Delta County Prosecutor's Office

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MEMO

DATE: June 16, 2025

TO: Delta County Board of Commissioners; Ashleigh Young, Delta County Administrator

FROM: Lauren Wickman, Delta County Prosecuting Attorney

RE: Appeal of FOIA Request #25-94

Below please find information related to the Appeal of Freedom of Information Act ("FOIA") Request #25-94. Please note I am providing this information in my capacity as Prosecuting Attorney and not as Civil Counsel; therefore, this Memorandum is not subject to the Attorney-Client Privilege.

A. RELEVANT FACTS AND PROCEDURAL BACKGROUND

1. FOIA Request #25-94

[redacted] request, in which he sought the following records "covering the period of January 1, 2021, to the present (or from the date Ms. Wickman assumed office, if later)":

1. The total number of criminal cases filed.

2. The number of cases resulting in:
    a. Guilty verdicts at trial
    b. Not guilty verdicts at trial
    c. Dismissals
    d. Plea agreements[.]

3. A breakdown of felony versus misdemeanor case outcomes, if available.

4. Any internal performance reports or case disposition summaries related to Prosecutor Wickman or the office as a whole.

It is worth noting that the language in the initial FOIA Request, as set forth verbatim above, is slightly different from the language in the Appeal related to the FOIA Request (*i.e.*, the appeal currently being considered by this Board). Specifically, the language with regard to item (1) is different in the Appeal because, as explained more fully below, some of the documents in item (1) were provided to Requester in the Response to the initial Request. The language with regard to item (2) is slightly different between the Request and the Appeal as well, but not in any way that would meaningfully impact the FOIA Response or Appeal or that is relevant to the current consideration.

2. Response To FOIA Request #25-94

Upon receipt of FOIA Request #24-94, I thoroughly reviewed the Request and the existing public records within my possession and/or within the possession of the Prosecutor's Office. On June 5, 2025[1], after said review, the Request was granted in part and denied in part as follows:

1. The total number of criminal cases filed. – *Requester was provided with a list of authorized charges for the Delta County Prosecutor's Office for 2021, 2022, and 2023. I then advised that a document(s) containing the "total number of criminal cases filed" in 2024 or 2025 does not currently exist*.

2. The number of cases resulting in: guilty verdicts at trial; not guilty verdicts at trial; dismissals; plea agreements. – *I advised that this document(s) does not currently exist*.

3. A breakdown of felony versus misdemeanor case outcomes, if available. – *I advised that this document(s) does not currently exist*.

4. Any internal performance reports or case disposition summaries related to Prosecutor Wickman or the office as a whole. – *I advised that this document(s) does not currently exist.*

In other words, again, FOIA Request #25-94 was granted in part, and denied in part.

[1] A "Notice to Extend Response Time for FOIA Request" was sent to Requester on May 30, 2025.

3. Appeal Of Response To FOIA Request #25-94

On June 6, 2025, Requester filed the Appeal currently at issue. Per MCL 15.240(3), the Appeal is deemed received by the Delta County Board of Commissioners ("Board") at the Board's next regularly scheduled meeting, which is the meeting scheduled for Tuesday, June 17, 2025.

Per MCL 15.240(2) and Delta County FOIA Procedures and Guidelines Section 8, this Board now has 10 business days to: (i) reverse in whole or in part the disclosure denial; (2) uphold in whole or in part the disclosure denial; or (3) "under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal."

For the reasons set forth herein, ***I am respectfully requesting that this Board uphold the partial disclosure denial***. ***However***, because I anticipate that in the near future my Office will be, in the regular course of business, generating some documents that would be responsive to the Request, ***I am also voluntarily agreeing to provide some additional documentation to Requester***.

More specifically, as set forth above, in the Response, the Prosecutor's Office provided Requester with a list of authorized charges for the Delta County Prosecutor's Office for 2021, 2022, and 2023. At the time FOIA Request #25-94 was under review by the Prosecutor's Office, similar information had not yet been compiled for either 2024 or the initial months of 2025. As such, the Response accurately stated that "a document(s) containing the 'total number of criminal cases filed' in 2024 or 2025 does not currently exist."

