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2 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
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5 Attorney for Petitioner
6 AMERICAN CIVIL LIBERTIES
UNION OF NORTHERN CALIFORNIA

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION

12 AMERICAN CIVIL LIBERTIES UNION OF)
13 NORTHERN CALIFORNIA,)

14 Petitioner,)

15 v.)

16 CALIFORNIA DEPARTMENT OF)
17 CORRECTIONS AND REHABILITATION)

18 Respondent.)
19)
20)
21)

No. CPF-10-510882

DECLARATION OF TIM

REDMOND

Department: Dept. 302

Hrg. Date: Tuesday, Dec. 14, 2010

Hrg. Time: 9:30 am

22
23
24 I, Tim Redmond, declare as follows:

25 1. I am the executive editor of the San Francisco Bay Guardian. The Bay Guardian has
26 95,000 weekly copies distributed and an estimated 350,000 weekly readers and is approved by the San
27 Francisco Superior Court as a newspaper of general circulation.
28

1 2. I have been a professional journalist for more than 30 years. I have been a reporter,
2 political editor, city editor and managing editor before becoming executive editor. My work has been
3 published in dozens of weekly newspapers and several national magazines including Mother Jones,
4 Playboy and Omni. I am the author of a book on environmental history (Not in Our Back Yard,
5 William Morrow, 1992). I have won more than 35 national and local journalism awards.

6 3. I have written about criminal-justice issues for many years, and have overseen
7 numerous major stories on the topic. The Bay Guardian has consistently covered the California
8 Department of Corrections and Rehabilitation (CDCR), with particular interest in the prison system
9 and capital punishment. Our stories on these topics have won major awards, have received tremendous
10 feedback from readers and have always been popular. A recent online blog related entirely to prison
11 issues has been among the most popular features ever on our website, www.sfbg.com, consistently
12 attracting more comments than almost any other feature.

13 4. On Oct. 20, 2010, I directed our reporter, Rula Al-Nasrawi, to contact CDCR and ask
14 for information about the procurement of sodium thiopental. Ms. Al-Nasrawi filed a formal request
15 under the California Public Records Act seeking:

16 “Any purchase orders, letters, communications including e-mail, involving the CDCR’s recent
17 acquisition of sodium thiopental for executions.

18 The information we seek includes but is not limited to: financial records, checks, inventory
19 documents, shipping and transportation invoices, DEA approval documents, and any other information
20 related to this acquisition.”

21 A copy of this request is attached as Exhibit A to this declaration.

22 5. On Dec. 1, 2010, CDCR responded, offering to produce some material but denying
23 other material. A copy of this response is attaches as Exhibit B to this declaration.

24 6. As of today’s date, the CDCR has failed to produce to us any of the requested records.
25 The CDCR has provided us no further information as to when it will produce the records to us.

26 7. It is my professional opinion that the readers of the Bay Guardian have a direct interest
27 in the subject, and that the public wants to know how a drug has been procured that will be used in the
28 execution of human beings. There is nothing that the State of California does that is more profound --

1 and more in need of public scrutiny -- than the official act of taking a life. In my experience as a
2 journalist, the public is concerned about every aspect of the execution process.

3
4 8. Specifically, since the state has determined that this drug, and only this drug, is
5 acceptable in the execution protocol, as a journalist, I would like to provide the public information
6 about, among other things, whether the drug was obtained legally from a reputable supplier, in
7 compliance with all federal and state laws; that the decision to obtain the drug was made properly, in
8 compliance with state law and CDCR policy; that a proper chain of custody was maintained to ensure
9 the quality of the drug; whether the internal CDCR discussions around the procurement of the drug
10 were appropriate and within agency policy; and that the decision to procure this drug was made by the
11 proper authorities, with the proper procedures in place.

