

MICHAEL T. RISHER (State Bar No. 191627)
LINDA LYE (State Bar No. 215584)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street, 2nd Floor
San Francisco, California 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-1478

Attorney for Petitioner
AMERICAN CIVIL LIBERTIES
UNION OF NORTHERN CALIFORNIA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION

Respondent.

No. CPF-10-510882

PETITIONER'S SUPPLEMENTAL
BRIEFING IN SUPPORT OF
PETITION FOR WRIT OF
MANDATE

Department: Dept. 504

Hon. Charlotte W. Woolard

(chambers copies to Dept. 302)

Hrg. Date: Tuesday, Jan. 10, 2011

Hrg. Time: 9:00 am

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1 Of the 1121 pages of records that CDCR initially produced in response to this Court's order, it
2 redacted some 660 and completely withheld 125. During the meet-and-confer process, CDCR released
3 information it had previously withheld, including the name of the drug manufacturer, the lot numbers,
4 and information that indicated that it was Arkansas, not Texas, that initially had the idea of getting
5 lethal-injection drugs from Britain. The ACLU has also agreed that certain information need not be
6 produced, including physical and email addresses, and phone numbers, and is willing to reduce the list
7 of disputed documents to approximately 300 (out of 785 withheld or redacted documents).

8 Most of these disagreements can be resolved by a ruling that, as a matter of law, the CDCR has
9 or has not met its burden to show that particular categories of information can be withheld. Where the
10 Court agrees as to the existence of an exemption, the parties could then meet and confer again to further
11 narrow the documents requiring in camera review (because the applicability of certain exemptions will
12 depend on the particular withheld or redacted content). Judicial resolution of the following purely legal
13 questions will determine whether much of the disputed material can lawfully be withheld:

- 14 1. Whether the governor's-correspondence exception to disclosure applies to internal
15 communications or to correspondence to which no one on the governor's staff is a party.
- 16 2. Whether CDCR can redact documents on the grounds that some of their contents are "non-
17 responsive" to the request.
- 18 3. Whether CDCR can withhold the names of the pharmaceutical companies and/or other actual or
19 potential sources of lethal-injection drugs.
- 20 4. Whether CDCR can withhold the identity of CDCR employees that were not decisionmakers but
21 who were involved in the process of obtaining these drugs.
- 22 5. Whether CDCR can withhold the identity of members of the execution team, including the
23 physician who obtains the execution drugs.
- 24 6. Whether CDCR can withhold the identity of non-California state and federal government
25 officials that were involved in the process of obtaining these drugs.
- 26 7. Whether CDCR can take back information it has already released.

27 Petitioner thus asks the court to rule now on whether these categories justify withholding records, *i.e.*, on
28 whether CDCR's proffered justifications give rise to an exemption, to direct the parties to meet and
confer over the applicability of any such exemptions to records asserted by CDCR, and to set a further
date for CDCR to provide the court with unredacted copies of documents that are still disputed, if any,

1 for in-camera review.¹

2 Petitioner has briefed many of these legal issues in its Reply, filed December 13, 2010
3 (hereinafter “Reply”). We now address issues on which the Court requested further briefing and
4 points raised by the meet-and-confer process.

5 **1. The Governor’s Correspondence Exception Does not Apply to the Documents that CDCR**
6 **is Withholding, because they are Internal Governmental Communications²**

7 In *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325, 1337 (1991), our Supreme Court
8 *rejected* the governor’s argument that this exception applied to “written communications” internal to
9 his office, in that case, communications “between his scheduling secretary, his senior staff and
10 himself.” The case involved internal memoranda about the governor’s schedule. *Id.* at 1330. Even
11 though the documents could literally be construed as correspondence, as they were authored by his
12 scheduling secretary and addressed to his senior staff members for their review, the Court found them
13 not protected by Gov. Code §6254(l). *Id.* at 1337.

14 The Court of Appeal has subsequently explained that in *Times Mirror* the “the Supreme Court
15 feared that treating *internally* generated documents as correspondence would create an exemption so
16 broad that all records in the custody of the Governor or employees of the Governor’s would be exempt
17 from disclosure.” *California First Amendment Coalition v. Superior Court*, 67 Cal.App.4th 159, 168
18 (1998) (“CFAC”) (emphasis added). Mindful that the “exception” in §6254(l) should not “swallow
19 the rule,” CFAC held that

20 the correspondence exemption was intended to protect communications to the Governor and
21 members of the Governor’s staff from correspondents *outside* of government. The Governor’s
22 calendar and schedule [*in Times Mirror*] was a public record when created; its transmission to
23 the Governor within the Governor’s office did not alter its character or entitle it to any greater
24 protection than it would otherwise be entitled. [*Id.* at 168 (quoting *Times Mirror*, 53 Cal.3d at
25 1337) (emphasis added).]

26 Under this definition, CFAC found application forms submitted from private citizens to the governor’s

27 ¹ Petitioners have suggested to CDCR that it provide the Court with copies of these documents with all
28 redactions converted into highlighting so that the Court can easily review them and see what information
has been redacted.

² Docs. 4, 24, 53, 83,291,326, 327, 410, 411, 412, 430,431,652,653,862,863,941,956. All cited CDCR
documents are attached to this brief as Appendix A in the order they are cited, other than those
documents CDCR has completely withheld.

1 office for appointment to a temporary appointment to a local board of supervisors to be protected
2 governor's correspondence. *Id.* at 164, 168.

3 Notably, *CFAC* found it irrelevant that the applications were not a typical form of
4 correspondence (they did "not begin with a salutation or end with formal closing"). *Id.* at 168.
5 Because *CFAC* held that the form of the communication is irrelevant, the only distinction between the
6 unprotected communications in *Times Mirror* and the protected communications in *CFAC* is the fact
7 that those in *Times Mirror* were internal communications, while those in *CFAC* involved members of
8 the public. *Id.* ("transmission [of documents] within the Governor's office did not" render documents
9 protected, but documents submitted "from private citizens" and "received by Governor's office"
10 entitled to protection). *CFAC*'s holding thus turned on the distinction between internal and external
11 communications, and the above statement limiting the exception to protect only communications with
12 the governor's office and "correspondents *outside* of government" is not dictum. *Id.*

13 Because the disputed communications in the case at bar did not involve members of the
14 public, the governor's-correspondence exception does not apply.³

15 A separate and independent basis for rejecting CDCR's invocation of this exemption is that, as
16 to most documents where CDCR asserts it, nobody from governor's office is listed on the log. Docs.
17 4,24,53,83,291,652,653,862,863,941,956. Although this exception also protects "correspondence ...
18 in the custody of or maintained by the governor's legal-affairs secretary," this does not allow the
19 CDCR to withhold documents in its possession simply because copies of those same documents may
20 also be in the possession of the legal-affairs secretary, any more than it would allow CDCR to create
21 an attorney-client privilege by giving copies unprivileged documents to its lawyers.⁴

22
23
24 ³ Nor does it matter that *Times Mirror* involved communications within the governor's office, which
25 those here are between that office and CDCR – it cannot be that a memorandum to the governor from
his own press secretary would be unprotected, but that same memorandum from the CDCR's spokesman
to the governor would be.

26 ⁴ Petitioner previously discussed the deliberative process privilege. Reply at 4. CDCR did not in its
27 Initial Response or during the meet and confer process explain why any of the records as to which it
28 invokes this privilege fall thereunder. CDCR still has not met its burden of "establish[ing] the
conditions" for applicability of this privilege to any particular document. *CFAC*, 67 Cal.App.4th at
1773.

1 **2. “Non-Responsive” is Not a Valid Reason to Redact Documents⁵**

2 Petitioners explained in their prior briefing why “non-responsive” is not an exception to the
3 PRA’s presumption of disclosure. Reply at 9. If CDCR is claiming that these portions of what are
4 admittedly public records are not even public records, that argument too must fail.

5 Under the PRA, “Public records’ includes any writing containing information relating to the
6 conduct of the public’s business prepared, owned, used, or retained by any state or local agency
7 regardless of physical form or characteristics.” § 6252(e). “This definition is intended to cover every
8 conceivable kind of record that is involved in the governmental process.” *Calif. State Univ. v. Superior*
9 *Court*, 90 Cal.App.4th 810, 825 (2001) (citations omitted). Thus, even a remote connection to
10 government business is enough to make something a public record such that the government must
11 justify withholding it.

12 The documents with redacted “non-responsive” materials all “contain[] information relating”
13 to the CDCR’s operations, and the documents are thus public records (which is why they were
14 produced in the first place). The government has the burden to justify withholding, and nothing in the
15 PRA suggests that the government can designate individual parts of public records to be not-public
16 records, and for good reason: any comments on a public document will either relate in some way to
17 the rest of the document’s content or will reveal information about the relationship between the
18 comment’s author and the recipient. The mere act of a public official’s providing an internal
19 government document to another person inside or outside of government is itself part of the operation
20 of our government. A simple exchange of pleasantries between a potential government contractor and
21 person in government may be evidence of a relationship that could lead to favoritism or of an attempt
22 to create such a relationship. *See IFPTE, Local 21 v. Superior Court*, 42 Cal.4th 319, 333 (2007)
23 (information that sheds light on potential existence of “nepotism, favoritism, or financial
24 mismanagement” subject to disclosure).

25 And the redacted materials in these documents seem much more tied to government operations
26 than the exchange of pleasantries – for example, the redaction on one document that is justified solely

27
28 ⁵ Docs. 233, 291, 700, 1053, 1062, 1075, 1079, 1083, 1086, 1102, 1105

1 as “non-responsive” appears to be a comment on a pharmaceutical company’s statement that it does
2 not want its drugs used in executions. Doc. 233. Another large redaction, also justified only as non-
3 responsive, appears to relate to a proposed contract to buy thiopental that, according to the document,
4 was to “be addressed confidentially” and that appears to have been a no-bid contract. Doc. 1075; *see*
5 Doc. 588. A large block of text in a series of emails about the CDCR’s trip to Arizona to obtain
6 thiopental is redacted, apparently as non-responsive. Doc. 1053. The blocks of text must have some
7 relationship either to the work-related messages that precede and follow them or to some other aspect
8 of government business.

9 Finally, the CDCR Departmental Operations Manual specifically states that personnel “will not
10 use the facilities and capabilities of workgroup computing to ... conduct activities not related to the
11 mission or work tasks of the workgroup or [CDCR].”⁶ It also reminds them that “users should have no
12 expectation of privacy in” their official email. *Id.* If CDCR personnel are in fact using their official
13 email accounts to conduct purely personal business, they are breaking the rules, and the public has the
14 right to know this, too.

15 **3. The Public Has A Right to Know the Actual and Potential Entities With Whom CDCR** 16 **Transacts Business**

17 The parties further dispute whether CDCR may keep confidential the identity of private entities
18 that were actual or potential sources of the drug.⁷ Reply at 7-9. The documents produced indicate that
19 CDCR may have entered into a non-competitive bid contract. Identification of the actual and potential
20 drug dealers is critical to determining whether the terms of the transaction were “fair and reasonable”
21 relative to other options and whether CDCR granted “any favoritism or advantage” to the source
22 selected. *See Calif. State Univ.*, 90 Cal.App.4th at 833 (identity of persons that actually or potentially
23 do business with the state assists public in detecting favoritism or fraud and must be disclosed). This

24 ⁶ CDCR Department Operations Manual Chapt. 4 p. 300 § 48010.5 (2010 update), available at
25 http://www.cdcr.ca.gov/Regulations/Adult_Operations/DOM_TOC.html. This policy specifically
26 covers employee email. *Id.* at 297 § 48010.1, 298 § 48010.3.1. These pages are attached to this brief as
Appendix B.

27 ⁷ CDCR contended in the meet and confer process that its argument in this regard applies equally to
28 corporate entities and natural persons working for those entities. Thus, it is not arguing that individuals
working for a drug company have heightened or different privacy concerns.

1 is precisely the type of information the electorate intended to make public when it passed Proposition
2 59. *See* Reply at 8 n.8 (electorate intended to make public information about potential competitors the
3 government “talk[ed] to before awarding a no-bid contract” (quoting ballot arguments)). CDCR has
4 not added in the meet and confer process anything to its speculations about safety. *Commn. on Peace*
5 *Ofcr. Standards & Training v. Superior Court*, 42 Cal.4th 278, 302, 303 (2007) (“CPOST”) (“privacy
6 and safety” concern did not justify disclosure where agency “offered no evidence that such a scenario
7 is more than speculative”).

8 Finally, the meet-and-confer process revealed that CDCR redacted even the name of a state in
9 which a vendor is located (Doc. 137) and purchase order numbers in the subject line of emails (Doc.
10 253) based on the asserted need to protect the identity of its drug source. It is not self-evident that
11 such information could identify anyone or thing and it is unclear what other types of information
12 CDCR considers to be “identifying.” Petitioner requests that the Court, should it rule that CDCR may
13 keep confidential the identity of the drug dealers, clarify whether the ruling extends beyond the names
14 of the companies and employees.