It is important to note – and is explained more thoroughly below – that Michigan appellate courts have consistently maintained a very clear line between a public body's possession of existing *raw data* and a public body's possession of reports, lists, or compilations related to that data. While the Prosecutor's Office may have had the underlying data to generate a new report or list reflecting the total number of criminal cases filed in 2024 and/or to date in 2025, no such report or list existed at the time the Response was being considered, and Michigan law is clear that FOIA does not impose a requirement on the Prosecutor's Office to generate any such report or list. See MCL 15.233(4) and (5); *Ellison v Dep't of State,* 320 Mich App 169, 177; 906 NW2d 221 (2017), *lv den*, 501 Mich 953*; Key v Twp of Paw Paw*, 254 Mich App 508, 511; 657 NW2d 546 (2002); *Walloon Lake Water Sys, Inc v Melrose Twp*, 163 Mich App 726, 731; 415 NW2d 292 (1987).

Nonetheless, again, in the near future my Office will, in the regular course of business, be manipulating the raw data in our electronic case management database to generate reports related to the total number of charges authorized by the Prosecutor's Office in 2024 and the initial months

of 2025. As such, I will *voluntarily* provide this additional information to Requester in order to pre-empt a duplicative FOIA request and so Requester has an entirely comprehensive Response to item (1) on FOIA Request #25-94. However, I maintain that the initial Response was proper, and my voluntary, pre-emptive gesture should not be construed either as a concession that the partial denial related to item (1) was improper, or as an agreement to automatically provide similar information in any future FOIA request made by this, or any other, Requester. Each FOIA request is properly considered on a case-by-case basis.

B. RELEVANT LAW AND ANALYSIS

1. General Statutory And Case Law Related To FOIA

First, for purposes of FOIA, a "public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. MCL 15.232(i). Under FOIA, a person has a right to receive, upon proper request, copies of a public record not subject to exemption from disclosure. MCL 15.233(1).

Notably, FOIA does not require a public body to: (a) make a compilation, summary, or report of information or (b) create a new public record [except to the extent required by FOIA for the furnishing of copies, or edited copies, of an already existing public record]. MCL 15.233(4) and (5).[2] In other words, FOIA "only gives a right of access to records in existence." *Walloon Lake Water Sys, supra*, 163 Mich App at 731. If a document does not exist, the public body's only responsibility is to respond to the request and to inform the requesting party of the document's status. *Key, supra*, 254 Mich App at 511.

2. The Partial Denial Was Proper Because The Information Denied Is Not Information Prepared, Owned, Used, In The Possession Of, Or Retained By The Prosecutor's Office

As an initial matter, the information sought in items (2) and (3) of FOIA Request #25-94 is ***not*** information prepared, owned, used, in the possession of, or retained by the Prosecutor's Office

[2] Both of these subsections are subject to exceptions as set forth in section 11 of FOIA, which is codified in MCL 15.241. However, section 11 of FOIA relates only to State Agencies and is inapplicable to the present analysis.

in the performance of an official function, from the time it was created. As such, the denial of this information was proper pursuant to MCL 15.232(i).[3]

Recall that the information sought in item (2) of FOIA Request #25-94 was "[t]he number of cases resulting in: guilty verdicts at trial; not guilty verdicts at trial; dismissals; [and] plea agreements." The information sought in item (3) of the Request was "[a] breakdown of felony versus misdemeanor case outcomes, if available." In other words, items (2) and (3) in the Request are essentially seeking the same basic data (*i.e.*, data regarding criminal case outcomes), with item (2) seeking a breakdown of the outcomes by type of resolution, and item (3) seeking a breakdown of the outcomes by the severity of the charge.

Although initially it might seem like the Prosecutor's Office is the public body that would create raw data regarding criminal case outcomes, in reality, that data is created by the courts themselves. The clerk for a specific court ***creates and maintains*** the official record as to the outcome of a case. If a case proceeds to trial, the court is the public body that generates the verdict form, and following a trial verdict, the court retains the verdict form. If a plea is entered, the clerk of the applicable court creates a plea sheet, which is the official record of the terms of the plea.[4] Similarly, a judgment of sentence in a criminal case is also created and maintained by the court in which a defendant is sentenced. If a case is to be dismissed, the Prosecutor's office can send a ***request*** for a nolle prosequi ("nolle") to a court, but the court is the public body that actually creates and maintains the order of nolle prosequi ("nolle order"). The Prosecutor's Office typically, eventually, gets a *copy* of the official record regarding the outcome of a criminal case (*i.e.*, verdict form, plea sheet, judgment of sentence, nolle order); however, as set forth below, there is no question that the Prosecutor's Office does not prepare, own, use, possess, or retain records regarding the outcome of a criminal case in the performance of its official functions from the time those records are created. Although this approach may seem like mere semantics, it is not. Rather, it is an important nuance – set forth in the plain language of MCL 15.232 – that is intended to provide a FOIA requester with the most complete and accurate information.

