



March 4, 2016

VIA MAIL & ELECTRONIC MAIL

Tony Rackauckas
Orange County District Attorney's Office
401 W Civic Center Drive West
Santa Ana, CA 92701
Tony.Rackauckas@da.ocgov.com

RE: Public Records Act Request

Dear Mr. Rackauckas:

We write to request the release of public records from the Orange County District Attorney's Office ("OCDA" or "the Office") pursuant to the California Public Records Act (CPRA), California Government Code Sections 6250 to 6270 and article 1 section 3(b) of the California Constitution¹. The District Attorney's office is an agency subject to the disclosure requirements of the CPRA. (*See, Weaver v. Superior Court*, 224 Cal.App.4th 746 (2014).)

On March 12, 2015, Judge Thomas Goethals issued an extraordinary order removing the entire District Attorney's office from the prosecution of Scott Dekraai as sanction related to the withholding of evidence. The Order followed the discovery that records relating to in-custody informants, contained in the computerized "TRED database" since 1990, have apparently been systematically withheld from defendants. Subsequent revelations have raised questions about whether your Office has, over the course of decades, concealed favorable evidence from the Orange County Informant Index ("OCII"). These revelations have severely damaged the credibility and standing of the OCDA in the eyes of the public.

With the goal of seeking to fully understand the scope of the withholding of evidence and the policies that may have contributed to potential due process violations, the ACLU of Southern California seeks disclosure of the items below, pursuant to the CPRA.

¹ The federal courts have similarly recognized a common law right of public access to government documents, although the parameters of the right have not been clearly established. In *Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589, the court observed that "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." (*Id.* at p. 597, fns. omitted.)

Executive Director **Hector O. Villagra** Director of Orange County and Inland Empire Offices **Belinda Escobosa Helzer**

Chair **Shari Leinwand** Vice Chair **Susan Adelman** Vice Chair **Richard Barry**
Chairs Emeriti **Danny Goldberg** **Allan K. Jonas*** **Burt Lancaster*** **Irving Lichtenstein, MD*** **Jarl Mohn** **Laurie Ostrow*** **Stanley K. Sheinbaum**
Stephen Rohde

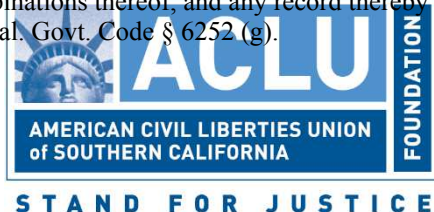
*deceased

ORANGE COUNTY OFFICE 1851 E FIRST ST SUITE 450 SANTA ANA CA 92705 t 714.450.3962 f 714.543.5240

We seek copies of all records² in your office's possession, regardless of who wrote them, *between 1985 and the present*, except where specified otherwise. For requests related to policies, manuals, training materials, directions or instructions, we seek copies of *every version* of such policy, manual, training material, direction, or instruction *between 1985 and the present*, except where specified otherwise:

- 1) The number and names of cases in which the Office has found prosecutorial misconduct, including the sanction, reprimand, or remedy for misconduct identified prior to the completion of trial, and, where misconduct was identified after trial, in addition, the effect of misconduct on the outcome of the case (e.g. harmless error, reversal, exoneration, etc.);
- 2) The case numbers and names of all cases in which the Office has defended in court against claims that informants were used in violation of *Massiah* and the case numbers and names of all cases in which the Office has defended in court against allegations of failures to turn over favorable evidence;
- 3) Any records, including internal policies and protocols, office memoranda, guidelines, operational manuals, training materials, directions, or instructions, including anything contained in electronic mail, that address or describe staff conduct and reporting obligations, supervisory responsibilities, internal investigations, and disciplinary action related to ethical breaches, error, or misconduct by attorneys and other staff involved in the prosecution of criminal cases, including, but not limited to, formal allegations and findings of prosecutorial error and prosecutorial misconduct;
- 4) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding prosecutorial ethics and preventing prosecutorial error and misconduct;
- 5) The case numbers and names of all cases in which the OCDA called at a preliminary hearing, grand jury proceeding, or trial, a witness who testified regarding statements that he or she claimed were made by a defendant while said defendant was incarcerated at a

² The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Govt. Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Govt. Code § 6252 (g).



jail or prison facility, regardless of whether at the time of the communication said defendant was criminally charged;