15 **4. Non-Managerial CDCR Employees Have Information about the Conduct of Public**
16 **Business**

17 CDCR has failed to meet its burden of justifying withholding the names of non-managerial
18 CDCR employees based on safety and privacy concerns. Petitioner reiterates the arguments set forth
19 in its Reply (at 4-7). “[T]he name of *every* public employee ... is a matter of public record.” *Local*
20 *21*, 42 Cal.4th at 331 (quoting 25 Ops.Cal.Atty.Gen. 90, 91, (1955) (emphasis added)). CDCR
21 “offered no evidence,” previously or during the meet and confer process, that its safety concerns are
22 “more than speculative,” much less that “anonymity is essential to [an employee’s] safety.” *Id.* at 337,
23 *CPOST*, 42 Cal.4th 278, 302 (2007).

24 Nor do generalized privacy concerns carry the day simply because the employee was not a
25 decisionmaker. CDCR, for example, has redacted the names of administrative assistants who were
26 “cc’d” on all of the correspondence of high level decisionmakers. Precisely because these individuals
27 were cc’d on all correspondence, their identities directly implicate “the right of the public and the
28

1 press to review the government’s conduct of its business”: They are unique potential sources of
2 information with comprehensive knowledge of what the government did. *See CBS, Inc. v. Block*, 42
3 Cal.3d 646, 654 (1986) (requiring disclosure of “names of license holders” “to ensure that public
4 officials are acting properly”). Similarly, employees with “contracting and accounting” duties (CDCR
5 Initial Resp. at 3) are especially well positioned to shed light on whether CDCR complied with normal
6 procedures in acquiring the drug, even though here it apparently “pursue[]d a non-competitive bid
7 purchase.” Reply at 8 n.8. In short, even though these employees were not decisionmakers, they have
8 information about the conduct of the people’s business and as such, are important potential sources for
9 the press and public.

10 In addition, without names, the public cannot obtain salary information or discern how many
11 support staff were involved in acquiring the drug – all questions implicating public resources. *Local*
12 *21*, 42 Cal.4th at 333 (public employee names, titles and salary shed light on potential existence of
13 “nepotism, favoritism, or financial mismanagement”).

14 **5. CDCR Has Adduced No Evidence to Justify Withholding Identities of Execution Team**
15 **Members**

16 As this Court indicated at the December 10, 2010 hearing, it is not bound by Judge Fogel’s
17 discovery order in the *Morales* litigation and CDCR, given a second bite at the apple, still has not
18 offered Petitioner any evidence to support its security justification. *See* Reply at 6-7.

19 The meet-and-confer process revealed that CDCR has withheld the identity of the prescribing
20 doctor based on the execution-team rationale. Petitioner requests that in the event the Court rules
21 CDCR may keep confidential the identity of execution team members, it clarify whether the ruling
22 extends to the prescribing doctor.

23 **6. CDCR Has Offered No Justification for Withholding Information About Officials From**
24 **Other States or the Federal Government**

25 The meet-and-confer process confirmed that CDCR has redacted information identifying state
26 and federal government officials. This includes the name of attorneys general in other states (Docs.
27 342-43) and officials at the federal Drug Enforcement Agency (Docs. 340-41). Notwithstanding its
28

1 burden to “demonstrate that the record in question is exempt,” *Local 21*, 42 Cal.4th at 337, CDCR
2 failed to justify or even acknowledge withholding this information in its Initial Response and has thus
3 waived any belated effort to do so now. *See Citizens for a Better Env. v. Calif. Dept. of Food & Ag.*,
4 171 Cal.App.3d 704, 716 (1985) (“Failure to raise [PRA] exemptions waives the right to tender”
5 them) (“CBE”). To the extent CDCR relies on “safety” concerns, the argument is purely speculative
6 and cannot justify nondisclosure. *See CPOST*, 42 Cal.4th at 302, 303. Courts have required disclosure
7 under the PRA of documents pertaining to other government agencies. *See CBE*, 171 Cal.App.3d at
8 718 (requiring disclosure of federal Environmental Protection Agency memoranda in possession of
9 state agency).

10 Moreover, CDCR has taken the position that it can withhold the name of the division of a
11 federal agency (the DEA) on these same grounds. Doc. 156. That CDCR believes it can redact such
12 basic information in the name of safety and security shows the need for independent judicial scrutiny
13 of its balancing of the public’s right to know against what are clearly speculative security concerns.⁸

14 **7. CDCR Cannot Take Back Information it has Already Released**

15 In the first set of redacted documents, CDCR disclosed to Petitioner the identity of at least one
16 drug company and its CEO as well as a division of the DEA. But CDCR now says this information
17 should have been redacted.⁹ The information, however, is already public and “limiting the
18 dissemination of a public record is improper.” *Fontana Police Dept. v. Villegas-Banuelos*, 74
19 Cal.App.4th 1249, 1252 n.2 (1999) (citation omitted). CDCR could have, but did not, redact the
20 information, and such discretionary disclosure by the agency operates to waive any exemptions. *See*
21 Cal. Gov. Code §6254.5. Moreover, once the government releases information, even by accident,
22 whoever lawfully obtains that information may disseminate it “absent a need to further a state interest
23 of the highest order.” *Florida Star v. B.J.F.*, 491 U.S. 524, 536-538 (1989) (First Amendment protects

24 _____
25 ⁸ Petitioner requests that, in the event the Court rules in favor of CDCR on this category, it clarify
26 whether the ruling extends beyond names and titles of government officials and to include the names of
27 governmental units.

28 ⁹ The documents are 179 (¶4.7), 181 (¶7.1), 184, but not attached to this brief. The ACLU recognized
that CDCR’s failure to redact the names from one copy of a document was likely inadvertent and chose
to redact it before posting the document on its website so that CDCR could bring the matter to this
Court’s attention.

1 dissemination of name of rape victim that police inadvertently disclosed in violation of state law);
2 *Freedom Communications, Inc. v. Superior Court*, 167 Cal.App.4th 150, 153-54 (2008). CDCR cannot
3 possibly show that protecting the identity of a pharmaceutical company doing business with the state
4 or the name of a federal agency, meets this strict standard.

5 **8. CDCR Must Produce Additional Unaccounted-for Documents**

6 Finally, the documents produced to date leave major questions unanswered. The CDCR has
7 still not produced records demonstrating how much money has been spent on the search for and
8 acquisition of execution drugs. Reply at 10. Nor has it provided the list of hospitals that the CDCR
9 purchased and contacted but which refused to provide CDCR with drugs. Docs. 283, 289, 863.

10 The documents revealed demonstrate that state employees and contractors spent scores if not
11 hundreds of hours on this effort. For example, John McClure is employed by the state as a consultant,
12 apparently to work exclusively on lethal injection issues. The contract with Mr. McClure and all
13 documents relevant to his pay fall within our PRA request. We reasonably believe that similar records
14 regarding the use of taxpayer funds exist but have not been disclosed. The public has a need to know
15 how much money has been spent on something that CDCR staff themselves describe as “resource
16 intensive.” *See Local 21*, 42 Cal.4th at 319 (emphasizing “the strong public interest in knowing how
17 the government spends its money”).

18 The CDCR has disclosed very little communication from officials and employees of federal
19 agencies to the CDCR. Several of the documents disclosed are email messages and correspondence
20 from CDCR staff to employees of the DEA, FDA and U.S. Customs and Border Protection. Yet,
21 almost no responses have been provided. For example, the CDCR asked the DEA for permission to
22 import sodium thiopental from Pakistan. We see from internal CDCR emails that the DEA refused to
23 give that permission. The actual response from the DEA is not provided in any of the disclosed
24 records. The public has a need to know why DEA officials refused to allow import from Pakistan and
25 to view any other documents from federal employees that address the issue of the legality of acquiring
26 execution drugs from outside the country.

27 The CDCR has not disclosed any records revealing who the actual decision makers are in this
28

1 process. Who is deciding what avenues will be pursued and how many tax dollars will be used?
2 Who is making the decision to seek drugs from foreign sources or to solicit drugs from hospitals?
3 Who is directing the process and calling the shots? The public has a need to know which public
4 officials are responsible for the decision making, whether it is the Governor, the Attorney General, the
5 Secretary of the CDCR, or someone else.

6 **9. Conclusion**

7 For the reasons discussed above and in its prior briefing, Petitioner asks this court to
8 to rule on whether these categories justify withholding records, *i.e.*, on whether CDCR's proffered
9 justifications give rise to an exemption, to direct the parties to meet and confer over the applicability
10 of any such exemptions to records asserted by CDCR, and to set a further date for CDCR to provide
11 the court with unredacted copies of documents that are still disputed, if any, for in-camera review.

12
13
14 Dated: 1/6/2011

Respectfully submitted,

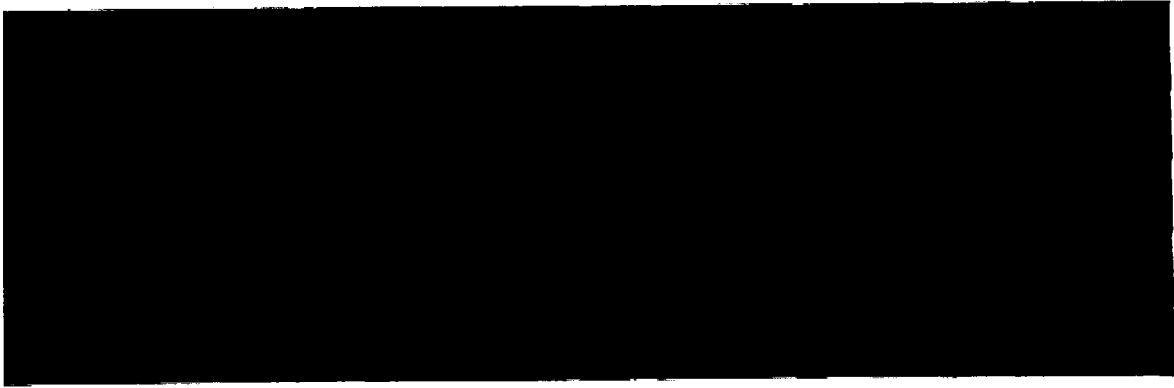
15
16 By: Michael T. Risher

17
18 MICHAEL T. RISHER
19 LINDA LYE
20 American Civil Liberties Union
Foundation of Northern California

21 Attorneys for Petitioner
22
23
24
25
26
27
28

Appendix A

John



From: Kernan, Scott@CDCR
To: [REDACTED]@CDCR; Duffy, Brian@CDCR
Subject: FW:
Date: Monday, August 23, 2010 9:54:55 AM

From: Duffy, Brian@CDCR
Sent: Monday, August 23, 2010 9:54:54 AM
To: Cullen, Vincent@CDCR; McAuliffe, John@CDCR
Cc: Kernan, Scott@CDCR
Subject: FW:
Auto forwarded by a Rule

Vince and John,

Please see below.

Brian

Brian Duffy
Special Assistant to the Undersecretary, Operations
California Department of Corrections and Rehabilitation
[REDACTED]

----- Original Message -----

From: Rice, Benjamin@CDCR
To: Kernan, Scott@CDCR; Cate, Matt@CDCR
Sent: Mon Aug 23 09:27:07 2010
Subject: Re:

That is great news! Thanks- [REDACTED]
Sent using blackberry

----- Original Message -----

From: Kernan, Scott@CDCR
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Sent: Mon Aug 23 09:23:27 2010
Subject:

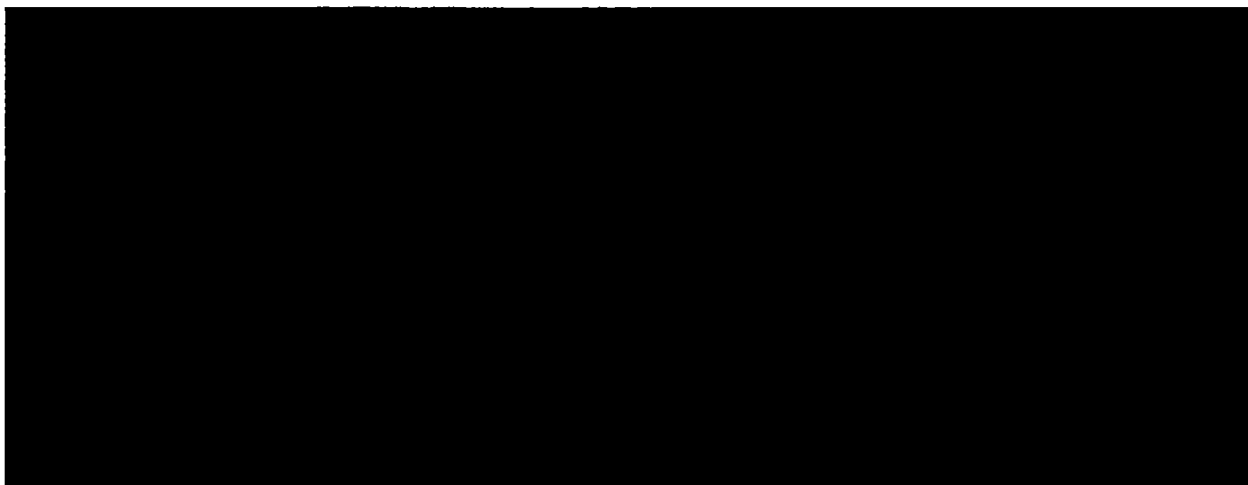
I just got great news. [REDACTED] advised that he has got and is shipping the lethal injection drugs to SQ pharmacy. Its enough to do one execution. Bad news is the drug expires in Oct. But at least we would be ready. He is still looking for more. Matt, would be nice for you to call and thank them.
Scott

From: Kernan, Scott@CDCR
To: [REDACTED]@CDCR; Duffy, Brian@CDCR
Subject: FW:
Date: Wednesday, September 29, 2010 3:16:48 PM

From: McAuliffe, John@CDCR
Sent: Wednesday, September 29, 2010 3:16:47 PM
To: Kernan, Scott@CDCR
Subject: Re:
Auto forwarded by a Rule

Scott

No we did not. With [REDACTED] and the Receiver changing their positions on helping then not helping the National shortage had come in play. We did ask [REDACTED]
John



From: Duffy, Brian@CDCR
To: Kernan, Scott@CDCR
Subject: Re: Drugs
Date: Monday, August 02, 2010 11:20:16 AM

I'll come in tomorrow morning and give to you. Do you need it today?