First, the Prosecutor's Office does not "prepare" or "own" records of criminal case outcomes for any reason in the performance of its official functions. Instead, as set forth above, it is actually the court that generates all of the information regarding the outcome of a criminal case. Moreover,

[3] The information sought in item (1) was addressed *infra*. The information sought in item (4) [performance reviews, etc.] is addressed below.

[4] For example, occasionally at the time of sentencing, the prosecutor and the defense attorney may have a different recollection regarding a minor detail of a plea. The plea sheet created by the court is the official record of the plea, and the language in the court's plea sheet controls the terms of the plea.

if clerical changes need to be made to a verdict form, plea sheet, judgment of sentence, or nolle order, the Prosecutor's Office has no authority to make any such changes; the relevant court would need to do so. If the Court of Appeals seeks a copy of a judgment of sentence as part of a case on appeal, the Court of Appeals does not contact the Prosecutor's Office for this document; it contacts the clerk of the relevant court. If a defendant is seeking to have his or her conviction set aside per statute, the defendant does not obtain information regarding the relevant judgment of sentence from the Prosecutor's Office; he or she contacts the clerk of the court. In other words, ***in the course of performing its official functions, the Prosecutor's Office does not "prepare" records of criminal case outcomes from the time those records are created or "own" records of criminal case outcomes from the time those records are created***.

Second, the Prosecutor's Office does not "use" records of criminal case outcomes for any reason in the performance of its official functions. The Michigan Supreme Court case of *Amberg v City of Dearborn*, 497 Mich 28; 859 NW2d 674 (2014) is instructive in this regard. In *Amberg*, an attorney submitted a FOIA request seeking copies of video surveillance recordings that were retained by the City of Dearborn's police department. *Id*. at 30-31. The public body argued that, at the most basic level, the recordings were not public records within the meaning of FOIA and denied the request. The Michigan Supreme Court determined that whether or not the recordings were public records within the meaning of FOIA hinged whether the recordings were used by the police "in the performance of an official function."' The Supreme Court stressed that the statute "makes clear that ***the mere possession of the recordings by defendants is not sufficient to make them public records***." *Id*. at 31 (internal citation omitted, emphasis added). However, the Supreme Court found that the police department "used" the recordings in the performance of an official function because the recordings were "collected as evidence by the police *to support the decision*" to issue a citation, and the relevant police file referred to the recordings, including how the police had acquired them. *Id*. at 32 (emphasis in original).

Similarly, in *Blackwell v City of Livonia*, 339 Mich App 495; 984 NW2d 780 (2021), the Court of Appeals considered whether messages sent to the City mayor's Facebook page were subject to FOIA. Although the mayor used the Facebook page to "disseminate information about her official activities as mayor, such as presiding over a swearing-in ceremony for new firefighter," the Court ultimately concluded that none of the evidence demonstrated that the mayor actually used the Facebook profile to facilitate the business of her office – for example, she did not use it to communicate with individual constituents regarding official business. Explaining this decision further, the Court explained that "Mayor Brosnan's comment instructing a constituent to call her office directly showed that Mayor Brosnan did not use the Facebook profile to communicate with individual constituents regarding official business. Instead, she directed the constituent to communicate with her office through official channels by calling her office directly." *Id*. at 508.

As such, because the information on the Facebook page was not used to further official business, the information was not considered a public record for purposes of FOIA. In other words, both *Amberg* and *Blackwell* make it clear that the statutory requirement that a document be "used" by a public body "in the performance of an official function" before that document is subject to FOIA means that passive possession of said document does not satisfy this requirement. Rather, the public body must actively incorporate the information in the public document into its work in a way that facilitates, helps, and advances the work of that office.

