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Attorney for Petitioners,
American Civil Liberties Union
and
American Civil Liberties Union
of Northern California

ENDORSED
FILED
Superior Court of California
County of San Francisco

JUN 07 2016

CLERK OF THE COURT
BY: ARLENE RAMOS
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

American Civil Liberties Union,
American Civil Liberties Union of Northern
California,

Petitioners,

v.

California Department of Corrections and
Rehabilitation,

Respondent.

Case No. CPF-16-515083

Verified Petition for
Writ of Mandate

Judge:
Department:

INTRODUCTION

1. This is a suit to enforce the California Public Records Act ("PRA"). The California Department of Corrections and Rehabilitation ("CDCR" or "Department") has improperly denied two separate PRA requests for information concerning persons serving life sentences for crimes committed as juveniles.

2. In the first request, the American Civil Liberties Union of Northern California ("ACLU-NC") sought records containing information about CDCR inmates serving sentences of life without the possibility of parole for crimes committed as juveniles. The Department turned over some information for some of these prisoners, but refused to provide any information about 16 individuals in its custody. It also refused to provide dates of birth for any of them, relying in part on a regulation, 15 C.C.R.

1 § 3261.2, that it claims gives it the discretion to decide whether to release certain information under
2 the PRA.

3 3. In the second request, the national American Civil Liberties Union (“ACLU”) sought statistical
4 and demographic information about people serving life sentences for crimes they committed as
5 juveniles. The Department did not deny the request outright; instead, after charging the ACLU more
6 than \$1,000 to compile the requested information, it determined that the request was for “research
7 purposes” and therefore refused to release the information unless the ACLU followed a lengthy review
8 procedure.
9

10 4. The Department’s failure to provide the information requested by the ACLU was improper,
11 because this review procedure, which is intended to protect prisoner privacy and health, does not apply
12 to the release of the information at issue, and the PRA does not permit an agency to condition
13 disclosure of non-exempt information on compliance with such a procedure. Moreover, it specifically
14 prohibits an agency from limiting access to information based on the requestor’s purpose for seeking
15 it.

16 5. The Department is now on a routine basis improperly requiring members of the public who
17 seek information that should be available under the PRA to follow the Department’s research review
18 protocol in order to have their requests considered.

19 6. Petitioners therefore request that this Court order the Department to comply with their PRA
20 requests. In addition, the ACLU-NC, as a California corporation and taxpayer, asks this Court to
21 prohibit the Department from (1) requiring any requester seeking records or information otherwise
22 disclosable under the PRA to go through the Department’s research review, or (2) relying on 15
23 C.R.R. § 3261.2 to deny the release of records under the PRA.
24

25 PARTIES

26 7. Petitioner ACLU is a nationwide nonprofit, non-partisan organization with over 500,000
27 members, dedicated to the defense and promotion of the guarantees of individual rights and liberties
28

embodied in the state and federal constitutions.

8. Petitioner ACLU-NC is a nonprofit public-interest corporation with a longstanding goal of advancing free-speech and open-government rights. It is incorporated in California and has approximately 40,000 members who reside in this state, many of whom are assessed and pay California income, property, and other taxes.

9. Both the ACLU and the ACLU-NC are members of the public as defined by the PRA, with the right to enforce their requests for records under Government Code §§ 6252, 6258.

10. Respondent CDCR is a public agency within the meaning of Government Code § 6252(d).

11. The CDCR is in possession of the records sought by this Petition.

JURISDICTION AND VENUE

12. This Court has jurisdiction under Government Code §§ 6258, 6259, Code of Civil Procedure §§ 1060 and 1085, and Article VI section 10 of the California Constitution.

13. Venue is proper in this Court. Because the California Attorney General has an office located in the City and County of San Francisco, any suit against the CDCR that may be brought in Sacramento may also be commenced and tried in this Court. Code Civ. Pro. § 401(1). The records in question, or some portion of them, are situated in the County of Sacramento, meaning that suit may be brought in that County. Gov. Code § 6259(a); Code Civ. Pro. § 401(1). In addition, the CDCR resides in, and the acts and omissions complained of herein occurred in, Sacramento. *See* Code Civ. Pro. §§ 393, 395(a).

THE STATUTORY AND CONSTITUTIONAL RIGHT TO PUBLIC RECORDS

14. Under the PRA, all records that are prepared, owned, used, or retained by any public agency must be made publicly available for inspection and copying upon request, unless they are exempt from disclosure. Gov. Code §§ 6253(a) and (b); 6252(e). If documents contain both exempt and non-exempt material, the government must disclose the non-exempt material. *Id.* § 6253(a).

15. The PRA “does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.” *Id.* § 6257.5.

1 Nor does it allow agencies to require a requestor to comply with non-statutory conditions in order to
2 obtain public records. *Cty. of Santa Clara v. Superior Court*, 170 Cal.App.4th 1301, 1335-36 (2009).

3 16. “Whenever it is made to appear by verified petition to the superior court of the county where
4 the records or some part thereof are situated that certain public records are being improperly withheld
5 from a member of the public, the court shall order the officer or person charged with withholding the
6 records to disclose the public record or show cause why he or she should not do so.” Gov. Code
7 § 6259(a).

8 17. The government has the burden to justify non-disclosure of any record. *ACLU-NC v. Superior*
9 *Court*, 202 Cal.App.4th 55, 83-86 (2011). If the Court finds that the government has failed to meet
10 this burden, it shall order the public official to make the record public. Gov. Code § 6259(b).

11 18. The California Constitution provides an additional, independent right of access to government
12 records: “The people have the right of access to information concerning the conduct of the people’s
13 business, and, therefore, the meetings of public bodies and the writings of public officials and
14 agencies shall be open to public scrutiny.” CAL. CONST., ART. 1 § 3(b)(1).

15 19. Mandate lies to compel the government to comply with the PRA and the California
16 Constitution. Gov. Code § 6258; Code Civ. Pro. § 1085.

17 **FACTS**

18 **A. Petitioner ACLU-NC’s Public Record Act Request to the CDCR**

19 20. Because the ACLU-NC requested records after the Department had refused to provide them to
20 another organization, it is necessary to start with a description of that organization’s request.

21 21. In July and August of 2015, Phillips Black, a public interest law firm, submitted PRA requests
22 to the Department seeking information about inmates serving life sentences without the possibility of
23 parole for offenses committed as juveniles. The requests asked for these prisoners’ names, dates of
24 conviction, counties of conviction, current places of confinement, sentence dates, race, gender and
25 date of birth. *See* Ex. A at 9, 7, 4-5, 2-3 (July 8, 2015 email from A. Dorn to M. Tuntakit and J.
26 Callison; July 22, 2015 email from A. Dorn to J. DeVoe; Aug. 17, 2015 email from A. Dorn to J.

DeVoe; Sept. 18, 2015 email from A. Dorn to J. DeVoe).¹

22. The Department produced most of the requested information for 289 inmates but refused to release the prisoners' dates of birth, dates of conviction, race, and gender, citing 15 Cal. Code of Regulations § 3261.2 and Government Code § 6254 (c), (k) to justify nondisclosure. *See* Ex. A at 6, 2-3 (July 22, 2015 email from J. DeVoe to A. Dorn; Sept. 18, 2015 email from J. DeVoe to A. Dorn, dated Sept. 18, 2015); Ex. B (Oct. 30, 2015 letter from J. Atkinson to A. Dorn). In lieu of date of birth the Department provided age at the time of the offense; it also provided the offense dates, but did not provide dates of conviction. *See* Ex. B (Oct. 30, 2015 letter from J. Atkinson to A. Dorn). The Department charged the Phillips Black project more than \$850 for these records. *See* Ex. A at 7, 2 (July 22, 2015 email from J. DeVoe to A. Dorn; Sept. 21, 2015 email from A. Dorn to J. Atkinson).

23. The Department also stated there were 16 additional JLWOP inmates for whom the Department would not be disclosing *any* information, because it "ha[d] determined that release of their information may pose a safety and security issue to themselves or to CDCR." *See* Ex. B (Oct. 30, 2015 letter from J. Atkinson to A. Dorn).

24. In December 2015, counsel sent a follow-up letter on behalf of the ACLU-NC and Phillips Black, requesting that the Department reconsider its refusal to release any information about the 16 inmates and to withhold the race, sex, and date of birth of all of the inmates. *See* Ex. C (Dec. 30, 2015 letter from M. Risher to CDCR). This letter asked that the Department release documents containing that information, as well as inmate numbers and how it had calculated the amount it charged the Phillips Black project for compiling data. *Id.*

25. The Department denied this request, again citing Government Code §§ 6254(c) and (k) and 15 C.C.R. § 3261.2, and also citing Government Code § 6254(f). *See* Ex. D (Jan. 14, 2016 letter from J. Atkinson to M. Risher). More specifically, it asserted that the requested information about the inmates' identities and underlying convictions constitutes "criminal offender record information,"

¹ The exhibits to this Petition are all true copies of the documents as described in the text.

1 which cannot lawfully be released to the public, that the information on the 16 inmates was exempt
2 from disclosure under Government Code § 6254(f), and that information on race, sex, date of birth
3 and inmate number was exempt under Government Code §§ 6254(c) and (k). *Id.*

4 26. In explaining why it had released much of the information for 289 prisoners, the Department
5 asserted that 15 C.C.R. § 3261.2 gives it “some discretion” to release or withhold this information. *Id.*

6 27. In denying the request, the Department failed to note that its own website allows the public to
7 input a name and find corresponding inmate numbers, age, admission date and current institution for
8 most inmates. *See* <http://inmatelocator.cdcr.ca.gov/>. The public may also do the reverse and input an
9 inmate number and pull up name, age, admission date and current institution.

10 28. In addition, the Department releases to the public information relating to escaped inmates,
11 including the individual’s name, CDCR number, date of birth, race, sex, and commitment offense,
12 under the CDCR’s Department Operations Manual § 13010.9.²

13 29. The public’s interest in disclosure of the requested information is considerable. The
14 government must not be permitted to hide the identities and basic information about the people in our
15 state prisons – particularly not those who are serving the most serious possible sentence that can be
16 imposed on them as juveniles. Allowing the public access to this basic information on these
17 individuals is critical to ensuring the public knows who the state is depriving of their liberty and for
18 what reasons.
19

20 **B. National ACLU’s Public Record Act Request to the CDCR**

21 30. In May 2015 the national ACLU submitted a request for records to the CDCR seeking
22 demographic and statistical information about individuals serving life sentences. Ex. E (May 20, 2015
23 letter from S. Mehta to CDCR).

