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April 24, 2024

Office of Minnesota Attorney General
Data Practices Responsible Authority
(By email Submission Through Agency Web Portal)

RE: Data Practices Request Concerning Conviction Review Unit

To the Chpt. 13 Responsible Authority for Office of Minnesota Attorney General:

This letter is a request for data pursuant to Minn. Stat. Chpt. 13 for data concerning the Conviction Review Unit as described in the labeled sections of your agency web site. I have reviewed the web pages, including the Charter, the FAQ section, the Application for Conviction Review, the Flow Chart, the Advisory Board Announcement and the three media releases on the web site. I would expect that some of the data included in my request would have been published by now as promised some of in your postings. I was not able to find them, but if they have been posted and as to their content, you may be able to meet some of my data request as to those elements simply by advising where that data has been published by you. If it has not been so published you can include the responses along with your other responses to this request.

I am certain that you are used to letters that start out purporting to inform you of your duties under the Data Practices Act, the consequences for non-compliance and other statements of the obvious. I will forego all of that, but I do have one request and that is based on Minn. Stat. 13.03, subd. 3(f). As required by that statute if you determine any of the data responsive to my request is classified so as to make it other than public data, I require that you confirm in writing that access is being denied and cite the specific legal authority upon which that denial is based.

I also realize that the data sought may be extensive and located in different areas so it may take a reasonable amount of time to fully respond to this request. In that case be advised I am willing to access the data in the nature of a rolling response as encouraged by the Department of Administration and the Minnesota Supreme Court.

My request is to access the data by viewing it either at your offices or electronically if that is more convenient for you. This request is largely based upon your web postings concerning the Conviction Review Unit and, I will shorten my reference for purposes of this request to CRU or Unit. The data I request is listed below and to facilitate your response where the request relates to matters concerning the CRU found on your web site, I will reference that material.

1. In the introduction to the CRU it is written that “the CRU also will develop policy proposals to address the most frequently identified causes of wrongful convictions

and, when possible, identify the person or people who actually committed the crime”. I request all data that reflects the policy proposals that have been developed to date from the CRU consistent with that statement. In addition to any final policy proposals I request all data even if preliminary for any analysis and development of policies with the stated aims.

2. That same web page states “The CRU Advisory Board will advise the Attorney General on the establishment, functioning and hiring of the unit.” I request to access all such data that has been created, collected, received, maintained or disseminated that relates to or is concerned with that statement, including any and all such advice communicated from the Advisory Board to any representative or agent of the Office of the Attorney General.
3. Page one of the CRU Charter as well as several other references reflect that the Office of the Attorney General in conjunction with another entity received a federal grant to fund the CRU project. In the media release dated October 8, 2020, it was stated that a two-year, \$300,000 grant was received from the U.S. Department of Justice.
 - A. I ask for access to all data that was submitted in application for that grant and all data that was collected, created, received, maintained or disseminated concerning the grant application without regard to whether it was submitted as part of the grant application.
 - B. I ask for access to all data that was received from any source in response to the grant applications, including and not limited to the grant award, grant documents, grant reporting requirements and all obligations incurred as part of the grant.
 - C. I ask for access to all data that was submitted to the Department of Justice or any other entity in meeting any reporting requirements of the grant and all data that was collected, created, received, maintained or disseminated concerning the reporting related to the grant without regard to whether it was submitted as part of the grant report.
4. As to the activities of the CRU I seek access to the data that relates to every application for relief or assistance received by the unit, including but not limited to, each application and all data related to the review and processing of each and every application. I note that the 10-page application includes no Advisory consistent with the requirements of Minn. Stat. 13.04, subd. 2, which is required by statute whenever a government entity such as your office asks an individual to supply data about themselves that is classified as private or confidential. By virtue of the absence of such an Advisory, assuming your Office obeys state statutes, it can be concluded that you have determined the application to be public data so I expect access to an unredacted copy of each such data set.

5. On page 2 of the Charter it indicates the Unit shall be staffed with one or more attorneys and support staff who are committed to its mission. As to those persons I request they be identified by name and further request access to all data concerning said persons classified as public data under Minn. Stat. 13.43, subd. 2.
6. On page 2 of the Charter it states the preferred mechanism for facilitating CRU review of cases prosecuted by a County Attorney is for such a County Attorney to request that the Attorney General appear in the case pursuant to Minn. Stat. 8.01. I request access to all data that reflects any contact with a County Attorney consistent with this statement, including access to any written contact in whatever form and any responses received thereto.
7. Page 3 of the Charter indicates that the CRU may conduct a review and investigation". I seek access to all data reflecting any policies, procedures, protocols or similar data by whatever name described that establishes directions or guidelines on how such review shall be conducted and the identity of such investigators as determined and so assigned.
8. In footnote number 4 on page 4 it is stated the Unit shall consult the 2010 American Psychological Association white paper on police interrogation and confessions and any emerging literature or research regarding false confessions and recanting witnesses, to inform its review of convictions supported by statements obtained during custodial interrogations that have since been recanted or disavowed by the person who allegedly made the statement. I ask for access to all data consulted by the Unit as reflected in that footnote.
9. In footnote number 5 on page 5 it is stated the CRU shall consult the National Registry of Exonerations report Governing Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement (2020), and any emerging literature or research regarding official misconduct, to inform its review of convictions alleged to have resulted in whole or in part from official misconduct. I ask for access to all data consulted by the Unit as reflected in that footnote.
10. On page 7 of the Charter it is indicated the Unit may retain forensic analysts as part of the review process. If any such analysts have been retained I request access to all data concerning such persons, including any financial and contractual agreements and any data such analysts have created, collected, received, maintained or disseminated pursuant to such an agreement or as an agent, consultant or representative of the Unit.
11. On page 7 of the Charter it states: the CRU shall assist applicants in ascertaining the status of physical evidence by facilitating contacts between individuals seeking testing and/or their attorneys and the crime lab and/or law enforcement agency and/or court staff and/or county attorney office personnel and/or any other place where evidence might exist in order to search evidence and property rooms

to locate the evidence in question. I ask for access to all data reflecting the accomplishment or efforts to accomplish that facilitation for each and every instance where such activity has taken place.

