Pursuant to California Rules of Court, Rule 3.1110(f), Petitioners/Plaintiffs hereby submit
Exhibits A-P and an Index of Exhibits to the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.
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DATED: October 31, 2022

By:

Emi MacLean
Chessie Thacher
AMERICAN CIVIL LIBERTIES
UNION
FOUNDATION OF NORTHERN
CALIFORNIA

Sean Garcia-Leys
PEACE AND JUSTICE LAW
CENTER

Robert Ponce
Eva Bitran
AMERICAN CIVIL LIBERTIES
UNION
FOUNDATION OF
SOUTHERN CALIFORNIA

Attorneys for Petitioners/Plaintiffs
Exhibit A
Dear Mr. Armstrong,

Thank you again for your office’s initial response to our records request that you provided us in June 7, 2019. We now have a graduate student (Steven Medeiros, copied here) working to analyze these records, and at this time we have a few follow-up questions for your office. For your reference, I’ve attached the original PRA.

1. In response to request 2, which referred to records related to diversion programs. You provided us a copy of the Deferred Entry of Judgement Misdemeanor Program Handbook. Do you have any information or guides related to felony diversion programs?

2. In response to request 3, which referred to parole records, you provided us with information related to how many parole hearings your office attended for 2017-18. Can you provide us that same information for 2016, 2019, and 2020?

3. Would your office be able to update the records provided to include available data from 2019 and 2020 as it relates to request 1?

Thank you very much for your assistance. We are happy to schedule a phone call to discuss the available data, if that would be most expedient.

Best,

Yoel

“Nobody in the world, nobody in history, has ever gotten their freedom by appealing to the moral sense of the people who were oppressing them.”—Assata Shakur

Yoel Y. Haile, MPP
Criminal Justice Program Director (interim)
ACLU of Northern California
39 Drumm St | San Francisco, CA 94111
Office: 415-293-6350
Cell: 408-821-4795 | yhaile@aclunc.org

From: Armstrong, Ray <Ray.Armstrong@da.ocgov.com>
Sent: Friday, June 7, 2019 4:09 PM
To: Yoel Y. Haile <yhaile@aclunc.org>
Subject: ACLU PRA Request

Good afternoon, Mr. Haile:

In compliance with Government Code Section 6253, this email and the attached records are in response to the ACLU’s Public Records Act request dated May 13, 2019.
Request No. 1: Seeks prosecution data for all cases filed by the Orange County District Attorney’s Office in 2017 and 2018.

Response No. 1: Please see the attached spreadsheet containing the information requested regarding all felonies and misdemeanors filed in superior court against adult defendants in 2017 and 2018, including all charges and sentencing information. We have excluded the information regarding cases filed in Juvenile court as that information is exempt from disclosure pursuant to Government Code section 6254(k) and Welfare & Institutions Code section 827 and cannot be disclosed without a court order. We do not keep records pertaining to the other statistical data you requested.

Request No. 2: Seeks records and documents pertaining to diversion programs offered to criminal defendants in Orange County.

Response No. 2: Please see the attached records pertaining to diversion programs in Orange County. We do not keep records pertaining to the other statistical data you requested.

Request No. 3: Seeks records regarding the number of parole hearings attended in 2017 and 2018, and the number of hearings that the victim or victim’s next of kin attended.

Response No. 3: A representative from the Orange County District Attorney’s Office attended 197 parole hearings in 2017 and 174 parole hearings in 2018. We do not keep statistical information pertaining to the number of hearings attended by victims or victim’s next of kin.

Request No. 4: Seeks copies of all office policies regarding the death penalty, charging and plea deals, and pardons and commutations.

Response No. 4: Internal office policies are exempt from disclosure under and the attorney work product privilege and the deliberative process privilege. “Any writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.” (Code Civ. Proc. § 2018.030 (a) and Gov. Code § 6254 (k).) The core work product privilege is not limited to writings made in preparation for litigation, but also to protected writings not made in preparation for trial. (Rumac, Inc. v. Bottomley (1983) 143 Cal.App.3d 810.) The deliberative process exemption protects from disclosure records reflecting the thought processes or “deliberative thought” of elected officials and employees of a government agency, whose responsibility it is to decide how prosecutors should proceed given various circumstances. (Gov. Code § 6255, subd. (a); California First Amendment Coalition v. Superior Court (1998) 67 Cal.App.4th 159, 170.) Disclosing such materials would expose the District Attorney’s decision making process in such a way as to discourage candid discussion within the office and thereby undermine the District Attorney’s ability to ensure the fair administration of justice. The public interest in nondisclosure, that is, the interest in ensuring that those who are involved in formulating such policies and directions have the freedom to engage in open dialogue, debate and deliberation with other attorneys in order to create effective and efficient policies and procedures, clearly outweighs the interest of the public in disclosing those thought processes. (Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325; Rogers v. Superior Court (1993) 19 Cal.App.4th 469; Wilson v. Superior Court (1996) 51 Cal.App.4th 1136.)

Request No. 5: Seeks copies of office immigration policies applicable to Penal Code sections 1016.3(b) and 1473.7.
Response No. 5: Internal office policies are exempt from disclosure under and the attorney work product privilege and the deliberative process privilege. See our Response to Request No. 4.

Request No. 6: Seeks all records concerning the implementation of SB 1421, including policies and training manuals, and revisions of Brady policies in light of SB 1421.

Response No. 6: Internal office policies are exempt from disclosure under and the attorney work product privilege and the deliberative process privilege. See our Response to Request No. 4.

Should you wish to discuss this matter further, please feel free to contact me directly.

Thank you,

Ray Armstrong
Senior Deputy D.A.
Special Prosecutions Unit
714-347-8795
Ray.armstrong@da.ocgov.com

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.
ATTACHMENT TO EMAIL IN EXHIBIT A
May 13, 2019

Via U.S. Mail

District Attorney Todd Spitzer  
Orange County District Attorney’s Office  
401 Civic Center Drive West  
Santa Ana, CA 92701

Re: Public Records Act Request

Dear District Attorney Todd Spitzer:

We write to request the release of public records from the Orange county’s District Attorney’s office pursuant to the California Public Records Act (Government Code section 6250 et seq.), we seek to obtain the following information:

1. Records\(^1\) of prosecution data within your possession for calendar year 2017 and 2018, including but not limited to,
   a. Unique identifiers for each person, charges, and outcomes for all minors (any persons under the age of 18) prosecuted directly in adult court in Orange County (adult court is defined as a court of criminal jurisdiction) (otherwise known as “pipeline” or “direct file” cases) under Welfare and Institutions Code section 707.
   i. Unique identifiers for each person, charges, and outcomes for all minors prosecuted in adult court in Orange County after any one of the following:
      1. a judicial certification to adult court following a juvenile transfer hearing under the newly amended Welfare and Institutions Code section 707 subsection (a);

---

\(^1\) 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. Govt. 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. Govt. Code § 6252 (g).
2. a juvenile defendant’s waiver of transfer hearing or stipulation to 
adult court following the District Attorney’s motion to transfer to 
adult court.
   b. Unique case identifiers, charges, and outcomes for all minors prosecuted in 
   juvenile court in Orange county, including, but not limited to demographic data, 
   charges filed, and case outcomes during the calendar year of 2017 and 2018.
   c. Unique case identifiers, charges, and outcomes (including diversion) of all 
misdemeanor charges for minors and adults in Orange county.
   d. Unique case identifiers, charges, enhancements and outcomes (including 
diversion) of all felony charges for minors and adults in Orange county.
2. All documents and records related to all diversion programs offered or used by the DA’s 
   office, how many people utilized those programs, demographics of those people, the 
   charges they were facing, outcomes of those cases, requirements for completing 
diversion, and any charges or costs associated with those diversion programs for calendar 
years 2017 and 2018.
3. All records relating to how many parole hearings the office attended, how many hearings 
your office opposed, and how many parole hearings your office opposed when the next of 
kim took no position in the calendar years of 2017 and 2018.
4. Copies of all office policies, including but not limited to policies regarding the death 
   penalty and when its sought, charging and plea offer policies, pardons and 
   commutations, etc. Request #3 is not limited to calendar year 2017 and 2018.
5. Copies of all office policies that relate to immigration including but not limited to:
   a. Records that refer to office efforts to implement its obligations under Penal Code
      1016.3(b).
   b. Records that refer to office efforts to implement its obligations under Penal Code 
      1473.7.
   c. Records, memoranda, and emails that relate to the creation and development of 
      an immigration policy for the office.
   d. Request #5 is not limited to calendar year 2017 and 2018.
6. All records concerning implementation of SB 1421, including copies of any new policies, 
   training manuals or procedures regarding SB 1421, including any policies, procedures or 
   training manuals for making SB 1421 requests, maintaining SB 1421 records, disclosures 
of SB 1421 requests to criminal defendants, revisions of any Brady policies in light of SB 
1421, and all policies and procedures for reviewing all criminal convictions, arrests and 
charging decisions, in view of SB 1421. Request #4 is not limited to calendar year 2017 
and 2018.