----- Original Message -----

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Cc: Duffy, Brian@CDCR
Sent: Mon Aug 02 09:58:01 2010
Subject: RE: Drugs

Please and let me know. I was under impression that there was no problem with these other two drugs and we had quantity internally. Going to get very political quick. [REDACTED]
[REDACTED]

I know Brian struck out with the big company's for an importer but was looking for some smaller companies that could possibly help out. I also need to know where we are at on the email to DEA (brian?)

Scott

-----Original Message-----

From: McAuliffe, John@CDCR
Sent: Monday, August 02, 2010 9:51 AM
To: Kernan, Scott@CDCR
Subject: Drugs

Scott

Bruce Slavin just called and asked if we are having any problems getting the other two drugs? He said the AG called him and said they (AG) heard there is a shortage of Pancurium Bromide? Not sure where this is coming from but will immediately find out.

John

[REDACTED]

From: Rice, Benjamin@CDCR
To: Kernan, Scott@CDCR
Cc: Cate, Matt@CDCR
Sent: Mon Aug 02 16:20:12 2010
Subject: FW: Lethal Injection/Sodium Thiopental

FYI.

From: [REDACTED]@oag.ok.gov [mailto:[REDACTED]@oag.ok.gov]
Sent: Monday, August 02, 2010 6:15 AM
To: [REDACTED] [AG]
Cc: [REDACTED]@oag.state.VA.us; [REDACTED]@AZag.gov; [REDACTED]@msn.com;
[REDACTED]@SCag.gov; [REDACTED]@SCag.gov; [REDACTED]@SCag.gov; [REDACTED]@SCag.gov;
[REDACTED]@gmail.com; [REDACTED]@PalauNet.com; [REDACTED]@atg.WA.gov; [REDACTED]@oag.state.MD.us;
[REDACTED]@oag.state.NY.us; [REDACTED]@SCag.gov; [REDACTED]@doj.state.OR.us;
[REDACTED]@ago.MO.gov; [REDACTED]@state.SD.us; [REDACTED]@ag.TN.gov;
[REDACTED]@state.MA.us; [REDACTED]@state.MA.us; [REDACTED]@doj.CA.gov;
[REDACTED]@SCag.gov; [REDACTED]@SamoaTelco.com; [REDACTED]@RIag.state.RI.us;
[REDACTED]@AttorneyGeneral.gov; [REDACTED]@law.GA.gov; [REDACTED]@Utah.gov; [REDACTED]@Michigan.gov;
[REDACTED]@NCdoj.gov; [REDACTED]@doj.CA.gov; [REDACTED]@oag.state.TX.us;
[REDACTED]@oag.state.TX.us; [REDACTED]@ago.MO.gov; [REDACTED]@doj.state.OR.us;
[REDACTED]@myFloridalegal.com; [REDACTED]@Utah.gov; [REDACTED]@riag.RI.gov; [REDACTED]@NCdoj.gov;
[REDACTED]@MT.gov; [REDACTED]@myFloridalegal.com; [REDACTED]@Michigan.gov;
[REDACTED]@state.CO.us; [REDACTED]@KSag.org; [REDACTED]@Michigan.gov;
[REDACTED]@myFloridalegal.com; [REDACTED]@oag.state.TX.us; [REDACTED]@doj.CA.gov;
[REDACTED]@Arkansasag.gov; [REDACTED]@ag.KY.gov; [REDACTED]@state.OR.us;
[REDACTED]@doj.CA.gov; [REDACTED]@ArkansasAG.gov; [REDACTED]@ag.TN.gov;
[REDACTED]@Ohioattorneygeneral.gov; [REDACTED]@Alaska.gov;
[REDACTED]@oag.state.OK.us; [REDACTED]@atg.state.IL.us; [REDACTED]@Maine.gov;
[REDACTED]@NAAG.org; [REDACTED]@ag.state.LA.us; [REDACTED]@ag.NV.gov; [REDACTED]@DOJ.gov.VI;
[REDACTED]@oag.state.TX.us; [REDACTED]@oag.state.MD.us; [REDACTED]@atg.state.IL.us;
[REDACTED]@oag.state.TX.us; [REDACTED]@Ohioattorneygeneral.gov;
[REDACTED]@state.DE.us; [REDACTED]@doj.NH.gov; [REDACTED]@oag.state.TX.us;
[REDACTED]@Ohioattorneygeneral.gov; [REDACTED]@Nebraska.gov; [REDACTED]@atg.state.IL.us;
[REDACTED]@ago.state.MS.us; [REDACTED]@ag.TN.gov; [REDACTED]@oag.state.TX.us;
[REDACTED]@Michigan.gov; [REDACTED]@doj.state.WI.us; [REDACTED]@Ohioattorneygeneral.gov;
[REDACTED]@oag.state.TX.us; [REDACTED]@atg.state.IL.us; [REDACTED]@ag.KY.gov;
[REDACTED]@state.DE.us; [REDACTED]@doj.state.OR.us; [REDACTED]@po.state.CT.us;
[REDACTED]@NJdcj.org; [REDACTED]@NJdcj.org; [REDACTED]@Ohioattorneygeneral.gov;
[REDACTED]@doj.state.OR.us; [REDACTED]@doj.state.OR.us; [REDACTED]@atg.IN.gov;
[REDACTED]@Nebraska.gov; [REDACTED]@state.DE.us; [REDACTED]@ag.Idaho.gov;
[REDACTED]@oag.OK.gov; [REDACTED]@oag.state.TX.us; [REDACTED]@oag.OK.gov;
[REDACTED]@oag.state.VA.us; [REDACTED]@ago.state.MS.us; [REDACTED]@WVago.gov;
[REDACTED]@oag.state.TX.us; [REDACTED]@Ohioattorneygeneral.gov;
[REDACTED]@oag.state.TX.us; [REDACTED]@ag.KY.gov; [REDACTED]@Ohioattorneygeneral.gov;
[REDACTED]@NAAG.org; [REDACTED]@po.state.CT.us; [REDACTED]@state.CO.us;
[REDACTED]@ago.MO.gov; [REDACTED]@state.CO.us; [REDACTED]@AZag.gov;
[REDACTED]@doj.state.OR.us; [REDACTED]@oag.state.TX.us; [REDACTED]@oag.state.TX.us;
[REDACTED]@myFloridalegal.com; [REDACTED]@ago.state.MS.us; [REDACTED]@oag.state.VA.us;

@atq.state.VT.us; @oag.state.MD.us; @oag.state.TX.us;
@myFloridalegal.com; @doj.state.OR.us; @Arkansas.gov;
@oag.state.VA.us; @oag.state.VA.us; @ArkansasAG.gov;
@atg.IN.gov; @AZag.gov; [AG]; @doj.CA.gov;
@state.MN.us; @ago.NE.gov; @oag.state.VA.us;
@Michigan.gov; @doj.state.OR.us; @KSag.org; @ND.gov;
@ag.Idaho.gov; @co.dakota.MN.us; @AZag.gov;
@oag.state.TX.us; @GuamAttorneyGeneral.com; @oag.state.VA.us;
@ago.state.MS.us; @oag.state.NY.us; @michigan.gov;
@Hawaii.gov; @doj.state.WI.us; @state.WY.us; @Honolulu.gov;
@doj.state.OR.us; @riag.RI.gov; @co.anoka.MN.us;
@oag.state.TX.us; @oag.state.TX.us; @ag.NV.gov;
@Michigan.gov; @NCdoj.gov; @ago.state.AL.us; @NCdoj.gov;
@oag.state.TX.us; @state.WY.us; @ag.KY.gov;
@po.state.CT.us; @myFloridalegal.com; @NMag.gov;
@doj.state.WI.us; @Michigan.gov; @ohioattorneygeneral.gov;
@MT.gov; @ago.state.AL.us; @law.GA.gov; @Alaska.gov;
@state.MA.us; @oag.state.TX.us; @NMag.gov;
@co.dakota.MN.us; @doj.state.WI.us; @doj.state.WI.us;
@state.MA.us; @myFloridalegal.com; @atg.WA.gov;
@state.DE.us; @state.MN.us; @oag.state.TX.us;
@ago.state.MS.us; @law.GA.gov; @Arkansasag.gov;
@state.MA.us; [AG]; @oag.state.VA.us; @WVago.gov;
@oag.state.TX.us; @WVago.gov; @Phila.gov;
@atg.WA.gov; @oag.state.TX.us; @DC.gov;
@doj.CA.gov; @Ohioattorneygeneral.gov; @doj.CA.gov;
@myFloridalegal.com; [AG]; @state.SD.us; @Michigan.gov;
@ago.state.AL.us; @doj.CA.gov; @oag.OK.gov;
@Ohioattorneygeneral.gov; @Ohioattorneygeneral.gov;
@ago.MO.gov; @oag.state.TX.us; @atg.IN.gov;
@doj.state.WI.us; @doj.state.OR.us; @doj.NH.gov;
@oag.state.TX.us; @oag.state.TX.us; @ago.state.MS.us;
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@doj.CA.gov; @doj.state.WI.us; @Alaska.gov;
@Ohioattorneygeneral.gov; @Maine.gov; @NAAG.org;
@doj.CA.gov

Subject: Lethal Injection/Sodium Thiopental

In Oklahoma, the law provides that an execution must be inflicted by an ultra short-acting barbiturate, as well as other drugs. As many of you are aware, sodium thiopental is in short supply. At this point, Oklahoma has an execution scheduled for August 17 and we have not been successful in finding any sodium thiopental to carry out the execution. I understand that other states have run into this problem. Can you please advise me of the course of action that has been taken in this situation? Or, if anyone has any information on how to obtain this drug or any other ultra short-acting barbiturate, that would be extremely helpful.

Thank you.

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Subject: RE:
Date: Wednesday, September 29, 2010 3:43:21 PM

Waiting for AZ to call. If they say yes we can talk about logistics. Also talked to the agent in [REDACTED] and he is doing some research. Let me know what England says.

Scott

From: McAuliffe, John@CDCR
Sent: Wednesday, September 29, 2010 3:39 PM
To: Kernan, Scott@CDCR
Subject: Re:

Don't forget the compounding pharmacies.

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Sent: Wed Sep 29 15:32:23 2010
Subject: RE:

Didn't we also canvass local hospitals?

From: McAuliffe, John@CDCR
Sent: Wednesday, September 29, 2010 3:17 PM
To: Kernan, Scott@CDCR
Subject: Re:

Scott

No we did not. With [REDACTED] and the Receiver changing their positions on helping then not helping the National shortage had come in play. We did ask [REDACTED] [REDACTED] [REDACTED] and [REDACTED]
John

[REDACTED]

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Subject: RE:
Date: Wednesday, September 29, 2010 3:32:26 PM

Didn't we also canvass local hospitals?

From: McAuliffe, John@CDCR
Sent: Wednesday, September 29, 2010 3:17 PM
To: Kernan, Scott@CDCR
Subject: Re:

Scott

No we did not. With [REDACTED] and the [REDACTED] changing their positions on helping then not helping the National shortage had come in play. We did ask [REDACTED] [REDACTED] and [REDACTED]
John



From: McAuliffe, John@CDCR
To: Kernan, Scott@CDCR
Subject: Re:
Date: Wednesday, September 29, 2010 3:39:17 PM

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From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Sent: Wed Sep 29 15:32:23 2010
Subject: RE:

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From: McAuliffe, John@CDCR
Sent: Wednesday, September 29, 2010 3:17 PM
To: Kernan, Scott@CDCR
Subject: Re:

Scott

No we did not. With [REDACTED] and the Receiver changing their positions on helping then not helping the National shortage had come in play. We did ask Feds VA OK and TN.
John



From: McAuliffe, John@CDCR
To: Kernan, Scott@CDCR
Subject: Re:
Date: Wednesday, September 29, 2010 3:37:30 PM

I called approximately 100 Hospitals and local general surgery centers.

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Sent: Wed Sep 29 15:32:23 2010
Subject: RE:

Didn't we also canvass local hospitals?

