request sought all records concerning the DA’s implementation of and compliance with the RJA (Category D) and all communications concerning the RJA, including but not limited to email correspondence, and both internal and external communications (Category E).

On July 1, 2024, the County stated that it was handling Categories D and E “in tandem.” From correspondence dated July 1 and August 12, 2024, the ACLU believes that the County claims that it is withholding responsive records and making redactions to records it discloses to protect personal privacy (Gov. Code, § 7927.705; Cal. Const., art. I, § 1), criminal offender record information (Gov. Code, § 7927.705; Pen. Code, §§ 13102 and 13300), core work product privilege (Gov. Code § 7927.705; Code Civ. Proc., § 2018.030, subd. (a)), and investigatory records (Gov. Code, §§ 7923.600-7923.630).

When the ACLU raised concerns about production delays, the County stated that its search returned 16,145 documents and review of these documents would take an additional 10 months. The ACLU then demanded that the County provide information about its search protocol under Government Code section 7922.600, subd. (a). In response, the County identified five members of the DA’s Office whose email accounts had been searched and provided a list of 8 search terms that were being used to search those accounts. After further back and forth about search parameters, the ACLU proposed a two-part search protocol with an eye towards reducing irrelevant hits. The ACLU requested that the County provide hit counts on each search term before reviewing the records themselves in case further iteration was necessary. The County agreed to conduct its search in line with the ACLU’s protocol and, on February 18, 2025, made its first production.

V. ALL INVESTIGATIONS INTO *BATSON-WHEELER* MOTIONS (CATEGORY F)

Category F sought 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.

On July 1, 2024, the County stated that it “identified no responsive documents for this item.” Because the County never asserted exemptions in response to Category F, it is the ACLU’s understanding that the County is not withholding any documents responsive to this category.

VI. FINAL DEMAND FOR COMPLIANCE

The ACLU has repeatedly requested that the County meet its burden of overcoming the presumption in favor of disclosure and demonstrate that the records at issue are properly withheld, either pursuant to a specific statutory exemption or because of a clear overbalance on the side of confidentiality. (*CBS Broadcasting v. Superior Court* (2001) 91 Cal.App.4th 892, 908; Gov. Code, § 7922.000.) As the proponent of nondisclosure, the County “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.” (*ACLU of Northern Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 83 [emphasis in original, internal citations and quotations

omitted].) The County has consistently evaded this obligation, instead making insufficient “[c]onclusory or boilerplate assertions that merely recite statutory standards.” (*Ibid.*)

The County’s incomplete disclosures and broad assertions of exemptions have hindered meaningful public oversight. The ACLU appreciates the County’s efforts to review and produce records thus far, but the lack of clarity regarding withheld documents remains a significant concern.

To avoid unnecessary litigation, the ACLU requests that the County confirm in writing by May 1, 2025 that it will provide information regarding its assertion of exemptions, including why each specific exemption is relevant and linking those claims to each withheld record, or portion thereof. This information “must be specific enough to give the requester a meaningful opportunity to contest the withholding of the documents.” (*ACLU of Northern Cal. v. Superior Court, supra*, 202 Cal.App.4th at 83.)

If the County is unable to provide this information by May 1, 2025, we are happy to discuss a reasonable timeline for completion. If a resolution is not reached, the ACLU will be forced to pursue legal remedies, including a petition for writ of mandate and recovery of attorneys’ fees and costs under Government Code section 7923.115 and Code of Civil Procedure section 1021.5.

We remain hopeful that this matter can be resolved cooperatively and appreciate the County’s attention to this request. We look forward to your response.

All rights reserved.

Very truly yours,



Chelsea Tirgardo

Cc: Kory DeClark (declark@braunhagey.com), Jacqueline Wu (jwu@braunhagey.com), Emi MacLean (emaclean@aclunc.org), Chessie Thacher (cthacher@aclunc.org), Shaila Nathu (snathu@aclunc.org)

EXHIBIT 22

From: Kerrigan, Hilary <Hilary.Kerrigan@cco.sccgov.org>

Sent: Thursday, May 1, 2025 2:09 PM

To: Chelsea Tirgardoorn <tirgardoorn@braunhagey.com>

Cc: RJA_Litigation <RJA_Litigation@aclunc.org>; PRA Response <praresponse@braunhagey.com>; Kory DeClark <declark@braunhagey.com>; Jacqueline Wu <jwu@braunhagey.com>; EMacLean <emaclean@aclunc.org>; Chessie Thacher <CThacher@aclunc.org>; Shaila Nathu <SNathu@aclunc.org>

Subject: RE: California Public Records Act Request

***** EXTERNAL MESSAGE *****

Hi Chelsea,

Please see attached.



