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California Department of Corrections and Rehabilitation - General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, Petitioner, **v.** **CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,** Respondent.	Case No. CV1504195 **DECLARATION OF KELLY MCCLEASE IN SUPPORT OF OPPOSITION TO VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND WRIT OF MANDATE** Date: December 11, 2015 Time: 9:00 a.m. Courtroom: E Judge: The Honorable Paul M. Haakenson Trial Date: None set Action Filed: November 18, 2015

I, KELLY McCLEASE, declare as follows:.

1. I am an Attorney III in the Legal Affairs Division of the California Department of Corrections and Rehabilitation ("CDCR"). I have held this position since 2005.

2. As part of my official duties, I am responsible for issues related to the death penalty, executions and lethal injection drugs and protocols. In carrying out those duties, I have

developed a comprehensive knowledge of CDCR's records related to execution protocols in general and lethal injection drugs and protocols in particular.

3. Attached to this declaration as Exhibit A is a true and correct copy of a letter dated September 28, 2015 from me to Ana Zamora, Criminal Justice Policy Director of the American Civil Liberties Union of Northern California ("ACLU-NC"), responding to her records request to CDCR dated August 14, 2015. I have personal knowledge of the facts stated therein and know them to be true.

4. Attached to this declaration as Exhibit B is a true and correct copy of a letter dated October 2, 2015 from me to Ms. Zamora, responding to her records request to CDCR dated September 7, 2015. I have personal knowledge of the facts stated therein and know them to be true.

5. Attached to this declaration as Exhibit C is a true and correct copy of a letter dated December 4, 2015 from me to Ms. Zamora, providing a supplemental response to her records request to CDCR dated August 14, 2015. I have personal knowledge of the facts stated therein and know them to be true.

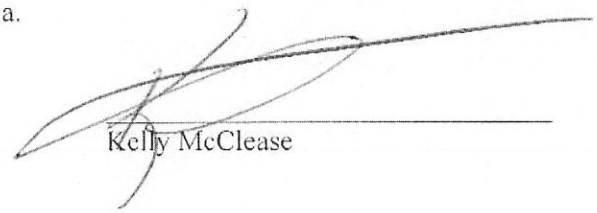
6. Attached to this declaration as Exhibit D is a true and correct copy of a letter dated December 4, 2015 from me to Ana Zamora, providing a supplemental response to her records request to CDCR dated September 7, 2015. I have personal knowledge of the facts stated therein and know them to be true.

7. CDCR has no records of communications, during the period since March 1, 2013 covered by the ACLU-NC's August 14, 2015 records request item 8, with pharmaceutical companies, pharmacies or suppliers about acquisition of drugs included in its new lethal injection protocol, proposed on November 5, 2015.

8. CDCR has no records of communications, during the period since March 1, 2013 covered by the ACLU-NC's August 14, 2015 records request item 9, with the DEA, the FDA or other federal agencies regarding drugs intended or considered for use in executions or whether use of the drugs in its new proposed protocol complies with federal law.

9. Stored on the hard drive of my office computer alone, and not including files stored on the computers of other CDCR attorneys or the CDCR network[s], are at least 79,387 email files related to lethal injection drugs and protocols that are either privileged attorney-client communications, attorney work product, drafts, or subject to a combination of two or all three of those exemptions.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 7, 2015 at Sacramento, California.



Kelly McClease

Exhibit A

Division of Adult Operations
San Quentin State Prison
San Quentin, CA 94964

September 28, 2015

Ana Zamora
American Civil Liberties Union
Of Northern California
39 Drumm Street
San Francisco, CA 94111

Re: Public Records Act Request dated August 14, 2015

Dear Ms. Zamora:

This is in response to your request for records from the California Department of Corrections and Rehabilitation (CDCR) dated August 14, 2015 and received on September 4, 2015.

We have identified approximately 40 pages which are responsive to your request. The duplication fees for this request are $7.12 (40 pages at .12 each ($4.80)) plus postage of $2.32). The responsive documents will be mailed upon receipt of this payment. Please mail the payment to: B. Ebert, Litigation Coordinator, San Quentin State Prison, San Quentin, CA 94964.

A portion of the records that you requested are exempt from disclosure under the Public Records Act and will not be provided to you. The applicable exemptions, more fully discussed below, include: Government Code §§ 6254 (a), (b), (c), (f) and (k); Business & Professions Code §§ 6068 and 6202; Evidence Code §§ 952, et seq. and Code of Civil Procedure § 2018.030.