From: McAuliffe, John@CDCR
Sent: Wednesday, September 29, 2010 3:17 PM
To: Kernan, Scott@CDCR
Subject: Re:

Scott

No we did not. With [REDACTED] and the Receiver changing their positions on helping then not helping the National shortage had come in play. We did ask Feds VA OK and TN.
John



Cullen, Vincent@CDCR

From: Duffy, Brian@CDCR [Brian.Duffy@cdcr.ca.gov]
Sent: Monday, August 23, 2010 9:55 AM
To: Cullen, Vincent@CDCR; McAuliffe, John@CDCR
Cc: Kernan, Scott@CDCR
Subject: FW:

Vince and John,

Please see below.

Brian

Brian Duffy
Special Assistant to the Undersecretary, Operations California Department of Corrections
and Rehabilitation
[REDACTED]

----- Original Message -----

From: Rice, Benjamin@CDCR
To: Kernan, Scott@CDCR; Cate, Matt@CDCR
Sent: Mon Aug 23 09:27:07 2010
Subject: Re:

That is great news! Thanks- [REDACTED]
Sent using blackberry

----- Original Message -----

From: Kernan, Scott@CDCR
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Sent: Mon Aug 23 09:23:27 2010
Subject:

I just got great news. [REDACTED] advised that he has got and is shipping the lethal injection drugs to SQ pharmacy. Its enough to do one execution. Bad news is the drug expires in Oct. But at least we would be ready. He is still looking for more. Matt, would be nice for you to call and thank them.
Scott



----- Original Message -----

From: McAuliffe, John@CDCR
To: Kernan, Scott@CDCR
Sent: Tue Sep 28 08:35:23 2010
Subject: Re: Hospira Sodium Thiopental

This was on news last night. I have not seen nor heard if letter has been sent out yet.
John

----- Original Message -----

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Sent: Tue Sep 28 08:09:58 2010
Subject: Re: Hospira Sodium Thiopental

Is this just rumor or have we seen letter?

----- Original Message -----

From: McAuliffe, John@CDCR
To: Kernan, Scott@CDCR
Cc: Rice, Benjamin@CDCR; Slavin, Bruce@CDCR; McCleese, Kelly@CDCR; Cullen, Vincent@CDCR
Sent: Tue Sep 28 08:02:22 2010
Subject: Hospira Sodium Thiopental

Scott

Hospira the manufacturer of Sodium Thiopental yesterday announced that they are going to send out letters to all 35 states that have lethal injection stating "they do not want their drug (Sodium Thiopental) used for executions.". Not sure how this will effect our current and/or future orders? I will call Hospira directly after this execution.
John

From: Duffy, Brian@CDCR
To: Kernan, Scott@CDCR
Subject: Re: Drugs
Date: Monday, August 02, 2010 11:20:16 AM

I'll come in tomorrow morning and give to you. Do you need it today?

----- Original Message -----

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Cc: Duffy, Brian@CDCR
Sent: Mon Aug 02 09:58:01 2010
Subject: RE: Drugs

Please and let me know. I was under impression that there was no problem with these other two drugs and we had quantity internally. Going to get very political quick. [REDACTED]
[REDACTED]

I know Brian struck out with the big company's for an importer but was looking for some smaller companies that could possibly help out. I also need to know where we are at on the email to DEA (brian?)

Scott

-----Original Message-----

From: McAuliffe, John@CDCR
Sent: Monday, August 02, 2010 9:51 AM
To: Kernan, Scott@CDCR
Subject: Drugs

Scott

Bruce Slavin just called and asked if we are having any problems getting the other two drugs? He said the AG called him and said they (AG) heard there is a shortage of Pancurium Bromide? Not sure where this is coming from but will immediately find out.

John

From: Duffy, Brian@CDCR
To: Cullen, Vincent@CDCR; McAuliffe, John@CDCR
Cc: Kernan, Scott@CDCR
Subject: FW:
Date: Monday, August 23, 2010 9:54:56 AM

Vince and John,

Please see below.

Brian

Brian Duffy
Special Assistant to the Undersecretary, Operations
California Department of Corrections and Rehabilitation
[REDACTED]

----- Original Message -----

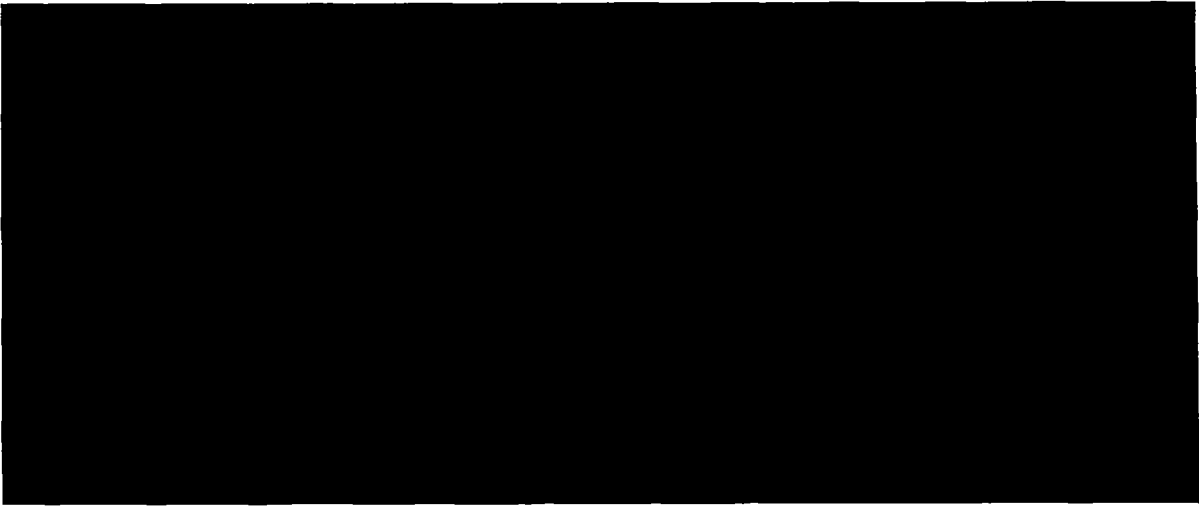
From: Rice, Benjamin@CDCR
To: Kernan, Scott@CDCR; Cate, Matt@CDCR
Sent: Mon Aug 23 09:27:07 2010
Subject: Re:

That is great news! Thanks- [REDACTED]
Sent using blackberry

----- Original Message -----

From: Kernan, Scott@CDCR
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Sent: Mon Aug 23 09:23:27 2010
Subject:

I just got great news. [REDACTED] advised that he has got and is shipping the lethal injection drugs to SQ pharmacy. Its enough to do one execution. Bad news is the drug expires in Oct. But at least we would be ready. He is still looking for more. Matt, would be nice for you to call and thank them.
Scott



From: Chaus, Anthony@CDCR
Sent: Thursday, September 30, 2010 2:13 PM
To: [REDACTED] CDCR
Subject: FW:

[REDACTED]
The contacts are below. Get the telephone numbers from [REDACTED]
Tony

From: Cullen, Vincent@CDCR
Sent: Thursday, September 30, 2010 1:35 PM
To: Kernan, Scott@CDCR; Chaus, Anthony@CDCR
Cc: McAuliffe, John@CDCR
Subject: RE:


Scott/Tony,
I personally called the agent while he was at Florence and provided the information. His point of contact is the Team Administrator, [REDACTED] It will be [REDACTED] and the Team Leader, [REDACTED] who will meet the agent at the East Gate. Agent [REDACTED] has multiple numbers to call.

VINCENT S. CULLEN
Warden (A)
San Quentin State Prison
[REDACTED]

From: Kernan, Scott@CDCR
Sent: Thursday, September 30, 2010 1:33 PM
To: Chaus, Anthony@CDCR
Cc: Cullen, Vincent@CDCR; McAuliffe, John@CDCR
Subject: RE:

Vince,

Can you provide information to Tony on who will be at prison to receive and store drug?



From: McAuliffe, John@CDRC
Sent: Thursday, September 30, 2010 9:20 AM
To: Kernan, Scott@CDRC
Subject: FW: Thiopental Injection

FYI
John


From: [REDACTED]
Sent: Thursday, September 30, 2010 9:15 AM
To: McAuliffe, John@CDRC
Cc: [REDACTED]
Subject: RE: Thiopental Injection

Received.

I have attached our standard contract (MSA). A Statement of Work (SOW) will define exact work to be conducted.

Please review and redline any issues.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



From: Kernan, Scott@CDJR
Sent: Thursday, September 30, 2010 1:44 PM
To: Alston, Steve M@CDJR
Cc: McAuliffe, John@CDJR
Subject: RE: Thiopental Injection

Steve,

Thanks for your help. Needs to be addressed confidentially.

I assume the 3 year noted in the agreement is standard. Fact is we are buying enough of the drugs to last until 2014 and would not think, but not impossible, that we would need any more during the three years. So one time transaction.

I'll have to get back to you on cost. Don't know.

The contractor would facilitate the one time purchase of the drug and we would take possession for storage at SQ. no need for them to store it.

Scott

From: Alston, Steve M@CDJR
Sent: Thursday, September 30, 2010 11:21 AM
To: Kernan, Scott@CDJR
Subject: RE: Thiopental Injection

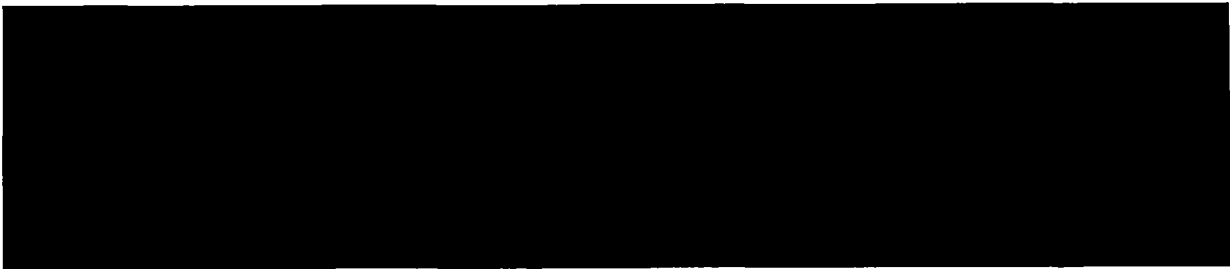
Scott,

Pulling our team together this afternoon to discuss in detail after which I will get back to you on this. A few questions for you:

1. Looks like a proposed three year agreement, right?
2. Estimated cost?
3. Will the proposed contractor store the inventory and ship it to CDJR on an as needed basis?

THANKS!

Steve



From: Kernan, Scott@CDCR
Sent: Thursday, September 30, 2010 4:48 PM
To: Alston, Steve M@CDCR
Cc: McAuliffe, John@CDCR
Subject: RE: Thiopental Injection

Helps. Thanks. I'll let you know if in fact we have to go this way to procure the drugs.

Scott

From: Alston, Steve M@CDCR
Sent: Thursday, September 30, 2010 3:52 PM
To: Kernan, Scott@CDCR
Cc: McAuliffe, John@CDCR
Subject: RE: Thiopental Injection
Importance: High

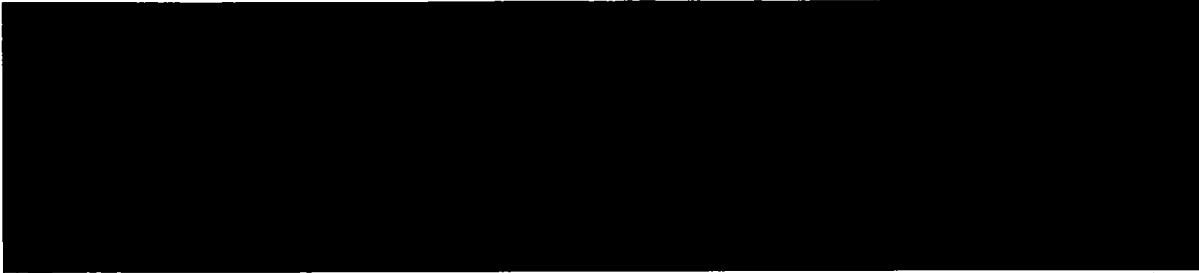
Scott,

Here is our take on the issue:

- The attached MSA is a vendor provided agreement covering a number of services, which, based on your note below, we should not sign.
- Based on your note this appears to be a straight purchase and not a service contract. Consequently, if [REDACTED] is in fact the vendor of choice, we will need to see if they will accept a CDCR issued purchase order.
- If you want to pursue a non-competitive bid purchase, then a justification will need to be developed explaining why this cannot go out for bid.
- The dollar value of the purchase will dictate required approvals:
 - Less than \$5,000 can be approved by OBS without an NCB.
 - If the purchase is \$5-25,000 an NCB will be required, but will not require DGS review / approval.
 - If the purchase is in excess of \$25,000 then DGS review / approval will be required.

Hope this helps!