The Michigan Supreme Court has made it clear that the Prosecutor's Office's mere possession of the documents that detail criminal case outcomes is not sufficient to find that these documents must be produced by the Prosecutor's Office pursuant to FOIA. *Amberg, supra*, at 31. And, in contrast to *Amberg*, an examination of the relevant facts makes it clear that the Prosecutor's Office does not use the case outcome documents in the performance of the Office's official functions (for example, to make charging decisions or try cases). Indeed, by the time a copy of a case outcome document makes it to the Prosecutor's Office, the relevant case is, for all practical purposes, resolved and nearly ready to be closed. Further, sometimes due to clerical issues on the part of a court, the Prosecutor's Office never even receives a plea sheet. Unlike *Amberg*, the documents at issue here are not used to support any particular decision by the Prosecutor's Office, and the Prosecutor's Office does not routinely reference these documents in reports produced by the Office. Rather, the documents at issue are more akin to the Facebook messages in *Blackwell*; although this information or communication may exist in the course of the public body's work, it is not necessary to facilitate the business of the Prosecutor's Office. In other words, ***in the course of performing its official functions, the Prosecutor's Office does not "use" records of criminal case outcomes from the time those records are created***.

Third, and finally, the Prosecutor's Office does not "possess" or "retain" records of criminal case outcomes in the performance of its official functions. Rather, only the case outcomes retained by the clerk of the court are the official records regarding criminal case outcomes.[5] In the thousands of pages of documents sent to the Prosecutor's Office every *week*, there is inevitably going to be an amended plea sheet that does not make it from the court to the Prosecutor's Office, or a judgment of sentence that is misfiled. Indeed, in June 2024, the Prosecutor's Office transitioned from one case tracking system to another. The transition of hundreds of thousands of data points – if not more – inevitably resulted in some of the information being transitioned inconsistently. As such, the records of Prosecutor's Office prior to June 2024, unless specifically recreated, are incomplete. In other words, ***in the course of performing its official functions, the Prosecutor's***

[5] The Prosecutor's Office very often does not even get a ***copy*** of the verdict form following a trial; a verdict form is guarded very carefully by a court because it is the only record of a jury's decision.

Office does not have "possession of" criminal case outcomes from the time the records are created or "retain" records of criminal case outcomes from the time those records are created.

Because the case outcome documents are not owned, used, in the possession of, or retained by the Prosecutor's Office in the performance of an official function from the time they were created, these documents are not subject to FOIA – at least not through the Prosecutor's Office. As such, the denial of this information was proper pursuant to MCL 15.232(i). However, even if it is decided that the case outcome documents should be considered "public records" of the Prosecutor's Office, the Prosecutor's Office still correctly denied production of the documents pursuant to MCL 15.233.

3. The Partial Denial Was Proper Because The Information Denied Does Not Exist

Significantly, the information requested in items (2), (3), and (4) of FOIA Request #25-94 did not exist at the time the Response was filed, and still to this day, does not exist.[6] ***No public record currently exists to fulfill the request for information presented in items (2), (3), and (4), and these requests inherently require the Prosecutor's Office to generate a new summary or compilation of information***.

a. The information sought in items (2) and (3) does not exist

Recall that items (2) and (3) in FOIA Request #25-94 both seek data regarding criminal case outcomes; specifically, item (2) seeks a breakdown of the outcomes by type of resolution (guilty, not guilty, dismissal, plea agreement), and item (3) seeks a breakdown of the outcomes by the severity of the charge (felony or misdemeanor). Although it may seem intuitive that the Prosecutor's Office would retain this information, the Prosecutor's Office only maintains the relevant raw data in its electronic case management database. In order to provide the data sought in items (2) and (3) of the Request, the Prosecutor's Office would be required to manipulate this data to provide a specific output, *i.e.*, make a compilation, summary, or report of information or create a new public record. Pursuant to the plain statutory language of FOIA, as well as ample Michigan case law, the Prosecutor's Office has no obligation under FOIA to create any such documents. MCL 15.233(4) and (5); *Ellison, Walloon Lake Water Sys, and Key, supra*.

[6] As explained above, part of the information requested in item (1) [documents containing the total number of criminal cases filed in specific years] was provided in the initial Response to FOIA Request #25-94. The Prosecutor's Office has voluntarily agreed to provide the remainder of the information requested in item (1).

