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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 COUNTY OF SOLANO

11 AMERICAN CIVIL LIBERTIES
12 UNION OF NORTHERN CALIFORNIA,

13 Petitioner/Plaintiff,

14 vs.

15 KRISHNA A. ABRAMS, In Her Official
16 Capacity as The District Attorney of Solano
17 County and THE COUNTY OF SOLANO

18 Respondents/Defendants.

Civil Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Govt. Code §7920.000 *et seq.*; Code Civ.
Proc. § 1085 *et seq.*, Cal. Const., art. I, §3].

1 **INTRODUCTION**

2 1. This lawsuit seeks to enforce the California Public Records Act (“PRA”) set forth
3 at Government Code sections 7920.000 *et seq.* against Krishna A. Abrams, in her official capacity
4 as the Solano County District Attorney (“SCDA”), and the County of Solano (“Solano County”).
5 The SCDA and Solano County have refused to comply with their legal obligations under the PRA
6 by repeatedly denying access to information essential for public oversight of prosecutorial
7 practices. For years, SCDA has ignored multiple requests for basic prosecutorial records. This is
8 a clear violation of the PRA and the California Constitution. It also prevents meaningful
9 implementation of the Racial Justice Act, California’s landmark legislation intended to eliminate
10 racial discrimination in the criminal legal system.

11 2. Between 2021 and 2023, Petitioner/Plaintiff American Civil Liberties Union of
12 Northern California (“ACLU”) submitted three PRA requests to the SCDA seeking prosecutorial
13 data, policies, and other information relevant to the implementation of the Racial Justice Act.
14 The ACLU submitted similar PRA requests to every district attorney in the state, as part of an
15 effort to create a public database of prosecutorial records that will allow for robust
16 implementation of the Racial Justice Act.¹ The SCDA all but ignored each PRA request. After
17 acknowledging receipt of each request, the SCDA refused to produce any responsive records.
18 Instead, the SCDA asserted overbroad and unsupported exemptions, withheld key policy
19 documents, and rebuffed efforts to provide statutorily required information. The SCDA then
20 ceased replying to requests for the legally required production of records or for further
21 information.

22 3. The PRA provides a comprehensive framework for the disclosure of government
23 records based on the premise that access to such information is “a fundamental and necessary
24 right of every person in this state.” (Gov. Code, § 7921.000.) The California Constitution also
25 recognizes that the people have a “right of access to information concerning the conduct of the

26 ¹ See ACLU of Northern California, Racial Justice Act (last accessed September 15, 2024),
27 <https://www.aclunc.org/racial-justice-act#:~:text=The%20Racial%20Justice%20Act%20is,policies%20and%20data%20from%20prosecutors.>

1 people’s business.” (Cal. Const., art. 1, § 3, subd. (b), par. (1).) In refusing to produce requested
2 records, the SCDA has impermissibly insulated itself from public scrutiny and accountability, in
3 violation of the PRA and Constitution.

4 4. The SCDA’s actions also obstruct the effectuation of the Racial Justice Act. The
5 Racial Justice Act exists expressly “to provide remedies that will eliminate racially discriminatory
6 practices in the criminal justice system” and “to ensure that individuals have access to all relevant
7 evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining
8 convictions or imposing sentences.” (*See* AB 2542 Criminal Procedure: Discrimination, Stats.
9 2020, Ch. 317, § 2(j).) Lack of access to prosecutorial records starves the public of the
10 information necessary to ensure that the Racial Justice Act achieves its purpose.

11 5. Petitioner/Plaintiff ACLU respectfully asks this Court to issue a writ of mandate
12 compelling the SCDA to comply with its legal obligations and provide to Petitioner/Plaintiff the
13 information requested, as well as to order declaratory and injunctive relief to the same effect.
14 Absent the issuance of a writ of mandate and the other relief requested, Petitioner/Plaintiff ACLU
15 has no plain, speedy, or adequate remedy at law to enforce its rights.

16 **PARTIES**

17 6. Petitioner/Plaintiff ACLU is a non-profit organization under the laws of the state
18 of California. It is an affiliate of the national American Civil Liberties Union, a non-profit, non-
19 partisan civil liberties organization with more than 1.7 million members, dedicated to the
20 principles of liberty and equality embodied in our civil rights laws and in both the United States
21 and California Constitutions. The ACLU is further dedicated to advancing government
22 transparency and accountability. As part of its advocacy, the ACLU relies on public records to
23 gather information and ensure that the public is informed about the conduct and practices of local,
24 state, and federal officials. The ACLU routinely uses information from public records to support
25 civil rights litigation, publish reports, and work with the press and the public at large to promote
26 participation in civic affairs. The ACLU is also actively involved in seeking to ensure
27 implementation of the Racial Justice Act statewide, including by collecting and disclosing
28 information about the policies and practices of district attorneys throughout the state. The ACLU

1 is a member of the public with the right under the PRA to inspect and receive public records and
2 to seek relief in a court of competent jurisdiction to enforce that right. (Gov. Code, §§ 7920.515,
3 7920.520, 7920.530, 7923.000, 7923.100.)

4 7. Respondent/Defendant Krishna A. Abrams, in her official capacity as the Solano
5 County District Attorney, is a government official responsible for the prosecution of criminal
6 offenses in Solano County. Pursuant to state law, SCDA has discretionary authority to “initiate
7 and conduct on behalf of the people all prosecutions for public offenses,” or to decline to
8 prosecute offenses. (Gov. Code, § 26500.) The SCDA is a public agency within the meaning of
9 the PRA. (Gov. Code, §§ 7920.510, 7920.525.)

10 8. Respondent/Defendant the County of Solano is a local public agency within the
11 meaning of Government Code sections 7920.510 and 7920.525.

12 **JURISDICTION AND VENUE**

13 9. This Court has jurisdiction under Government Code sections 7923.000, 7923.005,
14 7923.100, 7923.105, 7923.110, 7923.115, 7923.500; Code of Civil Procedure section 1085; and
15 Article VI, section 10 of the California Constitution.

16 10. Venue is proper in this Court because the acts and omissions complained of herein,
17 as well as the records in question, or some portion of them, are situated in this County. (Code Civ.
18 Proc., §§ 394, subd. (a), 395, subd. (a), 401, subd. (1); Gov. Code, §§ 7923.100, 7923.105.)

19 **LEGAL BACKGROUND**

20 **Statutory and Constitutional Rights to Public Records**

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

27 12. Under the PRA, “access to information concerning the conduct of the people’s
28 business”—business conducted by public agencies on behalf of the people—is a “fundamental

1 and necessary right of every person in this state.” (Gov. Code, § 7921.000.) The PRA requires
2 that, in response to records requests from members of the public, public agencies “make the
3 records promptly available,” so long as the records are not expressly exempt. (Gov. Code, §
4 7922.530, subd. (a).) The PRA defines a record to include “any writing containing information
5 relating to the conduct of the public’s business prepared, owned, used, or retained by any state or
6 local agency regardless of physical form or characteristics.” (*Id.*, § 7920.530.) A “writing” under
7 the PRA encompasses any “means of recording upon any tangible thing any form of
8 communication or representation,” and includes information in an electronic format. (*Id.*, §
9 7920.545 & *id.*, § 7922.570.) Non-exempt electronic records must be made available even when
10 “the information must first be retrieved and then exported into a separate record.” (*National*
11 *Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal.5th 488, 502.)
12 The PRA requires agencies to “gather and segregate disclosable electronic data and to ‘perform
13 data compilation, extraction or computer programming if ‘necessary to produce a copy of the
14 record.’” (*Id.* at 503 [quoting *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 669] and
15 Gov. Code, § 6253.9, subd. (b).)

16 13. The PRA codifies specific requirements and deadlines that agencies must observe
17 upon receipt of a public records request. (Gov. Code, §§ 7920.000 *et seq.*) Specifically, once an
18 agency receives a PRA request, it has 10 days to respond. Within those 10 days, the agency must
19 determine whether the request seeks disclosable public records in its possession, custody, or
20 control, and must “promptly” notify the requestor of its determination and reasoning. (*Id.*, §
21 7922.535.) Only in “unusual circumstances” may an agency extend the time to respond, by up to
22 14 days. (*Ibid.*) Such “unusual circumstances” are limited to certain enumerated reasons for
23 delay.² An agency utilizing an extension must explicitly notify the requestor of it in writing, set

24 ² Under the PRA, unusual circumstances “means” only: “(1) The need to search for and collect
25 the requested records from field facilities or other establishments that are separate from the office
26 processing the request. (2) The need to search for, collect, and appropriately examine a
27 voluminous amount of separate and distinct records that are demanded in a single request. (3) The
28 need for consultation, which shall be conducted with all practicable speed, with another agency
having substantial interest in the determination of the request or among two or more components
of the agency having substantial subject matter interest therein. (4) The need to compile data, to
write programming language or a computer program, or to construct a computer report to extract
data.” (Gov. Code, § 7922.600.)

1 forth the reasons for the extension, and provide an estimate as to when the records will be
2 available. (*Ibid.*)

3 14. The PRA permits delay “only to the extent reasonably necessary to the proper
4 processing of the particular request.” (Gov. Code, § 7922.535.) The same section of the PRA
5 forbids delay for any other reasons: “Nothing in this chapter shall be construed to permit an
6 agency to delay or obstruct the inspection or copying of public records.” (*Id.*, § 7922.500.)

7 15. It is an agency’s obligation to conduct record searches based on the criteria
8 identified in a specific request. (Gov. Code, §§ 7922.500, 7922.505, 7922.525, 7922.530,
9 7922.535, 7922.540, 7922.545, 7922.600, 7922.605.) An agency may be required to assist a
10 requestor to formulate a request based on the agency’s greater knowledge of its own
11 recordkeeping system. (*Id.*, § 7922.600.) Additionally, officials responding to a PRA request
12 must also (1) offer assistance in identifying responsive records and information; (2) describe “the
13 information technology and physical location in which the records exist”; and (3) provide
14 “suggestions for overcoming any practical basis” that might be asserted as a reason to delay or
15 deny access to the records or information sought. (*Id.*, § 7922.600.) Information produced as an
16 electronic record should be produced “in the format requested if the requested format is one that
17 has been used by the agency to create copies for its own use or for provision to other agencies.”
18 (*Id.*, § 7922.570 subd. (b)(2).)

19 16. If an agency denies a request for records in whole or in part, it must issue that
20 denial in writing. (Gov. Code, § 7922.540, subd. (a).) In such communication, the agency must
21 “demonstrate[e] that the record in question is exempt under [the PRA’s] express provisions . . . or
22 that on the facts of the particular case the public interest served by not disclosing the record
23 clearly outweighs the public interest served by disclosure of the record.” (*Id.*, § 7922.000.) The
24 agency must also identify both the name and title of the person(s) responsible for deciding not to
25 disclose requested records. (*Id.*, §§ 7922.540.) An agency must segregate exempt from
26 nonexempt material and disclose “[a]ny reasonably segregable portion of a record.” (*Id.*, §
27 7922.525, subd. (b).)

1 17. “Any person” may institute proceedings for injunctive or declaratory relief or writ
2 of mandate to enforce the right to inspect or receive a copy of any nonexempt public record.
3 (Gov. Code, § 7923.000; *see also* Code Civ. Proc., §§ 1085 *et seq.*) The PRA further provides
4 that a “court shall order the officer or person charged with withholding the records to disclose the
5 public record or show cause why the officer or person should not do so” where “it is made to
6 appear by verified petition to the superior court of the county where the records or some part
7 thereof are situated that certain public records are being improperly withheld from a member of
8 the public.” (Gov. Code, § 7923.100.)

9 18. To ensure that the public’s access to information is not delayed or obstructed, the
10 PRA requires that “the court shall set the times for hearings and responsive pleadings with the
11 object of securing a decision as to the matters at issue at the earliest possible time.” (Gov. Code,
12 § 7923.005.)

13 **The Racial Justice Act**

14 19. In addition to the foregoing constitutional and statutory directives commanding the
15 disclosure of public records, the Racial Justice Act reinforces the need for disclosure of the types
16 of records that Petitioner/Plaintiff seeks by its PRA requests.

17 20. The California Legislature enacted the Racial Justice Act “to eliminate racial bias
18 from California’s criminal justice system,” “to remedy the harm to the defendant’s case and to the
19 integrity of the judicial system,” “to actively work to eradicate” racial disparities in the judicial
20 system, and “to ensure that individuals have access to all relevant evidence, including statistical
21 evidence, regarding potential discrimination in seeking or obtaining convictions or imposing
22 sentences.” (AB 2542 Criminal Procedure: Discrimination, Stats. 2020, Ch. 317, § 2(i), (j).) In
23 September 2022, California enacted new legislation to make the Racial Justice Act retroactive.
24 (AB 256 Criminal Procedure: Discrimination, Stats. 2022, Ch. 739.) To implement the Racial
25 Justice Act and realize the Legislature’s goal of eradicating racial bias from the criminal legal
26 system, the public must be able to access policies and data concerning decisions regarding
27 whether and how cases are prosecuted and whether such prosecutions may be tainted by racial
28 bias.

1 21. The Racial Justice Act specifically provides that a defendant may present evidence
2 of racial bias by showing “statistical evidence or aggregate data demonstrat[ing] a significant
3 difference in seeking or obtaining convictions or in imposing sentences comparing individuals
4 who have committed similar offenses and are similarly situated, and the prosecution cannot
5 establish race-neutral reasons for the disparity.” (Penal Code, § 745, subd. (h)(1).) In
6 recognizing that the identification of racial and ethnic disparities may depend on statistical
7 evidence or aggregate data, the Legislature has presumed public access to such information, as
8 well as confirmed that access to this information is required to maintain the “integrity of the
9 judicial system.” (AB 2542 Criminal Procedure: Discrimination, Stats. 2020, Ch. 317, § 2(i).)

10 22. Solano County was the first county in the State subject to appellate litigation
11 related to the Racial Justice Act. (*See Young v. Superior Court of Solano County* (2022) 79 Cal.
12 App. 5th 138 [affirming a criminal defendant’s right to seek discovery from the District
13 Attorney’s office regarding potential prosecutorial bias under the Racial Justice Act].)

14 23. Partly in response to the implementation of the Racial Justice Act and the Court of
15 Appeal decision in *Young*, Solano County Superior Court “adopt[ed] Local Rule 17.7” which
16 established an Elimination of Bias Committee in 2022. (*See* Richard Bammer, *Solano County*
17 *Superior Court Launches Effort to Address Systemic Bias*, Vacaville Reporter, Aug. 17, 2022, at
18 [https://www.thereporter.com/2022/08/17/solano-county-superior-court-launches-effort-to-](https://www.thereporter.com/2022/08/17/solano-county-superior-court-launches-effort-to-address-systemic-bias/)
19 [address-systemic-bias/](https://www.thereporter.com/2022/08/17/solano-county-superior-court-launches-effort-to-address-systemic-bias/); LR 17.7 [Committee “established for the purpose of addressing and
20 remedying actual or perceived bias in connection with judicial proceedings or court operations”
21 and promotes “inclusion and equity” through “education and activities designed to address
22 explicit and implicit bias.”].)

