

TENTATIVE RULINGS

DEPARTMENT C44

Judge Walter Schwarm

March 6, 2025; 10:00 a.m.

This is the Court's tentative ruling. It may become an order if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative ruling, please call the Court Clerk to inform the court that all parties submit on the Court's tentative ruling. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that all parties submit to the Court's tentative ruling.

APPEARANCES: Department C44 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at <https://www.occourts.org/media-relations/aci.html>. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)(1).).

PUBLIC ACCESS: Media and public access to proceedings will be in person in the courtroom where the hearing is scheduled. In the event any proceeding is conducted entirely remotely, the press and public can obtain public access by contacting the courtroom. Phone numbers for the courtrooms can be found at <https://www.occourts.org/directory/civil/CivilPhoneDepartmentDirectory.pdf>. In those instances where proceedings will be conducted only by remote video and/or audio, access will be provided to interested parties by contacting the courtroom clerk, preferably 24 hours in advance. No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

COURT REPORTERS: Official court reporters (i.e. court reporters employed by the Court) are NOT typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#); and

- For additional information, please see the court’s website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

#	Case Name	Tentative
	30-2022-01291297 Chicanxs Unidxs De Orange County v. Todd Spitzer	<p>Petitioners’ (Chicanxs Unidxs De Orange County, American Civil Liberties Union of Northern California, and American Civil Liberties Union of Southern California) Motion for Judgment on the Verified Petition for Writ of Mandate and Complaint (Motion), filed on 1-26-23 under ROA No. 53, is GRANTED in part, DENIED in part, and DENIED in part as MOOT as set forth below.</p> <p>The court DENIES Respondents’ Request for Judicial Notice (RJN), filed on 3-27-23 under ROA No. 67, as immaterial to the court’s decision. (<i>Silverado Modjeska Recreation & Parks District v. County of Orange</i> (2011) 197 Cal.App.4th 282, 307, fn. 18 (<i>Silverado</i>.)</p> <p>Defendants’/Respondents’ Objections to Evidence Submitted in Support of Petitioners’ Motion for Judgment filed on 3-27-23 under ROA No. 63: The court SUSTAINS Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, and 12 (The court SUSTAINS Objection No. 12 as immaterial to the court’s ruling). The court OVERRULES Objections Nos. 9 and 13.</p> <p>The court notes that Petitioners filed a Request for Dismissal as to the County of Orange on 8-22-24 under ROA No. 182. Therefore, the remaining Respondent is Todd Spitzer in his official capacity as the District Attorney of Orange County.</p> <p>On 8-22-23 under ROA No. 90, the court issued a tentative ruling (Tentative Ruling). The court did not adopt the Tentative Ruling at the hearing on 8-22-23. Since the issuance of the tentative ruling, the court conducted an in camera review of documents (Gov. Code, § 7923.105, subd. (a)) between 9-17-24 and 12-19-24, and the parties have agreed they have resolved some of the issues. (See, 9-17-24, 9-18-24, 9-19-24, 9-23-24, 10-31-24, 11-8-24, 11-14-24, 11-21-24, 12-3-24, 12-10-24, and 12-19-24 Minute Orders, and Joint Matrix Re Status of Contested Issues and Productions to Date filed on 4-25-24 under ROA No. 152 (Joint Matrix).)</p> <p>Petitioners filed their Verified Petition (Petition) on 10-31-22 under ROA No. 2. The Verified Petition alleges the following causes of action: (1) Writ of Mandate for Violation of Government Code sections 6250 <i>et seq.</i>; (2) Declaratory Relief; and (3) Injunctive Relief. (Petition.)</p>

	<p>Respondents (Todd Spitzer and County of Orange) filed their Answer to the Petition on 1-3-23 under ROA No. 21.</p> <p>The Petition pertains to five requests pursuant to the California Public Records Act (CPRA). (Petition; ¶ 3.) The Petition alleges the five requests were made on 2-4-21 (Petition, ¶ 38), 7-23-21 (Petition, ¶ 60), 9-27-21 (Petition, ¶ 40), 2-18-22 (Petition, ¶ 46), and 7-8-22 (Petition, ¶ 53).</p> <p>The Motion states, “OCDA failed to comply with its PRA obligations when responding to the five requests at the core of this lawsuit—refusing to produce any prosecutorial data in response to four PRA requests, and asserting overbroad and unsupported exemptions in response to a fifth request for policy and training materials. Evidence drawn from approximately thirty other requests produced by OCDA—and an internal OCDA email—show that OCDA’s refusal to produce prosecutorial data is systemic. In late February 2021, the agency changed its policy and began refusing to extract and produce electronically stored prosecutorial data in response to PRA requests, where it previously routinely provided such records.” (Motion; 8:26-9:5.) As to the Petition’s request for prosecutorial data, the Motion states, “OCDA refused to produce <i>any</i> responsive data. It asserted, consistently, that the requests sought data in a form not currently stored in OCDA’s system and thus were records that did not exist, and, in some cases, that the requests were unduly burdensome. (9:10-13; Italics in Motion.) As to the Petition’s request for policies and training materials, the Motion asserts, “In response, OCDA produced fewer than 50 records, slowly over fifteen months. . . . OCDA refused to disclose large quantities of the requested records, claiming broad and unsupported exemptions. OCDA asserted that it withheld records on the grounds of deliberative process privilege, attorney work product, or copyright; or because the request was unduly burdensome. . . . However, OCDA provided no specificity as to the records withheld, which exemptions applied to which records, or the requisite justification for the withholding. . . . OCDA also refused to justify numerous redactions. . . .” (Motion; 10:28-11:7.)</p> <p>Respondents’ Opposition to Plaintiffs’ Motion for Judgment on Verified Writ of Mandate (Opposition), filed on 3-27-23 under ROA No. 65, contends, “Petitioner-Plaintiffs (‘Petitioners’) seek, by way of the California Public Records Act (‘CPRA’), local summary criminal history information in violation of Penal Code section 13300. In addition, their lawsuit is a thinly-veiled attempt to circumvent the statute that gives the Orange County District Attorney (‘OCDA’) and other local prosecutorial</p>
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agencies until **March 1, 2027**, to compile and release many of the same prosecutorial data elements at issue here.” (Opposition; 1:3-7 (Emphasis in Opposition; Footnote 1 omitted).) As to the prosecutorial data, the Opposition states, “In summary, publicly providing records from a criminal history database that can be used to identify the holder of the underlying record will, in general, violate the law. As such, these records are exempt from disclosure under the CPRA pursuant to Government Code section 7927.705.” (Opposition; 8:11-13.) Relying on Penal Code section 13370, the Opposition asserts, “Petitioners do not and cannot articulate the public interest served by forcing OCDA to undertake the ‘gargantuan effort’ of creating records and producing this data prior to March 1, 2027, at taxpayer expense. Accordingly, this data is presently exempt from disclosure pursuant to section 7927.705.” (Opposition; 9:9-12.) As to the policies and training materials, the Opposition asserts, “Here, OCDA properly redacted training materials that were independently protected pursuant to the attorney work product doctrine” (Opposition; 9:18-19.) Further, the Opposition states, “As described in the Privilege Log attached as Exhibit 1 to the Declaration of Johanna Kim, many of the training materials are protected by the investigatory file privilege set forth in CPRA” (Opposition; 10:15-16.) Finally, the Opposition contends, “OCDA also properly withheld training materials as protected by the deliberative process privilege as well as undue burden pursuant to section 7922.000, which is the ‘catchall’ exemption to the CPRA that requires the Court to engage in a balancing test involving the public interest.” (Opposition; 10:28-11:2.)

The parties filed a Joint Statement of Issues (Joint Statement) on 7-19-23 under ROA No. 83.