Records that are drafts not kept in the ordinary course of business will not be disclosed pursuant to Government Code § 6254 (a).

Documents that are protected by the attorney-client privilege, attorney work product, or were specifically prepared for CDCR's use in pending litigation will not be disclosed pursuant to Government Code §§ 6254 (b) and (k), Business & Professions Code §§ 6068 and 6202; Evidence Code § 952, et seq. and the Code of Civil Procedure § 2018.030.

Disclosure of some documents could compromise the safety and security of the institutions, staff, offenders, and others. These records will not be disclosed pursuant to Government Code §§ 6254 (f) and (k), Evidence Code § 1040, as discussed in *Procunier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211.

Records that would impose an unwarranted invasion of personal privacy, personnel records, or records deemed "protected information" by the Protective Order issued on April 3, 2006 in *Morales v. Woodford, et al.,* U.S. District Court for the Northern District of California case numbers 06 219 and 06 926 (including those indicating names, ranks, job descriptions, and other identifying information of members of the execution team) will be withheld consistent with the Protective Order, pursuant to Government Code §§ 6254 (f) and (k), Evidence Code § 1040, as discussed in *Procunier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211, Government Code §§ 6254 (c) and (k), Penal Code §§ 832.7 and 832.8, and Government Code § 6255.

Please note that the California Department of Corrections and Rehabilitation is still reviewing documents that may be responsive to your request, and it is possible that additional documents and/or exemptions will be identified during the review and compilation of these records.

If you have any questions I can be reached at (415) 455-5007.

Sincerely,

B. Ebert
Correctional Counselor II, Specialist
Litigation Coordinator
San Quentin State Prison

Exhibit B

Division of Adult Operations
San Quentin State Prison
San Quentin, CA 94964

October 2, 2015

Ana Zamora
American Civil Liberties Union
Of Northern California
39 Drumm Street
San Francisco, CA 94111

Re: Public Records Act Request dated September 4, 2015

Dear Ms. Zamora:

This is in response to your request for records from the California Department of Corrections and Rehabilitation (CDCR) dated September 4, 2015 and received on September 8, 2015.

We have identified approximately 10 pages which are responsive to your request. The duplication fees for this request are $2.12 (10 pages at .12 each ($1.20)) plus postage of $0.92). The responsive documents will be mailed upon receipt of this payment. Please mail the payment to: B. Ebert, Litigation Coordinator, San Quentin State Prison, San Quentin, CA 94964.

A portion of the records that you requested are exempt from disclosure under the Public Records Act and will not be provided to you. The applicable exemptions, more fully discussed below, include: Government Code §§ 6254 (a), (b), (c), (f) and (k); Business & Professions Code §§ 6068 and 6202; Evidence Code §§ 952, et seq. and Code of Civil Procedure § 2018.030.

Records that are drafts not kept in the ordinary course of business will not be disclosed pursuant to Government Code § 6254 (a).

Documents that are protected by the attorney-client privilege, attorney work product, or were specifically prepared for CDCR's use in pending litigation will not be disclosed pursuant to Government Code §§ 6254 (b) and (k), Business & Professions Code §§ 6068 and 6202; Evidence Code § 952, et seq. and the Code of Civil Procedure § 2018.030.

Disclosure of some documents could compromise the safety and security of the institutions, staff, offenders, and others. These records will not be disclosed pursuant to Government Code §§ 6254 (f) and (k), Evidence Code § 1040, as discussed in *Procunier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211.

Records that would impose an unwarranted invasion of personal privacy, personnel records, or records deemed "protected information" by the Protective Order issued on April 3, 2006 in *Morales v. Woodford, et al.,* U.S. District Court for the Northern District of California case numbers 06 219 and 06 926 (including those indicating names, ranks, job descriptions, and other identifying information of members of the execution team) will be withheld consistent with the Protective Order, pursuant to Government Code §§ 6254 (f) and (k), Evidence Code § 1040, as discussed in *Procunier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211, Government Code §§ 6254 (c) and (k), Penal Code §§ 832.7 and 832.8, and Government Code § 6255.

Please note that the California Department of Corrections and Rehabilitation is still reviewing documents that may be responsive to your request, and it is possible that additional documents and/or exemptions will be identified during the review and compilation of these records.

If you have any questions I can be reached at (415) 455-5007.