Hilary Kerrigan | Deputy County Counsel

Office of the County Counsel, County of Santa Clara

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

Office: (408) 299-5925 Mobile: (669)250-8176

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Pronouns: she/her/hers

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**Robert M. Coelho
Michaela L. Lewis
Steve Mitra
Elizabeth G. Pianca
Douglas M. Press
Relic Sun
Gita C. Suraj
ASSISTANT COUNTY COUNSEL**

May 1, 2025

Re: Public Records request from ACLU

Dear Ms. Tirgardoorn:

We have received your letter regarding the ACLU's pending public records act request to the County of Santa Clara's District Attorney's Office. We were surprised to receive your letter, given our ongoing efforts to fully and completely comply with the extensive and voluminous request, and given our very recent efforts to work collaboratively with the ACLU to identify and focus our review on the most useful within the few remaining categories of outstanding records.

Your letter contains some incomplete information about which records have been disclosed, and under what circumstances. Please note that given the size of many of the productions, we have utilized drop box in many instances. In an effort to clear up any misunderstandings, I am providing detail regarding the status of each of the requests, below. If any of the productions need to be re-sent, please let me know and I will arrange for that right away.

On Friday, November 17, 2023 we received the initial request from Haazim Amirali, attaching a pdf letter signed by Emi MacLean. On November 22, 2023, Shaila Nathu confirmed that the ACLU was not requesting re-disclosure of responsive documents previously produced to the ACLU pursuant to overlapping records requests from 2021 and 2022.

On November 27, 2023, Shana Heller of my Office met with various ACLU folks to discuss the request. The ACLU inquired whether the County would be asserting the same exemptions and privileges as were asserted on the parallel sections from the prior records request, and Ms. Heller confirmed that was the case. It was agreed that the ACLU had the universe of prosecutorial policies up until the time of the former request, and that only new policies since the last production would be produced.

A. Prosecutorial Data

Letter to Chelsea Tirgardoorn
Re: Public Records request from ACLU
Date: May 1, 2025
Page 2

On January 12, 2024, Shana Heller of my Office informed Shaila Nathu of the ACLU that the County was continuing to assess which of the requested data elements were subject to query in the District Attorney's System, as well as what scope of available data could be produced consistent with the private rights of the defendants involved.

On February 6, 2024, Shana Heller of my Office informed Ms. Nathu of our determinations regarding the availability of each item, and the applicable exemptions as to those that were available but could not be disclosed.

On April 25, 2024, we reiterated the payment instructions to run the requested and available data extraction at Shaila Nathu's request.

On July 1, 2024, after payment was received, the data was extracted, and reviews for fidelity were completed, we produced a very large spreadsheet of prosecutions from 2015 to the present to Emi MacClean. That spreadsheet contained ID per case; 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.

I have checked your website several times to determine whether that spreadsheet has been made publicly available, but I do not see it there. Please let me know if this is because you do not have the spreadsheet in hand, and I will re-send immediately. We consider this request to have been fully complied with since July of 2024.

For your reference, below is a reiteration of our determinations as to each item in this category:

Unique identifier associated with each defendant, each case, and each arrest.

The spreadsheet we provided included a deidentified ID number for each entry on the spreadsheet. We cannot provide identifying protected criminal record information pursuant to Penal Code sections 13102 and 13300.

Demographic Information regarding each Offender

Race- our spreadsheet included this data point.

Ethnicity- this data point is not tracked by the DA's Office.

Country of origin or nationality- this data point is not tracked by the DA's Office.

Gender- our spreadsheet included this data point.

Age or date of birth- we provided year of birth for each item

Prior criminal convictions of a defendant- this is not available in the DA's office case management system. To the degree individual criminal histories could as a practical matter be individually pulled from state or federal systems one at a time, which would be extraordinarily burdensome, that material is protected under Penal Code sections 13102 and 13300, and the CLETS policies and procedures.

Letter to Chelsea Tirgardoorn
Re: Public Records request from ACLU
Date: May 1, 2025
Page 3

Information regarding each arrest

Zip code of arrest- our spreadsheet included this data point.
Date of arrest- our spreadsheet included year of arrest.
Charge identified by LEA- this data point is not tracked by the DA's office.
Arresting agency- our spreadsheet included this data point under "LEA"

ADA assigned to the case

To degree this refers to an assigned deputy district attorney, it cannot be queried.

Decisions to decline to prosecute

Our spreadsheet contains information about whether each case was filed or rejected. The balance of the information under this item is not maintained in the system in a manner that is subject to query. Reviewing individual analyses and narratives in the voluminous individual case files to determine whether such information is present in each file would require a hand count, which is not required. Further, any such narratives would be exempt as protected criminal record information under Penal Code sections 13102 and 13300, investigative records under Government Code 7923.600, and core attorney work product.

Diversion offers and decisions

This information is not tracked by the DA's office in a manner that is subject to query. To the degree some case files contain this information for some prosecutions, a hand count and review of narratives for each individual case would be required to identify any such information. Completing a review of that kind is extremely burdensome and beyond what is required by law. Additionally, some of the responsive materials would likely contain exempt investigative records, CORI, and core attorney work product.

Charges filed

Statutes- the spreadsheet we produced contains this data point.
Severity- the spreadsheet we produced contains this data point.
Any enhancements- the spreadsheet we produced contains this data point.