Moreover, this request is more complicated than would appear at first glance. First, and very significantly, in the electronic case management system utilized by the Prosecutor's Office there is no way to designate a conviction as a "trial verdict" or a "plea agreement case" or a "plea as charged case."[7] That specific data – which is a large part of the information requested in item (2) – simply is never entered or created as a data point in the Prosecutor's case management system. This information possibly could be ascertained on a file-by-file, in-person review of the underlying raw data – *i.e.*, the actual, paper pleas sheets, verdict forms, judgments of sentence, and nolle orders that are ***created and maintained*** by the courts. However, this information simply is not retained in the Prosecutor's Office. As such, even if Michigan law required my Office to generate a new report in response to FOIA Request #25-94 – which it clearly does not – much of the data sought by Requester is simply not available in the Prosecutor's Office in any format.

In addition, is very common for a criminal defendant to be charged with more than one offense in the context of a single case. Imagine a case in which one of the charges is a felony, while two other charges are misdemeanors. As part of a plea deal, the defendant agrees to plead guilty to the felony charge and one of the misdemeanors, and the second misdemeanor will be dismissed. In addition, part of the same plea deal is that the Prosecutor's Office will not add another charge that could potentially be supported by the facts of the case.[8] Under the FOIA Request at issue in this Appeal, should the outcome of this case be coded as a guilty, dismissal, or plea agreement? Should this case be coded as a felony or misdemeanor? Another example to consider is a misdemeanor case that is initially dismissed for lack of evidence, but, upon further investigation, is recharged as a felony, with an accompanying misdemeanor; the defendant then pleads guilty to the felony and the Prosecution dismisses the misdemeanor. Should this single case be counted as a dismissal outcome AND a guilty felony outcome AND a not guilty misdemeanor outcome? There are potentially nearly endless variations of case outcomes. The Prosecutor's Office maintains hundreds of thousands of data points – if not more – and even the data points that do exist clearly must be manipulated within the Office's electronic database in order to produce any specific information regarding case outcomes.

[7] Notably, the electronic case management system used by the Prosecutor's Office is the same system used by nearly all – if not all – prosecutor's offices throughout the state of Michigan and was selected by the Prosecuting Attorneys Association of Michigan as the criminal case management system to be used throughout the State.

[8] For example, in a recent prosecution, a single defendant was charged with three separate counts of aggravated possession of child sexually abusive material and three separate counts of using a computer to commit a crime, and additional charges could potentially have been supported by the facts of the case, although adding additional charges would not have enhanced the potential penalty.

In *Ellison, supra,* the Michigan Court of Appeals addressed a similar issue. Terry Lee Ellison submitted a FOIA request to the Michigan Department of State requesting "any" information contained in the Department's database specifically related to vehicle registrants whom the Department had identified as unable to verify proof of vehicle insurance at the time they renewed their vehicle's registration. *Id*. at 172. The Court first held that information stored in the Department's database was a "public record" because "the database contained some of the information [Ellison] sought, including names, addresses, vehicle identification numbers ["VINs"], registration, and insurance-audit information." *Id.* at 177. Like our case, upon first glance, the request in *Ellison* may seem simple; either a person had proof of insurance when they renewed their driver's license, or they did not. However, the Department denied the request because, *inter alia,* it alleged it was not required to create a report to identify the specific information sought in the FOIA request. *Id*. at 173. In the context of the FOIA appeal, an administrator for the Department testified that "[t]he types of information sought were stored as fields in the database tables." *Id*. at 178-179. He was unable to "put the entire database on a thumb drive," *i.e.* provide the entirety of the raw data, so his only other option would be to "program the database to give him *specific* output." *Id*. at 178 (emphasis in original). The Court of Appeals found that if the Department was required to manipulate the data in the database to provide the specific, requested output, that meant that the Department would be "creating a new compilation of the data." *Id*. at 179.

In sum, Mr. Ellison made a request for information contained within, and maintained by, the Department's database (*i.e*. names, addresses, VINs, etc.). That individual information, as requested, was an existing public record. The Court in *Ellison* found that because the information requested directly aligned with the information in the database, the underlying information potentially could have been provided in raw form to Mr. Ellison pursuant to FOIA. As such, to the extent Mr. Ellison sought specific data points, the entire database itself (presumably heavily redacted) could potentially be provided to Mr. Ellison. However, the Court was clear that the Department was not required to create a summary or compilation of specific information contained within the database in response to the FOIA request.

However, unlike the request in *Ellison*, which sought the recitation of specific, documented information, (such as names, addresses, VINS, etc.), the Request in the instant matter asks for specific, documented information (some of which does not even exist in the Prosecutor's case management system) to be ***aggregated***. For example, the request in item (1) for "the total number of criminal cases filed" inherently requires the Prosecutor's Office to manipulate data to provide a compilation, summary, or creation of public records to fulfill the request. This "total number" is not information directly or specifically contained within the database (unlike the name of a defendant, officer in charge, witness, or even the specific law enforcement department involved).