Law:

“The people have the right of access to information concerning the conduct of the people’s business, and, therefore, . . . the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I, § 3, subd. (b)(1).)

National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward (2020) 9 Cal.5th 488, 492 (*National Lawyers*), states, “The California Public Records Act (PRA) establishes a right of public access to government records. ‘Modeled after the federal Freedom of Information Act (5 U.S.C. § 552 et seq.), the PRA was enacted for the purpose of increasing freedom of information by giving members of the public access to records in the possession of state and local agencies.’

	<p>[Citation.] In enacting the statute in 1968, the Legislature declared this right of access to be 'a fundamental and necessary right of every person in this state' (Gov. Code, § 6250)—a declaration ratified by voters who amended the California Constitution in 2004 to secure a 'right of access to information concerning the conduct of the people's business' (Cal. Const., art. I, § 3, subd. (b)(1), added by Prop. 59, Gen. Elec. (Nov. 2, 2004)). [Citation.]”</p> <p><i>Becerra v. Superior Court</i> (2020) 44 Cal.App.5th 897, 913-914 (<i>Becerra</i>), provides, “Pursuant to the California Constitution, the CPRA must be ‘broadly construed’ because its statutory scheme ‘furthers the people's right of access.’ (Cal. Const., art. 1, § 3, subd. (b)(2).) Nevertheless, the act does not confer an absolute right of access. As part of the CPRA, the Legislature included a provision declaring it was ‘mindful of the right of individuals to privacy.’ (Gov. Code, § 6250.) This express policy declaration ‘bespeaks legislative concern for individual privacy as well as disclosure.” [Citation.] “In the spirit of this declaration, judicial decisions interpreting the [CPRA] seek to balance the public right to access to information, the government's need, or lack of need, to preserve confidentiality, and the individual's right to privacy. [Citations.]” ‘ [Citation.] [¶] The CPRA balances the dual concerns for privacy and disclosure by providing for various exemptions that permit public agencies to refuse disclosure of certain public records. (Gov. Code, §§ 6254–6255.) For instance, the CPRA does not require agencies to permit public inspection of records that are exempted or prohibited from public disclosure pursuant to federal or state law, including Evidence Code provisions relating to privilege. (Gov. Code, § 6254, subd. (k) (hereafter Gov. Code, § 6254(k).) Also, as discussed <i>post</i>, law enforcement investigatory files were, until recently, categorically exempted from the CPRA's general requirement of disclosure. (Gov. Code, § 6254, subd. (f) (hereafter Gov. Code, § 6254(f).) ‘ “In large part, these exemptions are designed to protect the privacy of persons whose data or documents come into governmental possession.” ‘ [Citation.] CPRA exemptions are narrowly construed [citation], and the agency opposing disclosure bears the burden of proving an exemption applies. [Citations.]”</p> <p><i>City of San Jose v. Superior Court</i> (2017) 2 Cal.5th 608, 627 (<i>San Jose</i>), states, “CPRA requests invariably impose some burden on public agencies. Unless a records request is overbroad or unduly burdensome, agencies are obliged to disclose all records they can locate ‘with reasonable effort.’ [Citation.] Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches, however. [Citations.] In general, the scope of</p>
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		<p>an agency's search for public records 'need only be reasonably calculated to locate responsive documents.' [Citations.]”</p> <p>Government Code section 7923.000 states, “Any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right under this division to inspect or receive a copy of any public record or class of public records.”</p> <p>Government Code section 7922.525, subdivision (a), states, “Public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record, exempted as otherwise provided.”</p> <p>Government Code section 7921.000 states, “In enacting this division, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.”</p> <p>Government Code section 7922.000 states, “An agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”</p> <p>Government Code section 7927.705 states, “Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of 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.”</p> <p>Government Code section 7923.600, subdivision (a), states, “Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require the disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.”</p>
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		<p>Penal Code section 13300 states in part, "(a) As used in this section: [¶] (1) 'Local summary criminal history information' means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100) of Title 3 of Part 4 pertaining to 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. . . . [¶] (h) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed. . . . [¶] (j) Notwithstanding any other law, a public prosecutor may, in response to a written request made pursuant to Article 1 (commencing with Section 7922.500) and Article 2 (commencing with Section 7922.525) of Chapter 1 of Part 3 of Division 10 of Title 1 of the Government Code, provide information from a local summary criminal history, if release of the information would enhance public safety, the interest of justice, or the public's understanding of the justice system and the person making the request declares that the request is made for a scholarly or journalistic purpose. If a person in a declaration required by this subdivision willfully states as true any material fact that person knows to be false, the person shall be subject to a civil penalty not exceeding ten thousand dollars (\$10,000). The requestor shall be informed in writing of this penalty. An action to impose a civil penalty under this subdivision may be brought by any public prosecutor and shall be enforced as a civil judgment. . . ."</p> <p>Penal Code section 13305, subdivision (a), states, "It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed."</p> <p>Penal Code section 13370 states in part, "(d)(1) Beginning March 1, 2027, every agency statewide shall collect every data element in subdivision (e) for cases in which a decision to reject charges or to initiate criminal proceedings by way of complaint or indictment has been made by that agency from that date forward. Each data element shall be collected according to the definitions provided in this section with any ambiguities to be resolved by the department in the data dictionary described in clause (i) of subparagraph (I) of paragraph (1) of subdivision (b) for uniform application statewide. Each data element shall be submitted in a format designated by the department to be the most appropriate and cost effective to carry out the objectives of this article. Any ambiguities regarding the substance or timing</p>
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of the collection described in this paragraph shall be resolved by the department by letter guidelines issued to all prosecution agencies upon consultation with the Prosecutorial Transparency Advisory Board. . . .”

Welfare and Institutions Code section 827, subdivision (a)(4), states, “A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to a person or agency, other than a person or agency authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with, and in the course of, a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.”

Welfare and Institutions Code section 827, subdivision (b)(1), describes the confidentiality of juvenile court records by stating in part, “While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential”

S.V. v. Superior Court (2017) 13 Cal.App.5th 1174, 1180 (S.V.), provides, “The Legislature has provided that ‘juvenile court records, in general, should be confidential.’ (§ 827, subd. (b)(1).) While most court records are available and open to the public for inspection, there are strong public policy reasons for keeping the records of juvenile proceedings confidential; among them, to protect children from adverse consequences and unnecessary emotional harm. [Citation.] A minor’s ‘juvenile case file’ generally contains all the various documents that are relevant in a juvenile case, including police and probation records. (Cal. Rules of Court, rule 5.552(a).) [¶] By statute, a minor’s confidential juvenile case file may routinely be accessed by certain designated parties such as ‘[c]ourt personnel,’ a ‘district attorney,’ and a ‘minor’s parent or guardian.’ (§ 827, subd. (a)(1).) The Legislature has also created a procedure allowing third parties to gain access to a minor’s confidential juvenile case file upon the filing of a petition with proper notice. (§ 827, subd. (a)(1)(P).) ‘If petitioner shows good cause, the court may set a hearing.’ (Cal. Rules of Court, rule 5.552(e)(2).) ‘In determining whether to authorize inspection or release of juvenile case files . . . the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.’ (Cal. Rules of Court, rule 5.552(e)(4).) If a court ‘determines that all or a portion

of the juvenile case file may be disclosed, the court must make appropriate orders’ (Cal. Rules of Court, rule 5.552(e)(7).) ‘The court may issue protective orders to accompany authorized disclosure, discovery, or access.’ (Cal. Rules of Court, rule 5.552(e)(8).)”

