

Date: **December 22, 2009**

Subject: **Request for public records by voiceofsandiego.org**

Steve Walker

San Diego District Attorney's Office

Sent via e-mail to: steve.walker@sdca.org

To whom it may concern,

My name is Keegan Kyle and I'm a staff writer for voiceofsandiego.org, a nonprofit news organization. Under California's Public Records Act, I request an electronic copy of the following public records from the San Diego District Attorney's Office.

I request a copy of data from the DA's case management system. I request all data related to cases that involved a defendant being charged with a crime and California's gang enhancement (Penal Code 186.22). Please limit this request to cases filed between January 2000 and December 2009.

I ask that this request encompass all cases involving the gang enhancement charge at some point in the prosecution. Please include cases even if the gang enhancement was dropped or added after the original charges were filed. Please include cases even if they did not result in a conviction of the gang enhancement or a conviction of any crime.

The electronic records should include, but should not be limited to, the following information:

- Case number
- Date charges were filed
- Criminal charges tied to the gang enhancement
- Other criminal charges not tied to the gang enhancement
- Defendant's name
- Prosecutor's name
- Date of conviction
- Convicted crimes

Although I am not required to explain the purpose of this request by law, I am seeking this information to better understand how the District Attorney's Office uses the gang enhancement. If you are aware of a more efficient way for me to access the same information that would be provided by this request, please let me know.

Please do not hesitate to contact me if you have any questions about this request. I am happy to provide clarification and discuss alternative options that may provide the same information in a more efficient

way. I ask that you notify me of any fees exceeding \$20 before processing this request so that I may decide which records I want copied.

Thank you for your time and attention to this matter.

Sincerely,

Keegan Kyle

Staff Writer

www.voiceofsandiego.org

Office: 619-550-5668

Mobile: 619-206-5293

E-mail: keegan.kyle@voiceofsandiego.org

From: Armstrong, Richard [mailto:richard.armstrong@sdcca.org]
Sent: Monday, January 04, 2010 4:19 PM
To: Keegan Kyle
Cc: Levikow, Paul; Walker, Steve (Communications)
Subject: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Mr. Kyle: attached find our response to your request of 12/22. Let me know what you decide to do with this request, or call me with any further questions.

Hope your holidays went well.

RSA

<<09-43 VoSD gang enhc ltr 100104.pdf>>

RICHARD S. ARMSTRONG

Deputy District Attorney

Appellate & Training Division

(619) 531-3578

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
BONNIE M. DUMANIS
DISTRICT ATTORNEY

330 West Broadway, Suite 860
San Diego, CA 92101
(619) 531-4074

January 4, 2010

Keegan Kyle, Staff Writer
Via Email: keegan.kyle@voiceofsandiego.org

Re: Request for Public Records
09-43 PRA

Mr. Kyle:

On December 22, this office received your request under the California Public Records Act [CPRA] for statistical data held in the District Attorney's Case Management System [CMS] database. Specifically, you seek:

. . . all data related to cases that involved a defendant being charged with a crime and California's gang enhancement (Penal Code 186.22) . . . [in] cases filed between January 2000 and December 2009 . . . ¶ . . . involving the gang enhancement charge at some point in the prosecution[,] even if the gang enhancement was dropped or added after the original charges were filed[, or the case] did not result in a conviction of the gang enhancement or a conviction of any crime . . . ¶ . . . [E]lectronic records should include, but should not be limited to, the following information:

- Case number
- Date charges were filed
- Criminal charges tied to the gang enhancement
- Other criminal charges not tied to the gang enhancement
- Defendant's name
- Prosecutor's name
- Date of conviction
- Convicted crimes

Our initial query found 2162 defendants that meet your initial charging criteria, although the query included defendants charged with the felony found at subdivision (a) of Penal Code section 186.22, as well as the four enhancements and one elevator found in section 182.66 as a whole. For the purposes of this letter, it would be safe to assume that a complaint charging a defendant with a felony under section 186.22(a) would also include at some point an enhancement or elevator under section 186.22.

