PROCESSING PUBLIC RECORDS ACT REQUESTS
A GUIDE FOR PROSECUTORS

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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
PUBLIC RECORDS ACT MANUAL
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First written in October 1996 by former Deputy District Attorney Diana Summerhayes, this monograph has been updated annually since December 2000 by Assistant Head Deputy District Attorney William Woods.

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1.00 INTRODUCTION

Requests for and the release of records to members of the public are governed by the California Public Records Act (PRA).[1] (Gov. Code[2], § 6250 et seq.) Originally enacted in 1968, to replace "a hodgepodge of statutes and court decisions, relating to public records[,]" it was patterned after the federal Freedom of Information Act (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338; 5 U.S.C. § 552, et seq.). The premise of the PRA is that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) Therefore, the PRA is to be liberally construed in favor of the release of public records; while the assertion of PRA exemptions is narrowly construed. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476, fn. 4-5; see Cal. Const., art. I, § 3, subd. (b) (2).) However, "the public's right to disclosure of public records is not absolute," especially when balanced against an individual's right to privacy. (Cal. Const., art. I, § 3, subd. (b) (3); *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653 ["The objectives of the Public Records Act thus include preservation of islands of privacy upon the broad seas of enforced disclosure."]; *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1017 [identities of complaints concerning noise at local airport do not need to be disclosed].) As a consequence in balancing these policy considerations, the deputy processing a PRA request should be mindful that our office's discretion concerning the disclosure of records is limited and, therefore, any decision not to release records must be based only on exemptions set forth in the PRA. (§§ 6254, 6255.)

Proposition 59: At the November 2, 2004 general election, the voters overwhelmingly (83.2%) approved Proposition 59, mandating that statutes limiting public access to government records must now be narrowly construed to promote openness. (Cal. Const., art. I, § 3, subd. (b) (2).) According to the Legislative Analyst, Proposition 59:

> does not directly require any specific information be made available to the public. It does, however, create a *constitutional right* for the public to

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[1] This overview does not discuss the release of records pursuant to a subpoena duces tecum in a civil case (Code Civ. Proc., §§ 1985, 1985.4) or the Information Practices Act (Civ. Code, §§ 1798-1798.86). The Information Practices Act and the Right to Financial Privacy Act (Gov. Code, §§ 7460, et seq.) were enacted to protect the confidentiality of certain personal information, but allow individuals to obtain information maintained by government agencies about themselves. The Information Practices Act, however, bars the release to an individual of any records concerning a criminal investigation into his or her conduct. (Civ. Code, § 1798.40, subd. (c).)

[2] All further references are to the Government Code unless otherwise noted.

> access government information. As a result, a government entity would have to demonstrate *to a somewhat greater extent than under current law* why information requested by the public should be kept private.

(Ballot Pamp., Gen. Elec. (Nov. 2, 2004) analysis of Prop. 59 by legislative analyst, p. 13; italics added.) The Proposition also enacted significant protection for the right to privacy, specifically mandating that its provisions cannot be used to modify or supercede any privacy protection. (Cal. Const., art. I, § 3, subd. (b) (2); *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750-751.).)

2.00 DEFINING A PUBLIC RECORD

Section 6252, subdivision (e), defines "public records" as including "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." In an opinion by the California Attorney General, a public record has been defined as "a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept or (2) because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference." (64 Ops.Cal.Atty.Gen. 317, 324 (1981); see also *City Council of Santa Monica v. Superior Court* (1962) 204 Cal.App.2d 68, 73.) "'This definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed. Only purely personal information unrelated to "the conduct of the public's business" could be considered exempt from this definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.' [Citation omitted.]." (*San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774; but see *Coronado Police Officers Assoc. v. Carroll* (2003) 106 Cal.App.4th 1001, 1008-1009 [public defender's client's files are exempt from PRA, including separate database compiled about police officers for purposes of impeachment].)

The form of the record is not material; photographs, audio and video cassette tapes, computer data, and paper documents are all defined as a "writing" (§ 6252, subd. (g).). Computer data should be provided in the electronic format in which the material is stored. (§ 6253.9, subd. (a)(1).) However, the agency must also provide the document in an alternative electronic record format, if that computer storage method is employed by the agency for its own use or storage of records. (§ 6253.9, subd. (a)(2).)

An agency cannot limit access to records based on the purpose for which the record is requested. (§ 6257.5.) "Idle curiosity" is justification enough for any PRA request. (*Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125; *County of Los Angeles v. Superior Court (Axelrad)* (2000) 82 Cal.App.4th 819, 826.) Similarly, records may be requested by any member of the public, including another government agency. (§ 6252;

Los Angeles Unified School District v. Superior Court (2007) 151 Cal. App. 4th 759, 776.)

3.00 TIME LIMITS

3.01 Response Due Within Ten Calendar Days

Section 6253 sets forth the time limits for a PRA response, and in subdivision (c) provides that an agency must respond ***within 10 calendar days*** after receipt of a PRA request. A PRA response should state whether or not we have the documents described in the request (if that is known), whether we will comply with the request, and any reasons for withholding records or documents. (§ 6253, subd. (c).) If the records we are planning on disclosing are not available at the time of our response; then we must inform the requestor of the approximate date that they will become available. (§ 6253, subd. (c).) However, in *Motorola Communications & Electronics, Inc. v. Dept. of Gen. Services* (1997) 55 Cal.App.4th 1340, 1349, the court held that while this response must be made in 10 calendar days, "[t]he Public Records Act does not specify when records must be provided to a requesting party." Nonetheless, the best policy is to furnish the documents as soon as is reasonably possible.

Immediately upon receipt of the PRA request, a copy should either be sent by email, FAX or hand-delivered to the Director of Prosecution Support Operations for entry into the PRA computer log in Lotus Notes. Because of the short time limits, a PRA request cannot sit on a desk until the last day for a response. If the PRA request must be forwarded to another office or unit, email, FAX or hand-deliver the request so a response can be promptly prepared. If the tenth calendar day falls on a Saturday, Sunday or holiday, the better practice is to mail the response, or a request for an extension of time, before the ten days has expired.

The deputy processing the response needs to determine when it is due (check PRA LOG in Lotus Notes), what records are requested, and where they are stored. After reviewing the records, the Head Deputy or Deputy-in-Charge must decide whether this office will comply with all or part of the PRA request and, if we decide not to disclose the records, state the reasons for refusing to disclose with references to the applicable statutory exemptions.

3.02 Additional Extension of Fourteen Calendar Days

Section 6253, subdivision (c), provides for an extension of time for ***up to 14 additional calendar days*** in "unusual circumstances." Those circumstances are listed in: (c)(1) "The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request." (c)(2) "The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request." (c)(3) "The need for consultation . . . with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest

therein." and (c)(4) "The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data."

The first circumstance may occur often given the size of our office; it is not unusual for documents relating to a PRA request to be stored at different locations. The second circumstance applies when an extensive PRA request is made for numerous documents in a large case file or a voluminous number of documents that require more time to cull through to determine which documents correspond to the request and which are exempt. The third circumstance may occur when an outside agency or another unit within this office has a substantial interest in the documents requested, and a collective decision is needed to determine which documents are exempt from disclosure and which ones must be released. Finally, the fourth situation arises where Systems will need time to prepare a program to compile information from PIMS or another database.

If an extension of time is necessary, a letter should be sent to the PRA requestor explaining the reason for claiming an extension of time and citing the appropriate subdivision of section 6253, subdivision (c). Requests for additional time should always be done in writing or the requestor could later argue that our office failed to timely reply and has waived its right to assert exemptions. (A sample letter requesting additional time is found in Appendix A.) Note that section 6253, subdivision (d) prohibits the use of any provision of the PRA to delay access to public records.

4.00 RESPONDING TO PRA REQUESTS

The Legal Policies Manual (LPM) states office policy concerning how to process and respond to PRA requests. (LPM Ch. 23, at pp. 213-216.) Priority must be given to processing PRA requests because of the short time requirements. The Head Deputy or Deputy-in-Charge of the office or unit where the case was tried, or the records are stored, can designate a deputy to prepare a response. The Head Deputy or Deputy-in-Charge is responsible for supervising this deputy, ensuring a timely response, and signing any letters. They must also decide whether to disclose documents from law enforcement investigative files; those records should not be disclosed in sensitive cases, or cases where the release of information could jeopardize the safety of victims or witnesses, interfere with pending cases, or related on-going investigations. (*Id.*; *Williams v. Superior Court* (1993) 5 Cal.4th 337, 349; see § 6254, subd. (f).)

PRA requests received at the Clara Shortridge Foltz Criminal Justice Center will be forwarded to the appropriate Head Deputy or Deputy-in-Charge. A PRA LOG is maintained in Lotus Notes to help insure a timely response. The date a PRA request is received is entered in the PRA LOG, when it is due, the office or unit processing the request, and whether files have been ordered from storage.

4.01 Identifiable and Electronic Records

In order to respond, a PRA request must be for "identifiable records." (§ 6253, subd. (b); *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186.) There is

no requirement, however, that such a request be made in writing. (*Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392 ["The California Public Records Act plainly does not require a written request."].) However, when a request has been made in writing then our response must be written. (§ 6255, subd. (b).)

Sometimes a requestor makes a general and sweeping demand for files or records, and before January of 2002, we were able to reject such requests because they were not specific enough. However, section 6253.1, subdivision (a) (1), was enacted which requires that a public agency must, "assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request." This requirement is satisfied if we are unable to locate the record after having sought additional clarifying information from the requestor as to exactly what he/she is seeking, and are still unable to locate the materials. (§ 6253.1, subd. (b).)

Requestors sometimes ask for information in an electronic (digital) format. Section 6253.9, subdivision (a), mandates that if we have non-exempt information in such a format, we must provide it in the electronic version. (See, 88 Ops.Cal.Atty.Gen. 153, 157 (2005) [assessor, upon request, must make electronic parcel maps available to the public].) There is no obligation to translate the data into a format in which we do not use. (§ 6253.9, subd. (a) (1).) Nonetheless, we can elect to provide data in another format, if we use such a storage system. (§ 6253.9, subd. (a) (2).) However, if we must undertake "data compilation, extraction, or programming to produce the record [,]" we may charge the requestor the "cost of programming and computer services necessary to produce a copy of [the] record in an electronic format." (§ 6253.9, subd. (b) (2).) It is important to note, there is no obligation to "reconstruct" an electronic record (e.g. e-mails) that are no longer available. (§ 6253.9, subd. (c).)