12. On page 7 of the Charter it states: the CRU shall disclose to the applicant or their counsel, if the applicant is represented, all inconclusive and exculpatory forensic results, in addition to any information about corrective actions taken in a laboratory or proficiency testing of individual analysts. The CRU shall also make routine requests to preserve forensic evidence, especially where the applicant or their counsel seek preservation for potential future testing. I ask for access to all data reflecting each and every instance where such activity has taken place, including the disclosure made and the identity of the person or entity that received such disclosure.
13. On page 7 of the Charter it states: the CRU shall facilitate a CODIS, MAFIN, or NBIN search of evidence that may help demonstrate an individual was wrongly convicted or identify a perpetrator. I ask for access to all data reflecting the accomplishment or efforts to accomplish that facilitation for each and every instance where such activity has taken place.
14. On page 8 of the Charter it states: Where an applicant is represented by counsel, the CRU shall use joint discovery or limited disclosure agreements, in appropriate cases, to share investigative and work product information. The CRU will seek to conduct investigations jointly and collaboratively with counsel, sharing exculpatory or improperly withheld information as quickly as practicable. In such cases, a cooperative agreement, in writing and signed by both parties, will provide, among other things, that any attorney-client or work-product privileged information an applicant shares with the CRU shall not be shared with other units in the office or other prosecuting authorities and shall not be used by other units or prosecuting authorities in litigation pertaining to applicant's case. Nor may privileged information provided to the CRU be used to the detriment of the applicant at trial, appeal, postconviction hearings, parole hearings, or pardon, commutation, or clemency proceedings. In any event, a waiver of attorney-client privilege or confidentiality shall not be a necessary prerequisite to the CRU's acceptance of a case for review. I seek access to any and all data reflecting such agreements, including, but not limited to a signed and dated copy of such agreements.
15. On page 8 of the Charter it states: CRU staff shall consult with outside experts, as needed, to obtain relevant materials concerning best practices regarding conducting CRU investigations. I seek access to any and all data reflecting such consultation with outside experts on each and every matter for which there has been such consultation.
16. On page 8 of the Charter it states: Where practicable, all CRU investigations shall be undertaken jointly and cooperatively with defense counsel, joint participation

in witness interviews, the sharing of documents and evidence, and cooperation as to strategic decisions concerning the investigation. I seek access to any and all data reflecting such cooperative efforts with defense counsel on each and every matter for which there has been such cooperative efforts.

17. On page 9 of the Charter it states: the CRU shall work to obtain all discovery the The applicant is entitled under Minnesota law, including but not limited to all Brady materials in the constructive possession of the prosecuting authority's office. I seek access to all data that reflects policies, procedures, techniques or protocols by whatever name they are called that relate to how this stated objective shall be implemented.
18. On page 9 of the Charter it states: the CRU shall also allow applicants and their attorneys to have access to all non-privileged and non-sensitive information in the case files under review, including information in police reports and lab reports concerning the testing of forensic evidence. I seek access to all data by which your Office determines what is "non-privileged and non-sensitive information" as that term is used in the Charter.
19. On page 10 of the Charter it states: the CRU shall proactively seek to obtain complete files from the prosecuting authority's offices and law enforcement agencies pertaining to the case as well as forensic evidence and files maintained by laboratories, coroner's or medical examiner's offices, and social services agencies.
 - A. As to that statement I seek access to all data that reflects policies, procedures, techniques or protocols by whatever name they are called that relate to how this stated objective shall be implemented.
 - B. As to that statement I seek access to all data that reflects each and every case in which such efforts have been made to the date of this request.
20. On page 12 of the Charter it states: The CRU shall comply with all statutes and rules governing victims' rights and shall seek to engage a victim representative at any stage in the investigation when doing so may be in the best service of the investigation or the victim.
 - A. I seek access to all data that reflects policies, procedures, techniques or protocols by whatever name they are called that relate to how this stated objective shall be implemented.
 - B. As to that statement I seek access to all data that reflects each and every case in which such efforts have been made to the date of this request.

21. On page 12 of the Charter it states: the CRU shall establish a protocol for reporting colorable claims of misconduct by prosecutorial or law enforcement authorities and personnel.
- A. I seek access to all data that reflects policies, procedures, techniques or protocols by whatever name they are called that relate to how this stated objective shall be implemented.
 - B. As to that statement I seek access to all data that reflects each and every case in which such reports have been made, including but not limited to the specifics of the report and the entity or person to which such report was made and a copy of said report.
22. On page 12 of the Charter it states the Unit shall post bi-annual updates on its web site of its listed operations. I seek all data that reflects compliance with this state in terms of where such data has been posted.
23. As to the Conviction Review Unit I seek access to its inventory of private or confidential data on individuals as required by Minn. State. 13.025, subd. 1.

I am certain that your Office is aware of the definition of government data in Minn. Stat. 13.02, subd. 7 and this request applies to all data without regard to physical form, storage media or condition of use. I look forward to receipt of the requested data.

Yours,

S/Richard Hodsdon