City of San Jose v. Superior Court (1999) 74 Cal.App.4th 1008, 1016, states, “The Act was modeled upon the federal Freedom of Information Act, (5 U.S.C. § 552 et seq., hereafter FOIA), and has a common purpose. [Citations.] Accordingly, federal ‘legislative history and judicial construction of the FOIA’ may be used in construing California’s Act. [Citation.]”

National Association of Criminal Defense Lawyers v. Department of Justice Executive Office for United States Attorneys (D.C. Cir. 2016) 844 F.3d 246, 251 (NACDL), states, “In ascertaining whether a document was prepared in anticipation of litigation, we have applied a ‘because of’ test, asking whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation.’ [Citations.] For that standard to be met, the attorney who created the document must have ‘had a subjective belief that litigation was a real possibility,’ and that subjective belief must have been ‘objectively reasonable.’ [Citation.]” “We face a very different situation here. A specific-claim requirement would make little sense in the context of the Blue Book. Unlike the audit documents at issue in *Coastal States*—which might well never be used (or be of use) in litigation—the Blue Book is *entirely* about the conduct of litigation. It is aimed directly for use in (and will inevitably be used in) litigating cases. Its disclosure therefore risks revealing DOJ’s litigation strategies and legal theories regardless of whether it was prepared with a specific claim in mind. It was prepared with the litigation of *all* charges and *all* cases in mind. The presence or absence of a specific claim or transaction might be a helpful consideration in the context of an agency compliance inquiry with no enforcement action or litigation necessarily on the horizon. But it is an unhelpful consideration here given that the Blue Book undoubtedly was created in anticipation of—and for use in—foreseeable litigation, i.e., federal criminal prosecutions.” (*Id.*, at p. 254; Italics in NACDL.) “NACDL next argues that the Blue Book falls outside the work-product privilege because it aims to advance a non-adversarial function—namely, education and training of prosecutors. NACDL advocates drawing a line between (unprivileged) documents that convey agency policy and (potentially privileged) documents that help the agency prevail in

court. Whatever the validity of such a line, it would not advance NACDL's cause because the Blue Book was designed to help federal prosecutors prevail in court on behalf of the government." (*Id.*, at p. 255.) "To be sure, the Blue Book contains certain information—such as 'compilations of cases,' Gerson Decl. ¶ 21 (J.A. 85)—that may come with a seeming air of neutrality if considered in strict isolation. But disclosure of the publicly-available information a lawyer has decided to include in a litigation guide—such as citations of (or specific quotations from) particular judicial decisions and other legal sources—would tend to reveal the lawyer's thoughts about which authorities are important and for which purposes. The Blue Book, for instance, does not include lists of cases in a vacuum. It instead 'offers compilations of cases that prosecutors can use to support different arguments' in litigation as well as '[c]ases illustrating potential pitfalls that prosecutors should avoid' when conducting discovery. *Id.* (J.A. 85-86). That sort of information squarely implicates the work-product privilege. (*Id.*, at p. 256.)

First Cause of Action—Writ of Mandate:

Issue No. 1—Exemption Claimed Under Government Code section 7927.05 Based on Penal Code section 13300:

As to the 2-4-21, 9-27-21, 2-18-22, and 7-8-22 requests for prosecutorial data, the Opposition states, ". . . publicly providing records from a criminal history database that can be used to identify the holder of the underlying record will, in general, violate the law. As such, these records are exempt from disclosure under the CPRA pursuant to Government Code section 7927.705." (Opposition; 8:11-13.) Petitioners' Reply in Support of Motion for Judgment on Verified Petition (Reply), filed on 4-28-23 under ROA No. 69, states, "Petitioners do not seek such identifying information." (Reply; 3:11.)

Although the 2-4-21 (through the attached 5-13-19 request), 2-18-22, and 7-8-22 requests (Petition; Exhibits A, J, and Q) seek statistical data, they also request the identity of the individuals that that are the subjects of those records. The 2-4-21 (through the attached 5-13-19 request) uses the term "unique identifiers." (Petition, Exhibit A.) The 2-18-22 request specifically seeks disclosure of the "Name of Defendant," "Court case number(s)," "Arresting agency number(s)," "Any other unique identifiers," and "Age or date of birth." (Petition; Exhibit J.) The 7-8-22 request seeks disclosure of the "Case number," "Defendants first and last names," and "Defendants' Age or Date of Birth." (Petition; Exhibit Q.)

The 2-4-21 (through the attached 5-13-19 request), 2-18-22, and 7-8-22 requests seek disclosure of the identity of the subjects of those records. To the extent that any of the requests for prosecutorial data sought information about the identity of the individuals that are the subjects of the requested information, the court finds that Respondent was justified in refusing to disclose those records under Penal Code sections 13300 and 13305. Thus, Respondent has carried its burden of proving that the Government Code section 7927.705 exemption applies based on Penal Code section 13305. The court also finds, however, finds that Penal Code section 13305 does not otherwise prevent the disclosure of statistical or research information provided that the identity of the subject of the records is not disclosed.

The Joint Statement states, "In an effort to resolve the dispute about whether the requests seek the production of local summary criminal history information, Petitioners have clarified in their Reply brief that they are seeking only anonymized data. . . . Respondents dispute this 'clarification' is properly raised without Petitioners amending their complaint and therefore dispute that any request for 'anonymized' data is properly before this Court." (Joint statement, 3:10-16.) The court notes that Respondent did not specifically identify Penal Code sections 13300 and 13305 in any of their responses to the requests at issue. (Petition; Exhibits B, D, L, R, and X.) As a result, Petitioners did not have an opportunity to limit their requests to "anonymized data." Since the court is considering the Opposition's contention regarding the applicability to Penal Code section 13300, the court will allow Petitioners to limit their requests to "anonymized data."

Issue No. 2—Exemption Claimed Under Government Code section 7927.705 Invoking the Provisions of Penal Code section 13370:

As to the application of Penal Code section 13370, it appears that some of the requested prosecutorial data is similar to the data elements in Penal Code section 13370, subdivision (e). Respondent has not demonstrated that the obligations imposed by recently enacted Penal Code section 13370 exempts Respondent from disclosing prosecutorial data under the CPRA even though the requested data may overlap with the data elements in Penal Code section 13370, subdivision (e).

Issue No. 3—Exemption Claimed Under Government Code section 7927.705 Invoking Attorney Work Product Doctrine and Deliberative Process Privilege:

Citizens for Ceres v. Superior Court (2013) 217 Cal.App.4th 889, 911 (*Citizens*), provides, “The attorney work-product doctrine provides two levels of protection for attorney work product—absolute protection and qualified protection: [¶] ‘(a) A writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances. [¶] ‘(b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in an injustice.’ (Code Civ. Proc., § 2018.030.) [¶] Work produced by an attorney’s agents and consultants, as well as the attorney’s own work product, is protected by the attorney work-product doctrine. [Citation.]”

In *Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1263, fn. 27 (*Humane Society*), the court explained, “California courts recognize a ‘deliberative process privilege’ under section 6255’s catchall exemption”

Times Mirror Company v. Superior Court (1991) 53 Cal.3d 1325, 1342 (*Times Mirror*) states, “The key question in every case is ‘whether the disclosure of materials would expose an agency’s decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.’ [Citation.] Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is ‘actually . . . related to the process by which policies are formulated’ [citation] or ‘inextricably intertwined’ with ‘policy-making processes.’ [Citation.]” (See also, *American Civil Liberties Union of Northern California v. Superior Court* (2011) 202 Cal.App.4th 55, 75-76.)