23 **Other Relevant Legislation**

24 24. The Legislature requires the proactive disclosure of law enforcement policies and
25 training materials to “help[] educate the public about law enforcement policies, practices, and
26 procedures [and] increase[] communication and community trust.” (Sen. Bill No. 978 (2017-18
27 Reg. Sess.) § 1, subd. (d) [codifying Penal Code § 13650].)

1 25. The Legislature also expressly recognized the importance of collecting and
2 publishing prosecutorial data like that at issue here when it recently passed prosecutorial data
3 transparency reforms. (AB 2418 Crimes: Justice Data Accountability and Transparency Act,
4 Stats. 2022, Ch. 787.) In passing the Justice Data Accountability and Transparency Act, the
5 Legislature affirmed that “it is an important state interest to implement a data collection,
6 aggregation, and publishing process for criminal prosecutions to promote criminal justice data
7 transparency.” (*Ibid.*)

FACTUAL BACKGROUND

Petitioner/Plaintiff’s Three Public Record Requests

10 26. Between July 2021 and December 2023, the ACLU sent three PRA requests to the
11 SCDA seeking prosecutorial data and records relevant to the implementation of the Racial Justice
12 Act. The SCDA has systematically refused to provide any of the requested records, baselessly
13 asserting that the requests are unduly burdensome or come within various exemptions.³ This
14 conduct violates the PRA.

Petitioner/Plaintiff’s July 23, 2021 Public Record Request

16 27. On July 23, 2021, the ACLU, through counsel, sent a PRA request to the SCDA
17 (“July 2021 PRA Request”) seeking certain documents and information related to the SCDA’s
18 implementation of the Racial Justice Act. Specifically, the July 2021 PRA Request sought (1)
19 prosecutorial policies, memoranda, or guidance documents; (2) prosecutorial training materials;
20 (3) records concerning implementation of the Racial Justice Act; and (4) investigations into
21 *Batson/Wheeler* motions. The July 2021 PRA Request noted the statutory 10-day period for the
22 SCDA to respond. Further, it recited the statutory requirement that if the SCDA claimed any
23 exemptions from disclosure that the SCDA specify any legal authority relied upon, identify the

24 ³ The SCDA has a demonstrated history of refusing to comply with the PRA that predates the July
25 2021 PRA request. On July 29, 2019, the ACLU submitted a PRA request to the SCDA seeking
26 training materials concerning (1) jury selection and/or (2) constitutional requirements under
27 *Batson v. Kentucky*, 476 U.S. 79 (1986) and *People v. Wheeler*, 4 Cal. 4th 284 (1993). That PRA
28 request also sought training materials related to the handling of *Batson-Wheeler* claims or
motions. After some correspondence between the SCDA and the ACLU, the SCDA ignored the
PRA request and did not produce responsive records. The ACLU chose not to bring a lawsuit at
that time to compel compliance.

1 name and title of the person(s) responsible for any determination not to disclose, and release any
2 non-exempt portions of partially exempt records. A true and correct copy of the July 2021 PRA
3 Request is attached as Exhibit A.

4 28. On August 6, 2021, the SCDA responded, refusing to produce any responsive
5 records and instead asserting unsubstantiated broad exemptions. Specifically, the SCDA asserted
6 that all prosecutorial policy and training records (Parts 1 & 2 of the July 2021 PRA Request) were
7 “exempt from disclosure under the deliberative process privilege and pursuant to Government
8 Code Section 6254(a), (k) and (p),” referring to PRA exemptions for preliminary drafts (since re-
9 codified as § 7927.500), records protected by other law (since re-codified as § 7927.705), and
10 certain records of state or local agencies (since re-codified as §§ 7928.405, 7928.410),
11 respectively. And the SCDA asserted that any investigations into *Batson/Wheeler* motions (Part 4
12 of the July 2021 PRA Request) were categorically “exempt from disclosure under Government
13 Code Section 6254(a), (c), and (f),” referring to PRA exemptions for preliminary drafts (since re-
14 codified as § 7927.500), personal privacy (since re-codified as § 7927.700), and certain police
15 investigative records (since re-codified as §§ 7923.600-7923.625), respectively. The SCDA also
16 represented that it had “no non-exempt responsive records to produce” in response to Part 3 of the
17 July 2021 PRA Request, which seeks records related to the implementation of the Racial Justice
18 Act. The SCDA further asserted, in reference to a prior July 29, 2019 PRA request from the
19 ACLU to which the SCDA had produced no responsive records (see para. 26, n. 3, *supra*), that
20 “[their] response remains the same.” A true and correct copy of the SCDA’s August 6, 2021 letter
21 is attached as Exhibit B.

22 29. The SCDA failed to specify the legal authority it relied upon, failed to identify the
23 name or title of the person(s) responsible for the determinations not to disclose, and released no
24 non-exempt portions of partially exempt records. The SCDA bears the burden of affirmatively
25 showing that withheld materials need not be disclosed. Bare conclusions that information is not
26 responsive to a request or that information is exempt do not satisfy an agency’s obligations. By
27 asserting boilerplate exemptions, without any further explanation, the SCDA has not met its
28 burden in responding to ACLU’s July 2021 Request. Moreover, the SCDA has failed to show

1 why any of its asserted exemptions would categorically bar the disclosure of *any* responsive
2 records. Instead, the SCDA has asserted exemptions over large swaths of documents – and has
3 made no attempt to show that the exemptions universally cover all the records requested by the
4 ACLU. Nor has the SCDA shown that there is no way to disclose *any* information without
5 producing exempt or privileged information.

6 30. Further, the SCDA’s reliance on the deliberative process privilege, and other
7 exemptions, are improper.

8 31. First, the deliberative process privilege does not justify nondisclosure of a
9 document merely because it was the product of an agency’s decision-making process. Disclosure
10 must, instead, expose the SCDA’s decision-making process in such a way as to discourage candid
11 discussion with the agency and thereby undermine the agency’s ability to perform its functions.
12 Thus, articulations of final decisions are not shielded by the privilege. In its August 6, 2021
13 Letter, the SCDA wrongly asserted the deliberative process privilege over materials that could not
14 possibly be covered by the privilege, including policies, guidance documents, and training
15 materials.

16 32. Second, the SCDA cites to specific exemptions for certain records of state
17 agencies concerning employee relations and local public employee organizations (recodified as
18 Govt. Code §§ 7928.405 and 7928.410). Both exemptions only apply to employees of local
19 agencies that “do not have full collective bargaining and representation rights.” The SCDA has
20 made no effort to identify which of its employees, if any, fall into this category. In fact, the
21 SCDA’s deputy district attorneys (I-V) are members of Local 150 and are subject to a collective
22 bargaining agreement with Solano County.⁴ Memorandum of Understanding for Chauffeurs,
23 Teamsters & Helpers Local 150, Unit # 1 Attorneys, Oct. 22, 2022 – Oct. 25, 2025
24 <https://www.solanocounty.com/civicax/filebank/blobdload.aspx?blobid=10358>; Covered Classes
25 – Unit 01, <https://www.solanocounty.com/civicax/filebank/blobdload.aspx?blobid=16522>.

26 ⁴ Solano County’s paralegals, legal secretaries, and other clerical staff are also unionized and
27 have a collective bargaining agreement. See Memorandum of Understanding Service Employees
28 International Union , Oct. 22, 2022 – Oct. 25, 2025,
<https://www.solanocounty.com/civicax/filebank/blobdload.aspx?blobid=3026>; Covered Classes –
Units 2, 7, 9, <https://www.solanocounty.com/civicax/filebank/blobdload.aspx?blobid=16523>.

1 33. Third, the SCDA cites to specific exemptions for certain law enforcement records
2 (recodified as Govt. Code §§ 7923.600-7923.625). As an initial matter, the SCDA has asserted
3 these boilerplate exemptions without meeting its burden of proving each exemption applies. For
4 example, Section 7923.610 provides for disclosure of “arrest information” so long as disclosure
5 would not endanger persons involved in the investigation or successful completion of the
6 investigation. Here, the SCDA made no attempt to show that these concerns are universally
7 present in the records requested by the ACLU or that there was no way to disclose any
8 information without raising these concerns.

9 34. On November 15, 2021, counsel for the ACLU sent a letter responding to the
10 SCDA’s August 6, 2021 letter, stating that the SCDA response lacked legally required
11 information and specificity. The November 15, 2021 letter stated that the SCDA failed to
12 adequately justify its denial by “demonstrating either (1) that the ‘record in question’ – that is, the
13 particular record [ACLU] have requested – falls under a specific legal exemption, which [SCDA]
14 must cite, or (2) that the public interest served by [SCDA’s] denial for that particular record
15 ‘clearly outweighs’ the public interest that would be served by its disclosure.” The SCDA further
16 failed to provide the names and titles or positions of each person responsible for the denial. In the
17 alternative, the ACLU requested a waiver of the SCDA’s asserted exemptions. Finally, the
18 ACLU offered to meet and confer by telephone. A true and correct copy of ACLU’s November
19 15, 2021 letter is attached as Exhibit C.

20 35. The SCDA did not respond to the ACLU’s November 15, 2021 letter.

21 36. On January 21, 2022, counsel for ACLU sent another letter seeking a response to
22 the November 15, 2021 letter and again offered to discuss by telephone the SCDA’s asserted
23 exemptions. A true and correct copy of ACLU’s January 21, 2022 letter is attached as Exhibit D.

24 37. The SCDA never responded to the ACLU’s January 21, 2022 letter.

25 **Petitioner/Plaintiff’s September 7, 2021 Public Record Request**

26 38. On September 7, 2021, the ACLU requested from the SCDA prosecutorial data
27 from 2015 to the present (“September 2021 PRA Request”). The ACLU once again reminded the
28 SCDA of its statutory obligations to specify the legal authority relied upon, to identify the name

1 and title of the person(s) responsible for any determination not to disclose, and to release any non-
2 exempt portions of partially exempt records. A true and correct copy of the September 2021 PRA
3 Request is attached as Exhibit E.

4 39. On September 17, 2021, the SCDA responded to the September 2021 PRA
5 Request, refusing to produce any responsive prosecutorial data and asserting categorical
6 exemptions for all categories of requested information. Specifically, the SCDA categorically
7 stated that the requested records were exempt pursuant to either “Penal Code Section 13300-
8 13305 and Government Code Section 6254(f) [since recodified to §§ 7923.600-7923.625]”; or
9 “the deliberative process privilege, work product privilege, and also on the ground that the public
10 interest served by not disclosing these items outweighs the public interest served by disclosing
11 them,” citing Government Code Section 6254(a), (p)(l) and 6255, [since recodified to §§
12 7927.500, 7928.405, 7922.540(a)]; or Penal Code Section 841.5, in response to the ACLU’s
13 request for records related to victim demographics. A true and correct copy of the SCDA’s
14 September 17, 2021 response is attached as Exhibit F.

15 40. Once again, the SCDA made no attempt to meet its burden of affirmatively
16 showing that withheld materials need not be disclosed. The SCDA merely states boilerplate
17 exemptions without any effort to show that the specific exemption applied or that the “the public
18 interest served by not disclosing these items outweighs the public interest served by disclosing
19 them.” For example, the SCDA has not shown that either the deliberative process privilege or the
20 work product protection are applicable to the prosecutorial data that it refuses to disclose. Neither
21 applies to all written documents generated by a local agency or an attorney, and raw prosecutorial
22 data does not fall within either exception.

23 41. Nor does the SCDA’s reliance on sections of the Penal Code make any sense.
24 Penal Code Sections 841.5 and 13300-13305 do not bar disclosure of the records the ACLU
25 seeks. *See* Penal Code § 13302 (“Nothing in this section shall prohibit a public prosecutor from
26 accessing and obtaining information from the public prosecutor’s case management database to
27 respond to a request for publicly disclosable information pursuant to the California Public

1 Records Act.”); Penal Code § 841.5 (barring disclosure of personal address or telephone numbers
2 of victims, not the demographic information the ACLU was seeking).

3 42. On January 18, 2022, the ACLU sent a letter informing the SCDA that its
4 September 17, 2021 response was not legally adequate and pointing out deficiencies with its
5 blanket assertions of exemptions. The ACLU also offered to discuss the matter further. A true
6 and correct copy of ACLU’s January 18, 2022 request is attached as Exhibit G.

7 43. On January 28, 2022, the SCDA emailed to “confirm receipt” of the January 18,
8 2022 letter, and committed to “research the issues [] raised and respond accordingly.” A true and
9 correct copy of the January 28, 2022 email is attached as Exhibit H. The SCDA never provided
10 any promised substantive response.

11 44. The ACLU, through counsel, requested follow-up from the SCDA by email on
12 March 1 and April 5, 2022. A true and correct copy of the March 1 and April 5, 2022 emails are
13 attached as Exhibits I & J.

14 45. On April 8, 2022, the SCDA emailed the ACLU stating that “[w]e are finishing up
15 drafting our response and should have that to you within a few days.” A true and correct copy of
16 the April 8, 2022 email is attached as Exhibit K. The SCDA never provided any promised
17 substantive response.

18 46. On August 29, 2022, the ACLU again requested a response from the SCDA. A
19 true and correct copy of the August 29, 2022 email is attached as Exhibit L. The SCDA never
20 responded.

21 47. On September 26, 2022, the ACLU again requested a response to both the July
22 2021 and September 2021 PRA Requests. The letter further noted that the SCDA had produced
23 no responsive documents, failed to respond to the ACLU’s prior correspondence, and failed to
24 provide a legally adequate response. A true and correct copy of the ACLU’s September 26, 2022
25 letter is attached as Exhibit M.

26 48. Despite repeated requests from the ACLU, and occasional promises from the
27 SCDA, the SCDA provided no substantive communication in response to the ACLU’s September

1 2021 PRA Request, subsequent to its September 17, 2021 categorical refusal to produce any
2 records.

3 **Petitioner/Plaintiff's December 11, 2023 Public Record Request**

4 49. On December 11, 2023, ACLU sent a letter renewing and updating the ACLU's
5 prior PRA Requests ("December 2023 PRA Request"). Specifically, ACLU requested (A)
6 prosecutorial records; (B) prosecutorial policies, memoranda or guidance documents; (C) training
7 materials; (D) records concerning implementation of, and compliance with, the Racial Justice
8 Act; (E) communications concerning the RJA; and (F) all investigations into *Batson-Wheeler*
9 motions. In its December 2023 PRA Request, the ACLU again reminded the SCDA of its
10 statutory obligations to specify the legal authority relied upon, to identify the name and title of the
11 person(s) responsible for any determination not to disclose, and to release any non-exempt
12 portions of partially exempt records. A true and correct copy of the December 11, 2023 letter is
13 attached as Exhibit N.