- 6) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding a prosecutor's discovery duties, including but not limited to, those under California Penal Code Section 1054 et seq., *Brady v. Maryland*, 373 U.S. 83 (1963), California Penal Code Section 939.7 et seq., or any other regulatory, statutory, or constitutional law, or policy;
- 7) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding training provided by OCDA staff to staff of the Orange County Sheriff's Department regarding their disclosure responsibilities to criminal defendants, including but not limited to, those under California Penal Code Section 1054 et seq., *Brady v. Maryland*, 373 U.S. 83 (1963), California Penal Code Section 939.7 et seq., or any other regulatory, statutory, or constitutional law, or policy;
- 8) Any records reflecting the number or names of cases in which the timing of discovery disclosures by your Office resulted in continuances in criminal cases;
- 9) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, as well as the documents themselves, pertaining to requests by your Office for protective orders and/or confidentiality agreements made prior to a defendant receiving discovery;
- 10) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding the use of the Orange County Informant Index ("OCII"), including but not limited to, the maintenance of OCII files, the creation of new files, and the addition of information to preexisting OCII files;
- 11) The date on which the OCII was first created;
- 12) The number of individuals for whom an OCII file currently exists;
- 13) Any records including internal policies, internal memoranda, guidelines, operational



manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, that identify any procedure that exists or has existed since the creation of the OCII for removing individuals or information and/or purging files from the OCII;

- 14) Any communications, including anything contained in electronic mail, between your Office and the Orange County Sheriff's Department regarding the use and maintenance of the OCII database;
- 15) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding a prosecutor's duties when using in-custody informants, including but not limited to, those under California Penal Code section 1127(a), *Massiah v. United States*, 377 U.S. 201 (1964), or any other regulatory, statutory, or constitutional law, or policy;
- 16) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding information received by OCDA staff regarding the Orange County Sheriff's Department Special Handling Unit duties and responsibilities;
- 17) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding information received by OCDA staff regarding informant operations in the Orange County Jail;
- 18) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding information received by OCDA staff regarding the classification system and/or inmate record keeping systems in the Orange County Sheriff's Department;
- 19) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, and directions or instructions, including electronic mail, regarding the use of the TRED database, including, but not limited to, the maintenance of the TRED database, the creation of new entries, and the addition of



information to preexisting TRED entries;

- 20) Any communications, including anything contained in electronic mail, between your Office and the Orange County Sheriff's Department regarding the use and maintenance of the TRED database;
- 21) The case numbers and names of all matters in which TRED records, created by the Orange County Sheriff's Department ("OCSD"), were ordered disclosed and/or where the Office took possession of said records;
- 22) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding how the Office coordinates the gathering and collection of evidence from law enforcement and other agencies that are part of the prosecution team for discovery purposes;
- 23) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding how the Office decides and defines who is considered part of "the prosecution team" for discovery purposes;
- 24) Any records, including internal policies, internal memoranda, guidelines, directions, instructions, or communications, including anything contained in electronic mail, regarding the scope of the authority and the access to information given to the Informants Policies and Practices Evaluation Committee ("IPPEC");
- 25) Any records, including retainer agreements, contracts, memorandums of understanding, agreements, internal policies, internal memoranda, guidelines, directions, instructions, or communications, including anything contained in electronic mail, regarding the services to be rendered and/or any compensation provided to individual members of the IPPEC and the IPPEC as a whole;
- 26) All materials provided to IPPEC for their review;
- 27) All case names and numbers provided by the Office to IPPEC for review;
- 28) All Office personnel who provided interviews to IPPEC during the course of their investigation;



- 29) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, relating to implementation of any of the recommendations made by IPPEC, including, but not limited to, the creation of a Confidential Informant Review Committee and a Conviction Integrity Unit.

All records requested above are subject to the CPRA because the CPRA applies to “any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics” (Govt. Code, § 6252, subd. (e)), unless a specific statutory exemption applies (Govt. Code, § 6255, subd. (a); see Govt. Code, §§ 6254 et seq., 6276 et seq.).

“This definition is intended to cover every conceivable kind of record that is involved in the governmental process Only purely personal information unrelated to ‘the conduct of the public's business’ could be considered exempt from this definition” (Assem. Statewide Information Policy Com., Final Rep. (Mar. 1970) 1 Assem. J. (1970 Reg. Sess.) appen. p. 9; accord, *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 288, fn. 3 [64 Cal. Rptr. 3d 661, 165 P.3d 462]).

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255. Pursuant to section 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure.

If any records requested above are available in electronic format, please make them available in electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

Because the ACLU is a nonprofit civil rights organization, we request that you waive any fees that normally apply to a CPRA request. However, should you be unable to do so, the ACLU will reimburse your agency for the “direct costs” of copying these records plus postage. If you anticipate these costs to exceed \$50.00, please notify us prior to making the copies.

If we can provide any additional information that will expedite your processing of our request, please do not hesitate to contact us at (714) 450-3966 or by email at



csanderson@aclusocal.org.