Put more simply, items (1), (2), and (3) of the Request are each seeking a summary or compilation of different data points – some, but not all, of which happen to be contained within a database.[9] To be closer to the facts in *Ellison*, Requester would have, for example, sought "the names of all defendants in the criminal cases filed." However, Requester did not do this, but rather made a request that would require the Prosecutor's Office to create a new public record by compiling or summarizing information from a large number of public records. And neither the compilation or summary of information, nor the creation of a new public record, is required by FOIA. MCL 15.233(4) and (5). Recall that FOIA "only gives a right of access to records in existence [*Walloon Lake Water Sys, supra*], and if a document does not exist, the public body's only responsibility is to respond to the request and to inform the requesting party of the document's status [*Key, supra*].

With that being said, the majority of the ***underlying, raw data*** to support items (2) and (3) of the current Request (*i.e.*, individual copies of actual plea sheets, judgments of sentences, verdict forms, nolle orders) ***does*** exist within the files of the Prosecutor's Office. *Even though Requester did not seek disclosure of this raw data / any of the specific data points found in the database* (as Mr. Ellison did in his case), the Prosecutor's Office is willing to provide copies of the raw data that it does possess (appropriately redacted) to Requester. See *Detroit Free Press, Inc. v City of Southfield*, 269 Mich App 275, 288; 713 NW2d 28 (2005), *lv den*, 475 Mich 860 ("Rather than compiling a list, the city could have satisfied the request by allowing plaintiff access to, or providing copies of, redacted records that contained only the requested information). Additional details regarding providing this raw data to Requester is found in section "C" of this Memorandum ("Details Related To Fulfilling Request For Raw Data To Support Calculations Of Various Criminal Case Outcomes").

b. The information sought in item (4) does not exist

Finally, item (4) of the Request seeks "[a]ny internal performance reports or case disposition summaries related to Prosecutor Wickman or the office as a whole." However, these records also do not exist, and there is no underlying data, facts, writings, or communications to support this request.

[9] Again, part of the information sought in item (1) had already been generated by the Prosecutor's Office and was thus provided in the initial Response to the Request. The remainder of the information in item (1) will be provided to Requester because the Office was already planning to generate this information in the near future.

I have been employed full time in the Prosecutor's Office for nearly a decade, certainly long before January 2021. I assure this Board that there has never been an internal performance review resulting in a report related to myself, or any member of the Prosecutor's Office. As such, there simply is no public record related to "performance reports" as requested in item (4). Although the request for "case disposition summaries," as requested in item (4), is extremely vague, the Prosecutor's Office does not possess or maintain any documents fitting that description as it relates to a particular Prosecutor. In sum, the Delta County Prosecutor's Office has not maintained statistics or information regarding the performance of a particular attorney as long as I have been in the office. If a document does not exist, the public body's only responsibility is to respond to the request and to inform the requesting party of the document's status. *Key, supra*. As such, the Prosecutor's Office properly denied the information requested in item (4) of FOIA Request #25-94.

C. DETAILS RELATED TO FULFILLING REQUEST FOR RAW DATA TO SUPPORT CALCULATIONS OF VARIOUS CRIMINAL CASE OUTCOMES

1. Background Of Prosecutor's Office Case Tracking And Data Storage

In 2018, the Delta County Prosecutor's Office began an internal transition to "paperless" data storage. Initially this transition was done with existing processes and spearheaded by then-Assistant Prosecutor Wickman, and the Office manager. However, it became apparent quickly that the IT Department would need to be involved. With their expertise, the system transitioned from a server-based system, with no remote access, to a cloud-based system within NextCloud.

This system was paired with the case tracking system that had been created and maintained by the Prosecuting Attorneys Association of Michigan ("PAAM"). The case tracking system, at that time, was driven by employee-entered information, with no internal document storage to link case information to the documents related to that case. The two systems essentially ran parallel to one another, providing different functions to our Office.

In 2023, PAAM started exploring a new case tracking system for all Michigan Prosecutor's Offices. After much considerations, debate, and input, ProsecutorbyKarpel ("Karpel") was chosen. The cost of this new program was borne by PAAM through funding earmarked by the Michigan legislature. Each Prosecutor's Office had options in terms of storage of documents and other case related items.