Please respond to this request in ten days, either by providing the requested information or 
providing a written response setting forth the specific legal authority on which you rely in failing
to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov’t Code § 6255.

If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

If I can provide any clarification that will help expedite your attention to my request, please contact us at yhaile@aclunc.org.

Because this request is made by a non-profit organization with the intent to make this material accessible to the public as promptly as possible, we request that you waive any fees. However, should you be unable to do so, we will reimburse your agency for the “direct costs” of copying these records plus postage. If you anticipate these costs to exceed $50.00, please notify us prior to making the copies.

Thank you in advance for providing the records we have requested. Please do not hesitate to contact us with any questions regarding this letter.

Yours Truly,

Yoel Haile
Criminal Justice Associate
ACLU of Northern California
February 28, 2021

Steven (Kanani) Medeiros
Criminal Justice Policy Intern
ACLU of Northern California

Dear Mr. Medeiros,

In compliance with Government Code § 6253, this letter addresses your California Public Records Act (Gov. Code § 6250 et seq) request dated February 5, 2021. This letter constitutes our formal response to your public record demand.

In your request, you referenced your May 13, 2019 Public Records Act request to this office and made the following requests. Please find below your requests and our responses to those requests:

**Request No. 1:** “Do you have any information or guides related to felony diversion programs?”

**Response:** We are interpreting the phrase “felony diversion programs” to be programs such as those outlined in California Penal Code sections 1210-1210.1, 3063 and 1001.36 where eligible defendants may have their criminal charges or conviction dismissed if they successfully complete a court-approved program and/or needed treatment in lieu of traditional penalties such as custody time. California Penal Code sections 1210-1210.1, 3063 and 1001.36 are publicly available records.

We do not have responsive records to this request in the format of guides or a handbook similar to the misdemeanor diversion handbook that was disclosed to you in response to your previous request.

We have responsive records to this request that will not be disclosed because they are exempt from disclosure pursuant to Government Code section 6254, subsection (k); specifically Attorney Work Product, Code of Civil Procedure section 2018.030.

**Request No. 2:** The number of parole hearings our office attended for 2016, 2019 and 2020.

**Response:** A representative from our office attended the following number of parole hearings for the years listed.

2016: 193 hearings
2019: 227 hearings
2020: 265 hearings
Request No. 3: “Would your office be able to update the records provided to include available data from 2019 and 2020 as it relates to request 1?”

We are interpreting this request to be for following data for the years 2019 and 2020 as stated in Request number 1 from the May 13, 2019 Public Records Act request to this office:

“Records of prosecution data within your possession for calendar year 2017 and 2018, including but not limited to,

a. Unique identifiers for each person, charges, and outcomes for all minors (any persons under the age of 18) prosecuted directly in adult court in Orange County (adult court is defined as a court of criminal jurisdiction) (otherwise known as “pipeline” or “direct file” cases) under Welfare and Institutions Code section 707.

   i. Unique identifiers for each person, charges, and outcomes for all minors prosecuted in adult court in Orange County after any one of the following:

      1. a judicial certification to adult court following a juvenile transfer hearing under the newly amended Welfare and Institutions Code section 707 subsection (a);
      2. a juvenile defendant’s waiver of transfer hearing or stipulation to adult court following the District Attorney’s motion to transfer to adult court.

b. Unique case identifiers, charges, and outcomes for all minors prosecuted in juvenile court in County, including, but not limited to demographic data, charges filed, and case outcomes during the calendar year of 2017 and 2018.

c. Unique case identifiers, charges, and outcomes (including diversion) of all misdemeanor charges for minors and adults in Orange County.

d. Unique case identifiers, charges, enhancements and outcomes (including diversion) of all felony charges for minors and adults in Orange County.” [Emphasis added]

Response: In this request, you have requested 2 years of records of prosecution data of all misdemeanor and felony charges from this agency under the California Public Records Act.

Your request calls for a compilation of information not existing within the Orange County District Attorney’s Office. The Public Records Act applies to existing records and does not require a public agency to create a record that does not exist. (Gov. Code § 6252 (e) and (f); Sander v. State Bar of California (2013) 58 Cal. 4th 300.)


Finally, please note that you have requested records of data of minors charged in juvenile court. Records of this data is exempt from disclosure pursuant to Government Code section 6254, subsection (k); specifically Welfare & Institutions Code section 827 and cannot be disclosed without a court order.
In conclusion, the OCDA claims for its records, such as might exist, all applicable exemptions from the California Public Records Act disclosure. In maintaining the lawful confidentiality of these records, the OCDA claims, enforces, and applies all applicable exemptions, privileges, and proscriptions against public disclosure of records, including but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence and Penal Codes, and the Federal Rules of Evidence.

Sincerely,

Denise Hernandez

Denise Hernandez
Senior Deputy District Attorney
Special Prosecutions Unit
Exhibit C
September 27, 2021

Orange County District Attorney
300 North Flower St.
Santa Ana, CA 92703

Attention: Public Records Act Request

To Whom it May Concern:

Pursuant to the California Public Records Act (“PRA”), I request the following records in the possession of the Los Angeles Sheriff’s Department (“LASD”). As used in this request, the term “document” has the same broad definition as the term “writing” in Government Code § 6252(f): “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 communications 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.”

Each numbered paragraph should be considered a separate request. For each set of records produced, please identify the subsection to which these records are intended to respond. I request the following documents and records:

1. The number of prosecutions for the following penal code violations from 2019 to present, broken down by race and gender:
   - PC § 314(1) — Indecent Exposure
   - PC § 372 — Public Nuisance
   - PC § 647(a) — Lewd Conduct in Public
   - PC § 647(b) — Solicitation for Sex
   - PC § 647(b)(1) — Solicitation for Sex - Sex Worker
   - PC § 647(b)(2) — Solicitation for Sex - Client
   - PC § 653.22 — Loitering w/ Intent
   - PC § 266(h) — Pimping
   - PC § 266(i) — Pandering

2. The number of reports written involving sex work related prosecutions from 2019 to present, broken down by race and gender.

3. All documents regarding current or past training materials used by the office regarding sex work related offenses and human trafficking.

EXECUTIVE DIRECTOR Hector O. Villagra

CHAIR Marla Stone VICE CHAIRS Sherry Frumkin and Frank Broccolo
CHAIRS EMERITI Shari Leinwand  Stephen Rohde  Danny Goldberg  Allan K. Jonas*  Burt Lancaster*  Irving Lichtenstein, MD*  Jarl Mohn  Laurie Ostrow*  Stanley K. Sheinbaum*  
*deceased
4. All documents regarding the presence or absence of human trafficking units within the District Attorney’s office from 2019 to present.
   a. The budget of such units, and the number of attorneys assigned to them from 2019 to present.

   Where data is requested, I request the data in the most disaggregated form available. Please note that I am not seeking any records that are confidential or contain identifying information. To the extent that my request could be disregarded on the basis that it only seeks information, please note that the Public Records Act “defines ‘public records’ broadly;” “[a]n appropriate request is one that ‘reasonably’ describes identifiable public records or information.” 

   The California Supreme Court has held that the disclosure of “information” from a record is appropriate even where the record itself cannot be disclosed. Williams v. Superior Court, 5 Cal. 4th 337, 360-361 (1993). The Los Angeles Sheriff’s Department is required to act in conformity with Government Code Section 6253.9, even if a public record must be “created” in order to disclose the information requested.

   If possible, please provide these documents and any response to this request in electronic form. Our office is working remotely, and I have limited access to regular mail. Please feel free to contact me by email at mkandel@aclusocal.org or phone at 213-977-5266 if you have any questions regarding this. Thank you.

