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January 14, 2013

Mr. Frank R. Weathersbee
Anne Arundel County State's Attorney
7 Church Cir., Suite 200
Annapolis, MD 21401

Re: Maryland Public Information Act Request / Privately Operated Diversion Programs

Dear Mr. Weathersbee,

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND FOUNDATION

MAIN OFFICE
& MAILING ADDRESS:
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

FIELD OFFICE:
6930 CARROLL AVENUE
TAKOMA PARK, MD 20912

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
ALLIE HARPER
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN
GENERAL COUNSEL

This is a request under the Maryland Public Information Act (MPIA), Md. Code, State Gov't. §§ 10-611 to 628. On behalf of the American Civil Liberties Union Foundation and the American Civil Liberties Union Foundation of Maryland, we wish to inspect and copy the following records in your custody and control pertaining to arrangements between your agency and private companies operating prosecution diversion programs. Such programs authorize for-profit companies to administer prosecution diversion programs and, in many instances, to demand program fees in exchange for a decision not to prosecute. *See, e.g., Jessica Silver-Greenberg, In Prosecutors, Debt Collectors Find a Partner, NEW YORK TIMES* (Sept. 15, 2012), at A1. Such practices may implicate serious civil liberties concerns, including potential violations of the due process rights of individuals subjected to these practices.

Records Requested

For purposes of this letter, "Private Prosecution Program" refers to any program administered by a non-governmental corporation or person that diverts from prosecution or criminal penalty individuals who have allegedly passed bad checks, committed petty theft, or committed other misdemeanors, and "Private Prosecution Program Company" refers to any non-governmental corporation or person that operates or otherwise administers a Private Prosecution Program. Unless otherwise noted, please provide copies of the following records (whether electronic or printed) created since, or in effect from January 1, 2008, to the present:

1. Copies of all agreements and/or contracts with any Private Prosecution Program Company.
2. Copies of all correspondence with any Private Prosecution Program Company, including via email, other than correspondence solely concerning a specific case or individual in such program.
3. Copies of any policies, guidelines, rules, practices, or instructions concerning or relating to any Private Prosecution Program.
4. Documents, not provided in response to requests above, that indicate, set forth, or describe any eligibility criteria for participation in any Private Prosecution Program.

5. Documents, not provided in response to requests above, that indicate, set forth, or describe any processes or procedures available to individuals who believe they have wrongfully received correspondence from any Private Prosecution Program Company acting on behalf of the Office of the State's Attorney or have otherwise wrongfully been required or asked to participate in a Private Prosecution Program.
6. Documents, not provided in response to requests above, that indicate, set forth, or describe the policies for investigating potential violations of Maryland penal law before requiring or asking any person to participate in a Private Prosecution Program.
7. Documents, not provided in response to requests above, that identify who determines that there is probable cause to believe that a violation of Maryland penal law has occurred before persons are required or asked to participate in any Private Prosecution Programs, and documents that indicate, set forth, or describe how such probable cause determinations are to be made.
8. Documents, not provided in response to requests above, that indicate, set forth, or describe the role of county prosecutors in evaluating probable cause determinations or eligibility for prosecution when deciding whether it is appropriate to contact an alleged offender regarding participation in a Private Prosecution Program.
9. Documents, not provided in response to requests above, that indicate, set forth, or describe any policies, procedures, or practices intended to monitor and reduce the occurrence of error in the identification of individuals required or asked to participate in any Private Prosecution Program.
10. A copy of any form letters sent to persons required or asked to participate in any Private Prosecution Program (the templates, not the actual letters sent to particular individuals).
11. Any ethics opinions expressing a view on any Private Prosecution Program, including any ethics opinion addressing the propriety of allowing an outside company, entity or person to send letters on letterhead from the Office of the State's Attorney, or to threaten prosecution by the Office of the State's Attorney, or to require or present the Private Prosecution Program as an explicit alternative to criminal prosecution.
12. Any legal opinions (whether in house or by an outside entity, including, but not limited to, a court) that express a view on the legality of any Private Prosecution Program, including any legal opinion addressing the propriety of allowing an outside company, entity or person to send letters on letterhead from the Office of the State's Attorney, or to threaten prosecution by the Office of the State's Attorney, or to require or present the Private Prosecution Program as an alternative to criminal prosecution.
13. Any legal opinions (whether in house or by an outside entity, including, but not limited to, a court) that express a view on the legality of requiring persons to pay a non-governmental entity to participate in a Private Prosecution Program, as an alternative to criminal prosecution.
14. Documents setting forth the legal authority to demand that persons pay a non-governmental entity to attend a class as part of a diversion program, or otherwise pay a non-governmental entity to participate in a diversion program, as an alternative to criminal prosecution.
15. Records indicating how many letters have been sent to persons offering the option of participating in a Private Prosecution Program since January 1, 2012, broken down by specific