February 4, 2021 Request and February 28, 2021 Response (Petition; Exhibits A and B):

Item 1—The Tentative Ruling granted the Petition as to Item 1, which was a follow-up to item 2 in an earlier request dated 5-19-19, and seeks “information or guides related to felony diversion programs,” except as to material containing attorney work-product. (Gov. Code, § 7927.705 and Code Civ. Proc., 2018.030.) The Joint Matrix indicates that Item 1 is still in dispute. (Joint

	<p>Matrix, p. 2.) The court’s in camera review has resolved Item 1 as to the application of the attorney work product doctrine to the requested information. The court’s rulings during the in camera review are the court’s final rulings regarding the disclosure and/or non-disclosure of documents responsive to Item 1. Based on the court’s in camera rulings, the court GRANTS the Petition in part and DENIES the Petition in part as to this item.</p> <p>Item 2—The court’s Tentative Ruling (Tentative Ruling) denied the Petition as to Item 2, which was a follow-up to item 3 in the earlier request of 5-19-19, because Respondent—Orange County District Attorneys’ Office (OCDA) provided a substantive response. (Petition; Exhibit B.) The Joint Matrix indicates that Item 2 is no longer at issue “. . . because OCDA has produced all substantive responsive documents prior to litigation” (Joint Matrix, p. 2.) Since Item 2 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 3—The court’s Tentative Ruling granted the Petition as to Item 3, which was a follow-up to item 1 in the earlier request of 5-19-19, and sought updated “available data from 2019 and 2020” for “Records of prosecution data,” including unique identifiers, charges, and outcome. The Tentative Ruling found that Petitioners were entitled to receive “statistical or research information” obtained from OCDA’s records, as long as identifying information about the subjects of the records, e.g., names and birthdates, is not disclosed. (Penal Code, §§ 13300 and 13305). The Tentative Ruling also found that Respondent properly excluded information regarding information pertaining to “misdemeanor charges for minors” and “felony charges for minors” (Exhibit A) as nondisclosable. (Gov. Code, § 7927.705 and Welf. & Inst. Code, § 827.) Thus, the court denied the Petition as to this request to the extent it requests disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties resolved Item 3 following the court’s Tentative Ruling. (Joint Matrix, p. 3.) The Joint Matrix states, “Anonymized prosecutorial data was provided” (Joint Matrix, p. 3.) Since Item 3 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>September 27, 2021 Request and October 7, 2021 Response (Petition; Exhibits C and D):</p> <p>Item 1—The Tentative Ruling granted the Petition as to Item 1, which sought the number of prosecutions for Penal Code §§ 314(a), 372, 647(a) and (b)(1) and (2), 653.22, and 266(h) and (i), broken down by race and gender. The request does not seek any identifying</p>
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	<p>information about the subjects of the records. However, the disclosure should exclude information regarding juveniles. The Tentative Ruling denied the Petition as to this request to the extent it requested disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties resolved Item 1 following the court’s Tentative Ruling. (Joint Matrix, p. 4.) The Joint Matrix states, “Anonymized prosecutorial data was provided, as originally requested in the Item, with the exception of data relating to minors/juveniles” (Joint Matrix, p. 4.) Since Item 1 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 2—The Tentative Ruling granted the Petition as to Item 2, which sought the number of reports written involving sex work related prosecutions from 2019 to present, broken down by race and gender. The request did not seek any identifying information about the subjects of the records. The Tentative Ruling denied the Petition to the extent Item 2 requested disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties resolved Item 2 following the court’s Tentative Ruling. (Joint Matrix, p. 4.) The Joint Matrix states, “Responsive data was provided prior to litigation. And additional anonymized prosecutorial data was provided, as originally requested in the Item, with the exception of data relating to minors/juveniles” (Joint Matrix, p. 4.) Since Item 2 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 3—The Tentative Ruling granted the Petition as to this item, which sought “information or guides related to felony division programs,” except as to material containing attorney work-product. (Gov. Code, § 7927.705 and Code Civ. Proc., § 2018.030.) The Joint Matrix indicates that Item 3 is no longer at issue “. . . because OCDA produced all substantive responsive documents prior to litigation and because Petitioners identified only prosecutorial data as the only disputed items” (Joint Matrix, p. 5.) Since Item 3 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 4—The Tentative Ruling granted the Petition as to this item, which sought “All documents regarding the presence or absence of human trafficking units within the District Attorney’s office from 2019 to present” as well as “[t]he budgets of such units, and the number of attorneys assigned to them from 2019 to the present.” The response referred Petitioners to “publicly available records that are responsive to this request.” It also stated that</p>
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the units had between three and six attorneys from 2019 and that the budget for such units was not separate from the rest of the office. The Joint Matrix indicates that Item 4 is no longer at issue “. . . because OCDA produced all substantive responsive documents prior to litigation and because Petitioners identified only prosecutorial data as the only disputed items . . .” (Joint Matrix, p. 5.) Since Item 4 is no longer at issue, the court **DENIES** the Petition as **MOOT** as to this item.

February 18, 2022 Request and March 14, 2022 Response (Petition; Exhibits J and L):

Item 1—The Tentative Ruling granted the Petition as to Item 1 which sought “Unique identifiers associated with each defendant, case, and arrest.” Petitioners are entitled to receive “statistical or research information” obtained from OCDA’s records, as long as identifying information about the subjects of the records, e.g., names and birthdates, is not disclosed. (Penal Code, §§ 13300 and 13305). The Tentative Ruling denied the Petition as to Item 1 to the extent it requested disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties resolved Item 1 following the court’s Tentative Ruling. (Joint Matrix, p. 6.) The Joint Matrix states, “Anonymized prosecutorial data was provided, with the exception of data relating to minors/juveniles or information protected by WIC 827.” (Joint Matrix, p. 6.) Since Item 1 is no longer at issue, the court **DENIES** the Petition as **MOOT** as to this item.

Item 2—The Tentative Ruling granted the Petition as to this item which sought, “Demographic and other information concerning each defendant.” Petitioners are entitled to receive “statistical or research information” obtained from OCDA’s records, as long as identifying information about the subjects of the records, e.g., names and birthdates, is not disclosed. (Penal Code, §§ 13300 and 13305). The Tentative Ruling denied the Petition as to this request to the extent it requested disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties resolved Item 2 following the court’s Tentative Ruling. (Joint Matrix, p. 6.) The Joint Matrix states, “Anonymized prosecutorial data was provided, with the exception of data relating to minors/juveniles or information protected by WIC 827.” (Joint Matrix, p. 6.) Since Item 2 is no longer at issue, the court **DENIES** the Petition as **MOOT** as to this item.

Item 3—The Tentative Ruling granted the Petition as to Item 3 which sought information regarding each arrest, including zip code of arrest, date of arrest, and charge

