

MONTEREY COUNTY

OFFICE OF THE DISTRICT ATTORNEY

JEANNINE M. PACIONI, DISTRICT ATTORNEY



January 14, 2021

Via Electronic Mail

Daniel Trautfield
California Coalition for Women Prisoners
dtrautfield@gmail.com

Re: Public Records Act Request

Dear Mr. Trautfield:

This Office is in receipt of a request for records made pursuant to the California Public Records Act ("the Act") as codified in Sections 6250 *et seq* of the California Government Code, dated December 17, 2020. Thank you for your patience and understanding regarding the delay in responding to this request. I apologize again for the oversight.

You requested the following records:

1. *[C]riminal records of individuals sentenced under PC §190.2 from 1991 through 2020.*

Please provide where possible:

1. *Disposition date*
2. *Charges convicted/penal codes for each case (eg. 187(a), 190.2(a)(3))*
3. *Any demographic information available, including:*
 - a. *Race of defendant*
 - b. *Gender of defendant*
 - c. *Age at the time of sentencing (or DOB when not available)*

You should be aware that under the CRPA, many documents contained in our files, law enforcement files, our Case Management System, and our internal policy records are exempt from disclosure, including:

1. Investigative files compiled by local agencies for law enforcement purposes, such as police reports or investigative summaries, pursuant to Government Code section 6254, subdivision

(f), and the holdings of *Williams v. Superior Court* (1993) 5 Cal.4th 337, 351, 354, 362, and *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1059. This includes an investigative file including police reports, medical/autopsy reports, witness and victim statements, evidence reports, photos, audio-video, investigative notes, laboratory/forensic reports, 911 recordings, and any other investigative reports contained within our investigative file.

2. Personnel and medical records, the disclosure of which would constitute an unwarranted invasion of privacy. (Gov. Code, § 6254, subd. (c).) This includes any medical files of a suspect, officer, or other involved individual.
3. Attorney work product, incorporated in section 6254, subdivision (k), of the Government Code. (*Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 128-135; *Fellows v. Superior Court (Los Angeles County)* (1980) 108 Cal.App.3d 55, 63.) This includes any internal memoranda or notes of the District Attorney's Office.
4. Records protected by the deliberate process privilege, pursuant to Government Code section 6255. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.)
5. Documents provided to one governmental agency by another with an agreement to treat them as confidential, pursuant to Government Code section 6254.5, subdivision (e).
6. Documents which are determined to be within the "catchall" exemption, Government Code section 6255, wherein the public interest served by disclosure is clearly outweighed by the public interest served by non-disclosure. (*Wilson v. Superior Court* (1997) 51 Cal.App.4th 1136, 1139-43.)
7. Documents exempted pursuant to other statutes or statutory privileges. (Gov. Code, §6254, subd. (k).) Probation reports, official information, summary histories of criminal information, reporter's transcripts, and confidential juvenile records fall within this category. (Evid. Code, §1040 et seq. [official information privilege]; Gov. Code § 69954, subd. (d) [prohibiting transfer or selling of reporter's transcripts]; Pen. Code § 13300 et seq. [summary criminal history information]; Welf. & Inst. Code § 827 [juvenile files]; *People v. Connor* (2004) 115 Cal.App.4th 669.)
8. Internal office policies and internal training materials are exempt from production as preliminary drafts, notes, internal memoranda (Gov. Code § 6254, subd. (a)), attorney work product of the District Attorney's Office (Gov. Code §§ 6254, subds. (a) and (k), 6255; Pen. Code § 1054.6; Code Civ. Proc. § 2018.30), official information (Gov. Code § 6254, subd. (k); Evid. Code § 1040), and/or records for which the public's interest in non-disclosure clearly outweighs the public's interest in disclosure. (Gov. Code § 6255, *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325 [deliberate process]; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Wilson v. Superior Court* (1981) 126 Cal.App.3d 576 [policies or documents reflecting how prosecutors exercise their discretion are not subject to discovery]).

These exemptions apply to District Attorney case files and continue to apply even if the investigation is closed and even if the documents were disclosed pursuant to criminal discovery obligations or presented as exhibits in court. Government Code section 6254.5, specifically subdivisions (a) and (b), state that there is no waiver for disclosures made pursuant to “discovery proceedings” (subdivision (a)) or “[m]ade through other legal proceedings or as otherwise required by law” (subdivision (b)).

Under the CPRA, we are not required to prepare a log or create a record that is not currently in existence. (Gov. Code § 6253, subd. (b); *State Bd. Of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.)

Regarding your specific requests:

Responsive documents are enclosed. The attachments are an excel spreadsheet, page one was generated by our case management system, and page two shows the requested biographical data; a single page of cases in which I was able to determine individuals were sentenced under PC 190.2; and a PDF spreadsheet generated by our case management system.

I would note that we began using our case management system in September of 2013. Any cases prior to that date were extracted from our prior system, therefore there may be some inaccuracies in the conversion of those cases.

This date was retrieved by searching for those charged with a special circumstance, so I am including a separate page, listing which of those were convicted and sentenced on a special circumstance.

You indicated to me in our email conversations regarding this request that you were particularly interested in records from the 1990s. From reviewing what our computer search pulled up, it appears those cases are too old for the special circumstance to have been properly converted into the new system.

In the event that you are interested in doing some research in court records and/or CDC records (I have found the online inmate locator to be helpful), I am including a list of all cases in which PC 187 was charged by our office, which was generated in response to a different records request. It would give you a starting point if you were inclined.

If you wish to dispute any determination contained in this response, please advise us of your legal argument. If you would also provide us with a citation or legal authority which supports your argument, we are willing to reconsider our opinion.

Sincerely

JEANNINE M. PACIONI
District Attorney

By:

A handwritten signature in black ink, appearing to read 'Cul J', with a long, sweeping horizontal stroke extending to the right.

Cristina Johnson
Deputy District Attorney