4.02 Written Response Required To PRA Requests

We are also now required to inform the requestor about the information technology used to maintain the record(s) and where they are presently stored. (§ 6253.1, subd. (a)(2).) Additionally, the statute mandates that we "Provide suggestions for overcoming any practical basis for denying access to the records or information sought." (§ 6253.1, subd. (a) (3).) However, all of these mandates are inapplicable where we provide the documents requested; the materials are exempt from disclosure; or we give the requestor an index of our records. (§ 6253.1, subd. (d).)

Any refusal to disclose records should be in writing; any verbal conversations concerning a refusal to disclose documents should be memorialized by letter; and all responses providing documents should be in writing. The latter responses should be in letter format and include: (1) the identification of documents that meet the request, the information technology in which they are stored and their present location; (2) a list of all appropriate exemptions (see Exemptions below); (3) the total number of pages to be released; (4) the estimated cost of copying the documents (see Recovering Costs, below); and (5) a contact person, so the requesting party can make arrangements to inspect the records and/or pick

up copies. (A sample response letter is found in Appendix B.) The deputy who provides the documents either should keep an exact copy of the records released or make a log to be placed in the DA file. This should avoid any confusion in the future as to which documents were released.

5.00 STATUTORY EXEMPTIONS

5.01 Sections 6254, 6254.5 and 6255

Sections 6254, 6254.5 and 6255 contain specific classifications of records which are exempt from disclosure under the Act. Additionally, section 6275 et seq., is a listing of all statutes, no matter in what code, that exempt records from disclosure. The deputy preparing the response should carefully review these sections and pertinent case law so as to assert proper exemptions. The exemptions most frequently used by prosecutors and law enforcement agencies are in sections 6254, subdivisions (a), (b), (c), (f), and (k), 6254.5, subdivision (e) and 6255. (Frequently used exemptions are listed in Appendix C.)

Proposition 59 has now embedded in the state constitution a new lens which must be employed when viewing specific PRA exemptions. It instructs that "a statute, court rule, or other authority [court opinion]" must now be "broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." (Cal. Const, art. I, § 3, subd. (b)(2).) While statutes and court decisions must be construed in favor of openness, Proposition 59 did not repeal any existing exemptions as it specifically stated:

> This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, *including, but not limited, to any statute protecting the confidentiality of law enforcement and prosecution records*

(Cal. Const., art. I, § 3, subd. (b) (5); italics added.)

A PRA exemption may apply to the whole document or only to some information contained in the document. Section 6253, subdivision (a), provides: "Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law." If the whole document does not fall within the exemption, then it should be edited by redacting that portion which would be exempt. (See Editing, below.)

5.02 Preliminary Drafts of Memorandums

Section 6254, subdivision (a) exempts from release, "Preliminary drafts, notes, or interagency or intra-agency memorandums that are not retained by the public agency in the ordinary course of business" can be exempt from disclosure under a balancing test if "the public interest in withholding those records clearly outweighs the public interest in

disclosure." Arguably, this exemption would include any informal notes within a case file that would not ordinarily be retained after a trial is completed, or early drafts of memos or letters. (See *Citizens for a Better Environment v. Dept. of Food & Agriculture* (1985) 171 Cal.App.3d 704, 711-714.)

Proposition 59 now requires that we must now broadly construe this exemption to promote public access. (Cal. Const, art. I, § 3, subd. (b)(2).) Therefore, if, for example, a request is made for the preliminary draft of a memorandum related to a filing decision, it will now be incumbent on the prosecutor to provide a greater justification for denying its release. However as discussed *post*, there are a number of other PRA exemptions likely to bar release of large portions of such a document, including attorney work product. (§ 6254, subd. (k).)

5.03 Records of Pending Litigation

Section 6254, subdivision (b) exempts from release, "Records pertaining to pending litigation to which the public agency is a party" until the pending litigation is finally adjudicated or settled. The phrase "records pertaining to pending litigation" refers to agency records which were specifically prepared for pending litigation where the public agency is a party. (*Board of Trustees of the Cal. State Univ. v. Superior Court* (2005) 132 Cal.App.4th 889, 897.) Police records subject to disclosure under section 6254, subdivision (f), do not become exempt from disclosure under subdivision (b) even if they are relevant to pending litigation. (71 Ops.Cal.Atty.Gen. 235, 235-236 (1988); see also *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1417-1420.)

5.04 Personnel or Medical Records

Section 6254, subdivision (c) exempts from release, "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." This exemption includes the medical file of a victim or defendant. This provision also applies to the personnel files of police officers and prosecutors, but there are limits on the exemption in those situations. (*Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 347 ["[O]ne does not lose his right to privacy upon accepting public employment, [but] the very fact that he [or she] is engaged in the public's business strips him of some anonymity."].) For example these limits were recently discussed in *International Federation of Professional and Technical Engineers v. Superior Court* (2007) 42 Cal.4th 319, 331, which held that the salary amounts of public employees are not exempt from disclosure as there is no reasonable expectation of privacy in such information. (See also, *Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal. App.4th 440; [names and pension benefits of county employees not exempt from PRA disclosure].) Similarly, in *BRV, Inc. v. Superior Court, supra,* 143 Cal.App.4th at page 758-759, the appellate court held that a school superintendent's right to privacy, as to his personnel file, did not outweigh the public's right to know about alleged malfeasance including sexual harassment. The appellate court observed that public officials holding important positions enjoy a lowered expectation of privacy in their employment records. (*Id.* at p. 758, accord see *Sanchez v. County of San Bernardino* (2009) 176 Cal.App.4th

516, 526-527 [dicta]; *Marken v. Santa Monica-Malibu Unified School District* (2012) 202 Cal. App.4th 1250, 1275 [report of disciplinary charge against a public employee, if upheld, even with a private reproval, or if charge is well-founded and reliable but not sustained, must be disclosed, in response to PRA request], but see *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 819 [superintendent's "personal performance goals" from personnel file were exempt from disclosure as release would constitute an unwarranted invasion of right to privacy].)

5.05 Law Enforcement Investigative Records

Section 6254, subdivision (f) exempts from release, records of complaints made to law enforcement, law enforcement investigative files, law enforcement intelligence information, or security files, even after the investigation has been completed. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1071; *Williams v. Superior Court, supra*, 5 Cal.4th at p. 355; *Dixon v. Superior Court* (2009) 170 Cal. App. 4th 1271, 1273-1274 [autopsy reports are exempt from disclosure as long as there is "'a concrete and definite prospect'" of "'criminal law enforcement' proceedings"].) Further, disclosure is not required for that portion of an investigative file that reflects the analysis or conclusions of the investigating officer. (§ 6254, subd. (f); *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 176-177.)

Crime victims (arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or offenses listed in § 13951, subd. (b) [all misdemeanor and/or felony offenses]), or persons with bodily injuries, property damage, or loss from those listed crimes can receive the following information: the names, addresses and statements of persons involved in, or witnesses to the incident (other than confidential informants); a description of any property involved; the date, time, and location of the incident and all diagrams. (§ 6254, subd. (f).) This information can also be released to their representatives or insurance carriers. (*Ibid.*)

If an agency chooses not to release law enforcement records, then a summary of the information, as discussed below, should be provided, unless such disclosure would endanger the safety of a person involved in the investigation, endanger the successful completion of a related investigation, or disclose the identity of a confidential informant. (§ 6254, subd. (f)(1) & (2); see *Williams v. Superior Court, supra*, 5 Cal.4th at p. 360-361.) However, in *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, 601, the court concluded that the disclosure of the information specified in subdivisions (f)(1) and (f)(2) is "limited to current information and records of the matters described in the statute and which pertain to contemporaneous police activity." This office will release this information in rejected cases for 30-days after the date the case is rejected; after that time, we will not provide any information. (See, Declinations, § 6.02, below.)

5.06 Arrest Information

Section 6254, subdivision (f) (1) concerns arrest information. It requires disclosure of an arrestee's name, occupation and physical description, the date, time, and circumstances surrounding the arrest, the date and time of booking, the amount of bail, any outstanding warrants or holds, where the person is being held, and the date and manner of release. This information could also include, if requested, the names of officers in a critical incident such as a shooting. (91 Ops.Cal.Atty.Gen. 11, (2008).) These names can be disclosed unless the public interest in non-disclosure outweighs the public interest in their release. (*Ibid.*) Additionally, law enforcement agencies have discretion, under the PRA, to deny the release of mug shots of defendants in response to a request, as they are part of the investigative record. (86 Ops. Cal. Atty. Gen. 132, 135-136 (2003).)

5.07 Crime Information

Section 6254, subdivision (f)(2) requires disclosure of information related to the crime or crimes committed including, "the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved." The victim's name should *not* be disclosed (at the victim's request or at the request of the parent or guardian of a victim who is a minor) for the following crimes: Penal Code sections 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75 or 646.9.

5.08 Victim Information

Section 6254, subdivision (f)(3) limits the disclosure of addresses for victims and arrestees to those persons who declare under penalty of perjury that the PRA request is being made for scholarly, journalistic, political, or governmental purposes or for investigation purposes by a licensed private investigator. There are two exceptions: (1) addresses for victims and witnesses shall not be disclosed to the defendant (Pen. Code § 841.5) and (2) addresses for victims of the crimes listed in subdivision (f)(2) (above) shall remain confidential. (See also § 6205 [protecting confidentiality of addresses for victims of domestic violence].)

The Ninth Circuit found subdivision (f)(3) to be an unconstitutional infringement on commercial speech under the First Amendment, to the extent it permits law enforcement agencies to refuse to disclose arrestees' addresses to a business which then sells that information. (*United Reporting Publishing Corp. v. California Highway Patrol* (1998) 146 F.3d 1133.) However, the United States Supreme Court in *Los Angeles Police Department v. United Reporting Publishing Corp.* (1999) 528 U.S. 32 [145 L.Ed.2d 451, 120 S.Ct. 483], rejected this holding and found subdivision (f)(3) to be facially valid and not an infringement on the First Amendment.

Based on *Williams v. Superior Court, supra*, 5 Cal.4th 337, our office has the following options when asked to release investigative records: (1) claim an exemption for law

enforcement investigative records and provide *current* information under subdivisions (f) (1) and (f) (2); (2) release the reports, but edit out exempt information; or (3) disclose the reports and waive the exemptions. (See Waiver of Exemptions, below.)

