

Ellen Leonida, Esq.

Partner

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January 18, 2022

VIA EMAIL AND MAIL

Barbara M. Yook
c/o Michael Hatfield
Senior Department Analyst
Office of the District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Email: mhatfield@co.calaveras.ca.us

Re: California Public Records Act Request

Dear Barbara Yook:

I write in response to your October 1, 2021 letter regarding our CPRA Request. Thank you for your letter.

In your response, you write:

The records prior to February 22, 2021 are in paper files and contained in a database we no longer have license to manipulate. Collecting the data you are requesting from 2015 to February 21, 2021, would require a hand search and analysis of thousands and thousands of files. Hand searching and gathering the records you requested would consume months of staff time. It is our position that diverting months of staff time away from current duties to conduct this search is contrary to public interest and far outweighs the need you expressed in your request.

We would welcome a conversation so that you can explain this situation to us in greater detail. Specifically, we are interested in knowing how your office accesses records from before February 2021 when conducting regular business and how you intend to migrate the records from your open and active cases into your new system. If there a process and cost associated with accessing the expired database (which has, we assume, electronic copies of these paper files) please also let us know what that process and cost estimate would be. We note that software licensing expiration is not a statutorily permitted exemption and we expect that a reasonable means exists to overcome any obstacle to disclosure. Again, we would be happy to discuss how to do this over the phone.

That aside, thank you for offering to provide us with the data you will be migrating into your new system and for the data that you do have with respect to item 13(c). We would like all the data and are happy to receive on it a rolling basis in native format.

San Francisco

351 California Street, 10th Floor
San Francisco, CA 94104
Tel. & Fax: (415) 599-0210

New York

7 Times Square, 27th Floor
New York, NY 10036-6524
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Regarding your assertion that the public interest in relieving you of your legal burden to compile the requested data clearly outweighs the public interest in the disclosure of the data we requested, and by extension the public oversight of your activities as they relate to racial justice concerns, we respectfully disagree and believe that any court will also disagree. The passage of the Racial Justice Act, to say nothing of the hundreds of instances of civic engagement and press reporting on issues concerning racial bias in law enforcement, demonstrates a clear public interest in disclosure.¹ This is in keeping with the spirit of the PRA, which explicitly favors broad access to public records and is especially true in light of the fact that you purportedly cannot access many of the records we've requested through your computer database.²

In your response letter, you also note that you would charge us a fee to compile certain data under Government Code § 6253.9 through “specialized programming and computer services.” Please note that the statute does not allow fees for time spent searching for responsive records, redacting information, or other actions that would limit the furtherance of the people’s right of access.³ Please also note that the cost for duplication under Government Code § 6253.9 must be necessary and reasonable. Please provide a cost estimate for the duplication, including a detailed description of the files that must be searched, the process of compilation, the title of the person doing the compiling, the number of hours being charged, and the rate per hour. Please also explain why the work is necessary and why the cost is reasonable.

Please also let us know at your earliest convenience if you intend to stand on your exemptions as grounds for withholding certain records, or whether you would consider waiving any, or all the asserted exemptions. Exemptions, as you know, are permissive, not mandatory, and it is our goal—and yours, we imagine—to avoid unnecessary litigation, which can be costly and time consuming. If you are open to this possibility, please let us know. We would be happy to discuss this matter over the phone if you believe we may be able to find an amenable solution. However, if you do not believe further discussions would be helpful, please advise us of this position and tell us whether your office has adopted a formal process for an administrative appeal. Should we determine that we are entitled to documents you have refused to produce—whether before an administrative appeal or after—we may litigate to obtain them. In that event, we will seek all attorney’s fees and costs for the litigation.⁴

As a separate matter, we write to request that you reproduce the data that you have provided to us so far in a native format. Unfortunately, the PDF format used by your office for the production does not allow for use of the data for any reasonable purpose. Please resend the data in native format at your earliest convenience.

¹ In enacting the Racial Justice Act, the Legislature expressed its intent “to eliminate racial bias from California’s criminal justice system,” “to remedy the harm to the defendant’s case and to the integrity of the judicial system,” “to actively work to eradicate” racial disparities in the judicial system, and “to ensure that individuals have access to all relevant evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining convictions or imposing sentences.” A.B. 2542, Ch. 317, 2019-2020 Sess. §§ 2(i), (j) (Cal. 2020).

² *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1335 (1991).

³ *N.L.G., San Francisco Bay Area Chapter v. City of Hayward*, 9 Cal. 5th 488, 506 (2020).

⁴ Cal. Gov. Code § 6259(d). We note that courts have awarded costs and fees if even a single document was improperly withheld. *See, e.g., Los Angeles Times v. Alameda Corridor Transp. Auth.*, 88 Cal. App. 4th 1381, 1391 (2001).

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Thank you again for your response to our earlier letter and, generally, for your assistance with our requests. We look forward to any further discussion and your production of records.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'E. Leonida', with a long horizontal flourish extending to the right.

Ellen V. Leonida