



C A L I F O R N I A

DEPARTMENT OF JUSTICE

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August 26, 2024

Sent Via Email

Will Scolinos
America First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, D.C. 20003
FOIA@aflegal.org

RE: Public Records Act Request; DOJ No. 2024-01947

Dear Mr. Scolinos:

This letter is in further response to your online submission received by the California Department of Justice (Department) on July 25, 2024, in which you sought records pursuant to the California Public Records Act (PRA) as set forth in Government Code section 7920.000, et. seq. Specifically, you requested:

*We are requesting access to the records and electronic systems of former California Attorney General Kamala Harris, in possession or control of the California Attorney General's Office, for the purposes of inspection and copying pursuant to the California Public Records Act, California Government Code § 7920.000 et seq. ("CPRA"), and the California Constitution, CONST. art. I, § 3(b). During Kamala Harris' service as Attorney General, the State of California required organizations that solicited charitable contributions in California to file copies of their federal IRS Form 990 tax forms. These forms include a list of all donors who contributed at least \$5,000 to the charity in a given year. The Supreme Court, in *APF v. Bonta*, 594 U.S. 595, 616–17 (2021), held that such mandatory disclosures violated the First Amendment. That case did not deal with a federal statute that governed Kamala Harris' fishing expedition against groups she ideologically opposed. 26 U.S.C. § 6103(p)(8)(A) of the Internal Revenue Code orders that "no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless*

such State adopts provisions of law which protect the confidentiality of the copy of the Federal return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.”

I. Requested Records

Pursuant to the CPRA, Cal. Gov’t Code §§ 7920.000, et seq., and the California Constitution, CAL. CONST. art. I, § 3(b), AFL requests disclosure of all records and communications within the records and electronic systems of former Attorney General of California Kamala Harris referring and relating to:

A. All provisions of law adopted and applicable to the Attorney General’s office protecting the confidentiality of the Federal tax return. For each applicable “provision(s) of law” please produce all records tending to show that the relevant regulation, order, or guidance has the force of law in California.

B. All records concerning the identity of public charities soliciting contributions in California for whom the Attorney General’s office requests disclosure of their unredacted IRS Form 990’s.

C. All records identifying public charities that were subjected to audits, investigations, or other requests for information.

D. All records regarding the processing of these items.

The time period for each of the above items is from January 3, 2011, to January 3, 2017.

On August 5, 2024, the Department provided notice that it was taking an extension of time to respond to your request. The Department also notified you that documents filed by a charitable organization and public notices issued to an organization are posted to the organization’s public file, which are available for inspection online and can be accessed using the Registry Search Tool page of the Department’s website: <https://rct.doj.ca.gov>.

Item A

Your request references “Federal tax returns” when seeking “*provisions of law adopted and applicable to the Attorney General’s office protecting the confidentiality of the Federal tax return.*” However, charities’ annual filing requirements with the Registry of Charities and Fundraisers include informational returns open to public inspection rather than tax returns.

Therefore, we construe your request to mean IRS informational returns including the IRS Forms 990, 990-EZ and 990-PF. (See, e.g., Cal. Code Regs., tit. 11, § 301.) While the Department cannot provide you legal advice, you may consider reviewing California Regulations on the Supervision of Trustees and Fundraisers for Charitable Purposes (Cal. Code Regs., tit. 11, § 300 et seq.) which can be found at the following link: <https://oag.ca.gov/charities/laws>. You may want to particularly consider California Code of Regulations, title 11, section 310.¹

Item B

Item B seeks records identifying public charities soliciting contributions in California for whom the Department requested disclosure of an unredacted IRS Form 990 from January 3, 2011, to January 3, 2017. The Department does not maintain, index or categorize our files based on the criteria provided in your request. The Department maintains records for all public charities that solicited contributions in California if they are registered with the Department; however, we cannot determine which public charities were required to submit an unredacted IRS Form 990 during the time period identified without manually reviewing the records for the tens of thousands of charities that may have been required to submit an IRS Form 990 for each of the six years. The expense and inconvenience of engaging in such a limitless search of documents would not be in the public interest. (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 452-453.)

We understand the Registry Search Tool does not offer the ability to filter by year. Thus, the Department can provide a list of all charities who renewed during the time period at issue of your request, possibly triggering the need to file the IRS Form 990. With this list, you will then need to review the public file for each charity by using the Registry Search Tool to inspect for Forms 990 filed by organizations from 2011 to 2017. The Department cannot more narrowly identify those organizations that were required to File a Form 990.

If you are interested in this list, please be advised that this will require payment of the programming costs associated with the data extraction. (Gov. Code, § 7922.575, subd. (b).) It would take an Information Technology Specialist I approximately 1 hour at a rate of \$59.03 per hour to program and extract the requested report.

If you decide that you want the Department to proceed with this item of your request, please send a check within 20 days for \$59.03 made out to the Department of Justice to:

Public Records Coordinator
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

¹ This provision was renumbered to Section 309, effective March 26, 2024.

Once the Department receives payment, we will begin the necessary programming for the data extraction. If we do not receive payment within 20 days, we will consider this item of your request withdrawn.

