1. Produce responsive records without the excessive fees designed to obstruct access;
2. Create basic statistical compilations from existing data as required by the public interest;
3. Acknowledge and remedy the systemic failure to maintain records essential to prosecutorial accountability.

II. GROUNDS FOR APPEAL

A. The Response Improperly Denies Access Through Prohibitive Fees

Issue: The Prosecutor's Office has imposed a fee of **$23,146.66** (requiring a $11,573.33 deposit) with a 180-day production timeline, effectively denying access to public records through economic prohibition.

Legal Standard: MCL 15.234(1) permits fees only for actual costs and prohibits fees that are "unreasonably high" or designed to obstruct access. The Michigan Court of Appeals has held that fees must be "reasonable" and cannot be used as a barrier to FOIA requests. *Bloch v. Davison Community Schools*, 2011 WL 2470666 (Mich. Ct. App. 2011).

Argument:

1. **The Fee Is Unreasonable Given Modern Technology**
    - The Prosecutor's Office claims it must manually review 4,000 case files at 14 minutes per file
    - However, they use ProsecutorbyKarpel, a modern case management system designed for data queries
    - The fee assumes manual review is necessary when electronic searches should be possible
    - Other prosecutor offices produce similar data through database queries at minimal cost

2. **The Office Created Its Own Burden**
    - The excessive cost stems from the office's failure to maintain basic prosecutorial statistics
    - They admit plea offer details are "only contained in correspondence or plea offer forms" rather than entered as searchable data fields
    - This is a self-created inefficiency that should not be passed to the public
    - MCL 15.234 does not permit charging for inefficient record-keeping practices

3. **The Fee Serves as a Barrier to Access**
    - A $23,146.66 fee for basic prosecutorial statistics is prohibitive for any individual citizen
    - This is the third substantially similar request (25-94, 25-136, 25-278), suggesting the office is using fees to avoid transparency
    - The 180-day timeline further delays public access to time-sensitive information

Relief Requested: The Board should order the Prosecutor's Office to:

- Produce statistical summaries using database queries at reasonable cost
- Waive or substantially reduce fees given the public interest in prosecutorial accountability
- Provide a sample production (e.g., 100 cases) to verify the actual time required

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B. The Office Improperly Refuses to Create Basic Statistical Compilations

Issue: The Prosecutor's Office repeatedly invokes MCL 15.233(4) and (5) to refuse creating "compilations" or "summaries," yet the underlying data exists and basic statistics are clearly in the public interest.

Legal Standard: While FOIA does not require creating new records, Michigan courts have recognized that "reasonable compilation of existing data" may be required when:

1. The data exists in the public body's possession
2. The compilation serves a significant public interest
3. The compilation is ministerial rather than requiring new analysis

Herald Co. v. Eastern Michigan University Board of Regents, 475 Mich. 463 (2006).

Argument:

1. **The Data Exists - Only Compilation Is Needed**
    - The office admits "underlying data that would allow for the number to be derived is available"
    - Plea offers exist in case files
    - Case outcomes are recorded
    - The office provided trial statistics for 2022-2025, proving they can compile data when they choose to
2. **Basic Prosecutorial Statistics Serve Critical Public Interest**
    - **Accountability:** The public has a right to know how prosecutors exercise discretion
    - **Equal Protection:** Statistics reveal whether similar cases receive similar treatment
    - **Transparency:** Plea bargaining affects 95%+ of criminal cases
    - **Constitutional Compliance:** Data is necessary to assess Brady/Giglio compliance
    - **Resource Allocation:** Taxpayers fund the office and deserve performance metrics
3. **The Compilation Is Ministerial, Not Analytical**
    - Counting plea offers made: simple enumeration
    - Counting acceptances/rejections: simple enumeration
    - Comparing charges pre/post-plea: data extraction, not analysis
    - These are basic statistics, not policy judgments
4. **Other Prosecutor Offices Maintain This Data**

- The Michigan Prosecuting Attorneys Coordinating Council recommends tracking these metrics
- Many Michigan counties produce annual reports with plea statistics
- The failure to track is an outlier, not the norm

Relief Requested: The Board should order the Prosecutor's Office to:

- Create basic statistical summaries from existing case data
- Implement systematic tracking going forward
- Provide the requested statistics at reasonable cost

C. The Office's Lack of Systematic Tracking Violates Public Policy

Issue: The response reveals a systemic failure to maintain records essential to prosecutorial accountability, constitutional compliance, and public oversight.

Public Policy Concerns:

1. **No Brady/Giglio Tracking System**
    - The office admits: "the old case tracking system did not have data fields related to the tracking of plea-bargaining or Brady/Giglio"
    - Brady v. Maryland requires prosecutors to disclose exculpatory evidence
    - Without systematic tracking, Brady violations are inevitable
    - ***The office's claim that no "constitutional-obligation" records need to be generated is legally incorrect***
2. **No Written Plea Bargaining Policies**
    - No standardized plea offer guidelines
    - No sentencing range policies
    - No written criteria for enhancement, reduction, or withdrawal
    - This creates risk of arbitrary and capricious decision-making
    - Equal protection requires consistent treatment of similarly situated defendants
3. **No Performance Metrics**
    - No tracking of plea resolution rates
    - No trial-to-plea ratios
    - No efficiency measurements
    - No way to assess office performance or justify budget requests
    - No accountability to the public
4. **Ongoing System Migration Problems**
    - Migration completed June 2024, but "mistakes and issues being found on nearly a weekly basis"
    - No documentation of errors or remediation plan
    - No explanation of impact on pending cases
    - This suggests serious quality control problems