24 31. Specifically, the ACLU asked for the number of persons serving life sentences who were under
25 18 or between 18 and 25 at the time of the offense, lengths of sentences for that population and racial
26

27 ² *Available at:*
28 http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202016/2016_DOM.PDF.

1 breakdown for that population. *Id.* at 4. The request also asked for numbers and percentages of
2 prisoners participating in, and on waiting lists for, various treatment and training programs. *Id.* at 4-5.
3 The request noted that “[t]he information sought in this record request will be compiled in an ACLU
4 research document on prisoners and parole and will be made available to the public through our
5 website.” *Id.* at 5.

6 32. The Department responded and provided the numbers and percentages of inmates participating
7 in the various treatment and training programs. Ex. F at 2-4 (Aug. 11, 2015 letter from D. Beaty to S.
8 Mehta). As to the statistical and demographic information on the juvenile lifers, and the statistical
9 information on the number of inmates on waiting lists for the treatment and training programs, the
10 Department stated that it would respond to the requests, but needed to extract the information from its
11 databases, which would require an up-front payment from the ACLU. *Id.* at 2, 4. The ACLU sent in
12 two checks, one for \$247.79 and one for \$1,393.92.

14 33. The Department cashed the ACLU’s checks, but then informed the ACLU that it had
15 “overlooked [the] statement that this request was for research purposes when [the CDCR] provided
16 [the] initial response,” and that the CDCR “need[ed] [the ACLU] to follow the CDCR research
17 protocols.” Ex. G (Nov. 9, 2015 letter from J. Atkinson to S. Mehta).

18 34. The Department then sent a follow-up email explaining that the “CDCR has a formal research-
19 review process pursuant to PC §§ 3500-3524, California Code of Regulations, Title 15 Article 9.1
20 3369.5 and the Department Operations Manual, Article 19, Section 14020.5 and 14020.5.1,” that the
21 ACLU must complete the review process to obtain the requested information. Ex. H at 1-2 (Nov. 9,
22 2015 email from A. Gabbard to J. DeVoe (pagination added)).

24 35. The research review process requires the researcher to submit a preliminary assessment
25 request, a request for access to inmate for research purposes (if there will be contact with inmates
26 such as via surveys or interviews) and an agreement to comply with the Department’s Confidential
27 Data policy for Research Organizations. The researcher must also secure local Institutional Review
28

1 Board approval, approval from the California Committee for the Protection of Human Subjects and
2 final approval from the Department's Research Advisory Committee. *Id.*

3 36. The Department's External Research Preliminary Assessment Request Phase I form requires
4 the requester to provide information including a summary of the research, the source of funding for
5 the research, estimated beginning and end dates of the study, estimated department staff time
6 required, operating or equipment costs to the state, estimated time required of inmate subjects,
7 compensation to inmate participants, the potential value that the research may contribute to CDCR's
8 mission, the objective and purpose of the study, description of research methods and approaches, and
9 an explanation of whether identifiable information is sought from administrative data and records and
10 why access to that information is necessary to conduct the study. *Id.* at 3-5 (External Research
11 Preliminary Assessment Request Phase I).

12 37. The Department's Confidential Data Policy for Research Organizations requires that the
13 requester sign a confidentiality agreement under which the requester attests that she "acknowledge[s]
14 that records, documents and data provided by the ... CDCR, are subject to strict confidentiality
15 requirements." It also requires the requester to agree not to "use, disseminate or otherwise distribute
16 confidential records or said documents or information ... other than in the performance of the specific
17 authorized research," and that "unauthorized use, dissemination or distribution is grounds for
18 immediate termination of [the requester's] agreement with the CDCR and may subject [the requester]
19 to penalties both civil and criminal." *Id.* at 18 (CDCR's Confidential Data Policy for Research
20 Organizations).

21 38. The research-review process takes a number of months; following it results in substantial
22 delays in the release of records and information.

23 39. The ACLU did not go through the research review process and so has not gotten the
24 information.

25 40. The ACLU seeks this information for its nationwide report on prisoners and parole that will
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27
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1 contribute to the public's knowledge of who is in our state prisons, for how long and under what
2 conditions.

3 41. Respondent CDCR has an unlawful policy and practice of requiring compliance with its
4 research-review protocol in order to obtain records that should be available under the PRA.

5 42. Respondent CDCR has an unlawful policy and practice of relying upon 15 C.R.R. § 3261.2 to
6 deny the release of records that should be available under the PRA.
7

8
9 **FIRST CAUSE OF ACTION**
Violation of the California Public Records Act and
Article I, § 3 of the California Constitution

10 (Petitioner ACLU-NC v. Respondent CDCR)

11 43. Petitioner ACLU-NC incorporates by reference the above allegations, as if set forth in full.

12 44. The PRA requires the disclosure of the records and information that the ACLU-NC requested.

13 45. The CDCR's failure to provide the requested records and information violates the PRA and
14 Article I, § 3 of the California Constitution.
15

16
17 **SECOND CAUSE OF ACTION**
Violation of the California Public Records Act and
Article I, § 3 of the California Constitution

18 (Petitioner ACLU v. Respondent CDCR)

19 46. Petitioner ACLU incorporates by reference the above allegations, as if set forth in full.

20 47. The PRA requires the disclosure of the records and information that the ACLU requested.

21 48. The CDCR may not require Petitioner ACLU to undergo the CDCR's research-review process
22 in order to obtain these records.

23 49. The CDCR's failure to provide the requested records and information and its requirement that
24 Petitioner undergo the research review process violate the PRA and Article I, § 3 of the California
25 Constitution.
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THIRD CAUSE OF ACTION
Taxpayer Action under Code Civ. Proc. § 526a to Prevent Illegal Expenditure of Funds

(Petitioner ACLU-NC v. Respondent CDCR)

50. Petitioner ACLU-NC incorporates by reference the above allegations, as if set forth in full.

51. Respondent is illegally expending public funds by relying upon 15 C.R.R. § 3261.2 and its research-review protocol to deny, delay, and put unlawful conditions upon access to records and information that should be available to the public under the PRA and the California Constitution.

RELIEF REQUESTED

Petitioners therefore ask the Court for the following:

1. A writ of mandate directing Respondent CDCR to provide Petitioner ACLU-NC with the name, date of conviction, county of conviction, current places of confinement, sentence date, inmate number, and date of birth for each prisoner in its custody serving a sentence of life without the possibility of parole for a crime committed as a juvenile, excepting those records CDCR has already released to Phillips Black and records or parts thereof that the Court determines may lawfully be withheld.

2. A writ of mandate directing Respondent CDCR to provide Petitioner ACLU with the records it requested, excepting those records that CDCR has already released to the ACLU and records or parts thereof that the Court determines may lawfully be withheld.

3. A writ of mandate prohibiting Respondent CDCR from relying on 15 C.R.R. § 3261.2 to deny the release of records under the PRA.

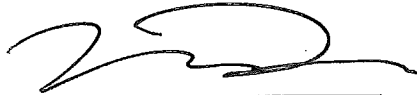
4. A writ of mandate prohibiting Respondent CDCR from requiring any requester to go through the CDCR's research review process in order to obtain records or information that is subject to release under the PRA.

5. Attorneys' fees and costs.

1 6. Such other and further relief as the Court deems proper and just.

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3 Dated: June 7, 2016

By:


Micaela Davis
Attorney for Petitioners
ACLU and ACLU-NC

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9 **VERIFICATION**

10 I, Christine Sun, am the Associate Director of the American Civil Liberties Union of Northern
11 California. I have read this Verified Petition for Writ of Mandate in the matter of *American Civil*
12 *Liberties Union and American Civil Liberties Union of Northern California v. California Department*
13 *of Corrections and Rehabilitation*, and am informed, and do believe, that the matters herein are true.
14 On that ground I allege that the matters stated herein are true. I declare under penalty of perjury under
15 the laws of the State of California that the foregoing is true and correct.
16

17 DATED: June 7, 2016 at San Francisco, CA

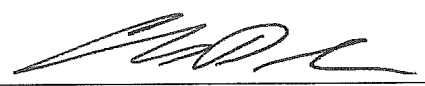

Christine Sun

EXHIBIT A



Anna Dorn <a.dorn@phillipsblack.org>

Public Records Request

DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov>
To: Anna Dorn <a.dorn@phillipsblack.org>

Thu, Sep 24, 2015 at 2:07 PM

We received Ms. Dorn's cashier's check. David has her PRA to work on.

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender Information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]
Sent: Tuesday, September 22, 2015 4:42 PM
To: Atkinson, Jay@CDCR
Cc: DeVoe, June@CDCR; Donahue, Michael@CDCR; Beaty, Dennis@CDCR
Subject: Re: FW: Public Records Request

Thanks very much, Mr. Atkinson!

On Tue, Sep 22, 2015 at 3:58 PM, Atkinson, Jay@CDCR <Jay.Atkinson@cdcr.ca.gov> wrote:

We will let you know when we receive it, and when we can get you the data.

Jay Atkinson, Chief
Offender Information Services Branch,
Office of Research
E-Mail: Jay.Atkinson@cdcr.ca.gov
Phone: (916) 324-8810
Fax: (916) 327-5836



From: Anna Dorn [mailto:a.dorn@phillipsblack.org]
Sent: Tuesday, September 22, 2015 1:53 PM
To: DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov>

Cc: Atkinson, Jay@CDCR <Jay.Atkinson@cdcr.ca.gov>; Donahue, Michael@CDCR <Michael.Donahue@cdcr.ca.gov>; Beaty, Dennis@CDCR <Dennis.Beaty@cdcr.ca.gov>
Subject: Re: FW: Public Records Request

Hi Mr. Atkinson,

I mailed out the check this morning. Please let me know when it arrives.

Best,

Anna

On Mon, Sep 21, 2015 at 9:11 AM, Anna Dorn <a.dorn@phillipsblack.org> wrote:

Hi Mr. Atkinson,

I apologize for the delay getting back to you -- I had to confer with my supervisor. We would like to just add date of sentence to the request, per the last letter. I will send a cashier's check for \$351.28 today.

Thanks,

Anna

On Mon, Sep 21, 2015 at 7:30 AM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

Jay,

In the attached email, Ms. Dorn requested the sentence date and DOB on Monday, August 17th. I called her that day and explained we could not provide DOB which is why she sent another email on August 19th asking for the sentence date. In that second email she also requested clarification on the ages of two individuals listed on our initial response. The cost letter that was sent on the 24th (sent to you in an earlier email this morning) was in response to her request of August 19th.

