



David Loy, Legal Director
dloy@firstamendmentcoalition.org
Direct: 1.619.701.3993

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VIA ELECTRONIC MAIL

Joseph Larmour, Esq.
County Counsel
Shasta County
Email: countycounsel@co.shasta.ca.us,
jlarmour@shastacounty.gov

Re: Public Records Request 26-1798

Dear Mr. Larmour:

I represent Shasta Scout with respect to the above-referenced records request, which sought “a digital copy of the subpoena made to Clint Curtis on Sept. 10, 2026, requesting that he appear in federal court to testify before a grand jury.” The County denied the request, stating, in relevant part, “Records, orders, and subpoenas relating to grand-jury proceedings are kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury. Fed. R. Crim. P. 6(e)(6).”

I write to explain why Federal Rule of Criminal Procedure 6(e) does not displace the County’s duty to disclose the subpoena under the California Public Records Act (“CPRA”). For the reasons discussed below, I ask the County to reconsider its position and disclose the subpoena immediately, in hopes of avoiding litigation to compel disclosure.

Although federal law states, “Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury,” Fed. R. Crim. P. 6(e)(6), that provision only authorizes a federal court to seal its own records. It does not cover the County.

The Federal Rules of Criminal Procedure “govern the procedure in all criminal proceedings in the United States district courts, the United States courts of appeals, and the Supreme Court of the United States.” Fed. R. Crim. P. 1(a)(1). That list does not include the County.

Standing alone, Rule 6(e)(6) does not apply to records in the County’s possession or displace the County’s duty to disclose such records under the CPRA. To suggest otherwise would be inconsistent with a core principle of the CPRA: “A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this division.” Gov. Code § 7921.005.

Although other provisions of Rule 6(e) may prevent disclosure of grand jury materials by certain persons or entities in some circumstances, they do not apply to the County in this case.

According to the rule, “the following persons must not disclose a matter occurring before the grand jury:

- (i) a grand juror;
- (ii) an interpreter;
- (iii) a court reporter;
- (iv) an operator of a recording device;
- (v) a person who transcribes recorded testimony;
- (vi) an attorney for the government; or
- (vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).”

Fed. R. Crim. P. 6(e)(2)(B). “Attorney for the government” does not include the County or its attorneys. See Fed. R. Crim. P. 1(b)(1).

Rule 6(e) cannot prevent disclosure of grand jury materials by any person or entity not named in the rule. Fed. R. Crim. P. 6(e)(2)(A) (“No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).”)

The only part of the rule that might cover the County in some cases is Rule 6(e)(3)(A)(ii), which covers “any government personnel—including those of a state, state subdivision, Indian tribe, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney’s duty to enforce federal criminal law.” However, I am aware of no evidence that it applies to the County in this instance.

The “government personnel” referred to in Rule 6(e)(3)(A)(ii) are “employees of non-federal government entities that are engaged in assisting federal criminal law enforcement,” for example “in organized crime and racketeering investigations, in public corruption and major fraud cases, and in various other situations where federal and state criminal jurisdictions overlap.” *United States v. Fort*, 472 F.3d 1106, 1112–13 (9th Cir. 2007).

Under the CPRA, the County bears the burden of proof to justify withholding a public record in its possession. Gov. Code § 7922.000; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319, 329 (2007); *American Civil Liberties Union of Northern California v. Superior Court*, 202 Cal. App. 4th 55, 83 (2011).

To invoke Rule 6(e)(3)(A)(ii) as grounds for compelling it to withhold the subpoena, the County would have to prove by specific and concrete evidence that its personnel were assisting federal

law enforcement in a joint investigation. It is not sufficient that the subpoena was merely delivered to the County.

I am not aware of any facts suggesting that the County is participating in a joint investigation with the federal government or that the subpoena is part of any such investigation. Accordingly, I do not see how the County can be covered by Rule 6(e)(3)(A)(ii).

For all of these reasons, I ask that the County reconsider its position and disclose the subpoena immediately, especially in light of the paramount public interest in disclosure of any matter related to the administration of elections. I hope that litigation to compel disclosure will not be necessary, but failure to disclose the subpoena would expose the County to such litigation and a judgment for attorney's fees under the CPRA.

Thank you very much for your attention, and please let me know if you have any questions. I am available to talk at any mutually convenient time.

Sincerely,

FIRST AMENDMENT COALITION



David Loy
Legal Director