5.09 Impact of Proposition 59 on Release of Investigatory Reports

Proposition 59 should have little, if any, impact in this arena as it specifically states that it does not effect statutory exemptions related to the "confidentiality of law enforcement and prosecution records." (Cal. Const., art. I, § 3, subd. (b)(5).) However, a possible concern is the continuing vitality of the PRA provision barring release of investigatory reports after "the conclusion of the investigation." (*Williams v. Superior Court, supra,* 5 Cal.4th at p. 361; see also *Haynie v. Superior Court, supra,* 26 Cal.4th at p. 1071.) The holdings in *Haynie* and *Williams* barring release of reports in closed cases were founded on the premise that the Legislature adopted a specific procedure in the PRA for the disclosure of investigatory reports and, therefore, an appellate court could not create an exception allowing their release following the conclusion of an investigation. (*Ibid.*; see also *Rackauckas v. Superior Court, supra,* 104 Cal.App.4th at pp. 176-177 [holding public policy supports withholding police reports to protect right to privacy and promote cooperation with law enforcement].) While Proposition 59 now instructs courts to view all exemptions in favor of disclosure, it does not mandate court adoption of an interpretation in conflict with the Legislature's intent in enacting the statute. The rulings in *Williams*, *Haynie* and *Rackauckas*, barring a change in the statutory language, should insure that investigatory reports will continue to be exempt from disclosure even after a case has been closed.

5.10 Confidential Disclosure to another Government Agency

Section 6254.5, subdivision (e) provides that government records need not be disclosed to a member of the public if the records were given by one agency to another "which agrees to treat the disclosed material as confidential." This type of record can only be released to "persons authorized in writing by the person in charge of the agency. . . ." (*Ibid.*) Therefore, if the records are marked confidential or if there is a written agreement that the records be treated as confidential or if the agency has a written policy that such documents are confidential, these records should not be released under the PRA. For example, the Orange County District Attorney's office did not waive the law enforcement investigatory report exemption when it furnished a close out memorandum discussing the results of an investigation into officer misconduct to the local police agency, because it was to remain confidential. (*Rackauckas v. Superior Court, supra,* 104 Cal.App.4th at p. 178.) While **Proposition 59** favors openness, it seems unlikely that this exemption could be construed to permit disclosure.

5.11 Catch-All Exemption

Section 6255 provides an exemption to bar disclosure if "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (See, *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652.) Often referred to as the

"catch-all" exemption, this provision can be asserted when no other specific exemption applies. However, the burden is on the agency to justify nondisclosure of the records. (*Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 612; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585, disapproved on other grounds in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1298.) Consequently, the particular public interest in not disclosing the records should be clearly stated in our response.

5.12 Deliberative Process Exemption

The most useful portion of the catch-all exemption was the so-called "Deliberative Process Privilege," first recognized by the Supreme Court in *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1339. In that case, the court held that agencies were not required to release documents which revealed the:

> "decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its function."

(*Id.* at p. 1342, quoting *Dudman Communications v. Dept. of Air Force* (D.C. 1987) 815 F.2d 1565, 1568.) Under this exemption, public agencies were able to deny release of information concerning the decision making process. (*Times Mirror Co. v. Superior Court, supra,* 53 Cal.3d at p. 1344 [governor does not need to disclose appointment calendar & schedules]; *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 169 [applications to governor for appointment to board of supervisor are protected by deliberative process exemption]; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1139 [accord].)

It was this specific exemption that **Proposition 59** sought to curtail, as voters were told, "It [Proposition 59] will allow the public to see and understand the deliberative process through which decisions are made." (Ballot Pamp., Gen. Elec. (Nov. 2, 2004) argument in favor of Prop. 59, p. 14.) Of course, the only way this could be accomplished is if previously exempted documents, related to the decision making process, must now be released.

The question now becomes, has the deliberative process exemption vanished? The answer is hard to determine. As the Supreme Court observed in its decision in *Times Mirror* the need for the deliberative process exemption arose because of the fear that:

> "frank discussion of legal or policy matters" might be inhibited if "subjected to public scrutiny," and that "efficiency of Government would be greatly hampered" if, with respect to such matters, government agencies were "forced to operate in a fishbowl."

(*Times Mirror Co. v. Superior Court, supra,* 53 Cal.3d at p. 1340, quoting *EPA v. Mink* (1973) 410 U.S. 73, 87 [35 L.Ed.2d 119, 93 S.Ct. 827].) As the *Times Mirror* Court

noted, employees who anticipate that their advice or analysis may be exposed to the public are likely to "temper" the "candor" of their remarks. (*Id.* at p. 1341.) This policy concern obviously was not removed by the enactment of Proposition 59. (But see, *Babets v. Secretary of Human Services* (1988) 403 Mass. 230 [526 N.E.2d 1261, 1266 [refusing to create a deliberative process exemption].) The unknown question is whether or not this policy concern will overcome Proposition 59's mandate to err on the side of disclosure. While unlikely, it is possible that courts will continue to allow predecisional documents to be withheld, but require disclosure of documents designed to explain a policy once it has been adopted. (See, *Times Mirror Co. v. Superior Court, supra,* 53 Cal.3d at p. 1341.) However, at this point it cannot be predicted with any degree of certainty what the outcome will be concerning the deliberative process exemption.

What should prosecutors do then when responding to requests for items such as: intra-office policy memoranda, case disposition memoranda or minutes or notes from policy meetings? The *Times Mirror* decision contains some suggestions. In particular, in discussing the governor's calendar and appointment books it noted that there could be other exemptions including Evidence Code section 1040 (Official Information Privilege) which might also prevent their disclosure. (*Times Mirror Co. v. Superior Court, supra,* 53 Cal.3d at p. 1339, fn. 9.) As discussed *ante*, this section may also be problematic, but it could provide the necessary court balancing to protect records from disclosure.

Perhaps, the exemption providing the greatest protection in this arena is attorney work product, as much of the materials found in prosecutors' memoranda or notes will constitute work product as they reflect the "impressions, conclusions, opinions, or legal research or theories..." of an attorney. (Code of Civ. Proc., § 2018.030, subd. (a); Pen. Code, § 1054.6.) This seems especially true if the predecisional memorandum contains a legal analysis of various policy actions.

5.13 Burdensome Requests

While no statutory exemption exists, there is case law which permits a PRA request to be rejected because it is unduly burdensome. In *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-453, the court rejected the contention that when a request is made a reviewing court should not consider the expense and inconvenience of complying. The court noted that a burdensome request can be rejected because it is not within the public interest under section 6255. Similarly, in *County of Los Angeles v. Superior Court (Kusar), supra*, 18 Cal.App.4th at pages 591-592, the court rejected, because of the time and expense of compiling the record, a PRA request for 10-years of arrest reports made by two Los Angeles County deputy sheriffs.

6.00 PIMS DATA

Requests are frequently received concerning a defendant's local summary criminal history, such as the information stored in the Prosecutors' Information Management System (PIMS). (A sample response letter can be found in Appendix B.) Such requests are governed by Penal Code section 13300 et seq., the local summary criminal history

statute. (Special Directive (SD) 06-04.) Under that statute, a prosecutor's office cannot release, in response to a PRA request, "the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person." (Pen. Code, § 13300, subd. (a)(1).) It is a misdemeanor for any employee to release such information. (Pen. Code, § 13302.) Merely removing a defendant's name and furnishing only a case number is also a violation of the statute. (89 Ops.Cal.Atty.Gen. 204, 215 (2006).)

In a recent decision, which has subsequently been modified by statute as discussed below, the Attorney General has clarified the impact of the local summary criminal history statute on certain specific PRA requests including the following situations:

- *A PRA request seeking information concerning, "[a]n individual's criminal history in the county, including all arrests and case dispositions."*

  This is "protected" information, and cannot be released in response to a PRA request. (89 Ops.Cal.Atty.Gen. 204, 215 (2006).) Not only can this information not be supplied from the PIMS database, but it is a violation of the statute to circumvent the prohibition by furnishing the same information from another source. (*Ibid.*)

- *A PRA request seeking, "[t]he disposition of matters referred to the district attorney for filing of criminal charges."*

  Under section 6254, subdivision (f)(2), law enforcement agencies, like LADA, are required to make certain information public concerning the disposition of matters referred to it for processing. (89 Ops.Cal.Atty.Gen. 204, 215 (2006).) This includes what is happening on a filed case during the time it is in the court system. Therefore, it is not a violation of the local summary criminal history statute to provide information, in response to a request from the public, about a matter while it is pending. (SD 06-04, pp. 2-3.) However, such information should only be furnished on contemporaneous matters. (89 Ops.Cal.Atty.Gen. 204, 215 (2006).) Consequently, no information should be released 30 days after sentence has been imposed. (SD 06-04, p. 3.) Requestors seeking case disposition information after that point in time should be referred to the Superior Court.

  Requests are also often received seeking to learn the disposition of cases referred to the District Attorney in which charges were filed or rejected against a specific class of defendants (e.g. police officers or lawyers). This information cannot be provided as to do so would disclose a large body of protected data related to numerous individuals. (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157; 89 Ops.Cal.Atty.Gen. 204, 212-213 (2006).) There is an exception in the local criminal history statute, however, which allows a public agency to furnish "statistical or research information" if a defendant's identity is

not revealed. (Pen. Code, §§ 133000, subd. (h) & 13305, subd. (a).) Consequently, the statute is not violated if information is released revealing the number of individuals charged with a particular offense, as long as the identity of the defendants is protected. (SD 06-04, p. 4.)

- *A PRA request seeks to learn the "[c]riminal histories associated with a requested list of cases in which a specified witness has testified."*

  Requests are frequently received seeking a listing of cases on which a particular individual, often a police officer, has been included on a witness list. This information cannot be released. (89 Ops.Cal.Atty.Gen. 204, 215 (2006)

- *A PRA request seeks, "[n]umerous criminal histories associated with a request for the names and identities of defendants charged with particular specified criminal conduct over a period of years."*

  These requests usually seek to learn the identity of defendants charged over a period of time with a particular offense (e.g., robbery or Three Strikes). This type of information cannot be released. (89 Ops.Cal.Atty.Gen. 204, 215-216 (2006).) However, it is not a violation to release "statistical or research information" concerning the number of defendants charged with a specific offense over a particular time period (e.g. 200 defendants were charged with robbery in Los Angeles County between January and February).