Sincerely,

Minouche Kandel
Senior Staff Attorney
ACLU of Southern California
Exhibit D
October 7, 2021

Minouche Kandel
Senior Staff Attorney
ACLU of Southern California
1313 West Eighth Street, Suite 200
Los Angeles, CA 90017
mkandel@aclusocal.org

Dear Minouche Kandel,

I am the designated representative of the Orange County District Attorney’s Office (“OCDA”) assigned to handle your California Public Records Act (Gov. Code § 6250 et.seq.) request (the “Request”) that is dated September 27, 2021. In compliance with Government Code § 6253, This letter constitutes our formal response to your public record demand. We will produce what records we have as of the date of this response. We continue to search for additional responsive records, and will make responsive non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

**Request No. 1:** “The number of prosecutions for the following penal code violations from 2019 to present, broken down by race and gender:

- PC § 314(1) – Indecent Exposure
- PC § 372 – Public Nuisance
- PC § 647(a) – Lewd Conduct in Public
- PC § 647(b) – Solicitation for Sex
- PC § 647(b)(1) – Solicitation for Sex-Sex Worker
- PC § 647(b)(2) – Solicitation for Sex-Client
- PC § 653.22 – Loitering w/ Intent
- PC § 266(h) – Pimping
- PC § 266(i) – Pandering

**Response:** Your request for “[t]he number of prosecutions...” for the Penal Code sections listed above from 2019 to present, “…broken down by race and gender” calls for a compilation of information not existing within the Orange County District Attorney’s Office. We do not have a record responsive to your request. Our Case Management System that we use to track our files does not maintain records in the format requested. The Public Records Act applies to existing
records and does not require a public agency to create a record that does not exist. (Gov. Code § 6252 (e) and (f); Sander v. State Bar of California (2013) 58 Cal. 4th 300.)

**Request No. 2:** “The number of reports written involving sex work related prosecutions from 2019 to present, broken down by race and gender.”

**Response:** We are interpreting your request for “[t]he number of reports…” to be a request for the number of police reports “…written involving sex work related prosecutions from 2019 to present, broken down by race and gender.” Your request calls for a compilation of information not existing within the Orange County District Attorney’s Office. We do not have a record responsive to your request. Our Case Management System that we use to track our files does not maintain records in the format requested. The Public Records Act applies to existing records and does not require a public agency to create a record that does not exist. (Gov. Code § 6252 (e) and (f); Sander v. State Bar of California (2013) 58 Cal. 4th 300.)

**Request No. 3:** “All documents regarding current or past training materials used by the office regarding sex work related offenses and human trafficking.”

**Response:** We continue to search for responsive records, and will make responsive, non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure. To the extent that there are records responsive to your request, the records will be redacted to exclude information that is exempt from disclosure based on the following:

1) The attorney core work product privilege pursuant to Government Code section 6254, subdivision (k) and Code Civil Procedure section 2018.030, subdivision (a.) The OCDA’s training materials were prepared by our attorneys for legal guidance on issues facing prosecutors and/or to prepare prosecutors for trial. Such records reflect an attorney’s impressions, conclusions, opinions, or legal research or theories and are considered core work product; as such, they are protected and privileged writings whether created by this office’s attorneys in anticipation of litigation or for legal advice when no litigation is threatened. (League of California Cities v. Superior Court (2015) 41 Cal.App.4th 976; 71 Ops. Cal.Atty.Gen. 5, 7: “undeniable that public attorney can rely to "full extent" upon protection of attorney work product.”)

2) The deliberative process exemption pursuant to Government Code section 6255, subdivision (a). The deliberative process exemption protects, from disclosure, records reflecting the thought processes or “deliberative thought” of those, in our case elected members and employees of a government agency, whose responsibility it is to decide how prosecutors should proceed given various circumstances. (See California First Amendment Coalition v. Superior Court (1998) 67 Cal.App.4th 159, 170.) Disclosing such materials would expose the OCDA’s decision making process in such a way as to discourage candid discussion within the office and thereby undermine our office’s ability to ensure the fair administration of justice. The public interest in nondisclosure, the interest in ensuring that those who are involved in formulating such policies and directions have the freedom from criticism to engage in open dialogue, debate and deliberation with other attorneys in order to create effective and efficient policies and procedures clearly outweighs the interest of the public in disclosing those thought processes. (Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325; Rogers v. Superior Court (1993) 19 Cal.App.4th 469; Wilson v. Superior Court (1996) 51 Cal.App.4th 1136.)

3) Federal/State Law Copyright Exemption pursuant to Government Code section 6254,
subdivision (k); Civil Code section 980. Training materials also include records created by attorneys from other counties and government agencies and are subject to the Federal/State Law Copyright Exemption.

4) Investigative file exemption pursuant to Government Code section 6254, subdivision (f). Training materials that include records that are exempt from disclosure as records of investigatory files, compiled by a local police agency for law enforcement purposes, will not be disclosed. (Government Code section 6254, subdivision (f).) This section applies to law enforcement investigatory files and records, including district attorney case files, and continues to apply even if the investigation is closed. (See Rackauckas v. Superior Court (2002) 104 Cal.App.4th 150; Rivera v. Superior Court (1997) 54 Cal.App.4th 1048; Williams v. Superior Court (1993) 5 Cal.4th 337.)

5) Government Code section 6254, subd. (k); Records the disclosure of which is exempted or prohibited pursuant to federal or state law, specifically:
   b. Criminal offender record information, Penal Code sections 11075 et seq.
   c. Confidential information concerning victims and witnesses. Penal Code §§ 841.5 and 964.

Request No. 4: “All documents regarding the presence or absence of human trafficking units within the District Attorney’s office from 2019 to present.”

Response: We have identified records that are responsive to this request. For publicly available records responsive to this request, please see this office’s website at: http://orangecountyda.org for the following records:

- “Proposition 35 and The OCDA’s HEAT Unit” at http://www.orangecountyda.org/documents/Proposition%2035%20and%20HEAT.pdf

Request No. 4a: The budget of such units [human trafficking], and the number of attorneys assigned to them from 2019 to present.

Response: We do not have a separate budget for the human trafficking unit, therefore, we do not have records responsive to this request. The number of attorneys assigned to the human trafficking unit has ranged from three to six Deputy District Attorneys from 2019 to the present.

In conclusion, the OCDA claims for its records, such as might exist, all applicable exemptions from the California Public Records Act disclosure. In maintaining the lawful confidentiality of these records, the OCDA claims, enforces, and applies all applicable exemptions, privileges, and proscriptions against public disclosure or records, including but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence and Penal Codes, and the Federal Rules of Evidence. While we have set forth our reasons for our denials, we reserve the right to present additional theories, and authority for non-disclosure in the future.

Sincerely,

Johanna Kim
Deputy District Attorney
Special Prosecutions Unit
Exhibit E
Dear Johanna Kim:

I would just like to clarify your response below. Are you continuing to claim that the Orange County District Attorney’s office will not provide data on the prosecutions that we requested? The Human Trafficking Report for 2021 that you reference below includes data on the number of human trafficking cases reviewed and filed each year between 2012-2020, so it is clear that your system allows for extraction of prosecution data by type of offense. Furthermore, as recently as 2019, your office provided even more detailed prosecution data to the ACLU of Northern California. (See attached spread sheet.)

Can you please explain how the data we have requested is not covered by the Supreme Court’s ruling in Nat’l Laws. Guild, San Francisco Bay Area Chapter v. City of Hayward, and why you are refusing to provide data to us when you provided even more detailed data just 2 years ago? Thank you.

Sincerely,

Minouche Kandel
Senior Staff Attorney
LGBTQ, Gender, & Reproductive Justice Project
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
213.977.5266
mkandel@aclusocal.org
Pronouns: she/her/hers
Good Morning Minouche Kandel,

Thank you for clarifying what records you are seeking with respect to Request No. 2. For publicly available records responsive to your request for “analyses or reports that your office might have compiled regarding sex work related prosecutions...from 2019 to present broken down by race and gender” please see https://www.ochumantrafficking.com/resources for the following records:

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- Orange County Human Trafficking Task Force’s Human Trafficking Victim Report – 2021

With respect to Request No. 1, please refer to our original response dated October 7, 2021 in response to your PRA request dated September 27, 2021.

We continue to search for additional responsive records, and will make responsive non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Thank you,

Johanna Kim
Deputy District Attorney
Orange County District Attorney

From: Minouche Kandel <MKandel@aclusocal.org>
Sent: Thursday, October 7, 2021 5:32 PM
To: Kim, Johanna <Johanna.Kim@da.ocgov.com>
Cc: Wiseman, Teresa <Teresa.Wiseman@da.ocgov.com>; Arneta Rogers <ARogers@aclunc.org>; brittney.frey@live.law.cuny.edu
Subject: RE: OCDA FORMAL RESPONSE TO ACLU PRA REQUEST - HUMAN TRAFFICKING

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Dear Johanna Kim:

Request No. 1
I am surprised to hear that your office cannot provide data on the prosecutions that we requested. No other District Attorney’s office that we have contacted has claimed they are unable to do so. Government Code section 6253.9(b)(2) specifically references public record requests that require “data compilation, extraction or programming to produce the record.” The California Supreme Court recently and explicitly held that “[t]he PRA does sometimes require agencies to construct records for
public release.” Nat’l Laws. Guild, San Francisco Bay Area Chapter v. City of Hayward, 9 Cal. 5th 488, 502 (2020). The Court noted that “the PRA does require agencies to gather and segregate disclosable electronic data and to ‘perform data compilation, extraction or computer programming if “necessary to produce a copy of the record.”’ Id. at 503 citing Sander v. Superior Court, 26 Cal.App.5th 651, 669 (2018).