Steve



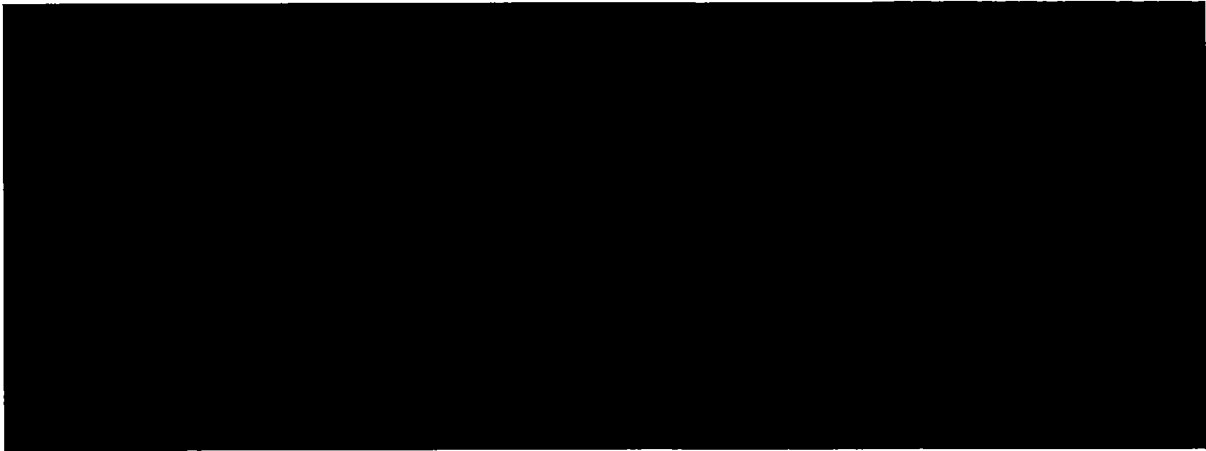
From: [REDACTED]
Sent: Thursday, September 30, 2010 10:48 AM
To: Alston, Steve M@CDCR
Cc: [REDACTED]
Subject: RE: Thiopental Injection

Do you want me to schedule a meeting for us to discuss?

From: Alston, Steve M@CDCR
Sent: Thursday, September 30, 2010 9:52 AM
To: [REDACTED]
Subject: FW: Thiopental Injection

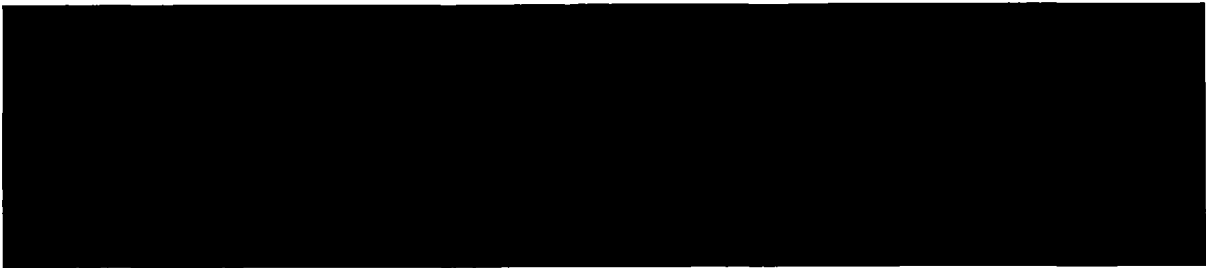
My read of the attached is that it is a service contract and not a purchase as suggested in Scott's note. Additionally, it contains language that I suspect the State would not agree to include full indemnification of the contractor. Lastly, my guess is this would follow the NCB process and likely far exceed our delegated authority.

Before I respond to Scott I am interested in your thoughts.



From: McAuliffe, John@CDCR
Sent: Thursday, September 30, 2010 9:20 AM
To: Kernan, Scott@CDCR
Subject: FW: Thiopental Injection


FYI
John



From: Alston, Steve M@CDRC
Sent: Thursday, September 30, 2010 9:52 AM
To: [REDACTED]
Subject: FW: Thiopental Injection

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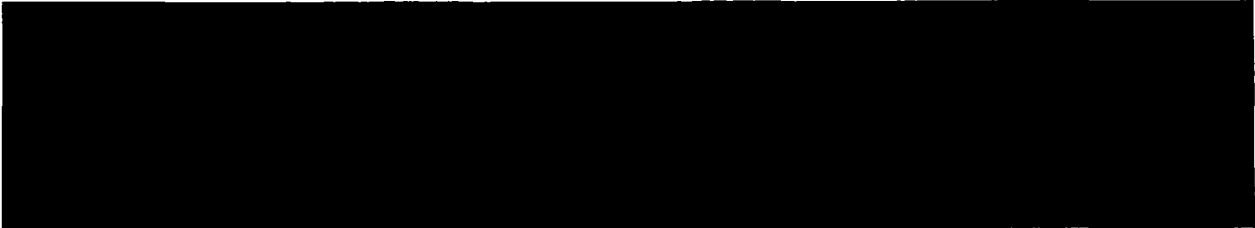
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2. Estimated cost?
3. Will the proposed contractor store the inventory and ship it to CDCR on an as needed basis?

THANKS!

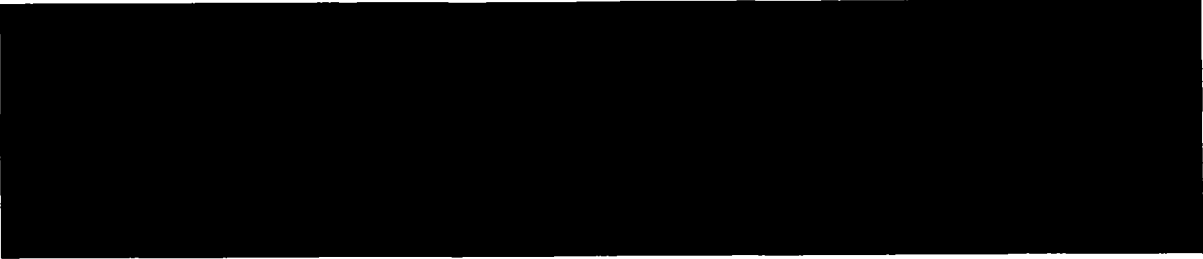
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Subject: FW: Thiopental Injection

FYI
John

From: 



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Sent: Thursday, September 30, 2010 3:52 PM
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Importance: High

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2. Estimated cost?
3. Will the proposed contractor store the inventory and ship it to CDCR on an as needed basis?

THANKS!

Steve



From: McAuliffe, John@CDCR

From: Kernan, Scott@CDCR
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Subject: Fw: Purchase Order # [REDACTED]
Date: Wednesday, August 25, 2010 7:17:18 AM

Fyi
Scott

From: [REDACTED]
To: McAuliffe, John@CDCR; [REDACTED]
Cc: Kernan, Scott@CDCR; Rice, Benjamin@CDCR; Cullen, Vincent@CDCR; [REDACTED]@CDCR
Sent: Wed Aug 25 07:13:36 2010
Subject: [REDACTED]

John,

There are 3 packages arriving today:

Tracking #	Carrier	Comments
[REDACTED] medication(Pancuronium)	UPS	one of the UPS packages contains some refrigerated
[REDACTED] Sodium and Potassium Chloride	UPS	the other UPS package contains some Thiopental
[REDACTED] refrigerated medication(Pancuronium)	FEDEX	this is a large package containing the rest of the

I am expecting the rest of the Potassium Chloride to arrive and ship from here today. I'll keep you informed on the rest of the Thiopental...we're still waiting on the manufacturer.

Thanks,

[REDACTED]

From: McAuliffe, John@CDCR [mailto:John.McAuliffe@cdcr.ca.gov]
Sent: Tuesday, August 24, 2010 2:45 PM
To: [REDACTED]
Cc: Kernan, Scott@CDCR; Rice, Benjamin@CDCR; Cullen, Vincent@CDCR; [REDACTED]@CDCR
Subject: [REDACTED]

[REDACTED]
Please go ahead and ship the 8 grams of Thiopental.....Thank you...
John McAuliffe

From: [REDACTED]
Sent: Tuesday, August 24, 2010 12:19 PM
To: McAuliffe, John@CDCR
Subject: [REDACTED]

John,

We have received 8 grams of Thiopental Sodium. It expires Oct 1, 2010.

From: Cate, Matt@CDCR
To: @CDCR; @CDCR; @CDCR
Subject: FW: Lethal Injection/Sodium Thiopental
Date: Monday, August 02, 2010 4:20:12 PM

From: @oag.ok.gov [mailto: @oag.ok.gov]
Sent: Monday, August 02, 2010 6:15 AM
To: [AG]
Cc: @oag.state.VA.us; @AZag.gov; @msn.com;
@SCag.gov; @SCag.gov; @SCag.gov; @SCag.gov;
@gmail.com; @PalauNet.com; @atg.WA.gov; @oag.state.MD.us;
@oag.state.NY.us; @SCag.gov; @doj.state.OR.us;
@ago.MO.gov; @state.SD.us; @ag.TN.gov;
@state.MA.us; @state.MA.us; @doj.CA.gov;
@SCag.gov; @SamoaTelco.com; @RIag.state.RI.us;
@AttorneyGeneral.gov; @law.GA.gov; @Utah.gov; @Michigan.gov;
@NCdoj.gov; @doj.CA.gov; @oag.state.TX.us;
@oag.state.TX.us; @ago.MO.gov; @doj.state.OR.us;
@myFloridalegal.com; @Utah.gov; @riag.RI.gov; @NCdoj.gov;
@MT.gov; @myFloridalegal.com; @Michigan.gov;
@state.CO.us; @KSag.org; @Michigan.gov;
@myFloridalegal.com; @oag.state.TX.us; @doj.CA.gov;
@Arkansasag.gov; @ag.KY.gov; @state.OR.us;
@doj.CA.gov; @ArkansasAG.gov; @ag.TN.gov;
@Ohioattorneygeneral.gov; @Alaska.gov;
@oag.state.OK.us; @atg.state.IL.us; @Maine.gov;
@NAAG.org; @ag.state.LA.us; @ag.NV.gov; @DOJ.gov.VI;
@oag.state.TX.us; @oag.state.MD.us; @atg.state.IL.us;
@oag.state.TX.us; @Ohioattorneygeneral.gov;
@state.DE.us; @doj.NH.gov; @oag.state.TX.us;
@Ohioattorneygeneral.gov; @Nebraska.gov; @atg.state.IL.us;
@ago.state.MS.us; @ag.TN.gov; @oag.state.TX.us;
@Michigan.gov; @doj.state.WI.us; @Ohioattorneygeneral.gov;
@oag.state.TX.us; @atg.state.IL.us; @ag.KY.gov;
@state.DE.us; @doj.state.OR.us; @po.state.CT.us;
@NJdcj.org; @NJdcj.org; @Ohioattorneygeneral.gov;
@doj.state.OR.us; @doj.state.OR.us; @atg.IN.gov;
@Nebraska.gov; @state.DE.us; @ag.Idaho.gov;
r@oag.OK.gov; @oag.state.TX.us; @oag.OK.gov;
@oag.state.VA.us; @ago.state.MS.us; @WVago.gov;
@oag.state.TX.us; @Ohioattorneygeneral.gov;
@oag.state.TX.us; @ag.KY.gov; @Ohioattorneygeneral.gov;
@NAAG.org; @po.state.CT.us; @state.CO.us;
@ago.MO.gov; @state.CO.us; @AZag.gov;

@doj.state.OR.us; @oag.state.TX.us; @oag.state.TX.us;
@myFloridalegal.com; @ago.state.MS.us; @oag.state.VA.us;
@atg.state.VT.us; @oag.state.MD.us; @oag.state.TX.us;
@myFloridalegal.com; @doj.state.OR.us; @Arkansas.gov;
@oag.state.VA.us; @oag.state.VA.us; @ArkansasAG.gov;
@atg.IN.gov; @AZag.gov; [AG]; @doj.CA.gov;
@state.MN.us; @ago.NE.gov; @oag.state.VA.us;
@Michigan.gov; @doj.state.OR.us; @KSag.org; @ND.gov;
@ag.Idaho.gov; @co.dakota.MN.us; @AZag.gov;
@oag.state.TX.us; @GuamAttorneyGeneral.com; @oag.state.VA.us;
@ago.state.MS.us; @oag.state.NY.us; @michigan.gov;
@Hawaii.gov; @doj.state.WI.us; @state.WY.us; @Honolulu.gov;
@doj.state.OR.us; @riag.RI.gov; @co.anoka.MN.us;
@oag.state.TX.us; @oag.state.TX.us; @ag.NV.gov;
@Michigan.gov; @NCdoj.gov; @ago.state.AL.us; @NCdoj.gov;
@oag.state.TX.us; @state.WY.us; @ag.KY.gov;
@po.state.CT.us; @myFloridalegal.com; @NMag.gov;
@doj.state.WI.us; @Michigan.gov; @ohioattorneygeneral.gov;
@MT.gov; @ago.state.AL.us; @law.GA.gov; @Alaska.gov;
@state.MA.us; @oag.state.TX.us; @NMag.gov;
@co.dakota.MN.us; @doj.state.WI.us; @doj.state.WI.us;
@state.MA.us; @myFloridalegal.com; @atg.WA.gov;
@state.DE.us; @state.MN.us; @oag.state.TX.us;
@ago.state.MS.us; @law.GA.gov; @Arkansasag.gov;
@state.MA.us; [AG]; @oag.state.VA.us; @WVago.gov;
@oag.state.TX.us; @WVago.gov; @Phila.gov;
@atg.WA.gov; @oag.state.TX.us; @DC.gov;
@doj.CA.gov; @Ohioattorneygeneral.gov; @doj.CA.gov;
@myFloridalegal.com; [AG]; @state.SD.us; @Michigan.gov;
@ago.state.AL.us; @doj.CA.gov; @oag.OK.gov;
@Ohioattorneygeneral.gov; @Ohioattorneygeneral.gov;
@ago.MO.gov; @oag.state.TX.us; @atg.IN.gov;
@doj.state.WI.us; @doj.state.OR.us; @doj.NH.gov;
@oag.state.TX.us; @oag.state.TX.us; @ago.state.MS.us;
@atg.state.IL.us; [AG]; @Utah.gov;
@Ohioattorneygeneral.gov; @doj.NH.gov; @Phila.gov;
@oag.state.TX.us; @oag.state.TX.us; @oag.state.TX.us;
@oag.state.TX.us; @DOJ.gov.VI; @NAAG.org; @oag.state.VA.us;
@doj.CA.gov; @doj.state.WI.us; @Alaska.gov;
@Ohioattorneygeneral.gov; @Maine.gov; @NAAG.org;
@doj.CA.gov

Subject: Lethal Injection/Sodium Thiopental

In Oklahoma, the law provides that an execution must be inflicted by an ultra short-acting barbiturate, as well as other drugs. As many of you are aware, sodium thiopental is in short supply. At this point, Oklahoma has an execution scheduled for August 17 and we have not been successful in finding any sodium thiopental to carry out the execution. I understand that other states have run into this problem. Can you please advise me of the course of action that has been taken in this situation? Or, if anyone has any information on how to obtain this drug or any other ultra short-acting barbiturate, that would be extremely helpful.