14 50. On December 21, 2023, the SCDA responded by letter refusing to produce any
15 responsive records aside from its own prior correspondence to the ACLU in response to the
16 ACLU's July 2021 and September 2021 PRA Requests; and reiterating its previous refusals and
17 categorical exemptions. The SCDA asserted that its "response remains the same," apparently
18 referring to the SCDA's refusal to produce any records responsive to the ACLU's July 2021 and
19 September 2021 PRA requests. In response to the requests for prosecutorial records, policies,
20 training materials, and investigations into *Batson-Wheeler* motions (Part A-C & F of the
21 December 2021 PRA Request), the SCDA asserted that the requested prosecutorial records were
22 "not readily available in [their] database" and "unduly burdensome" to produce; or categorically
23 "exempt from disclosure . . . by the deliberative process privilege, work product privilege, and the
24 ground that the public interest served by not disclosing these items outweighs the public interest
25 served by disclosing them." The SCDA asserted that it had no records responsive to the request
26 for records concerning implementation of, or compliance with, the Racial Justice Act (Part D of
27 the December 2021 PRA Request). The only records the SCDA did produce, purportedly in
28 response to the request for "communications concerning the RJA" (Part E of the December 2021

1 PRA Request) were copies of the August 6 and September 17, 2021 letters the SCDA had
2 previously sent to the ACLU refusing to produce records responsive to the July 2021 and
3 September 2021 PRA Requests. A true and correct copy of the December 21, 2023 letter is
4 attached as Exhibit O.

5 51. Again, the SCDA made no effort to meet its burden to affirmatively show that
6 withheld materials need not be disclosed under a PRA exemption. Moreover, the SCDA fails to
7 justify its burden argument, raised for the first time in the December 21, 2023 letter. Some
8 tangible burden may be expected from any PRA request, and the SCDA fails to show with
9 meaningful detail that the ACLU's December 2023 Request is unduly burdensome. Moreover,
10 the heightened public interest in prosecutorial records justifies the burden of producing them.
11 The information requested is essential to understanding how the SCDA is exercising its authority
12 to prosecute criminal cases and whether that exercise involves racial disparities. The SCDA's
13 assertion that disclosure of the requested records would be unduly burdensome collapses when
14 compared to the information's public importance.

15 52. On February 20, 2024, ACLU emailed the SCDA requesting to meet and confer
16 regarding what information is collected, maintained and/or accessible through the SCDA's
17 databases, in light of its complete refusal to produce any responsive records. The ACLU also
18 recited the history of the SCDA's noncompliance with the PRA and requested that the SCDA
19 fulfill its obligations under the law. A true and correct copy of the February 20, 2024 email is
20 attached as Exhibit P. SCDA never responded to this email.

21 53. On June 20, 2024, counsel for the ACLU sent another letter in an attempt to secure
22 the SCDA's compliance with the ACLU's PRA requests. The June 20, 2024 letter summarized
23 the history of the SCDA's non-compliance with the ACLU's PRA requests, renewed its requests
24 for information the SCDA has an obligation to supply, and advised the SCDA that this was the
25 ACLU's final attempt to seek voluntary compliance before seeking the assistance of the courts.
26 The letter requested a response by July 2, 2024. A true and correct copy of the June 20, 2024
27 letter is attached as Exhibit Q. The SCDA never responded to this letter.

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Dated: December 2, 2024

Respectfully submitted,
MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Robert A. Lewis
Robert A. Lewis
Kevin M. Papay
Nicholas B. Pfeiffer
Attorneys for Petitioner/Plaintiff
American Civil Liberties Union of
Northern California


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VERIFICATION

I, Emi MacLean, am a Senior Staff Attorney of the Criminal Justice Program of the American Civil Liberties Union Foundation of Northern California. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. I have personal knowledge of the facts stated in paragraphs 6 and 26-53 and know them to be true. I am informed, and do believe, that the matters stated in the remainder of the Petition/Complaint are true. On these grounds, I allege that the matters stated herein are true.

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

Executed on December 2, 2024 in San Francisco, California.

By: 

Emi MacLean
ACLU of Northern California

EXHIBIT A

July 23, 2021

SENT VIA U.S. MAIL AND EMAIL

Krishna Abrams
Office of the District Attorney of Solano County
355 Tuolumne Street, Ste 3200
Vallejo, CA 94590-5700
(707) 553-5321
SolanoDA@solanocounty.com

Re: California Public Records Act Request

To the Office of the District Attorney of Solano County:

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 29, 2019, the ACLU submitted a CPRA request to your office seeking training materials concerning (1) jury selection and/or (2) constitutional requirements under *Batson v. Kentucky*, 476 U.S. 79 (1986) and *People v. Wheeler*, 4 Cal. 4th 284 (1993). That request also sought training materials related to the handling of *Batson-Wheeler* claims or motions. (See **Exhibit 1**, attached.) After initial correspondence between your office and the ACLU, you did not produce responsive records.

This CPRA letter constitutes a renewal of the ACLU’s prior request (as relevant, updated to the present day) and also a request for the additional following records in the possession or

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.

control of the Office of the District Attorney of Solano County for the time-period 2015 to present:

Records Requested:

1. Any and all written policies, memoranda, or guidance documents regarding:
 - a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendations;
 - c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decisions regarding wobblers;
 - 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; or
 - l. Referral of cases for federal prosecution.

2. Any and all policies regarding training as well as any training materials, recorded trainings, or related materials:
 - a. Which are mandatory for prosecutors;
 - b. Which are optional for prosecutors;
 - c. Which relate to jury selection;
 - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
 - e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).

3. Records concerning the Racial Justice Act:
 - a. Implementation of and compliance with the RJA;
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA.

4. All investigations into *Batson-Wheeler* motions, including, but not limited to:
 - a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or

- d. Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.

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.”⁵ The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”⁶ 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 Office of the District Attorney of Solano County’s possession or control. Even if a record was created by a member of another 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 Office of the District Attorney of Solano County.⁷

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.⁸ It is your obligation to conduct record searches based on the criteria identified herein.⁹ 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.¹⁰

The CPRA requires that you respond to this request in ten (10) days.¹¹ 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.¹² 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.¹³ 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

⁵ Gov’t Code § 6252(e).

⁶ *Id.* § 6252(g).

⁷ *Id.* § 6252(e); 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.”).

⁸ Gov’t Code § 6253(b).

⁹ See *id.* §§ 6253–6253.1.

¹⁰ *Id.* § 6253.1(a).

¹¹ *Id.* § 6253(c).

¹² *Id.* § 6255; see also *id.* § 6253(d)(3).

¹³ *Id.* § 6253(a), (c).

July 23, 2021

Page 4

favors disclosure.”¹⁴

Because the ACLU is a non-profit organization and because these requests pertain to matters of public concern, we 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 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: preresponse@braunhagey.com or to Ellen Leonida – PRA Responses, BraunHagey & Borden LLP, 351 California Street, 10th Floor, San Francisco, CA 94104.

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,



Ellen Leonida

¹⁴ *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”).

EXHIBIT 1



Northern
California

July 29, 2019

Transmitted by email

Solano County District Attorney's Office
355 Tuolumne St Ste 3200
Vallejo, CA 94590-5700
Email: SolanoDA@solanocounty.com

Re: Request for Records Pursuant to the California Public Records Act

To Whom it May Concern:

I am writing on behalf of the American Civil Liberties Union of Northern California to request records pursuant to the California Public Records Act, California Government Code sections 6250 to 6270 and article 1 section 3(b) of the California Constitution.

I seek copies of the following materials in the agency's possession, regardless of who wrote them, from 1990 onwards:

1. Any training materials related to jury selection
2. Any training materials related to the constitutional requirements under *Batson v. Kentucky* and *People v. Wheeler*, including training materials related to handling *Batson-Wheeler* claims or motions.

Batson v. Kentucky (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258. This request construes "materials" to mean any records¹, publications, memoranda, writings, electronic data, mail, media files, nonstandard documents, or other forms of communication.

In the case that this request is found to be insufficiently focused or effective, California Government Code Section 6253.1(a) requires (1) Assistance in identifying the records and information that are responsive to this request or to the purpose of this request; (2) Description of

¹ The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Gov't Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Gov't Code § 6252, subsection (g).

the information technology and physical location in which the records exist; and (3) that suggestions be provided for overcoming any practical basis for denying access to the records or information sought.

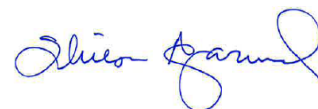
Pursuant to Government Code Section 6253(b), the requested records must be “promptly available,” for inspection and copying, based on payment of “fees covering direct costs of duplication, or statutory fee, if applicable.” No express provisions of law exist that exempt the record(s) from disclosure. As it is determined whether this request seeks copies of disclosable public records, be mindful that Article I, Section 3 (b)(2) of the California Constitution requires that a statute, court rule, or other authority be broadly construed if it furthers the right of access to the information requested and that a statute, court rule, or other authority limiting right of access be narrowly construed.

If a portion of the information requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released. If it is determined that an express provision of law exists to exempt from disclosure all or a portion of the material requested, Government Code Section 6253(c) requires notification of the reasons for the determination not later than 10 days from receipt of this request. Moreover, Government Code Section 6253(d) prohibits the use of the 10-day period, or any provisions of the Public Records Act “to delay access for purposes of inspecting public records.”

Please send copies of the requested records to me at the address shown above or email them to me at sagarwal@aclunc.org. We request that you waive any fees that would be normally applicable to a Public Records Act request. In addition, if you have the records in electronic form you can simply email them to me without incurring any copying costs. *See Gov’t. Code § 6253.9.* Should you be unable to do so, however, the ACLU will reimburse your agency for the direct costs of copying these records plus postage. *See Gov’t. Code § 6253(b).* To assist with the prompt release of responsive material, we ask that you make records available to me as you locate them, rather than waiting until all responsive records have been collected and copied.

If you have any questions regarding this request, please feel free to contact me at (415) 621-2493 or at sagarwal@aclunc.org. Thank you in advance for your time and attention to this request.

Sincerely,



Shilpi Agarwal
Senior Staff Attorney

EXHIBIT B



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO**

**KRISHNA A. ABRAMS
DISTRICT ATTORNEY**

Sharon S. Henry
Chief Deputy

Paul D. Sequeira
Chief Deputy

Andre W. Charles
Chief Investigator

August 6, 2021

Ellen Leonida, Esq.
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Request

Dear Ms. Leonida:

The Solano County District Attorney's Office is in receipt of your letter dated July 23, 2021 and received by our office on July 27, 2021. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §6253(c))

Specifically, you have requested the following:

"This CPRA letter constitutes a renewal of the ACLU's prior request (as relevant, updated to the present day) an also a request for the additional following records in the possession or control of the Office of the District Attorney of Solano County for the time-period 2015 to present:

Records Requested:

1. Any and all written policies, memoranda, or guidance documents regarding:
 - a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendation;
 - c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decision recording wobbler;
 - 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 or defendants and victims; or
 - l. Referral of cases for federal prosecution.

2. Any and all policies regarding training as well as any training materials, recorded trainings, or related material;
 - a. Which are mandatory for prosecutors;
 - b. Which are optional for prosecutors;
 - c. Which relate to jury selection;
 - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
 - e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).

3. Records concerning the Racial Justice Act:
 - a. Implementation of and compliance with the RJA
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA

4. All investigations into *Batson-Wheeler* motions, including, but not limited to:
 - a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or
 - d. Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.

In response to ACLU's prior request, our response remains the same.

Response to the above Record Requests Nos. 1 and 2, these materials are exempt from disclosure under the deliberative process privilege and pursuant to Government Code Section 6254(a), (k) and (p).

Response to the above Records Requests No. 3, there are currently no non-exempt responsive records to produce at this time.

Response to Records Request 4, these materials are exempt from disclosure under Government Code Section 6254(a), (c) and (f).

Sincerely,



Matthew K. Olsen
Deputy District Attorney

MKO:mpm

EXHIBIT C

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

November 15, 2021

VIA EMAIL AND MAIL

Matthew K. Olsen
Deputy District Attorney
Office of the District Attorney of Solano
355 Tuolumne Street, Ste 3200
P.O. Box 12002
Vallejo, CA 94590-5700
SolanoDA@solanocounty.com

Re: California Public Records Act Request

Dear Mr. Olsen:

I write in response to your August 6, 2021 letter regarding our CPRA Request. Thank you for your letter.

Your response letter lacks some legally required information. To the extent you intend to deny access to a requested record, you must justify that denial by demonstrating either (1) that the “record in question” – that is, the particular record we have requested – falls under a specific legal exemption, which you must cite, or (2) that the public interest served by your denial for that particular record “clearly outweighs” the public interest that would be served by its disclosure.¹ You must also provide the names and titles or positions of each person responsible for the denial.²

In your response letter, you provided conditional objections, asserting not that an exemption applies to a particular record we requested – as required under the law – but rather that, as a general matter, you will not produce records that fall under particular exemptions if our request seeks such records. Because we are not able to effectively respond to these objections without the more specific information described above and required by law, we ask that you provide it now.

Regarding the requested records (or portions of records) you may identify and assert clear grounds for withholding, we would like to know if you would consider waiving any, or all, of the asserted exemptions. Exemptions, as you know, are permissive, not mandatory, and it is our goal – and yours, we imagine – to avoid unnecessary litigation, which can be costly and time

¹ Gov’t Code § 6255(a).

² Gov’t Code § 6253(d)(3).

November 15, 2021

Page 2

consuming. If you are open to this possibility, please let us know. We would be happy to discuss this matter over the phone if you believe we may be able to find a solution that satisfies everyone. We would also be willing to provide further legal support and explanation for why we do not believe that the exemptions you have asserted are legally sound in this instance.

However, if you do not believe further discussions would be helpful and intend to deny some of our requests, please advise us of this position and tell us whether your office has adopted a formal process for an administrative appeal. Should we determine that we are entitled to documents you have refused to produce – whether before an administrative appeal or after – we may litigate to obtain them. In that event, we will seek all attorney’s fees and costs for the litigation.³

To the extent you have not yet produced any records for which you do not claim an exemption, please let us know the status of these records and produce them promptly and on a rolling basis.

Thank you again for your response to our earlier letter and, generally, for your assistance with our requests. We look forward to any further discussion and your production of records.

Very truly yours,



Ellen V. Leonida

³ Gov’t Code § 6259(d). We note that courts have awarded costs and fees if even a single document was improperly withheld. *See, e.g., Los Angeles Times v. Alameda Corridor Transp. Auth.*, 88 Cal. App. 4th 1381, 1391 (2001).