You are required to produce a record if it can be created through compilation, extraction or programming, even if you do not currently maintain it in the format requested. Are you claiming that your office is incapable of compiling or extracting this data from your case management system?

Request No. 2
We are requesting any analyses or reports that your office might have compiled regarding sex work related prosecutions, not police reports.

I look forward to receiving an updated response regarding this PRA request, and thank you for your assistance in responding.

Sincerely,

Minouche

Minouche Kandel
Senior Staff Attorney
LGBTQ, Gender, & Reproductive Justice Project
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
213.977.5266
mkandel@aclusocal.org
Pronouns: she/her/hers

From: Kim, Johanna <Johanna.Kim@da.ocgov.com>
Sent: Thursday, October 7, 2021 1:34 PM
To: Minouche Kandel <MKandel@aclusocal.org>
Cc: Wiseman, Teresa <Teresa.Wiseman@da.ocgov.com>
Subject: OCDA FORMAL RESPONSE TO ACLU PRA REQUEST - HUMAN TRAFFICKING

Good Afternoon Minouche Kandel,
Please find attached our response to your Public Records Act request dated September 27, 2021. We continue to search for additional responsive records, and will make responsive non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Thank you,

Johanna Kim  
Deputy District Attorney  
Orange County District Attorney
Exhibit F
Dear Avery:

Thank you for getting back to me. Attached please find our PRA request and the ensuring correspondence between myself and Johanna Kim. Please let me know if you can’t open the outlook attachment. What is most perplexing is that your office is refusing to provide prosecution data for particular charges when, as recently as 2019, your office provided even more detailed prosecution data to the ACLU of Northern California. (The spread sheet containing that data is contained in the outlook attachment.) As I noted, we have sent parallel PRA requests to a dozen other prosecutorial agencies in California, and none of them claim they are not obligated to provide this kind of data.

I appreciate your looking into this while Ms. Kim is away from the office, and I look forward to your response.

Best,

Minouche

Minouche Kandel
Senior Staff Attorney
LGBTQ, Gender, & Reproductive Justice Project
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
213.977.5266
mkandel@aclusocal.org
Pronouns: she/her/hers
Good afternoon,

Please send along any prior correspondence about your PRA request and I will look into it.

**Avery T. Harrison**  
Deputy District Attorney  
Special Prosecutions Unit  
P: 714-402-5754
Dear Johanna Kim:

I never heard back from you on my prior email (attached) requesting an explanation of why your office provided detailed prosecution data to the ACLU of Northern California in 2019 (see attached) and is now claiming it can not provide the smaller set of data that we requested. We have sent similar requests to 23 other law enforcement and prosecutorial agencies in California, and your office is the only one to claim that you cannot provide the type of data requested.

Can you please provide the data we requested or explain how it differs from data you have previously provided? Otherwise, we will be forced to pursue litigation to enforce our rights under the Public Records Act, and seek attorney’s fees.

Thank you.

Sincerely,

Minouche

Minouche Kandel
Senior Staff Attorney
LGBTQ, Gender, & Reproductive Justice Project
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
213.977.5266
mkandel@aclusocal.org
Pronouns: she/her/hers
Subject: OCDA FORMAL RESPONSE TO ACLU PRA REQUEST - HUMAN TRAFFICKING

Good Afternoon Minouche Kandel,

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The OCDA has identified some responsive, non-exempt records, which were made available to you on October 7, 2021, October 12, 2021, and November 9, 2021. We have also identified additional responsive, non-exempt records that are attached with this response. We continue to search for additional responsive records, and will make responsive, non-exempt records available to you on a continuing rolling basis until complete. Nothing in this letter should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Thank you,

Johanna Kim
Deputy District Attorney
Orange County District Attorney

From: Kim, Johanna
Sent: Tuesday, November 9, 2021 2:04 PM
To: 'Minouche Kandel' <MKandel@clusocal.org>
Cc: Wiseman, Teresa <Teresa.Wiseman@da.ocgov.com>; Paja, Aimelita <Aimelita.Paja@da.ocgov.com>
Subject: RE: OCDA FORMAL RESPONSE TO ACLU PRA REQUEST - HUMAN TRAFFICKING

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Thank you,
Good Morning Minouche Kandel,

Thank you for clarifying what records you are seeking with respect to Request No. 2. For publicly available records responsive to your request for “analyses or reports that your office might have compiled regarding sex work related prosecutions...from 2019 to present broken down by race and gender” please see https://www.ochumantrafficking.com/resources for the following records:

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With respect to Request No. 1, please refer to our original response dated October 7, 2021 in response to your PRA request dated September 27, 2021.

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Thank you,

Johanna Kim
Deputy District Attorney
Orange County District Attorney

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Dear Johanna Kim:

**Request No. 1**

I am surprised to hear that your office cannot provide data on the prosecutions that we requested. No other District Attorney’s office that we have contacted has claimed they are unable to do so. Government Code section 6253.9(b)(2) specifically references public record requests that require “data compilation, extraction or programming to produce the record.” The California Supreme Court recently and explicitly held that “[t]he PRA does sometimes require agencies to construct records for public release.” *Nat’l Laws. Guild, San Francisco Bay Area Chapter v. City of Hayward*, 9 Cal. 5th 488, 502 (2020). The Court noted that “the PRA does require agencies to gather and segregate disclosable electronic data and to ‘perform data compilation, extraction or computer programming if necessary to produce a copy of the record.’” *Id.* at 503 citing *Sander v. Superior Court*, 26 Cal.App.5th 651, 669 (2018).

You are required to produce a record if it can be created through compilation, extraction or programming, even if you do not currently maintain it in the format requested. Are you claiming that your office is incapable of compiling or extracting this data from your case management system?

**Request No. 2**

We are requesting any analyses or reports that your office might have compiled regarding sex work related prosecutions, not police reports.

I look forward to receiving an updated response regarding this PRA request, and thank you for your assistance in responding.

Sincerely,

Minouche

Minouche Kandel
Senior Staff Attorney
LGBTQ, Gender, & Reproductive Justice Project
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
213.977.5266
mkandel@aclusocal.org
Pronouns: she/her/hers
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Thank you,

Johanna Kim
Deputy District Attorney
Orange County District Attorney
Exhibit H
Dear Minouche,

You have yet to answer my questions about why your office is able to provide detailed prosecution data to the ACLU of Northern California in 2019, and claims that you cannot do so now. Can you please explain how the data we are requesting is different from the data that you previously provided? I would be happy to hop on a call if that would make sense.

Best,

Minouche

Minouche Kandel
Senior Staff Attorney
LGBTQ, Gender, & Reproductive Justice Project
ACLU Foundation of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
213.977.5266
mkandel@aclusocal.org
Pronouns: she/her/hers

From: Kim, Johanna <Johanna.Kim@da.ocgov.com>
Sent: Monday, January 10, 2022 10:54 AM
To: Minouche Kandel <MKandel@aclusocal.org>
Cc: Wiseman, Teresa <Teresa.Wiseman@da.ocgov.com>; Paja, Aimelita <Aimelita.Paja@da.ocgov.com>; Harrison, Avery <Avery.Harrison@da.ocgov.com>
Subject: OCDA FORMAL RESPONSE TO ACLU PRA REQUEST - HUMAN TRAFFICKING

Good Morning Minouche Kandel,

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The OCDA has identified some responsive, non-exempt records, which were made available to you
on October 7, 2021, October 12, 2021, November 9, 2021, and December 6, 2021. We continue to search for additional responsive records, and will make responsive, non-exempt records available to you on a continuing rolling basis until complete. Nothing in this letter should be construed as a representation that the OCDA has additional records, or that such records (if they exist) are subject to public disclosure.

