



Northern  
California

October 18, 2021

**VIA ELECTRONIC MAIL**

Kathleen A. Taylor  
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**RE: Public Records Act Request Regarding Recent COVID-19 Outbreak in Tulare County Jails and Death in Custody**

Dear Tulare County Sheriff's Office:

Pursuant to the California Public Records Act ("PRA"), I am writing on behalf of the American Civil Liberties Union of Northern California ("ACLU") to request records relevant to the recent outbreak of Covid-19 in the Tulare County Jails ("Jails"). On October 12, 2021, the Tulare County Sheriff's Office ("TCSO") announced an outbreak of Covid-19 at the Bob Wiley Detention Facility.<sup>1</sup> Over the weekend, at least thirty-one incarcerated individuals had tested positive.<sup>2</sup> One incarcerated person died and was confirmed Covid-positive at the time of his death.<sup>3</sup> Additionally, class counsel for plaintiffs in *Criswell v. Boudreaux* were informed on Friday that at least 48 individuals had tested positive for Covid-19 since the start of this outbreak, and that the outbreak had spread to at least four housing modules. Given the delayed disclosure of critical information, and the failure to conduct facility-wide testing, we have reason to believe that this is a severe undercount in the number of people infected, and the breadth of the outbreak.

Media reports indicate that TCSO suspects the virus entered the Jails when an infected person returned from a court visit.<sup>4</sup> TCSO has also publicly reported that one staff member was

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<sup>1</sup> Joshua Tehee, *31 Inmates Test Positive for COVID at Central California Facility. One Was Fully Vaccinated*, FRESNO BEE (Oct. 12, 2021, 8:09 AM), <https://www.fresnobee.com/news/local/article254944592.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Marie Edinger, *50-Year-Old Inmate Abruptly Dies in Jail in Visalia*, KPMH (Oct. 10, 2021), <https://kpmh.com/news/local/inmate-dies-in-jail-in-visalia>.

<sup>4</sup> Tehee, *supra* note 1.

**American Civil Liberties Union Foundation of Northern California**

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hospitalized with Covid-19 in the week prior to the current outbreak.<sup>5</sup> Past outbreaks—both in the Tulare County Jails and in numerous other correctional and detention facilities around the country—have resulted from staff introduction of Covid-19 into the facility.

The outbreak is especially concerning given the Jails' mismanagement of previous Covid-19 outbreaks and the Tulare County Sheriff's obligations under an ongoing settlement agreement to carry out diligent testing of, and offer vaccinations to, both incarcerated individuals and Jail staff, and to ensure proper compliance with CDC guidance concerning mitigation of Covid-19.<sup>6</sup> TCSO has not established that they are following appropriate mitigation measures to prevent the outbreak's spread—most notably, promptly administering rapid Covid-19 tests to everyone in the Facility to ensure an accurate understanding of the current state of the outbreak to allow an effective response; committing to ongoing surveillance testing; effectively identifying and isolating symptomatic people; and ensuring widespread vaccine access for both staff and incarcerated individuals.<sup>7</sup>

The ACLU is concerned for the well-being of those incarcerated in the Jails, as well as the general public, who face a significantly increased risk of Covid-19 infection because of outbreaks which originate or spread at congregate jail facilities.<sup>8</sup> Accordingly, we seek the following records in possession of TCSO:

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<sup>5</sup> Tulare County Sheriffs Office, Covid-19 Dashboard, Oct. 11, 2021, at <https://tularecounty.ca.gov/sheriff/index.cfm/links/covid-19-dashboard/covid-numbers-10-11-21/>.

<sup>6</sup> Settlement Agreement and Release, *Criswell v. Boudreaux*, No. 20-01048 (E.D. Cal. Aug. 8, 2021); Paul Myers, *COVID Protocol Agreed on for Tulare County Jails*, SUN GAZETTE (Sept. 15, 2021), <https://thesungazette.com/article/health/2021/09/15/covid-protocol-agreed-on-for-tulare-county-jails/>.

<sup>7</sup> See, e.g., CDC, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#print> (hereinafter "Interim Guidance"); CDC, Interim Guidance for SARS-CoV-2 Testing in Correctional and Detention Facilities, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html#print> (hereinafter "Testing"); CDC, COVID-19 Vaccine FAQs in Correctional and Detention Centers, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/vaccine-faqs.html> (hereinafter "Vaccine FAQs"); and CDC, Recommendations for Quarantine Duration in Correctional and Detention Facilities, at <https://www.cdc.gov/coronavirus/2019-ncov/community/quarantine-duration-correctional-facilities.html> (hereinafter "Quarantine").

<sup>8</sup> See, e.g., Gregory Hooks & Wendy Sawyer, "Mass Incarceration, Covid-19, and Community Spread," Prison Policy Initiative, Dec. 2020, at <https://www.prisonpolicy.org/reports/covidspread.html>.