Sincerely,

B. Ebert
Correctional Counselor II, Specialist
Litigation Coordinator
San Quentin State Prison

Exhibit C

DEPARTMENT OF CORRECTIONS AND REHABILITATION
Office of Legal Affairs
P. O. Box 942883
Sacramento, CA 94283-0001
(916) 445-0495
(916) 327-8706 fax

December 4, 2015

Ana Zamora
American Civil Liberties Union
Of Northern California
39 Drumm Street
San Francisco, CA 94111

Sent via electronic mail only - llye@ACLUnc.org

Public Records Act Request dated August 14, 2015

Dear Ms. Zamora:

This is in response to your request for records from the California Department of Corrections and Rehabilitation (CDCR) dated August 14, 2015 and received on September 4, 2015. CDCR has completed its review of documents. CDCR has confirmed with you that ACLU is not requesting documents that CDCR has previously provided to the ACLU in response to prior ACLU PRAs. (See November 2, and November 4, 2015 emails from Linda Lye, Senior Staff Attorney, American Civil Liberties Union of Northern California to Brandy Ebert, Correctional Counselor II, Specialist - Litigation Coordinator, San Quentin State Prison.)

We have identified approximately 83 pages which may be responsive to your request. The duplication fees for this request are a total of $14.96 (83 pages at .12 each ($9.96)) plus postage of $5.00). The responsive documents will be mailed upon receipt of this payment. Please mail the payment to: CDCR, Office of Legal Affairs, Attention: Dennis Beaty, 1515 S Street, Room 314S, Sacramento, CA 95811.

The ACLU has a scanned copy of the complete rulemaking file for the proposed Lethal Injection regulation. Additional responsive documents not exempted or privileged may include documents contained in the rulemaking file of the proposed regulations. The documents relied upon are listed in attachments A (vol. I) - attachments G (vol. VII) with their citations. CDCR has identified the following documents that may be responsive to your request: Attachment A (vol. 1) documents 6, 10-36, 40-44, 49; attachment B (vol. II) documents 1-7, 9-114; attachment C (vol. III) documents 1-92; attachment E (vol. V) documents 2-3, 8-21; attachment F (vol. VI) documents 3-6, 12, 32-35, 42; attachment G (vol. VII) document 1.

A portion of the records that you requested are exempt from disclosure under the Public Records Act and will not be provided to you. The applicable exemptions, more fully discussed below, include: Government Code §§ 6254 (a), (b), (c), (f) and (k); Business & Professions Code §§ 6068 and 6202; Evidence Code §§ 952, et seq. and 1040, and Code of Civil Procedure §2018.030, et seq.; and Federal Rule of Civil Procedure Rule 26(b)(4)(D).

Records that are drafts not kept in the ordinary course of business will not be disclosed pursuant to Government Code § 6254 (a). (August 14, 2015 PRA request numbers 1, 2, 3, 9, 10, 11, 12, 13.)

Documents that are protected by the attorney-client privilege, attorney work product, or were specifically prepared for CDCR's use in pending litigation or official information will not be disclosed pursuant to Government Code §§ 6254 (b) and (k), Business & Professions Code §§ 6068 and 6202; Evidence Code § 952, et seq. and 1040, and Code of Civil Procedure § 2018.030, et seq; Federal Rule of Civil Procedure Rule 26(b)(4)(D); *Sara Lee Cork v. Kraft Foods Inc*, 273 F.R.D. 416. (August 14, 2015 PRA request numbers 1, 2, 3, 6, 7, 8, 10, 11, 12, 13.)

Disclosure of some documents could compromise the safety and security of the institutions, staff, offenders, and others. These records will not be disclosed pursuant to Government Code §§ 6254 (f) and (k), Evidence Code § 1040, as discussed in *Procunier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211. (August 14, 2015 PRA request numbers 1, 2, 5, 6, 8, 10, 14.)

Records that would impose an unwarranted invasion of personal privacy, personnel records, or records deemed "protected information" by the Protective Order issued on April 3, 2006 in *Morales v. Woodford, et al.*, U.S. District Court for the Northern District of California case numbers 06 219 and 06 926 (including those indicating names, ranks, job descriptions, and other identifying information of members of the execution team) will be withheld consistent with the Protective Order, pursuant to Government Code §§ 6254 (f) and (k), Evidence Code § 1040, as discussed in *Procunier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211, Government Code §§ 6254 (c) and (k), Penal Code §§ 832.7 and 832.8. (August 14, 2015 PRA request numbers 1, 5, 6, 8, 10, 14.)

CDCR has no current supply of execution drugs. There are no responsive documents for August 14, 2015 PRA request number 4.

CDCR has no additional responsive documents for the August 14, 2015 PRA request number 8 other than those being produced with applicable redactions.

