

May 21, 2020

**To:** Xavier Becerra, Attorney General

**From:** Health in Justice Action Lab, Northeastern University School of Law

**Re:** Public Records Act Request (DOJ 2019-02076)

Dear Mr. Becerra:

Northeastern University's Health in Justice Action Lab is interested in the system-level functioning of the California Controlled Substance Utilization Review and Evaluation System ("CURES") 2.0. Specifically, we are interested in learning about law enforcement utilization of the database, the use of an algorithm that produces a risk score to analyze its contents, and the data access and retention rules governing the system. These data are being collected as part of an effort to improve the design and functioning of prescription drug monitoring systems in order to better deploy them to prevent overdoses and address other drug-related harms. The fundamental purpose of this research is to improve the lives of Californians and people all around the country.

In order to permit the public to understand how the Department of Justice uses CURES 2.0 and its impact on public health in California, Northeastern University's Health in Justice Action Lab is making this request under California Public Records Act: Government Code § 6250 et seq. for the following records:

*Any and all records showing how often law enforcement entities or individuals have requested information or records from CURES 2.0, or made electronic queries of the system, including but not limited to what types of information or records have been requested, which agencies have made the requests, the percentage of requests that were accepted versus denied, temporal trends, the form of the request (e.g. subpoena, warrant, etc.), and whether the requests were granted or denied.*

The California Department of Justice issued a response to this request, dated September 24, 2019, claiming that "queries made into CURES by law enforcement entities are exempt as investigatory records under [§ 6254(f)] as disclosure of this information might prove disruptive to current or future investigations, and could reveal certain investigative patterns and techniques of these agencies."

The Department's response incorrectly interprets the scope and purpose of our request. We are requesting metadata — information about the *number* of queries received and granted by the system, along with general information identifying agencies issuing such requests. It is a

perversion of the law and its regulation to interpret this information as falling within the exemption for investigatory records. We agree that specific records pertaining to ongoing or past investigations are likely exempt; the disclosure of metadata on the systems-level relationship between law enforcement and the CURES system poses no risk of disruption or disclosure of any specific investigation or investigatory practices writ large. Indeed, disclosure of metadata on the annual number of queries reveals nothing about the strategies or techniques employed by law enforcement that would allow individuals to avoid detection. Furthermore, subdivision (f) permits the withholding of information that (a) would endanger the safety of a witness or other person, (b) would endanger the successful completion of an investigation, or (c) reflects the analysis or conclusions of investigating officers. *Williams v. Superior Court*, 5 Cal. 4th 337, 349 (1993). The information requested would not trigger any such effects. The court in *Williams* allowed records to be withheld that pertained to a specific investigation. *Id.* Our request does not require the disclosure of any individual queries, but merely the data that reflects the frequency at which such queries are executed.

The Department of Justice also claimed that such documentation could be withheld under Government Code, section 6255(a) because of a strong public interest in creating a “secure database for the exclusive use of law enforcement, public health and regulatory oversight agencies.” This request would not compromise the security of the database or expand access to the specific records contained within the database. Our request serves the public interest by informing research into the extent to which California law enforcement entities are making use of health care utilization information. This research is being conducted to better understand and configure prescription drug monitoring programs like CURES in order to reduce overdose and other drug-related morbidity and mortality. Withholding this information unduly impedes this lifesaving research, while serving no discernible public interest since the request does not compromise the exclusivity of the database.

In regard to § 6254(k) and records exempt as attorney work product, we do not require the disclosure of any specific analyses or confidential memoranda. The metadata we are seeking is broad information about the number of queries filed and should not reflect the confidential or privileged communications, analyses, draft language, impressions, conclusions, legal research, or legal theories of the Attorney General or attorneys employed with the Attorney General's Office.

We hope that this provides clarification about the scope of our request and its conformity with the California Public Records Act. Because this request involves a matter of public concern and because it is made on behalf of a nonprofit organization, we ask that you waive any fees. If you decide not to waive fees, we request that you permit us to examine, at our election, the responsive documents before deciding which portions to transmit. We prefer the documents in electronic format. Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the

redacted portions. As you know, a custodian of public records shall comply with a request within ten days after receipt.

Thank you in advance for your anticipated cooperation in this matter.

Sincerely,

Louis Miyara  
Health in Justice Action Lab  
Northeastern University School of Law