Your request for “all data related to cases” identified in your request is respectfully denied. CMS includes “public information” as defined in Evidence Code section 1040 and prosecutors’ conclusions, opinions, and legal research and theories about our cases. (Pen. Code, § 1054.6; Code. Civ. Proc. § 2018.030(a); Gov. Code § 6254(k).) Disclosure of some CMS information would injure the privacy interests of crime victims and case witnesses. (Gov. Code, § 6254(k).) As well, a request for all CMS data on cases is a request for a significant part of the District Attorney’s case files. Investigatory files compiled for law enforcement purposes are not subject to CPRA disclosure. (Gov. Code, § 6254(f); *Williams v. Superior Court* (1993) 5 Cal.4th 337, 354; *County of Orange v. Superior Court [Wu]* (2000) 79 Cal.App.4th 759, 765.)

A review by deputy district attorneys of “all data related to cases” described in your request in order to identify and redact confidential information would require a very substantial expenditure of agency resources for little public benefit. More formally, in this instance, “on the facts of the particular case the public interest served by not disclosing the record[s] clearly outweighs the public interest served by disclosure of the record[s].” (Govt. Code, section 6255(a).)

For the foregoing reasons, the information below concerns production of the statistical information identified as bullet-pointed specifics in your letter and above. A senior IT engineer and our CIO have reviewed your request, and determined that extracting the identified data from CMS would require a substantial expenditure of agency resources. Indeed, given the current backlog of IT work, the foregoing balancing test found in Government Code section 6255(a) might very well call for outright denial of the request.

Before the inquiry reaches that point, however, there is another matter to be addressed. Production of the information you seek will require data compilation, extraction, and programming by our IT division. Pursuant to Government Code, section 6253.9, the cost of this work is be chargeable to you. ITD staff estimates that the budgetary cost of IT personnel and server time to produce the information you have requested – including the IT time already invested – as approximately \$1475. Before further work can proceed on your request, this office would require prepayment of that sum. If the estimate proved to be in excess of actual costs, any overage would be refunded, of course.

Please let me know if this is acceptable to you. If you wish to obtain the information in this manner, we will then decide if there are reasonably available resources to comply with your request.

In closing, it is also appropriate to state that in this matter, this Office claims, enforces and applies any and all applicable exemptions, privileges and proscriptions against public disclosure of records, including, but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, and those privileges established by the California Evidence Code and the Federal Rules of Evidence.

Respectfully,

RICHARD S. ARMSTRONG
Deputy District Attorney
(619) 531-3578
richard.armstrong@sdcca.org

RSA:kro

From: Armstrong, Richard [mailto:richard.armstrong@sdcca.org]
Sent: Thursday, January 14, 2010 3:29 PM
To: Keegan Kyle
Cc: Levikow, Paul; Walker, Steve (Communications)
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Mr. Kyle: sorry to keep you waiting. I've appended our response to each of your additional inquiries below.

RICHARD S. ARMSTRONG
Deputy District Attorney
Appellate & Training Division
(619) 531-3578

From: Keegan Kyle [mailto:Keegan.Kyle@voiceofsandiego.org]
Sent: Thursday, January 07, 2010 10:58 AM
To: Armstrong, Richard
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Good morning Richard,

A few follow-up questions about the CPRA for data related to the gang enhancement charge:

1. Can you breakdown the estimated cost (\$1,475) into specific terms? How many hours of staff/server time, who is the senior engineer, what is their time and a half pay, what is the rate for server time, how much is server time and how much is programming, etc.

3 servers for 16 hours @ \$25/hr/server = \$1200

Sr. IT Engineer @ \$50/hr for 5.5 hrs = \$275. Actually, it should be \$75/hr, to include benefits.

2. Is there another version of the data -- maybe a slightly outdated version -- that is available and would not need new programming? Some database systems create backups of their files every quarter or every year. Maybe these files could be copied to cover most of my time frame and cut down on copying costs.

My understanding is – and I could be mistaken – is that the programming time results from the broad scope of your request, many data points that are not necessarily interrelated in CMS.

3. How would reducing the amount of years affect the cost? 2000-2009 = \$1,475. What about the last five years or just the last year?

I'm told that there would probably be a fairly direct correlation between the number of years and the amount of server time required. An estimate for 1 year's run would be \$412.50 (employee time) and \$120 server time, \$532.50 total. Add \$120 for each additional year – as an estimate.

3. Are other office reports available -- annual reports or otherwise -- that provide similar information on how the gang allegation (PC 186.22) is attached to different crimes by San Diego prosecutors? I know what they can do in theory, but what's happening in reality.