CDCR has no responsive documents for the August 14, 2015 PRA request number 9.

If you have any questions I can be reached at (916) 324-3224.

Sincerely,

Dennis M. Beaty
Assistant General Counsel
PRA Unit

Exhibit D

STATE OF CALIFORNIA Edmund G. Brown, Jr., *Governor*

DEPARTMENT OF CORRECTIONS AND REHABILITATION
Office of Legal Affairs
P. O. Box 942883
Sacramento, CA 94283-0001
(916) 445-0495
(916) 327-8706 fax

December 4, 2015

Ana Zamora
American Civil Liberties Union
Of Northern California
39 Drumm Street
San Francisco, CA 94111

Sent via electronic mail only - llyc@ACLUnc.org

Re: Public Records Act Request dated September 4, 2015

Dear Ms. Zamora:

This is in response to your request for records from the California Department of Corrections and Rehabilitation (CDCR) dated September 4, 2015 and received on September 8, 2015. CDCR has completed its review of documents.

We have identified approximately 57 pages that may be responsive to your request. The duplication fees for this request are a total of $9.80 (57 pages at .12 each ($6.84) plus postage of $2.96). The responsive documents will be mailed upon receipt of this payment. Please mail the payment to: CDCR, Office of Legal Affairs, Attention: Dennis M. Beaty, 1515 S Street, Room 314S, Sacramento, CA 95811.

The ACLU has a scanned copy of the complete rulemaking file for the proposed Lethal Injection regulation. Additional responsive documents not exempted or privileged may include documents contained in the rulemaking file of the proposed regulations. The documents relied upon are listed in attachments A (vol. I) – attachments G (vol. VII) with their citations. CDCR has identified the following documents that may be responsive to your request: Attachment A (vol. I) documents 1-4, 8-9, 30, 37-39, 45-46, 48; attachment B (vol. II) document 1; attachment D (vol. IV) documents 1-70, attachment F (vol. VI) documents 1-4, 6-7, 14, 39, 42; attachment G (vol. VII) documents 1-9.

A portion of the records that you requested are exempt from disclosure under the Public Records Act and will not be provided to you. The applicable exemptions, more fully discussed below, include: Government Code §§ 6254 (a), (b), (c), (f) and (k); Business & Professions Code §§ 6068 and 6202; Evidence Code §§ 952, et seq. and 1040, and Code of Civil Procedure § 2018.030, et seq.; and Federal Rule of Civil Procedure Rule 26(b)(4)(D).

Records that are drafts not kept in the ordinary course of business will not be disclosed pursuant to Government Code § 6254 (a). (September 4, 2015 PRA request numbers 1, 2, 3, 5, 6, 7, 8, 11, 12.)

Documents that are protected by the attorney-client privilege, attorney work product, or were specifically prepared for CDCR's use in pending litigation or official information will not be disclosed pursuant to Government Code §§ 6254 (b) and (k), Business & Professions Code §§ 6068 and 6202; Evidence Code § 952, et seq. and 1040, and the Code of Civil Procedure § 2018.030, et seq; Federal Rule of Civil Procedure Rule 26(b)(4)(D); *Sara Lee Cork v. Kraft Foods Inc.* 273 F.R.D. 416. (September 4, 2015 PRA request numbers 1, 2, 3, 5, 6, 7, 8, 11, 12.)

Disclosure of some documents could compromise the safety and security of the institutions, staff, offenders, and others. These records will not be disclosed pursuant to Government Code §§ 6254 (f) and (k), Evidence Code § 1040, as discussed in *Procunier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211. (September 4, 2015 PRA request numbers 1, 2, 3, 4, 5, 6, 7, 8, 11)

Records that would impose an unwarranted invasion of personal privacy, personnel records, or records deemed "protected information" by the Protective Order issued on April 3, 2006 in *Morales v. Woodford, et al.,* U.S. District Court for the Northern District of California case numbers 06 219 and 06 926 (including those indicating names, ranks, job descriptions, and other identifying information of members of the execution team) will be withheld consistent with the Protective Order, pursuant to Government Code §§ 6254 (f) and (k), Evidence Code § 1040, as discussed in *Procunier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211, Government Code §§ 6254 (c) and (k), Penal Code §§ 832.7 and 832.8. (September 4, 2015 PRA request numbers 3, 4, 7, 8, 11.)

CDCR has no responsive documents for September 4, 2015 PRA request numbers 9 and 10.

If you have any questions I can be reached at (916) 324-3224.

Sincerely,

Dennis M. Beaty
Assistant General Counsel
PRA Unit