I heard nothing from Ms. Dorn since then.

June DeVoe

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender Information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Atkinson, Jay@CDCR
Sent: Friday, September 18, 2015 1:34 PM
To: Anna Dorn; DeVoe, June@CDCR
Cc: Donahue, Michael@CDCR; Beaty, Dennis@CDCR
Subject: RE: FW: Public Records Request

Importance: High

Anna, I have reviewed all e-mails and documents, related to your requests, and have the following comments:

1. Attached please find a signed cost letter, dated August 24, 2015, for adding the "date of sentence" to the list of LWOPs that we had previously sent you. I will follow-up with June on Monday, as to why you did not receive a copy of it.
2. Although, the attached cost letter does not address your request for date of birth (DOB), which we cannot provide you anyway, Per Title 15, Section 3261.2, and Government Code § 6254 (c) and (k), I can have June revise the cost letter on Monday to include the inmates' age at the time of the commitment offense, for which they received the LWOP sentence for, in lieu of DOB.

Please let me know what your preference is, and we will follow-up with you again on Monday.

Thanks,

Jay Atkinson, Chief
Offender Information Services Branch,
Office of Research
E-Mail: Jay.Atkinson@cdcr.ca.gov
Phone: (916) 324-8810
Fax: (916) 327-5836



From: Anna Dorn [<mailto:a.dorn@phillipsblack.org>]
Sent: Friday, September 18, 2015 11:26 AM
To: DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov>
Cc: Atkinson, Jay@CDCR <Jay.Atkinson@cdcr.ca.gov>; Donahue, Michael@CDCR <Michael.Donahue@cdcr.ca.gov>
Subject: Re: FW: Public Records Request

Hi Ms. DeVoe,

I'm just circling back about the following:

- (1) Do you think it would be possible to provide date of sentence for the inmates?
- (2) Same re date of birth?

Thanks!

Anna

On Mon, Aug 24, 2015 at 1:35 PM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

Ms. Dorn,

Another cost estimate letter will be forthcoming.

Regarding the two individuals:

Sam Savin was less than a month shy of his 18th birthday at the time of the Life WithOut the possibility of Parole (LWOP) offense.

Isaac Martinez was 17 at the time of his first LWOP offense.

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender Information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Wednesday, August 19, 2015 10:30 AM

To: DeVoe, June@CDCR

Subject: Re: FW: Public Records Request

Hi Ms. DeVoe,

I'm just following up regarding our conversation on Monday. I was hoping you could provide the sentence dates for the inmates you provided. I've included my spreadsheet of the data as well as the pdf you provided for your reference. If you could provide the information in excel form, I'd greatly appreciate it.

Also, I have questions about (1) Savin Sam; and (2) Issac Martinez. The pdf you've provided indicates both were over 18 at the time of their offense, so I wanted to confirm that they were included erroneously.

Thanks!

Anna

On Mon, Aug 17, 2015 at 2:06 PM, Anna Dorn <a.dorn@phillipsblack.org> wrote:

Hi Ms. DeVoe,

Thank you so much for providing the data. Two quick questions --

(1) Do you think it would be possible to provide date of sentence for the inmates?

(2) Same re date of birth?

Thanks!

Anna

On Thu, Jul 30, 2015 at 10:07 AM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

As stated in the cost estimate letter:

The OISB will notify you when the data are available. It is estimated that it may take up to 120 days from the date payment is received to develop the program and produce the report. Should you have any questions or concerns, please feel free to contact the undersigned to discuss this matter further.

Sincerely,

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender Information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Thursday, July 30, 2015 10:02 AM

To: DeVoe, June@CDCR

Subject: Re: FW: Public Records Request

Great! When can I expect to receive the data?

Thanks,

Anna

On Thu, Jul 30, 2015 at 9:50 AM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

We have received the payment. Thank you.

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender information Services Branch
V-mail (916) 322-4255
E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]
Sent: Thursday, July 23, 2015 5:16 PM

To: DeVoe, June@CDCR
Cc: Atkinson, Jay@CDCR; Callison, Jeffrey; Beaty, Dennis@CDCR
Subject: Re: FW: Public Records Request

Hi Ms. DeVoe,

I mailed the check yesterday. Please let me know when it's received.

Best,
Anna

On Wed, Jul 22, 2015 at 4:02 PM, Anna Dorn <a.dorn@phillipsblack.org> wrote:

Thanks for letting me know. I'll send in the check for the original check today.

Best,
Anna

On Wed, Jul 22, 2015 at 2:02 PM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

Ms. Dorn,

Unfortunately, Section 3261.2 , California Code of Regulations, Title 15, Section 3261.2, Authorized Release of Information, does not include ethnicity and gender as types of personal information on inmates that CDCR may release. Therefore, we are unable to expand your RPA request as requested below.

[June DeVoe](#)

Research Manager I
Data Analysis Unit
Estimates and Statistical Analysis Section
Offender information Services Branch
V-mail (916) 322-4255
E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Wednesday, July 22, 2015 10:04 AM

To: DeVoe, June@CDCR
Cc: Atkinson, Jay@CDCR; Callison, Jeffrey; Beaty, Dennis@CDCR
Subject: Re: FW: Public Records Request

Thank you. And will the price be the same if race and gender are added to the request?

Best,

Anna

On Wed, Jul 22, 2015 at 9:01 AM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

Ms. Dorn,

Please refer to the attached cost letter, page one:

The estimated cost for compiling this data is \$506.23. The payment must be received prior to the release of the data. Remit payment by a cashier's check or money order to the "California Department of Corrections and Rehabilitation", 1515 Street, Room 221N, Sacramento, CA 95811, Attention: June DeVoe and include the following reference in the "memo field" on the payment: "PRA-8733, Dorn".

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Tuesday, July 21, 2015 5:49 PM

To: DeVoe, June@CDCR

Cc: Atkinson, Jay@CDCR; Callison, Jeffrey; Beaty, Dennis@CDCR

Subject: Re: FW: Public Records Request

Thanks Mr. Atkinson. To whom do I make out the check and where do I send it?

On Tue, Jul 21, 2015 at 1:36 PM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

Ms. Dorn,

Attached is our cost estimate response to your PRA of July 8, 2015. If you have any questions, please feel free to contact Jay Atkinson at Jay.Atkinson@CDCR.Ca.gov.

Thank you.

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Friday, July 17, 2015 1:32 PM

To: DeVoe, June@CDCR

Cc: Atkinson, Jay@CDCR

Subject: Re: FW: Public Records Request

Thanks very much for your email and voicemail. I look forward to hearing from you.

On Fri, Jul 17, 2015 at 8:54 AM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

Good morning Ms. Dorn,

This is a follow-up to the phone message I left at your number at 8:35 this morning (11:35 EST).

My office is in receipt of your request for public records dated July 8, 2015. You requested the following information for currently incarcerated inmates who were sentenced to life without parole for an offense committed prior to the inmate's eighteenth birthday:

Inmate name;

Date of conviction;

County of conviction; and

Current institution of confinement.

We will provide a cost estimate for your request on Tuesday, July 21, 2015. The individual who will develop the program needed to obtain the data is out of the office and will not be available until Monday.

If you have any questions, please contact me. Thank you and have a good weekend.

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

.....

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Wednesday, July 08, 2015 11:35 AM

To: Tuntakit, Michael@CDCR; Callison, Jeffrey

Subject: Public Records Request

Dear Mr. Tuntakit and Mr. Callison,

I am writing to request public information. I am seeking information related to inmates who have been sentenced to life without possibility of parole for an offense committed prior to the inmate's eighteenth birthday. Specifically, I am seeking the total number of inmates currently serving such a sentence and their respective names, date and county of conviction and current institution of confinement.

I am willing to pay reasonable fees and expenses related to this request, up to \$100. If the total cost will exceed that amount, please let me know.

The information is related to a case with very strict deadlines. For that reason, I am requesting, if possible, that you expedite the request.

Please let me know if you require additional information. I look forward to hearing from you soon.

Sincerely,
Anna Dorn

--

Anna Dorn | Phillips Black

Research Fellow

a non-profit, public interest law office

phillipsblack.org

202.215.6270 (tel)

--

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Anna Dorn | Phillips Black
Research Fellow
a non-profit, public interest law office

phillipsblack.org

202.215.6270 (tel)

----- Forwarded message -----

From: "DeVoe, June@CDCR" <June.DeVoe@cdcr.ca.gov>
To: Anna Dorn <a.dorn@phillipsblack.org>
Cc: "Atkinson, Jay@CDCR" <Jay.Atkinson@cdcr.ca.gov>, "Donahue, Michael@CDCR" <Michael.Donahue@cdcr.ca.gov>
Date: Mon, 24 Aug 2015 20:35:49 +0000
Subject: RE: FW: Public Records Request

Ms. Dorn,

Another cost estimate letter will be forthcoming.

Regarding the two individuals:

Sam Savin was less than a month shy of his 18th birthday at the time of the Life WithOut the possibility of Parole (LWOP) offense.

Isaac Martinez was 17 at the time of his first LWOP offense.

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Wednesday, August 19, 2015 10:30 AM

To: DeVoe, June@CDCR

Subject: Re: FW: Public Records Request

Hi Ms. DeVoe,

I'm just following up regarding our conversation on Monday. I was hoping you could provide the sentence dates for the inmates you provided. I've included my spreadsheet of the data as well as the pdf you provided for your reference. If you could provide the information in excel form, I'd greatly appreciate it.

Also, I have questions about (1) Savin Sam; and (2) Issac Martinez. The pdf you've provided indicates both were over 18 at the time of their offense, so I wanted to confirm that they were included erroneously.

Thanks!

Anna

On Mon, Aug 17, 2015 at 2:06 PM, Anna Dorn <a.dorn@phillipsblack.org> wrote:

Hi Ms. DeVoe,

Thank you so much for providing the data. Two quick questions --

(1) Do you think it would be possible to provide date of sentence for the inmates?

(2) Same re date of birth?

Thanks!

Anna

On Thu, Jul 30, 2015 at 10:07 AM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

As stated in the cost estimate letter:

The OISB will notify you when the data are available. It is estimated that it may take up to 120 days from the date payment is received to develop the program and produce the report. Should you have any questions or concerns, please feel free to contact the undersigned to discuss this matter further.

Sincerely,

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender Information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Thursday, July 30, 2015 10:02 AM

To: DeVoe, June@CDCR

Subject: Re: FW: Public Records Request

Great! When can I expect to receive the data?