No. The Gang Prosecution Division does not produce any statistical reports with this information. Statistical information may be available from the Administrative Office of the Courts, of the California Judicial Council. Or the Clerk of the Superior Court may be able to produce the relevant statistics.

Please let me know if these questions are not clear. I'm also happy to meet with you and IT staff if that type of group conference would be a more efficient way to work through this request.

If you have further questions, Paul and Steve are always available. Our ITD is understaffed and very busy.

KK

From: Keegan Kyle [Keegan.Kyle@voiceofsandiego.org]
Sent: Wednesday, January 27, 2010 7:54 PM
To: Armstrong, Richard
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

OK, sorry for waiting on this. A few thoughts:

1. I don't understand why server time falls under the "direct cost" of copying these records. In reference to data compilation, the statutes talk about paying for the cost "to write programming language or a computer program" to extract the data. They do not say anything about the amount of time it takes to run the actual computer program.

2. Why does a senior engineer need to create the program? If another person in the office who makes less money can reproduce the records, then we should be talking about his or her hourly pay.

3. I understand that my original request was broad. I would like to talk with IT personnel about a more narrow request (defendant name, date of charge filed, list of charges and a few other categories) that would reduce the time and cost. Forgive the expression, but I would like to find the most bang for my buck.

4. Thank you for checking whether other reports are available.

Hopefully we can chat Thursday or Friday, and again, thanks for your assistance with this request.

- Keegan Kyle

From: Armstrong, Richard [mailto:richard.armstrong@sdcca.org]
Sent: Tuesday, February 02, 2010 4:14 PM
To: Keegan Kyle
Cc: Levikow, Paul; Walker, Steve (Communications)
Subject: FW: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Mr. Kyle: a confirmation of our conversation yesterday.

RICHARD S. ARMSTRONG
Deputy District Attorney
Appellate & Training Division
(619) 531-3578

From: Keegan Kyle [mailto:Keegan.Kyle@voiceofsandiego.org]
Sent: Wednesday, January 27, 2010 7:54 PM
To: Armstrong, Richard
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

OK, sorry for waiting on this. A few thoughts:

1. I don't understand why server time falls under the "direct cost" of copying these records. In reference to data compilation, the statutes talk about paying for the cost "to write programming language or a computer program" to extract the data. They do not say anything about the amount of time it takes to run the actual computer program.

Government Code section 6253.9, subdivision (b), states in pertinent part that "the requester **shall** bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and **computer services necessary to produce a copy of the record** when either of the following applies: . . . (2) The request would require data compilation, extraction, or programming to produce the record." (Emphasis added) A response to your request requires construction of a record by data compilation, data extraction, and programming, as well as the services of the office's computers. This office cannot neglect its duty to protect the public fisc in the recovery of these costs.

2. Why does a senior engineer need to create the program? If another person in the office who makes less money can reproduce the records, then we should be talking about his or her hourly pay.

Because it is a Sr. IT Engineer to whom the task has been assigned, based on the necessary levels of training and experience required to perform the task correctly and expeditiously.

I understand that my original request was broad. I would like to talk with IT personnel about a more narrow request (defendant name, date of charge filed, list of charges and a few other categories) that would reduce the time and cost. Forgive the expression, but I would like to find the most bang for my buck.

It is my understanding that a request for data on allegations, which are appended to the counts of a complaint or information, requires inherently complicated programming to produce the data. Our data systems are not organized for statistical tracking of allegations. Given that, and the circumstances that our ITD is understaffed and overcommitted, it is unlikely that such a meeting would be of any benefit to you in this matter.

4. Thank you for checking whether other reports are available.

Hopefully we can chat Thursday or Friday, and again, thanks for your assistance with this request.

- Keegan Kyle

Date: **February 2, 2010**

Subject: **RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS**

Richard Armstrong

San Diego District Attorney's Office

Sent via e-mail to: richard.armstrong@sdcdca.org

CC'd to: Paul Levikow, paul.levikow@sdcdca.org; Steve Walker, steve.walker@sdcdca.org; Andrew Donohue, andrew.donohue@voiceofsandiego.org

Mr. Armstrong,

I continue to respectfully disagree with the District Attorney's Office that voiceofsandiego.org is required to pay \$1,475 for a copy of some public records. I also continue to request a meeting with IT staff familiar with the scope of my request. Addressing a few of the following unresolved issues would make that meeting beneficial in finding a resolution outside of court proceedings:

