Delta County Prosecutor's Office

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MEMO

DATE: September 15, 2025

TO: Delta County Board of Commissioners; Emily DeSalvo, Delta County Administrator

FROM: Lauren Wickman, Delta County Prosecuting Attorney

RE: Appeal of FOIA Request #25-195

Below please find information related to Appeal of the Response to Freedom of Information Act ("FOIA") Request #25-195. This information is provided in my capacity as Prosecuting Attorney and not as Civil Counsel; therefore, this Memo is not subject to the Attorney-Client Privilege.

Because this Board is familiar with basic FOIA statutes and case law, this Memo does not provide detail regarding any general FOIA law. However, any nuanced or new statutory or case law relevant to this Appeal is discussed herein. Following review of the attached information, ***I am respectfully requesting that this Board issue a written notice to Requester upholding the disclosure denial and fee estimate related to FOIA Request #25-195.***

A. SUMMARY OF FOIA REQUEST #25-195 AND RESPONSE

FOIA Request #25-195 sought the following information:

> **All internal or external reports, evaluations, reviews, assessments, audits, performance appraisals, case statistics, summaries, or compilations of prosecutorial work prepared by, for, or on behalf of the Delta County Prosecutor or Prosecutor's Office during the period of January 1, 2023, through December 31, 2024.**
>
> This request includes but is not limited to:
>
> - Performance reviews, employee evaluations, or operational assessments;
> - Annual, mid-year, or year-end reports;

- Case summaries or statistical breakdowns by type, disposition, or outcome;
- Reports provided to or prepared for County officials, oversight bodies, or the public;
- Any compiled date, tables, charges, or narrative summaries reflecting prosecutorial work or office activity. (Emphasis in original.)

The Request was granted in part and denied in part. Notably, ***the Request was granted as to the majority of the documents sought by Requester***. Specifically, the Response stated as follows:

> Your request is **GRANTED** as to request for records of "[a]ll internal or external reports, evaluations, reviews, assessments, audits, performance appraisals, case statistics, summaries, or compilations of prosecutorial work prepared by, for, or on behalf of the Delta County Prosecutor or Prosecutor's Office," "[a]nnual, mid-year, or year-end reports," "[c]ase Case summaries or statistical breakdowns by type, disposition, or outcome," "[r]eports provided to or prepared for County officials, oversight bodies, or the public," and "[a]ny compiled data, tables, charges, or narrative summaries reflecting prosecutorial work or office activity" for "the period of January 1, 2023, through December 31, 2024".

The Request was denied as to only two categories of documents: (1) performance reviews, employee evaluations, or operational assessments, as such documents simply do not exist; and (2) any reports prepared by the Prosecutor's Office for County officials in the Office's capacity as civil counsel for the County *which were not released to the public and protected by the attorney-client privilege*. To be clear, any reports prepared by the Prosecutor's Office for County officials during the time period covered in the Request that were public and not subject to the attorney-client privilege were provided in the Response.

Many of the responsive documents related to the portions of the Response that were granted were directly provided with the Response. For example, compilations of statistical data from the Prosecutor's Office relevant to the time period covered by the Request which were already created and in existence were provided with the Response. Included with the Response to Request #25-195 were, *inter alia*, a pre-existing report of the number of felony charges authorized for 2023, broken down by offense category, as well as a report from the Michigan Department of Corrections that broke down by county certain criminal court dispositions for all offenses.

However, as has been explained to Requester countless times previously, the Prosecutor's Office generally does not maintain "statistical [case] breakdowns by type, disposition, or outcome." In addition, as has also been explained to Requester countless times previously, the case management system for the Prosecutor's Office changed in June 2024. As such, Response to Request #25-195 properly advised Requester that as to any statistical compilations sought that did not currently exist, the information could be provided to him "in the form of the underlying

information that would allow for your own compiling of the statistical breakdowns by type, disposition, or outcome." As required by statute, the Response then provided a cost and time estimate for compiling and redacting this data before it could be provided to Requester.

B. THE PARTIAL DENIAL OF REQUEST #25-195 WAS APPROPRIATE

First, following a review all of relevant information, I determined and confirmed that there simply were no performance reviews, employee evaluations, or operational assessments related to the Prosecutor's Office for the time period covered by the Request. As such, this discrete portion of Request #25-195 was properly denied because the requested records simply do not exist. *Walloon Lake Water Sys, Inc v Melrose Twp*, 163 Mich App 726, 731; 415 NW2d 292 (1987); *Key v Twp of Paw*, 254 Mich App 508, 511; 657 NW2d 546 (2002); *Ellison v Dep't of State*, 320 Mich App 169, 177; 906 NW2d 221 (2017), *lv den*, 501 Mich 953.

Second, as indicated above, the Response did provide copies of several reports prepared by the Prosecutor's Office for "County officials, oversight bodies, or the public." However as this Board knows, the Prosecutor's Office, in its capacity of civil counsel for the County, occasionally prepares confidential reports for County officials that provide legal analysis or advice. Such confidential reports would properly be protected by the attorney-client privilege and thus are exempt from disclosure under FOIA. MCL 15.243(1)(g) ("A public body may exempt from disclosure as a public record under this act . . . [i]nformation or records subject to the attorney-client privilege.") As such, the portion of the Response to #25-195 that denied the Request as to any reports protected by the attorney-client privilege was proper pursuant to Michigan law.