- *A PRA request seeks to discover "[w]hether a recently charged or soon-to-be charged defendant is on probation or parole, and details of his or her prior offenses."*

  Details of an individual's prior offenses are part of his or her local summary criminal history and, therefore, cannot be disclosed. (89 Ops.Cal.Atty.Gen. 204, 214 (2006).) If the individual was arrested by LADA, then we may disclose whether or not the defendant is subject to "any 'parole or probation *holds*'" (*Ibid.*) This would not preclude release, in response to a PRA request, of information about prior offenses contained in either the complaint or information such as alleged strike offenses. (*Estate of Hearst* (1977) 67 Cal.App.3d 777, 782 [court records are public and, therefore, not subject to PRA].

6.01 Disclosure Exemption for PIMS Data

The Legislature responded to the Attorney General's opinion by amending the local summary criminal history statute to permit the release of such information in limited situations. (Sen. Bill No. 690 (2007-2008 Reg. Sess.).) Under that amendment, a prosecutor has *discretion* to release local summary criminal history information such as past convictions or dispositions, but only in response to a written request from an individual seeking the disclosure for a scholarly or journalistic purpose. (Pen. Code, 13300, subd. (j).) Additionally, the release of such information must "enhance public

safety, the interest of justice, or the public's understanding of the justice system..." (*Ibid.*) When providing such information the prosecutor must inform the requestor that if he or she falsely stated the purpose of their request they are subject to a civil penalty not exceeding $10,000.

It bears emphasis that these disclosures are purely discretionary and material should never be released if it would endanger a defendant's right a fair trial or substantially impinge on a citizen's right to privacy.

6.02 Declinations

As a law enforcement agency, the District Attorney's Office is required to make public limited information about cases referred to it for "assistance." (Gov. Code, 6254, subd. (f)(2).) However, that obligation only pertains to requests for contemporaneous information. (*County of Los Angeles v. Kusar, supra,* 18 Cal.App.4th at pp. 595, 600-601.) Therefore, in response to a request for contemporaneous information, an employee may access PIMS to disclose whether or not charges were filed or rejected against a specific defendant in a specific case. If the case was rejected, the employee may give an explanation such as "insufficient evidence" or "no corpus." (SD 06-04, p. 3) However, this information is not required, as there is no obligation to disclose "any information reflecting the analyses or conclusions" of the filing deputy. (§ 6254.)

A request is considered contemporaneous if it is received within 30 calendar days of the rejection. (SD 06-04, p. 3.) After the 30 day period has expired, an employee responding to a PRA request should not provide any information from PIMS revealing whether charges were rejected or filed against a specific defendant in a specific case. (*Ibid.*)

This 30-day policy supercedes the previous 180-day policy for the release of declinations found in GOM 97-37 and LPM § 23.04. (SD 06-4, p. 1.) This policy reflects the strong emphasis placed by the recent Attorney General's opinion on a prosecutor's obligation to protect the privacy of individuals whose records are contained in local summary criminal history databases such as PIMS. (89 Ops.Cal.Atty.Gen. 204, 213 (2006).) However, as discussed above, this policy is now subject to the discretionary release exemption found in Penal Code section 13300, subdivision (j). Consequently, a prosecutor has *discretion* to furnish a declination more than 30 calendar days after the declination, if the request is in writing, made for a scholarly or journalistic purpose and release of the information would "enhance public safety, the interest of justice, or the public's understanding of the criminal justice system..." (*Ibid.*)

Declination Letters from Special Units: Certain special units often send either a citizen or another government agency a declination letter when charges are not filed. These letters explain the reasons for not pursuing a particular case. Such letters are public records, which must be disclosed in response to a specific request for them. However, they do not need to be disclosed if they were furnished in confidence to another government agency with the understanding that they would be kept confidential. (§ 6254.5, subd. (e).) Consequently, if a requestor wants to learn why charges were not

filed against a specific individual, the disclosure of a previously released declination letter, not furnished in confidence to another government agency, does not violate the prohibition on the release of local summary criminal history information. (SD 06-04, p. 4.) However, a request for all declination letters by a special unit for a period of time is barred by Penal Code section 13300 et seq. (*Westbrook v. County of Los Angeles, supra*, 27 Cal.App.4th 157.)

7.00 DISCLOSURE PROHIBITED BY OTHER STATUTES

7.01 Defendants' Records

Section 6254, subdivision (k) exempts from release, "Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." For example, Penal Code sections 11140, et seq. prohibit the release of a person's criminal history, unless specifically ordered to do so by the court. This exempts the following types of documents from disclosure: CII records, rap sheets, and FBI rap sheets. Probation reports become exempt from disclosure 60 days after judgment is pronounced under Penal Code section 1203.05. (See, *McGuire v. Superior Court* (1993) 12 Cal.App.4th 1685, 1687 [probation reports are court records and, therefore, not subject to a PRA request]; *People v. Connor* (2004) 115 Cal.App.4th 669, 679 [defendant has unfettered access to his or her own probation report].)

Section 6276 et seq. provides a partial list of other statutes which would exempt documents from disclosure under subdivision (k).

7.02 Confidential Informants

Section 6254, subdivision (k) can also be used to protect the identity of confidential informants. (Evidence Code, §§ 1040, et seq. [(Official Information Privilege].) Specifically, Evidence Code section 1040, subdivision (b) (2), permits a public agency to deny release of information if:

> there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice....

Here, the impact of **Proposition 59** is more problematic. Under present law, when a government agency asserts that official information is privileged a trial court weighs the competing interest between secrecy and disclosure. (*Marylander v. Superior Court, supra,* 81 Cal.App.4th at p. 1126.) The unanswered question is whether that weighing continues under the arguably more forgiving Evidence Code standard, or will a trial court now need to employ Proposition 59's lens requiring a statute to be broadly construed to allow public access to government records. (Evidence Code, § 1040, subd. (b)(2); Cal. Const., art. I, § 3, subd. (b)(2).) The answer is unknown. If the Proposition 59 standard is employed it may become more difficult to exempt material under Evidence Code section 1040.

7.03 Internal Affairs Investigations

Section 6254, subdivision (k), also protects from disclosure the records of citizens' complaints about police officers and internal affairs investigations. (Pen. Code, § 832.7; *City of Hemet v. Superior Court, supra,* 37 Cal.App.4th at pp. 1422-1427; *City of Richmond v. Superior Court* (1995) 32 Cal.App.4th 1430, 1440, but see *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 284 [holding that the names of police officers, employing departments and hiring and discharge dates are not protected from disclosure under the PRA].) **Proposition 59** should have no effect as it specifically states that it does not alter:

> any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(Cal. Const., art I, § 3, subd. (3).)

7.04 Attorney Work Product

Subdivision (k) of section 6254, also contains within its ambit an exemption for a prosecutor's work product.[3] (*Lawyer -Client Privilege & Work Product Rule*, 71 Ops. Cal. Atty. Gen. 5, 7 (1988) ["undeniable" that public attorney can rely to "full extent" upon protection of attorney work product].) This allows a prosecutor to bar "under any circumstances" release of materials, which reflect his or her "impressions, conclusions, opinions, or legal research or theories..." (Code of Civ. Proc., § 2018.030, subd. (a); Pen. Code, § 1054.6 [specifically protecting prosecutorial work product]; *Rumac, Inc. v. Bottomley* (1983) 143 Cal.App.3d 810, 816 [work product also includes materials prepared in non-litigation context].) Since **Proposition 59** did not repeal the current statutory exemptions, attorney work product should still be protected. (Cal. Const., art. I, § 3, subd. (b) (3).) Therefore, attorney work product found in memoranda discussing case issues, rejects or office policy should continue to be exempt from release.

8.00 WAIVER OF EXEMPTIONS

Although there may be one or more exemptions which apply to certain documents, it is important to remember that nothing in the Public Records Act prohibits an agency from waiving these exemptions and releasing the records, unless release is otherwise prohibited by law (such as criminal histories). There may even be advantages to

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[3] Evidence Code section 952, the attorney-client privilege, also provides government agencies with a PRA exemption. (*Lawyer-Client Privilege & Work Product Rule*, 71 Ops. Cal. Atty. Gen. 5, 7 (1988).) However, since prosecutors have no client, communications from a deputy to the head of a prosecutorial office are not protected by the attorney-client privilege. (*People ex rel. Lockyer v. Superior Court* (2000) 83 Cal.App.4th 387, 399 [district attorney does not have client and, therefore, confidentiality is only protected by Evidence Code, § 1040 [Official Information Privilege].)

releasing attorney work product (i.e. the agency wants to be candid about a certain issue to avoid possible claims of covering-up any irregular practices or procedures).

Once an otherwise exempt document is released to one person, all future exemptions for those records are waived. (§ 6254.5.) An agency cannot release documents to one individual and then refuse to release those same documents to another. (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 656.) In other words: once disclosed, forever disclosed. Therefore, if this office elects to waive exemptions in response to a PRA request, it is important that the deputy note which documents were released. However, there is no waiver of PRA exemptions when we provide law enforcement records or other documents to defense counsel pursuant to criminal discovery statutes. (§§ 6254.5, subd. (b); 6260.)

9.00 EDITING (REDACTING) DOCUMENTS

Section 6253, subdivision (a), addresses the situation where a document contains some exempt material or information, but the whole document would not be exempt from disclosure. Under those circumstances, the agency must make the document available for inspection "after deletion of the portions that are exempted by law." (§ 6253, subd. (a); *Northern Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, 124.) This can be done by blacking out the exempt information on a copy, then duplicating the edited copy. The deputy preparing the response should keep both the original document and a copy of the edited version in the file.

In responding to any request all personal identifiers of victims or witnesses such as addresses, driver's license numbers, or telephone numbers must be redacted. (§ 6254, subdivision (f)(3).) This protects the privacy of both victims and witnesses, and also complies with our statutory obligation as law enforcement officers under Penal Code section 841.5, subdivision (a), to insure that such information is never disclosed to a defendant.

10.00 RECORDS RELATING TO INFORMANTS

10.01 Jailhouse Informants

If a PRA request refers to records relating to a jailhouse informant or to a specific case known to involve a jailhouse informant, the HABLIT Unit (formerly known as JILT) should be consulted at (213) 974-5911, to determine whether the records requested relate to the files retained by HABLIT. This would include felony cases where a jailhouse informant was used between 1978 and 1988. HABLIT also maintains a log of jailhouse informants used after 1989, but does not have possession of those D.A. files.

If it is determined that the PRA request involves only files retained by HABLIT, the response will be prepared by that Unit. However, if the request relates to both a jailhouse informant's file and other records, HABLIT will only respond to the jailhouse informant portion of the PRA request, when those files are in its possession. A copy of the PRA

request should be sent immediately by FAX to the Director of the Bureau of Prosecution Support Operations Sergio Gonzalez, at (213) 626-5862.

