

From: [Joseph Charles](#)
To: [Ormond, Evan A.](#)
Cc: [Shin-Mee Chang](#); [Shelley Cushere](#); [Papay, Kevin M.](#); [Robert Lewis](#); [Satia, Rishi P.](#); [Chessie Thacher](#); [Emi MacLean](#)
Subject: RE: Feb. 10, 2022/Nov. 17, 2023 CPRA Requests - RJA Act
Date: Thursday, January 23, 2025 2:35:45 PM
Attachments: [image001.jpg](#)

Good afternoon.

After reviewing the original PRA request from 2022, the renewed request in 2023, our response and production in August 2024, and now your modified requests added to our August 2024 response as well as a request to “update” our previous response to include information during the period of August 2024 to the present, we have decided to rerun the entire report from 2015 with the modified categories that you have requested. This will take time, at least one month and possibly longer. To confirm, the SMCDAO will provide:

1a, b., and c: Consistent with the offer in our August 21, 2024 e-mail, we can produce updated information through date of production.

2a-e: information responsive to categories 2a through 2e through the date of the production.

3: information responsive to categories 3a, 3b, and 3d through date of production. Not sure we can search for and extract the information responsive to category 3.c. But we will let you know.

4: the names of the ADA who filed the complaints.

5: information responsive to categories 5a and 5b. As for 5c, we are only able to provide case-level rejection data (i.e., date and the DDA).

6: A list of cases that were assigned to misdemeanor diversion (Pen. Code, § 1001.95) or mental health diversion (Pen. Code, § 1001.36) and possibly military diversion. Unfortunately, we are unable to extract the remainder of the requested information as we do not track such information; that would require manual review of relevant case files.

7: Updated information through the date of production for categories 7a-c. As to category 7d, as noted in our previous response, we do not track this information. Therefore, we respectfully decline to provide any information responsive to 7.d on two grounds. First, to disclose information responsive to 7.d would require the SMCDAO to “create” a new record that does not already exist. The PRA does not require a public entity to create a record in order to respond to a PRA. (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].) Second, responding to 7.d would require the SMCDAO to manually review 146,000++ case files to identify what the maximum possible sentence could have been under the law **AT THAT TIME**, including enhancements. That literally could take years and is thus overly burdensome. Therefore, based on the facts of this particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (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 ["When weighing the benefits and costs of disclosure, any expense or inconvenience to the public agency may properly be considered"]; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 452–453.)

11: information through the date of production for categories 11a through 11c.

12: the names of the defense attorneys identified in each case (to the extent the information has been recorded, in some cases it may not be recorded). Also, it is unlikely that we will be able to identify whether the defense attorney was public or private. In many cases, they are both.

13: through the date of production for category 13.

As noted above, creating anew this spreadsheet for 2015 through January 2025 will take time, at least one month and possibly longer. The last excel spreadsheet the SMCDAO provided in response to this PRA included over 25,000 rows and 16 columns of information extracted from our database; this takes time. You have now requested additional information and updated information to the present. Your patience is therefore expected and appreciated. I will put something in my calendar to provide an update in about three weeks, assuming that is acceptable.

In the interim, I will provide you with an estimated cost for us to extract this information for your client.

Joseph F. Charles

Deputy County Attorney

County Attorney's Office, County of San Mateo

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From: Ormond, Evan A. <evan.ormond@morganlewis.com>

Sent: Tuesday, January 7, 2025 3:37 PM

To: Joseph Charles <jcharles@smcgov.org>

Cc: Shin-Mee Chang <schang@smcgov.org>; Shelley Cushere <scushere@smcgov.org>; Pamela

Driscoll <pdriscoll@smcgov.org>; Papay, Kevin M. <kevin.papay@morganlewis.com>; Lewis, Robert A. <robert.lewis@morganlewis.com>; Satia, Rishi P. <rishi.satia@morganlewis.com>; Chessie Thacher <CThacher@aclunc.org>; Emi MacLean <EMacLean@aclunc.org>

Subject: RE: Feb. 10, 2022/Nov. 17, 2023 CPRA Requests - RJA Act

CAUTION: This email originated from outside of San Mateo County. Unless you recognize the sender's email address and know the content is safe, do not click links, open attachments or reply.