On June 10, 2024, the Delta County Prosecutor's Office "went live" with Karpel. In our implementation, our office chose to upload all documents, but digital media (photographs, videos, etc.) were kept on a server. Through this transition the old data from the previous case tracking

system was transitioned to Karpel. However, over time, it has become clear that, despite best intentions, the data did not transition completely, or accurately due to different inputs.

This inconsistent and inaccurate transition was a possibility that we were warned of prior to the implementation. In anticipation of this, Prosecutor Wickman ran certain data reports to preserve that information.[10] However, access to the previous case tracking system or its exact data is no longer available.

In addition, our previously stored documents were transitioned from NextCloud to the server in the same format and organized as they had previously been in NextCloud. These files are organized by an individual's name, with each file associated with that person within its own file in the "name" file. In other words, each defendant is identified by name in the case tracking system (*i.e*. each defendant has a "name" file). Then within each "name" file is every case associated with that particular defendant. Because the root files are not organized by year (only by name), searching for outcomes by any particular year is not viable.

2. Potential Process In Attempt To Provide Information Within Request

As outlined above, the Delta County Prosecutor's Office does not maintain or have access to a document or record that would directly respond to most of the information sought in the Request. For this reason, it is fundamentally my position that the information requested does not fall within the provisions of FOIA. Specifically, there is nowhere within the current case management process that designates a case as being resolved pursuant to a plea agreement, trial verdict, or plea as charged, so any report that might be generated would not provide this information.

With that, the only way to potentially provide this information would be to provide Requester with the raw data (*i.e*. each and every actual plea form, verdict form, or nolle order for every case in District Court and Circuit Court from 2021 to the present time). Requester could then summarize or compile his own numbers, using the raw data. See *Ellison, supra; Detroit Free Press, supra*. This is only a potential way to provide the requested information for several reasons. However, to fulfill the Request through the production of raw data will require an arduous and extensive process.

First, there is no way to search simply by "plea form" or "verdict form" or "nolle order". As such, to locate the necessary documents would require an individual to open each and every digital file that is in the possession of the Delta County Prosecutor's Office. A review of our digital file systems indicates this would amount to over 4,000 files from the previous case management

[10] A sample of these data reports were provided to Requester in the form of a "Charges Authorized" report for 2021, 2022, and 2023.

system and approximately 1,000 files within Karpel. As such, this would require an individual to open approximately 5,000 digital files just to determine *if* a file from the requested years exists.

If a "name" file had a case or cases from the requested years, then those individual "case" files would have to be opened to determine how the case was resolved. Based on the number of cases in an average year (approximately 900 files), such a review would require the review of 4,050 "case" files within the 5,000 "name" files.

However, that number is likely higher. Requester does not specify if the time frame relates to when the case was initiated, or when it was resolved. However, based on what information is being sought (*i.e.* information regarding the resolution of a case), it can be reasonably inferred that the Request relates to cases resolved in 2021 to 2025. This would therefore require an individual seeking the singular document not to review just the files with a case number indicating that it was initiated in 2021, 2022, 2023, 2024, or 2025, but also cases initiated in 2019 and 2020. This is because most cases that are initiated in the latter half of a calendar year do not resolve until the next calendar year. This "bleed over" was exacerbated by COVID-19, which significantly delayed the resolution of cases initiated in 2019 and 2020. A such, the individual tasked with locating the document sought in the Request, would have to review approximately 5,850 "case" files to determine when and how they were resolved. This would require the opening and/or review of approximately 11,000 files.

Second, as my Office made the above-described transition, we have worked to maximize space by removing duplicate files from the server. However, this consolidation process means that the individual reviewing the files will likely need to review *both* the "name" file in the server *and* the Karpel file to locate the actual document.

Third, locating the plea form, verdict form, or nolle order would not be the end of the process. This tedious and monotonous task would also require the redaction of each and every document identified as responsive to the Request. Certain information would have to be redacted as exempt information or information not requested.

Finally, the more complicated process would be to actually determine how the case was resolved. Requester is seeking the total number of "guilty verdicts at trial"; "not guilty verdicts at trial", "plea resolutions," and "dismissals". However, as explained above, these categories do not accurately account for cases that are resolved with a "plea as charged," or for cases that were dismissed, reissued. and resolved within one of the other categories, or cases that were the result of a delay or deferred sentence. Due to these exclusions, there would be a large portion of the cases that would have to be reviewed for specific content to determine what, if any, plea offer

was made, how that compares to the documentation provided by the relevant court, and whether the information ultimately provided fits within one of the designated categories.