Thanks,

Anna

On Thu, Jul 30, 2015 at 9:50 AM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

We have received the payment. Thank you.

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender Information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Thursday, July 23, 2015 5:16 PM

To: DeVoe, June@CDCR
Cc: Atkinson, Jay@CDCR; Callison, Jeffrey; Beaty, Dennis@CDCR
Subject: Re: FW: Public Records Request

Hi Ms. DeVoe,

I mailed the check yesterday. Please let me know when it's received.

Best,
Anna

On Wed, Jul 22, 2015 at 4:02 PM, Anna Dorn <a.dorn@phillipsblack.org> wrote:

Thanks for letting me know. I'll send in the check for the original check today.

Best,
Anna

On Wed, Jul 22, 2015 at 2:02 PM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

Ms. Dorn,

Unfortunately, Section 3261.2, California Code of Regulations, Title 15, Section 3261.2, Authorized Release of Information, does not include ethnicity and gender as types of personal information on inmates that CDCR may release. Therefore, we are unable to expand your RPA request as requested below.

June DeVoe

Research Manager I
Data Analysis Unit
Estimates and Statistical Analysis Section
Offender information Services Branch
V-mail (916) 322-4255
E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]
Sent: Wednesday, July 22, 2015 10:04 AM

To: DeVoe, June@CDCR
Cc: Atkinson, Jay@CDCR; Callison, Jeffrey; Beaty, Dennis@CDCR
Subject: Re: FW: Public Records Request

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[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender information Services Branch

V-mail (916) 322-4255

E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]

Sent: Tuesday, July 21, 2015 5:49 PM

To: DeVoe, June@CDCR

Cc: Atkinson, Jay@CDCR; Callison, Jeffrey; Beaty, Dennis@CDCR

Subject: Re: FW: Public Records Request

Thanks Mr. Atkinson. To whom do I make out the check and where do I send it?

On Tue, Jul 21, 2015 at 1:36 PM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

Ms. Dorn,

Attached is our cost estimate response to your PRA of July 8, 2015. If you have any questions, please feel free to contact Jay Atkinson at Jay.Atkinson@CDCR.Ca.gov.

Thank you.

[June DeVoe](#)

Research Manager I

Data Analysis Unit

Estimates and Statistical Analysis Section

Offender information Services Branch
V-mail (916) 322-4255
E-mail June.DeVoe@CDCR.ca.gov

From: Anna Dorn [mailto:a.dorn@phillipsblack.org]
Sent: Friday, July 17, 2015 1:32 PM
To: DeVoe, June@CDCR
Cc: Atkinson, Jay@CDCR
Subject: Re: FW: Public Records Request

Thanks very much for your email and voicemail. I look forward to hearing from you.

On Fri, Jul 17, 2015 at 8:54 AM, DeVoe, June@CDCR <June.DeVoe@cdcr.ca.gov> wrote:

Good morning Ms. Dorn,

This is a follow-up to the phone message I left at your number at 8:35 this morning (11:35 EST).

My office is in receipt of your request for public records dated July 8, 2015. You requested the following information for currently incarcerated inmates who were sentenced to life without parole for an offense committed prior to the inmate's eighteenth birthday:

Inmate name;
Date of conviction;
County of conviction; and
Current institution of confinement.

We will provide a cost estimate for your request on Tuesday, July 21, 2015. The individual who will develop the program needed to obtain the data is out of the office and will not be available until Monday.

If you have any questions, please contact me. Thank you and have a good weekend.

June DeVoe
Research Manager I

Data Analysis Unit
Estimates and Statistical Analysis Section

Offender information Services Branch
V-mail (916) 322-4255
E-mail June.DeVoe@CDCR.ca.gov

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From: Anna Dorn [mailto:a.dorn@phillipsblack.org]
Sent: Wednesday, July 08, 2015 11:35 AM
To: Tuntakit, Michael@CDCR; Callison, Jeffrey
Subject: Public Records Request

Dear Mr. Tuntakit and Mr. Callison,

I am writing to request public information. I am seeking information related to inmates who have been sentenced to life without possibility of parole for an offense committed prior to the inmate's eighteenth birthday. Specifically, I am seeking the total number of inmates currently serving such a sentence and their respective names, date and county of conviction and current institution of confinement.

I am willing to pay reasonable fees and expenses related to this request, up to \$100. If the total cost will exceed that amount, please let me know.

The information is related to a case with very strict deadlines. For that reason, I am requesting, if possible, that you expedite the request.

Please let me know if you require additional information. I look forward to hearing from you soon.

Sincerely,
Anna Dorn

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EXHIBIT B

OFFICE OF RESEARCHP.O. Box 942883
Sacramento, CA 94283-0001

October 30, 2015

Email: a.dorn@phillipsblack.org

RE: Public Records Act Request Number 9067

Dear Ms. Dorn:

This letter is in response to your request for public records dated August 19, 2015 and received by the California Department of Corrections and Rehabilitation (CDCR) Office of Research on the same date. The list of CDCR offenders you requested has been uploaded to the State of California Office of Technology Secure File Transfer Service (OTECH-SFT) as a PDF file, labeled 'Under 18 LWOPS with Sentence Date'. You may access the file through the internet at the website <https://sft.ca.gov> and in the Name portion of the User Login, enter: "cdcr-or-oisbdaclient3" (minus the quotation marks). The password to log into the website and access the file will be sent to you in a subsequent email following the receipt of this letter.

Per your request, the list is for currently incarcerated inmates who were sentenced to Life Without the possibility Of Parole (LWOP) for an offense committed prior to the inmate's eighteenth birthday. This list of 289 inmates excludes 16 offenders for whom CDCR has determined that release of their information may pose a safety and security issue to themselves or to CDCR. Below is a brief description of the data columns on the list:

DATA COLUMN	COLUMN DESCRIPTION
Name	Name for this CDCFR offender
Offense Date	Date of the LWOP offense
Sentence Begin Date	The date on which the offender received their sentence
Age at Offense	Offender's age at the time of LWOP offense
County of Conviction	County of conviction for the LWOP offense
Institution	Current institution of confinement

Should you have any questions or concerns please feel free to contact me at (916) 324-8810 to discuss this matter further.

Sincerely,

A handwritten signature in blue ink, appearing to read "JAY ATKINSON", with a stylized flourish at the end.

JAY ATKINSON
PRA Coordinator
Office of Research/Offender Information Services Branch

cc: Jeffrey Callison, Press Secretary
Dennis Beaty, Assistant General Counsel, Office of Legal Affairs
Kathryn Clark, Staff Counsel, Office of Legal Affairs

EXHIBIT C



December 30, 2015

Via U.S. Mail and Electronic Mail

California Department of Corrections and Rehabilitation
Public Records Act Administrators
1515 S Street suite 314S
Sacramento, CA 94283-0001
PRAadministrators@cdcr.ca.gov

RE: California Public Records Act Request

Dear Public Records Act Administrator:

I am writing on behalf of the Phillips Black Project and the American Civil Liberties Union of Northern California to request records relating to inmates sentenced to LWOP for crimes committed before the age of 18.

On October 30, 2015, in response to a PRA request, the CDCR Office of Research provided information regarding 289 of these inmates to Ms. Anna Dorn of the Phillips Black Project. However, the CDCR refused to provide any information regarding an additional 16 of these prisoners, asserting that release of this information could pose a safety and security issues. In addition, the CDCR refused to provide information about the sex and race of these prisoners, asserting that 15 C.C.R. § 3261.2 allows this information to be withheld. A copy of the CDCR's cover letter that it sent along with the partial response (PRA Request No. 9067) is attached.

I am requesting that the CDCR reconsider its decision to withhold this information.

First, as to the 16 prisoners whose information was completely withheld, it is not clear what safety and security issues could justify refusing to release this basic information about persons in the custody of the CDCR. Although concrete threats to security can sometimes justify nondisclosure of records, these threats must be more than "conjectural or speculative." *Am. Civil Liberties Union of N. Cal. v. Superior Court*, 202 Cal. App. 4th 55, 75 (2011). Threats would have to be serious indeed to justify refusing to let the outside world know the identities of inmates, particularly those serving life sentences. And even if the CDCR does have sufficient

reason to withhold *some* information about these 16 prisoners, it is hard to imagine any reasons that would justify withholding *all* of the requested information about them.¹

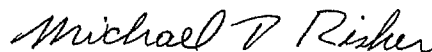
Second, the CDCR should release the sex, race, and dates of birth of all 305 of these prisoners, as well as their inmate numbers. The notion that an agency can eliminate its duties under the PRA simply by passing a regulation is contrary to the fundamental purpose of the PRA. In fact, the PRA specifically allows state and local agencies to adopt rules allowing “greater access to records than prescribed by the minimum standards” of the PRA, with no corresponding authorization to adopt rules that provide for less access. Gov’t Code § 6253(e). “A regulation which impairs the scope of a statute must be declared void.” *Bearden v. U.S. Borax, Inc.*, 138 Cal. App. 4th 429, 436 (2006).²

We therefore ask that you provide us with records showing the names, offense dates, sentence begin date, age at offense, county of conviction, race, sex, date of birth, inmate number, and current institution for each person under the jurisdiction of the CDCR who is serving a sentence of life without the possibility of parole for offenses committed as juveniles, including the 16 prisoners whose information was withheld in the October response. Please note that the Phillips Black project has already paid for the compilation of this information.³ We ask that you provide records in electronic format to avoid copying costs.⁴

Finally, please provide us with records showing how the CDCR calculated the amount it charged to the Phillips Black project for compiling responsive data.

Thank you for your time and attention to this matter. If you would like to discuss this request, please contact me at (415) 621-2493 or mrisher@aclunc.org.

Sincerely,



Michael T. Risher
Senior Staff Attorney

enc.

cc: John Mills, Anna Dorn

¹ The PRA requires release of any non-exempt information, even if other parts of a record are exempt from disclosure. Gov’t. Code § 6253(a).

² At the very least, the CDCR must release this information on records that are redacted to eliminate identifying information, or other records or information that would allow the public to know how many individuals of each sex and race/ethnicity are serving these sentences. *See id.*

³ The total was \$857.51 (\$506.23 and \$351.28).

⁴ Gov’t Code § 6253.9.