- (1)** Including "server time" in the direct costs to reproduce data is like including the cost of electricity to run computers or turn on the lights. Public agencies are not allowed to charge for these overhead costs, only additional costs.
- (2)** Including server time is also like accounting for the amount of time it takes to photocopy paper records. Public agencies are not allowed to charge for photocopying time.
- (3)** The office estimates server time costs \$25 per hour. Assuming the agency only has three servers that run all year, the office's annual cost to run these servers would be \$657,000. If that's true, I think it would make for an interesting news story about a very expensive system. I am requesting the specifications of these servers so that I may compare them to servers used elsewhere.
- (4)** Even if the program requires the complete capabilities of three servers for 16 hours, the office has not shown how this process would affect its regular business operations. I question whether the office would be profiting from the \$1,475 fee.
- (5)** I am not convinced that all alternatives to reproduce the data have been discussed. Every database system is capable of processing a data dump of information. From there, the office could redact the necessary information with little programming cost. The office could also choose a backup copy of its data or other copies of data produced at regular intervals. These versions of data would require no data compilation and no programming costs.
- (6)** Assuming voiceofsandiego.org actually pays the office \$1,475 to create a program to reproduce the data, I would expect to also receive a copy of the program. I would intend to publish the program on our website and ask software engineers how long it would take them to write a similar program.

(7) "Our data systems are not organized for statistical tracking of allegations." Why isn't the system designed to track these allegations? Are these charges not important to how the District Attorney manages the office? The gang allegation puts some people behind bars for more years than other crimes.

(8) "The Gang Prosecution Division does not produce any statistical reports with this information." Why not? If the division tracks anything, how is this charge not being watched? It's called the state's *gang* allegation.

(9) I still have no idea what information would even be provided in the \$1,475 database. This needs to be clearer before we even consider that large sum of payment.

(10) I still want to know whether a narrower set of fields would reduce the costs. What if the data only included defendant name, date of filing and the charges? We have only talked about the cost impact of a more limited timeframe.

To conclude, there are still a lot of questions to be answered here. At this point, I am not satisfied, and I don't think a judge would be satisfied, that the District Attorney's Office has fulfilled the following statutory responsibilities under Government Code 6253.1:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

Please do not hesitate to contact me if you have any questions. We have been talking about this records request for more than a month and I'm sure we would both like to find a resolution soon.

Thank you for your time and assistance.

Sincerely,

Keegan Kyle

Staff Writer

www.voiceofsandiego.org

Office: 619-550-5668

Mobile: 619-206-5293

E-mail: keegan.kyle@voiceofsandiego.org

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

330 West Broadway, Suite 860
San Diego, CA 92101
(619) 531-4074

BONNIE M. DUMANIS
DISTRICT ATTORNEY

February 18, 2010

Keegan Kyle, Staff Writer
Via Email: keegan.kyle@voiceofsandiego.org

Re: Request for Public Records
09-43 PRA

Mr. Kyle:

What follows is a response to the questions and complaints found in your letter of February 2. Portions of your letter are reproduced verbatim below, and each is followed immediately by our response.

(1) Including "server time" in the direct costs to reproduce data is like including the cost of electricity to run computers or turn on the lights. Public agencies are not allowed to charge for these overhead costs, only additional costs.

The statute requires public agencies to charge for the cost of "computer services." The computation of server costs is derived from the budgeted amount of dollars allocated for the maintenance and operation of each server operated by the office, a fair assessment of the cost of the "computer services."

(2) Including server time is also like accounting for the amount of time it takes to photocopy paper records. Public agencies are not allowed to charge for photocopying time.

You are partly correct. Server time costs are roughly equivalent to copying machine costs. The Public Records Act provides that persons requesting records pay the reasonable costs of both. Current California case law does prohibit any charge for the personnel and administrative costs incurred in photo-copying paper records in response to a CPRA request.

The same does not apply to computer services. Indeed, the Public Records Act explicitly requires a requester to pay personnel costs for compiling, programming, or extraction of data held in electronic databases,

as well as for "computer services" used in extracting requested data.

(3) The office estimates server time costs \$25 per hour. Assuming the agency only has three servers that run all year, the office's annual cost to run these servers would be \$657,000. If that's true, I think it would make for an interesting news story about a very expensive system. I am requesting the specifications of these servers so that I may compare them to servers used elsewhere.