Thank you.

From: Cate, Matt@CDCR
To: [REDACTED]@CDCR; [REDACTED]@CDCR; [REDACTED]@CDCR
Subject: FW: Import/Export Permit Application
Date: Tuesday, August 17, 2010 1:58:19 PM

From: Kernan, Scott@CDCR
Sent: Tuesday, August 17, 2010 1:58:17 PM
To: Cate, Matt@CDCR; Rice, Benjamin@CDCR
Subject: FW: Import/Export Permit Application
Auto forwarded by a Rule

FYI
Scott

From: McAuliffe, John@CDCR
Sent: Tuesday, August 17, 2010 12:44 PM
To: Kernan, Scott@CDCR
Cc: Gaddi, Kathy@CDCR
Subject: Import/Export Permit Application

Scott
For your review....
John

[REDACTED]@USDOJ.gov
[REDACTED]
Office of Diversion Control
Drug Enforcement Administration
United States Department of Justice

Dear Sir;

First let me thank you again for taking the time to talk and assist us in finding a solution in procuring thiofental. As you are well aware, Title 21 United States Code (USC) Controlled Substances Act; Section 952; Importation of Controlled Substances; outlines exceptions for importation of Scheduled III controlled substances. Specifically,

- Such amounts of any controlled substance in Schedule III the Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States
- During an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate.
- In any case in which the Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 823 of this title.
- In any case in which the Attorney General finds that such controlled substance is in limited quantities exclusively for scientific, analytical or research uses; may be so imported under such regulations as the Attorney General shall prescribe.

California Department of Corrections and Rehabilitation (CDCR) finds itself unfortunately meeting all of the above bullets. As we have discussed, I have had John McAuliffe (John.McAuliffe@cdcr.ca.gov) contact the Diversion Control Units in San Francisco [REDACTED]; Sacramento [REDACTED]; Oakland (Helpline) and Washington D.C. to get assistance in the procurement of Thiopental, a scheduled III controlled substance.

Thiopental is one of three chemicals that is authorized by the State of California for capital punishment by lethal injection. In May 2010, it was reported by the American Society of Health-System Pharmacists (ASHP) that there was a shortage of thiopental. This shortage was sparked by a manufacturing problem of thiopental as well as a shortage of propofol (a popular anesthetic used by anesthesiologist) which forced anesthesiologist to further deplete supplies of thiopental as a substitute. Additionally, CDCR had contact with numerous Compounding Pharmacies around the San Francisco Bay area with the same result and answer; "Thiopental is getting very hard to find and the manufacturer (Hospira) has the drug on back order with no predicted new date for or when it might be available."

CDCR has located a supply of sodium thiopental in Pakistan, specifically;

[REDACTED]

I am requesting help from your office to assist CDCR with the process of procuring the thiopental through the Import/Export Permit Application. We are requesting for the Warden of San Quentin State Prison be permitted to directly order the thiopental from Pakistan for delivery to San Quentin State Prison;

[REDACTED]
Neumiller Infirmary Pharmacy
California State Prison, San Quentin
San Quentin, California 94964

CDCR would be ordering 210 grams. The state of California's Lethal Injection Regulation, CDCR, Title 15; 3349; calls for a 500 mg/2.5% Kit (25 mg/mL) combination package with contents of 500 mg of Thiopental powder and 20mL flip top vial of sterile water to be mixed by appropriate execution team members. CDCR will be ordering from Pakistan 210 grams or 420 individual package kits of thiopental.

I look forward to talking to you and discussing this matter.

Scott Kernan
Undersecretary, Operations
California Department of Corrections and Rehabilitation
[REDACTED]

From: Kernan, Scott@CDCR
To: [REDACTED]@CDCR; Duffy, Brian@CDCR
Subject: FW: ATTN: [REDACTED]
Date: Wednesday, October 06, 2010 10:39:36 AM

From: McAuliffe, John@CDCR
Sent: Wednesday, October 06, 2010 10:38:53 AM
To: [REDACTED]
Cc: Kernan, Scott@CDCR
Subject: [REDACTED]
Auto forwarded by a Rule

Sir

I am forwarding this email to you for your record. CDCR would like to know if this process of obtaining the thiopental (Duty, Broker, any additional fees to include [REDACTED] fees) could be billed to CDCR as one invoice? Additionally, can you give a possible estimate as to how long this process will take before we receive the thiopental? Again, thank you for your assistance.
John McAuliffe

From: [REDACTED]@usdoj.gov]
Sent: Wednesday, October 06, 2010 1:34 AM
To: McAuliffe, John@CDCR
Subject: Re: [REDACTED]

Thank you. I'll make DEA's [REDACTED] aware of this matter.

[REDACTED]
Office of Diversion Control

From: McAuliffe, John@CDCR <John.McAuliffe@cdcr.ca.gov>
To: [REDACTED]
Cc: Kernan, Scott@CDCR <Scott.Kernan@cdcr.ca.gov>
Sent: Tue Oct 05 14:08:55 2010
Subject: [REDACTED]

[REDACTED]
Thank you for the list of companies listed with the DEA to import Thiopental. We have contacted [REDACTED] who has initially agreed to procure the Thiopental from London. We gave [REDACTED] your email as a point of contact with DEA since you know exactly what we have been doing and to whom we have been in contact with in your Department. Again thank you for your help and assistance.
John McAuliffe

From: Duffy, Brian@CDCR
To: McAuliffe, John@CDCR
Cc: Keinan, Scott@CDCR
Subject: FW: Approved purchase
Date: Thursday, August 19, 2010 1:25:17 PM

John,

Here is the approval from Brett Morgan. Let me know.

Brian

From: Morgan, Brett@CDCR
Sent: Thursday, August 19, 2010 1:24 PM
To: Gilpin, Timothy@CDCR
Cc: Duffy, Brian@CDCR
Subject: Approved purchase

John McAuliffe, who works on contract for us on lethal injection and death penalty issues, will be contacting you. He needs to purchase a list on-line of community hospitals. The list costs about \$65. Please assist John in purchasing the list.

From: Duffy, Brian@CDCR
To: Kernan, Scott@CDCR
Subject: [REDACTED]
Date: Friday, August 20, 2010 11:07:39 AM

FYI

From: McAuliffe, John@CDCR
Sent: Friday, August 20, 2010 11:04 AM
To: Duffy, Brian@CDCR
Subject: [REDACTED]

Going down the list.....Same response so far with 23 called....Who are you? Why are you asking?
And we do not give out that information to the public!
John

From: Duffy, Brian@CDCR [mailto:Brian.Duffy@cdcr.ca.gov]
Sent: Friday, August 20, 2010 10:43 AM
To: McAuliffe, John@CDCR
Subject: RE: [REDACTED]

John,

Any luck with calling hospitals? Anything I can do to help?

Brian

From: Kernan, Scott@CDCR
Sent: Friday, August 20, 2010 9:47 AM
To: [REDACTED]@CDCR; Duffy, Brian@CDCR
Subject: FW: [REDACTED]

From: McAuliffe, John@CDCR
Sent: Friday, August 20, 2010 9:46:50 AM
To: Kernan, Scott@CDCR
Subject: Fw: [REDACTED]
Auto forwarded by a Rule

Scott
See email. I called yesterday and said we needed a date. Also told [REDACTED] if he got a hold of any ship it to us immediately.
John

From: [REDACTED]
To: McAuliffe, John@CDCR
Sent: Fri Aug 20 06:19:22 2010
Subject: RE: [REDACTED]

From: McAuliffe, John@CDCR
To: Kernan, Scott@CDCR
Subject: Re:
Date: Wednesday, September 29, 2010 3:37:30 PM

I called approximately 100 Hospitals and local general surgery centers.

From: Kernan, Scott@CDCR
To: McAuliffe, John@CDCR
Sent: Wed Sep 29 15:32:23 2010
Subject: RE:

Didn't we also canvass local hospitals?

From: McAuliffe, John@CDCR
Sent: Wednesday, September 29, 2010 3:17 PM
To: Kernan, Scott@CDCR
Subject: Re:

Scott

No we did not. With [REDACTED] and the Receiver changing their positions on helping then not helping the National shortage had come in play. We did ask Feds VA OK and TN.
John



Appendix B

State of California

California Department of Corrections and Rehabilitation
Adult Institutions, Programs, and Parole

Operations Manual



"Public Safety. Public Service." ©

Updated Through
January 11, 2010

Inmate Roster System

The Inmate Roster System is the basis for DDPS and is, therefore, critical for the maintenance of all other DDPS applications. The roster is designed for use by control room staff and provides an automated means for tracking inmate location. This application allows any authorized user to request reports or make inquiries regarding any inmate or housing unit in the facility.

Inmate Roster Record

An Inmate Roster Record is created the first time an inmate is admitted. At that time, control room staff enter the inmate's full name, date of birth, ethnicity, arrival date, and location from which the inmate arrived. Once the inmate is admitted, the user must enter only the inmate's CDC number and the first five characters of the last name to enter a movement transaction. Reports on inmate movement may be generated within this application. The Automated Daily Movement Sheet is designed to assist control room staff in their use of the CDC Form 117, Daily Movement Sheet.

In addition to the inmate roster, this application maintains a roster of the housing structure and beds at each facility. Control room staff may use this information to readily identify vacant beds, the identity of the inmate in each bed, and beds that are being held for inmates on temporary leave from the facility (e.g., out to court for the day, in a local hospital). Bed vacancy and empty bed reports may be produced in this application to assist control room staff with the running count process.

Although the inmate roster was designed to serve the needs of control room staff, it has proven to be highly beneficial to other functional areas of the facility. Mailrooms have replaced their card systems with query terminals, and many visitor control areas use either terminals or housing reports to locate inmates within the facility. The inmate assignment office uses the information to make appropriate job assignments. Facility staff can request the preparation of special reports by their AISA using "INFORM" or by ISD using ad hoc reporting capabilities.

Responsibility

The Control Room Sergeant is responsible for data integrity and security of this application.

Time Collection System

The Time Collection System automates the data entry portion of updating the OBIS work time credit database. The CDC Form 191, Inmate Timecard, is scanned using a Sentry 4000 Optical Scanner. The scanned timecard information is sent to a file on the DDPS at each facility; the file is transferred nightly to Teale Data Center; data is validated; and the OBIS database is updated.

Responsibility

The CCRM is responsible for data integrity and security.

Inmate Classification System

The Inmate Classification System tracks the results of inmate classification hearings and contains certain descriptors critical to other functional areas of the facility. The privilege group determines an inmate's eligibility for canteen draw, visiting, and other inmate activities. Additionally, the inmate classification system tracks hearing dates and provides a "tickler" to notify counselors of upcoming hearing responsibilities.

Inmate Classification System information is entered after the initial inmate record is created. It is imperative to enter data during or immediately following hearings so that staff have up-to-the-minute information about an inmate's custody level and classification score, thus assisting subsequent program decisions.

Responsibility

The CC-II/III is responsible for data integrity and security.

Inmate Assignment System

The Inmate Assignment Application tracks inmate job assignments and inmate job waiting lists. It contains descriptive information about each job, including pay grade, dictionary of occupational titles code, Inmate Work Training Incentive Program code, assignment beginning date, job status, work location, site phone number, work schedule including regular days off, the name of the inmate holding the job if assigned, and any restrictions or special job requirements.

When assigning an inmate to a job or a waiting list, this application uses the Inmate Roster Record (including classification information) to

draw custody level and suffix, work group, ethnicity, administrative determinants, work qualifiers, and housing data.