10.02 Other Types of Informants

A request for records related to non-jailhouse informants may be made by an attorney who represents a defendant and believes there are previous case files or other records related to a "snitch" or witness in their client's case. Some PRA requests will identify the informant or witness by name; others may ask for all records showing the existence of an "informant" in a certain case.

If a PRA request is made for records concerning informants or witnesses by a defense counsel, the case file for that defendant is the first place to begin the search for documents which may relate to a particular witness or informant. Once a non-jailhouse informant is identified, the services of an investigator may be necessary to determine whether or not this particular individual has been used by our office in other cases, and whether we have other documents related to this alleged informant. A computer search of PIMS data may be necessary to identify whether this "informant" was listed as a potential witness in other cases. Contact the Systems Division to determine the limitations of our computer records. HABLIT should be contacted to see if the alleged "informant" is identified in their log.

The PRA protects against disclosing the identity of confidential informants. (§ 6254, subd. (f).) To obtain such information, defense counsel must file the appropriate motions in the trial court for a hearing on the matter. (Evidence Code, §§ 1040, et seq.)

11.00 COURT RECORDS

The disclosure of court records is not governed by the Public Records Act. (§ 6260.) However, court records and official entries are made public records by other statutes and by case law. (Code of Civ. Proc., § 1904; *Estate of Hearst, supra,* 67 Cal.App.3d at p. 782; *Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 262-263 [court must release master list of juror's names, but not responses to juror qualification questionnaire].) If the PRA request asks for documents from a prosecutor's file which are also court records, then PRA exemptions probably will not apply, unless a statute prohibits disclosure or the record was sealed by court order (i.e., probation reports sealed pursuant to Pen. Code, § 1203.05).

Examples of "public" court records include: the complaint or information; certified copies of prior convictions (*People v. Howard* (1925) 72 Cal.App. 561, 563-564); reporter's transcripts; all motions filed by counsel; and grand jury transcripts, 10 days after filing of the indictment (unless sealed under Pen. Code, § 938.1, subd. (b). (See, *McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162, 1178; *Press-Enterprise v. Superior Court* (1994) 22 Cal.App.4th 498, 505, fn. 5; *Craemer v. Superior Court* (1968) 265 Cal.App.2d 216, 220-223.). The media may have a right to challenge court orders sealing records under Code of Civil Procedure section 1008, subdivision (a).

(*Wilson v. Science Applications International Corp.* (1997) 52 Cal.App.4th 1025, 1030-1033; *Gilbert v. National Enquirer, Inc.* (1996) 43 Cal.App.4th 1135, 1149.)

In *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, the court restricted public access to court computer records (then MCI, now TCIS) which contained local criminal history data. However, *CBS Broadcasting Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 907, held that Penal Code section 11105, subdivision (a)(2)(A), barring release of state summary criminal histories, did not prohibit the release of "non-rap sheet" records of agencies, such as the Department of Social Services. This was because release of that information facilitated the public's review of an agency's exercise of discretion. (*CBS Broadcasting Inc. v. Superior Court, supra,* 91 Cal.App.4th at pp. 894-895.

12.00 RECOVERING COSTS

Section 6253, subdivision (b), requires government agencies to promptly make available copies of all requested documents upon the payment of the "direct costs of duplication, or a statutory fee, if applicable." (*North County Parents Organization v. Department of Education* (1994) 23 Cal.App.4th 144, 148 ["direct costs" do not include retrieval, inspection and handling of files].) If the records requested are in an electronic (digital) format, we can only charge the "direct cost of producing a copy of [the] record in [the] electronic format." (§ 6253.9, subd. (a) (2).) An agency can waive its fees or the costs of duplication. (*Ibid.*) Once the direct cost is calculated, a demand for payment can be made before the documents are released, and payment should be made by check to the Los Angeles County District Attorney. (§ 6253, subd. (b).) The Los Angeles County Chief Executive Office has determined the actual costs of duplication for PRA requests to be 75 cents per request and 3 cents per page.

If a large number of documents are involved, it may be better to first make the records available for inspection. After reviewing the documents, the PRA requestor may only want to copy certain documents. If numerous copies are required, the requestor may provide their own copying service.

Los Angeles County has an ordinance which allows a fee to cover the costs of searching for and reviewing documents under certain circumstances. For PRA requests which do not sufficiently define or identify the records sought and, consequently, require a significant amount of time to search for the records, a further charge of $22.50 per hour may be imposed in addition to duplication cost. (L.A. Co. Code, Ch. 2.170.010, subd. (C).) If a county department determines that the cost recovery fee will exceed $50.00, then it will provide the requestor with a good faith estimate of the total cost, and the requestor will be required to make the appropriate payment before the search is conducted. (L.A. Co. Code, Ch. 2.170.010, subd. (D).) Any overpayment or underpayment will be reconciled when the records are actually provided to the requestor. (*Ibid.*) Each requestor is entitled to one free hour of assistance per month. (*Ibid.*)

13.00 CONSULTATION

Questions concerning how to respond to a particular PRA request can be addressed to the Special Assistant to the Director of the Bureau of Prosecution Support Operations, at (213) 974-7991. It is helpful to provide a copy of the PRA request either by FAX or e-mail before calling. Questions may also be addressed to Assistant Head Deputy District Attorney William Woods in the Training Division at (213) 974-2187.

14.00 CONCLUSION

Failure to respond to a Public Records Act request in a timely manner may result in the waiver of certain exemptions. It should also be remembered that an agency's failure or refusal to provide records pursuant to the Act may result in the filing of a Petition for Writ of Mandate in the Superior Court to compel release of the records. (§ 6259, subd. (a).) The agency will be charged for the legal costs incurred by the requesting party which result from an improper denial of a PRA request. (§ 6259, subd. (d); *Fontana Police Dept. v. Villegas-Banuelos* (1999) 74 Cal.App.4th 1249, 1252 ["[W]hen the plaintiff prevails and thus compels disclosure under the act, an award of attorney's fees and costs is mandatory."]; *Bernardi v. County of Monterrey* (2009) 167 Cal.App.4th 1379, 1382 [upholding award of $244,287 in attorney's fees to plaintiff/requestor].)

PRA requests should not be taken lightly. They must be responded to quickly and thoroughly. It is important to state every possible exemption for each document, in order to preserve these exemptions for possible future litigation.

SAMPLE LETTER REQUESTING EXTENSION
(on office letterhead)

///// //, 201/

M/. //////////////////
//////////////////////
//////////////////////
///////////, CA /////

Dear M/. //////////:

CALIFORNIA PUBLIC RECORDS ACT REQUEST

We have reviewed your Public Records Act request, concerning ///////////. It was received by our office on ///// //, 201/.

Pursuant to Government Code section 6253, subdivision (c) (1) [(c) (2)], we are claiming an additional 14 calendar days to complete our search for and review of records. The additional time is necessary to search for files located away from our main office [to search for and examine a voluminous amount of separate and distinct records].

We will respond on or before ///// //, 201/.

Very truly yours,

JACKIE LACEY
District Attorney

By

///////////////
Deputy District Attorney

SAMPLE LETTER -- PRA RESPONSE
(on office letterhead)

/////// //, 201/

M/. //////////////
//////////////////
//////////////////
////////, CA /////

Dear M/. //////////:

CALIFORNIA PUBLIC RECORDS ACT REQUEST

Pursuant to your request under the California Public Records Act, received on ///// //, 201/, our office has reviewed records pertaining to ////////////////////. Some of the records and information you request are exempt from disclosure under the Public Records Act and will not be released. The following records are exempt from disclosure:

Medical records and personnel files (Gov. Code, § 6254, subd. (c) [unwarranted invasion of personal privacy] and § 6254, subd. (k) [privileged material under Evidence Code § 994]);

Crime scene photos, lab analysis reports, witness' statements, photo ID folders, and all other law enforcement reports, reports and investigation by District Attorney Investigators (Gov. Code, § 6254, subd. (f) [law enforcement investigatory files and records are exempt from disclosure pursuant to *Williams v. Superior Court* (1993) 5 Cal.4th 337); see LPM, Ch. 23, for guidelines].)

Notes or portions of documents which reflect the analysis or conclusions of an investigating officer (Gov. Code § 6254, subd. (f));

Addresses and phone numbers of victims and witnesses will not be disclosed to a defendant under Penal Code section 841.5 and Government Code § 6254, subd. (c) [unwarranted invasion of personal privacy] (see also Gov. Code § 6254, subd. (f)(2));

Criminal history or "rap sheets" (Gov. Code § 6254, subd. (k); Pen. Code §§ 11140 et seq., 13300 et seq. [Disclosure of criminal history reports and "rap sheets" to unauthorized persons is a misdemeanor under Pen. Code §§ 13300, 13303. However, disclosure of defendant's own criminal history is authorized under Pen. Code § 13300, subd. (b)(11).];

A listing of LADA closed cases against a particular defendant. (89 Ops.Cal.Atty.Gen. 204, 215 (2006).

The status of a particular defendant's case more than 30 days after imposition of sentence. (89 Ops.Cal.Atty.Gen. 204, 215 (2006), Los Angeles County District Attorney Special Directive 06-04, p. 3.)

Listings of cases on which a particular individual's name appeared on a witness list. (89 Ops.Cal.Atty.Gen. 204, 215 (2006).)

Listings of individuals charged with specific criminal conduct over a period of years. (89 Ops.Cal.Atty.Gen. 204, 215-216 (2006).)

Information seeking to learn if a specific defendant is on probation or parole. (89 Ops.Cal.Atty.Gen. 204, 214 (2006)

Probation reports (Gov. Code § 6254, subd. (k); Pen. Code § 1203.05 [reports not open to inspection or copying 60 days after pronouncement of judgment, unless by court order]);

Preliminary drafts, notes, interagency or intra-agency memoranda as defined in Government Code § 6254, subdivision (a);

Attorney work product (Gov. Code §§ 6254, subds. (a) and (k), and 6255; Pen. Code § 1054.6);

Documents provided to our office by a governmental agency which we agreed to treat as confidential (Gov. Code § 6254.5, subd. (e).).

We will release a total of ____ pages. We will provide you with copies of these documents upon payment of the duplication costs of 3 cents per page and 75 cents per request. The cost of duplicating these documents is $____.__.