Your annual cost estimation is mistaken. The per-hour server cost is calculated using the available annual work hours for office employees, not the number of hours in a year; to wit: \$26,808 budgeted costs for each server divided by 1992 hours available work time (52 x 40) – 88 holiday hours). Please let me know if, in light of this, you still would like the "specifications" for our new servers.

Good news: the ongoing upgrade of our facilities has reduced the cost of server time to \$22.49 per hour per server.

(4) Even if the program requires the complete capabilities of three servers for 16 hours, the office has not shown how this process would affect its regular business operations. I question whether the office would be profiting from the \$1,475 fee.

As regards the fee, it is not a matter of any effect upon our business operations. The statute requires that you pay for "computer services." This office has reasonably calculated the cost of our computer services paid by the taxpayers of San Diego County, and as required by statute are passing them on to you.

(5) I am not convinced that all alternatives to reproduce the data have been discussed. Every database system is capable of processing a data dump of information. From there, the office could redact the necessary information with little programming cost. The office could also choose a backup copy of its data or other copies of data produced at regular intervals. These versions of data would require no data compilation and no programming costs.

This is not as simple as dumping a single, flat-file, and even if it were, there would still be a programming redaction effort. The cost of "redacting the necessary information" is dependent on the complexity of

the database and the complexity of the question being asked. The estimate and response we gave was based on the exact wording of what was being asked for.

You requested a complex set of interrelated data retained in a sophisticated database. The Case Management System is designed to serve this office in the management of its cases. Your request, while "do-able," would require the system to produce a complicated data set based on queries at the lower levels of the scheme, a purpose for which it was not intended.

Your assertion that "the office could redact the necessary information with little programming cost" from a data dump or backup is generally correct. Your assumption that CPRA requires this office to expend hundreds, if not thousands, of work-hours to redact inapplicable information from that data set is not.

(6) Assuming voiceofsandiego.org actually pays the office \$1,475 to create a program to reproduce the data, I would expect to also receive a copy of the program. I would intend to publish the program on our website and ask software engineers how long it would take them to write a similar program.

Your expectations would remain unfulfilled. The programming required to extract the requested data is a lengthy, sophisticated query to our already existing Case Management System. Government Code § 6254.9 states, in pertinent part: "(a) Computer software developed by a state or local agency is not itself a public record under this chapter . . . ¶ . . . (b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems."

Satisfying your request would require that this office create an electronic record that does not yet exist. This office would create and maintain that electronic record either in Microsoft Access 2007 or Microsoft Excel 2007 format, whichever is most appropriate. We would be under no obligation to provide you with a copy of our proprietary CMS software, and would not do so.

(7) "Our data systems are not organized for statistical tracking of allegations." Why isn't the system designed to track these allegations? Are these charges not important to how the District Attorney manages the office? The gang allegation puts some people behind bars for more years than other crimes.

The Case Management System is designed, unsurprisingly, for the management of the District Attorney's caseload and the production of statistics for management analysis. You have requested raw data on cases. CMS was not designed to produce a data dump based on queries at the lower levels of the scheme.

"Are these charges not important to how the District Attorney manages the office?" No, not particularly. If a particular criminal act warrants the charging of gang allegations, then they are charged. Numerical data on the allegation's use might be informative in other areas, but not as to the District Attorney's management of her office and its caseload.

(8) "The Gang Prosecution Division does not produce any statistical reports with this information." Why not? If the division tracks anything, how is this charge not being watched? It's called the state's *gang* allegation.

There is no need to "watch" data on the use of this allegation. When applicable in a case, it is alleged. This office does not expend valuable taxpayer dollars in the production of tangential case-related data, unless requested to do so under CPRA.

(9) I still have no idea what information would even be provided in the \$1,475 database. This needs to be clearer before we even consider that large sum of payment.

My letter of January 4 was quite clear. You requested the following information:

"... all data related to cases that involved a defendant being charged with a crime and California's gang enhancement (Penal Code 186.22) ... [in] cases filed between January 2000 and December 2009 ... ¶ ... involving the gang enhancement charge at some point in the prosecution[,] even if the gang enhancement was dropped or added after the original charges were filed[, or the case] did not result in a conviction of the gang enhancement or a conviction of any crime ... ¶ ... [E]lectronic records should include, but should not be limited to, the following information:

- “• Case number
- “• Date charges were filed
- “• Criminal charges tied to the gang enhancement
- “• Other criminal charges not tied to the gang enhancement
- “• Defendant’s name
- “• Prosecutor’s name
- “• Date of conviction
- “• Convicted crimes”

My previous letter explained why this office would produce only that data described after each bullet-point above, rather than “all data” as requested. I cannot make it any clearer.