Thank you,

Johanna Kim
Deputy District Attorney
Orange County District Attorney

From: Kim, Johanna
Sent: Monday, December 6, 2021 2:59 PM
To: 'Minouche Kandel' <MKandel@aclusocal.org>
Cc: Wiseman, Teresa <Teresa.Wiseman@da.ocgov.com>; Paja, Aimelita <Aimelita.Paja@da.ocgov.com>; Harrison, Avery <Avery.Harrison@da.ocgov.com>
Subject: OCDA FORMAL RESPONSE TO ACLU PRA REQUEST - HUMAN TRAFFICKING

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Thank you,

Johanna Kim
Deputy District Attorney
Orange County District Attorney

From: Kim, Johanna
Sent: Tuesday, November 9, 2021 2:04 PM
To: 'Minouche Kandel' <MKandel@aclusocal.org>
Cc: Wiseman, Teresa <Teresa.Wiseman@da.ocgov.com>; Paja, Aimelita <Aimelita.Paja@da.ocgov.com>; Harrison, Avery <Avery.Harrison@da.ocgov.com>
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Johanna Kim
Deputy District Attorney
Orange County District Attorney

Good Morning Minouche Kandel,

Thank you for clarifying what records you are seeking with respect to Request No. 2. For publicly available records responsive to your request for “analyses or reports that your office might have compiled regarding sex work related prosecutions...from 2019 to present broken down by race and gender” please see https://www.ochumantrafficking.com/resources for the following records:

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**Request No. 2**
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I look forward to receiving an updated response regarding this PRA request, and thank you for your assistance in responding.

Sincerely,
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Orange County District Attorney

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.
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Exhibit I
Dear Ms. Kim:

As you know, I do not agree with your response to Request No. 1. As a matter of professional courtesy, I would appreciate the opportunity to have a telephone call with you to understand why you are refusing to provide data that every other District Attorney office from whom we requested this data has provided, and of a type which your office recently provided to our Northern California affiliate.

Can you let me know some times when you might be free to talk in the next week or two?

Sincerely,

Minouche

Minouche Kandel
Senior Staff Attorney
LGBTQ, Gender, & Reproductive Justice Project
ACLU of Southern California
1313 W. 8th Street
Los Angeles, CA 90017
213.977.5266
mkandel@aclusocal.org
Pronouns: she/her/hers
The OCDA has identified some responsive, non-exempt records, which were made available to you on October 7, 2021, October 12, 2021, November 9, 2021, and December 6, 2021. We have also identified additional responsive, non-exempt records that are attached with this response.

This concludes the production of documents in response to the CPRA request dated September 27, 2021. This request is now closed as public records have been provided and response has been made in accordance with the California Public Records Act.

Thank you,

Johanna Kim
Deputy District Attorney
Orange County District Attorney

From: Kim, Johanna
Sent: Monday, January 10, 2022 10:54 AM
To: Minouche Kandel <MKandel@aclusocal.org>
Cc: Wiseman, Teresa <Teresa.Wiseman@da.ocgov.com>; Paja, Aimelita <Aimelita.Paja@da.ocgov.com>; Harrison, Avery <Avery.Harrison@da.ocgov.com>
Subject: OCDA FORMAL RESPONSE TO ACLU PRA REQUEST - HUMAN TRAFFICKING

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Orange County District Attorney
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Thank you,

Johanna Kim
Deputy District Attorney
Orange County District Attorney
Exhibit J
February 18, 2022

SENT VIA U.S. MAIL AND EMAIL

Todd Spitzer
Office of the District Attorney of Orange County
300 North Flower Street
Santa Ana, CA 92703

Re: California Public Records Act Request

To the Office of the District Attorney for Orange:

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 Orange 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)

---

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

---

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
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

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.” The CPRA defines, in turn, a “writing” as any “means of recording upon any tangible thing any form of communication or representation.”

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 Orange 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 Orange District Attorney’s Office.

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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.

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\(^9\) 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 Cnty. 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”).
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
February 28, 2022

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

Dear Ms. Leonida,

This letter is in response to your California Public Records Act request that is dated February 18, 2022.

Pursuant to Government Code section 6253, subsection (c)(2), we are claiming an additional 14 calendar days to complete our review of records. This additional time is necessary to search for and examine a voluminous amount of separate and distinct records.

We will respond on or before March 14, 2022.

Sincerely,

Johanna Kim
Deputy District Attorney
Special Prosecutions Unit
Exhibit L
March 14, 2022

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

Dear Ms. Leonida,

I am the designated representative of the Orange County District Attorney’s Office (“OCDA”) assigned to handle your California Public Records Act (Gov. Code § 6250 et.seq.) request (the “Request”) that is dated February 18, 2022, and that I previously replied to on March 1, 2022. In compliance with Government Code § 6253, this letter constitutes our formal response, which is made within that statutorily required time, to your public record demand. In the Request, you also reference a July 23, 2021 Public Records Act request to this office, that I replied to on August 19, 2021. Please find below your request and our response to the request:

Request No. 1: “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 Orange County District Attorney’s Office for all cases considered for prosecution and/or prosecuted during the time-period 2015 to Present.

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

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY’S OFFICE
WEB PAGE: http://orangecountyda.org/
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:** In this request, you have requested more than 7 years of records of prosecution data of all infraction, misdemeanor, and felony charges from this agency under the California Public Records Act.

Your request calls for a compilation of information not existing within the Orange County District Attorney’s Office. The Public Records Act applies to existing records and does not require a public agency to create a record that does not exist. (Gov. Code § 6252 (e) and (f); Sander v. State Bar of California (2013) 58 Cal. 4th 300.)


In an effort to assist you in making a focused and effective request under the Public Records Act, if there is a specific record you would like to inspect or have produced to you, you may send the request to the following address: 300 North Flower St. Santa Ana, CA 92703 or media@da.ocgov.com. Requests for the inspection or production of records under the Public Records Act are processed in the ordinary course of business and disclosable records are available for inspection and production as required by law.

In conclusion, the OCDA claims for its records, such as might exist, all applicable exemptions from the California Public Records Act disclosure. In maintaining the lawful confidentiality of these records, the OCDA claims, enforces, and applies all applicable exemptions, privileges, and proscriptions against public disclosure or records, including but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence and Penal Codes, and the Federal Rules of Evidence.

While we have set forth our reasons for our denials, we reserve the right to present additional theories, and authority for non-disclosure in the future.

Sincerely,

**Johanna Kim**

Johanna Kim
Sr. Deputy District Attorney
Special Prosecutions Unit
VIA EMAIL AND MAIL

September 21, 2022

Johanna Kim
Deputy District Attorney
Office of the District Attorney for Orange County
300 North Flower Street
Santa Ana, California 92703
Email: Johanna.Kim@da.ocgov.com

Re: California Public Records Act Requests

Dear DDA Johanna Kim:

I write on behalf the American Civil Liberties Union of Northern California and the American Civil Liberties Union of Southern California (together, the “ACLU”) regarding two requests the ACLU made to the Orange County District Attorney’s Office (“OCDA”) pursuant to the California Public Records Act (“PRA”) seeking information concerning prosecutorial data and policies relevant to the implementation of the California Racial Justice Act. In the months since the ACLU made these two requests, OCDA has failed to provide a complete or satisfactory response. You have produced very few responsive records, though many more exist. You have also asserted overbroad and unsupported exemptions; and failed to respond to repeated requests for information. If you remain unwilling to produce records responsive to our requests, we will be left with no choice but to litigate to obtain them.

A. DATA REQUEST (FEBRUARY 18, 2022)

On February 18, 2022, the ACLU, via the law firm of Braun Hagey & Borden LLP (“BHB”), requested that OCDA produce prosecutorial data from 2015 to the present. Seven months later, and despite repeated outreach, we have not received any substantive response to this request.

On March 1, 2022, OCDA emailed a letter to BHB requesting an extension until March 14, 2022 to respond to the request. This letter was the sole communication from OCDA in response to the ACLU’s request.

On March 22, April 1, April 5, and April 26, 2022, BHB communicated in writing to OCDA about the ACLU’s pending request, seeking a meeting and/or a substantive response. On April 19, 2022, BHB telephoned OCDA to discuss this request. OCDA has not responded to either the written or telephonic communications.
You have failed to promptly disclose the requested records, as required by the CPRA. Where the records are requested, as here, to allow for a prompt public response to ongoing governmental activities, the failure to disclose records in a timely manner is akin to a denial, and violates the PRA.

**B. POLICY REQUEST (JULY 23, 2021)**

1. **ACLU Request**

On July 23, 2021, the ACLU, via BHB, requested a series of records related to OCDA’s (1) policies, (2) trainings, (3) records concerning the Racial Justice Act (“RJA”) and its implementation, and (4) investigations into *Batson-Wheeler* motions. Fourteen months later, we have not received a complete response to this request. OCDA has produced few responsive records, while more responsive records exist. OCDA has also provided insufficient justification for broadly and improperly asserted exemptions and withholdings.

2. **Limited Production of Responsive Records**

OCDA produced fewer than twenty responsive records in total on three different dates in 2021. OCDA asserted that it was continuing a rolling production for records responding to our requests for policy documents, training materials, and RJA-related communications. However, you have provided no substantive communication for more than eight months; and have refused or ignored repeated requests for communication about the status of your request.