EXHIBIT D

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

January 21, 2022

VIA EMAIL AND MAIL

Matthew K. Olson
Deputy District Attorney
Office of the District Attorney of Solano County
355 Tuolumne Street, Ste 3200
P.O. Box 12002
Vallejo, CA 94590
Email: SolanoDA@solanocounty.com

Re: California Public Records Act Request

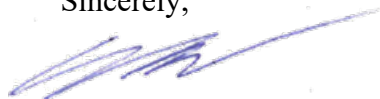
Dear Mr. Olsen:

On July 23, 2021 we sent you a Public Records Act request for the purpose of enforcing the Racial Justice Act. The request sought policy documents, training materials, records relating to the Racial Justice Act, and records regarding *Batson/Wheeler* investigations. You responded, asserting exemptions to the production of some of the requested documents. We sent you a letter on November 15, 2021 addressing exemptions you asserted in response to our request. In that letter, we offered to provide legal authority or to speak with you over the phone about your asserted exemptions in order to avoid unnecessary litigation. We remain willing to do so. As we informed you in our letter of November 15, 2021, however, should we be forced to file suit to obtain records to which we are entitled, you will be liable for our fees and costs.

If you wish to discuss this matter further, please contact our office as soon as possible. Please let us know if you are withholding documents on the basis of the exemptions you assert (as opposed to asserting exemptions to avoid waiver, but without withholding any documents). If you do not respond to our CPRA request, we will have no choice but to initiate litigation to obtain the documents to which we are entitled under the law.

Thank you for your immediate attention to this matter.

Sincerely,



Ellen V. Leonida

San Francisco
351 California Street, 10th Floor
San Francisco, CA 94104
Tel. & Fax: (415) 599-0210

New York
7 Times Square, 27th Floor
New York, NY 10036-6524
Tel. & Fax: (646) 829-9403

EXHIBIT E

September 7, 2021

SENT VIA U.S. MAIL AND EMAIL

Krishna Abrams
Office of the District Attorney of Solano County
355 Tuolumne Street, Ste 3200
Vallejo, CA 94590-5700
(707) 553-5321
SolanoDA@solanocounty.com

Re: California Public Records Act Request

To the Office of the District Attorney for Solano County:

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, we submitted a CPRA request to your office also seeking records relevant to the implementation of the RJA. This CPRA letter is a further request for the following records regarding relevant case, individual, and/or charge-level data in the possession or control of Solano District Attorney’s Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

Records Requested:

- 1. Unique identifier(s) associated with each defendant, each case, and each arrest**
 - a. Name of defendant
 - b. Court case number(s)
 - c. Arresting agency number(s)

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.

- d. 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)
- 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)
 - 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

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. 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

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 Solano District Attorney’s Office’s possession or control. Even if a record was created by a member of another 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 Solano District Attorney’s Office.⁸

⁶ Gov’t Code § 6252(e).

⁷ *Id.* § 6252(g).

⁸ *Id.* § 6252(e); 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.”).

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 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: praresponse@braunhagey.com or to Ellen Leonida – PRA Responses, BraunHagey & Borden LLP, 351 California Street, 10th Floor, San Francisco, CA 94104.

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.

⁹ Gov’t Code § 6253(b).

¹⁰ *See id.* §§ 6253–6253.1.

¹¹ *Id.* § 6253.1(a).

¹² *Id.* § 6253(c).

¹³ *Id.* § 6255; *see also id.* § 6253(d)(3).

¹⁴ *Id.* § 6253(a), (c).

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”).

September 7, 2021
Page 5

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ellen Leonida', with a long horizontal stroke extending to the right.

Ellen Leonida

EXHIBIT F



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO**

**KRISHNA A. ABRAMS
DISTRICT ATTORNEY**

Sharon S. Henry
Chief Deputy

Paul D. Sequeira
Chief Deputy

Andre W. Charles
Chief Investigator

September 17, 2021

Ellen Leonida, Esq.
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Request

Dear Ms. Leonida:

The Solano County District Attorney's Office is in receipt of your letter dated September 7, 2021. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §6253(c)).

Specifically, you have requested the following:

"On July 23, 2021, we submitted a CPRA request to your office also seeking records relevant to the implementation of the RJA. This CPRA letter is a further request for the following records regarding relevant case, individual, and/or charge-level data in the possession or control of Solano District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

Records Requested:

1. Unique identifier(s) associated with each defendant, each case, and each arrest

- a. Name of defendant
- b. Court case number(s)
- c. Arresting agency number(s)
- d. 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)

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)
- c. Any enhancements
- 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

Response to requests numbers 1, 2, 3, 5, 7, 9, 11:

A list of individual cases is exempt from CPRA pursuant to Penal Code Section 13300-13305 and Government Code Section 6254(f). An individual's criminal history in the possession of the District Attorney's Office, is "protected rap sheet information." 89 Ops.Cal.Atty.Gen.204 (2006)

Response to 4, 6, 8, 10, 12, 14, 15:

These are exempt from disclosure under the CPRA by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 6254(a), (p)(1) and 6255.

Response to 13:

These are exempt from disclosure under Penal Code Section 841.5 as well as the provisions set forth in the above responses.

Sincerely,



Matthew K. Olsen
Deputy District Attorney

MKO:mpm

Exhibit G

January 18, 2022

VIA EMAIL AND MAIL

Matthew K. Olsen
Office of the District Attorney of Solano County
355 Tuolumne St., Suite 3200
Vallejo, CA 94590
Email: SolanoDA@solanocounty.com

Re: California Public Records Act Request

Dear Mr. Olsen:

I write in response to your September 17, 2021 response to our CPRA Request. Thank you for your response.

For the data for which you assert the deliberative process exemption, please provide an explanation of which policies were being deliberated and how the data we seek is “actually related” to the formulation of those policies.¹ As you know, the exemption applies only to “predecisional” and “deliberative” documents, and a “policy cannot be properly. . . characterized as predecisional if it is adopted, formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public.”² Furthermore, “[t]he deliberative process privilege does not justify nondisclosure of a document merely because it was the product of an agency’s decision-making process; if that were the case, the PRA would not require much of government agencies.”³ Please also explain why your refusal to comply with our request would not undermine the goals of the Racial Justice Act—specifically, preventing racial bias in law enforcement actions.⁴

Regarding the data that you claim is exempt under Penal Code §§ 13300-13305, we note that § 13302 states: “Nothing in this section shall prohibit a public prosecutor from accessing and obtaining information from the public prosecutor’s case management database to respond to a request for publicly disclosable information pursuant to the California Public Records Act.” We ask that you turn over this data promptly.

¹ *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1341-2 (1991).

² *ACLU of N. Cal. v. Superior Ct.*, 202 Cal. App. 4th 55, 76 (2011) (internal quotation marks omitted).

³ *Id.*

⁴ A.B. 2542, Ch. 317, 2019-2020 Sess. § 2(i), (j) (Cal. 2020).

Regarding the data you claim is exempt under Penal Code § 841.5, we note that § 841.5(a) states: “no law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense.” We did not request the address or telephone number of anyone. The section of our request where you assert this exemption asks for demographic information of victims, which is not covered by this section. We ask that you turn over this data promptly.

Please also let us know at your earliest convenience if you intend to stand on your exemptions as grounds for withholding certain records, or whether you would consider waiving any, or all of the asserted exemptions. Exemptions, as you know, are permissive, not mandatory, and it is our goal—and yours, we imagine—to avoid unnecessary litigation, which can be costly and time consuming. If you are open to this possibility, please let us know. We would be happy to discuss this matter over the phone if you believe we may be able to find an amenable solution.

However, if you do not believe further discussions would be helpful, please advise us of this position and tell us whether your office has adopted a formal process for an administrative appeal. Should we determine that we are entitled to documents you have refused to produce—whether before an administrative appeal or after—we may litigate to obtain them. In that event, we will seek all attorney’s fees and costs for the litigation.⁵

To the extent you have not yet produced any records for which you do not claim an exemption, please let us know the status of these records and produce them promptly and on a rolling basis.

Thank you again for your response to our earlier letter and, generally, for your assistance with our requests. We look forward to any further discussion and your production of records.

Very truly yours,



Ellen V. Leonida

⁵ Cal. Gov. Code § 6259(d). We note that courts have awarded costs and fees if even a single document was improperly withheld. *See, e.g., Los Angeles Times v. Alameda Corridor Transp. Auth.*, 88 Cal. App. 4th 1381, 1391 (2001).

EXHIBIT H

From: [Olsen, Matthew K.](#)
To: [Ellen Leonida](#)
Subject: PRA request response letter - 1/18/22
Date: Friday, January 28, 2022 4:19:05 PM

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

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

EXHIBIT I

Re: PRA request response letter - 1/18/22

Josh Wilner <Wilner@braunhagey.com>

Tue 3/1/2022 1:15 PM

To: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>

Cc: PRA Response <praresponse@braunhagey.com>

Mr. Olsen,

Thank you for your attention to our requests. Please let us know when we can expect your response. As stated in the letter, we are happy to schedule a phone meeting to discuss any remaining questions.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco351 California Street, 10th Floor

San Francisco, CA 94104

Tel: (415) 599-0210

New York

7 Times Square

27th Floor

New York, NY 10036-6524

Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>**Sent:** Friday, January 28, 2022 4:18 PM**To:** Ellen Leonida <Leonida@braunhagey.com>**Subject:** PRA request response letter - 1/18/22***** EXTERNAL MESSAGE *****

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney

Solano County District Attorney's Office

675 Texas Street, Suite 4500

Fairfield, CA 94533-6340

Tel (707) 784-6800

Fax (707) 784-7986

EXHIBIT J

From: [Josh Wilner](#)
To: [Olsen, Matthew K.](#)
Cc: [PRA Response](#)
Subject: Re: PRA request response letter - 1/18/22
Date: Tuesday, April 5, 2022 8:54:53 AM

Mr. Olsen,

You received our letter nearly three months ago and our request was sent over eight months ago. We ask that you provide us with an answer this week, so that we may make an informed decision regarding whether to initiate litigation.

Please let me know if you have any questions.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104
Tel: (415) 599-0210

New York

7 Times Square
27th Floor
New York, NY 10036-6524
Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>
Sent: Friday, January 28, 2022 4:18 PM
To: Ellen Leonida <Leonida@braunhagey.com>
Subject: PRA request response letter - 1/18/22

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

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

EXHIBIT K

From: [Olsen, Matthew K.](#)
To: [Josh Wilner](#)
Cc: [PRA Response](#)
Subject: RE: PRA request response letter - 1/18/22
Date: Friday, April 8, 2022 11:54:48 AM

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

We are finishing up drafting our response and should have that to you within a few days. Thank you for your anticipated patience.

Matthew K. Olsen

Lead Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

From: Josh Wilner <Wilner@braunhagey.com>
Sent: Tuesday, April 5, 2022 8:55 AM
To: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>
Cc: PRA Response <praresponse@braunhagey.com>
Subject: Re: PRA request response letter - 1/18/22

Mr. Olsen,

You received our letter nearly three months ago and our request was sent over eight months ago. We ask that you provide us with an answer this week, so that we may make an informed decision regarding whether to initiate litigation.

Please let me know if you have any questions.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104

Tel: (415) 599-0210

New York

7 Times Square

27th Floor

New York, NY 10036-6524

Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>

Sent: Friday, January 28, 2022 4:18 PM

To: Ellen Leonida <Leonida@braunhagey.com>

Subject: PRA request response letter - 1/18/22

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

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney

Solano County District Attorney's Office

675 Texas Street, Suite 4500

Fairfield, CA 94533-6340

Tel (707) 784-6800

Fax (707) 784-7986

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

EXHIBIT L

From: [Josh Wilner](#)
To: [Olsen, Matthew K.](#)
Cc: [PRA Response](#)
Subject: Re: PRA request response letter - 1/18/22
Date: Monday, August 29, 2022 8:00:08 AM

Mr. Olsen,

Please see our request for a response below.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104
Tel: (415) 599-0210

New York

7 Times Square
27th Floor
New York, NY 10036-6524
Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>
Sent: Friday, April 8, 2022 11:54 AM
To: Josh Wilner <Wilner@braunhagey.com>
Cc: PRA Response <praresponse@braunhagey.com>
Subject: RE: PRA request response letter - 1/18/22

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

We are finishing up drafting our response and should have that to you within a few days. Thank you for your anticipated patience.

Matthew K. Olsen

Lead Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

From: Josh Wilner <Wilner@braunhagey.com>

Sent: Tuesday, April 5, 2022 8:55 AM
To: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>
Cc: PRA Response <praresponse@braunhagey.com>
Subject: Re: PRA request response letter - 1/18/22

Mr. Olsen,

You received our letter nearly three months ago and our request was sent over eight months ago. We ask that you provide us with an answer this week, so that we may make an informed decision regarding whether to initiate litigation.

Please let me know if you have any questions.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104
Tel: (415) 599-0210

New York

7 Times Square
27th Floor
New York, NY 10036-6524
Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>
Sent: Friday, January 28, 2022 4:18 PM
To: Ellen Leonida <Leonida@braunhagey.com>
Subject: PRA request response letter - 1/18/22

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

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney

Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

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EXHIBIT M

Kory DeClark
declark@braunhagey.com

September 26, 2022

VIA CERTIFIED U.S. MAIL

Matthew K. Olson
Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533
Email: MKOlsen@solanocounty.com
SolanoDA@solanocounty.com

Re: California Public Records Act Request

Dear Mr. Olsen:

I am writing today regarding your refusal to respond to our CPRA requests dated July 23 and September 7, 2021. The requests have been open for over a year and to date you have produced no responsive documents.

After receiving our letters dated January 18 and January 21, 2022 informing you that your response to our request was not legally adequate, you replied on January 28 telling us you would respond to our arguments and may speak with us over the phone. We have repeatedly asked for this response, sending emails on March 1, April 5, and August 29, 2022. On April 8, 2022, you responded to our request for a follow up stating you would respond within a week. To date, we have not received this response.

If you do not respond immediately and signal your intention to produce the requested documents in a timely manner, we will have no choice but to initiate litigation at your expense to obtain the documents we have requested.¹

Thank you for your immediate attention to this matter.

Very truly yours,



Kory DeClark

¹ Gov't Code §6259 subd. (d).

EXHIBIT N

December 11, 2023

SENT VIA U.S. MAIL AND EMAIL

Krishna Abrams
Office of the District Attorney of Solano County
355 Tuolumne Street, Ste 3200
Vallejo, CA 94590-5700
(707) 553-5321
SolanoDA@solanocounty.com

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 September 7, 2021, we submitted a CPRA request to your office seeking 1) policies, training materials and communications related to the RJA; and 2) prosecutorial data relevant to the implementation of the RJA. You did not meaningfully respond to these prior requests. 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. 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)

- 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”).

December 11, 2023

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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 O



OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO

KRISHNA A. ABRAMS
DISTRICT ATTORNEY

Paul D. Sequeira
Chief Deputy

Bruce T. Flynn
Chief Deputy

Matthew J. Lydon
Chief Investigator (Interim)

December 21, 2023

Emi MacLean
ACLU of Northern California
emaclean@aclunc.org

Re: Public Records Request

Dear Ms. MacLean:

The Solano County District Attorney's Office is in receipt of your letter received via e-mail on December 11, 2023. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §7922.535)

Specifically, you state the following:

On July 23, 2021 and September 7, 2021, we submitted a CPRA request to your office seeking 1) policies, training materials and communications related to the RJA; and 2) prosecutorial data relevant to the implementation of the RJA. You did not meaningfully respond to these prior requests. This is a renewed request for this information. Unless otherwise specified, this request seeks records from 2015 to the date of the search.

