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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 information³ 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

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.)**

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).)