1. All documents, including incident reports and communications, related to the death at the Jails on October 8, 2021, as well as documents related to any other in-custody deaths at the Jails for the period April 15, 2021 to October 15, 2021;
2. The autopsy report and the coroner's report of the deceased individual, as well as any other death reviews undertaken pursuant to TCSO or Wellpath policies related to the death at the Jails on October 8, 2021;
3. The autopsy report and the coroner's report from any in-custody deaths at the Jails for the period April 15, 2021 to October 15, 2021, as well as any other death reviews undertaken pursuant to TCSO, Wellpath, or County policies related to those deaths;
4. The names and booking numbers of all people currently incarcerated at the Jails and their housing locations (facility and unit) as of October 8, 2021;
5. An anonymized list of all incarcerated individuals, staff, vendors, and/or contractors who received one or more Covid-19 tests at the Jails for the period October 4, 2021 to October 15, 2021, including:
  - a. The type of test (rapid test or PCR test) each individual received;
  - b. The results of each test;
  - c. The housing unit of each individual (facility and unit);
6. Anonymized medical records over the past month of all people incarcerated at the Jails who tested positive in the current outbreak;<sup>9</sup>
7. Anonymized grievance forms related to Covid-19 symptoms, testing, and management (and TCSO's responses) from all people incarcerated at the Jails who tested positive for Covid-19 in the current outbreak;
8. All TCSO policies and procedures related to court transfers during the Covid-19 pandemic, including in particular whether individuals are tested upon their return to the Jails following a visit to court or other time outside of the Jails;
9. All communications with local courthouses regarding court transfers and/or Covid-19 for the period April 15, 2020 to October 15, 2021;

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<sup>9</sup> HIPAA does not prohibit the production of de-identified medical records. *Nw. Mem'l Hosp. v. Ashcroft*, 362 F.3d 923, 933 (7th Cir. 2004) ("In passing HIPAA, Congress recognized a privacy interest only in 'individually identifiable medical records' and not redacted medical records, and HIPAA preempts state law in this regard.").

10. An anonymized list of all Jails staff members and/or contractors who received one or more Covid-19 tests at the Jails, as well as the type of test (rapid test or PCR test) each individual received and the results of those tests, for the period October 4, 2021 to October 15, 2021;
11. All internal communications, or communications with Wellpath or Tulare County Health & Human Services Agency (“HHS”), regarding individuals experiencing symptoms of Covid-19, redacted to preserve individuals’ identities, for the period September 1, 2021 to October 15, 2021;
12. All internal communications, or communications with Wellpath or HHS, regarding TSCO’s response to the current Covid-19 outbreak, including regarding testing, contact tracing, isolation and quarantine, treatment, and evaluation of any changes to policy or practice;
13. Anonymized records pertaining to the staff member hospitalized during the week of October 2, 2021, as reported in the TCSO Dashboard, relevant to Covid-19 including:
  - a. The staff member’s job duties and assignments;
  - b. The staff member’s Covid-19 testing history;
  - c. The staff member’s Covid-19 vaccination history;
  - d. The staff member’s hours worked, and locations worked, at the Jails for the period September 15, 2021 to the date of hospitalization.
14. All policies, procedures, memoranda, and communications (internal and external) regarding the institution of lockdowns as part of the current outbreak, including the timing, duration, and scope of such lockdowns;

If portions of any documents are exempt from disclosure, please provide the non-exempt portions.<sup>10</sup> If the records must be redacted for disclosure, please redact the records and identify the reason for the redaction. Also, please provide complete documents, even if portions of them do not appear to be responsive to this request.

If you believe this request is overly broad, Government Code § 6253.1(a) requires that you (1) provide assistance in identifying responsive records and information; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions to overcome any practical basis that you assert as a reason to delay or deny access to the records or information sought.

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<sup>10</sup> Gov’t Code 6253(a).

When possible, please provide records in electronic format to avoid copying costs.<sup>11</sup> However, if that is impossible, please provide documents in whatever format they are available. If you have any questions regarding the scope of this request, anticipate that the cost of production will exceed \$50, or believe that the time needed to copy the records will delay their release, please contact me at [emaclean@aclunc.org](mailto:emaclean@aclunc.org) to discuss arrangements for the production of these documents.<sup>12</sup> Otherwise, please send all documents as soon as possible and on a rolling basis if necessary.

Pursuant to Government Code § 6253(c), you are required to respond to this request within ten days. Your response must provide all requested records or a schedule as to when these records will become available. Additionally, if you contend that any record requested is exempt from disclosure, either in whole or in part, your response must set forth the legal authority on which you rely to withhold such responsive information.<sup>13</sup> Please note that Government § 6253(d) prohibits the use of this ten-day period, or any provisions of the CPRA or any other law, “to delay access for purposes of inspecting public records.”

Thank you in advance for your compliance with this request. Pursuant to the CPRA, your response is due by **October 28, 2021**.

Sincerely,



Emi MacLean  
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ACLU of Northern California  
[emaclean@aclunc.org](mailto:emaclean@aclunc.org)

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<sup>11</sup> Gov't Code § 6253.9.

<sup>12</sup> Gov't Code § 6253.1.

<sup>13</sup> Gov't Code §§ 6253(c), 6255.