Sincerely,

Brendan Hamme
Staff Attorney

Caitlin W. Sanderson
Staff Attorney

CC:

'Todd.Spitzer@ocgov.com' <Todd.Spitzer@ocgov.com>;
'Lisa.Bartlett@ocgov.com' <Lisa.Bartlett@ocgov.com>;
'Michelle.Steel@ocgov.com' <Michelle.Steel@ocgov.com>;
'Andrew.Do@ocgov.com' <Andrew.Do@ocgov.com>;
'Shawn.Nelson@ocgov.com' <Shawn.Nelson@ocgov.com>





March 4, 2016

VIA MAIL & ELECTRONIC MAIL

Sandra Hutchens
Orange County Sheriff's Department
320 N. Flower Street
Santa Ana, CA 92703
shutchens@ocsd.org

RE: Public Records Act Request

Dear Sheriff Hutchens:

We write to request the release of public records from the Orange County Sheriff's Department ("OCSD" or "the Department") pursuant to the California Public Records Act (CPRA), California Government Code Sections 6250 to 6270 and article 1 section 3(b) of the California Constitution¹. The Sheriff's Department is an agency subject to the disclosure requirements of the CPRA. (*See, County of Los Angeles v. Superior Court*, 82 Cal.App.4th 819 (2000).)

On March 12, 2015, Judge Thomas Goethals issued an extraordinary order removing the entire District Attorney's office from the prosecution of Scott Dekraai as sanction related to the withholding of evidence. The Order followed the discovery that records relating to in-custody informants, contained in the computerized "TRED database" since 1990, have apparently been systematically withheld from defendants. Importantly, Judge Goethals specifically found that OC Sheriff's deputies mislead the court to hide the very existence of the inmate-tracking database called TRED. These revelations have severely damaged the credibility and standing of the OCSD in the eyes of the public.

With the goal of seeking to fully understand the scope of the withholding of evidence and the policies that may have contributed to potential due process violations, the ACLU of Southern California seeks disclosure of the items below, pursuant to the CPRA.

¹ The federal courts have similarly recognized a common law right of public access to government documents, although the parameters of the right have not been clearly established. In *Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589, the court observed that "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." (*Id.* at p. 597, fns. omitted.)

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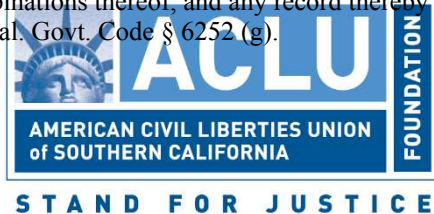
*deceased

ORANGE COUNTY OFFICE 1851 E FIRST ST SUITE 450 SANTA ANA CA 92705 t 714.450.3962 f 714.543.5240

We seek copies of all records² in your office's possession, regardless of who wrote them, *between 1985 and the present*, except where specified otherwise. For requests related to policies, manuals, training materials, directions, or instructions, we seek copies of *every version* of such policy, manual, training material, direction, or instruction *between 1985 and the present*, except where specified otherwise:

- 1) The name and number of cases in which a court has found misconduct by the Sheriff's Department, including its personnel, including the sanction, reprimand, or remedy for misconduct identified prior to the completion of trial, and, where misconduct was identified after trial, in addition, the effect of misconduct on the outcome of the case (e.g., harmless error, reversal, exoneration, etc.);
- 2) The number of cases in which the Department has found misconduct by members of its staff;
- 3) The case numbers and names of all cases in which Department staff have testified in court or given evidence to defend against claims that informants were used in violation of *Massiah* and the case numbers and names of all cases in which Department staff have testified in court or given evidence to defend against allegations of failures to turn over favorable evidence;
- 4) Any records including internal policies and protocols, office memoranda, guidelines, operational manuals, training materials, directions, or instructions, including anything contained in electronic mail, that address or describe staff conduct and reporting obligations, supervisory responsibilities, internal investigations, and disciplinary action related to ethical breaches, error, or misconduct by deputies and other staff involved in the prosecution of criminal cases, including, but not limited to, formal allegations and findings of error and misconduct;
- 5) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, training materials, directions, or instructions, including anything contained in electronic mail, regarding the use of in-custody informants, including, but not limited to, those under California Penal Code section 1127(a), *Massiah v. United*

² The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Govt. Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Govt. Code § 6252 (g).



States, 377 U.S. 201 (1964), or any other regulatory, statutory, or constitutional law, or policy;

- 6) The total number of individuals who have been identified by the Department, as having provided information to Department staff regarding either a possible criminal law violation or a jail rules violation by another inmate within the Orange County Jail(s);
- 7) The name(s) of all databases, lists, or file systems, that currently are used or have been used in the past to identify inmates who provide or have provided information to Department staff related to either criminal cases or jail conduct by other inmates within the Orange County Jails;
- 8) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding any system used by the Department to track in-custody informant location and movements inside the jails, including, but not limited to, the TRED Database, and including but not limited to, the maintenance of the database(s), the creation of new files, and the addition of information to preexisting database files;
- 9) The date on which each database, list, or file system, that is used or has been used by the Department to identify inmate informants, including but not limited to the TRED database, was created;
- 10) The number of individuals on each database, list, or file system that is used or has been used by the Department to identify inmate informants, including, but not limited to the TRED database, for whom an entry reflects informant status;
- 11) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, that identify any procedure that exists or has existed for removing individuals or information and/or purging entries from each database, list, or file system that is used or has been used by the Department to identify inmate informants, including but not limited to the TRED database;
- 12) Any communications, including anything contained in electronic mail, between your Department and the Orange County District Attorney's Office regarding the use and maintenance of the TRED database;