Please let us know if you wish to have copies made or when you want to inspect the records by contacting ///////////////, at (///)///-////.

Very truly yours,

JACKIE LACEY
District Attorney

By

////////////////////
Deputy District Attorney

EXAMPLES OF FREQUENTLY USED PRA EXEMPTIONS:

Law enforcement investigative files and records contained therein, including reports prepared by District Attorney Investigators and coroners. (§ 6254, subd. (f); Williams *v. Superior Court* (1993) 5 Cal.4th 337; *Dixon v. Superior Court* (2009) 170 Cal. App. 4th 12711273-1274 [autopsy reports are exempt from disclosure as long as there is "'a concrete and definite prospect'" of "'criminal law enforcement' proceedings".)

Notes or portions of documents reflecting the analysis or conclusions of an investigating officer. (§ 6254, subd. (f).)

Addresses and phone numbers of victims and witnesses (§ 6254, subds. (c) [unwarranted invasion of personal privacy] and (f)(2) [victim's address need not be disclosed]; see also § 6205 [confidentiality of address for victims of domestic violence]; Pen. Code, § 841.5 [addresses and telephone numbers of victims and witnesses shall not be disclosed to defendant].).

Release of arrest information is limited. (§ 6254, subd. (f); County *of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588 [disclosure of information listed in subds. (f)(1) and (f) (2) not required if person is no longer in the criminal justice system].)

"Rap sheets" or criminal history (§ 6254, subd. (k) [disclosure of criminal history to unauthorized persons is a misdemeanor under Pen. Code, §§ 11141-11143, 13302-13304; but disclosure of a criminal history to the subject is authorized under Pen. Code § 13300, subd. (b)(11)].

Medical records and personnel files. (§ 6254, subds. (c) and (k) [privileged under Evidence Code, § 994]).

Probation reports. (§ 6254, subd. (k) [not open for inspection or copying 60 days after pronouncement of judgment, unless by court order, under Pen. Code, § 1203.05].)

Preliminary drafts, notes, interagency or intra-agency memoranda (as defined in § 6254, subd. (a); see also §§ 6254, subd (k), & 6255).

Attorney work product (§ 6254, subd. (k); Pen. Code, § 1054.6).

Documents provided to one governmental agency by another with an agreement to treat them as confidential. (§ 6254.5, subd. (e).)

Juvenile court records are confidential under Wel. and Inst. Code, § 827 (see § 6254, subd. (k).). Severe limits are placed on the release of juvenile files by Wel. and Inst. Code § 827.9.

Witness protection files. (§ 6254, subd. (k); Pen. Code, §§ 14020-14033.)

Burdensome requests. (*American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440, 452-453; *County of Los Angeles v. Superior Court (Kusar)* (1993) 18 Cal.App.4th 588, 591-592.)

TABLE OF DISCLOSURE

DISCLOSURE PROHIBITED BY STATUTE:	**DISCRETION TO DISCLOSE**	**ALWAYS DISCLOSE**
Probation Reports 60 days after judgment (Pen. Code, § 1203.05.)	Law enforcement reports (Never where safety of victim or witness or further investigation is in danger)	Legal Policies Manual
Criminal history or rap sheet (Pen. Code, §§ 11141; 13302.)	Defendant's address (unless juvenile)	GOMs and Special Directives
Juvenile files without court order. (Wel. & Inst. Code, § 827.)	Office Memoranda including attorney work product (e.g. legal analysis, conclusions, and opinions)	Documents filed with the court
Names & addresses of sex crimes, stalking, domestic violence or minors without consent. (§ 6254, subd. (f).)		Declinations in compliance with SD 06-04
Victim and witness address to defendant. (Pen. Code, § 841.5.)		Grand jury transcripts if unsealed
Personnel files if unwarranted invasion of privacy (§ 6254, subd. (c).)		Reporter's transcripts unless sealed
Medical records, unless patient waiver (§ 6254, subd. (c).)		Current information about arrests and charges (§ 6254, subds. (f)(1) & (2).)
Financial records, unless financial institution is victim (§§ 6254, subd. (c); 7470.)		

CALIFORNIA PUBLIC RECORDS ACT
RELATED CASE LAW

GOVERNMENT CODE SECTION 6254: EXEMPTIONS.

Rogers v. Superior Court (1993) 19 Cal.App.4th 469, 476.
Public policy favors disclosure of public records, unless the records fall within a category of documents exempt under § 6254.

Subdivision (a): Preliminary drafts, notes, interagency and intra-agency memoranda

Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325, 1342-1344.
Governor's calendar for five years is protected under executive deliberative privilege (§ 6254 (a).). The key question is whether the disclosure of materials would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its function. **The validity of this holding has likely been undermined by the passage of Proposition 59 (see text).**

State Bd. of Equalization v. Superior Court (1992) 10 Cal.App.4th 1177, 1185- 1190.
Tax Board's records interpreting two regulations should be released, even though they would have no precedential value within the agency; duty to delete confidential taxpayer information was not too burdensome. There is no PRA restriction on disclosure for commercial use.

Citizens for a Better Environment v. Dept. of Food & Agriculture (1985) 171 Cal.App.3d 704, 711-713.
Using the federal Freedom of Information Act, the court found advisory opinions, recommendations, and policy consideration were exempt from disclosure, but factual materials were not exempt. Three requirements must exist to exempt these records from disclosure: (1) record must be preliminary draft, note or memorandum; (2) not retained by agency in normal course of business; and (3) public interest in withholding must clearly outweigh public interest in disclosure.

Subdivision (b): Pending litigation

Fairley v. Superior Court (1998) 66 Cal.App.4th 1414.
Pending litigation exemption does not apply to arrest records where arrestee later files a claim for damages against the city.

City of Los Angeles v. Superior Court (Axelrad) (1996) 41 Cal.App.4th 1083, 1088-1089.
Depositions from a civil case are not exempt after litigation is completed.

City of Hemet v. Superior Court (1995) 37 Cal.App.4th 1411, 1417-1420.

Internal police investigation report was not exempt under subdivision (b) because it was not prepared for litigation.

Subdivision (c): Medical or personnel files, unwarranted invasion of privacy

International Federation of Professional and Technical Engineers v. Superior Court (2007) 42 Cal.4th 319, 331
Salary amount of public employees is not exempt from disclosure as there is no reasonable expectation of privacy in such information.

New York Times Co. v. Superior Court (Thomas) (1997) 52 Cal.App.4th 97, 103-104, disapproved in part in *Copley Press Inc., v. Superior Court* (2006) 39 Cal.4th 1272, 1298.
The names of deputies involved in on-duty shooting must be disclosed, but not if that information is derived from personnel files.

Rogers v. Superior Court (1993) 19 Cal.App.4th 469, 479.
Refusal to release edited city council phone records, where phone numbers were deleted; removal of telephone numbers upheld based on protection of deliberative process.

Subdivision (f): Law enforcement investigative files

Haynie v. Superior Court (2001) 26 Cal.4th 1061, 1071.
Reaffirming that reports of criminal investigations are exempt from disclosure, even where no case was ever filed

Williams v. Superior Court (1993) 5 Cal.4th 337, 355.
Criminal investigative files are exempt, even after the investigation has been completed.

Dixon v. Superior Court (2009) 170 Cal. App. 4th 1271, 1273-1274.
Autopsy reports are exempt from disclosure as long as there is "'a concrete and definite prospect'" of "'criminal law enforcement' proceedings."

Rackauckas v. Superior Court (2002) 104 Cal.App.4th 169, 176-177.
Public policy supports the argument that police investigative files should remain exempt from disclosure because they "contain a vast amount of raw or half-baked data, gleaned from witnesses of varying degrees of reliability, veracity and bias. Much of it is hard to digest, and could prove ruinous to personal reputations, careers, or relationships if released to the general public in unvarnished form." Continuing such an exemption also leads to cooperation from witnesses who would not assist law enforcement if they believed their assistance would be disclosed.

Rivero v. Superior Court (1997) 54 Cal.App.4th 1048, 1059-1060.
San Francisco County supervisors cannot use local ordinance to compel disclosure of District Attorney's investigative files; state law (PRA) governs.

County of Los Angeles v. Superior Court (Kusar) (1993) 18 Cal.App.4th 588, 595.
Information concerning arrests and crimes which must be released pursuant to § 6254, subdivisions (f)(1) and (f)(2), is limited to persons currently in criminal justice system.

American Civil Liberties Union Foundation v. Deukmejian (1982) 32 Cal.3d 440, 452-454.
ACLU wanted FI index cards and computer printouts from DOJ. Some items were exempt as "intelligence information" but others should be disclosed after certain material deleted.

Younger v. Berkeley City Council (1975) 45 Cal.App.3d 825, 832.
Public Records Act is not the proper way to obtain arrest records.

Subdivision (k): Disclosure prohibited by other statutes

City of Hemet v. Superior Court (1995) 37 Cal.App.4th 1411, 1422-1427.
Internal police investigation report is exempt under Penal Code § 832.7 and Evidence Code §§ 1043 and 1046.

City of Richmond v. Superior Court (1995) 32 Cal.App.4th 1430, 1440.
Citizen's complaints about police are exempt under § 6254 (k) & confidential under Pen. Code § 832.7, subd. (a).

McGuire v. Superior Court (1993) 12 Cal.App.4th 1685, 1688.
Probation records cannot be disclosed without court order, even to the probationer.

Roberts v. City of Palmdale (1993) 5 Cal.4th 363, 373, 381.
Letter from City Attorney to city council expressing a legal opinion [attorney-client communication privilege] need not be disclosed.

People v. Connor (2004) 115 Cal.App.4th 669, 679
Probation reports are exempt under Penal Code § 1203.05, 60 days after being filed, but defendant always has unfettered access to his or her own probation report.

GOVERNMENT CODE SECTION 6255: MUST ASSERT SPECIFIC EXEMPTION OR BALANCE PUBLIC INTEREST IN NONDISCLOSURE AGAINST PUBLIC'S RIGHT TO KNOW.

Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325, 1342-1344.
Governor's calendar need not be disclosed under § 6255 and it is protected under § 6254, subd. (a), as executive deliberative process and for security. **The holding of this case has likely been undermined by the passage of Proposition 59 (see text).**

CBS, Inc. v. Block (1986) 42 Cal.3d 646, 651-656.
There was no specific exemption against disclosure of applications for concealed gun permits so they should be disclosed [release now prohibited by statute]. Court discusses

balancing test under § 6255 and holds that burden of proof is on the agency to justify nondisclosure.