C. THERE IS NO MERIT TO ANY OF REQUESTER'S GROUNDS FOR APPEAL

First, Requester alleges that the Response to #25-195 is contradictory to the Responses to FOIA Requests #25-133, 136, and 177.[1] However, a simple review of the Responses to #25-133, 136, and 177 show that this argument is without merit. Most notably, Requests #25, 133, 136, and 177 all sought documents specific to, *and limited to*, calendar year 2024. In contrast, the current Request seeks information for both the 2023 and the 2024 calendar years. As such, although the Response to the current Request does include some pre-existing summary data from calendar year 2023, this data was indeed not provided in the Responses to #25-133, 136, or 177 *because 2023 data was not sought in those Requests*.

[1] The Responses to #25-133 and #25-136 were appealed, and this Board has upheld the Responses.

By way of a quick recap, FOIA Request #25-133 sought a monthly summary of charges authorized each month of the *2024 calendar year*, broken down by felony versus misdemeanor offenses. Notably, the Response to #25-133 *did* provide a table that gave a *yearly* summary of felony and misdemeanor charges authorized. However, the request for monthly summaries and breakdowns of this data was denied because such summaries or breakdowns of the data do not exist. Moreover, a supplemental Response to #25-133 provided Requester with an estimate for the underlying data that would allow him to separate out the data by month. FOIA Request #25-136 sought a monthly summary of plea agreements offered and accepted each month of the *2024 calendar year*, broken down by felony versus misdemeanor offenses. This Request was denied because the records simply do not exist. FOIA Request #25-177 sought the average incarcerative sentence and average probation term for cases resolved for the *2024 calendar year*, broken down by plea versus trial. The Response to #25-177 provided much of the information sought in that Request and provided an estimate for the underlying data related to the rest of the Request. Clearly, the Response to Request #25-195 is in no way contradictory to the Responses to #25-133,136, or 137.

Second, Requester alleges that the cost estimate and timeline associated with producing raw data related to part of Request #25-195 is inflated. However, the estimate that was provided in the Response was appropriate pursuant to the guidelines set forth in MCL 15.234. Specifically, pursuant to that statute, the cost estimate was properly based on the hourly wage of the Prosecutor's Office's lowest-paid employee capable of performing the work, and the charged labor and redaction costs were itemized in increments of 15 minutes or more, with all partial time increments rounded down. Indeed, Requester's only basis for challenging the cost or time estimate is his allegation that "Prosecutor by Karpel and PAAM are designed for bulk data exports; manual review of 2,400 case files is not required to produce non-exempt case statistics." However, this statement is simply incorrect. Request #25-195 seeks documents covering "the period of January 1, 2023, through December 31, 2024." As explained ***numerous*** times in the past, the Prosecutor's case management system was converted from Case Tracking to Karpel in mid-2024.[2] As such, manual review of files is required to obtain accurate information related to data spanning the relevant time period. Pursuant to MCL 15.240, if Requester disagrees with the fee estimate associated with Request #25-194, he is required to "submit to the head of the public body a written appeal for a fee reduction that . . . identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4 [MCL 15.234]." In this instance, Requester simply has not demonstrated that the required fee associated with Request #25-

[2] Although this section of the Appeal references "PAAM," aside from facilitating the Karpel contract, the Prosecuting Attorney's Association of Michigan does not have anything to do with storage or management of the Office's case data.

195 exceeds the amount permitted by this Board's procedures and guidelines or statute. The estimate was created by meticulously following the requirements of MCL 15.234.

Third, Requester alleges that the Response failed to properly segregate exempt data from non-exempt data and cites MCL 15.244(1) as a basis for this argument.[3] However, the only exemption relied upon by the Prosecutor's Office in the Response to #25-195 is the exemption related to the attorney-client privilege. However, Requester's "segregability" argument is not applicable to these documents, as the entirety of confidential documents prepared in the context of the attorney-client relationship are properly excluded pursuant to the attorney-client privilege. MCL 15.243(1)(g). The Response also correctly stated that "performance reviews, employee evaluations, or operational assessments" for the requested time period simply DO NOT EXIST. Requester's "segregability" argument is equally inapplicable in this context, as there is no way to "segregate" exempt information from non-exempt information in non-existing documents.

Fourth, Requester alleges that the Response to #25-195 contains an "improper use of attorney-client privilege." However, as stated above, and as is clear from the Response, all of the non-confidential reports from the Prosecutor's Office to County officials during the relevant time period were produced in the Response. Only confidential reports, prepared in the context of the attorney-client relationship and that provide legal analysis or advice, were excluded. And these reports are clearly exempt from disclosure under FOIA. MCL 15.243(1)(g).

Fifth, and finally, Requester alleges that the Response to #25-195 demonstrates a "pattern of obstruction." However, Requester cites no legal or factual basis for this argument. Requester's reliance on the Responses to #25-133, 175, and 194 as evidence of such a "pattern" is disingenuous. Requester has been provided with all existing documents and/or estimates for the complication and redaction of existing documents with regard to each of those Requests.[4] There is simply no merit to this argument.

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[3] MCL 15.244(1) states as follows:

> If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

This statutory subsection does impose a duty to separate exempt and nonexempt material and make nonexempt material available when responding to a FOIA request. However, as explained above, Requester's reliance on this statutory subsection is misplaced in the context of the present Appeal.

[4] In addition, it is curious that Requester alleges that ***three*** of approximately ***fifty*** responses creates a "pattern" of any sort.

D. CONCLUSION

The Response to FOIA Request #25-195 was accurate and appropriate. Notably, the Request was granted as to the majority of the documents sought by Requester. Many of the non-exempt, responsive documents were provided to Requester with the Response, and an appropriate cost estimate was provided with regard to the remainder of these documents. The Request was denied as to only those documents that simply do not exist, or those documents which are explicitly exempt pursuant to the attorney-client privilege. As such, ***I am respectfully requesting that this Board issue a written notice to Requester upholding the disclosure denial and fee estimate related to FOIA Request #25-195.***