RESPONSE: Our response remains the same.

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

1. Unique identifier(s) associated with each defendant, each case, and each arrest
 - a. Court case number(s)
 - b. Arresting agency number(s)
 - c. Any other unique identifier(s)

2. Demographic and other information concerning each defendant
 - a. Race
 - b. Ethnicity
 - c. Country of origin or nationality
 - d. Gender/sex
 - e. Age or date of birth
 - f. Prior criminal convictions of a defendant

3. Information regarding each arrest
 - a. Zip code of arrest
 - b. Date of arrest
 - c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)
 - d. Arresting agency

4. ADA assigned to the case

5. Decisions to decline to prosecute
 - a. Date of decision to decline to prosecute
 - b. Identity of person who made final decision to decline prosecution
 - c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)
 - d. Reasons for the declinations to prosecute, including but not limited to:
 - i. police misconduct involved in case;
 - ii. injuries to persons involved;
 - iii. injuries to suspect;
 - iv. financial loss to persons involved;
 - v. prior criminal record of suspect; and
 - vi. victim's level of cooperation in prosecuting case.

6. Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)
 - a. Date of diversion offer
 - b. Type of diversion offered
 - c. Whether diversion accepted
 - d. Whether diversion completed

7. Charges filed
 - a. Statutes (applicable code section)
 - b. Severity (i.e., infraction, misdemeanor, wobbler, felony)
 - c. Any enhancements
 - 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

RESPONSE TO A, 1 - 4, 7, 9, 11, 12, and 13: The information is not readily available in our database and would require a tremendous amount of time, resources, and is unduly burdensome. Our office does not maintain all the requested data electronically.

RESPONSE TO A, 5, 6, 8, 10, 14, and 15: These are exempt from disclosure under CPRA by the deliberative process privilege, work product privilege, and the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 7927.500.

- B. Prosecutorial Policies, Memoranda or Guidance Documents
Please provide policies, memoranda, or guidance documents considered or relied on by the Office. This includes, but is not limited to, policies, memoranda or guidance documents concerning:
- a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendations;
 - c. Charging recommendations and/or decisions;
 - d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
 - e. Jury selection;
 - f. Sentencing recommendations;
 - g. Prosecution of minors;
 - h. Parole recommendations;

- i. Pardon and commutation recommendations;
- j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;
- k. Data collection relating to criminal matters, including demographic data of defendants and victims;
- l. Referral of cases for federal prosecution;
- m. Training; and
- n. Compliance with the RJA.

RESPONSE TO B: These are exempt from disclosure under CPRA by the deliberative process privilege, work product privilege, and the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 7927.500.

- 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.

RESPONSE TO C: These are exempt from disclosure under CPRA by the deliberative process privilege, work product privilege, and the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 7927.500.

- 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.

RESPONSE TO D: There are currently no records to produce at this time.

- 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.

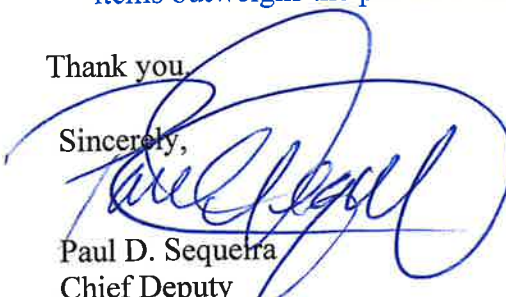
RESPONSE TO E: Attached please find two letters dated August 6, 2021, and September 17, 2021, to Ellen Leonida, Esq., which references RJA.

- 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.

RESPONSE TO F: These are exempt from disclosure under CPRA by the deliberative process privilege, work product privilege, and the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 7927.500.

Thank you,

Sincerely,


Paul D. Sequeira
Chief Deputy

PDS:mpm



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO**

**KRISHNA A. ABRAMS
DISTRICT ATTORNEY**

Sharon S. Henry
Chief Deputy

Paul D. Sequeira
Chief Deputy

Andre W. Charles
Chief Investigator

August 6, 2021

Ellen Leonida, Esq.
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Request

Dear Ms. Leonida:

The Solano County District Attorney's Office is in receipt of your letter dated July 23, 2021 and received by our office on July 27, 2021. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §6253(c))

Specifically, you have requested the following:

"This CPRA letter constitutes a renewal of the ACLU's prior request (as relevant, updated to the present day) an also a request for the additional following records in the possession or control of the Office of the District Attorney of Solano County for the time-period 2015 to present:

Records Requested:

1. Any and all written policies, memoranda, or guidance documents regarding:
 - a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendation;
 - c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decision recording wobbler;
 - 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 or defendants and victims; or
 - l. Referral of cases for federal prosecution.

2. Any and all policies regarding training as well as any training materials, recorded trainings, or related material;
 - a. Which are mandatory for prosecutors;
 - b. Which are optional for prosecutors;
 - c. Which relate to jury selection;
 - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
 - e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).

3. Records concerning the Racial Justice Act:
 - a. Implementation of and compliance with the RJA
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA

4. All investigations into *Batson-Wheeler* motions, including, but not limited to:
 - a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or
 - d. Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.

In response to ACLU's prior request, our response remains the same.

Response to the above Record Requests Nos. 1 and 2, these materials are exempt from disclosure under the deliberative process privilege and pursuant to Government Code Section 6254(a), (k) and (p).

Response to the above Records Requests No. 3, there are currently no non-exempt responsive records to produce at this time.

Response to Records Request 4, these materials are exempt from disclosure under Government Code Section 6254(a), (c) and (f).

Sincerely,



Matthew K. Olsen
Deputy District Attorney

MKO:mpm



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO**

**KRISHNA A. ABRAMS
DISTRICT ATTORNEY**

Sharon S. Henry
Chief Deputy

Paul D. Sequeira
Chief Deputy

Andre W. Charles
Chief Investigator

September 17, 2021

Ellen Leonida, Esq.
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Request

Dear Ms. Leonida:

The Solano County District Attorney's Office is in receipt of your letter dated September 7, 2021. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §6253(c)).

Specifically, you have requested the following:

"On July 23, 2021, we submitted a CPRA request to your office also seeking records relevant to the implementation of the RJA. This CPRA letter is a further request for the following records regarding relevant case, individual, and/or charge-level data in the possession or control of Solano District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

Records Requested:

1. Unique identifier(s) associated with each defendant, each case, and each arrest

- a. Name of defendant
- b. Court case number(s)
- c. Arresting agency number(s)
- d. 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)

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)
- c. Any enhancements
- 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

Response to requests numbers 1, 2, 3, 5, 7, 9, 11:

A list of individual cases is exempt from CPRA pursuant to Penal Code Section 13300-13305 and Government Code Section 6254(f). An individual's criminal history in the possession of the District Attorney's Office, is "protected rap sheet information." 89 Ops.Cal.Atty.Gen.204 (2006)

Response to 4, 6, 8, 10, 12, 14, 15:

These are exempt from disclosure under the CPRA by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 6254(a), (p)(1) and 6255.

Response to 13:

These are exempt from disclosure under Penal Code Section 841.5 as well as the provisions set forth in the above responses.

Sincerely,



Matthew K. Olsen
Deputy District Attorney

MKO:mpm

EXHIBIT P

From: Emi MacLean
Sent: Tuesday, February 20, 2024 4:59 PM
To: mmartinez@solanocounty.com; SolanoDA@solanocounty.com
Cc: Shaila Nathu; Haazim Amirali
Subject: Re: California Public Records Act Request
Attachments: 2023.12.11 Solano CPRA Request.pdf; 2023-12-21 - REPLY Letter to ACLU - MacLean.pdf

Dear Mr. Sequeira,

Thank you for your message on December 21, 2023 responding to our December 11, 2023 PRA request for information relevant to the implementation of the Racial Justice Act ("RJA"). For ease of reference, both the Request and your Response are attached.

We contest your refusal to provide *any* records responsive to our Request, and request that you revisit your response. You asserted that all data elements requested (Section A of the Request) are either not readily available and unduly burdensome to produce; or otherwise categorically exempt from disclosure by the deliberative process privilege, work product privilege, and either the PRA's catch-all exemption or Government Code section 7927.500's exemptions for drafts and interagency or intra-agency communications. (You referenced the public interest catch-all exemption, but cited to Government Code section 7927.500, which is an exemption for drafts and interagency or intra-agency communications.) You further asserted that all requested policy and training records, and investigations into Batson-Wheeler motions (Sections B, C & F of the Request, respectively) are also categorically exempt under the deliberative process privilege, work product privilege, and either the PRA's catch-all exemption or Government Code section 7927.500's exemptions for drafts and interagency or intra-agency communications. Lastly, you asserted that you had no records concerning implementation of or compliance with the RJA (Section D of the Request), or communications concerning the RJA (Section E of the Request) aside from two letters of correspondence with us refusing to produce any records in response to our prior RJA-related PRA requests.

First, in light of your assertion that significant data elements are "not readily available in [your] database and would require a tremendous amount of time, resources, and [be] unduly burdensome" to produce, we request an opportunity to meet with you to discuss the information that is collected, maintained or accessible through your databases. As you know, a government agency must (1) "[a]ssist" in the identification of records or refining of the request; (2) "[p]rovide suggestions for overcoming any practical basis for denying access to the records or information sought," and (3) "mak[e] a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records." (§ 7922.600 subds. (a) and (b).)

Likewise, we seek that meeting to better understand how you searched for records responsive to Requests D & E in light of the fact that your search failed to result in any responsive records. This strains credulity given that, among other things:

- 1) Solano County was the first county in the State subject to appellate litigation related to the Racial Justice Act (*Young v. Superior Court of Solano County*);
- 2) the Solano County Superior Court "adopt[ed] Local Rule 17.7, governing the Elimination of Bias Committee" in 2022, partly in response to the implementation of the RJA and the Court of Appeal decision in *Young* (see Richard Bammer, *Solano County Superior Court Launches Effort to Address Systemic Bias*, *Vacaville Reporter*, Aug. 17, 2022, at <https://www.thereporter.com/2022/08/17/solano-county-superior-court-launches-effort-to-address-systemic-bias/>); and
- 3) Solano County received, but did not respond to, a California Department of Justice survey seeking information for the Reparations Task Force about information collected (apparently the *only* county in the state which

refused to respond, see “California Prosecutorial & Judicial Race Data Survey,” pp. 851-61, at <https://oag.ca.gov/system/files/media/ch31-ca-reparations.pdf>).

Second, we contest your blanket assertions of privileges and exemptions as improper and unsupported. You have provided no explanation as to whether Solano indeed has responsive records, why these exemptions would apply, and which records they would apply to. Categorical exemptions are invalid under the PRA. We request that you provide “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.”].) You have not met that burden here.

Please let us know when you would be available to speak with us, consistent with your obligations under Government Code § 7922.600, subs. (a) and (b). We are available on the afternoons of February 21, 22, or 23, or March 7 or 8.

Best,
Emi MacLean

Emi MacLean
Senior Staff Attorney
ACLU of Northern California
929 375 1575
she/her

EXHIBIT Q

Morgan Lewis

Nicholas B. Pfeiffer

Associate
+1.415.442.1410
cole.pfeiffer@morganlewis.com

June 20, 2024

VIA FEDEX

Krishna Abrams
Office of the District Attorney of Solano County
355 Tuolumne Street, Ste 3200
Vallejo, California 94590-5700
(707) 553-5321
SolanoDA@solanocounty.com

Re: December 11, 2023 California Public Records Act Request

To the Office of the District Attorney:

The Morgan Lewis firm has been engaged by the American Civil Liberties Union of Northern California (“ACLU”) to secure compliance with the ACLU’s Public Records Act (“PRA”) requests to the Office of the District Attorney of Solano County (“Solano DA”) dated July 23, 2021; September 7, 2021; and December 11, 2023 (together, the “PRA Requests”).¹ All of the requests seek information relevant to the implementation of the Racial Justice Act (“RJA”). To date, Solano DA has not provided any documents responsive to the PRA Requests. Continued failure to provide responsive documents will leave us no recourse but to file a petition for writ of mandate to obtain compliance with the PRA Requests and seek the costs of doing so from the Solano DA.

This briefly summarizes the history that has placed us in this position.

July 23, 2021 Request for Prosecutorial Policies and Training Materials

On July 23, 2021, the ACLU, via ACLU’s counsel BraunHagey & Borden LLP (“BraunHagey”), sent a PRA request to the Solano DA seeking, among other things: (1) prosecutorial policies; (2) prosecutorial trainings; (3) certain records concerning the RJA;

¹ The December 11, 2023 PRA request renewed and updated the July 23, 2021 and September 7, 2021 PRA requests.

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and (4) all investigations into *Baston-Wheeler* motions. (A copy of the July 23, 2021 PRA request is included as Attachment A for your convenience.)

On August 6, 2021, Matthew K. Olsen, Solano County Deputy District Attorney, sent a letter stating that the Solano DA had no non-exempt documents responsive to the July 23, 2021 PRA request, and the Solano DA did not produce any responsive documents. (See Attachment B). Mr. Olsen stated that the requested policy and training records, as well as records related to *Batson Wheeler* investigations, were categorically exempt from disclosure, and that the DA had no non-exempt records responsive to the request for RJA related records.

September 7, 2021 Request for Prosecutorial Data

ACLU counsel BraunHagey sent a supplemental PRA request on September 7, 2021 requesting certain prosecutorial data. (A copy of the September 7, 2021 PRA request is included as Attachment C for your convenience.) On September 17, 2021, Mr. Olsen wrote that the Solano DA refused categorically to produce any of the requested data on the basis of certain proffered exceptions. (See Attachment D.)

Further Correspondence Related to 2021 Requests

On November 15, 2021, and January 18 and 21, 2022, BraunHagey sent letters informing the Solano DA that its responses were not legally adequate and pointing out deficiencies with its blanket assertions of privilege and exemptions. (See Attachments E, F, and G.) On January 28, 2022, the Solano DA responded, stating that it will “research the issues you have raised and would respond accordingly.” (See Attachment H.) BraunHagey, on behalf of the ACLU, made repeated requests for this promised response on March 1, April 5, and August 29, 2022. (See Attachments I, J, and K.) Mr. Olson on April 8, 2022 emailed that the Solano DA would respond within a week (See Attachment L), however, no response was ever received. On September 26, 2022, BraunHagey sent another letter requesting a response and production of the requested information. (See Attachment M.) No response was ever received to this letter either.