Information entered by the assignment lieutenant updates the inmate roster clearance regarding food handling, gate clearance, and other clearances. The Inmate Assignment System maintains a inmate's current work and waiting list status. Job history records provide information (including dates) about all previous jobs held by an inmate in that facility. Location records provide ethnicity counts to assist in maintaining an ethnic balance. Transportation records contain assignment information used for the daily movement sheet.

Responsibility

The Inmate Assignment Lieutenant is responsible for data integrity and security.

Inmate Trust Accounting System

PC 2085 and 5057 require that the Department establish, as necessary, an accounting and auditing system to accurately account for all inmate money and property. The Inmate Trust Accounting System is designed to:

- Replace outdated bookkeeping machines.
- Automate the bookkeeping functions in the facility's trust office.
- Account for all inmate monies held in trust by the Department. Each facility uses the inmate trust account system to perform trust accounting functions.

This application uses information provided by the Inmate Roster System to identify inmates who have just arrived, transferred out, transferred in, or have been paroled or discharged. For each new arrival, the Inmate Trust Accounting System establishes a trust account in which monies shall be held and deposits and withdrawals posted. An inmate's record is updated when the inmate leaves the facility to reflect the new location so that account information and funds can be transferred.

The Inmate Trust Accounting System produces monthly statements of account, a general ledger, accounts payable, accounts receivable, a daily balance sheet, audit reports, and preprinted canteen cards.

Responsibility

The Trust Officer is responsible for data integrity and security.

47130.5 Revisions

The Chief, ISD, or designee shall be responsible for ensuring that the contents of this section are kept current and accurate.

47130.6 References

PC §§ 2085 and 5057.

ARTICLE 41 — DEPARTMENTAL WORKGROUP COMPUTING POLICY

Revised March 21, 1997

48010.1 Policy

This document is the formal definition of the Department policy regarding the acquisition and use of workgroup computing technologies, including portable, stand-alone, and networked microcomputers, electronic mail, Internet and Intranet access, connectivity, and Web pages. It is CDC's policy that these technologies be used to:

- Increase employee and workgroup productivity.
- Enhance the sharing and distribution of departmental information, both within CDC and to external entities.
- Enhance overall departmental communication.
- Reduce the overall departmental operating costs by strategically deploying standard workgroup technologies at all levels of the organization.

48010.2 Purpose

The purpose of this policy is to establish standards and responsibilities for the acquisition, use, and management of workgroup computing within CDC. Specifically, the policy is intended to:

- Promote the identification of cost-effective opportunities for using workgroup computing technologies to support the accomplishment of the mission and program objectives within CDC.
- Ensure that the use of workgroup computing technologies is consistent with CDC's SISP, tactical plans, or other management plans.
- Ensure that existing CDC and State information technology infrastructure standards are met, and that individual workgroup computing activities do not preclude the implementation of other departmental applications on the same configuration.
- Establish policy structures, levels of approval, and accountability to define the appropriate use, acquisition, and support (maintenance and training) of

workgroup computing technologies, including electronic mail functionality and Internet access.

- Ensure that the integrity and security of automated files, ITS, and program operations are not jeopardized by the use of workgroup computing activities, including connection to external networks (Internet).
- Establish acceptable use standards for departmental employees using workgroup computing technologies, including portable and desktop systems, electronic mail, and Intranet and Internet connectivity.
- Establish appropriate policy structures for departmental information that is electronically provided by CDC for public access by the Internet.
- Establish appropriate policy structures for the publication of departmental information that is electronically provided internally to CDC by the Intranet.

48010.3 Scope, Definitions, and Exclusions

This section defines the scope and definitions for the workgroup computing policy and the automated technologies that are excluded from this policy.

48010.3.1 Scope

The scope of this policy deals with the appropriate use, approval, and acquisition of off-the-shelf workgroup computing technologies within CDC to increase the productivity of individuals and groups of employees working in the same programmatic function. This policy is for the benefit of employees only and cannot be used to acquire equipment for the exclusive use of inmates.

A workgroup is a group of employees performing the same programmatic function. A programmatic function within CDC can be defined either by commonality of organizational structure or work objectives. For the purposes of this policy, accounting, personnel, and business services could each be considered a programmatic function. A correctional institution or parole region could also be considered a workgroup performing the same function, i.e. managing groups of inmates or parolees.

This policy supports the SAM 4989.1 which promotes the deployment of workgroup technologies to increase the overall efficiency of State organizations. The workgroup computing approach focuses on the deployment of proven "off-the-shelf" hardware and software systems and the interconnection of these systems. This policy also promotes the development and maintenance of consistent computer and network services and standards to ensure that life cycle support is minimized for all workgroup computing technologies.

The following are included as workgroup computing technologies:

- Commercial productivity software for such functions as word processing, spreadsheet analysis, time management, presentation graphics, Internet connection, remote communication access, workgroup file management, and electronic mail connectivity.
- Special purpose software applications, such as accounting or dietary management software, that are off-the-shelf productivity systems for an identified departmental workgroup.
- Portable and desktop systems based on microcomputer hardware and operating system.
- Full network server configurations to interconnect workgroup computing systems and provide standard electronic mail and Intranet capabilities.
- Necessary networks and communication devices to interconnect workgroup computing systems to facilitate internal and external communications and the sharing of information. The use of modems within CDC is limited to the requirements defined in DOM 48020, Departmental Modem Policy. While the acquisition of these devices can be considered part of a workgroup computing solution, additional levels of approval and justification within CDC organization are needed. Please see the referenced policy.

The policy and the processes that are defined herein are consistent with the overall strategic directions and tactical initiatives that exist in CDC for support of major program areas.

48010.3.2 Definitions

A glossary of terms has been provided in DOM 41010 EDP General Information. The list of terms conforms with the definitions of terms

provided in the SAM 4989.1.

48010.3.3 Exclusions

SAM 4989.1 places limits on the applicability of the workgroup computing policy within a State organization. Any single workgroup computing request must be consistent with, and not exceed, the cost delegation level assigned to CDC, as stated in SAM 4819.34.

Any acquisition, maintenance, or support of workgroup computing requests that require a budget augmentation or that qualifies as an Advanced Technology Project, SAM 4821 through 4821.8, is not covered by the workgroup computing policy. However, it is permissible to use this policy to acquire equipment that is the normal workgroup complement of equipment (hardware and software) for new positions funded through a budgetary augmentation. More specifically, the policy does not apply to the following:

- Critical Applications. These are defined as acquired or developed applications that, if they were not available, even for short periods of time, would cause the State or CDC a significant negative impact regarding:
 - The health and safety of the public, State employees, or inmates.
 - The fiscal or legal integrity of State operations.
 - The continuation of essential departmental programs.
- Department Databases. These are systems that involve the creation and maintenance of files or databases that serve more than a single workgroup within CDC, or where a single workgroup constitutes CDC.
- Uploading of Data Files. Requests cannot include support applications involving the uploading of data to databases used by persons outside of the workgroup. Word processing, electronic mail, and Internet files are not considered data files for the purpose of this policy and as such are part of workgroup computing.
- Computer Programming. Acquiring computing technologies, where the proposed system is dependent on program design, coding, and ongoing programming support to develop and maintain the system, are not part of workgroup computing. Both procedural languages used to create database applications, and compilers used to compile procedural language routines, are considered elements of computer programming and are excluded from this policy. The creation of macros within a productivity software system and/or simple program instructions to run file management reports and queries as part of or by additional software packages, are not considered computer programming and can be part of a workgroup computing solution. The use of file management products, to manage information limited to a single workgroup, is allowed under this policy, so long as the file management functions are done through the use of menus and other pre-designed tools provided with the software package.
- Terminal Emulation. Acquiring computing technologies, for the sole purpose of emulating or replacing a computer terminal does not qualify as workgroup computing. While the use of microcomputer systems in a terminal emulation mode is not prohibited, such use alone does not constitute justification for acquisition of microcomputer commodities.
- Specialized or Single-Purpose Systems. Acquiring specialized, single-purpose desktop configurations, such as computer-aided design systems, desktop publishing systems, programmer workbench systems, or artificial intelligence systems does not qualify as workgroup computing. However, software-based applications on a general purpose personal computer may be covered by the workgroup computing policy. For example, desktop publishing employing word processing, graphics, and page layout software packages on a general purpose personal computer falls within this policy. Desktop publishing employing a specialized computer system that has been developed and marketed for the sole purpose of doing desktop publishing, does not.

Units wishing to initiate information technology projects that are not covered by the workgroup computing policy shall follow the procedures for planning and justifying such projects as specified in SAM 4819.3 through 4819.39.

48010.4 Responsibilities

The various areas of responsibility under the workgroup computing policy are summarized in the following sections.

48010.4.1 Department Management

As defined in the SAM 4841.1, the Director has ultimate responsibility for information technology, security, and risk management. The Director has the ability to delegate by policy, procedure, or written notification these responsibilities to other individuals in CDC. The specific requirements for the Director or his designee are to ensure that CDC has:

- A current information management strategy and a current or planned information technology infrastructure description on file, and that the workgroups computing acquisitions and usage are consistent with these strategies.
- Processes to safeguard workgroup computing systems and the information generated and transmitted by these systems.
- The necessary policies and procedures for the technical network support activities, including installation, configuration, problem-determination, maintenance, backup, recovery, and all other activities, which would be in addition to those normally associated with stand-alone personal computers.
- The necessary policies and procedures to provide support and services for access to the Internet, Intranet, and electronic mail systems and servers including installation, configuration, problem-determination, maintenance, backup, recovery, security, and all other activities, which would be in addition to those normally associated with networks and communication systems.

The method in which the Director of CDC will ensure compliance with these responsibilities, is summarized in the remainder of this section.

48010.4.2 Assistant Director of Communications

The Assistant Director of Communications within CDC has responsibility for developing policies, guidelines, and procedures to ensure the appropriate disclosure and protection of departmental information when being transmitted outside and/or accessed from outside of the organization. Since one of the primary purposes of workgroup computing is to improve the method of electronic communication, the Assistant Director of Communications, by delegation of the Director, is responsible for ensuring that the workgroup computing policy conforms with departmental communication policies.

Responsibilities of the Assistant Director of Communications:

- Develop and maintain standards for Internet Web pages within CDC to define the "look, feel, and content" of such pages. This scope does not include Intranet Home page standards or Intranet/Internet Web sites.
- Review and comment on all workgroup policies and procedures that allow for the electronic distribution of departmental information outside of the organization using workgroup computing technologies. (Approved information technology projects do not fall under these policies.)
- Provide assistance in the development of departmental training materials to ensure that users understand their responsibilities as they pertain to the electronic transmittal of information using workgroup computing technologies.
- Ensure that auditing and record keeping standards are not in conflict with the IPA monitored by the Assistant Director of Communications.

48010.4.3 Information Security Officer

The Information Security Officer within CDC has responsibility for developing policies, guidelines, and procedures to ensure the appropriate security and safety of information technology resources, including the systems and resident information. Since one of the primary purposes of workgroup computing is to improve the process for information distribution and communication both internal and external to the organization, the Information Security Officer by delegation of the Director, is responsible for ensuring that the workgroup computing policy is in conformance with departmental information security policies.

Responsibilities of the Information Security Officer:

- Review workgroup computing processes and request forms, CDC Form 1855, Workgroup Computing Justification, CDC Form 1855 B, Workgroup Computing Justification - Additional Modem Justification, and CDC Form 1856, Web Page Justification, to ensure that employees are given notification of security and auditing requirements and that security processes are being followed.
- Review and comment on workgroup policies and procedures that allow for the electronic access, retrieval, and storage of information on departmental workgroup computing systems to ensure that security requirements are being met.
- Provide assistance in the development of departmental training materials to ensure that employees understand their

responsibilities as they pertain to the security of departmental information technology resources and information.

48010.4.4 ITS Management

The overall responsibility for the deployment and maintenance of information technology systems rests with ISD of the EC&ISD within the Support Services area of CDC. The ISD is responsible for the development and maintenance of CDC standards for workgroup computing technologies, with the exception of Internet Web page format and content, and the activities assigned to the Information Security Officer.

The ISD is responsible for the maintenance of the departmental networks, including the support of the infrastructure that interconnects departmental locations and provides remote access and connection to external entities. The ISD Data Center maintains the standards for CDC's Intranet and Internet Web site and for the "look-and-feel" of departmental Intranet Home pages. Intranet or Internet Web pages developed by the users will be implemented on the Intranet or Internet Web servers by ISD staff. Intranet access and electronic mail systems are provided as part of the standard department network infrastructure and are included in the standards for all new network installations that will connect to the ISD departmental network.

Within this framework, ISD is integrally involved in workgroup computing to develop policies and procedures regarding the acquisition, use, and distribution of information. The ISD's Data Center staff determines the information technology standards for hardware and software and provides the ongoing maintenance and support of the infrastructure and CDC's Intranet and Internet access capabilities. The Workgroup Computing Coordinator, who administers the processes to support workgroup computing, is also part of ISD. The ISD also provides the technical expertise in terms of software systems and networking to implement the various workgroup computing requests and provides assistance in the initial configuration and deployment of a full workgroup computing solution.