Item C

To the extent that Item C of your request seeks audits and investigations, those records are considered investigative files, and we must deny your request. Investigative records are confidential law enforcement records of the Attorney General. Government Code section 7923.600-7923.625 expressly exempts from disclosure investigatory and security files of the Attorney General including complaints about unlawful practices. (See *Williams v. Superior Court* (1993) 5 Cal.4th 337, 354.) Investigative records do not lose their exempt status due to a failure to prosecute, or the close of an investigation. (*Id.* at p. 355 [A time limitation on the exemption for investigatory files is virtually impossible to reconcile with the language and history of Government Code sections 7923.600-7923.625].)

Additionally, Item C of your request as currently phrased seeks all communications to or from the Department about any “*other requests for information*” in relation to public charities. As phrased, this would include all communications over the course of six years that involved any communication to charities. This would require review of millions of records in more than 100,000 files, most of which have already been produced on the Department’s website and which are available through the Registry Search Tool. Pursuant to Government Code section 7922.000, the expense and inconvenience of engaging in such a limitless search of documents would not be in the public interest. (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 452-453.)

Government Code section 7922.000 “provides a means by which an agency may withhold a public record which would not be exempt under any of the specific exemptions delineated in section 6254.”² (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 662.) Section 7922.000 states that “[a]n agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” A PRA request to an agency must itself be focused and specific. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481.) This request does not provide sufficient specificity to allow the Department to conduct a reasonable search.

When weighing the competing public interests that favor disclosure and non-disclosure, it is appropriate not only to consider the duration of the period covered by the request, but also wording of the request itself. According to one California appellate court, “[i]t is the nonspecific and unfocused nature of [a] request which is dispositive, not its time period.” (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 480.) In *Rogers*, a newspaper reporter “requested the

² Following the January 1, 2023 recodification, former Government Code section 6254 is now found in sections 7923.600 – 7929.610.

wholesale production of all City-reimbursed telephone records of all City Council members over a one-year period.” (*Ibid.*) The reporter offered to make a more focused request to the trial court so that the court could intelligently review the telephone records in camera. The appellate court rejected that suggestion and stated that it is the responsibility of the person seeking public records to submit a focused request. “Petitioner should have presented a specific and focused request to the City, which it then would have an opportunity to comply. It makes no sense to permit an individual to make a general, unfocused request for records to the public agency which will then be compelled to deny it, thereby ensuring litigation. The request to the agency must itself be focused and specific.” (*Id.*, at p. 481.) This request for all internal communications of the Department over the course of six years is not sufficiently focused or specific to allow the Department to develop and conduct a search.

Additionally, to the extent that there are public records responsive to this request, they are likely to be posted to the charity’s public file and available through the Registry Search Tool on the Department’s website. To the extent such records are not already available, it is likely because they are exempt from disclosure for the reasons stated in this letter.

Item D

To the extent that Item D of your request seeks records regarding the processing of the items listed in your request, this request, as phrased, is similarly unfocused and overbroad. This request would require review of millions of records in more than 100,000 files. Pursuant to Government Code section 7922.000, the expense and inconvenience of engaging in such a limitless search of documents would not be in the public interest. (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 452-453.)

Government Code section 7922.000 “provides a means by which an agency may withhold a public record which would not be exempt under any of the specific exemptions delineated in section 6254.”³ (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 662.) Section 7922.000 states that “[a]n agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this division, or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

A PRA request to an agency must itself be focused and specific. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481.) This request for internal communications of the Department related to the processing of tens of thousands of charity renewals over the course of six years, is not sufficiently focused or specific to allow the Department to develop and conduct a search.

³ Following the January 1, 2023 recodification, former Government Code section 6254 is now found in sections 7923.600 – 7929.610.

Items C and D

To the extent items C and D of your request seek records that are subject to the attorney-client privilege, we must deny your request. Records subject to the attorney-client privilege are exempt from disclosure. Government Code section 7927.705 incorporates confidentiality privileges set forth elsewhere in law. The attorney-client privilege is contained in Evidence Code section 954 and protects confidential communications between the attorney and the client. In the case of *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, the Supreme Court held that Government Code section 7927.705 expressly exempts from disclosure matters privileged under the Evidence Code, which includes the attorney-client privilege.

In the present case, attorneys in the Department provide legal advice to the Attorney General and Department staff, including employees within the Registry of Charities and Fundraisers. Accordingly, all communications between the Attorney General, his designees, Department staff and the Department's attorneys concerning the subjects you requested are exempt from disclosure pursuant to the attorney-client privilege, and are exempt from disclosure under the Public Records Act.

To the extent items C and D of your request seek records that are subject to the attorney work-product privilege, we must deny your request. Code of Civil Procedure section 2018.030 exempts from disclosure the work product of an attorney. The attorney work product exception exempts from disclosure any writing that reflects an attorney's impressions, conclusions, opinions, legal research or legal theories that are maintained as confidential. It also is incorporated into the Public Records Act by Government Code section 7927.705. (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 833.) Under the attorney work-product exception, records such as confidential analyses, draft language and memoranda prepared by the attorneys employed with the Attorney General's Office would be subject to this exception, and are exempt from disclosure under the Public Records Act.

This completes the Department's response to your request.

Sincerely,



JOSEPH N. ZIMRING
Supervising Deputy Attorney General

For ROB BONTA
 Attorney General