(10) I still want to know whether a narrower set of fields would reduce the costs. What if the data only included defendant name, date of filing and the charges? We have only talked about the cost impact of a more limited timeframe.

As I have previously told you during our telephone conversations, ITD staff suggested an alternative, smaller data set that would be less costly to produce. It would identify cases in which the gang enhancement was appended to the most serious charge, what that most serious charge was, and the most serious charge under which the case was disposed.

To conclude, there are still a lot of questions to be answered here. At this point, I am not satisfied, and I don't think a judge would be satisfied, that the District Attorney's Office has fulfilled the following statutory responsibilities under Government Code 6253.1:

- (1)** Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
- (2)** Describe the information technology and physical location in which the records exist.
- (3)** Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

1) You are quite conversant regarding the information you are seeking, and quite knowledgeable about the manner in which this office keeps that information. All possible assistance has been rendered regarding your

request. As I have previously mentioned, the data you seek is also available from the records maintained by the Clerk of the Superior Court and from the JURIS database maintained by the San Diego Association of Governments (SANDAG).

2) In our response to your recent CPRA request for a CMS data scheme, you were given all disclosable information regarding the CMS information technology. CMS is operated on servers maintained in District Attorney facilities in the County of San Diego.

3) At this point, the only basis for denying access to the information you seek is your unwillingness to pre-pay our estimate of the statutorily mandated computer services fee for creating the report you want. The only possible suggestion available to me is that you pre-pay the estimated fee, and this office will create the record you have requested.

If you wish to pay the estimated charges, or submit a more-narrowly tailored request that may be less-costly to produce, I encourage you to do so.

Respectfully,

A handwritten signature in black ink, appearing to read "Richard S. Armstrong", with a long horizontal flourish extending to the right.

RICHARD S. ARMSTRONG

Deputy District Attorney

(619) 531-3578

richard.armstrong@sdcca.org

From: [Keegan Kyle](#)
To: [Armstrong, Richard](#)
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS
Date: Friday, March 05, 2010 12:32:57 PM

Richard,

My apologies for the delayed response. Before agreeing to pay the fee, I am requesting to inspect documents related to the annual cost of running the office's servers, their annual use by office employees and their technical specifications. Please let me know when this information is available and please do not hesitate to let me know if you have any questions.

Also, please note that the Public Records Act does not "require" us to pay for programming or computer services. Public agencies frequently choose to waive these fees to promote a more open and transparent government. In this case, the District Attorney's Office is choosing to charge us \$1,400 for public records.

-- Keegan Kyle

From: Armstrong, Richard [mailto:richard.armstrong@sdccda.org]
Sent: Thursday, February 18, 2010 4:42 PM
To: Keegan Kyle; Andrew Donohue
Cc: Levikow, Paul; Walker, Steve (Communications)
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Mr. Kyle:

Attached find our response in .pdf format.

RICHARD S. ARMSTRONG
Deputy District Attorney
Appellate & Training Division
(619) 531-3578

From: Keegan Kyle [mailto:Keegan.Kyle@voiceofsandiego.org]
Sent: Tuesday, February 02, 2010 8:55 PM
To: Armstrong, Richard
Cc: Levikow, Paul; Walker, Steve (Communications); Andrew Donohue
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Mr. Armstrong,

Please find an outline of my concerns in a Word document attached to this email (da letter gang data 2-2-2010.doc). I have also CC'd Paul Levikow, Steve Walker and my editor, Andrew Donohue. I look forward to continuing our discussion about this request for records.

From: [Keegan Kyle](#)
To: [Armstrong, Richard](#)
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS
Date: Friday, March 05, 2010 2:11:31 PM

Yes, I'm asking to inspect the records upon which the office's server cost calculations are based. I am also asking to see the technical specifications of the servers (this information might be available in a contract or purchase order). -- Keegan

From: Armstrong, Richard [mailto:richard.armstrong@sdccda.org]
Sent: Friday, March 05, 2010 12:44 PM
To: Keegan Kyle
Cc: Levikow, Paul; Walker, Steve (Communications)
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Mr. Kyle: Your request is quite general, and might run to a great deal of paper.