OFFICE OF RESEARCHP.O. Box 942883
Sacramento, CA 94283-0001

October 30, 2015

Email: a.dorn@phillipsblack.org

RE: Public Records Act Request Number 9067

Dear Ms. Dorn:

This letter is in response to your request for public records dated August 19, 2015 and received by the California Department of Corrections and Rehabilitation (CDCR) Office of Research on the same date. The list of CDCR offenders you requested has been uploaded to the State of California Office of Technology Secure File Transfer Service (OTECH-SFT) as a PDF file, labeled 'Under 18 LWOPS with Sentence Date'. You may access the file through the internet at the website <https://sft.ca.gov> and in the Name portion of the User Login, enter: "cdcr-or-oisbdaclient3" (minus the quotation marks). The password to log into the website and access the file will be sent to you in a subsequent email following the receipt of this letter.

Per your request, the list is for currently incarcerated inmates who were sentenced to Life Without the possibility Of Parole (LWOP) for an offense committed prior to the inmate's eighteenth birthday. This list of 289 inmates excludes 16 offenders for whom CDCR has determined that release of their information may pose a safety and security issue to themselves or to CDCR. Below is a brief description of the data columns on the list:

DATA COLUMN	COLUMN DESCRIPTION
Name	Name for this CDCFR offender
Offense Date	Date of the LWOP offense
Sentence Begin Date	The date on which the offender received their sentence
Age at Offense	Offender's age at the time of LWOP offense
County of Conviction	County of conviction for the LWOP offense
Institution	Current institution of confinement

Should you have any questions or concerns please feel free to contact me at (916) 324-8810 to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "JAY ATKINSON", is written over a horizontal line.

JAY ATKINSON
PRA Coordinator
Office of Research/Offender Information Services Branch

cc: Jeffrey Callison, Press Secretary
Dennis Beaty, Assistant General Counsel, Office of Legal Affairs
Kathryn Clark, Staff Counsel, Office of Legal Affairs

EXHIBIT D

OFFICE OF RESEARCH

P.O. Box 942883
Sacramento, CA 94283-0001



January 14, 2016

Michael T. Risher
American Civil Liberties Union Foundation of Northern California
39 Drumm Street,
San Francisco, CA 94111

RE: Public Records Act Request Number 9067

Dear Mr. Risher:

This letter is in response to your letter dated December 30, 2015 and received by the California Department of Corrections and Rehabilitation (CDCR) Office of Research on January 4, 2016. Your letter requested the release of information of 16 offenders for whom CDCR has determined that disclosure would create a safety and security issue. Accordingly, CDCR has determined that the information identifying those 16 inmates is exempt from disclosure under Government Code Section 6254(f).

In addition, the information is criminal offender record information within the meaning of Penal Code Sections 13101, 11075, 13102, 11076, 11080, 11081, 11105, 11077, 13200, 13202, 13301, 13100, 13102, 13305, and 13303. Given that the Penal Code places restrictions on the distribution of criminal offender record information, the information is exempt from disclosure under Government Code Section 6254(k). However, criminal offender record information can be released when authorized by other provisions of law. Title 15 California Code of Regulations Section 3261.2 provides an exception to the Criminal Offender Record Information statutes that allows limited disclosure of some information. However, please note that the language of Section 3261.2 is permissive, and gives CDCR some discretion to withhold information where release would pose a substantial risk of harm to people or to the security of the prisons.

Regarding the remaining 289 inmates, all other personal information, beyond what was provided in the October 30, 2015 response, is exempt from disclosure under GC § 6254(c) and (k). Therefore, the CDCR respectfully declines your request to provide information on the 16 offenders in question, as well as to provide the following additional information which was not covered in Ms. Dorn's initial or subsequent requests: race, sex, date of birth, and inmate number.

Should you have any questions or concerns please feel free to contact me at (916) 324-8810 to discuss this matter further.

Sincerely,

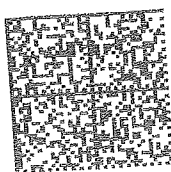
A handwritten signature in black ink, appearing to read "Jay Atkinson", is written over a circular stamp containing the number "4".



JAY ATKINSON
PRA Coordinator
Office of Research/Offender Information Services Branch

cc: Jeffrey Callison, Press Secretary
Dennis Beaty, Assistant General Counsel, Office of Legal Affairs
Jerry Zakrzewski, Office of Legal Affairs

CDCR Office of Research
1515 S St. Suite 221N
Sacramento, CA 95811

Michael T. Risher
American Civil Liberties Union Foundation of
Northern California
39 Drumm Street,
San Francisco, CA 94111



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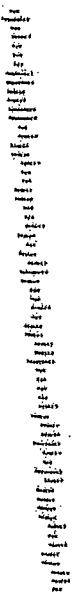


EXHIBIT E



May 20, 2015

California Department of Corrections and Rehabilitation
PRA Administrators
1515 S Street suite 314S
Sacramento, CA 94283-0001

Re: ACLU Request for Public Records

To Whom It May Concern:

The national office of the American Civil Liberties Union (ACLU) is conducting nationwide research regarding individuals sentenced to prison in their youth, including their length of imprisonment, and their parole grant rate. We are requesting information for every state regarding parole and individuals who were 25 years of age or younger at the time of their offense. To that end, we would appreciate your assistance in providing the information requested below. Pursuant to the California Public Records Act § 6250 et seq., I respectfully request the following statistics from the California Department of Corrections and Rehabilitation for the years 2010 to 2015, broken down by year and in electronic format unless only available in paper:

To the Board of Parole Hearings

1. The number and percentage of prisoners receiving parole consideration (through hearings or other forms of disposition) who were:
 - a. White or Caucasian
 - b. Black or African-American
 - c. Hispanic or Latino
 - d. Asian
 - e. Other.
2. The number and percentage of prisoners granted parole who were:
 - a. White or Caucasian
 - b. Black or African-American
 - c. Hispanic or Latino
 - d. Asian
 - e. Other.
3. The number and percentage of prisoners receiving parole consideration (through hearings or other forms of disposition), and their grant rate, who are:
 - a. Male
 - b. Female

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
NATIONAL OFFICE
125 BROAD STREET, 18 FL.
NEW YORK, NY 10004-2400
T/212.549.2500
F/212.549.2654
WWW.ACLU.ORG

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT B. REMAR
TREASURER

4. The number and percentage of prisoners granted parole who are:
 - a. Male
 - b. Female
5. The number of parole decisions (per year) for prisoners sentenced to "life imprisonment," and of those hearings:
 - a. The number of prisoners who were under 18 years of age at the time of their offense;
 - b. The number of prisoners who were 18-25 years of age at the time of their offense;
6. For each of the categories in request #5 (a)-(b), the number of prisoners who were granted parole;
7. The number of parole decisions (per year) and the grant rate for prisoners serving sentences of:
 - a. 50 years or longer
 - b. 40-50 years
 - c. 30-40 years
 - d. 20-30 years
8. For request #7, the number and percentage of prisoners in each category who were, at the time of their offense,
 - a. under 18 years of age
 - b. 18-25 years of age
9. The number and percentage of parole consideration dispositions conducted each year that were initial parole consideration disposition, and
 - a. The number and percentage of these initial dispositions where parole was granted.
10. Before becoming eligible for parole, the number and percentage of prisoners receiving initial parole dispositions who had served at least:
 - a. 20 years in prison;
 - b. 30 years in prison;
 - c. 40 years in prison.
11. In cases where parole was granted, the number and percentage of prisoners represented by an attorney for the parole hearing;
12. In cases where parole was denied, the number and percentage of prisoners represented by an attorney for the parole hearing;
13. The number and percentage of parole decisions where the prisoner requested reconsideration or review;
14. The number and percentage of cases where a parole board reviewed or reconsidered its parole determination and granted parole;
15. The number and percentage of parole decisions where parole was denied in which the victim or victim's family submitted input against release;

16. The number and percentage of parole decisions where parole was denied in which the victim or victim's family submitted input in favor of release;
17. Regarding the length of time each parole hearing: the average, mode, and range of minutes per prisoner;
18. The number and percentage of prisoners for whom parole was denied whose parole applications were subsequently set for review in:
 - a. One to two years;
 - b. Three years;
 - c. Five years;
 - d. Seven years;
 - e. Ten years;
 - f. Fifteen years.
19. The number and percentage of cases where a prisoner stipulated to their unsuitability for parole under Cal. Code Regs., tit. 15, § 2253, subd. (c);
20. The number and percentage of prisoners since September 16, 2013 who received a parole hearing and who were not eligible for parole prior to September 16, 2013 because they were serving a sentence of life imprisonment without parole for an offense committed as a juvenile;
21. The number and percentage of prisoners since September 16, 2013 who were granted parole and who were not eligible for parole prior to September 16, 2013 because they were serving a sentence of life imprisonment without parole for an offense committed as a juvenile;
22. The number and percentage of prisoners who received parole hearings who were documented as a being a gang member at the time of their conviction, and who are:
 - a. White or Caucasian
 - b. Black or African-American
 - c. Hispanic or Latino
 - d. Asian
 - e. Other.
23. The number and percentage of prisoners granted parole who were documented as being a gang member at the time of their conviction, and who are
 - a. White or Caucasian
 - b. Black or African-American
 - c. Hispanic or Latino
 - d. Asian
 - e. Other.

In addition to the above statistics, we further request any guidance, policies, memoranda or other documents provided to parole board staff regarding:

- 24. The prisoner's youth at the time of the offense, in particular how youth is considering in any risk assessment protocol;
- 25. Assistance for a prisoner with a disability during the parole hearing;
- 26. How to assess a prisoner's rehabilitation;
- 27. How to weigh different disciplinary infractions in prison.

To the Department of Corrections & Rehabilitation Regarding Prisoner Demographics

- 28. The number of prisoners currently serving life sentences in your state, and the number of those prisoners who were
 - a. Under 18 years of age at the time of their offense
 - b. 18-25 years of age at the time of their offense.
- 29. The number of prisoners currently serving sentences of
 - a. 50 years or longer;
 - b. 40-50 years;
 - c. 30-40 years;
 - d. 20-30 years;
- 30. For each subsection in request #29, the number of prisoners who were
 - a. Under 18 years of age at the time of their offense;
 - b. 18-25 years of age at the time of their offense.
- 31. For requests # 27-29, the number and percentage of prisoners in each section and subsection who are:
 - a. White or Caucasian;
 - b. Black or African-American;
 - c. Hispanic or Latino;
 - d. Asian;
 - e. Other.
- 32. The number and percentage of prisoners participating in:
 - a. Vocational training;
 - b. Academic education programming;
 - i. GED;
 - ii. Other educational programming.
 - c. Prison work assignment (institutional and/or prison industry jobs);
 - d. Substance abuse treatment;
 - i. Inpatient/residential treatment;
 - ii. Substance abuse education program;
 - e. Prerelease programs;
 - f. Sex offender programs.
- 33. The number and percentage of prisoners on a waiting list to participate in the programs listed in request 32 (a) – (f);

34. The average wait time for participation in the programs listed in request 32 (a) – (f).

If this request could be restructured to minimize the demands on your department's resources, I would be happy to discuss alternatives with you. Similarly, should you have any questions regarding the information sought in this request, please call me directly at 212-519-7826.