Specifically, OCDA produced records on August 19, November 9 and December 13, 2021. On August 19, 2021, OCDA produced approximately thirteen documents and committed to a rolling production until completion. The first records produced were: four documents concerning the OCDA’s diversion policies and practices; three other OCDA policy documents; an OCDA training bulletin concerning “The California Racial Justice Act”; three heavily redacted RJA Team Agendas; the 2020 Superior Court Uniform Bail Schedule; and the

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3 Dated: Feb. 5, Feb. 26, and Apr. 23, 2021. OCDA asserted that it redacted the records “to exclude attorney work product and information protected by the ‘deliberative process’ privilege.”
Superior Court’s Information and Instructions for a Petition for Resentence or Reclassification pursuant to PC 1170.18. Your written communication also referenced three purportedly publicly available OCDA records—the “Bureau Policy Manual,” “Informant Policy Manual,” and “Role of a Prosecutor and the Guiding Principles for the Orange County District Attorney’s Office”—however, none of the links OCDA provided are functional. OCDA also produced in the August 19, 2021 communication summary information concerning the number of parole hearings attended by the OCDA; and the names of three cases with Batson-Wheeler motions filed. On November 9, 2021, OCDA produced three additional records—publicly-available reports prepared by non-governmental entities concerning racial disparities in the criminal legal system. On December 13, 2021, OCDA produced one final record—a redacted PowerPoint presentation titled “Social Media 101,” apparently used in a training.

In total, OCDA produced only seven policy records, and identified three other policy documents asserted to be publicly available, but which were not actually accessible at the links provided. OCDA also acknowledged over 3,000 trainings conducted in the time period at issue in this PRA request, but produced only two training documents—one PowerPoint presentation and one training bulletin. In response to the PRA request concerning RJA-related communications and other records, OCDA produced only three heavily redacted RJA meeting agendas.

In three additional email communications – on September 16 and October 14, 2021, and on January 13, 2022 – you indicated that your continued search had not yet produced any further responsive records. You have provided no records since December 13, 2021, and no substantive communication since January 13, 2022.

The PRA and the California Constitution require broad disclosure and create a strong presumption of access to public records and require the prompt disclosure of public records not subject to exemption. (Gov. Code, § 6250; Cal. Const., art. I, § 3, subd. (b), par. (1); City of San Jose v. Superior Court (2017) 2 Cal.5th 608, 616.) OCDA’s limited and delayed production does not comply with the agency’s obligations under the law.

3. Overbroad Withholdings and Asserted Exemptions

In the communications accompanying the OCDA productions, you asserted that it could, or did, withhold certain records on the grounds of deliberative process privilege, attorney work product, or copyright; or because the request was unduly burdensome. You never provided specificity as to the records withheld, which exemptions applied to which records, or the

4 These documents were: Sentencing Project, Reducing Racial Disparity in the Criminal Justice System; American Bar Association, Justice for All? Challenging Racial Disparities in the Criminal Justice System; and Vera, A Prosecutor’s Guide for Advancing Racial Equity.
requisite justification for the withholding. You also refused to respond to repeated requests to discuss the deficient production or the asserted exemptions and withholdings. Your asserted exemptions therefore remain overbroad, improper, and unsupported by the information you have provided.

First, your responses lack legally required information. The government bears the burden of affirmatively showing that withheld materials need not be disclosed. An agency is required to “provide the requesting party ‘adequate specificity to assure proper justification by the governmental agency.’” (ACLU of N. Cal. v. Superior Court (2011) 202 Cal.App.4th 55, 82 [quoting Vaughn v. Rosen (D.C. Cir. 1973) 484 F.2d 820, 827].) OCDA must justify the denial of access to requested records by demonstrating either that the requested records fall under a specific legal exemption, or that the public interest served by denying disclosure “clearly outweighs” the public interest that would be served by its disclosure. (Gov. Code, § 6255, subd. (a).) OCDA must also provide the names and titles or positions of each person responsible for the denial. (Id., § 6253, subd. (d)(3).) Your failure to cite and justify with particularity the exemptions you assert do not satisfy the agency’s obligations here.

Second, your exemptions are overbroad. Exemptions must be narrowly construed, and blanket exemptions are inappropriate. (City of San Jose v. Superior Court (2017) 2 Cal.5th 608, 617, 629; County of Santa Clara v. Superior Court (2009) 170 Cal.App.4th 1301, 1321.)

Third, your asserted exemptions lack merit. You primarily rely on attorney work product and deliberative process privilege to support withholding most of OCDA’s RJA-related policy and training documents, communications, and information. Your assertion of the attorney work product exemption as grounds for withholding policies, training materials, and RJA communications stretches the exemption beyond its breaking point. The requested information is in public records that lay out “general standards to guide [] Government lawyers.” (ACLU of N. Cal. v. United States of Justice (9th Cir. 2018) 880 F.3d 473, 484-89 [affirming that agency manuals, guidance documents, and other materials conveying agency policy fall outside work product protection and thus are discoverable]; Judicial Watch, Inc. v. United States Department of Homeland Security (D.D.C. 2013) 926 F.Supp.2d 121, 142-44 [ruling that memoranda communicating policies, guidelines, and “general standards” to government staff attorneys not

5 On November 15, 2021, BHB sent a letter seeking to discuss exemptions to avoid litigation. OCDA has never responded to this letter. On April 5, 2022, BHB emailed OCDA to schedule a phone meeting to discuss this request. OCDA did not respond to that email. On April 19, BHB called OCDA to discuss this request, but did not receive a return call. And lastly, on April 26, BHB emailed requesting a meeting, but again received no response.

6 You asserted without specificity, or even certainty, that information contained within the training materials may also be “subject to the Federal/State Law Copyright Exemption (Govt. Code, § 6254, subd. (k); Civil Code, § 980.) This is an improper and unsubstantiated blanket exemption.

Nor does the deliberative process privilege embodied in Government Code section 6255 support withholding the requested records. The California Supreme Court identified “the key question” in examining the applicability of the deliberative process privilege as “whether disclosure of the materials would expose an agency’s decision-making process in such a way as to discourage candid discussion with the agency and thereby undermine the agency’s ability to perform its functions.” (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342. See also *ACLU of N. Cal. v. Superior Court* (2011) 202 Cal.App.4th 55, 76 [“The 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.”].) Office policies, guidance documents, and training materials do not categorically “expose an agency’s decision-making process,” but rather tend to articulate finalized decisions after deliberations have concluded. (*Times Mirror Co. v. Superior Court*, supra, 53 Cal.3d at p. 1342.) Furthermore, where the agency cites Government Code section 6255 for withholding, the burden falls on the agency to elaborate the public interest protected by nondisclosure and to demonstrate the “clear overbalance” in favor of withholding the records sought. (*Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1071.) You have not met this burden.

You also asserted improperly that some of our requests for training materials were “unduly burdensome and overbroad,” and thus refused to search for and produce the requested records. The request is neither overbroad nor unduly burdensome. The PRA, by its nature, imposes burdens on government agencies. (See *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1190, fn.14; see also *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 614.) “There is nothing in the [PRA] to suggest that a records request must impose no burden to the government agency.” (*CBS Broadcasting Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 909; see also *ibid.* [$43,000 cost of compiling an accurate list of names not “a valid reason to proscribe disclosure of the identity of such individuals”].) OCDA has not

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7 The PRA is modeled after the federal Freedom of Information Act (“FOIA”) and the “legislative history and judicial construction of the FOIA thus ‘serve to illuminate the interpretation of its California counterpart.’” (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338 [quoting *ACLU of N. Cal. v. Deukmejian* (1982) 32 Cal.3d 440, 447]; see also *Community Youth Athletic Ctr. v. City of Nat’l City* (2013) 220 Cal.App.4th 1385, 1400, fn.6 [“Judicial interpretations of the FOIA in the federal courts may be used to construe the PRA.”].)

8 OCDA acknowledged “over 3,000 trainings” in the time period covered.
demonstrated that the burden of searching for and producing the requested training materials is excessive. This is particularly true in light of the public interest in the disclosure of the records relevant or necessary for the implementation of the Racial Justice Act. (See Weaver v. Superior Court (2014) 224 Cal.App.4th 746, 752 [“concluding that [t]he approximately $3,400 expense of generating the list of cases at issue here is substantially less of a reason and pales in comparison to the interests of [the requester] and the public in disclosure” where the requester seeks information to show selective prosecution].)  

Lastly, the PRA imposes an obligation on agencies to segregate non-exempt portions of records from exempt portions if the agency can reasonably do so. (Cal. Gov. Code, § 6253, subd. (a).) Thus, you have an obligation to produce nonexempt materials that can be reasonably segregated from exempt materials. You have made no indication that you have endeavored to do so here.