December 11, 2023 Renewed and Updated Request for Prosecutorial Data, Policies and Training Materials

On December 11, 2023, the ACLU sent a letter renewing and updating the ACLU’s request for (1) policies, training materials and communications relevant to the implementation of the RJA, and (2) prosecutorial data. (A copy of the December 11, 2023 PRA request is included as Attachment N for your convenience.) On December 21, 2023, Solano DA Chief Deputy, Paul D. Sequeira, sent a letter refusing to produce any records responsive to the December 11, 2023 PRA request, claiming broad exemptions from the PRA and asserting, in part, that the information ACLU seeks would be “unduly burdensome” to retrieve on the asserted basis that the requested data was not maintained electronically and not readily available. (See Attachment O) Mr. Sequeira asserted that the

Solano DA's "response remains the same." The only records the Solano DA produced, in response to the ACLU request for "communications concerning the RJA," were the two August 6 and September 17, 2021 letters previously produced by the Solano DA in response to the ACLU's 2021 PRA requests.

On February 20, 2024, the ACLU emailed the Solano DA an offer to meet and confer regarding what information is collected, maintained and/or accessible through the Solano DA's databases. That email (a copy of which is included as Attachment P for your convenience) also recited the facts stated above, contested the Solano DA's noncompliance with the PRA, and requested that the Solano DA cooperate to fulfill its obligations under the law. To date – four months later – the Solano DA has not responded.

Solano DA's Violations of the PRA

The refusal of the Solano DA to produce *any* responsive records is wholly baseless and violates the PRA.

It is inconceivable that the Solano DA was unable to locate *any* records for *any* of the categories of documents requested in the July 23, 2021, September 7, 2021, or December 11, 2023 PRA requests. For example, PRA Requests D and E referenced in the December 11, 2023 letter seek "records concerning implementation of, and compliance with, the Racial Justice Act" and "communications concerning the RJA." The Solano DA represented that it located no responsive documents to these categories, even though:

- Solano County was the first county in the State subject to appellate litigation related to the Racial Justice Act (*Young v. Superior Court of Solano County*, 79 Cal. App. 5th 138 (2022));
- Solano County Superior Court "adopt[ed] Local Rule 17.7, governing the Elimination of Bias Committee" in 2022, partly in response to the implementation of the RJA and the Court of Appeal decision in *Young* (see Richard Bammer, *Solano County Superior Court Launches Effort to Address Systemic Bias*, Vacaville Reporter, Aug. 17, 2022, at <https://www.thereporter.com/2022/08/17/solano-county-superior-court-launches-effort-to-address-systemic-bias/>);
- Solano County received, but did not respond to, a California Department of Justice survey seeking information for the Reparations Task Force about information collected (apparently becoming the only county in the state refusing to respond, see "California Prosecutorial & Judicial Race Data Survey," pp. 851-61, at <https://oag.ca.gov/system/files/media/ch31-ca-reparations.pdf>).

The Solano DA's assertion that no responsive documents exist is also not credible, since the ACLU has received substantial productions from other California counties in response to the identical PRA requests. Indeed, the ACLU has sent the same PRA requests to every

district attorney in all of California's 58 counties, and the Solano DA's response pales in comparison to virtually all other counties.

Moreover, the Solano DA's blanket assertions of privileges and exemptions are improper and unsupported. As you should be aware, "all exemptions are narrowly construed" and the Solano DA, as the agency opposing disclosure, "bears the burden of proving that an exemption applies." *ACLU of N. Cal. v. Superior Court*, 202 Cal. App. 4th 55, 67 (2011); *see also* Gov't Code § 7922.000 ("An agency shall justify withholding any record . . ."); Cal. Const., art. 1, § 3(b)(2) ("A statute, court rule, or other authority . . . shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.").

Here, the Solano DA has not met its burden and cannot do so. Despite the ACLU's repeated requests, the Solano DA has failed to provide any explanation as to whether and to what extent documents responsive to the PRA Requests exist; how the asserted privileges and exemptions would apply, if at all, to such documents; and the specific documents to which each privilege or exemption would apply.

As you are aware, Solano DA has an obligation under the PRA to assist requestors in identifying responsive documents (Gov't Code § 7922.600(a)). Solano DA has ignored repeated requests from the ACLU and its counsel to lend assistance to minimize burden or identify responsive non-exempt records.

This letter is the final attempt to seek voluntary compliance by the Solano DA with the ACLU's PRA Requests. As memorialized here, the ACLU has made repeated, good-faith efforts to work with the Solano DA to identify responsive documents for production. The Solano DA met those good-faith efforts with an initial improper response and then silence. The Solano DA's baseless non-compliance – which now has dragged on for almost three years – is contrary to both the letter and the spirit of California law. *See, e.g.*, Cal. Const., art. 1, § 3(b)(1) (emphasizing that the "people have the right of access to information concerning the conduct of the people's business"); Gov't Code § 7921.000 (providing that "access to information concerning the conduct of the people's business" is a "fundamental and necessary right of every person in this state"); *id.* § 7922.530 (providing that local agencies, upon request, "shall make the records promptly available to any person").

Unless the Solano DA confirms in writing by **July 1, 2024** that it will now timely comply with the PRA Requests and produce all responsive documents, the ACLU will have no recourse other than to seek a writ mandating the Solano DA to respond in full and produce all responsive records. Further, the ACLU will seek, as it is entitled under Government Code § 7923.115 and Code of Civil Procedure § 1021.5, to recover all fees and costs incurred with respect to the petition for writ of mandate.

Because the Solano DA is particularly intransigent in obstructing production of public records in response to these PRA requests, and because Solano County should seek to avoid incurring the litigation costs it will be obliged to pay once the ACLU files its

Krishna Abrams
June 20, 2024
Page 5

petition, we urge the Solano DA to reconsider its position and to now meet its legal obligations and comply with the ACLU's PRA Requests.

I am available to discuss this by email (cole.pfeiffer@morganlewis.com) or by phone (415-442-1410). We look forward to your prompt response and sincerely hope litigation can be avoided in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Pfeiffer', written in a cursive style.

Nicholas Pfeiffer

ATTACHMENT A

July 23, 2021

SENT VIA U.S. MAIL AND EMAIL

Krishna Abrams
Office of the District Attorney of Solano County
355 Tuolumne Street, Ste 3200
Vallejo, CA 94590-5700
(707) 553-5321
SolanoDA@solanocounty.com

Re: California Public Records Act Request

To the Office of the District Attorney of Solano County:

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 29, 2019, the ACLU submitted a CPRA request to your office seeking training materials concerning (1) jury selection and/or (2) constitutional requirements under *Batson v. Kentucky*, 476 U.S. 79 (1986) and *People v. Wheeler*, 4 Cal. 4th 284 (1993). That request also sought training materials related to the handling of *Batson-Wheeler* claims or motions. (See **Exhibit 1**, attached.) After initial correspondence between your office and the ACLU, you did not produce responsive records.

This CPRA letter constitutes a renewal of the ACLU’s prior request (as relevant, updated to the present day) and also a request for the additional following records in the possession or

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.

control of the Office of the District Attorney of Solano County for the time-period 2015 to present:

Records Requested:

1. Any and all written policies, memoranda, or guidance documents regarding:
 - a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendations;
 - c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decisions regarding wobblers;
 - 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; or
 - l. Referral of cases for federal prosecution.

2. Any and all policies regarding training as well as any training materials, recorded trainings, or related materials:
 - a. Which are mandatory for prosecutors;
 - b. Which are optional for prosecutors;
 - c. Which relate to jury selection;
 - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
 - e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).

3. Records concerning the Racial Justice Act:
 - a. Implementation of and compliance with the RJA;
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA.

4. All investigations into *Batson-Wheeler* motions, including, but not limited to:
 - a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or

- d. Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.

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.”⁵ The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”⁶ 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 Office of the District Attorney of Solano County’s possession or control. Even if a record was created by a member of another 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 Office of the District Attorney of Solano County.⁷

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.⁸ It is your obligation to conduct record searches based on the criteria identified herein.⁹ 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.¹⁰

The CPRA requires that you respond to this request in ten (10) days.¹¹ 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.¹² 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.¹³ 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

⁵ Gov’t Code § 6252(e).

⁶ *Id.* § 6252(g).

⁷ *Id.* § 6252(e); 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.”).

⁸ Gov’t Code § 6253(b).

⁹ See *id.* §§ 6253–6253.1.

¹⁰ *Id.* § 6253.1(a).

¹¹ *Id.* § 6253(c).

¹² *Id.* § 6255; see also *id.* § 6253(d)(3).

¹³ *Id.* § 6253(a), (c).

July 23, 2021

Page 4

favors disclosure.”¹⁴

Because the ACLU is a non-profit organization and because these requests pertain to matters of public concern, we 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 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: preresponse@braunhagey.com or to Ellen Leonida – PRA Responses, BraunHagey & Borden LLP, 351 California Street, 10th Floor, San Francisco, CA 94104.

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,



Ellen Leonida

¹⁴ *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").

EXHIBIT 1



Northern
California

July 29, 2019

Transmitted by email

Solano County District Attorney's Office
355 Tuolumne St Ste 3200
Vallejo, CA 94590-5700
Email: SolanoDA@solanocounty.com

Re: Request for Records Pursuant to the California Public Records Act

To Whom it May Concern:

I am writing on behalf of the American Civil Liberties Union of Northern California to request records pursuant to the California Public Records Act, California Government Code sections 6250 to 6270 and article 1 section 3(b) of the California Constitution.

I seek copies of the following materials in the agency's possession, regardless of who wrote them, from 1990 onwards:

1. Any training materials related to jury selection
2. Any training materials related to the constitutional requirements under *Batson v. Kentucky* and *People v. Wheeler*, including training materials related to handling *Batson-Wheeler* claims or motions.

Batson v. Kentucky (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258. This request construes "materials" to mean any records¹, publications, memoranda, writings, electronic data, mail, media files, nonstandard documents, or other forms of communication.

In the case that this request is found to be insufficiently focused or effective, California Government Code Section 6253.1(a) requires (1) Assistance in identifying the records and information that are responsive to this request or to the purpose of this request; (2) Description of

¹ The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Gov't Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Gov't Code § 6252, subsection (g).

the information technology and physical location in which the records exist; and (3) that suggestions be provided for overcoming any practical basis for denying access to the records or information sought.

Pursuant to Government Code Section 6253(b), the requested records must be “promptly available,” for inspection and copying, based on payment of “fees covering direct costs of duplication, or statutory fee, if applicable.” No express provisions of law exist that exempt the record(s) from disclosure. As it is determined whether this request seeks copies of disclosable public records, be mindful that Article I, Section 3 (b)(2) of the California Constitution requires that a statute, court rule, or other authority be broadly construed if it furthers the right of access to the information requested and that a statute, court rule, or other authority limiting right of access be narrowly construed.

If a portion of the information requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) additionally requires segregation and deletion of that material in order that the remainder of the information may be released. If it is determined that an express provision of law exists to exempt from disclosure all or a portion of the material requested, Government Code Section 6253(c) requires notification of the reasons for the determination not later than 10 days from receipt of this request. Moreover, Government Code Section 6253(d) prohibits the use of the 10-day period, or any provisions of the Public Records Act “to delay access for purposes of inspecting public records.”

Please send copies of the requested records to me at the address shown above or email them to me at sagarwal@aclunc.org. We request that you waive any fees that would be normally applicable to a Public Records Act request. In addition, if you have the records in electronic form you can simply email them to me without incurring any copying costs. *See Gov’t. Code § 6253.9.* Should you be unable to do so, however, the ACLU will reimburse your agency for the direct costs of copying these records plus postage. *See Gov’t. Code § 6253(b).* To assist with the prompt release of responsive material, we ask that you make records available to me as you locate them, rather than waiting until all responsive records have been collected and copied.

If you have any questions regarding this request, please feel free to contact me at (415) 621-2493 or at sagarwal@aclunc.org. Thank you in advance for your time and attention to this request.

Sincerely,



Shilpi Agarwal
Senior Staff Attorney

ATTACHMENT B



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO**

**KRISHNA A. ABRAMS
DISTRICT ATTORNEY**

Sharon S. Henry
Chief Deputy

Paul D. Sequeira
Chief Deputy

Andre W. Charles
Chief Investigator

August 6, 2021

Ellen Leonida, Esq.
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Request

Dear Ms. Leonida:

The Solano County District Attorney's Office is in receipt of your letter dated July 23, 2021 and received by our office on July 27, 2021. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §6253(c))

Specifically, you have requested the following:

"This CPRA letter constitutes a renewal of the ACLU's prior request (as relevant, updated to the present day) an also a request for the additional following records in the possession or control of the Office of the District Attorney of Solano County for the time-period 2015 to present:

Records Requested:

1. Any and all written policies, memoranda, or guidance documents regarding:
 - a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendation;
 - c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decision recording wobbler;
 - 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 or defendants and victims; or
 - l. Referral of cases for federal prosecution.

2. Any and all policies regarding training as well as any training materials, recorded trainings, or related material;
 - a. Which are mandatory for prosecutors;
 - b. Which are optional for prosecutors;
 - c. Which relate to jury selection;
 - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
 - e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).

3. Records concerning the Racial Justice Act:
 - a. Implementation of and compliance with the RJA
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA

4. All investigations into *Batson-Wheeler* motions, including, but not limited to:
 - a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or
 - d. Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.

In response to ACLU's prior request, our response remains the same.

Response to the above Record Requests Nos. 1 and 2, these materials are exempt from disclosure under the deliberative process privilege and pursuant to Government Code Section 6254(a), (k) and (p).

Response to the above Records Requests No. 3, there are currently no non-exempt responsive records to produce at this time.

Response to Records Request 4, these materials are exempt from disclosure under Government Code Section 6254(a), (c) and (f).

Sincerely,



Matthew K. Olsen
Deputy District Attorney

MKO:mpm

ATTACHMENT C

September 7, 2021

SENT VIA U.S. MAIL AND EMAIL

Krishna Abrams
Office of the District Attorney of Solano County
355 Tuolumne Street, Ste 3200
Vallejo, CA 94590-5700
(707) 553-5321
SolanoDA@solanocounty.com

Re: California Public Records Act Request

To the Office of the District Attorney for Solano County:

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, we submitted a CPRA request to your office also seeking records relevant to the implementation of the RJA. This CPRA letter is a further request for the following records regarding relevant case, individual, and/or charge-level data in the possession or control of Solano District Attorney’s Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

Records Requested:

- 1. Unique identifier(s) associated with each defendant, each case, and each arrest**
 - a. Name of defendant
 - b. Court case number(s)
 - c. Arresting agency number(s)

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.

- d. 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)
- 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)
 - 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

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. 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

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 Solano District Attorney’s Office’s possession or control. Even if a record was created by a member of another 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 Solano District Attorney’s Office.⁸

⁶ Gov’t Code § 6252(e).

⁷ *Id.* § 6252(g).

⁸ *Id.* § 6252(e); 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.”).

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 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: praresponse@braunhagey.com or to Ellen Leonida – PRA Responses, BraunHagey & Borden LLP, 351 California Street, 10th Floor, San Francisco, CA 94104.