Legal Framework:

- Michigan Constitution Article I, 17 guarantees due process
- Equal protection requires consistent prosecutorial practices
- Public accountability requires transparent record-keeping
- FOIA's purpose is "to promote openness in government" - *Evening News Ass'n v. City of Troy*, 417 Mich. 481 (1983)

Relief Requested: The Board should:

- Order the Prosecutor's Office to implement systematic tracking of plea bargaining data
- Require written policies for plea offers and sentencing recommendations
- Mandate creation of a Brady/Giglio tracking system
- Direct annual public reporting of prosecutorial statistics

D. The Response Contains Legally Insufficient Denials

Specific Deficiencies:

1. **System Migration Records (Denied - "Don't Exist")**
    - The office claims no documentation of a major IT migration exists
    - This is implausible for a project that took 6+ months and cost taxpayer funds
    - At minimum, there should be: vendor contracts, project plans, status reports, training materials, data validation reports
    - The office's certification that these records "do not exist" is either false or reveals gross mismanagement

2. **Performance Metrics (Denied - "Don't Exist")**
    - The office claims no performance metrics exist
    - Yet they must justify budget requests, staffing levels, and resource allocation
    - They must report to the County Board on office activities
    - Some performance documentation must exist

3. **External Reporting (Denied - "Don't Exist")**
    - The office claims no statistical reports to external agencies exist
    - Many grants require performance reporting
    - The Michigan Prosecuting Attorneys Coordinating Council requests data
    - This denial is likely incomplete

Relief Requested: The Board should order a more thorough search for:

- All system migration documentation
- All budget justification materials containing performance data
- All reports to external agencies, grant funders, or coordinating bodies

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III. PUBLIC INTEREST WAIVER REQUESTED

Pursuant to MCL 15.234(1), I request a complete waiver of fees because this request is "primarily benefiting the general public."

Public Interest Factors:

1. **Subject Matter:** Prosecutorial accountability and plea bargaining practices affect fundamental rights
2. **Transparency:** The public has a compelling interest in how prosecutors exercise discretion
3. **Systemic Issues:** The response reveals serious gaps in record-keeping and oversight
4. **Constitutional Concerns:** Brady/Giglio compliance and equal protection require public scrutiny
5. **Taxpayer Interest:** The public funds the Prosecutor's Office and deserves accountability
6. **No Commercial Purpose:** This request serves public oversight, not private gain

Precedent: Michigan courts have recognized fee waivers for requests serving "watchdog" functions and promoting government accountability. *Kestenbaum v. Michigan State University*, 414 Mich. 510 (1982).

IV. ALTERNATIVE RELIEF REQUESTED

If the Board does not grant full reversal, I request the following alternative relief:

A. Phased Production

- Produce records for one year (2024) as a pilot at reduced cost
- Use this to verify actual time required and refine fee estimate
- Proceed with remaining years if requestor chooses to pay

B. Sample Production

- Produce 100 randomly selected case files with plea offers
- Demonstrate actual redaction time and process
- Allow requestor to assess value before committing to full fee

C. Statistical Summary Only

- Provide aggregate statistics without individual case files:
  - Total plea offers made per year
  - Total acceptances/rejections per year
  - Trial counts (already provided)
  - Average time from charge to disposition
- This would cost minimal staff time and serve the public interest

D. Prospective Tracking

- Order the Prosecutor's Office to begin systematic tracking immediately
- Provide quarterly reports going forward
- This would prevent future FOIA disputes and serve transparency

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V. LEGAL STANDARD FOR BOARD REVIEW

Under MCL 15.240(2), the Board must respond within 10 business days and must:

1. Review the denial de novo
2. Consider whether records were wrongfully withheld
3. Assess whether fees are reasonable and not prohibitive
4. Evaluate the public interest in disclosure

The burden is on the Prosecutor's Office to justify the denial, not on the requestor to prove entitlement. *Swickard v. Wayne County Medical Examiner*, 438 Mich. 536 (1991).

VI. CONCLUSION

The Prosecutor's Office has used technical FOIA compliance to avoid the substance of this request. They have:

- Imposed prohibitive fees to block access
- Refused to create basic statistical compilations despite clear public interest
- Revealed systemic failures in record-keeping and accountability
- Provided legally insufficient denials for key categories of records

This appeal is not merely about access to records, it is about the fundamental principle that prosecutors, who wield enormous power over citizens' liberty, must be accountable to the public they serve. The inability to produce basic statistics about plea bargaining practices is not a FOIA technicality; it is a governance failure.

I respectfully request that the Board of Commissioners:

1. **Reverse the denial** and order production of records at reasonable cost
2. **Grant a public interest fee waiver** given the importance of prosecutorial accountability
3. **Order the Prosecutor's Office to implement systematic tracking** of plea bargaining data
4. **Require annual public reporting** of prosecutorial statistics

The public has a right to know how its prosecutors exercise discretion. This appeal seeks to vindicate that right.

VII. REQUESTOR INFORMATION

[redacted]

Date of Response: December 18, 2025
Date of This Appeal: December 19th, 2025

VIII. CERTIFICATION

I certify that the statements in this appeal are true to the best of my knowledge and belief. I understand that the Board of Commissioners will review this appeal de novo and that I may seek judicial review if the appeal is denied.

[redacted]

Date: December 19th, 2025

ATTACHMENTS

1. FOIA Response Document

Virus-free.www.avg.com

#25-278 Response.pdf
12 MB