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Thank you for your careful reconsideration of your responses to our PRA requests. We request a response no later than **October 5, 2022**.

Very truly yours,

Emi MacLean  
Senior Staff Attorney  
ACLU of Northern California

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9 A government agency must also offer an opportunity to cure any asserted overbreadth or undue burden. You have not done so here. Where a county asserts a request to be overbroad, the County 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.” (Gov. Code, § 6253.1, subds. (a)-(b).) Thus, even if compliance with the request **would** impose an undue burden, you have an obligation to “provide suggestions for overcoming any practical basis for denying access to the records or information” that we seek. (Gov. Code, § 6253.1, subd. (a)(3).)
Exhibit N
October 5, 2022

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

Dear Ms. MacLean,


Please find below your requests and our responses to those requests.

**DATA REQUEST (FEBRUARY 28, 2022):** On February 18, 2022, the ACLU, via the law firm of Braun Hagey & Borden LLP (“BHB”), requested OCDA produce prosecutorial data from 2015 to the present.

**Response:** We previously responded to this request on March 14, 2022. Please see attached.

**POLICY REQUEST (JULY 23, 2021):** On July 23, 2021, the ACLU, via BHB, requested a series of records related to OCDA’s (1) policies, (2) trainings, (3) records concerning the Racial Justice Act (“RJA”) and its implementation, and (4) investigations into Batson-Wheeler motions.

**Response:** We have produced records in response to your request on August 19, 2021, November 9, 2021, December 13, 2021, February 14, 2022, June 15, 2022, and July 15, 2022. We will produce what records we have as of the date of this response. We continue to search for additional responsive records. Records must be reviewed to segregate non-exempt portions of records from exempt portions prior to production. Records are being reviewed, and we will make responsive, non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional
records, or that such records (if they exist) are subject to public disclosure.

In conclusion, the OCDA claims for its records, such as might exist, all applicable exemptions from the California Public Records Act disclosure. In maintaining the lawful confidentiality of these records, the OCDA claims, enforces, and applies all applicable exemptions, privileges, and proscriptions against public disclosure or records, including but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence and Penal Codes, and the Federal Rules of Evidence.

While we have set forth our reasons for our denials, we reserve the right to present additional theories, and authority for non-disclosure in the future.

Sincerely,

Johanna Kim
Johanna Kim
Sr. Deputy District Attorney
Special Prosecutions Unit
Exhibit O
VIA EMAIL

Johanna Kim  
Deputy District Attorney  
Office of the District Attorney for Orange County  
300 North Flower Street  
Santa Ana, California 92703  
Email: Johanna.Kim@da.ocgov.com

Re: California Public Records Act Requests

Dear DDA Johanna Kim:

I write on behalf the American Civil Liberties Union of Northern California and the American Civil Liberties Union of Southern California (together, the “ACLU”) regarding a request the ACLU made to the Orange County District Attorney’s Office (“OCDA”) pursuant to the California Public Records Act (“PRA”) seeking information concerning prosecutorial data and policies relevant to the implementation of the California Racial Justice Act.

First, I am seeking to confirm all of the records produced pursuant to the July 23, 2021 request related to OCDA’s (1) policies, (2) trainings, (3) records concerning the Racial Justice Act (“RJA”) and its implementation, and (4) investigations into *Batson-Wheeler* motions. Please also provide a justification for the redactions, or produce the information the Office has withheld.

A review of all communications from your office shows productions on the following dates:

- August 19, 2021
- November 9, 2021
- December 13, 2021
- February 14, 2022
- June 15, 2022
- July 15, 2022
- October 5, 2022
- October 6, 2022 (note: only received “Batch 2” of an unidentified number of batches)
- October 7, 2022 (note: OCDA produced documents referenced in Aug. 19, 2021 production letter, now with corrected links)

A review of all communications from your office shows your office also emailed with a status update but no productions on the following dates:
September 16, 2021
October 14, 2021
January 13, 2022
March 16, 2022
April 15, 2022
May 16, 2022

An appendix to this letter includes a list of all of the records produced.

1. Please identify whether you communicated or provided productions on any dates other than those listed here.
2. Please identify whether you produced any records other than those listed in the Appendix. If you have produced any other records, please reproduce them as we have not received them.
3. Please produce (or reproduce) any records produced in “batches” on October 6, 2022 aside from those listed as produced in “Batch 2,” produced at 10:35 am. (See Appendix and attached email communication.) We received only records identified as “Batch 2,” with an email identifying that production on this day is in “batches” due to the size of production.
4. Please provide justifications for the redactions, or produce the redacted information. For ease of identification, the redacted records are identified in the Appendix as “REDACTED.”

Second, we renew our objections to OCDA’s overbroad exemptions and refusal to produce all records responsive to both the July 23, 2021 request and the February 18, 2022 request seeking prosecutorial data from 2015 to the present.

Thank you for your prompt response.

Very truly yours,

Emi MacLean
Senior Staff Attorney
ACLU of Northern California
Appendix

**OCDA Responses to ACLU PRA Request 1**
*(policies, training materials, communications)*

**Aug. 19, 2021 Production**
- Four documents concerning the OCDA’s diversion policies and practices
  - Deferred Entry of Judgment Program (DEJ): Eligibility and Suitability Procedures (Feb. 24, 2009)
  - List of “DEJ eligible Offenses”
  - Diversion and Treatment Programs Summary (Mar. 27, 2017)
- Three other OCDA policy documents
  - Discovery and Brady Obligations (rev. Jan. 2019);
  - Policy for Reporting State Bar Contacts, Findings of Prosecutorial Misconduct and Requests for Representation (Jan. 1, 2021);
  - Diversion and Treatment Programs Summary (Mar. 27, 2017).
- Three heavily redacted RJA Team Agendas;
  - Feb. 25, 2021 RJA Team Meeting Agenda Redacted
  - Feb. 26, 2021 RJA Team Meeting Agenda Redacted
  - Apr. 23, 2021 RJA Team Meeting Agenda Redacted
- The 2020 Superior Court Uniform Bail Schedule
- Superior Court’s Information and Instructions for a Petition for Resentence or Reclassification pursuant to PC 1170.18
- Referenced three purportedly publicly available OCDA records, however, none of the links OCDA provided are functional. Later produced upon request Oct. 7, 2022
  - “Bureau Policy Manual”
  - “Informant Policy Manual”
  - “Role of a Prosecutor and the Guiding Principles for the Orange County District Attorney’s Office”

**Nov. 9, 2021 Production**
- Three publicly-available reports prepared by non-governmental entities concerning racial disparities in the criminal legal system.
  - Sentencing Project, Reducing Racial Disparity in the Criminal Justice System (2008)
Vera, A Prosecutor’s Guide for Advancing Racial Equity (Nov. 2014)

Dec. 13, 2021 Production
- REDACTED PowerPoint presentation titled “Social Media 101,” dated July 19, 2018, apparently used in a training.

Feb. 14, 2022 Production
- Slides for presentation—“Building and Maintaining a Safe, Respectful and Inclusive Community,” presented by Embassy Consulting Services, LLC (310-367 OCDA Bias (Josef Levy – 3-31-17 – Office-wide)

June 15, 2022 Production
- REDACTED OCDA Professional Responsibility & Training Unit Training Bulletin: “Hate Crimes for Law Enforcement” (PGS. 368-371 TRAINING BULLETIN 19-005) ⇒ significant sections redacted in full on pp 2-3 without explanation

July 15, 2022 Production
- 9 case summaries with significant unexplained redactions
  - REDACTED “An Update: Review Granted in People v. Brady Alerts”) (PGS. 372 2019-09-04, P and A-P.10_Secured) ⇒ 2 paras total; sections at top and bottom redacted
  - REDACTED “Review Granted by California Supreme Court” (PGS. 373 Weekly Report 2019-08-23 Revised-P.5_Secured) ⇒ 2 paras total; sections at top and bottom redacted
  - REDACTED “The Prosecutor Did Not Violate Batson,” summarizing People v. Bryant (PGS. 374 Weekly Report 2019-10-04) ⇒ 2 paras total; section at bottom redacted
  - REDACTED “California Supreme Court Opinions: Capital Case Affirmed,” summarizing People v. Rhoades (PGS. 375 Weekly Report 2019-12-13-P.1 ⇒ 2 paras total; section at bottom redacted
  - REDACTED “U.S. Court of Appeals for the Ninth Circuit, Opinions: The Trial Judge Did Not Violate Equal Protection By Dismissing a Juror Whose On Statements Reflected Racial Bias,” summarizing Infante v. Martel (PGS. 376 Weekly Report 2020-04-07-P.1_Secured) ⇒ 2 paras total; sections at top and bottom redacted
  - REDACTED “U.S. Court of Appeals for the Ninth Circuit, [section redacted], The State Court’s Prejudice Analysis of Juror Voir Dire Misconduct Was Not Contrary to McDonough v. Greenwood” (PGS. 377-378 Weekly Report 2020-06-26-PP.1-2_Secured) ⇒ large sections at top and bottom redacted
o REDACTED “The Trial Court Applied an Incorrect Test at Step One of its *Batson* Analysis; On De Novo Review, the Record Raises an Inference of Discrimination, and the Case Must Be Remanded to Complete *Batson* Steps Two and Three,” summarizing *People v. Collins* (PGS. 379 Weekly Report 2021-02-05-P.4_Secured)
⇒ large section at bottom redacted

o REDACTED “The Trial Court Abused Its Discretion by Withholding the Names of Prospective Jurors from the Parties During Voir Dire Based on Its General Concerns About Doing So” (PGS. 380 Weekly Report 2021-06-18-P.4_Secured)
⇒ 2 paras total; short sections at top and bottom redacted

o Email summarizing “Case Update: People v. Baker” (PGS. 381 Case Update_People v. Baker _Cal.5th) [no redactions]