program or offense, if more than one program exists or more than one offense is eligible for participation.

16. Records indicating how many persons have participated in any Private Diversion Program since January 1, 2012, broken down by specific program or offense, if more than one program exists or more than one offense is eligible for participation.

17. Records indicating the number of cases referred for prosecutorial review for persons who declined participation in (or otherwise failed to complete) any Private Diversion Program since January 1, 2012, broken down by specific program or offense, if more than one program exists or more than one offense is eligible for participation.

18. Records indicating the number of cases actually prosecuted following referrals for prosecutorial review for persons who declined participation in (or otherwise failed to complete) any Private Diversion Program since January 1, 2012, broken down by specific program or offense, if more than one program exists or more than one offense is eligible for participation.

19. Records indicating how many cases were prosecuted since January 1, 2012 in which a defendant was charged with any offense eligible to be referred to any Private Diversion Program, and no such referral was made prior to prosecution, broken down by specific program or offense, if more than one program exists or more than one offense is eligible for participation.

20. Records indicating how much money has been collected and remitted to your office by any Private Diversion Program since January 1, 2012, broken down by what sum represents fines, fees, restitution, and any other applicable category, and further broken down by specific program or offense, if more than one program exists or more than one offense is eligible for participation, and what account or accounts any such funds have been deposited in, and the permissible uses of money in any such accounts.

21. Records indicating how many persons sought a waiver of part or all of the fees required for participation in any Private Prosecution Program, how many waivers were granted and in what amount, how many waivers were budgeted in advance, any criteria for evaluating fee waiver requests, and the identity and job titles of the persons deciding whether or not a waiver should be granted.

22. Copies of any material used in or related to the contents of any class used as part of a Private Prosecution Program, including but not limited to class syllabi, required readings, hand-out material, exams, homework, and instructor guides.

Please provide this information on a CD-ROM or in an electronic format. Where electronic records cannot be provided, please supply instead paper copies of all responsive documents. Please direct all records to:

Larry Schwartztol
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

If you believe that a statutory basis for denial applies to any portion of this request, please state in writing the reasons for your conclusion. Please also state the basis for any denials with specificity as to the reasons for your assertions and excise or delete from the records only that portion of the record for which a denial is being asserted and validly applies.

Please note that State Gov't § 10-614(b)(1) requires a response to this request within 30 days. We will treat a failure to respond as a denial of the request.

The American Civil Liberties Union Foundation and the American Civil Liberties Union of Maryland Foundation are non-profit, tax exempt organizations. We request this information in order to carry out our charitable mission, specifically, to ensure that pretrial diversion programs operate fairly and within constitutional constraints. We additionally plan to publicize any information gained from this request in order to further public understanding of how prosecuting agencies in Maryland utilize private companies as part of their prosecutorial function. Allowing private, for-profit companies to utilize official letterhead to threaten prosecution to generate revenue for the companies is undoubtedly a matter of public interest and concern. As nonprofit organizations with regular print and web publications, we are well situated to disseminate information obtained from this request to the general public. Therefore, we request that you waive all fees associated with this request pursuant to State Gov't § 10-621(e). If our request for a fee waiver is denied, please explain the reasons for the denial. If any fees associated with this request will exceed \$100.00, please contact us before the charges are incurred.

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

If you have any questions regarding this request, please feel free to contact David Rocah at (410) 889-8550, x.111, or rocah@aclu-md.org. Thank you for your time and attention to this request.

Sincerely,



David Rocah
Staff Attorney
ACLU Foundation of Maryland



Larry Schwartzol
Brandon Buskey
Dennis Parker
Ezekiel Edwards
Greger Calhan
ACLU Foundation