American Civil Liberties Union Foundation v. Deukmejian (1982) 32 Cal.3d 440, 453-454.
ACLU wanted copies of FI index cards and computer printout from DOJ; agency claimed "intelligence information" exemption under § 6254, subd. (f). Case discusses balancing test under § 6255, where burden of excising materials outweighs utility of disclosing the documents. Also held that PRA requests can be rejected where there are too burdensome to comply with.

City of San Jose v. Superior Court (1999) 74 Cal.App.4th 1008, 1017
List of names and addresses of complainants to city about noise at local airport do not have to be disclosed to requestor under § 6255 and right to privacy.

California First Amendment Coalition v. Superior Court (1998) 67 Cal.App.4th 159, 167-169.
Application forms sent to the Governor for vacant county supervisor position are exempt from disclosure under section 6254, subdivision (l), and protection of deliberative process under section 6255. **The holding of this case has likely been undermined by the passage of Proposition 59 (see text).**

Connell v. Superior Court (1997) 56 Cal.App.4th 601, 612-614.
State Controller failed to demonstrate that public interest in nondisclosure, based on speculative security concerns, outweighed public interest in disclosure under § 6255.

Wilson v. Superior Court (1996) 51 Cal.App.4th 1136, 1143-1144.
Governor need not disclose applications by gubernatorial appointees under § 6255 because deliberative process should be protected. **The holding of this case may have been undermined by the passage of Proposition 59 (see text).**

Rogers v. Superior Court (1993) 19 Cal.App.4th 469, 477-479.
City met burden of showing why telephone numbers of calls made by city council members should not be released.

State Bd. of Equalization v. Superior Court (1992) 10 Cal.App.4th 1177, 1187-1190.
Duty to delete confidential taxpayer information was not too burdensome and failure to release documents cannot be justified under § 6255. No restriction on disclosure for commercial use.

New York Times Co. v. Superior Court (1990) 218 Cal.App.3d 1579, 1585.
Agency must show justification for not disclosing names of excessive water users.

EXCISING EXEMPT MATERIALS:

Citizens for a Better Environment v. Dept. of Food & Agriculture (1985) 171 Cal.App.3d 704, 713.
The court found advisory opinions, recommendations, and policy consideration were exempt from disclosure, but factual material was not exempt and must be disclosed.

Northern California Police Practices Project v. Craig (1979) 90 Cal.App.3d 116, 118-119, 124.
Request sought documents used by CHP to train officers; CHP opposed on grounds these records included security and safety procedures. Segregation is required where nonexempt materials are not inextricably intertwined with exempt materials.

WAIVER:

Bradshaw v. City of Los Angeles (1990) 221 Cal.App.3d 908, 922.
Transcript of disciplinary hearing of police officer should be released because disciplinary board meeting was public and final report was made public.

In re Ricky B. (1978) 82 Cal.App.3d 106, 113.
Providing law enforcement records or other documents to defense counsel pursuant to criminal discovery statutes is not a waiver of PRA exemptions to other members of the public.

Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645, 656-657 .
Once a document is released to any member of the public there is a waiver of the exemption as to every other member of the public.

RECOVERY OF COSTS:

North County Parents Organization v. Department of Education (1994) 23 Cal.App.4th 144, 146-148.
Section 6257 only allows agencies to charge for the direct costs of duplication or a statutory fee, if applicable; direct costs do not include retrieval or the inspection and handling of files.

CHALLENGING A DECISION NOT TO RELEASE DOCUMENTS:

Powers v. City of Richmond (1995) 10 Cal.4th 85, 111.
A Petition for Writ of Mandate must be filed in the Superior Court to challenge a PRA response denying access to records.

Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325, 1332-1333.
Section 6259, subd. (c), allows an independent review of superior court's order on the merits.

Fontana Police Dept. v. Villegas-Banuelos (1999) 74 Cal.App.4th 1249, 1252.
Successful plaintiff who compels discovery under the PRA is entitled to attorney's fees and costs.

Rogers v. Superior Court (1993) 19 Cal.App.4th 469, 484.
Agency cannot recover attorney fees unless plaintiff's case is clearly frivolous.

COURT RECORDS:

The disclosure of court records is not governed by the Public Records Act, but by other statutes (Code of Civ. Proc., § 1904) and case law.

McClatchy Newspapers v. Superior Court (1988) 44 Cal.3d 1162, 1178.
The superior court has the power to seal raw evidentiary materials contained in a grand jury's investigative report, including transcripts and evidence. (See Pen. Code §§ 924.2, 938.1.) However, a grand jury is required to file it findings and recommendations. (Pen. Code § 933.)

Wilson v. Science Applications International, Corp. (1997) 52 Cal.App.4th 1025, 1032-1033. When press is not a party to the litigation, trial court must consider whether there is some change of circumstances to justify belated filing of a request to unseal court records under Code Civ. Proc. § 1008 (a).

Gilbert v. National Enquirer (1996) 43 Cal.App.4th 1135, 1148-1149.
Unsealing court records was proper.

Westbrook v. County of Los Angeles (1994) 27 Cal.App.4th 157, 160-161.
Court computer records (TCIS) need not be disclosed because they show criminal history. (But see, CBS Broadcasting Inc. v. Superior Court (2001) 91 Cal.App.4th 892, 907, [criminal records that are not maintained by the Attorney General are not exempt from PRA disclosure].)

Press-Enterprise v. Superior Court (1994) 22 Cal.App.4th 498, 505, fn. 5.
Trial court can seal transcript of grand jury hearings prior to trial, after making certain findings. Otherwise, under Pen. Code § 938.1, subd. (b), after an indictment has been filed, the transcripts are available to the public 10 days after delivery to defendant or his attorney.

McGuire v. Superior Court (1993) 12 Cal.App.4th 1685, 1688.
Probation records cannot be disclosed without a court order, even to probationer; they are confidential.

Copley Press, Inc. v. Superior Court (1992) 6 Cal.App.4th 106, 115.
A court clerk's rough notes are court records and are subject to disclosure.

Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1068-1069.

Sealed court records are protected from disclosure.

CHAPTER 23

PUBLIC RECORDS ACT

23.01 CALIFORNIA PUBLIC RECORDS ACT

The California Public Records Act (PRA), Government Code §§ 6250 *et seq.*, permits any member of the public to inspect and copy records prepared, owned, used or retained by any state or local governmental agency regardless of physical form or characteristics for any reason. The definition of records includes documents, computer records and e-mail.

The PRA and this policy apply to all District Attorney records, in any form, including felony, misdemeanor and civil case files. However, juvenile case files are confidential and cannot be disclosed without a court order. (Welfare and Institutions Code § 827(a)(1)(O))

The PRA also contains a number of exemptions from the general rule of disclosure. There is a PRA manual available in Lotus Notes that explains these exemptions and provides guidance in their application. The Appellate Division's PRA Unit is available to provide recommendations and legal advice in processing requests.

23.02 STRICT TIME LIMITS

The PRA sets strict time limits for the response to a request. If some or all of the records are exempt from disclosure under the PRA, the exemptions must be claimed within these time limits. Failure to respond and claim the exemptions within the time limits may be deemed a waiver of the exemptions.

Upon receipt of a PRA request, we have ten calendar days within which to respond. In unusual circumstances, this time limitation may be extended up to 14 additional calendar days upon written notice to the requestor setting forth the reasons for the extension and the expected response date. (Government Code § 6253 (c))

Unusual circumstances include:

- The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request;
- The need for consultation, which shall be conducted as quickly as possible, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein; or
- The need to compile data, to write programming language or a computer program,

or to construct a computer report to extract data.

The initial response required under the PRA is the determination whether the records exist and whether they will be disclosed or are exempt from disclosure. This response does not necessarily include the actual production of the records within the ten-day period. If the records exist but require separation or redaction of non-disclosable material, or require computer analysis or extraction, or are voluminous, the response should be made as soon as possible within the time limits and indicate when we expect the records to be available for inspection.

23.03 RESPONDING TO PRA REQUEST

Notification/Tracking

The employee receiving a PRA request shall immediately forward it to the Director of the Bureau of Prosecution Support Operations where the request will be logged into the Lotus Notes PRA database and tracked. The employee shall also forward a copy of the request to the Head Deputy or Deputy-in-Charge. In the Bureau of Investigation PRA requests shall be forwarded to the Divisional Captain.

Processing - Records Exists

The Head Deputy, Deputy-in-Charge or Captain shall promptly determine whether the requested records exist and, if they do exist, where they are located.

The Head Deputy, Deputy-in-Charge or Captain shall review the records and determine whether the records should be disclosed or whether they are exempt from disclosure under the PRA or other statutory or case law.

If the records are exempt from disclosure, the Head Deputy, Deputy-in-Charge or Captain shall promptly notify the requestor in writing within the statutory time limits. The written notification shall state the reasons for non-disclosure. The Head Deputy, Deputy-in-Charge or Captain shall notify the Director of the Bureau of Prosecution Support Operations who will update the PRA Log.

If the Head Deputy, Deputy-in-Charge or Captain determines that the records are not exempt, he/she shall promptly notify the requestor in writing within the statutory time limits and indicate when and where the records will be made available for inspection. If the records themselves are not exempt from disclosure, but contain information that is exempt, the Head Deputy, Deputy-in-Charge or Captain shall cause the exempt information to be separated or redacted from the records. The Head Deputy, Deputy-in-Charge or Captain shall notify the Director of the Bureau of Prosecution Support Operations who will update the PRA Log.

If the Head Deputy, Deputy-in-Charge or Captain determines that the request should have been delivered to a different office or unit within the District Attorney's Office, he/she

shall immediately forward the request by fax to the appropriate office or unit. The Head Deputy, Deputy-in-Charge or Captain shall also notify that office or unit and the Director of the Bureau of Prosecution Support Operations by telephone.

If the Head Deputy, Deputy-in-Charge or Captain determines that the request should have been delivered to another government office the supervisor shall direct the requestor, in writing, to the appropriate office.

The Head Deputy, Deputy-in-Charge or Captain is also responsible for deciding whether to disclose law enforcement investigative records under the guidelines set forth below. When records are disclosed, a copy of the response letter should be placed in the case file indicating which documents were disclosed.

Processing - Records Do Not Exist

If the Head Deputy, Deputy-in-Charge or Captain determines that the requested records do not exist, he/she shall promptly notify the requestor in writing. The Head Deputy, Deputy-in-Charge or Captain shall notify the Director of the Bureau of Prosecution Support Operations who will update the PRA Log.