With all of these considerations in mind, and conducting a "practice" run on how long this process would take, the Prosecutor's Office estimates that on average it would take approximately 20 minutes – conservatively – to review each file, locate the relevant document in each file, confirm the information requested, and redact any responsive documents in said file. [11] As such, per this conservative estimate, an individual could review three files an hour, on average.

The cost for this process is hard to accurately estimate.[12] The Delta County Prosecutor's Office's lowest paid employee who is capable of performing the task earns $18.31 per hour. Considering the County's standard work week of thirty-five hours per week, if this individual devoted their **entire** work week to fulfilling this FOIA Request (and therefore did not do any of the other work the County was paying this individual to do), the individual could review approximately 105 files per week. At that rate, the approximately 11,000 files would take 104 weeks, or 1.87 YEARS, to complete. **At this rate, the total cost to fulfill the Request would be $66,648.40.**

From a practical standpoint, the Prosecutor's Office could not function if more than one individual staff member was to be devoted to this process, so there is no feasible way to shorten the time period for providing all of the raw data underlying the Request. Indeed, committing even one County employee in our Office to a nearly a two-year long project that is not, in any way, directly related to the work being done by the Prosecutor's Office would greatly impact and hamper the work, production, and efficiency of the Office.

D. CONCLUSION

The Prosecutor's Office has provided to Requester any and all documents responsive to FOIA Request #25-94 that were in the possession of the Prosecutor's Office at the time of the Request. Moreover, the Prosecutor's Office has gone above and beyond its statutory duties and has agreed

[11] This is an average, as some "name" files will not have any "case" files that fit the requested timeframe, whereas other "name" files will have multiple "case" files that fit the requested timeframe. Those "name" files with no "case" files will take less than one minute. However, for those "name" files with one or more "case" files within the requested time frame, the document would have to be located, reviewed, determined if it fits the Request, and ultimately redacted, as explained above.

[12] The above process and information have been discussed at length within the Prosecutor's Office to ensure there is not a faster or easier way to obtain those documents that would potentially respond to the Request. The result of that discussion is that there is no easier or faster way to accomplish the task. There is no report or list that could be generated, and there are no existing documents (spreadsheets or otherwise) that provide this information.

to voluntarily provide additional information to Requester, so he has an entirely comprehensive Response to item (1) on FOIA Request #25-94.

With regard to items (2) and (3) of the Request [data regarding criminal case outcomes], the Prosecutor's Office does not prepare, own, use, possess, or retain records regarding the outcome of a criminal case in the performance of its official function, from the time those records are created. As such, the Prosecutor's Office properly denied any request for this data pursuant to MCL 15.232(i).

Moreover, even if the Prosecutor's Office was required to provide information regarding criminal case outcomes, this information does not currently exist. Some of the data points required to generate the reports sought by Requester simply do not exist in the Office's case management system. Further, producing the requested information for data points that do exist would require the Prosecutor's Office to create a new public record by compiling or summarizing information from a large number of public records, and Michigan courts are clear that there is no such obligation. As such, the Prosecutor's Office properly denied any request for this data pursuant to MCL 15.233 (4) and (5). See also *Ellison, Walloon Lake Water Sys, and Key, supra*.

The most information the Prosecutor's Office would be required to provide related to items (2) and (3) would be the (properly redacted) underlying, raw data. *Ellison, Detroit Free Press, supra*. Upon receipt of an appropriate deposit (consistent with the work described in Section "C," above), the Prosecutor's Office is willing to provide this information to Requester, even though this is ***not*** the specific information identified by Requester in FOIA Request #25-94.

Finally, the Prosecutor's Office properly denied the information requested in item (4) of the Request because none of this information exists. *Key, supra*.

As such – with the understanding that the remaining information to satisfy item (1) of the Request will be provided and that the underlying raw data to satisfy items (2) and (3) of the Request will be provided upon receipt of a proper deposit – I am respectfully requesting that this Board deny the Appeal at issue and uphold *in whole* the partial denial related to FOIA Request #25-94.

Sincerely,

Lauren M. Wickman
Prosecuting Attorney
Delta County