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.

⁹ Gov’t Code § 6253(b).

¹⁰ *See id.* §§ 6253–6253.1.

¹¹ *Id.* § 6253.1(a).

¹² *Id.* § 6253(c).

¹³ *Id.* § 6255; *see also id.* § 6253(d)(3).

¹⁴ *Id.* § 6253(a), (c).

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”).

September 7, 2021
Page 5

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ellen Leonida', written in a cursive style.

Ellen Leonida

ATTACHMENT D



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO**

**KRISHNA A. ABRAMS
DISTRICT ATTORNEY**

Sharon S. Henry
Chief Deputy

Paul D. Sequeira
Chief Deputy

Andre W. Charles
Chief Investigator

September 17, 2021

Ellen Leonida, Esq.
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Request

Dear Ms. Leonida:

The Solano County District Attorney's Office is in receipt of your letter dated September 7, 2021. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §6253(c)).

Specifically, you have requested the following:

"On July 23, 2021, we submitted a CPRA request to your office also seeking records relevant to the implementation of the RJA. This CPRA letter is a further request for the following records regarding relevant case, individual, and/or charge-level data in the possession or control of Solano District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

Records Requested:

1. Unique identifier(s) associated with each defendant, each case, and each arrest

- a. Name of defendant
- b. Court case number(s)
- c. Arresting agency number(s)
- d. 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)

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)
- c. Any enhancements
- 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

Response to requests numbers 1, 2, 3, 5, 7, 9, 11:

A list of individual cases is exempt from CPRA pursuant to Penal Code Section 13300-13305 and Government Code Section 6254(f). An individual's criminal history in the possession of the District Attorney's Office, is "protected rap sheet information." 89 Ops.Cal.Atty.Gen.204 (2006)

Response to 4, 6, 8, 10, 12, 14, 15:

These are exempt from disclosure under the CPRA by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 6254(a), (p)(1) and 6255.

Response to 13:

These are exempt from disclosure under Penal Code Section 841.5 as well as the provisions set forth in the above responses.

Sincerely,



Matthew K. Olsen
Deputy District Attorney

MKO:mpm

ATTACHMENT E

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

November 15, 2021

VIA EMAIL AND MAIL

Matthew K. Olsen
Deputy District Attorney
Office of the District Attorney of Solano
355 Tuolumne Street, Ste 3200
P.O. Box 12002
Vallejo, CA 94590-5700
SolanoDA@solanocounty.com

Re: California Public Records Act Request

Dear Mr. Olsen:

I write in response to your August 6, 2021 letter regarding our CPRA Request. Thank you for your letter.

Your response letter lacks some legally required information. To the extent you intend to deny access to a requested record, you must justify that denial by demonstrating either (1) that the “record in question” – that is, the particular record we have requested – falls under a specific legal exemption, which you must cite, or (2) that the public interest served by your denial for that particular record “clearly outweighs” the public interest that would be served by its disclosure.¹ You must also provide the names and titles or positions of each person responsible for the denial.²

In your response letter, you provided conditional objections, asserting not that an exemption applies to a particular record we requested – as required under the law – but rather that, as a general matter, you will not produce records that fall under particular exemptions if our request seeks such records. Because we are not able to effectively respond to these objections without the more specific information described above and required by law, we ask that you provide it now.

Regarding the requested records (or portions of records) you may identify and assert clear grounds for withholding, we would like to know if you would consider waiving any, or all, of the asserted exemptions. Exemptions, as you know, are permissive, not mandatory, and it is our goal – and yours, we imagine – to avoid unnecessary litigation, which can be costly and time

¹ Gov’t Code § 6255(a).

² Gov’t Code § 6253(d)(3).

November 15, 2021

Page 2

consuming. If you are open to this possibility, please let us know. We would be happy to discuss this matter over the phone if you believe we may be able to find a solution that satisfies everyone. We would also be willing to provide further legal support and explanation for why we do not believe that the exemptions you have asserted are legally sound in this instance.

However, if you do not believe further discussions would be helpful and intend to deny some of our requests, please advise us of this position and tell us whether your office has adopted a formal process for an administrative appeal. Should we determine that we are entitled to documents you have refused to produce – whether before an administrative appeal or after – we may litigate to obtain them. In that event, we will seek all attorney’s fees and costs for the litigation.³

To the extent you have not yet produced any records for which you do not claim an exemption, please let us know the status of these records and produce them promptly and on a rolling basis.

Thank you again for your response to our earlier letter and, generally, for your assistance with our requests. We look forward to any further discussion and your production of records.

Very truly yours,



Ellen V. Leonida

³ Gov’t Code § 6259(d). We note that courts have awarded costs and fees if even a single document was improperly withheld. *See, e.g., Los Angeles Times v. Alameda Corridor Transp. Auth.*, 88 Cal. App. 4th 1381, 1391 (2001).

ATTACHMENT F

January 18, 2022

VIA EMAIL AND MAIL

Matthew K. Olsen
Office of the District Attorney of Solano County
355 Tuolumne St., Suite 3200
Vallejo, CA 94590
Email: SolanoDA@solanocounty.com

Re: California Public Records Act Request

Dear Mr. Olsen:

I write in response to your September 17, 2021 response to our CPRA Request. Thank you for your response.

For the data for which you assert the deliberative process exemption, please provide an explanation of which policies were being deliberated and how the data we seek is “actually related” to the formulation of those policies.¹ As you know, the exemption applies only to “predecisional” and “deliberative” documents, and a “policy cannot be properly. . . characterized as predecisional if it is adopted, formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public.”² Furthermore, “[t]he deliberative process privilege does not justify nondisclosure of a document merely because it was the product of an agency’s decision-making process; if that were the case, the PRA would not require much of government agencies.”³ Please also explain why your refusal to comply with our request would not undermine the goals of the Racial Justice Act—specifically, preventing racial bias in law enforcement actions.⁴

Regarding the data that you claim is exempt under Penal Code §§ 13300-13305, we note that § 13302 states: “Nothing in this section shall prohibit a public prosecutor from accessing and obtaining information from the public prosecutor’s case management database to respond to a request for publicly disclosable information pursuant to the California Public Records Act.” We ask that you turn over this data promptly.

¹ *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1341-2 (1991).

² *ACLU of N. Cal. v. Superior Ct.*, 202 Cal. App. 4th 55, 76 (2011) (internal quotation marks omitted).

³ *Id.*

⁴ A.B. 2542, Ch. 317, 2019-2020 Sess. § 2(i), (j) (Cal. 2020).

Regarding the data you claim is exempt under Penal Code § 841.5, we note that § 841.5(a) states: “no law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense.” We did not request the address or telephone number of anyone. The section of our request where you assert this exemption asks for demographic information of victims, which is not covered by this section. We ask that you turn over this data promptly.

Please also let us know at your earliest convenience if you intend to stand on your exemptions as grounds for withholding certain records, or whether you would consider waiving any, or all of the asserted exemptions. Exemptions, as you know, are permissive, not mandatory, and it is our goal—and yours, we imagine—to avoid unnecessary litigation, which can be costly and time consuming. If you are open to this possibility, please let us know. We would be happy to discuss this matter over the phone if you believe we may be able to find an amenable solution.

However, if you do not believe further discussions would be helpful, please advise us of this position and tell us whether your office has adopted a formal process for an administrative appeal. Should we determine that we are entitled to documents you have refused to produce—whether before an administrative appeal or after—we may litigate to obtain them. In that event, we will seek all attorney’s fees and costs for the litigation.⁵

To the extent you have not yet produced any records for which you do not claim an exemption, please let us know the status of these records and produce them promptly and on a rolling basis.

Thank you again for your response to our earlier letter and, generally, for your assistance with our requests. We look forward to any further discussion and your production of records.

Very truly yours,



Ellen V. Leonida

⁵ Cal. Gov. Code § 6259(d). We note that courts have awarded costs and fees if even a single document was improperly withheld. *See, e.g., Los Angeles Times v. Alameda Corridor Transp. Auth.*, 88 Cal. App. 4th 1381, 1391 (2001).

ATTACHMENT G

Ellen Leonida, Esq.
Partner
leonida@braunhagey.com

January 21, 2022

VIA EMAIL AND MAIL

Matthew K. Olson
Deputy District Attorney
Office of the District Attorney of Solano County
355 Tuolumne Street, Ste 3200
P.O. Box 12002
Vallejo, CA 94590
Email: SolanoDA@solanocounty.com

Re: California Public Records Act Request

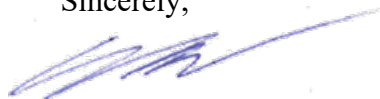
Dear Mr. Olsen:

On July 23, 2021 we sent you a Public Records Act request for the purpose of enforcing the Racial Justice Act. The request sought policy documents, training materials, records relating to the Racial Justice Act, and records regarding *Batson/Wheeler* investigations. You responded, asserting exemptions to the production of some of the requested documents. We sent you a letter on November 15, 2021 addressing exemptions you asserted in response to our request. In that letter, we offered to provide legal authority or to speak with you over the phone about your asserted exemptions in order to avoid unnecessary litigation. We remain willing to do so. As we informed you in our letter of November 15, 2021, however, should we be forced to file suit to obtain records to which we are entitled, you will be liable for our fees and costs.

If you wish to discuss this matter further, please contact our office as soon as possible. Please let us know if you are withholding documents on the basis of the exemptions you assert (as opposed to asserting exemptions to avoid waiver, but without withholding any documents). If you do not respond to our CPRA request, we will have no choice but to initiate litigation to obtain the documents to which we are entitled under the law.

Thank you for your immediate attention to this matter.

Sincerely,



Ellen V. Leonida

San Francisco
351 California Street, 10th Floor
San Francisco, CA 94104
Tel. & Fax: (415) 599-0210

New York
7 Times Square, 27th Floor
New York, NY 10036-6524
Tel. & Fax: (646) 829-9403

ATTACHMENT H

From: [Olsen, Matthew K.](#)
To: [Ellen Leonida](#)
Subject: PRA request response letter - 1/18/22
Date: Friday, January 28, 2022 4:19:05 PM

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

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

ATTACHMENT I

Re: PRA request response letter - 1/18/22

Josh Wilner <Wilner@braunhagey.com>

Tue 3/1/2022 1:15 PM

To: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>

Cc: PRA Response <praresponse@braunhagey.com>

Mr. Olsen,

Thank you for your attention to our requests. Please let us know when we can expect your response. As stated in the letter, we are happy to schedule a phone meeting to discuss any remaining questions.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco351 California Street, 10th Floor

San Francisco, CA 94104

Tel: (415) 599-0210

New York

7 Times Square

27th Floor

New York, NY 10036-6524

Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>**Sent:** Friday, January 28, 2022 4:18 PM**To:** Ellen Leonida <Leonida@braunhagey.com>**Subject:** PRA request response letter - 1/18/22***** EXTERNAL MESSAGE *****

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney

Solano County District Attorney's Office

675 Texas Street, Suite 4500

Fairfield, CA 94533-6340

Tel (707) 784-6800

Fax (707) 784-7986

ATTACHMENT J

From: [Josh Wilner](#)
To: [Olsen, Matthew K.](#)
Cc: [PRA Response](#)
Subject: Re: PRA request response letter - 1/18/22
Date: Tuesday, April 5, 2022 8:54:53 AM

Mr. Olsen,

You received our letter nearly three months ago and our request was sent over eight months ago. We ask that you provide us with an answer this week, so that we may make an informed decision regarding whether to initiate litigation.

Please let me know if you have any questions.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104
Tel: (415) 599-0210

New York

7 Times Square
27th Floor
New York, NY 10036-6524
Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>
Sent: Friday, January 28, 2022 4:18 PM
To: Ellen Leonida <Leonida@braunhagey.com>
Subject: PRA request response letter - 1/18/22

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

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

ATTACHMENT K

From: [Josh Wilner](#)
To: [Olsen, Matthew K.](#)
Cc: [PRA Response](#)
Subject: Re: PRA request response letter - 1/18/22
Date: Monday, August 29, 2022 8:00:08 AM

Mr. Olsen,

Please see our request for a response below.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104
Tel: (415) 599-0210

New York

7 Times Square
27th Floor
New York, NY 10036-6524
Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>
Sent: Friday, April 8, 2022 11:54 AM
To: Josh Wilner <Wilner@braunhagey.com>
Cc: PRA Response <praresponse@braunhagey.com>
Subject: RE: PRA request response letter - 1/18/22

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

We are finishing up drafting our response and should have that to you within a few days. Thank you for your anticipated patience.

Matthew K. Olsen

Lead Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

From: Josh Wilner <Wilner@braunhagey.com>

Sent: Tuesday, April 5, 2022 8:55 AM
To: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>
Cc: PRA Response <praresponse@braunhagey.com>
Subject: Re: PRA request response letter - 1/18/22

Mr. Olsen,

You received our letter nearly three months ago and our request was sent over eight months ago. We ask that you provide us with an answer this week, so that we may make an informed decision regarding whether to initiate litigation.

Please let me know if you have any questions.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104
Tel: (415) 599-0210

New York

7 Times Square
27th Floor
New York, NY 10036-6524
Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>

Sent: Friday, January 28, 2022 4:18 PM

To: Ellen Leonida <Leonida@braunhagey.com>

Subject: PRA request response letter - 1/18/22

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

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney

Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

ATTACHMENT L

From: [Olsen, Matthew K.](#)
To: [Josh Wilner](#)
Cc: [PRA Response](#)
Subject: RE: PRA request response letter - 1/18/22
Date: Friday, April 8, 2022 11:54:48 AM

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

We are finishing up drafting our response and should have that to you within a few days. Thank you for your anticipated patience.

Matthew K. Olsen

Lead Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533-6340
Tel (707) 784-6800
Fax (707) 784-7986

From: Josh Wilner <Wilner@braunhagey.com>
Sent: Tuesday, April 5, 2022 8:55 AM
To: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>
Cc: PRA Response <praresponse@braunhagey.com>
Subject: Re: PRA request response letter - 1/18/22

Mr. Olsen,

You received our letter nearly three months ago and our request was sent over eight months ago. We ask that you provide us with an answer this week, so that we may make an informed decision regarding whether to initiate litigation.

Please let me know if you have any questions.

Regards,

Joshua Wilner

BRAUNHAGEY & BORDEN LLP

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104

Tel: (415) 599-0210

New York

7 Times Square

27th Floor

New York, NY 10036-6524

Tel: (646) 829-9403

From: Olsen, Matthew K. <MKOlsen@SolanoCounty.com>

Sent: Friday, January 28, 2022 4:18 PM

To: Ellen Leonida <Leonida@braunhagey.com>

Subject: PRA request response letter - 1/18/22

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

I am writing to confirm receipt of your letter dated 1/18/22. We will research the issues you have raised and respond accordingly. I appreciate the offer to discuss the matter over the phone and may take you up on that, should we determine that it would be helpful in resolving your requests. Thanks.

