



## COUNTY OF FRESNO

Lisa A. Smittcamp  
District Attorney

September 16, 2021

**VIA E-MAIL**

Ellen Leonida, Esq.  
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RE: *Public Records Act Request, received July 23, 2021*

Dear Ms. Leonida:

This letter follows up on the County of Fresno (County) District Attorney's Office (Department) letters, dated August 13, 2021, and August 2, 2021, in response to your Public Records Act request, dated July 23, 2021 and received by the Department that same date (the July 23, 2021 Letter Request).

Your July 23, 2021 Letter Request requested the Department's records from four broad categories of records, each with numerous subparts, which includes records from the time period 2015 to the present date of that request.

In its August 2, 2021 letter to you, the Department informed you, pursuant to Government Code section 6253, subdivision (c)(2)(4), of the need to extend its time to respond to your July 23, 2021 Letter Request.

Your July 23, 2021 Letter Request stated that there were two prior Public Records Act requests by the ACLU, one dated May 13, 2019 [i.e., submitted by Yoel Haile] and one dated July 29, 2019 [i.e., submitted by Shilpi Agarwal], and that your July 23, 2021 Letter Request "constitutes a renewal of the ACLU's two prior requests (as relevant, updated to the present day) and also a request for the additional following records in the possession or control of the Office of the District Attorney for Fresno County for the time-period 2015 to present":

1. Any and all written policies, memoranda, or guidance documents regarding:
  - a. Diversion eligibility and/or programming;
  - b. Custody and/or bail recommendations;
  - c. Charging recommendations and/or decisions, including, but not limited to:
    - i. Charging recommendations and/or decisions regarding enhancements;
    - ii. Charging recommendations and/or decisions regarding special circumstances; or
    - iii. Charging recommendations and/or decisions regarding wobblers;
  - d. Compliance with *Brady v. Maryland*, 373 U.S. 83 (1963);
  - e. Jury selection;
  - f. Sentencing recommendations;
  - g. Prosecution of minors;
  - h. Parole recommendations;
  - i. Pardon and commutation recommendations;
  - j. Reports to the State Bar relating to discipline and/or prosecutorial misconduct;
  - k. Data collection relating to criminal matters, including demographic data of defendants and victims; or
  - l. Referral of cases for federal prosecution.
2. Any and all policies regarding training as well as any training materials, recorded trainings, or related materials:
  - a. Which are mandatory for prosecutors;
  - b. Which are optional for prosecutors;
  - c. Which relate to jury selection;
  - d. Which relate to bias, implicit bias, unconscious bias, and/or racism; or
  - e. Which relate to presentation and/or use of evidence from social media platforms (including but not limited to YouTube, Snapchat, Instagram, TikTok, Twitter, Facebook, Reddit and Tumblr) and other media (including but not limited to movies, song lyrics, and videos).
3. Records concerning the Racial Justice Act:
  - a. Implementation of and compliance with the RJA;
  - b. Communications concerning the RJA; or
  - c. Trainings related to the RJA.
4. All investigations into Batson-Wheeler motions, including, but not limited to:
  - a. Motions filed;
  - b. Motions granted;
  - c. Internal training and/or discipline; or
  - d. Reports to the State Bar relating to any Batson-Wheeler motions made and granted.

In the Department's extension letter to you, dated August 2, 2021, we acknowledged the foregoing introductory statement explaining your request. That is, the July 23, 2021 Letter Request states that it constitutes a renewal of two prior requests by the American Civil Liberties Union Foundation of Northern California (ACLU), "as relevant, updated to the present day." We also said in that extension letter that it is not clear to the Department what "renewal" means here, but the Department informed you that it assumes it means you are seeking documents for the periods after what those prior

requests covered. We further requested that you contact us if that is not what you intended. We did not receive your response to our understanding of your July 23, 2021 Letter Request, and so, the Department will proceed with that understanding in responding to the July 23, 2021 Letter Request. But again, if that understanding is not correct, please let us know as soon as possible, as it will significantly affect the amount of work, and time that the Department needs to undertake to respond to the July 23, 2021 Letter Request.

**In its August 13, 2021 letter, the Department stated that it expected that any responsive public records would be provided on or before September 16, 2021, unless our expectation changed in the course of searching for those responsive records. Since that letter, the Department has been searching its records, and due to the voluminous number of records to be reviewed, the Department now expects that any responsive public records will be provided on or before October 15, 2021, subject to the following conditions in this letter. The Department also still reserves the right to contend that the July 23, 2021 is overly broad.**

Any public records provided in response to your July 23, 2021 Letter Request are those public records of the Department that existed as of July 23, 2021, which is the date of the July 23, 2021 Letter Request.

Because your July 23, 2021 Letter Request seems to seek a voluminous number of records, any production may need to be over a period of time, and we may need to ask you whether you wish certain records to be made available before others. The Department has a limited number of staff available to review responsive records for this request, which includes reviewing policies since 2015, and hundreds of legal education PowerPoint records since 2015, many of which must be redacted. If any records are available sooner than October 15, 2021, those will be sent to you earlier.

To provide all responsive documents with respect to your July 23, 2021 Letter Request, it might be necessary for the Department to compile data, write programming language or a computer program, or construct a computer report to extract data from the Department's electronic records to respond to your request, at a cost to you. That would take additional time as well. If it appears that such work is necessary, we will contact you before incurring those costs, to see whether you wish for the Department to proceed with that work.

In addition, the Department is not required to create a record in order to comply with your July 23, 2021 Letter Request. (Gov. Code, § 6252, subd. (e); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.)

At the time records responsive to each category of records in your July 23, 2021 Letter Request are produced, if any records are to be withheld, the Department will demonstrate that the records in question are exempt under express provisions of the Public Records Act, or that on the facts present, that the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records. (Gov. Code, § 6255, subd. (a).)

If you have any questions regarding the foregoing, please contact me.

Sincerely,



Kelsey Peterson, Deputy District Attorney