	<p>identified by law enforcement. Item 3 did not seek identifying information about the subjects of the records sought. (Penal Code, §§ 13300 and 13305). The Tentative Ruling denied the Petition as to Item 3 to the extent it requested disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties resolved Item 3 following the court’s Tentative Ruling. (Joint Matrix, p. 7.) The Joint Matrix states, “Anonymized prosecutorial data was provided, with the exception of data relating to minors/juveniles or information protected by WIC 827.” (Joint Matrix, p. 7.) Since Item 3 is no longer at issue, the court DENIES the Petition as MOOT at to this item.</p> <p>Item 4—The Tentative Ruling granted the Petition as to this item which sought identification of ADA assigned to the case. Item 4 did not seek identifying information about the subjects of the records sought. (Penal Code, §§ 13300 and 13305). The Joint Matrix indicates that the parties resolved Item 4 following the court’s Tentative Ruling. (Joint Matrix, p. 7.) The Joint Matrix states, “Anonymized prosecutorial data was provided . . . with the exception of data relating to minors/juveniles or information protected by WIC 827.” (Joint Matrix, p. 7.) Since Item 4 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 5—The Tentative Ruling denied the Petition as to Item 5 which sought records regarding decisions to decline to prosecute. By its terms, this item sought records that are exempt and not subject to disclosure under Government Code section 7927.705, Code of Civil Procedure section 2018.030, and the deliberative process privilege. (Gov. Code, § 7922.000.) The Joint Matrix indicates that the parties resolved Item 5 following the court’s Tentative Ruling. (Joint Matrix, p. 8.) The Joint Matrix states, “Following clarification from Petitioners that the February 18, 2022 Request sought prosecutorial data only, and not records relating to decisionmaking as originally interpreted by the Court in its August 21, 2023 Tentative Ruling, Respondents agreed that they would produce the data in anonymized form.” (Joint Matrix, p. 8.) Since Item 5 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 6—The Tentative Ruling denied the Petition as to Item 6 which sought identification about diversion offers and decisions, including formal and informal offers and decisions, and whether the offers were accepted and completed. By its terms, Item 6 sought records that are exempt and not subject to disclosure under Government Code section 7927.705, Code of Civil Procedure section 2018.030, and the deliberative process privilege. (Gov.</p>
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	<p>Code, § 7922.000.) The Joint Matrix indicates that the parties resolved Item 6 following the court’s Tentative Ruling. (Joint Matrix, p. 9.) The Joint Matrix states, “Following clarification from Petitioners that the February 18, 2022 Request sought prosecutorial data only, and not records relating to decisionmaking as originally interpreted by the Court in its August 21, 2023 Tentative Ruling, Respondents agreed that they would produce the data in anonymized form.” (Joint Matrix, p. 9.) Since Item 6 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 7—The Tentative Ruling granted the Petition as to Item 7 which sought information regarding the charges filed, including statutes, severity, enhancements, and maximum sentence. Item 7 did not seek identifying information about the subjects of the records sought. (Penal Code, §§ 13300 and 13305). The Tentative Ruling denied the Petition as to this request to the extent it requested disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties resolved Item 7 following the court’s Tentative Ruling. (Joint Matrix, p. 9.) The Joint Matrix states, “OCDA does not track maximum sentence. [¶] But to the extent OCDA does track the other information requested, anonymized prosecutorial data was provided, with the exception of data relating to minors/juveniles or information protected by WIC 827.” (Joint Matrix, p. 9.) Since Item 7 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 8—The court DENIES the Petition as to this item, which seeks records regarding “[f]actors considered in deciding charges to file and level of charges.” By its terms, this item seeks records that are exempt and not subject to disclosure under Government Code section 7927.705, Code of Civil Procedure section 2018.030, and the deliberative process privilege. (Gov. Code, § 7922.000.) The Joint Matrix indicates that the “. . . parties do not contest this Court’s August 21, 2023 Tentative Ruling” as to Item 8 (Joint Matrix, p. 10.)</p> <p>Item 9—The Tentative Ruling granted the Petition as to Item 9 which sought bail and custody information except as to material underlying the decisions about the detention orders sought, such as attorney opinions and advice, personal impressions, legal research, theories and conclusions. (Gov. Code, § 7927.705 and Code Civ. Proc., § 2018.030.) Under Penal Code section 13305, only “statistical or research information” obtained from OCDA’s records is subject to disclosure as to Item 9. The Joint Matrix indicates that the parties resolved Item 9 following the court’s Tentative Ruling. (Joint Matrix, p. 10.) The</p>
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	<p>Joint Matrix states, "OCDA does not track bail amount; detention orders sought; whether bail was set or denied; whether individuals were released on bail or not. [¶] But to the extent OCDA does track the other information requested, anonymized prosecutorial data was provided, with the exception of data relating to minors/juveniles or information protected by WIC 827." (Joint Matrix, p. 10.) Since Item 9 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 10—The Tentative Ruling denied the Petition as to Item 10 which sought information about plea offers. This item is sufficiently broad to include disclosure of records protected by Code of Civil Procedure section 2018.030 and the deliberative process privilege. The records sought by Item 10 are exempt under Government Code sections 7922.000 and 7927.705. The Joint Matrix indicates that the parties resolved Item 10 following the court's Tentative Ruling. (Joint Matrix, p. 11.) The Joint Matrix states, "Following clarification from Petitioners that the February 18, 2022 Request sought prosecutorial data only, and not records relating to decisionmaking as originally interpreted by the Court in its August 21, 2023 Tentative Ruling, Respondents agreed that they would produce the data in anonymized form to the extent they possessed it." (Joint Matrix, p. 11.) Since Item 10 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 11—The Tentative Ruling granted the Petition as to Item 11 which sought information regarding charges of conviction, dismissed charges, and sentences. Item 11 did not seek identifying information about the subjects of the records sought. (Penal Code, §§ 13300 and 13305). The Tentative Ruling denied the Petition as to Item 11 to the extent it requested disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties resolved Item 11 following the court's Tentative Ruling. (Joint Matrix, p. 11.) The Joint Matrix states, "Anonymized prosecutorial data was provided, with the exception of data relating to minors/juveniles or information protected by WIC 827." (Joint Matrix, p. 11.) Since Item 11 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 12—The Tentative Ruling granted the Petition as to Item 12 which sought information about defense counsel. Item 12 did not seek identifying information about the subjects of the records sought. (Penal Code, §§ 13300 and 13305). The Tentative Ruling denied the Petition as to Item 12 to the extent it requested disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties</p>
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	<p>resolved Item 11. (Joint Matrix, p. 12.) The Joint Matrix states, "OCDA does not track defense attorney information." (Joint Matrix, p. 12.) Since Item 12 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 13—The Tentative Ruling granted the Petition as to Item 13 which sought demographic information about crime victims, including race, ethnicity and gender/sex. Item 13 did not seek identifying information about the subjects of the records sought. (Penal Code, §§ 13300 and 13305). The Tentative Ruling denied the Petition as to Item 13 to the extent it requested disclosure of information protected by Welfare and Institutions Code section 827. The Joint Matrix indicates that the parties resolved Item 13 following the court's Tentative Ruling. (Joint Matrix, p. 12.) The Joint Matrix states, "OCDA does not track race, ethnicity, gender/sex of victims. [¶] But to the extent OCDA does track the other information requested, anonymized prosecutorial data was provided, with the exception of data relating to minors/juveniles or information protected by WIC 827." (Joint Matrix, p. 12.) Since Item 13 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>Item 14—The court DENIES the Petition as to this item, which seeks information about recommendations regarding parole. This item is sufficiently broad to include disclosure of records protected by Code of Civil Procedure section 2018.030 and the deliberative process privilege. The records sought by this request are exempt under Government Code sections 7922.000 and 7927.705. The Joint Matrix indicates that the ". . . parties do not contest this Court's August 21, 2023 Tentative Ruling" as to Item 10 (Joint Matrix, p. 12.)</p> <p>Item 15—The court DENIES the Petition as to this item which seeks information about recommendations regarding pardons and commutations. This item is sufficiently broad to include disclosure of records protected by Code of Civil Procedure section 2018.030 and the deliberative process privilege. The records sought by this request are exempt under Government Code sections 7922.000 and 7927.705. The Joint Matrix indicates that the ". . . parties do not contest this Court's August 21, 2023 Tentative Ruling" as to Item 15 (Joint Matrix, p. 13.)</p> <p>July 8, 2022 Request and July 18, 2022 Response (Petition; Exhibits Q and R):</p> <p>Item 1—The Tentative Ruling granted the Petition as to Item 1, which sought "all publicly disclosable information</p>
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for every criminal case in your case management system filed in adult court” . . . “for all cases filed on or after January 1, 2000.” Petitioners are entitled to receive “statistical or research information” obtained from OCDA’s records, as long as identifying information about the subjects of the records, e.g., names and birthdates, is not disclosed. (Penal Code, §§ 13300 and 13305). By its terms, this item is limited to information about cases filed in adult court, and Welfare and Institutions Code section 827 does not apply. The Joint Matrix indicates that the parties resolved Item 1 following the court’s 8-22-23 Tentative Ruling. (Joint Matrix, p. 14.) The Joint Matrix states, “To the extent OCDA tracks this information, anonymized prosecutorial data was provided, with the exception of data relating to minors/juveniles or information protected by WIC 827.” (Joint Matrix, p. 14.) Since Item 1 is no longer at issue, the court **DENIES** the Petition as **MOOT** as to this item.