The ACLU is a nationwide, nonprofit, and nonpartisan organization dedicated to protecting civil rights and civil liberties in the United States. It is the largest civil liberties organization in the country, with offices in the fifty states and over 500,000 members. The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are widely disseminated to the public. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, and law students and law faculty—for either no cost or for a nominal fee through its public education department. The ACLU also disseminates information through its high-traffic website, <http://www.aclu.org>, which specifically features information obtained through public records requests. *See, e.g.*, <http://www.aclu.org/safefree/torture/torturefoia.html>; http://www.aclu.org/patriot_foia/index.html.

The information sought in this record request will be compiled in an ACLU research document on prisoners and parole and will be made available to the public through our website. Thus, because this request is on a matter of public concern and it is made on behalf of a non-profit organization, we request a fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of research. Please inform us in advance if a cost will be assessed.

Please furnish all applicable records to smehta@aclu.org and please do contact me at 212-519-7826 should you have any questions regarding this request. We look forward to your response within ten (10) business days. Thank you for your prompt attention to this matter.

Sincerely yours,



Sarah Mehta
Human Rights Researcher
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

EXHIBIT F

OFFICE OF LEGAL AFFAIRS

Benjamin T. Rice
General Counsel
P.O. Box 942883
Sacramento, CA 94283-0001



August 11, 2015

Ms. Sarah Mehta
American Civil Liberties Union
125 Broad Street
New York, NY 10004

Re: Public Records Request for Demographics and Rehabilitation Statistics,
Reference 2015-003973

Dear Ms. Mehta

This letter is in response to your request for public records dated May 20, 2015, in which you requested public records of statistics related to parole and rehabilitative programs. It is my understanding the Board of Parole Hearings is responding to items 1 through 27 of your request, this letter responds to items 28 through 34 of your request. The CDCR reviewed your request and pursuant to the California Public Records Act (PRA), the CDCR partially denies your request for the following reason(s):

Government Code sections 6254(f) and 6254(k); Article I, section 3 of the California Constitution; Penal Code sections 841.5, 1203.05, 2081.5, 2600, 3003(e)(4), 11075-11076, 11081, 11141-11143, 13102, 13201, and 13302-13304; Evidence Code section 1040; part 2.11 of title 42 of the Code of Federal Regulations; section 1232g of title 20 of the United States Code; section 703, Title 11 of the Code of Regulations; sections 3000, 3321, and 3370 of Title 15 of the California Code of Regulations; *Procunier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211; *Runyon v. Board of Prison Terms and Paroles* (1938) 26 Cal.App.2d 183; *People v. Gauden* (1974) 36 Cal.App.3d 942; and *Yarish v. Nelson* (1972) 27 Cal.App.3d 892.

Additionally, while we believe we can fully complete your request, due to new inmates still being processed and possible data anomalies, we might not include all inmates that meet your criteria.

The CDCR's Offender Information Services Branch will address the following items from your request:

28. The number of prisoners currently serving life sentences in your state, and the number of those prisoners who were

- (a). Under 18 years of age at the time of their offense
- (b) 18-25 years of age at the time of their offense.

29. The number of prisoners currently serving sentences of

- (a) 50 years or longer;
- (b) 40-50 years;
- (c) 30-40 years;
- (d) 20-30 years;

30. For each subsection in request #29, the number of prisoners who were

- (a) Under 18 years of age at the time of their offense;
- (b) 18-25 years of age at the time of their offense.

31. For requests # 27-29, the number and percentage of prisoners in each section and subsection who are:

- (a) White or Caucasian;
- (b) Black or African-American;
- (c) Hispanic or Latino;
- (d) Asian;
- (e) Other.

To complete the CDCR response, OISB staff will need to write a SAS program to extract the necessary information from our databases. Government Code Section 6253.9(b) allows CDCR to request payment for the cost of compiling your data request. The estimated cost for compiling this data is \$247.79. The payment must be received prior to the release of the data. Remit payment by a cashier's check or money order to the "California Department of Corrections and Rehabilitation," 1515 S Street, Room 3148, Sacramento, CA 95811, Attention: Dennis M. Beaty and include the following reference in the "memo field" on the payment: 2015-003973

The CDCR's Division of Rehabilitative Programs will address the following items:

32. The number and percentage of prisoners participating in:

- (a) Vocational training;

Response: As of June 30, 2015, there were 5,988 inmates enrolled in CDCR's Career Technical Education (CTE) programs or 5.0% of the in-

state prison population. CDCR has the capacity to provide CTE programs to 8,854 inmates or approximately 7.5% of the in-state prison population.

- (b) Academic education programming;
 (i) GED;
 (ii) Other educational programming.

Response: As of June 30, 2015, there were 33,263 inmates enrolled in CDCR Academic programs or 28.0% of the in-state prison population. CDCR has the capacity to provide Academic programs to 41,409 inmates or approximately 34.8% of the in-state prison population.

- (c) Prison work assignment (institutional and/or prison industry jobs);

Response: This request is denied because it does not describe an existing record. The Division of Rehabilitative Programs does not have the ability to report on institutional or prison industry jobs.

- (d) Substance abuse treatment;
 (i) Inpatient/residential treatment;

Response: As of June 30, 2015, there were 2,471 inmates enrolled in CDCR's Substance Abuse Treatment program or 2.1% of the in-state prison population. CDCR has the capacity to provide Substance Abuse Treatment to 3,124 inmates at one time or approximately 2.6% of the in-state prison population.

- (ii) Substance abuse education program;

Response: The Division of Rehabilitation does not provide Substance Abuse Education. However, AA and NA programs are provided by the Division of Adult Institutions.

- (e) Prerelease programs;

Response: The CDCR needs further clarification of this item in order to complete a response. Please provide a specific definition for what you mean by prerelease programs. However, CDCR has established Reentry Hubs at designated institutions and provides relevant services specifically to inmates who are within four years of release and who demonstrate a willingness to maintain appropriate behavior to take advantage of these services. Reentry Hub programming is geared to ensure that, upon release,

offenders are ready for the transition back into society. Cognitive Behavioral Treatment (CBT) programming is the core of Reentry Hub programming and addresses the following major areas: Substance Abuse Treatment, Criminal Thinking, Anger Management and Family Relations. In addition, the Transitions program (Employment Program) is offered to prisoners in the 14 Reentry Hubs and the California Identification Card Program is offered at all CDCR institutions. The Reentry Hubs have 4,256 slots currently filled or 3.6% of the in-state inmate population. It should be noted that the same inmate may occupy multiple slots depending on his or her assessed criminogenic needs.

(f) Sex offender programs.

Response: The in-custody sex offender program was staffed on July 1, 2015. Currently, no inmates have been assigned to the pilot program. The program is slated to have 80 slots.

33. The number and percentage of prisoners on a waiting list to participate in the programs listed in request 32 (a) - (f);

34. The average wait time for participation in the programs listed in request 32 (a) - (f).

To complete the CDCR response to items 33 and 34 above, DRP staff will need to extract the necessary information from our databases. Government Code Section 6253.9(b) allows CDCR to request payment for the cost of compiling your data request. The estimated cost for compiling this data is \$890.70. The payment must be received prior to the release of the data. Remit payment by a cashier's check or money order to the "California Department of Corrections and Rehabilitation," 1515 S Street, Room 314S, Sacramento, CA 95811, Attention: Dennis M. Beaty and include the following reference in the "memo field" on the payment: 2015-003973

If you have any questions regarding this letter, please feel free to contact me at 916 324-3224 to discuss this matter further.

Sincerely,



Dennis M. Beaty
Assistant General Counsel
PRA and Business Infrastructure Legal Team

EXHIBIT G

OFFICE OF RESEARCH

P.O. Box 942883
Sacramento, CA 94283-0001



November 9, 2015

Sarah Mehta
Human Rights Researcher
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

RE: Public Records Act Request Number 2015-003973

Dear Ms. Mehta:

This letter is in response to your request for public records dated May 20, 2015 and received by the Office of Research, California Department of Corrections and Research (CDCR) on June 11, 2015.

Unfortunately, we overlooked your statement that this request was for research purposes when we provided our initial response. We need you to follow the CDCR research protocols. To expedite the process, see the attached External Research Review Process package. Your request can be submitted electronically.

If you have any questions, please contact Ashely Gabbard, Program Evaluation Unit, at (916) 324-8890. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Atkinson", is written over a circular stamp. The stamp contains the word "RECEIVED" and some other illegible text.

JAY ATKINSON
PRA Coordinator
Office of Research/Offender Information Services Branch

cc: Wayne Babby, Deputy Director, Office of Research
Kathryn Clark, Attorney, Office of Legal Affairs
Dennis Beaty, Attorney, Office of Legal Affairs
Ashely Gabbard, Program Evaluation Unit

EXHIBIT H

From: Gabbard, Ashley L@CDCR <Ashley.Gabbard@cdcr.ca.gov>
Sent: Monday, November 09, 2015 10:12 AM
To: DeVoe, June@CDCR
Subject: CDCR External Research Review Process
Attachments: Preliminary Assessment Request.doc; CDCR Confidential Data Policy for Research Organizations.pdf; Request for Access to Inmate for Research Purpose (2).pdf

Importance: High

To whom it may concern:

The California Department of Corrections & Rehabilitation (CDCR) Office of Research (OR) received your message regarding your research.

CDCR has a formal research review process pursuant to PC §§ 3500 – 3524, California Code of Regulations, Title 15, Article 9.1 3369.5, and Department Operations Manual, Article 19, Section 14020.5 and 14020.5.1. Please reference the steps below and the attached documents to complete the process.

