



C A L I F O R N I A

DEPARTMENT OF JUSTICE

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**Attorney General**

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August 19, 2024

***Sent Via Email***

Rachel Jag  
America First Legal Foundation  
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Washington, DC 20003  
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RE: Public Records Act Request; DOJ No. 2024-01951

Dear Rachel Jag:

This letter is in response to your public records request received by the California Department of Justice (Department) on July 25, 2024, in which you sought records pursuant to the California Public Records Act. (Gov. Code, § 7920.000 et seq.) Specifically, you requested:

*In 2015, California Attorney General Kamala Harris launched a criminal investigation into corruption inside Orange County jails (hereinafter “criminal investigation”). See Letter from Todd Spitzer, Orange County Dist. Att’y, to Hon. Att’y Gen. Xavier Becerra, Cal. Dep’t of Just. (Apr. 23, 2019) <https://bit.ly/3y1mniP> (last visited July 24, 2024). Four years later, no charges were filed. Id.*

*I. Records Request*

*Pursuant to the CPRA, Cal. Gov’t Code §§ 7920.000, et seq., and the California Constitution, CAL. CONST. art. I, § 3(b), which govern access to public records of California state and local government agencies, AFL requests disclosure of the following records:*

*A. All records, including document drafts, meeting notes, and related communications and records relating to the criminal investigation and Harris’ decision not to seek indictments*

*B. All records, including document drafts, reports, advice, meeting notes, and related communications and records and related communications evidencing:*

*1. All records indicating any findings of perjury by any deputy employed in the Orange County Sheriff’s Department, including specific findings that two deputies*

*“intentionally lied or willfully withheld material evidence” about the misuse of informants at a murder trial.*

*2. The number and job title of Sheriff’s Department employees who were interviewed as part of the investigation and the dates of each interview of Sheriff’s Department personnel.*

*3. All reports or communications made to the AG office by Orange County Assistant Public Defender Scott Sanders.*

*C. All records, including email communications within the Office of the Attorney General, sufficient to show a timeline, or proposed timeline or date to end the Attorney General’s investigation into the Orange County Sheriff’s Department*

*D. All communications with the Orange County District Attorney, including any responses to (and drafts or communications relating to) Todd Spitzer’s April 23, 2019, letter to Attorney General Xavier Becerra. See Letter from Todd Spitzer, Orange County Dist. Att’y, to Hon. Att’y Gen. Xavier Becerra, Cal. Dep’t of Just. (Apr. 23, 2019) <https://bit.ly/3y1mniP> (last visited July 24, 2024).*

*The time period for these items is from November 1, 2014, to March 31, 2020.*

#### Item A

To the extent that your request seeks investigative files, we must deny your request. Investigative records are confidential law enforcement records of the Attorney General. Government Code sections 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.) (*Id.* at pp. 361-362 [“the exemption for law enforcement investigatory files does not end when the investigation ends.”].)

The records that you are seeking are also exempt from disclosure pursuant to the attorney-client privilege and attorney work product exception. 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. Government Code section 7927.705 expressly exempts from disclosure matters privileged under the Evidence Code, which includes the attorney-client privilege. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370.)

In the present case, the attorneys in our department provide legal advice to the Attorney General and his designees. Accordingly, all communications between the Attorney General or his designees and the department’s attorneys concerning the investigation are exempt from disclosure pursuant to the attorney-client privilege.

Code of Civil Procedure section 2018.030 also 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 (Axelrad)* (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 by the Department would be subject to this exception and are exempt from disclosure under the Public Records Act.

Additionally, the deliberative process exemption is also applied to the Public Records Act through Government Code section 7922.000. It exempts from disclosure materials that would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or, if it is inextricably intertwined with policymaking processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.) Accordingly, any records related to the Attorney General's decisions and decision-making process are exempt from disclosure.

## Item B

### Subitem 1

The Department consulted with knowledgeable people and searched in logical places, and did not locate any records responsive to subitem 1. Accordingly, we have no records related to findings of perjury by deputies employed in the Orange County Sheriff's Department.

We have no obligation or ability to provide public records that are not in our custody. (Gov. Code, § 7922.535, subd. (a).) If you wish to review records that are in the custody or control of a local or another state agency, we suggest that you direct your request to that agency. In this instance, you may wish to direct your request to the Orange County Superior Court.

### Subitem 2

To the extent that this request seeks investigative files regarding any interviews of Sheriff's Department employees conducted pursuant to an investigation, we must deny this request as well. As noted above, investigative records are confidential law enforcement records of the Attorney General. Government Code sections 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.) (*Id.* at p. 361-362 ["the exemption for law enforcement investigatory files does not end when the investigation ends."].)

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### Subitem 3

To the extent this request seeks reports or communications made to the Department by the Orange County Assistant Public Defender Scott Sanders related to an investigation, we must deny this request as well. As noted above, investigative records are confidential law enforcement records of the Attorney General. Government Code sections 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.) (*Id.* at p. 361-362 [“the exemption for law enforcement investigatory files does not end when the investigation ends.”].)

### Item C

To the extent that Item C of your request—seeking records showing a timeline for an investigation into the Orange County Sheriff’s Department—seeks investigative files, we must deny this request. Investigative records are confidential law enforcement records of the Attorney General. Government Code sections 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.) (*Id.* at p. 361-362 [“the exemption for law enforcement investigatory files does not end when the investigation ends.”].)

The records that you are seeking are also exempt from disclosure pursuant to the attorney-client privilege and attorney work product exception. 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. Government Code section 7927.705 expressly exempts from disclosure matters privileged under the Evidence Code, which includes the attorney-client privilege. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370.)

In the present case, the attorneys in our department provide legal advice to the Attorney General and his designees. Accordingly, all communications between the Attorney General or his designees and the department’s attorneys concerning the investigation are exempt from disclosure pursuant to the attorney-client privilege.

Code of Civil Procedure section 2018.030 also 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 (Axelrad)* (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 by the Department would be subject to this exception and are exempt from disclosure under the Public Records Act.

Additionally, the deliberative process privilege is also applied to the Public Records Act through Government Code section 7922.000. It exempts from disclosure materials that would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or, if it is inextricably intertwined with policymaking processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.)

Item D

To the extent that Item D of your request—for communications with the Orange County District Attorney—seeks investigative files, we must deny this request. Investigative records are confidential law enforcement records of the Attorney General. Government Code sections 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.) (*Id.* at p. 361-362 [“the exemption for law enforcement investigatory files does not end when the investigation ends.”].)

This completes our response to your request.

Sincerely,

/s/ Jessica Owen  
Deputy Attorney General  
Special Prosecutions Section

For ROB BONTA  
Attorney General