



COUNTY OF FRESNO

Lisa A. Smittcamp
District Attorney

July 30, 2024

VIA E-MAIL

Emi MacLean, Senior Staff Attorney
Shaila Nathu, Staff Attorney
Haazim Amirali, Legal-Policy Assistant
Criminal Justice Division
ACLU Foundation of Northern California

E-Mail Addresses: emaclean@aclunc.org; hamirali@aclunc.org; SNathu@aclunc.org

RE: Public Records Act Request, received Wednesday January 17, 2024, via e-mail

Dear Ms. MacLean, Ms. Nathu, and Mr. Amirali:

This letter follows up on the Fresno County District Attorney's Office (the Department) letters, dated January 29, 2024, and February 12, 2024, and March 12, 2024, and April 12, 2024, and June 4, 2024, and June 10, 2024, in response to your Public Records Act request, dated November 17, 2023, but received by the Department by email on January 17, 2024 (the request dated November 17, 2023 was sent to an inactive or unmonitored email address) for the period of "2015 through the date of the search" ("the Current Request").

While the Department has continued to respond to your request, on July 16, 2024, the Department received the following email from you:

Thank you for your office's April 10, 2024 and June 10, 2024 correspondence clarifying that the County is assessing fees against ACLU to run the searches for records responsive to our CPRA request concerning implementation of the Racial Justice Act. We object to this fee assessment on the grounds that it is outside the bounds of what the Legislature contemplated in Government Code sections 7922.530, subsection (a) and 7922.575, and also beyond what California courts have permitted. See, e.g., National Lawyers Guild, San Francisco Bay Area Chapter ("NLG") v. City of Hayward, 9 Cal. 5th 488 (2020).

Nonetheless, given the significant public interest in obtaining the requested records, we agree to pay the assessed \$ 533.81 under protest. We make this payment without waiver or forfeiture of any rights that we may have to challenge this fee assessment in the future and without waiver of any other rights to challenge the County's overall response to our PRA request. See NLG, 9 Cal. 5th at 496-97 (recognizing that payments for the production of public records in response to a PRA request can be made "under protest" without waiver of any right to challenge issues concerning the underlying request).

In your July 16, 2024, email, you assert that the Department is assessing fees against the ACLU to run searches for records responsive to your CPRA request (i.e., for Category A, Prosecutorial Data, for the time period of August 13, 2022 through January 17, 2024) concerning implementation of the Racial Justice Act. This statement is inaccurate. The Department is not assessing fees for searching for records.

As we informed you on June 10, 2024, the records that you request do not exist.

The Department is not required to create a record in order to comply with your request. (Gov. Code, § 7920.530; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075.)

So, it would be necessary for the Department to conduct data compilation, extraction, or programming in order to produce the requested records.

The Department is assessing fees against the ACLU to recover the cost of constructing a record, that is, the cost of programming, and computer services necessary to produce the record, because your Request requires data compilation, extraction, or programming to produce the record, which is permitted by law. (Gov. Code § 7922.575(b)(2)). As mentioned in the Department's letter dated April 12, 2024, the Department does not maintain a record in response to your Current Request for Category A, Prosecutorial Data, in the format you are seeking (Gov. Code § 7920.530).

Therefore, as explained in the Department's April 12, 2024 letter, the Department must construct a record to produce records responsive to your Current Request, Category A, prosecutorial data. Because this portion of your Request requires data extraction, compilation or programming, and are not records that we produce on a regular basis, Government Code section 7922.575(b)(2) provides that you shall bear the cost of producing the cost to construct the record.

In your email, you cite *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward* (2020) 9 Cal. 5th 488, which holds in part that "data extraction" does not cover the process of redacting exempt material from otherwise disclosable electronic records, but the Department is not assessing fees for potential redactions associated with your Current Request; the Department is charging for its costs to extract data that you have requested from its databases. The Court states, "...extraction costs would include, for example, exporting responsive data from a large government database, but

they would not include time spent redacting personally identifiable or otherwise confidential information from the spreadsheet once constructed.” (*Id.* at 498.)

In the Department’s April 12, 2024 letter, the Department informed you of the cost estimate to extract data pursuant to your request for Category A, Prosecutorial Data, for the time period of August 13, 2022 through January 17, 2024, the date of the Current Request, with its respective subcategories. For the request to be processed, the Department requires that you provide payment in advance for the Department’s performance of data extraction necessary to produce those records. In the event fewer hours are expended in performing such data extraction, the Department will notify you of the updated total, and refund the overpayment. If more hours are expended in performing such data extraction, the Department will notify you of the updated total and request payment of the additional amount required.

After we receive payment, it is anticipated that the query will be completed within thirty (30) days of the project’s commencement. The Department will not begin this data extraction work until it receives the advance payment of \$533.81.

Payment in the form of a check, made payable to the “Fresno County District Attorney’s Office” may be sent to the following:

**Fresno County District Attorney’s Office
c/o Jamie Kalebjian, Deputy District Attorney
Writs & Appeals Unit
3333 E. American Ave
Fresno, CA 93725**

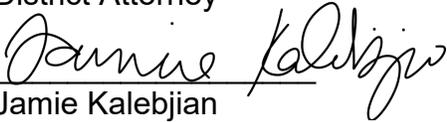
Finally, in the Department’s June 10, 2024, email in which the Department’s June 10, 2024, letter was attached, the Department requested from the ACLU a mailing address to send responsive materials, in the event that sending materials would be too voluminous through email. The Department did not receive a response to that request. **Please provide a mailing address, and the recipient’s name, for the Department to transmit responsive records for the Department’s disclosure of records occurring first on September 9, 2024.**

As stated in the Department’s previous letters, the Current Request seeks a voluminous number of records, so 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.

Please contact me if you have any questions.

Sincerely,

Lisa A. Smittcamp
District Attorney

By 
Jamie Kalebjian
Deputy District Attorney