July 23, 2021 Request and August 19, 2021 Response (Exhibits V and X):

The 7-23-21 request contained a “renewal” of two earlier requests dated 5-13-19 and 7-29-19. (Petition; Exhibit V.) The OCDA’s 8-19-21 response followed the numbering as to the items sought by the “renewal” regarding the 5-13-19 request. (Petition; Exhibit X.) The OCDA’s 8-19-21 response renumbered the items in the 7-29-19 request as Items 7 and 8. (Petition; Exhibit X.) The OCDA’s 8-19-21 response renumbered the items in the 7-23-21 request as Items 9, 10, 11, and 12 with subparts. (Petition; Exhibit X.)

As to this request, the declaration from OCDA’s attorney, filed on 3-27-23 under ROA No. 61, indicates that the OCDA disclosed numerous documents on 8-19-21. (Kim Decl., ¶ 15, and Petition at Exhibit X.) This declaration also shows that the OCDA withheld documents or produced documents with redactions. (Kim Decl., ¶ 7 and Exhibit 1.) The attorney for the OCDA attached a privilege log regarding the documents that the OCDA withheld or produced with redactions. (Kim Decl., ¶ 7 and Exhibit 1.) The privilege log is sufficiently specific to show what was redacted and the reason for the redaction. (Kim Decl., ¶ 7 and Exhibit 1.)

The court’s Tentative Ruling previously addressed each of the items in the 5-13-19 and 7-29-19 requests as renewed by the 7-23-21 request. The Joint Matrix addresses only the additional items listed on pages 2 and 3 of the 7-23-21 request. The court interprets the Joint Matrix as only requesting rulings on the additional items listed on pages 2 and 3 of the 7-23-21 request.

		<p>Therefore, the court will not address the items listed in the 5-23-19 and 7-29-19 requests as renewed by the 7-23-21 request.</p> <p>Item 1 in the Request of July 23, 2021 (renumbered as Item 9 in the response)—The Tentative Ruling granted the Petition as to Item 1 which sought “Any and all written policies, memoranda, or guidance documents” regarding diversion eligibility and programming, custody and bail recommendations, charging recommendations or decisions, compliance with <i>Brady v. Maryland</i>, jury selection, sentencing recommendations, prosecution of minors, parole recommendations, pardon and commutation recommendations, reports to the State Bar relating to discipline and prosecutorial misconduct, data collection relating to criminal matters, and referral of cases for federal prosecution except as to records including information protected by Code of Civil Procedure section 2018.030 and the deliberative process privilege. The Joint Matrix indicates that Item 1 is unresolved based on documents subject to claims of exemption by Respondent. (Joint Matrix, p. 15.) The court’s in camera review has resolved Item 1 as to the application of the attorney work product doctrine to the requested information. The court’s rulings during the in camera review are the court’s final rulings regarding the disclosure and/or non-disclosure of documents responsive to Item 1. Based on the court’s in camera rulings, the court GRANTS the Petition in part and DENIES the Petition in part as to this item.</p> <p>Item 2 in the Request of July 23, 2021 (renumbered as item 10 in the response)—The Tentative Ruling granted the Petition as to Item 2 which sought “Any and all policies regarding training as well as training materials . . .” which are mandatory or optional for prosecutors and relate to jury selection, implicit bias, and presentation of evidence from social media, except as to records including information protected by Code of Civil Procedure section 2018.030 and the deliberative process privilege. The Joint Matrix indicates that Item 2 is unresolved based on documents subject to claims of exemption by Respondent. (Joint Matrix, p. 16.) The court’s in camera review has resolved Item 2 as to the application of the attorney work product doctrine to the requested information. The court’s rulings during the in camera review are the court’s final rulings regarding the disclosure and/or non-disclosure of documents responsive to Item 2. Based on the court’s in camera rulings, the court GRANTS the Petition in part and DENIES the Petition in part as to this item.</p>
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	<p>Item 3 in the Request of July 23, 2021 (renumbered as item 11 in the response)—The Tentative Ruling granted the Petition as to Item 3 which sought records concerning implementation of the Racial Justice Act, communications about the Racial Justice Act, and trainings related to the Racial Justice Act except as to records including information protected by Code of Civil Procedure section 2018.030 and the deliberative process privilege. The Joint Matrix indicates that Item 3 is unresolved based on documents subject to claims of exemption by Respondent. (Joint Matrix, p. 17.) The court’s in camera review has resolved Item 3 as to the application of the attorney work product doctrine to the requested information. The court’s rulings during the in camera review are the court’s final rulings regarding the disclosure and/or non-disclosure of documents responsive to Item 3. Based on the court’s in camera rulings, the court GRANTS the Petition in part and DENIES the Petition in part as to this item.</p> <p>Item 4 in the Request of July 23, 2021 (renumbered as item 12 in the response)—The Tentative Ruling denied the Petition as to Item 12, which seeks “All investigations into <i>Batson-Wheeler</i> motions” because OCDA provided a substantive response to this item. The response identifies three specific unpublished appellate cases in which motions were filed and then states that no additional responsive documents exist. (Petition; Exhibit X.) The Joint Matrix indicates that Item 4 is no longer at issue because “. . . OCDA produced all substantive responsive documents prior to litigation.” (Joint Matrix, p. 17.) Since Item 4 is no longer at issue, the court DENIES the Petition as MOOT as to this item.</p> <p>On 12-19-24 under ROA No. 236, the court issued a Minute Order describing the results of its in camera review.</p> <p>The court ordered disclosure of the following documents (some portions of some of these documents were protected by the attorney work product doctrine/Gov. Code, § 7922.000): 1, 2, 5, 9, 10, 13, 14.1, 16, 17, 19, 20, 21, 22, 23, 29, 30, 32.2, 34, 35, 37, 44, 50, 51, 60, 61, 62, 63, 64, 65, 66, 67, 75, 78, 86, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111.0, 111.3, 111.4, 115, 116, 117, 118, 119.1, 119.2, 120.1, 120.2, 120.3, 121, 122.1, 122.2, 122.3, 123, 124, 127.1, 136, 138, 142, 143, 144.2, 144.3, 144.4, 146.2, 148, 150, 153, 155, 157, 158, 159, 165, 168, 170, 171.2, 177, 179.2, 181.2, 181.3, 181.4, 184.1, 184.2, 184.3, 187.2, 187.3, 187.4, 188.1, 188.2, 188.3, 188.4, 193, 194, and 195.</p>
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		<p>The court ordered nondisclosure of the following documents (some portions of some of these documents were not protected by the attorney work product doctrine/Gov. Code, § 7922.000 and the court ordered disclosure of these portions): 3, 4, 6, 7, 8, 11, 12, 14.2, 15, 18, 24, 26, 27, 28, 31, 32, 32.1, 33, 36, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 52, 53, 54, 55, 56, 57, 58, 59, 68, 69, 70, 71, 72, 73, 74, 76, 77, 79, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 94, 112, 113, 114, 125, 126, 127.2, 127.3, 128, 129, 130, 131, 132, 133, 134, 135, 137, 139, 140, 141.1, 144.1, 145.1, 145.2, 146.1, 146.4, 147.1, 147.6, 149, 151, 152, 154, 156, 160, 161, 162, 163, 164, 166.1, 166.2, 166.3, 167, 169, 171.1, 172, 173, 174, 175, 176, 178, 179.1, 180, 181.1, 182, 183, 185, 186, 187.1, 189, 190.1, 190.2, 191, 192, and 196.</p> <p>The parties withdrew 25 based on the Joint Waiver of Disqualification filed on 8-26-24 under ROA No. 186.</p> <p>As to Document No. 114, the court found that the attorney work product doctrine applied to this document. Petitioners note that Respondent did not assert the attorney work product doctrine as an exemption to the Public Records Act. Petitioners' Supplemental Brief Regarding Attorney Work Product Privilege (PSupp.), filed on 1-16-25 under ROA No. 241, states, "Petitioners respectfully contested this determination, arguing that the Court could not order such a withholding where the agency neither asserted the privilege itself nor identified in its log an attorney or relevant case to justify the exemption." (PSupp.; 2:17-20.) Respondent's Statement Re Applicability of Work Product Doctrine to ARN 114 (RSupp.), filed on 1-7-25 under ROA No. 239, provides, "Is it therefore entirely appropriate (and wholly consistent with the other findings made by this Court in relation the documents contained in the Annex of Disputed Records) for this Court, following an in camera review, to apply the protections of the Work Product Doctrine to ARN 114, regardless of whether OCDA expressly asserted the Work Product Doctrine in its letter response to Petitioners' July 23, 2021, CPRA request." (RSupp.; 4:13-17.) The issue is whether the court can independently apply exemptions to document withheld by a public agency that the public agency did not assert.</p> <p>Here, the parties do not appear to dispute that Respondent did not assert the attorney work product doctrine to support the exemption under Government Code section 7927.705 as to Document No. 114. (See Annex of Disputed Records (Annex) filed on 4-8-24 under ROA No. 136.) Government Code section 7922.000 states, "An agency shall justify withholding any record by demonstrating that the record in question is exempt</p>
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under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” Government Code section 7922.000 places the burden on the agency to justify an asserted exemption. Under Government Code section 7922.000, the burden is not on the court to search for an exemption that may apply to a document that the agency did not assert. Since Respondent did not assert the attorney work product doctrine as to Document No. 114, the court does not have the authority to raise that doctrine as an exemption. Therefore, the court orders disclosure of Document No. 114.