Oct. 5, 2022 Production
- Three articles/reports apparently for a presentation, produced as a single document (PGS. 382-403 A Conversation About the Impact of Race in the Criminal Justice System (Panelists - 06-19-2020) SECURED)
  o Jerry Kang, “Implicit Bias: A Primer for Courts,” a product of the National Center for State Courts for the National Campaign to Ensure the Racial and Ethnic Fairness of America’s State Courts (Aug. 2009)
  o Gloria Romero, “It’s time for a hard look at our broken status quo,” Orange County Register (June 7, 2020)
  o ABA, “How to confront bias in the criminal justice system”
- American Defamation League Presentation Slides (Apr. 15, 2021) (PGS. 404-422 A Look at Far Right Extremist Groups in the United States Webinar (Friedfeld 04-26-21) SECURED)

Oct. 6, 2022 Productions
10:35 am Batch 2
- 2 short outlines from trainings
  o PGS. 607 Asian Gang Conference (06-12 - 06-16-17) REDACTED SECURED (one page undated outline, “Westerner Radicalization: Rethinking the Psychology of Terrorism,” presented by Vern Pierson)
  o PGS. 601-604 Active Shooter Response & Impact of Workplace Violence (Williams, Millhollon - 05-02) REDACTED SECURED (“Expanded Outline 2 hour presentation” & 2 slides)
- 4 single-page undated slides from presentations
  o Single undated slide: “The Most Valuable Discovery I Have Found” (PGS. 605 Analyzing Defendant Interviews to Determine Guilt or Innocence (Montgomery 1-17-19) REDACTED SECURED
Single undated slide: “Primacy Bias” (PGS. 606 ARIDE (Chang 5-16-19)-REDACTED SECURED)

Single undated slide: “Work Product Waiver?” (PGS. 608 Attorney Client Privilege Training (Pennington - 9-22-20))

Single undated slide, “Impeachment Evidence” (PGS. 609 Brady Update (Kim 04-20-21))

Note: 10:33 am email [Batch 1] visible below 10:35 email, but not received. No other batches aside from “Batch 2” received on October 6, 2022.

Oct. 7, 2022 Production

Produced Aug. 19, 2021 referenced manuals, which had been unavailable in links previously provided

- “Informant Policy Manual” - [FOREWORD (orangecountyda.org)](https://orangecountyda.org)
- “Role of a Prosecutor and the Guiding Principles for the Orange County District Attorney’s Office” - [Transparency - Orange County District Attorney (orangecountyda.org)](https://orangecountyda.org)
Exhibit P
Via Email Transmission: EMacLean@aclunc.org

October 17, 2022

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

Dear Ms. MacLean,


Please find below your requests and our responses to those requests.

Request No. 1: An appendix to this letter includes a list of all of the records produced.
1. Please identify whether you communicated or provided productions on any dates other than those listed here.
2. Please identify whether you produced any records other than those listed in the Appendix. If you have produced any other records, please reproduce them as we have not received them.
3. Please produce (or reproduce) any records produced in “batches” on October 6, 2022 aside from those listed as produced in “Batch 2,” produced at 10:35 AM. (See Appendix and attached email communication.) We received only records identified as “Batch 2,” with an email identifying that production on this day is in “batches” due to the size of production.)
4. Please provide justifications for the redactions, or produce the redacted information. For ease of identification, the redacted records are identified as the Appendix as “REDACTED.”

Response: We previously responded to the data request dated February 18, 2022 on March 14, 2022. We reproduced records to you on October 13, 2022, that had been previously produced to you on October 6, 2022. It appears that technical difficulties on your end once again prevented you from receiving the records that we had produced. We produced the entirety of “Batch 1” again on October 13, 2022, and also split up “Batch 1” into three smaller batches, batch 1-a, batch 1-b, and batch 1-c, and sent them to you again on October 13, 2022 to ensure that you would receive...
the records. You indicated in an email dated October 13, 2022 that you received the records.

Records that have been produced already and any future records that may be produced have been and will be redacted to exclude attorney work product and records that are protected by the "deliberative process" privilege. (Gov. Code § 6254, subdivision (k); Code Civ. Proc. § 2018.030(a); Gov. Code § 6255, subdivision (a). "Any writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances." (Code Civ. Proc. § 2018.030 (a) and Gov. Code § 6254 (k).) The core work product privilege is not limited to writings made in preparation for litigation, but also to protected writings not made in preparation for trial. (Rumac, Inc. v. Bottomley (1983) 143 Cal.App.3d 810.) The deliberative process exemption protects, from disclosure, records reflecting the thought processes or “deliberative thought” of those, in our case elected members and employees of a government agency, whose responsibility it is to decide how prosecutors should proceed given various circumstances. (See California First Amendment Coalition v. Superior Court (1998) 67 Cal.App.4th 159, 170.) Disclosing such materials would expose the OCDA’s decision making process in such a way as to discourage candid discussion within the office and thereby undermine our office’s ability to ensure the fair administration of justice. The public interest in nondisclosure, the interest in ensuring that those who are involved in formulating such policies and directions have the freedom from criticism to engage in open dialogue, debate and deliberation with other attorneys in order to create effective and efficient policies and procedures clearly outweighs the interest of the public in disclosing those thought processes. (Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325; Rogers v. Superior Court (1993) 19 Cal.App.4th 469; Wilson v. Superior Court (1996) 51 Cal.App.4th 1136.) The term “public interest” encompasses “public concern and the cost and efficiency of government.” (North County Parents Org. v. Dept of Education (1994) 23 Cal.App.4th 144, 152.) The financial aspect of a requested disclosure is a factor to be considered in determining whether a request is reasonable. (See County of Los Angeles v. Superior Court (1993) 18 Cal.App.4th 588, 600-601; Bertoli v. City of Sebastopol (2015) 233 Cal.App.4th 353.) The Fourth District Court of Appeal has recognized the Rule of Reasonableness: the PRA should be interpreted through the lens of reasonableness noting the “press of business of public agencies, particularly in these difficult fiscal times.” (Fredericks v. Superior Court (2015) 233 Cal.App.4th 209, 229.) Additionally, training materials may also include records created by attorneys from other counties and government agencies and are subject to the Federal/State Law Copyright Exemption (Government Code section 6254, subdivision (k); Civil Code section 980.) Therefore, such copyrighted records have not been and will not be produced. Please also refer to our formal response dated August 19, 2021.

As stated previously, we continue to search for additional responsive records, and will make responsive, non-exempt records available to you on a continuous rolling basis until complete. Nothing in this response should be construed as a representation that the OCDA has additional records.
records, or that such records (if they exist) are subject to public disclosure.

**Request No. 2:** Second, we renew our objections to OCDA’s overbroad exemptions and refusal to produce all records responsive to both the July 23, 2021 request and the February 18, 2022 request seeking prosecutorial data from 2015 to the present.

**Response:** We previously responded to the July 23, 2021 request on August 19, 2021, and the February 18, 2022 request on March 14, 2022. Please refer to our previous responses.

In conclusion, the OCDA claims for its records, such as might exist, all applicable exemptions from the California Public Records Act disclosure. In maintaining the lawful confidentiality of these records, the OCDA claims, enforces, and applies all applicable exemptions, privileges, and proscriptions against public disclosure or records, including but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence and Penal Codes, and the Federal Rules of Evidence.

While we have set forth our reasons for our denials, we reserve the right to present additional theories, and authority for non-disclosure in the future.

Sincerely,

**Johanna Kim**

Johanna Kim  
Sr. Deputy District Attorney  
Special Prosecutions Unit