23.04 CLAIMING PRA EXEMPTIONS

SD 06-04: Release of PIMS Information - PRA

District Attorney personnel shall promptly respond to all PRA requests. However, in sensitive cases or when the release of information might jeopardize victims or witnesses or interfere with pending cases or investigations, a deputy shall claim all appropriate exemptions. Some common exemptions include:

- Law enforcement investigative files and police reports even if a case or investigation has concluded. Government Code § 6254 (f) and *Williams v. Superior Court* (1993) 5 Cal.4th 337, 355;
- Documents containing attorney work product or that reveal the deliberative process of this office. Government Code § 6254 (k) and *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1342-1344;

Charge Evaluation Worksheets (declinations) may be disclosed within six months of the date of the declination. The worksheet must be edited to remove all confidential law enforcement identification numbers (e.g., criminal identification and information (CII) numbers), rap sheets, employee identification numbers, victims' and witnesses' addresses, telephone numbers and any other identifying information and any confidential attorney work product. After six months, charge evaluation worksheets shall no longer be disclosed. The office will continue to disclose the fact that criminal charges were declined.

Office publications including General Office Memoranda and Special Directives may be disclosed, and court documents and records including pleadings, motions or reporter's transcripts may be disclosed unless they have been sealed by court order.

23.04.01 Mandatory Exemptions

The following exemptions shall be asserted in all appropriate cases:

GOM 08-78: Implementation of *Maisy's* Law - New Procedures

- Probation Reports: Probation reports are barred from disclosure for any reason 60 days after judgment is entered. (Penal Code § 1203.05)

GOM 09-03: Disclosure of RAP Sheets

- Criminal History Information: It is a criminal offense to disclose state summary criminal history information (rap sheets) maintained by the California Department of Justice to any person not authorized by law to receive such information. (Penal Code §§ 11140 *et seq.* and 13300 *et seq.*)

GOM 10-108 Electronic Probation Reports in Pending Cases

- Victim Identifying Information: No law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense. (Government Code § 6254(f) and Penal Code § 841.5)

23.05 WAIVER OF EXEMPTIONS

Once an exemption is waived and a record disclosed to any requestor pursuant to the Public Records Act, that exemption is forever waived as to that record and to all requestors.

Commentary

There may be situations in which it might seem appropriate to disclose certain records to certain requestors even though a PRA exemption could be claimed. Be aware that once that record is disclosed to one requestor it must be disclosed to all other requestors. Once waived, a claim of exemption is forever waived.

SPECIAL DIRECTIVE 06-04

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE
Chief Deputy District Attorney

SUBJECT: RELEASE OF PIMS INFORMATION IN RESPONSE TO A PUBLIC RECORDS ACT REQUEST

DATE: NOVEMBER 30, 2006

THIS SPECIAL DIRECTIVE SUPERSEDES, IN PART, GENERAL OFFICE MEMORANDUM 97-37 AND LEGAL POLICIES MANUAL SECTION 23.04.

INTRODUCTION

The California Attorney General has recently issued a published opinion regarding the public release of information from our Prosecutors Information Management System (PIMS).[1] This opinion is entitled to great weight and will be fully implemented by this office.[2] The opinion requires significant changes to our current policy regarding the public disclosure of PIMS criminal history information[3] and declinations (blue sheets).

The release of government records, such as the criminal history information maintained in PIMS, is governed by two competing statutory schemes. The first, the Public Records Act (PRA), is based on the premise that the people's right to evaluate the performance of its government requires access to records maintained by any agency. (Gov. Code § 6250 et seq.) By contrast, Penal Code § 13300 et seq. was enacted to limit public access to "local summary criminal history information". The information barred from release under § 13300 et seq. includes: "records reflecting the 'name, date of birth, physical

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[1] The complete opinion can be found in the September 25, 2006 Daily Appellate Report at page 12877 and online at <http://ag.ca.gov/opinions/monthly_report.php> (Opinion 06-203).

[2] Compliance with the AG's opinion is mandatory for all employees as it is a misdemeanor to disclose protected information. (Pen. Code, § 13302.)

[3] The AG's opinion makes it clear that § 13300 et seq. applies not only to information taken directly from PIMS but also to lists or databases of cases derived from PIMS and maintained by individual offices or units.

description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data' about any given person." (Atty. Gen. Opn. 06-203, p. 8.)

According to the opinion, when a member of the public, including the news media, seeks information from PIMS, Penal Code § 13300 et seq. controls.[4] The wide-ranging opinion considered a number of specific requests which are set forth below.

SUMMARY OF ATTORNEY GENERAL OPINION 06-203

- **PRA request (oral or written) seeking to know if an individual is on probation or parole.**[5]

An employee cannot search PIMS and based on that information disclose to a member of the public whether or not an individual is on probation or parole.

Exception - Police Agencies: A police agency must, in response to a timely public inquiry, disclose whether or not an arrestee is subject to a parole or probation *hold.* This does not allow a police agency to disclose that a defendant is on parole or probation if a hold is not in place.

Exception - Bureau of Investigation Arrests: If the subject of the inquiry was arrested by the District Attorney's Bureau of Investigation, the District Attorney's Office must, in response to a timely public inquiry, disclose whether or not an arrestee is subject to a parole or probation *hold.* If the arrestee was not the subject of a parole or probation hold, nothing else about the arrestee's parole or probation status can be released to the public.

Note - Systems Similar to PIMS: An employee cannot disclose case history information stored in an individual office-authorized database. These systems are merely derivative of information stored in PIMS, such that release of data from them would defeat the bar on disclosure of local summary criminal history information.

- **PRA request for an individual's local criminal history, including all arrest and case dispositions.**

An employee cannot provide a list of cases in PIMS revealing the cases or case numbers filed against a specific individual.

- **PRA request seeking to learn the disposition of "current matters referred to the district attorney for filing of criminal charges." ("Disposition" includes filed or rejected cases.)**

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[4] The news media has no greater right to access to public records than does any private citizen. (See *Copley Press, Inc. v. Superior Court* (2006) 39 Cal. 4th 1272, 1306.)

[5] A PRA request may be made either orally or in writing. (*Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392.)

As a law enforcement agency, the District Attorney's Office is required to make public limited information about cases referred to it for "assistance." (Gov. Code, § 6254, subd. (f)(2).) Therefore, in response to a request for *contemporaneous* information, an employee may access PIMS to disclose whether or not charges were filed or rejected against a *specific* defendant in a specific case. If the case was filed, then the charges may also be disclosed. If the case was rejected, the employee may give an explanation such as "insufficient evidence" or "no corpus." However, this information is not required, as there is no obligation to disclose "any information reflecting the analyses or conclusions" of the filing deputy. (Gov. Code, 6254.)

Note - Contemporaneous Request - Filed Cases: It is the policy of this office that a request will be considered *contemporaneous* when it is received after a case is filed and while the case is still active in the trial courts, or within 30 calendar days after sentence has been imposed.

Note - Contemporaneous Request - Rejected Cases: When a case is rejected, a request will be considered contemporaneous if it is received within 30 calendar days of the rejection. After the 30-day period has expired, an employee in response to a PRA request should not provide any information from PIMS, or information obtained from PIMS, revealing whether charges were rejected or filed against a specific defendant in a specific case.

This new 30-day policy supersedes the previous 180-day policy for the release of declinations found in GOM 97-37 and LPM § 23.04. This new policy reflects the strong emphasis placed by the AG on protecting the privacy of individuals whose records are contained in local summary criminal history databases.

Note - Once Disclosed Always Disclosed: Under the PRA, once a public agency has supplied information to a requestor, then the same material must be furnished to anyone else seeking it. (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 656, 657.) Consequently, if a contemporaneous disclosure is made revealing whether charges have been filed or rejected against a specific defendant in a specific case, then the same information must be supplied to a subsequent requestor even if that request is made after the request is no longer contemporaneous. All disclosures of PIMS records, or information obtained from PIMS, should be fully documented in the case file by inclusion of the letter sent to the requestor. (Sample letters can be found in the Public Records Act Log on the Lotus Notes System.)

Note - Requests for a Class of Defendants: Requests are often received seeking case dispositions via a search of PIMS for the identities of a specific class of defendants (e.g. lawyers). Such requests must be declined as they seek a large body of protected data related to numerous individuals. (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157.) The AG cautioned that district attorneys should not make "general or comprehensive compilations" of data "available to members of the public..." (Atty. Gen. Opn. 06-203, p. 10.) This concern is not present, however, when the requestor seeks

contemporaneous information on a specific defendant for a specific case. As well, a requestor can be provided with "statistical or research information" such as the number of cases, charges and dispositions filed against a particular class of defendants as long as the identity of the defendants is not revealed. (Pen. Code, §§ 13300 (h) & 13305 (a).) Consequently, it would not be a violation to respond to an inquiry seeking to learn the number of attorneys charged with a crime and the disposition of those cases as long as the identity of the defendants is not released.

Note - Reject/Declination Letters from Special Units: Certain special units often send either a citizen or another government agency a reject/declination letter when charges are not filed. These letters explain the reasons for not pursuing a particular case. Such letters are public records, which must always be disclosed in response to a specific request for them.[6] Therefore, if a requestor wants to learn why charges were not filed against a specific individual, the disclosure of a previously released declination letter does not violate the prohibition on the release of local summary criminal history information. However, a request for all declination letters by a special unit for a period of time is barred by Penal Code section 13300 et seq. (*Westbrook v. County of Los Angeles, supra,* 27 Cal.App.4th 157.)

- **PRA request seeking a list of all cases in which a specific witness testified.**

An employee cannot access PIMS and release the case numbers of matters in which a specific witness testified or was listed as a subpoenaed witness.

- **PRA request seeking "numerous criminal histories associated with a request for the names and identities of defendants charged with particular specified criminal conduct over a period of years":**

An employee may not access PIMS to release information about the identity of defendants charged over a period of time with a particular offense. (E.g., robbery or Three Strikes). However, it is not a violation to release "statistical or research information" concerning the number of defendants charged with a specific offense over a particular time period. (E.g. 200 defendants were charged with robbery in Los Angeles County between January and February.)

Any questions concerning the processing of requests for PIMS data or rejects can be addressed to DDA William Woods in the Appellate Division by email or by telephone at (213) 974-1616.

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[6] Reject/declination letters would not have to be disclosed if they were furnished in confidence to another government agency with the understanding that they would be kept confidential. (Gov. Code, § 6254.5, subd. (e).)