At the hearing on 12-19-19, Petitioners requested that the court describe its reasoning regarding the disclosure and/or nondisclosure of the documents listed above based on the court’s in camera review of those documents. The court will provide general guidelines as to its reasoning for the parties guidance. However, the court’s rulings during the in camera review are the court’s final rulings as to each document reviewed. These general guidelines do not supersede the court’s rulings during the in camera review as to each document. Based on this qualification, the court provides the following general guidelines:

1. In general, in applying the attorney work product doctrine, the court relied on *National Association of Criminal Defense Lawyers v. Department of Justice Executive Office for United States Attorneys* (D.C. Cir. 2016) 844 F.3d 246, 251 as to documents prepared by an attorney from the OCDA for training regarding the litigation of issues in criminal cases;
2. In general, the court ordered disclosure of documents that were not prepared by the OCDA;
3. In general, the court ordered disclosure of documents prepared by an attorney of the OCDA that were presented to an audience that included attendees outside of the OCDA; and
4. The court does not recall applying the deliberative process privilege to any of the documents reviewed.

In summary, the court **GRANTS** the Writ of Mandate in part, **DENIES** the Writ of Mandate in part, and **DENIES** the Writ of Mandate in part as **MOOT** as described above.

Second Cause of Action—Declaratory Relief:

The Joint Matrix requests the court to “. . . issue declaratory relief as to whether Petitioners have met their burden in establishing that Respondents engaged in a practice or policy of withholding prosecutorial data requested by members of the public in violation of the CPRA. . . .” (Joint Matrix; 18:10-15.)

Petitioners’ Supplemental Brief Regarding Taxpayer Claim for Declaratory Judgment (PSupp. 1), filed on 2-7-25 under ROA No. 246, states, “Petitioners brought this claim pursuant to the Taxpayer Act, Code of Civil Procedure § 526a, which authorizes taxpayers to bring a lawsuit to, among other things, ‘prevent policies and practices that violate[] the California Public Records Act [PRA].’ . . . Specifically, the claim challenges OCDA’s unlawful ‘blanket policy’ of refusing to produce electronically stored data in response to PRA requests from Petitioners and members of the media and general public.” (PSupp. 1; 3:5-10.)

Respondent’s Brief in Response to Petitioners’ Supplemental Brief Re Taxpayer Claim for Declaratory Judgment (Respondent’s Brief), filed on 2-19-25 under ROA No. 248, asserts, “Here, while there is generally no dispute regarding the propriety of the declaratory relief allegations as *pled*, Petitioners here never established with admissible evidence that, prior to the present lawsuit, Respondent had a policy or practice relating to responding to Public Records Act requests such as the CPRA requests at issue in this case. Petitioners never introduced facts to support their allegations other than an unauthenticated exhibit (that Respondent objected to), which purportedly reflected the entirety of every CPRA request made to OCDA during a particular timeframe. (Objections to Evidence, ROA #63.) Even if the exhibit did constitute admissible evidence, Petitioners do not offer any evidence or argument to tie the exhibit to their taxpayer claims. There is simply no evidence to suggest that the finite numbers contained in the exhibit over a short period of time rise to the level of a policy or practice.” (Respondent’s Brief; 4:8-17.)

Code of Civil Procedure section 526a, subdivision (a), states in part, “An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the

commencement of the action, has paid, a tax that funds the defendant local agency, including but not limited to, the following: [¶] (1) An income tax”

County of Santa Clara v. Superior Court (2009) 171 Cal.App.4th 119, 129 (*Santa Clara*), provides, “ ‘Code of Civil Procedure section 526a permits a taxpayer to bring an action to restrain or prevent an illegal expenditure of public money. No showing of special damage to a particular taxpayer is required as a requisite for bringing a taxpayer suit. [Citation.] Rather, taxpayer suits provide a general citizen remedy for controlling illegal governmental activity. [Citation.] [¶] Citizen suits may be brought without the necessity of showing a legal or special interest in the result where the issue is one of public right and the object is to procure the enforcement of a public duty. [Citation.] Citizen suits promote the policy of guaranteeing citizens the opportunity to ensure that governmental bodies do not impair or defeat public rights.’ [Citation.] [¶] ‘[T]he existence of individuals directly affected by the challenged governmental action . . . has not been held to preclude a taxpayers’ suit. Numerous decisions have affirmed a taxpayer’s standing to sue despite the existence of potential plaintiffs who might also have had standing to challenge the subject actions or statutes.’ [Citation.] The purpose of Code of Civil Procedure section 526a is to “enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement.” ’ [Citation.] Code of Civil Procedure section 526a is construed liberally to support this purpose. [Citation.]”

Connerly v. State Personnel Board (2001) 92 Cal.App.4th 16, 29 (*Connerly*), explains, “Taxpayer suits and citizen suits are closely related concepts of standing. [Citation.] The chief difference is a taxpayer suit seeks preventative relief, to restrain an illegal expenditure, while a citizen suit seeks affirmative relief, to compel the performance of a public duty. [Citation.] Where standing appears under either rule, the action may proceed regardless of the label applied by the plaintiff. [Citation.]”