Mr. Charles,

We have not received any response to our correspondence sent on October 28, 2024. Please confirm receipt of this email and confirm that you will promptly produce responsive records. Thanks very much.

Best,

Evan A. Ormond

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From: Ormond, Evan A.

Sent: Monday, October 28, 2024 4:27 PM

To: 'Joseph Charles' <jcharles@smcgov.org>

Cc: Shin-Mee Chang <schang@smcgov.org>; Shelley Cushere <scushere@smcgov.org>; Pamela Driscoll <pdriscoll@smcgov.org>

Subject: RE: Feb. 10, 2022/Nov. 17, 2023 CPRA Requests - RJA Act

Mr. Charles,

This email replies to your email of August 21, 2024 which responded to our letter of August 7, 2024.

We briefly summarize here the current status as we understand it. We do not believe that we received any substantive response from the SMDA to our November 17, 2023 PRA request. Instead, review of our records indicates that we received, on November 27, 2023, the reproduction of the County's April 19, 2022 production, which had been responding to our February 10, 2022 PRA request. The November 27 correspondence further confirmed that the San Mateo DA has filed thousands of new cases since April 2022. Please confirm that the County has produced no other written responses to our November 17, 2023 PRA request.

We very much appreciate your stated willingness to produce a substantive response to our November 17, 2023 PRA request now. Please inform us whether the County intends to produce the same categories of data previously produced, or different data. We are, however, unclear as to

whether the County is seeking to charge fees for the proposed production, when the County has previously produced nearly identical data without seeking *any* fees. If the County is seeking fees for its proposed production, please provide the estimated total amount of fees charged, the basis for the charge, the scope of work or data compilation contemplated, the number of hours anticipated to perform the work, and the proposed hourly rate, as well as any other information to help us understand if the amount estimated complies with statutory and constitutional law.

We have these comments with regard to your response to specific categories:

1a, b., and c: Consistent with the offer in your August 21, 2024 e-mail, please produce updated information through the date of the production.

2a-e: Please produce information responsive to categories 2a through 2e through the date of the production.

3: Please produce information responsive to categories 3a and 3b through the date of the production. As to category 3c, please produce information responsive to this category as it was kept until the referenced change, and produce information responsive after the change through the date of the production.

4: Please provide the names of the ADA who filed the complaints.

5: Please produce information through the date of the production for categories 5a, 5b, and 5c.

6: Please produce a list of cases that were assigned to misdemeanor diversion (Pen. Code, § 1001.95) or mental health diversion (Pen. Code, § 1001.36). Please also produce information on defendants seeking diversion (including Deferred Entry Judgment or any other diversion programs the SMCDAO offers) and the SMCDAO's opposition or submission, including but not limited to: (i) date of diversion request, (ii) type of diversion requested, (iii) whether the SMCDAO opposed or submitted, and (iv) whether diversion was completed.

7: Please produce updated information through the date of production for categories 7a-c. As to category 7d, the burden for demonstrating that a record is exempt or otherwise properly withheld is on the agency withholding a record. (Gov. Code, § 7922.000; *Getz v. Superior Court* (2021) 72 Cal.App.5th 637, 651, reh. den., Mar. 16, 2022.) SMCDAO must provide "meaningful detail" about the "public fiscal and administrative concerns over the expense and inconvenience of responding" to records requests in order to meet its burden to show that the public interest in nondisclosure "clearly outweigh[s] the public interest in disclosure." (*Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 931.)

11: Please produce information through the date of production for categories 11a through 11c. As to your request for costs, please explain in detail the work associated with extraction of this data, the amount requested and how the amount was calculated, and the bases for the requested costs.

12: Please provide the names of the defense attorneys.

13: Please produce information through the date of production for category 13.

I am available to discuss this by email (evan.ormond@morganlewis.com) or by phone (213.612.7206). We look forward to your prompt response and production of responsive records.

Best,

Evan A. Ormond

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From: Joseph Charles <jcharles@smcgov.org>

Sent: Wednesday, August 21, 2024 2:23 PM

To: Ormond, Evan A. <evan.ormond@morganlewis.com>

Cc: Shin-Mee Chang <schang@smcgov.org>; Shelley Cushere <scushere@smcgov.org>; Pamela Driscoll <pdriscoll@smcgov.org>

Subject: Feb. 10, 2022/Nov. 17, 2023 CPRA Requests - RJA Act

[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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