



## COUNTY OF FRESNO

Lisa A. Smittcamp  
District Attorney

September 3, 2024

### **VIA E-MAIL**

Emi MacLean, Senior Staff Attorney  
Shaila Nathu, Staff Attorney  
Criminal Justice Division  
ACLU Foundation of Northern California

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

Dear Ms. MacLean, and Ms. Nathu:

This letter follows up on the Fresno County District Attorney's Office (the Department) letters, dated January 29, 2024, February 12, 2024, March 12, 2024, April 12, 2024, and June 4, 2024, June 10, 2024 and July 30, 2024, in response to your Public Records Act request, dated November 17, 2023, but received by the Department by email on January 17, 2024 (the request dated November 17, 2023 was sent to an inactive or unmonitored email address) for the period of "2015 through the date of the search" ("the Current Request"). The period of investigation for responsive records shall end January 17, 2024, the date of the Current Request.

The Current Request contains six main categories, at least 29 subcategories, each broken down into at least 65 further sub-categories, as follows:

### **A. Prosecutorial Data**

Please provide the following case, individual, and/or charge-level data in the possession or control of the District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to the date of the search. For any data elements the Office does *not* produce, please identify whether the Office: 1) does not collect the data element in a computerized database; 2) is asserting an exemption, and the specific exemption asserted; or 3) is not disclosing for some other reason.

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1. Unique identifier(s) associated with each defendant, each case, and each arrest
  - a. Court case number(s)
  - b. Arresting agency number(s)
  - c. Any other unique identifier(s)
2. Demographic and other information concerning each defendant
  - a. Race
  - b. Ethnicity
  - c. Country of origin or nationality
  - d. Gender/sex
  - e. Age or date of birth
  - f. Prior criminal convictions of a defendant
3. Information regarding each arrest
  - a. Zip code of arrest
  - b. Date of arrest
  - c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)
  - d. Arresting agency
4. ADA assigned to the case
5. Decisions to decline to prosecute
  - a. Date of decision to decline to prosecute
  - b. Identity of person who made final decision to decline prosecution
  - c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)
  - d. Reasons for the declinations to prosecute, including but not limited to:
    - i. police misconduct involved in case;
    - ii. injuries to persons involved;
    - iii. injuries to suspect;
    - iv. financial loss to persons involved;
    - v. prior criminal record of suspect; and
    - vi. victim's level of cooperation in prosecuting case.
6. Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)
  - a. Date of diversion offer
  - b. Type of diversion offered
  - c. Whether diversion accepted
  - d. Whether diversion completed
7. Charges filed
  - a. Statutes (applicable code section)
  - b. Severity (i.e., infraction, misdemeanor, wobbler, felony)
    - a. Any enhancements<sup>5</sup>
    - b. Maximum sentence
8. Factors considered in deciding charges to file, and level of charges, including

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- a. Injuries to persons
- b. Financial loss to persons
- c. Status of victim (i.e., law enforcement, child, spouse, etc.)
- d. Prior criminal history of defendant
- e. Victim's cooperation
9. Bail/custody information
  - a. Bail amount requested
  - b. Detention orders sought
  - c. Whether bail was set or denied
  - d. Whether individuals were released on bail or not
  - e. Pre-plea/pre-trial custody status
10. Plea offers
  - a. Charge(s) offered, including severity (i.e., infraction, misdemeanor, felony), including enhancements
  - b. Dates of plea offers
  - c. Sentence(s)/disposition(s) offered
  - d. Records of whether any plea offer was accepted, including date of acceptance
11. Case outcomes
  - a. Charges of conviction
  - b. Dismissed charges
  - c. Sentences
12. Counsel for defendant, whether public defender or private counsel
13. Demographic and other information concerning victims
  - a. Race
  - b. Ethnicity
  - c. Gender/sex
14. Recommendations regarding parole
15. Recommendations regarding pardon or commutation

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

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

- a. Diversion eligibility and/or programming;
- b. Custody and/or bail recommendations;
- c. Charging recommendations and/or decisions;
- d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
- e. Jury selection;
- f. Sentencing recommendations;
- g. Prosecution of minors;

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- 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.**

On August 14, 2024, the Department received your payment of \$533.81, which is the cost estimate to extract data pursuant to the Current Request for Category A, Prosecutorial Data, with its respective subcategories, for the time period of August 13, 2022 through January 17, 2024, the date of the Current Request. The Department is currently processing that data extraction, which is taking longer than originally anticipated. **Therefore, the Department now anticipates that the Department will complete the data extraction necessary to produce the data requested for Category A, Prosecutorial Data, for the time period of August 13, 2022 through**

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**January 17, 2024, and will transmit that data to you on or before September 30, 2024. The Department will let you know if that expectation changes.**

**On April 12, 2024, the Department sent a letter with records responsive to Category B, subcategories (a) through (n) of the Current Request. That concluded the Department's response to Category B of the Current Request.**

In the following section, the Department will now address Category C, Any and all training agenda, training materials, and recorded trainings that are mandatory or optional for prosecutors.

