



# OCTOBER

NATIONAL DOMESTIC VIOLENCE  
AWARENESS MONTH

## COUNTY OF FRESNO

LISA A. SMITTCAMP  
DISTRICT ATTORNEY

October 15, 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, August 2, 2021, and September 16, 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".

Department staff have located responsive records as described below, or anticipate that there will be responsive records as noted below (in the interest of keeping track of your several requests, we have noted the categories to which we have responded, and in the interest of efficiency, we have grouped responses that are common to sub-categories of your requests):

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.

**See attached records. We believe that all of the Department's responsive records have been produced for this category 1 of requested records.**

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).

**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, as well as the numerous requests for records to which the Department is responding, the Department now expects that any responsive public records will be provided on or before November 30, 2021, subject to the following conditions in this letter. As stated in the September 16, 2021 letter, the Department has a**

limited number of staff available to review responsive records for this request, which includes reviewing policies, and hundreds of legal education PowerPoint records since 2015, many of which must be redacted. If any records are available sooner than November 30, 2021, those will be sent to you earlier. The Department also still reserves the right to contend that the July 23, 2021 request is overly broad.

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.

**See attached records. We believe that all of the Department's responsive records have been produced for this category 3 of requested records.**

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.

**See attached records. We believe that all of the Department's responsive records have been produced for this category 4 of requested records.**

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. However, you subsequently sent an email, dated September 27, 2021, that stated:

"To clarify, our office seeks all documents that the County has *not* produced in response to the ACLU's original requests within their specified date parameters, in addition to responsive documents updated to present day." (*italics in original*)

#### **May 13, 2019 Request (Yoel Haile)**

In the attached letter from Senior Deputy District Attorney, Doug Treisman, dated May 29, 2019, Mr. Treisman found that records responsive to sub-categories a), b), and c) of category 1 were privileged pursuant to Welfare and Institutions Code § 827, produced responsive records to categories 1, 2, and 3, requested clarification with regard to



categories 4 and 5, and found that there were no records responsive to category 6 of your request.

Categories 4 and 5 of the May 13, 2019 request were as follows:

4. Copies of all office policies, including, but not limited to Brad compliance policy, charging and plea deal offer policies, pardons, and commutations, etc. Request #3 is not limited to calendar year 2017 and 2018.
5. Copies of all office policies that relate to immigration including but not limited to:
  - a) Records that refer to office efforts to implement its obligations under Penal Code 1016.3(b).
  - b) Records that refer to office efforts to implement its obligations under Penal Code 1473.7.
  - c) Records, memoranda, and emails that relate to the creation and development of an immigration policy for the office.
  - d) Request #5 is not limited to calendar year 2017 and 2018.

In his May 29, 2019 letter, in regard to category 4, Mr. Treisman asked for clarification whether you were asking for a copy of the Department's policy manual. In regard to category 5, Mr. Treisman stated, "However, please feel free to focus your request and address specific records of interest or modify your request to address whether you are seeking the entire Policy Manual." The requestor did not respond to these requests for clarification. However, if you would like to now clarify those portions of the May 13, 2019 request, the Department could respond to those clarified portions of the request. Please let us know if that is the case.

### **July 29, 2019 Request (Shilpi Agarwal)**

In his October 17, 2019 response to Mr. Agarwal, Mr. Treisman claimed several privileges in regard to the requested records, including exemption from disclosure under Government Code sections 6254(k) and 6255, the attorney work product privilege, and the deliberative process privilege. It is the opinion of the Department that these privileges still apply. However, since the date of that letter, the CDAA has authorized disclosure of certain training materials. Those materials will be produced on November 30, 2021, along with any responsive public records in category 2 of the July 23, 2021 Letter Request, subject to the following conditions in this letter.

### **General Conditions**

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.

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.)

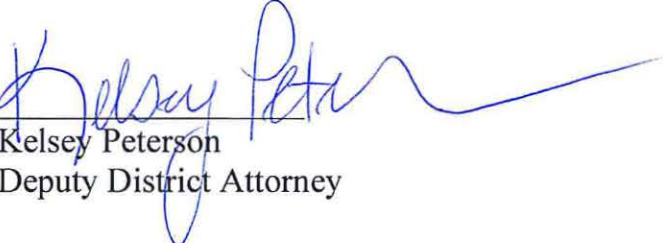
At the time records responsive to each category of records in your July 23, 2021 Letter Request are produced, if any records are to be withheld, the Department will demonstrate that the records in question are exempt under express provisions of the Public Records Act, or that on the facts present, that 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,

LISA A. SMITTCAMP  
DISTRICT ATTORNEY

By

  
Kelsey Peterson  
Deputy District Attorney