- 1) Researcher completes the attached documents and submits (reply to this email) to the CDCR External Research and Legislative Reporting Unit:
 - Preliminary Assessment Request
 - Request for Access to Inmate for Research Purpose (only needed if there will be contact with inmates via surveys, interviews, etc.)
 - CDCR Confidential Data Policy for Research Organizations (only a signed copy of page 13 is needed)
- 2) CDCR External Research and Legislative Reporting Unit reviews preliminary assessment forms.
- 3) Researcher secures local http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108http://www.ecfr.gov/cgi-bin/text-idx?SID=951057004afe918f6c77699bef69bc19&mc=true&node=pt45.1.46&rgn=div5#se45.1.46_1108

- 8) After receiving a CDCR Research Approval Letter, the researcher will work with the External Research and Legislative Reporting Unit who will contact the appropriate parties within CDCR to begin the project.
- 9) If the researcher's proposal is denied, the CDCR will issue a CDCR Research Denial Letter citing the reasons for denial.

Please note that steps 3 (IRB approval) and 4 (CPHS approval) may be completed before or during step 2. In other words, time could be saved if approval from outside organizations is obtained while, or before, awaiting CDCR review of the preliminary assessment forms.

If you have any questions about the steps outlined above or about the process my contact information is listed below.

Sincerely,

Ashley Gabbard
Program Evaluation Unit
Office of Research
Phone Number: 916-324-8890

<http://saveourwater.com/http://saveourwater.com/>

Date Submitted: _____

External Research Preliminary Assessment Request Phase I

The California Department of Corrections and Rehabilitation (CDCR) Office of Research requests completion of this form by researchers requesting permission to conduct research at CDCR facilities and/or to access CDCR administrative data and records. **No further processing of your request can occur until all requested information is obtained.**

1. Proposed Research Title:
2. Researcher's Name & Title:
3. Researcher's Contact Information:
Mailing Address:
Phone number:
Email:
4. Alternate Name & Contact Information (if applicable):
5. Researcher's Affiliation:
6. Abstract/Research Summary. Please summarize your proposed research in 200-250 words. Your summary should include the research question being addressed, why the research has value, who you will be studying, and your research design and methodology:
7. Source of Funding (include approved and potential fund):
8. CDCR sponsoring or supporting project (if applicable):
9. Estimated beginning and ending dates of the study: From: _____ To: _____
10. Longitudinal Study? Yes _____ No _____
11. Estimated departmental staff time to be devoted to this project (including data programming, custody staff, etc.)
12. Additional operating or equipment costs to the State, including alterations to or additions of space:

13. Estimated time required of inmate subjects:

14. Will there be any compensation to inmates for participation in research? Please specify:

15. The mission of the CDCR is to enhance public safety through safe and secure incarceration of offenders, effective parole supervision, and rehabilitative strategies to successfully reintegrate offenders into our communities. Describe any potential value that your research may contribute to CDCR's mission:

16. Describe the objectives and purpose of the proposed study (include specific research questions):

17. Description of research methods and approaches:

18. Description of the measuring devices to be used (e.g. scales, tests, questionnaires, etc.). If conducting interviews, please describe how interviews will be conducted (i.e. logistics, process, estimated time required, number of inmates involved, etc.):

19. Institution(s) and/or parole unit(s) where researcher intend to collect data. Also include the desired/target sample population and size:

20. If requesting access to administrative data and records, please describe the type of data needed, and/or list of data variables and time period. Specify whether identifiable information is requested and explain why access to this information is necessary to conduct this study (Note: If requesting access to administrative data and records, IRB approval needs to be obtained from the Committee for the Protection of Human Subjects in Phase II):

21. Description of security measures that ensures safeguards against loss or unauthorized (accidental or intentional) access, use, disclosure, modification, or destruction of confidential data. Include data storage procedures:

22. Received Institutional Review Board approval?

Yes _____ No _____ Pending _____

23. Other relevant information related to this study:

For Official Review Only

Does the research support CDCR's mission?
Value added to CDCR in carrying out its mission?
Is research permissible under legal and ethical requirements?
Is identifiable data being requested?
Soundness of methodology?
Can CDCR accommodate the impact on existing resources?
Does impacted programs support this research?
Program: _____
Program: _____
Program: _____

Yes _____	No _____
Yes _____	No _____
Yes _____	No _____
Yes _____	No _____
Yes _____	No _____
Yes _____	No _____
Yes _____	No _____
Yes _____	No _____
Yes _____	No _____

Estimated programming time: _____

Does reviewer recommend approval of this research?

Yes _____ No _____

**Office of Research
Confidentiality and Security
Requirements for
Research Organizations**

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I. GENERAL PROVISIONS

In addition to any other contract provisions, researchers and research organizations shall be responsible for maintaining the confidentiality and security of California Department of Corrections & Rehabilitation (CDCR) confidential data. No exceptions from these policies shall be permitted without the explicit, prior, written approval of CDCR.

II. DEFINITIONS

For the purposes of these requirements, the stated terms have the following meaning:

Research - Federal policy regarding the protection of human subjects (56FR28003) defines research as: "... a systematic investigation, including research, development, testing and evaluation, designed to contribute to generalizable knowledge." The California State Penal Code § 3500 expands this definition to include data upon which such knowledge may be based, and requires that such knowledge can be corroborated by accepted scientific observation and inferences.

This definition encompasses research and evaluation conducted by CDCR employees, contractors, faculty at institutions of higher education, researchers with private research firms, governmental agencies, and students. Projects that involve personal interaction with wards or adult offenders committed to and paroled by the CDCR, program evaluation, clinical trials of interventions, and any requests by outside researchers for access to wards, adult offenders, staff, or data are subject to this review and approval process.

Audit Trail - Systems information identifying all accesses to the source file, including source/location of access, date and time, user-id, targeted service and activity performed, success or failure of the access, the completion status of the access (e.g. "failed authentication," or "successful," or "user terminated") and any record and field modified.

Confidential Data - Information, the disclosure of which is restricted or prohibited by any provision of law. Some examples of "confidential information" include, but are not limited to, "personal information" about individuals as defined in California Civil Code Section 1798.3 of the Information Practices Act (IPA) if the disclosure of the "personal information" is not otherwise allowed by the IPA. Confidential data includes confidential identifiers.

Confidential Identifiers - Specific personal identifiers such as name, social security number, address and date of birth.

De-identification - Assignment of unique identifiers to confidential identifiers such that the individual cannot be identified through the unique identifier.

Information Assets - Information assets include anything used to process or store information, including (but not limited to) records, files, networks and databases; and information technology facilities, equipment (including personal computer systems), and software (owned or leased).

Information Security Incidents - Any event (intentional or unintentional) that causes the loss, damage to, destruction, or unauthorized exposure or disclosure of CDCR information assets or confidential data.

Researcher or Research Organization (hereafter, **Research Organization**) - An individual or organization conducting research of potential benefit to CDCR and the State of California which requires access to CDCR confidential data.

III. CONFIDENTIAL DATA SECURITY

A. Access to CDCR Confidential Data

1. *Request and Rediscovery:* All research organizations seeking access to CDCR confidential data shall submit a written request to CDCR. The research organization shall not rediscover or re-release CDCR confidential data.
2. *Referral for Request:* The research organization shall refer any persons not affiliated with the research organization nor included under this contract with the CDCR to the CDCR to request access to the confidential data.
3. *Local Institutional Review Board Approval:* The research organization shall submit a copy of its project approval from the organization's Institutional Review Board (IRB) as a condition of receiving CDCR confidential data. If the research organization does not have a local IRB, it may submit documentation of reliance on another IRB for review of its projects.
4. *Committee for the Protection of Human Subjects Approval:* The research organization shall submit a copy of its project approval letter from the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA) as a condition of receiving CDCR confidential data. The research organization shall also submit an annual update to the CPHS approval, as well as any approval letters for any revisions to the project as a condition of continued access to CDCR confidential data.

B. Confidential Data Security Requirements

1. *Research Organization Responsibility:* The research organization is responsible for security of the CDCR confidential data.
2. *Level of Protection:* The research organization shall ensure that electronic media containing confidential data is protected at the level of the confidential data.
3. *General Requirements:* The research organization shall have adequate security measures. These measures shall include, but are not limited to, the development of passwords and access controls to protect the security of the data from any individual who is not authorized to access the data. All research organizations, and their staff, shall:

- a. Designate, in advance, the individuals who will have access to CDCR confidential data.
- b. At the point an authorized individual requests access to confidential data, confirm his or her identity.
- c. When there is a need to discuss CDCR confidential data within the office, discuss the information in an enclosed room, if possible.
- d. Neither use nor store CDCR confidential data on wireless devices. For purposes of this requirement, "wireless devices" include, without limitation, notebook computers or Personal Digital Assistants (PDAs) equipped for 802.11x wireless networking. This restriction shall apply whether or not the data are encrypted.

4. *Data Transmission:*

- a. *General Requirement:* The research organization shall ensure the confidentiality of confidential data transmission.
- b. *Data transferred via tape, cartridge or CD:* All confidential data that is transferred on tapes, cartridges or CDs shall be encrypted and placed in separate files with identifiers and a crosswalk on one file, the crosswalk and remaining data on another file, with the files transported separately. Additionally, the tapes, cartridges and CDs shall be delivered using a bonded accountable mail service.
- c. *Data transferred electronically:* The research organization may not transfer CDCR confidential data via File Transfer Protocol (FTP) without prior written approval of CDCR. All CDCR confidential data must be encrypted before it can be transfer via FTP. All FTP accounts that transfer confidential data shall be highly restricted in access by the research organization and shall be accessible to only those research organization staff that needs access for performance of the research. These accounts shall maintain an audit trail. No other accounts on the research organization's computers may have access to these FTP accounts. The research organization shall maintain a current listing of the personnel who have access to the FTP account.
- d. *Data transferred via paper copy:* Paper copies of confidential data shall be mailed using double envelopes and shall be delivered using a bonded accountable mail service. Paper copies of confidential data shall be stored in a locked file cabinet. Access to the key shall be highly restricted.

- e. *Data transferred via fax:* CDCR confidential data may not be transmitted by fax. CDCR non-confidential information may be transmitted by fax, provided that the research organization confirms the recipient fax number before sending, takes precautions to ensure that the fax was appropriately received, maintains procedures to notify recipients if the research organization's fax number changes, and maintains fax machines in a secure area.
5. *Physical Security:* The research organization shall provide for the management and control of physical access to information assets (including Personal Computer systems and computer terminals) used in performance of this contract. In addition, the organization shall provide for the prevention, detection, and suppression of fires, and the prevention, detection, and minimization of water damage. The physical security measures taken shall include, but not be limited to:
- a. Implementing security measures to physically protect data, systems and workstations from unauthorized access and malicious activity.
 - b. Logging the identity of persons having access to restricted facilities and the date and time of access.
 - c. Restricting the removal of CDCR confidential data from the authorized work location.
 - d. Placing devices used to access CDCR confidential data in areas not accessible by the public or unauthorized personnel. For purposes of this requirement, "devices" shall include, but not be limited to, dumb terminals, personal computers and printers.
 - e. Preventing printed records, microfilmed records, and records stored on any electronic media (including, without limitation, diskette, hard drive, or optical media) from unauthorized access or viewing by unauthorized persons, whether in work areas, in transit, or in storage.
6. *Storage:* CDCR confidential data shall be stored in a place physically secure from access, use, modification, disclosure, or destruction by an unauthorized person. All media containing confidential information shall be stored in a secured area (a locked room or locked file cabinet). Keys to these locks shall be held by a limited number of research organization personnel. Confidential information in electronic format, such as magnetic tapes or discs, shall be stored and processed in such a way that an unauthorized person cannot retrieve the information by computer, remote terminal or other means.