Matthew K. Olsen

Lead Deputy District Attorney

Solano County District Attorney's Office

675 Texas Street, Suite 4500

Fairfield, CA 94533-6340

Tel (707) 784-6800

Fax (707) 784-7986

[EXTERNAL Email Notice!] External communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

ATTACHMENT M

Kory DeClark
declark@braunhagey.com

September 26, 2022

VIA CERTIFIED U.S. MAIL

Matthew K. Olson
Deputy District Attorney
Solano County District Attorney's Office
675 Texas Street, Suite 4500
Fairfield, CA 94533
Email: MKOlsen@solanocounty.com
SolanoDA@solanocounty.com

Re: California Public Records Act Request

Dear Mr. Olsen:

I am writing today regarding your refusal to respond to our CPRA requests dated July 23 and September 7, 2021. The requests have been open for over a year and to date you have produced no responsive documents.

After receiving our letters dated January 18 and January 21, 2022 informing you that your response to our request was not legally adequate, you replied on January 28 telling us you would respond to our arguments and may speak with us over the phone. We have repeatedly asked for this response, sending emails on March 1, April 5, and August 29, 2022. On April 8, 2022, you responded to our request for a follow up stating you would respond within a week. To date, we have not received this response.

If you do not respond immediately and signal your intention to produce the requested documents in a timely manner, we will have no choice but to initiate litigation at your expense to obtain the documents we have requested.¹

Thank you for your immediate attention to this matter.

Very truly yours,



Kory DeClark

¹ Gov't Code §6259 subd. (d).

ATTACHMENT N

December 11, 2023

SENT VIA U.S. MAIL AND EMAIL

Krishna Abrams
Office of the District Attorney of Solano County
355 Tuolumne Street, Ste 3200
Vallejo, CA 94590-5700
(707) 553-5321
SolanoDA@solanocounty.com

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 September 7, 2021, we submitted a CPRA request to your office seeking 1) policies, training materials and communications related to the RJA; and 2) prosecutorial data relevant to the implementation of the RJA. You did not meaningfully respond to these prior requests. 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. 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)

- 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”).

December 11, 2023

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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", with a long horizontal flourish extending to the right.

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

ATTACHMENT O



OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO

KRISHNA A. ABRAMS
DISTRICT ATTORNEY

Paul D. Sequeira
Chief Deputy

Bruce T. Flynn
Chief Deputy

Matthew J. Lydon
Chief Investigator (Interim)

December 21, 2023

Emi MacLean
ACLU of Northern California
emaclean@aclunc.org

Re: Public Records Request

Dear Ms. MacLean:

The Solano County District Attorney's Office is in receipt of your letter received via e-mail on December 11, 2023. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §7922.535)

Specifically, you state the following:

On July 23, 2021 and September 7, 2021, we submitted a CPRA request to your office seeking 1) policies, training materials and communications related to the RJA; and 2) prosecutorial data relevant to the implementation of the RJA. You did not meaningfully respond to these prior requests. This is a renewed request for this information. Unless otherwise specified, this request seeks records from 2015 to the date of the search.

RESPONSE: Our response remains the same.

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

1. Unique identifier(s) associated with each defendant, each case, and each arrest
 - a. Court case number(s)
 - b. Arresting agency number(s)
 - c. Any other unique identifier(s)

2. Demographic and other information concerning each defendant
 - a. Race
 - b. Ethnicity
 - c. Country of origin or nationality
 - d. Gender/sex
 - e. Age or date of birth
 - f. Prior criminal convictions of a defendant

3. Information regarding each arrest
 - a. Zip code of arrest
 - b. Date of arrest
 - c. Charge identified by law enforcement referring individual (including top charge by law enforcement referring)
 - d. Arresting agency

4. ADA assigned to the case

5. Decisions to decline to prosecute
 - a. Date of decision to decline to prosecute
 - b. Identity of person who made final decision to decline prosecution
 - c. Charges declined to prosecute (charge-level declinations as opposed to individual- or case-level where available)
 - d. Reasons for the declinations to prosecute, including but not limited to:
 - i. police misconduct involved in case;
 - ii. injuries to persons involved;
 - iii. injuries to suspect;
 - iv. financial loss to persons involved;
 - v. prior criminal record of suspect; and
 - vi. victim's level of cooperation in prosecuting case.

6. Diversion offers and decisions (formal and informal, and including collaborative court and deferred prosecution)
 - a. Date of diversion offer
 - b. Type of diversion offered
 - c. Whether diversion accepted
 - d. Whether diversion completed

7. Charges filed
 - a. Statutes (applicable code section)
 - b. Severity (i.e., infraction, misdemeanor, wobbler, felony)
 - c. Any enhancements
 - 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

RESPONSE TO A, 1 - 4, 7, 9, 11, 12, and 13: The information is not readily available in our database and would require a tremendous amount of time, resources, and is unduly burdensome. Our office does not maintain all the requested data electronically.

RESPONSE TO A, 5, 6, 8, 10, 14, and 15: These are exempt from disclosure under CPRA by the deliberative process privilege, work product privilege, and the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 7927.500.

- B. Prosecutorial Policies, Memoranda or Guidance Documents
Please provide policies, memoranda, or guidance documents considered or relied on by the Office. This includes, but is not limited to, policies, memoranda or guidance documents concerning:
- a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendations;
 - c. Charging recommendations and/or decisions;
 - d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
 - e. Jury selection;
 - f. Sentencing recommendations;
 - g. Prosecution of minors;
 - h. Parole recommendations;

- i. Pardon and commutation recommendations;
- j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;
- k. Data collection relating to criminal matters, including demographic data of defendants and victims;
- l. Referral of cases for federal prosecution;
- m. Training; and
- n. Compliance with the RJA.

RESPONSE TO B: These are exempt from disclosure under CPRA by the deliberative process privilege, work product privilege, and the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 7927.500.

- 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.

RESPONSE TO C: These are exempt from disclosure under CPRA by the deliberative process privilege, work product privilege, and the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 7927.500.

- 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.

RESPONSE TO D: There are currently no records to produce at this time.

- 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.

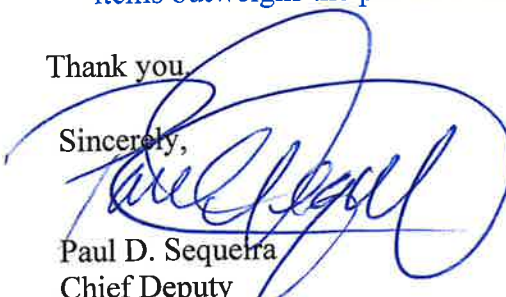
RESPONSE TO E: Attached please find two letters dated August 6, 2021, and September 17, 2021, to Ellen Leonida, Esq., which references RJA.

- 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.

RESPONSE TO F: These are exempt from disclosure under CPRA by the deliberative process privilege, work product privilege, and the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 7927.500.

Thank you,

Sincerely,


Paul D. Sequeira
Chief Deputy

PDS:mpm



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO**

**KRISHNA A. ABRAMS
DISTRICT ATTORNEY**

Sharon S. Henry
Chief Deputy

Paul D. Sequeira
Chief Deputy

Andre W. Charles
Chief Investigator

August 6, 2021

Ellen Leonida, Esq.
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Request

Dear Ms. Leonida:

The Solano County District Attorney's Office is in receipt of your letter dated July 23, 2021 and received by our office on July 27, 2021. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §6253(c))

Specifically, you have requested the following:

"This CPRA letter constitutes a renewal of the ACLU's prior request (as relevant, updated to the present day) an also a request for the additional following records in the possession or control of the Office of the District Attorney of Solano County for the time-period 2015 to present:

Records Requested:

1. Any and all written policies, memoranda, or guidance documents regarding:
 - a. Diversion eligibility and/or programming;
 - b. Custody and/or bail recommendation;
 - c. Charging recommendations and/or decisions, including, but not limited to:
 - i. Charging recommendations and/or decisions regarding enhancements;
 - ii. Charging recommendations and/or decisions regarding special circumstances; or
 - iii. Charging recommendations and/or decision recording wobbler;
 - 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 or defendants and victims; or
 - l. Referral of cases for federal prosecution.

2. Any and all policies regarding training as well as any training materials, recorded trainings, or related material;
 - a. Which are mandatory for prosecutors;
 - b. Which are optional for prosecutors;
 - c. Which relate to jury selection;
 - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
 - e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).

3. Records concerning the Racial Justice Act:
 - a. Implementation of and compliance with the RJA
 - b. Communications concerning the RJA; or
 - c. Trainings related to the RJA

4. All investigations into *Batson-Wheeler* motions, including, but not limited to:
 - a. Motions filed;
 - b. Motions granted;
 - c. Internal training and/or discipline; or
 - d. Reports to the State Bar relating to any *Batson-Wheeler* motions made and granted.

In response to ACLU's prior request, our response remains the same.

Response to the above Record Requests Nos. 1 and 2, these materials are exempt from disclosure under the deliberative process privilege and pursuant to Government Code Section 6254(a), (k) and (p).

Response to the above Records Requests No. 3, there are currently no non-exempt responsive records to produce at this time.

Response to Records Request 4, these materials are exempt from disclosure under Government Code Section 6254(a), (c) and (f).

Sincerely,



Matthew K. Olsen
Deputy District Attorney

MKO:mpm



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO**

**KRISHNA A. ABRAMS
DISTRICT ATTORNEY**

Sharon S. Henry
Chief Deputy

Paul D. Sequeira
Chief Deputy

Andre W. Charles
Chief Investigator

September 17, 2021

Ellen Leonida, Esq.
BraunHagey & Borden LLP
351 California Street, 10th Floor
San Francisco, CA 94104

Re: Public Records Request

Dear Ms. Leonida:

The Solano County District Attorney's Office is in receipt of your letter dated September 7, 2021. Having come within 10 days of receipt of the request, this response is timely under the CPRA. (Gov't Code §6253(c)).

Specifically, you have requested the following:

"On July 23, 2021, we submitted a CPRA request to your office also seeking records relevant to the implementation of the RJA. This CPRA letter is a further request for the following records regarding relevant case, individual, and/or charge-level data in the possession or control of Solano District Attorney's Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present:

Records Requested:

1. Unique identifier(s) associated with each defendant, each case, and each arrest

- a. Name of defendant
- b. Court case number(s)
- c. Arresting agency number(s)
- d. 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)

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)
- c. Any enhancements
- 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

Response to requests numbers 1, 2, 3, 5, 7, 9, 11:

A list of individual cases is exempt from CPRA pursuant to Penal Code Section 13300-13305 and Government Code Section 6254(f). An individual's criminal history in the possession of the District Attorney's Office, is "protected rap sheet information." 89 Ops.Cal.Atty.Gen.204 (2006)

Response to 4, 6, 8, 10, 12, 14, 15:

These are exempt from disclosure under the CPRA by the deliberative process privilege, work product privilege, and also on the ground that the public interest served by not disclosing these items outweighs the public interest served by disclosing them. Government Code Section 6254(a), (p)(1) and 6255.

Response to 13:

These are exempt from disclosure under Penal Code Section 841.5 as well as the provisions set forth in the above responses.

Sincerely,



Matthew K. Olsen
Deputy District Attorney

MKO:mpm

ATTACHMENT P

From: Emi MacLean
Sent: Tuesday, February 20, 2024 4:59 PM
To: mmartinez@solanocounty.com; SolanoDA@solanocounty.com
Cc: Shaila Nathu; Haazim Amirali
Subject: Re: California Public Records Act Request
Attachments: 2023.12.11 Solano CPRA Request.pdf; 2023-12-21 - REPLY Letter to ACLU - MacLean.pdf

Dear Mr. Sequeira,

Thank you for your message on December 21, 2023 responding to our December 11, 2023 PRA request for information relevant to the implementation of the Racial Justice Act ("RJA"). For ease of reference, both the Request and your Response are attached.

We contest your refusal to provide *any* records responsive to our Request, and request that you revisit your response. You asserted that all data elements requested (Section A of the Request) are either not readily available and unduly burdensome to produce; or otherwise categorically exempt from disclosure by the deliberative process privilege, work product privilege, and either the PRA's catch-all exemption or Government Code section 7927.500's exemptions for drafts and interagency or intra-agency communications. (You referenced the public interest catch-all exemption, but cited to Government Code section 7927.500, which is an exemption for drafts and interagency or intra-agency communications.) You further asserted that all requested policy and training records, and investigations into Batson-Wheeler motions (Sections B, C & F of the Request, respectively) are also categorically exempt under the deliberative process privilege, work product privilege, and either the PRA's catch-all exemption or Government Code section 7927.500's exemptions for drafts and interagency or intra-agency communications. Lastly, you asserted that you had no records concerning implementation of or compliance with the RJA (Section D of the Request), or communications concerning the RJA (Section E of the Request) aside from two letters of correspondence with us refusing to produce any records in response to our prior RJA-related PRA requests.

First, in light of your assertion that significant data elements are "not readily available in [your] database and would require a tremendous amount of time, resources, and [be] unduly burdensome" to produce, we request an opportunity to meet with you to discuss the information that is collected, maintained or accessible through your databases. As you know, a government agency must (1) "[a]ssist" in the identification of records or refining of the request; (2) "[p]rovide suggestions for overcoming any practical basis for denying access to the records or information sought," and (3) "mak[e] a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records." (§ 7922.600 subds. (a) and (b).)

Likewise, we seek that meeting to better understand how you searched for records responsive to Requests D & E in light of the fact that your search failed to result in any responsive records. This strains credulity given that, among other things:

- 1) Solano County was the first county in the State subject to appellate litigation related to the Racial Justice Act (*Young v. Superior Court of Solano County*);
- 2) the Solano County Superior Court "adopt[ed] Local Rule 17.7, governing the Elimination of Bias Committee" in 2022, partly in response to the implementation of the RJA and the Court of Appeal decision in *Young* (see Richard Bammer, *Solano County Superior Court Launches Effort to Address Systemic Bias*, *Vacaville Reporter*, Aug. 17, 2022, at <https://www.thereporter.com/2022/08/17/solano-county-superior-court-launches-effort-to-address-systemic-bias/>); and
- 3) Solano County received, but did not respond to, a California Department of Justice survey seeking information for the Reparations Task Force about information collected (apparently the *only* county in the state which

refused to respond, see “California Prosecutorial & Judicial Race Data Survey,” pp. 851-61, at <https://oag.ca.gov/system/files/media/ch31-ca-reparations.pdf>).

Second, we contest your blanket assertions of privileges and exemptions as improper and unsupported. You have provided no explanation as to whether Solano indeed has responsive records, why these exemptions would apply, and which records they would apply to. Categorical exemptions are invalid under the PRA. We request that you provide “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.”].) You have not met that burden here.

Please let us know when you would be available to speak with us, consistent with your obligations under Government Code § 7922.600, subs. (a) and (b). We are available on the afternoons of February 21, 22, or 23, or March 7 or 8.

Best,
Emi MacLean

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