- 13) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding the documentation and sharing of information to be included in each database, list, or file system that is used or has been used by the Department to identify inmate informants, including, but not limited to, the TRED database;
- 14) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, training materials, directions, or instructions, including anything contained in electronic mail, regarding the duties of the Department and its deputies in the discovery process, including but not limited to, those under California Penal Code Section 1054 et seq., *Brady v. Maryland*, 373 U.S. 83 (1963), or any other regulatory, statutory, or constitutional law, or policy.
- 15) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding the use of the Orange County Informant Index (“OCII”), including but not limited to, the maintenance of OCII files, the creation of new files, and the addition of information to preexisting OCII files;
- 16) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, that identify any procedure that exists or has existed since the creation of the OCII for removing individuals or information and/or purging files from the OCII;
- 17) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding the documentation and sharing of information to be included in the OCII;
- 18) Any communications, including anything contained in electronic mail, between your Department and the Orange County District Attorney’s Office regarding the use and maintenance of the OCII database;
- 19) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including



anything contained in electronic mail, regarding how the Department coordinates the transfer of evidence from the Department to the Orange County District Attorney's Office and other agencies that are part of the prosecution team for discovery purposes;

- 20) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding how the Department decides and defines who is considered part of "the prosecution team" for discovery purposes;
- 21) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding the Special Handling Unit of the Department, including but not limited to their job duties and responsibilities;
- 22) Any records including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions, or instructions, including anything contained in electronic mail, regarding informant operations in the jails;
- 23) Any records, including internal policies, internal memoranda, guidelines, directions, instructions, or communications including anything contained in electronic mail, regarding the scope of the authority and the access to information given to the Informants Policies and Practices Evaluation Committee ("IPPEC");
- 24) Any records, including retainer agreements, contracts, memorandums of understanding, agreements, internal policies, internal memoranda, guidelines, directions, instructions, or communications including anything contained in electronic mail, regarding the services to be rendered and/or any compensation provided to individual members of the IPPEC and the IPPEC as a whole;
- 25) All materials provided to IPPEC for their review;
- 26) All case names and numbers provided by the Department to IPPEC for review;
- 27) All Department personnel who provided interviews to IPPEC during the course of their investigation;
- 28) Any records, including internal policies, internal memoranda, guidelines, operational manuals, publications, internal training materials, directions or instructions, including



anything contained in electronic mail, relating to implementation of any of the recommendations made by IPPEC.

All records requested above are subject to the CPRA because the CPRA applies to “any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics” (Govt. Code, § 6252, subd. (e)), unless a specific statutory exemption applies (Govt. Code, § 6255, subd. (a); see Govt. Code, §§ 6254 et seq., 6276 et seq.).

“This definition is intended to cover every conceivable kind of record that is involved in the governmental process Only purely personal information unrelated to ‘the conduct of the public's business’ could be considered exempt from this definition” (Assem. Statewide Information Policy Com., Final Rep. (Mar. 1970) 1 Assem. J. (1970 Reg. Sess.) appen. p. 9; accord, *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 288, fn. 3 [64 Cal. Rptr. 3d 661, 165 P.3d 462]).

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255. Pursuant to section 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure.

If any records requested above are available in electronic format, please make them available in electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

Because the ACLU is a nonprofit civil rights organization, we request that you waive any fees that normally apply to a CPRA request. However, should you be unable to do so, the ACLU will reimburse your agency for the “direct costs” of copying these records plus postage. If you anticipate these costs to exceed \$50.00, please notify us prior to making the copies.

If we can provide any additional information that will expedite your processing of our request, please do not hesitate to contact us at (714) 450-3966 or by email at csanderson@aclusocal.org.

Sincerely,



Brendan Hamme
Staff Attorney

Caitlin W. Sanderson
Staff Attorney

CC:

'Todd.Spitzer@ocgov.com' <Todd.Spitzer@ocgov.com>;
'Lisa.Bartlett@ocgov.com' <Lisa.Bartlett@ocgov.com>;
'Michelle.Steel@ocgov.com' <Michelle.Steel@ocgov.com>;
'Andrew.Do@ocgov.com' <Andrew.Do@ocgov.com>;
'Shawn.Nelson@ocgov.com' <Shawn.Nelson@ocgov.com>

