

From: [Joseph Charles](#)
To: [Ormond, Evan A.](#)
Cc: [Shin-Mee Chang](#); [Shelley Cushere](#); [Pamela Driscoll](#)
Subject: Feb. 10, 2022/Nov. 17, 2023 CPRA Requests - RJA Act
Date: Wednesday, August 21, 2024 2:28:13 PM
Attachments: [SMDA Data.xlsx](#)

[EXTERNAL EMAIL]

Mr. Ormond:

This email shall respond to your letter dated August 7, 2024 to my client the San Mateo County District Attorneys' Office ("SMCDAO"). I am going to respond – again – substantively to each request and offer a new disclosure of responsive public records in an effort to resolve this issue but before I do, please allow me to establish a few parameters. I have attached the excel spreadsheet prepared by the SMCDAO that was previously served on your client in response to this request. As you can see, it contains over 25,500 rows and 16 columns of extracted information from a search of 146,000 cases over approximately a 7-year period, which is responsive to most of the 15 categories of information requested by your client. Based on this, the SMCDAO disputes your client's claim that we failed to comply with its requests.

As is often the case with Public Records Act ("PRA") requests, what the requestor is really seeking is "information." However, under the Act, the requestor is only entitled to "records." As noted in my written responses to this PRA request, the Public Records Act does not require a public entity to create a new record that does not already exist in order to respond to a PRA request. (See, *Sanders v. Sup. Ct.* (2018) 26 Cal.App. 5th 651, 665-666; *Federicks v. Sup. Ct.* (2015) 233 Cal.App. 4th 209, 227; *Hayne v. Sup. Ct.* (2001) 26 Cal.4th 1061, 1073-75[agency not under a duty to create log of potentially responsive records].) The SMCDAO respectfully declines to create a new public record to respond to your client's PRA requests.

Next, and your letter understandably fails to address this, my response dated March 25, 2022 to Braun Hagey specifically requested confirmation that the ACLU will pay for all costs associated with the extraction, programming and/or compiling of the requested electronic information to "construct" the record requested as authorized under the Act. (See, Gov't C. § 7922.575.) Neither the ACLU nor Braun Hagey ever responded to that request for confirmation. That failure by itself may have delayed or prevented the disclosure of some responsive information. We understand that the ACLU has requested a fee waiver. Unfortunately, the SMCDAO is not willing to grant such a request so as to maintain consistent treatment of all persons who submit PRA requests of such magnitude. So, before we endeavor to create an algorithm to re-search in excess of 150,000 cases and "construct" a document of extracted information from our database, we ask again to please confirm your client's willingness to pay any costs and fees associated with this effort to the extent that any are incurred.

With that said, the SMCDAO responds, again, to each one of the 15 categories of requests, most having three or four subcategories, as follows:

1.a.b. & c – Items a through c can be provided, with the caveat that “arresting agency number” refers to the police report number. It is our understanding that the SMCDAO has already provided information responsive to these three requests (see attached above). Please confirm if you want updated information current through today’s date.

2.a through e – the SMCDAO can extract information responsive to items a through e. However, we cannot, nor are we allowed to under California law, disclose information responsive to subcategory “f”, as it is a misdemeanor offense to disclose a defendant’s prior criminal history report (rap sheet). (See, Penal C. §§ 11140(a); 11141; 11142; see also, Gov’t C. § 7927.705.) Therefore, we will not produce any records responsive to 2.f.

3. Records responsive to items a and b can be provided however there is an accuracy issue with responding to item c as the SMCDAO recently change the manner in which it maintains this information. Information responsive to item 3.c may only be accurate for the last several months.so as

4. We request clarification as to this request. There is not one single ADA assigned to any given criminal case. One ADA may file the complaint, another may handle the preliminary hearing and/or other motion hearings, others may handle the trial, others may handle sentencing and post-trial motions. Our database does not track that information so we are unable to provide all that information. However, we may be able to provide you with the name of the ADA who filed the complaint only. Let us know if you want that information.

5. As previously noted, the SMCDAO is able to search and disclose information responsive to 5.a and 5.b. As for 5.c, again, the SMCDAO only began tracking such information a few months ago. We are willing to disclose that limited information if your client wishes. As for 5.d, the SMCDAO does not track or maintain information responsive to this request and therefore the SMCDAO respectfully declines to disclose any public information responsive to 5.d as doing so would require a manual review of over 150,000 files. Such a request is overly burdensome and therefore the public interest served in non-disclosure outweighs the public interest served in disclosure. (Gov’t C. § 7922.000; *Times Mirror Co. v. Sup. Ct.* (1991) 53 Cal.3d 1325.)

6. We can run a list of cases that ended up in misdemeanor diversion (PC1001.95) or mental health diversion (PC 1001.36). It gets a bit tricky, though, because the SMCDAO doesn’t really “offer” diversion. In general, the defendant seeks it and the SMCDAO opposes it or submits on it. Also, there are other types of diversion and/or “collaborative courts” but it’s

not clear what your client is truly seeking. The SMCDAO does not know what is meant by “informal” diversion as that term is unfamiliar to us. Please clarify what information you are seeking and/or whether your client simply wishes any cases that ended up in misdemeanor diversion (PC1001.95) or mental health diversion (PC 1001.36).

7. As previously noted, we are able to extract information responsive to requests 7.a through 7.c. We do not track or maintain information responsive to 7.d, therefore it is not searchable. The SMCDAO respectfully declines to provide information responsive to 7.d on the grounds that this request is unduly burdensome and therefore the public interest served in non-disclosure outweighs the public interest served in disclosure. (Gov’t C. § 7922.000; *Times Mirror Co. v. Sup. Ct.* (1991) 53 Cal.3d 1325; *Bertoli v. City of Sebastopol* (2015) 233 Cal.App.4th 353, 372; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 452–453.) Let us know if you want updated information responsive to 7.a through 7.c.

8. As previously noted, the SMCDAO does not track or maintain information responsive to request 8. Therefore, no responsive information can be disclosed.

9. As previously noted, the SMCDAO does not track or maintain information responsive to request 9. Therefore, no responsive information can be disclosed.

10. As previously noted, the SMCDAO does not track or maintain information responsive to request 10. Therefore, no responsive information can be disclosed.

11. As previously noted, the SMCDAO likely can extract information responsive to 11.a through 11.c. Please confirm your client’s willingness to pay costs associated with extracting this information to the extent there are any costs associated.

12. As previously noted, the SMCDAO likely can provide the name of the defense attorney but is not able to identify whether defense counsel was public or private as that information is not tracked or maintained.

13. Information responsive to this request can be provided with the caveat that the SMCDAO tracks data for race as provided to it by law enforcement.

14. As previously noted, the SMCDAO does not track or maintain information responsive to request 14. Therefore, no responsive information can be disclosed.

15. As previously noted, the SMCDAO does not track or maintain information responsive to request 15. Therefore, no responsive information can be disclosed.

The written response as well as the attached Excel spreadsheet are essentially what the SMCDAO provided your client in 2022 and again in 2023. Please let us know if your client wants updated information to the 15 categories of requests as limited by the above written responses. Please be advised that providing updated information as outlined above will take time to complete, likely a few weeks.

Last, the SMCDAO also hopes that litigation will not be necessary and is willing to discuss a resolution satisfactory to both parties. However, we disagree with your assessment that the SMCDAO has failed to comply with any of the ACLU's PRA requests. We look forward to your positive response and written confirmation that the ACLU is willing to pay costs associated with extracting and compiling the requested information.

Joseph F. Charles

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