12 9. I have reviewed the documents that the CDCR produced to the ACLU of Northern
13 California and, as a journalist, I believe these records raise additional questions which the public wants
14 answered. Specifically, we would believe it is important to provide the public answers to these
15 questions:

16 (a) Why the CDCR's request to the Drug Enforcement Agency (DEA) to purchase
17 the drug from Pakistan was denied? Our readers will want to know what quality control or other
18 concerns might have caused the DEA to refuse the importation of drugs in this instance. Yet the
19 disclosed records do not include any correspondence that explains this decision.

20 (b) Why the CDCR purchases such a large quantity of drugs given that only six
21 grams are needed per execution? Our readers will want to know if the CDCR contemplates selling or
22 trading these drugs to other states, and if the CDCR is properly using taxpayer dollars. Yet the
23 disclosed records do not reveal the reasons for such a large purchase.

24 (c) How did CDCR locate doctors willing to assist in ordering the lethal drugs and
25 who are these doctors? Our readers will want to know which doctors may be violating their ethical
26 responsibility to protect life and not assist in taking life, and whether these doctors work for public
27 agencies. Our readers will also want to know the lengths to which the CDCR went to find these
28 doctors and how much the CDCR is paying them for performing this service. As a journalist, I would

1 want to interview the doctors and ask them why they are assisting the CDCR and if this is consistent
2 with medical ethics. Yet the disclosed records do not reveal who the doctors are, if they are being paid,
3 and how the CDCR finally found them.

4 (d) How much of the state's resources were spent on this endeavor? The public has
5 a keen interest in the use of state resources, particularly given the state's fiscal crisis. As a journalist, I
6 want to know how many state employees were involved in this process; how much employee time was
7 devoted to acquiring the drugs; how much state money was spent on every part of the process; and
8 how many support staff, whether directly involved in this process or not, high level employees enjoy.
9 Because the state has redacted the names of state employees, it is impossible for the public to know
10 how many individuals worked on this and who they are. Records produced thus far do not reveal the
11 money spent, including records regarding payments made for the "secret mission" to Arizona to pick
12 up the drugs, and payments made to outside contractors.

13 (e) Was state law was followed in this process? The emails that have been
14 disclosed raise questions about whether CDCR employees followed state law regarding contracting
15 and payment for costs related to international purchases, among other issues. The public is especially
16 interested in knowing whether state employees are following the very laws intended to prevent abuse
17 of state power, favoritism in contracting and the waste of state resources. Records produced to date do
18 not reveal this information.

19 (f) What hospitals were contacted in an effort to obtain the drug? What were they
20 offered and how did they respond? Since hospitals are community institutions, and many are operated
21 by public agencies, our readers will want to know whether these hospitals rejected the CDCR request
22 and why. I would like to interview hospital officials and discuss their response to CDCR's request.
23 But while the documents note that CDCR representative contacts more than 80 hospitals, they give no
24 indication of which hospitals were involved.

25 10. Further, as a journalist, I believe the public is interested in knowing what information
26 has been blacked out and why. Some emails have been blacked out in their entirety, particularly emails
27 directed to or from CDCR Secretary Cate. The role high level state officials such as the CDCR
28

1 Secretary and the Governor played in the acquisition of the drugs is a matter of paramount public
2 importance, something our readers will be very interested in learning.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct.

5 December 13, 2010,



6 Tim Redmond

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Exhibit A

Tim Redmond | Executive Editor

**GUARDIAN
SFBG.COM**

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----- Forwarded Message -----

From: "Rula Al-Nasrawi" <rula.alnasrawi@gmail.com>
To: "Tim Redmond" <tr@sfbg.com>
Sent: Tuesday, December 7, 2010 1:18:15 PM GMT -07:00 U.S. Mountain Time (Arizona)
Subject: Fwd: From the San Francisco Bay Guardian- By e-mail and follow up fax

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

From: **Rula Al-Nasrawi** <ralnasra@slugmail.ucsc.edu>
Date: Tue, Oct 26, 2010 at 2:37 PM
Subject: From the San Francisco Bay Guardian- By e-mail and follow up fax
To: Terry.Thornton@cdcr.ca.gov, media@cdc.gov

San Francisco Bay Guardian

By e-mail and follow up fax

This is a formal request under the California Public Records Act, Government Code Section 6250 et.seq. The information I request is as follows:

-Any purchase orders, letters, communications including e-mail, involving the CDCR's recent acquisition of sodium thiopentathol for executions.