7. *Encryption:* The research organization shall encrypt CDCR confidential data, whether for transmission or in storage, using non-proprietary, secure generally-available encryption software. The CDCR confidential data shall be encrypted upon receipt from CDCR and shall remain encrypted other than when in active use by the research organization. Proprietary encryption algorithms shall not be acceptable. Passwords or biometrics templates used for user authentication shall be encrypted using Double Encryption Standards (DES), or better, one-way only encryption. Data encryption shall meet the National Institute of Standards and Technology (NIST) Advanced Encryption Standard (AES).
8. *De-identification:*
 - a. *Assignment of Unique Identifier:* The research organization shall remove confidential identifiers from CDCR confidential data, and substitute unique identifiers, as soon as possible but no later than 60 days after receipt of the CDCR confidential data.
 - b. *No connection before de-identification:* CDCR confidential data that includes confidential identifiers shall not be used or stored in a device connected to the Internet or to a Local Area Network (LAN) until the confidential identifiers have been removed from the data.
 - c. *Data Outputs:* Full-time security personnel shall review all data outputs prior to removal from secured work areas to ensure that they are in an aggregated and non-confidential form. Personal identifiers must be removed, geographic identities must be specified only in large areas, and as needed, variables must be recoded in order to protect confidentiality.

C. Security Manual or Package

The research organization shall maintain a security manual or package which describes safeguards against loss or unauthorized (accidental or intentional) access, use, disclosure, modification, or destruction of confidential data.

D. Ownership and Destruction of Confidential Data

1. *Ownership and Return or Destruction:* All data used, compiled, developed, processed, stored, or created under this contract are the property of CDCR. All such data shall either be returned to CDCR in an agreed upon format within 30 days of termination of the contract or destroyed. If the data are returned, the research organization shall provide the CDCR with the media and an inventory of the data and files returned.

2. *Methods of Destruction:* The research organization shall destroy all confidential data not returned when the authorized use ends in accordance with approved methods of confidential destruction (via shredding, burning or certified or witnessed destruction). Destruction standards shall be in accordance with the National Security Center Standards ("A Guide to Understanding Data Reminiscence in Automated Information Systems").

E. Research Organization Staff

1. *Former Employees:* The research organization shall ensure that confidential data are not accessible to former employees of the research organization.
2. *Employee Authorization:* The research organization shall maintain a record of the access authorization for each individual employee that has access to the confidential data. The research organization's security systems administrator designated pursuant to Section III. H. 1. shall maintain an appointment/separation checklist for each employee which documents how access authorization was modified when any employee terminates employment or changes duties.

F. Information Security Incidents

1. *Notification:* The research organization shall within 24 hours notify the CDCR or its designated agent, the institution's IRB, and the CHHSA CPHS of any actual or attempted information security incidents, as defined above. Information security incidents shall be reported by telephone to:

Denise M. Allen
Chief of Research
Department of Corrections & Rehabilitation
1515 S Street, Suite 221N
Sacramento, Ca 95814
(916) 650-6955

2. *Cooperation:* The research organization shall cooperate with CDCR, its own IRB and the CHHSA in any investigations of information security incidents.
3. *Isolation of system or device:* The system or device using CDCR confidential data and affected by an information security incident shall be immediately removed from operation until correction and mitigation measures have been applied. CDCR must be contacted prior to placing the system or device, containing CDCR data, back in operation. The affected system or device shall not be returned to operation without approval by CDCR.

G. Confidentiality Statements

1. *Requirement:* All staff of the research organization with actual or potential access to CDCR confidential data shall read and sign a Confidentiality Agreement (see page 13).
2. *Supervisory Review:* The supervisor of the employee shall review the signed Confidentiality Agreement with the employee and document this review.
3. *Submission:* The signed original Confidentiality Agreement shall be submitted to the CDCR Project Representative.
4. *Annual Notification:* The research organization shall provide to CDCR in January of each calendar year a current list of authorized users and a newly signed Confidentiality Agreement for all authorized users.

H. Security Systems Administrator Duties

1. *Designation:* The research organization shall designate a single person as the security systems administrator. The name of the individual so designated shall be supplied to the CDCR.
2. *Access Control:* The security systems administrator shall have the ability to change or remove the computer access authorization of an individual having access to the system at any time.
3. *Employee Verification:* The research organization shall verify that the employee who performs the duties of the security systems administrator is a trusted person who has demonstrated in past jobs a capability to perform in this role. Additionally, the research organization's security clearance procedures shall ascertain if the employee who performs the duties of security systems administrator has any past employment background which would call into question their ability to perform this role successfully.
4. *Vulnerability Assessments and Mitigation Validation:* The security systems administrator shall assess system security vulnerabilities and validate mitigation actions performed; and shall disable all applications components and services that are not required to process or store CDCR confidential data.
5. *Security Patches and Upgrades:* The security systems administrator shall ensure that security patches and upgrades released by the respective manufacturers of the components of the information assets used to process CDCR confidential data are promptly applied to the components. Patches and upgrades downloaded from public networks shall be applied only if digitally-signed by the source and only after the security systems administrator has reviewed the integrity of the patch or upgrade.

I. Risk Analysis

The research organization shall carry out a risk analysis with sufficient regularity to identify and assess vulnerabilities associated with all information assets owned, maintained, or used by the research organization that are used to process or store CDCR confidential information, and shall define a cost-effective approach to manage such risks. Specific risks that shall be addressed include, but are not limited to, those associated with accidental and deliberate acts on the part of employees and outsiders; fire, flooding, and electrical disturbances; and loss of data communications capabilities. The research organization shall advise the CDCR or its designated agent of any vulnerability that may present a threat to CDCR confidential data and of the specific safeguards taken for protecting the CDCR confidential data. The research organization shall take the necessary steps to protect the CDCR confidential data.

J. Contingency Plans:

Contingency plans shall be established and implemented for the research organization's information assets containing CDCR confidential information to assure that operations can be back to normal in minimum time after natural or man-made disasters, unintentional accidents, or intentional acts such as sabotage. These plans shall include, but not be limited to the regular backup of automated files and databases, secure storage, recovery, and restarting planning procedures.

K. Rules of Aggregation.

1. *Requirement:* Aggregated, as used in this subsection, refers to a data output report that does not allow identification of an individual. All reports developed by the research organization shall contain CDCR data only in aggregated form. No disaggregate data identifying individuals shall be released to unauthorized staff, outside parties, or to the public.
2. *Prerelease Edits:* The data system of the research organization shall have prerelease edits, which shall not allow the production of data cells that do not comply with the requirements of this section.
3. *Minimum Data Cell Size:* The minimum data cell size shall be five participants for any data table released to outside parties or to the public.

IV. Requirements Document Update and Revision

- A. *Update:* These policies will be reviewed by CDCR semi-annually for conformance to current law and changes in technologies.
- B. *Revision:* The CDCR Information Security Officer, with input and concurrence from The Research and Advisory Committee, will be responsible for updating and distributing revisions to these policies.

CONFIDENTIALITY AGREEMENT

I, the undersigned Principal Investigator _____ an
employee of _____

(Research organization or University), hereby acknowledge that records, documents and data provided by the California Department of Corrections & Rehabilitation (CDCR), are subject to strict confidentiality requirements imposed by state law including California Penal Code § 3521; the California Code of Regulations (Title 15, Article 9.1); the California Civil Code § 1798.24-1798.24b; SB 13, an act to amend Section 1798.24 of the Civil Code.

I confirm that the appropriate data security staff has reviewed the provisions of California state laws including the penalties for breaches of confidentiality.

I confirm that appropriate data security staff has reviewed the confidentiality and security policies of the CDCR.

I understand that any unauthorized use, dissemination or distribution of CDCR confidential information is a crime.

I hereby agree that I will not use, disseminate or otherwise distribute confidential records or said documents or information either on paper or by electronic means other than in the performance of the specific authorized research. I understand that unauthorized use, dissemination or distribution is grounds for immediate termination of my organization's agreement with the CDCR and may subject me to penalties both civil and criminal.

Principal Investigator (Faculty Advisor)

Date

(Data Security Staff)

Date

State of California
Department of Corrections and Rehabilitation
Request for Access to Inmates for Research Purpose

Access to Department of Corrections and Rehabilitation youthful and/or adult offenders for research purposes is expressly covered by the California Penal Code Section 3521, the Code of Regulations (Title 15, Article 9.1) and the California Civil Code Sections 1798.24-1798.24b. I agree to obtain informed consent from any participant in this study. I agree to protect the rights and welfare of wards, inmates and parolees, and maintain security for all personal information with the following exception: certain types of information revealed by youthful offenders participating in research projects must be disclosed to Juvenile Justice Division staff. Mandatory disclosures include allegations of child abuse, threats of harm to themselves or others, and involvement in serious criminal activity previously unreported. This requirement must be included in the consent form for youthful research participants.

All dissertations must designate the Faculty Advisor as the Principal Investigator and the Faculty Advisor must sign all agreements.

I agree to protect the identity of any subject involved in this research (Civil Code Section 1798.24 (t)) and that any report or publication will not identify specific individuals.

I, the undersigned, agree to abide by the provisions of the Government Code and Penal Code Sections discussed above and agree to abide by all California Department of Corrections and Rehabilitation Rules and Regulations.

I further agree to provide the Department of Corrections and Rehabilitation with a copy of any report or publication based upon this research.

Principal Investigator (signature): _____

Principal Investigator (printed): _____

Affiliation: _____ **Date:** _____

Students who wish to conduct research must also sign this agreement in addition to their faculty advisor who is designated as the Principal Investigator:

Student Researcher (signed): _____

Student Researcher (printed): _____

Affiliation: _____ **Date:** _____