

Law Office of  
Michael T. Risher

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Xavier Becerra  
California Attorney General  
California Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Attn: Director Barry Miller  
Law Enforcement Bureau  
[PC296.PC296@doj.ca.gov](mailto:PC296.PC296@doj.ca.gov)

Dear Sirs:

I am writing on behalf of [REDACTED] to ask about the California Department of Justice's implementation of California's DNA collection program. As you know, this program authorizes California law-enforcement agencies to take DNA samples from felony arrestees and to send those samples to the state DNA laboratory for analysis and inclusion in the CODIS database. It also requires those agencies to inform the state DNA laboratory within two years of whether a person whose sample they have submitted remains a suspect in a criminal investigation; samples taken from people who are no longer suspects must be expunged unless there is a separate reason to retain them. *See* Penal Code § 297(c)(2).

We are concerned that state and local agencies may not be complying with Penal Code § 297(c)(2) and we ask you to take whatever steps are needed to bring these agencies into immediate compliance, and also that you inform us of this.<sup>1</sup>

In addition, we are requesting records containing the following information under the California Public Records Act:

1. The total number of known-offender samples currently in California's DNA database.

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<sup>1</sup> If law-enforcement agencies are failing to comply with this provision, your Department should issue regulations requiring them to do so and specifying whatever procedures are necessary to ensure that they provide the DNA Lab with appropriate and timely information about people who are no longer suspects, in compliance with the law. *See* Cal. Const. art. V § 13; Penal Code § 295(h). If the DNA Lab is failing to expunge samples after being informed that the arrestees who provided them are no longer suspects, it should immediately expunge these samples and profiles.

2. The number of those samples taken as a result of a person's being arrested for a felony offense under Penal Code § 296(a)(2).
3. The number of those samples taken from arrestees who were not ultimately convicted of any felony offense.
4. The total number of DNA samples/profiles removed/expunged from the database under the provisions of Penal Code § 299.
5. The total number of DNA samples/profiles removed/expunged from the database by means of the California Department of Justice's Streamlined DNA Expungement process, (form DLE 244, available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/bfs/expungement\\_app.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/bfs/expungement_app.pdf)).
6. The total number of DNA samples/profiles removed/expunged from the database under the provisions of Penal Code § 297(c)(2).
7. Any forms, policies, or procedures relating to Penal Code § 297(c)(2) expungement, including those explaining how law-enforcement agencies inform the Department that a person whose DNA sample they have submitted is no longer a suspect.
8. The number of law-enforcement agencies that have informed the Department that a person whose DNA sample they have submitted is no longer a suspect since January 1, 2017.
9. The identity of each law-enforcement agency that has informed the Department that a person whose DNA sample they have submitted is no longer a suspect since January 1, 2017.
10. Any plans your department or any other state or local entity has to change your procedures or practices for complying with Penal Code § 297(c)(2).

This request applies to all documents in your agency's possession, including emails, video and audiotapes, and other electronic records.<sup>2</sup> It also includes documents that were created by a member of another government agency or a member of the public.<sup>3</sup> If specific portions of any documents are exempt from

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<sup>2</sup> Gov't. Code § 6252(e).

<sup>3</sup> See *California State University v. Superior Court*, 90 Cal.App.4th 810, 824-25 (1999).

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disclosure, please provide the non-exempt portions.<sup>4</sup> If only a part of a document is responsive to this request, please nevertheless provide the entire document.

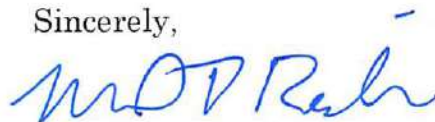
Please respond to this request within ten days, either by providing all the requested records or by providing a written response setting forth the legal authority on which you rely in withholding or redacting any document and stating when the documents will be made available.<sup>5</sup>

We ask that you provide any records maintained in electronic format in that same format, to avoid copying costs.<sup>6</sup> However, should you be unable to do so, we will reimburse your agency for the direct costs of copying these records (if your agency elects to charge for copying) plus postage. If you anticipate that these costs will exceed \$50, or that the time needed to copy the records will delay their release, please contact me so that I can arrange to inspect the document or decide which documents I wish to have copied. Otherwise, please copy and send them as soon as possible, and we will promptly pay the required costs.

If I can provide any clarification that will help identify responsive documents or focus this request,<sup>7</sup> please contact me at 510.689.1657 or [michael@risherlaw.com](mailto:michael@risherlaw.com).

Thank you for your time and attention to this matter.

Sincerely,



Michael T. Risher

cc: PRA coordinator – Attorney General's Office, Public Records Coordinator, P.O. Box 944255, Sacramento, CA 94244-2550;  
[https://oag.ca.gov/contact/publicrecords\\_form](https://oag.ca.gov/contact/publicrecords_form);

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<sup>4</sup> Gov't. Code § 6253(a).

<sup>5</sup> Gov't. Code §§ 6253(c), 6255.

<sup>6</sup> Gov't. Code § 6253.9.

<sup>7</sup> Gov't. Code § 6253.1.