The information we seek includes but is not limited to: financial records, checks, inventory documents, shipping and transportation invoices, DEA approval documents, and any other information related to this acquisition.

You are authorized to make copies at a cost of up to 50 dollars, please let me know when the documents will be available.

Thank you very much,

Rula Al-Nasrawi

Exhibit B

OFFICE OF PUBLIC AND EMPLOYEE COMMUNICATIONS

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



December 1, 2010

Rula Al-Nasrawi
The San Francisco Bay Guardian
135 Mississippi Street
San Francisco, CA 94107

Re: Public Records Request

Dear Ms. Al-Nasrawi:

This is in response to your October 20, 2010 request for records of the Department of Corrections and Rehabilitation (CDCR) for "any purchase orders, letters, communications including e-mail, involving the CDC's recent acquisition of sodium thiopental for executions," including, but not limited to "financial records, checks, inventory documents, shipping and transportation invoices, DEA approval documents, and any other information related to this acquisition."

We have reviewed your request and have determined that your request should be partially granted. CDCR charges 12 cents per page plus postage for copies made in response to Public Records Act requests. Once we have an accurate page count, we will contact you to inform you of the total duplication fee. Because of the volume of material that must be reviewed, the determination of a final page count could take quite some time. Our best estimate at this point is that we will be able to provide you with a page count in a few weeks. Due to shifting departmental demands, this estimate is subject to change.

Some of the records you requested are exempt from disclosure under the California Public Records Act. The applicable exemptions, more fully discussed below, include: Government Code, §§ 6254 (b), (c), (f), (k), and (l); Business & Professions Code, §§ 6068 and 6202; Evidence Code, §§ 952, *et seq.* and 1040; Code of Civil Procedure, § 2018.030; and Government Code, § 6255.

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

Records that would impose an unwarranted invasion of personal privacy, personnel records, or records deemed "protected information" by the Protective Order issued on

April 3, 2006 in *Morales v. Woodford, et al.*, U.S. District Court for the Northern District of California, case numbers 06 219 and 06 926 (including those indicating names, ranks, job descriptions, and other identifying information of members of the execution team) will be withheld consistent with the Protective Order, pursuant to Government Code, §§ 6254, (f) and (k), Evidence Code, § 1040, as discussed in *Procurier v. Superior Court of Monterey County* (1973) 35 Cal.App.3d 211, Government Code, §§ 6254 (c) and (k), and Government Code, § 6255.

Pursuant to Government Code, § 6254 (l), CDCR will not provide any records reflecting communications with the Governor or his staff.

Records protected by the deliberative process privilege will not be provided to you (see *Times Mirror Co. v. Superior Court*, (1991) 53 Cal.3d 1325). Although we recognize the public's right to access government records generally, the Public Records Act allows CDCR to withhold information if nondisclosure of the records requested would outweigh the public interest in releasing the documents. As the court indicated in *Times Mirror*, "protecting the predecisional deliberative process gives the chief executive 'the freedom to think out loud,' which enables him to test ideas and debate policy and personalities uninhibited by the danger that his tentative but rejected thoughts will become subjects of public discussion." Releasing records that would expose CDCR's decision making process would discourage candid discussion, and thereby undermine the agency's ability to perform its functions.

Should you have any questions, please feel free to contact my office at (916) 445-4950.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Hidalgo", with a long horizontal flourish extending to the right.

OSCAR HIDALGO
Assistant Secretary
Office of Public and Employee Communications