You request in Category C, all trainings that are mandatory or optional for prosecutors. It is unreasonable for the Department to have to make an extraneous determination whether records of trainings are mandatory or optional for its prosecutors, so the Department is only searching for trainings available to its prosecutors. The Department has determined that any and all training agenda, training materials and recorded trainings available to its prosecutors are protected in their entirety by the core work product privilege and deliberative process. (Gov. Code § 7927.705.) Training records have been created by the Department's attorneys for legal guidance on issues facing prosecutors and/or to prepare prosecutors for trial, and these are protected from disclosure by the attorney work product doctrine. (Ibid.; Code Civ.Proc., § 2018.030, subd. (c) ["A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances."].) Such records reflect an attorney's impressions, conclusions, opinions, or legal research or theories and are considered core work product and as such they are protected and privileged writings whether created by County's District Attorney's Office in anticipation of litigation or for legal advice when no litigation is threatened. (See *League of California Cities v. Superior Court* (2015) 41 Cal.App.4th 976; 71 Ops.Cal.Atty.Gen. 5, 7.)

These records are also exempt from disclosure under Government Code section 7927.705, and pursuant to the deliberative process privilege, and also on the grounds that the public interest served by not disclosing these records outweighs the public interest served by disclosing them. (Code of Civ. Proc. §2018.02, Gov. Code § 7922.000; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136). The deliberative process privilege protects materials reflecting deliberative or decision-making processes. (*Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.)

Disclosure of these records would expose the decision-making process of the District Attorney's Office in relation to case preparation, jury selection, trial preparation, case administration and case strategy in such a way as to discourage candid discussion in District Attorney staff and undermine the ability of the District Attorney's Office to

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perform its function of ensuring the fair administration of justice. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325). Further, some records are withheld due to safety considerations of the Department's employees. Some records, if released, would reveal strategic safety processes or other information related to employee personal safety which could put the personal safety of the Department's employees at risk. Therefore, those records have been held on the basis that not disclosing those records outweighs public interest served by disclosing them. (Code of Civ. Proc. §2018.02, Gov. Code § 7922.000; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136).

To the extent that the Current Request seeks records published by outside organizations, but possessed by the County, the Department has conducted a review of any and all potentially responsive documents and have determined these records are exempt from disclosure on the basis of core work product, privilege, and deliberative process. (Code of Civ. Proc. §2018.02, Gov. Code § 7922.000; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136). Such records are exempt from disclosure under Government Code section 7927.705, and pursuant to the deliberative process privilege, and also on the grounds that the public interest served by not disclosing these records outweighs the public interest served by disclosing them. (Code of Civ. Proc. §2018.02, Gov. Code § 7922.000; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136). Moreover, such records reflect an attorney's impressions, conclusions, opinions, or legal research or theories and are considered core work product and as such they are protected and privileged writings whether created by the County's District Attorney's Office in anticipation of litigation or for legal advice when no litigation is threatened. (*See League of California Cities v. Superior Court* (2015) 41 Cal.App.4th 976; 71 Ops.Cal.Atty.Gen. 5, 7.) Further, the Department is exempt from disclosing external privileged records based on attorney work product, containing impressions, conclusions, opinions or legal research or theories. (Gov. Code § 7922.000; *OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874,887-889; *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 920-921.)

In addition to exemptions contained within in the Public Record Act, including the exemptions listed above, the Department has determined that the Department's training materials are also protected under doctrines of confidentiality (Evid. Code §§ 1040-1041), privacy (Cal. Const. art. 1 § 1), provisions of law prohibiting disclosure of particular types of information such as copyrighted materials (Civ. Code § 980; Title 17 U.S.C § 101 et. seq.), criminal history information (Pen. Code § 11105), and personal identifying information. (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 347, 201 Cal.Rptr. 654.; Pen. Code §§ 530.5-530.55.) And as such, the public interest served by

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not disclosing these records outweighs the public interest served by disclosing them.  
(Code of Civ. Proc. §2018.02, Gov. Code § 7922.000.)

This determination notwithstanding, the District Attorney is aware of the serious current public concern surrounding unconscious and conscious bias of prosecutors, including case discretion, jury selection, and other areas associated with employment. Therefore, the District Attorney has balanced the public concerns against all exemptions and privileges and will waive the core work product privilege, as well as the deliberative process exemption, for certain responsive records which it is releasing concurrently with this letter.

**Please see attached records. You will find three separate attachments of released records. These records have been sent via email and are electronically shared through Sharepoint.**

Please note that the Department endeavors to provide access to information concerning the conduct of the People's business. We reserve the right, however, to maintain the lawful confidentiality of our records, and to claim, enforce, and apply any and all applicable exemptions, privileges, and proscriptions against public disclosure of records, including but not limited to, those listed in Article 2 of the Government Code, Title 1, Division 7, Chapter 3.5 of the California Evidence, Civil procedure, and Penal Codes, the Federal Rules of Evidence, and those established by case law.

**This concludes the Department's response to Category C of your request.**

**As stated in the Department's June 10, 2024, letter, the Department searched its records and did not find any records responsive to Category D of the Current Request, which concluded the Department's response to Category D of the Current Request.**

**As stated in the Department's June 10, 2024, letter, the Department searched its records and produced certain records responsive and not exempt from disclosure in response to Category E of the Current Request, which concluded the Department's response to Category E of the Current Request.**

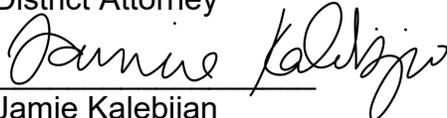
**As stated in the Department's June 10, 2024, letter, the Department searched its records and did not find any records responsive to Category F of the Current Request, which concluded the Department's response to Category F of the Current Request.**

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Please contact me if you have any questions.

Sincerely,

Lisa A. Smittcamp  
District Attorney

By   
Jamie Kalebjian  
Deputy District Attorney