Are you asking to see the records upon which our server cost calculations are based?

RICHARD S. ARMSTRONG
Deputy District Attorney
Appellate & Training Division
(619) 531-3578

RICHARD S. ARMSTRONG
Deputy District Attorney
Appellate & Training Division
(619) 531-3578

From: Keegan Kyle [mailto:Keegan.Kyle@voiceofsandiego.org]
Sent: Friday, March 05, 2010 12:32 PM
To: Armstrong, Richard
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Richard,

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Also, please note that the Public Records Act does not "require" us to pay for programming or computer services. Public agencies frequently choose to waive these fees to promote a more open

From: [Armstrong, Richard](#)
To: "Keegan Kyle"
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS
Date: Wednesday, March 10, 2010 4:41:29 PM

We have not yet determined our response to your latest request. I do not anticipate responding any later than close-of-business Monday, 3/15.

RICHARD S. ARMSTRONG
Deputy District Attorney
Appellate & Training Division
(619) 531-3578

From: Keegan Kyle [mailto:Keegan.Kyle@voiceofsandiego.org]
Sent: Wednesday, March 10, 2010 4:36 PM
To: Armstrong, Richard
Subject: FW: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Richard, Do you know when I can expect these records? - KK

From: Keegan Kyle
Sent: Friday, March 05, 2010 2:11 PM
To: 'Armstrong, Richard'
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Yes, I'm asking to inspect the records upon which the office's server cost calculations are based. I am also asking to see the technical specifications of the servers (this information might be available in a contract or purchase order). -- Keegan

From: Armstrong, Richard [mailto:richard.armstrong@sdcca.org]
Sent: Friday, March 05, 2010 12:44 PM
To: Keegan Kyle
Cc: Levikow, Paul; Walker, Steve (Communications)
Subject: RE: 09-43 CPRA REQUEST -- DA GANG ENHANCE STATS

Mr. Kyle: Your request is quite general, and might run to a great deal of paper.

Are you asking to see the records upon which our server cost calculations are based?

RICHARD S. ARMSTRONG
Deputy District Attorney
Appellate & Training Division

From: [Armstrong, Richard](#)
To: "Keegan Kyle"
Cc: [Levikow, Paul](#); [Walker, Steve \(Communications\)](#)
Bcc: [Rodriguez, Jesse](#); [Moskowitz, Ron](#); [Tanney, Laura](#); [Roach, Sophia](#); [Pettingill, William L. SDCOUNTY](#)
Subject: 09-43 CLOSURE OF CPRA REQUEST TO CREATE RECORD
Date: Thursday, March 11, 2010 3:04:20 PM
Attachments: [09-43 Server Cost Estimate.xls](#)

Mr. Kyle:

On December 22, 2009, you asked this office, pursuant to the California Public Records Act [CPRA], to create an electronic record showing nine specific data points for every case prosecuted by this office over a nine-year period in which certain specified sentence enhancements were charged. Given the complexity and scope of the request, we estimated computer-services and programming fees, as required by Government Code section 6253.9, subdivision (b), at \$1,475. Given our responsibility to the public fisc, we asked for prepayment of the estimated fee, subject to reimbursement if we had overestimated the expense of producing the record.

You have consistently declined to pay the estimated computer services fee, and demanded that this office justify its estimate. Although not required by CPRA, we have attempted to answer your questions. We also have attempted to assist you in finding other sources for the data you seek, and have suggested data sets that would be less costly to produce. You decline to pay the estimated fee, and seek to further debate our estimate, a debate in which this office is not required to engage. Having fulfilled its obligations under CPRA, this office considers your request of December 22 to be closed.

Regarding your last request for documents regarding our fee calculations – I have attached an Excel spreadsheet showing our calculations of server operational cost. As regards your request for the technical specifications for our servers, that request is denied, because the public interest in maintaining the greatest possible level of operational security for the District Attorney's information system outweighs any public interest in disclosure of that system's technical specifications. (Gov. Code, § 6255(a).)

RICHARD S. ARMSTRONG

Deputy District Attorney

Appellate & Training Division

(619) 531-3578