Items 8 through 11, and 14-15

None of these items are maintained in the case management system in a manner that is subject to query. To the degree this information exists in some of the individual matters, it could only be identified by opening each and every case file and conducting a hand count, which is extremely burdensome. Further, some of the material would be exempt under Penal Code sections 13102 and 13300, as investigative records under Government Code 7923.600, and or as core attorney work product.

Demographic and other information concerning victims.

Victim race and gender were included in the spreadsheet we produced. Victim ethnicity is not recorded by the DA's office.

Letter to Chelsea Tirgardoorn
Re: Public Records request from ACLU
Date: May 1, 2025
Page 4

Prosecutorial Policies, Memoranda, or Guidance Documents

On January 12, 2024, we provided an initial production of prosecutorial policies and guidance documents to Shaila Nathu. This included guides for prosecutors.

On February 15, 2024, I made a second and final production of prosecutorial policies, noting that all other responsive documents had been provided pursuant to prior ACLU records requests and would not be produced again, per our agreement. No prosecutorial policies were withheld under any exemption. This response closed this portion of the request.

Any and All Training Agendas, Training Materials, and Recorded Trainings

On January 12, 2024, Shana Heller of my Office provided an initial production of training materials to Shaila Nathu. This included power point presentations used to train prosecutors through the California District Attorneys Association.

On February 1, 2024, I provided a production to Shaila Nathu, containing additional training material, including several slide decks and related notes. Attorney work product was redacted from this production, as was personal contact information and Zoom meeting login details.

On March 18, 2024, I provided another production containing training slides.

On August 19, 2024, I informed Shaila Nathu that we had reviewed the balance of the documents responsive to this request, and that the remainder of the documents were exempt under the core work product privilege. We considered this item fully satisfied on that date.

Records Concerning Implementation of, and Compliance with, the Racial Justice Act and Communications Concerning the RJA

Because the Racial Justice Act has had significant impact on DAO operations, the universe of potentially responsive records is extraordinarily voluminous. The responsive items for section C and D overlapped considerably, with communications concerning the RJA constituting a sub-set of records concerning the RJA, such that it has been most practical to consider these two items together.

In a meeting held between Shana Heller of my office and the ACLU on November 27, 2023, Ms. Heller inquired whether a more targeted request could be landed upon, given the likely very broad and voluminous scope of the documents potentially responsive to the request as originally phrased, much of which would not be useful. The ACLU agreed to discuss further internally and to provide additional information at a later date, but ultimately never followed up with additional information, and my office proceeded to run a search tailored to the original request.

On January 12, 2024, not having received any additional narrowing information, Ms. Heller produced an initial set of emails discussing the RJA and its implementation to Shaila Nathu.

Letter to Chelsea Tirgardoorn
Re: Public Records request from ACLU
Date: May 1, 2025
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On February 1, 2024, I produced a second set of correspondence discussing the RJA and its implementation to Ms. Nathu. Attorney work product and personal identifying information were redacted from this production. We also redacted Zoom and other remote meeting login information, as the benefit to the public of having that information is outweighed by the harm to the public of having government meetings interrupted by third parties. In this batch of records, the name of a victim of a crime was also redacted.

On March 18, 2024, I produced a third set of documents regarding implementation of the RJA, including memoranda, correspondence, and slides, applying the same universe of redactions.

On August 1, 2024, I produced a large batch of documents via drop box to Shaila Nathu, responsive to this request.

On August 19, 2024, I informed Shaila Nathu that we had in excess of 10,000 documents remaining for review under this category. On September 8, 2024, the ACLU responded with questions about the search that resulted in this universe of documents. On September 11, 2024, I provided the search terms and email addresses we had searched, as requested.

I heard nothing for many weeks, so on November 1, 2024, I followed up to see whether there was a desire to meet to discuss the outstanding documents, and any possible narrowing. I again heard nothing, and followed up on December 11, 2024 to inquire again. Finally, on December 17, 2024, more than 3 months after my last inquiry, I received a request for additional information about the search we had conducted. On December 19, 2024, I responded with detailed information about the number of search hits for each email address and each search term. I did not hear anything in response until January 24, 2025, when Shaila Nathu responded with, rather than a narrowing of the original request, a new request suggesting a search of many more email addresses, for many more terms.

On February 18, 2025, I provided another very large production via drop box. From this production, we redacted personal identifying information, core work product, investigative records, and documents consisting of deliberative process. My office continues to expend many resources reviewing the voluminous documents for this request, and for the subsequent broadened request, and will continue to do so on a consistent and ongoing basis until all the non-privileged, non-exempt material is produced.

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.

On July 1, 2024, I reported to Emi MacLean that after a diligent search, we had not identified any responsive records for this component of this request. Nothing has been withheld.

Letter to Chelsea Tirgardoon
Re: Public Records request from ACLU
Date: May 1, 2025
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As I have offered in the past, I am very happy to meet to discuss any outstanding concerns related to this request. I would note that I have reached out to the ACLU on several occasions to clarify and/or coordinate. We are eager to get you what you are seeking in an expeditious manner consistent with our legal obligations to protect confidential materials.

I look forward to discussing this with you further as is useful.

TONY LOPRESTI
County Counsel

/s/

HILARY T. KERRIGAN
Deputy County Counsel