Sander v. Superior Court (2018) 26 Cal.App.5th 651, 669 (*Sander*), explains, “No one disputes that public agencies can be required to gather and segregate disclosable electronic data from nondisclosable exempt information, and to that end perform data compilation, extraction or computer programming if ‘necessary to produce a copy of the record.’ (§ 6253.9, subd. (b).) But segregating and extracting data is a far cry from requiring public agencies to undertake the extensive ‘manipulation or restructuring of the substantive content of a record’ [citation] such as

Petitioners propose here. Certainly, they have not identified any instances in which courts have compelled a public agency to undertake programming that would assign new or different values to existing data, replace groups of data with median figures or variables, and collapse and band data into newly defined categories. [¶] In short, the trial court got the law right. There is no doubt that a government agency is required to produce non-exempt responsive computer records in the same manner as paper records and can be required to compile, redact or omit information from an electronic record. [Citations.] But it cannot be required to create a new record by changing the substantive content of an existing record or replacing existing data with new data. The trial court's application of this distinction was entirely correct." (Footnote 9 omitted.)

Center for Investigative Reporting v. United States Department of Justice (9th Cir. 2021) 14 F.4th 916, 937 (*Center*), states, "Although FOIA requires federal agencies to make 'reasonable efforts to search for' the records requested, [citations] 5 U.S.C. § 552(a)(3)(C), it does not require agencies to create new records, [citations]. However, 'the burden is on the agency to demonstrate, not the requester to disprove, that the materials sought are not [currently existing] agency records.' [Citation.]"

The court finds that the evidence is sufficient to demonstrate that Respondent had a policy of not complying with the Public Records Act regarding requests that required extraction of data from existing records. Exhibit LL is a 3-2-21 email from OCDA employee Denise Hernandez to Kimberley Edds. (MacLean Decl., ¶ 25 and Exhibit LL.) The 3-2-21 email states, "To confirm our conversation, going forward we will not prepare records that are not already in existence in response to a Public Records Act (PRA) request. This applies and includes data extraction requests such as the one here from VOC." (MacLean Decl., ¶ 25 and Exhibit LL.) This email indicates that Respondent's intended course of action, as of 3-2-21, was to refuse to provide nonexempt, responsive records if doing so required the extraction of data from existing records. This approach does not comply with *Sander*. *Sander* allows for the extraction of disclosable data even from nondisclosable exempt information.

Therefore, the court **GRANTS** Petitioner's request for declaratory relief, in part, and declares that the 3-2-21 email (MacLean Decl., ¶ 25 and Exhibit LL) does not comply with *Sander v. Superior Court* (2018) 26 Cal.App.5th 651 because it indicates that Respondent has

		<p>a policy that it will not comply with CPRA requests for data extraction from existing records.</p> <p>The court finds that the evidence is insufficient to demonstrate that Respondent failed to promptly produce disclosable records, and has a pattern or practice of doing so as requested in paragraph 88 of the Petition. As discussed above, some of the requests at issue in the Petition requested prosecutorial data related to minors. The court found that Respondent’s withholding of prosecutorial data protected by Welfare and Institutions Code section 827 was proper. The withholding of prosecutorial data under Welfare and Institutions Code section 827 does not necessarily show a practice or policy of withholding prosecutorial data. As to Exhibit MM (MacLean Decl., ¶ 26), Exhibit MM contains several disclosures by Respondent. For example, the following responses show disclosure of information by Respondent: (1) The 10-3-22 Response (MacLean Decl., ¶ 51 and Exhibit MM, p. 99); (2) 8-19-21 Response (MacLean Decl., ¶ 26 and Exhibit MM, pp. 118-128); (3) 10-7-21 Response (MacLean Decl., ¶ 26 and Exhibit MM, pp. 131-133); (4) 5-26-22 Response (MacLean Decl., ¶ 52 and Exhibit MM, p. 135); (5) 11-28-22 Response (MacLean Decl., ¶ 57 and Exhibit MM, pp. 165-166); and (6) 8-30-21 Response (MacLean Decl., ¶ 58 and Exhibit MM, pp. 173-174).</p> <p>The court recognizes that Exhibit MM contains numerous responses that state, “We do not have a responsive record to your request. The Public Records Act applies to existing records and does not require a public agency to create a record that does not exist” or “Your request calls for a compilation of information” (For example, see Exhibit MM at pp. 033-037, 040, 052, 066, 071-075, 078-079, and 105.) Petitioners provided the records in Exhibit MM for the purpose of showing that Respondent engaged in a pattern or practice of failing to comply with the CPRA. Exhibit MM does not support that Respondent has a pattern or practice of failing to comply with the CPRA because Exhibit MM does not show that the requesting parties challenged Respondent’s compliance as to their CPRA requests. The records in Exhibit MM are not in dispute in terms of whether Respondent complied with the CPRA based on Respondent’s stated reasons in support of its justifications for nondisclosure as to each of the requests in Exhibit MM. Since the records in Exhibit MM are not in dispute in terms of Respondent’s compliance with the CPRA, the issue of compliance as to the requests in Exhibit MM is not before the court. Therefore, the court DENIES Petitioners’ request for declaratory relief as requested in paragraph 88 of the Petition.</p>
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Third Cause of Action—Injunctive Relief:

The Petition also seeks injunctive relief. The Petition states, "An injunction should issue against OCDA prohibiting this conduct and compelling prospective compliance with the PRA." (Petition; ¶ 97.) *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 332-333, provides, "Preliminarily, the express codified purpose of a prohibitory injunction is to prevent future harm to the applicant by ordering the defendant to refrain from doing a particular act. [Citation.] Consequently, injunctive relief lies only to prevent threatened injury and has no application to wrongs that have been completed. [Citation.] It should neither serve as punishment for past acts, nor be exercised in the absence of any evidence establishing the reasonable probability the acts will be repeated in the future. Indeed, a change in circumstances at the time of the hearing, rendering injunctive relief moot or unnecessary, justifies denial of the request. [Citations.] Moreover, not only can injunctive relief be denied where the defendant has voluntarily discontinued the wrongful conduct [citation], there exists no equitable reason for ordering it where the defendant has in good faith discontinued the proscribed conduct (*People v. National Association of Realtors* (1981) 120 Cal.App.3d 459, 476, 174 Cal.Rptr. 728). 'Thus, to authorize the issuance of an injunction, it must appear with reasonable certainty that the wrongful acts will be continued or repeated.' [Citation.]" *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084, states, "An injunction cannot issue in a vacuum based on the proponents' fears about something that may happen in the future. It must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity."

Here, the court has granted the Petition in part and denied it in part as to the first cause of action. Petitioners are not subject to future harm because the court has resolved the issues pertaining to the Public Records Act requests at issue. Although Petitioners may have concerns that Respondent will not comply with a future request under the Public Records Act, the court can only address the requests that are actually at issue. Injunctive relief is unnecessary as to the parts of the Writ of Mandate that the court has granted because the court anticipates issuing a judgment requiring the Respondent to comply with the court's rulings. Therefore, the court **DENIES** Petitioners' request for injunctive relief.

		<p>Whether the County of Orange is a Proper Party?:</p> <p>The Opposition and Reply disputed whether the County of Orange is a proper party to this action. (Opposition; 14:12-23 and Reply; 10:13-19.) The court notes that this issue is no longer in dispute because Petitioners filed a Request for Dismissal as to the County of Orange on 8-22-24 under ROA No. 182.</p> <p>Conclusion:</p> <p>In summary, Petitioners’ (Chicanxs Unidxs De Orange County, American Civil Liberties Union of Northern California, and American Civil Liberties Union of Southern California) Motion for Judgment on the Verified Petition for Writ of Mandate and Complaint, filed on 1-26-23 under ROA No. 53, is GRANTED in part, DENIED in part, and DENIED in part at MOOT as set forth above.</p> <p>Petitioners are to give notice.</p>
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