48010.4.5 Departmental Workgroup Computing Coordination

Responsibility for workgroup computing coordination within CDC is assigned to the ISD, which maintain three primary functions to support workgroup computing:

- Workgroup computing information dissemination and acquisition support.
- Provide general technical and networking expertise and assistance.
- Maintain the departmental network, including the infrastructure, hardware and communication devices, Internet access services, Intranet connectivity, and electronic mail.

The Workgroup Computing Coordinator will perform the dissemination of information, oversight of acquisition activities, and maintenance of standards lists. Responsibility for technical assistance and review of workgroup computing configurations will be assigned to the Data Center, including approval of new network installations and remote access authorization, maintenance of the departmental network, Internet Web site, and Intranet and electronic mail capabilities. Technical assistance for individual workgroup computing requests can also be provided based on the specific requirements of the request.

Responsibilities of ISD's workgroup computing coordination function are:

- Assist departmental management and individual departmental employees in the identification of opportunities for employing workgroup computing to improve personal and workgroup productivity.
- Provide overall interconnection of CDC using networks, remote access, and the Internet and Intranet by maintaining standards and offering set services as part of the departmental network.
- Assist in the justification of workgroup computing configurations, the specification of microcomputer and network commodities for workgroup computing, and the preparation of required documents.
- Coordinate the creation and maintenance of lists of CDC approved standard workgroup computing technologies.
- Review and approve individual workgroup computing technology acquisition requests.
- Assist in determining whether a workgroup computing configuration could support a proposed application in addition to its workgroup computing work.
- Maintain continuing liaison with departmental management to ensure that proposed workgroup computing implementations are:
 - Consistent with CDC's established strategy for information management as described in CDC's SISP.
 - Preventing duplication of existing capabilities.
 - Not precluding the implementation of other departmental applications on the same configuration.
- Maintain the departmental network, Intranet and Internet Web sites, and access.

- Provide for backup procedures and disaster recovery processes that should be part of workgroup computing requests.

48010.4.6 Parole Automation Systems Unit, Institution, and Unit Computing Coordination

Responsibility for workgroup computing coordination within an institution or other departmental unit is assigned to the Computing Coordinator, usually an AISA. These coordinators perform key functions to support workgroup computing within their specific unit or institution. The Parole Automation Systems Unit performs these functions for P&CSD staff. The Computing Coordinators and Parole Automation Systems Unit assist with information dissemination and acquisition support and interface with ISD on workgroup computing requests. They also provide technical assistance and review workgroup computing configurations within their respective organizations. Additional technical assistance from ISD can also be provided based on the specific requirements of a workgroup computing request.

General responsibilities of the Computing Coordinators are:

- Assist institutions, unit management, and individual departmental employees in the identification of opportunities for employing workgroup computing to improve personal and workgroup productivity.
- Assist in the justification of workgroup computing configurations, the specification of microcomputer commodities for workgroup computing, and the preparation of required documents.
- Coordinate, review, and approve individual workgroup computing technology acquisitions.
- Assist in determining whether a workgroup computing configuration could support a proposed application in addition to its workgroup computing work.
- Maintain continuing liaison with CDC's ISD staff to ensure that proposed workgroup computing implementations are:
 - Consistent with CDC's established strategy for information management.
 - Preventing duplication of existing capabilities.
 - Not precluding the implementation of other departmental applications on the same configuration.

48010.4.7 Unit Supervisors

Unit supervisors are responsible for the work performed within their organization. This responsibility includes the access, use, and security of workgroup computing technologies and associated information. Workgroup computing technologies are considered a departmental resource and are assigned to staff based on justified need.

Responsibilities of the unit supervisor:

- Actively initiate and deploy workgroup computing technologies to improve the productivity and efficiency of their unit.
- Develop, review, and approve justifications for procurement of workgroup computing resources.
- Review and approve justifications for access to the Internet for purposes of information collection and communication external to CDC.
- Review and approve justifications to establish a Web site on either the Internet or Intranet for the distribution of departmental information, both internal and external to CDC.
- Supervise and approve the creation and updating of the content and format of Intranet or Internet Web pages.
- Ensure that all employees are trained in and aware of their responsibilities when using workgroup computing technologies, and that each employee has in their official personnel file a signed CDC Form 1857, Computing Technology Use Agreement.
- Ensure that employees use workgroup computing resources solely for assigned departmental activities appropriate to that workgroup.
- Initiate disciplinary action for employees who are inappropriately using workgroup computing technologies, up to and including termination of employment.

48010.4.8 Procurement

During the acquisition of workgroup computing technologies, a procurement process will follow and/or parallel the workgroup computing authorization process.

Responsibilities of Procurement:

- The necessary procurement documents are completed and the acquisition is completed in conformance with the PCC and departmental policies and procedures.
- Information technologies procurements have been authorized. For workgroup computing technologies, this means ensuring that the Workgroup Computing Coordinator has an approved CDC Form 1855 on file, and that the procurement documents have appropriately referenced this Form.

48010.4.9 Users

In an environment that encourages workgroups to make use of computing technologies to increase work efficiency and performance, the users become responsible for more than just a computer on their desk. They are members of a wider community of interdependent users and need to be respectful of other departmental users and safeguard the information that might be shared on these systems.

Responsibilities of Users:

- Understand and follow the acceptable usage guidelines for workgroup computing resources listed in DOM 48010.5.
- Seek guidance in areas for which policy and procedural clarification is needed.
- Participate in necessary training to further ensure the productive use of workgroup computing tools.

48010.5 Acceptable Uses and Ethics

The effectiveness of the departmental computing environment and shared information resources depends on the responsible behavior of all authorized users, managers, and administrators of these resources. Along these lines, guidelines are used to determine acceptable uses.

The CDC reserves the right to monitor and/or log all network activity, including electronic mail, with or without transaction-by-transaction notification, and therefore, users should have no expectation of privacy in the use of these resources.

Uses that are acceptable and encouraged for workgroup computing include and are limited to the:

- Performance of assigned departmental activities.
- Preparation, communication, and exchange of information directly related to the mission and work tasks of CDC or its workgroups.
- Announcement of laws, procedures, hearings, policies, and services or activities related to CDC.
- Professional society activities authorized by CDC.
- Administration of contracts or federal grants for departmental programs.
- Communication and exchange of information for professional development and to debate issues related to assigned governmental activities.
- Research and development of documents, reports, and analyses of information related to the departmental workgroup activities.

Workgroup computing technologies, including access to the Internet, should not be used to publish, display, or transmit any information that will:

- Violate or infringe on the rights of any other persons, including the right of privacy.
- Contain defamatory, false, inaccurate, abusive, obscene, pornographic, profane, sexually-oriented, threatening, racially offensive or other biased, discriminatory material.
- Violate departmental policies and regulations prohibiting sexual harassment.
- Restrict or inhibit other users from using the system or the efficiency of the computing systems.
- Encourage the use of controlled substances or use of the system for the purpose of criminal intent.
- Violate State or Federal laws.

The CDC's policy is that users will not use the facilities and capabilities of workgroup computing to:

- Conduct activities not related to the mission or work tasks of the workgroup or CDC.
- Solicit the performance of any activity that is prohibited by law.
- Transmit material, information, or software in violation of departmental communication policies, or local, State, or federal law.
- Conduct any electioneering or political activities.
- Perform non-government related fund raising or public relations activities.

- Engage in any activity for personal gain or for personal business transactions.
- Make unauthorized purchases.

48010.6 Approved Technologies

It is the policy of CDC that standard configurations for workgroup technologies will be implemented to ensure a consistent approach for implementation, training, and support of these technologies. The Workgroup Computing Coordinator within CDC develops and maintains lists of departmental-approved, standard workgroup computing technologies. These standards are for microcomputer hardware and software systems, off-the-shelf special purpose applications, communication interconnectivity, including remote access to department systems and networks, and use of the Intranet and Internet.

These standards are developed to ensure consistency within the overall Department. Items on the technology standards lists have been selected because they are of proven capability and reliability, are appropriately priced, and are compatible with configurations already in use in CDC or in other State agencies. Minimum standards and lists will be updated in response to changing technology and State experience. Consideration is given to new categories of hardware and software based on the probability that a solution will be employed in more than one workgroup, and to maintain uniformity in the deployment of technology.

As part of CDC's network maintained by ISD, standard functionality is provided to departmental employees. Some of these features include virus check, Intranet access, print services, and electronic mail. Items that are provided as part of CDC's network **do not** require a workgroup computing request unless a new microcomputer is part of the request. Requests for new networks will be considered part of the overall departmental network and must meet the departmental network standards, including offering standard functionality.

In addition to the standard lists maintained by the Workgroup Computing Coordinator, ISD maintains the standards for network infrastructures, including Local Area Network's, Wide Area Network's, and Internet/Intranet connections. To ensure network interoperability and consistency within CDC, ISD's networking group will review and approve requests that involve new network installations, Internet access requests, Intranet Web pages, and exceptions to departmental standards.

Units proposing to acquire workgroup computing commodities are expected to select from these lists whenever possible. Proposals to acquire items not included in the lists will fall into one of two classifications:

- Requested technology falls into one of the standard categories defined by the ISD, and the Unit is requesting an "exception" to the standards in that category.
- Requested technology does not fall into one of the standard categories defined by the ISD and must be reviewed to ensure that the solution meets all of the requirements for being a workgroup computing technology. For example, a system to manage the planning of the dietary program in an institution could fall under the workgroup computing policy.

The first type of request will require, at a minimum, the approval of the Chief of Information Systems and must be based on a sound, justifiable business need. Rejected requests may be appealed through CDC's chain of command.

The second type of request must be approved by the departmental division office responsible for the specific workgroup computing request. The request must also be reviewed by the Workgroup Computing Coordinator on a case-by-case basis to determine if the solution falls within the parameters of a workgroup computing solution. Solutions that are in question may require an individual review by the control agency, as stated in SAM 4989.1. Requests that are deemed to meet the workgroup computing requirements will then be reviewed to determine if the proposed solution should be added to a departmental standards list.

48010.7 Development of Software

It is the policy of CDC to use commercial software packages for workgroup computing whenever possible, rather than undertake independent software development. Fully tested and documented commercial packages are readily available for most functions and are usually much less costly than custom-developed programs.

Computer programming **does not** fall within this workgroup computing policy and shall be justified in accordance with the requirements of SAM 4819.3 through 4819.39 and DOM 43020.

48010.8 Acquisition Authorization Process

For the purposes of this policy *acquire* refers to either the procurement of and/or receiving approval to utilize workgroup computing technologies. As such, there are two processes necessary for CDC to acquire workgroup computing technologies. The first is the authorization and approval process and the second is the procurement process. The procurement process for workgroup computing technologies falls under CDC's procurement policies and procedures which are defined in DOM Chapter 20000, Financial Operations, Subchapter 22000, Budget Administration, and Chapter 40000, MIS, and Subchapter 45000, General Procurement and Contracting.

Each procurement of a workgroup computing technology, is subject to management review and approval before an actual order can be placed or the unit takes possession of the equipment or software. Approval is required to gain Internet access or to establish an Internet or Intranet Web page.

The approval process consists of:

- Determining the hardware, software, and network requirements.
- Completing the CDC Form 1855, CDC Form 1855 B, CDC Form 1856, and/or CDC Form 1857.
- Routing the CDC Form 1855 and documents for approvals and signatures.
- Getting necessary reviews and approvals for acquisitions that will involve: new network installations, new systems that will distribute or access departmental information, and exceptions to workgroup computing standards.
- Getting necessary review and approvals to establish Internet or Intranet Web page or to gain Internet browsing access.

48010.8.1 Justification

Unit management is responsible for performing the needs assessment and for preparing the justification associated with the proposed approval or acquisition of workgroup computing commodities. This process shall be documented using the CDC Form 1855, CDC Form 1855 B, and/or the CDC Form 1856. The CDC Form 1855 is used to justify the acquisition of workgroup computing technologies. The form is also used to request and gain approval for Internet browsing access. The CDC Form 1856 is used to justify establishment of Web or Home pages. These activities shall also be in conformance with the applicable sections of SAM.

The amount of information and degree of detail provided shall be commensurate with the nature, complexity, risk, and expected cost of the proposed workgroup computing effort. When such applications include the use of networks or Internet access using "servers" or other shared devices, unit management must include consideration and justification for the necessary technical support for activities such as installation, configuration, problem-determination, maintenance, backup, recovery, and all other activities that would be in addition to those normally associated with stand-alone personal computers.

48010.8.2 Forms

The basis for the workgroup computing justification is the CDC Form 1855, which is maintained by the Workgroup Computing Coordinator and is modeled after the form shown in SAM 4991. This form is updated on a periodic basis and is modified to support specific processes that are unique within CDC. The form provides for the acquisition of portable and desktop hardware and software and Internet access. It also provides for necessary approval signatures and certifications. This form will be available through Electronic Distribution on the CDC Intranet.

The CDC Form 1856 is used to request establishment and maintenance of an Internet Web page for distribution of information outside CDC, or an Intranet Home page for distribution of information internal to CDC. Form maintenance is coordinated by the Workgroup Computing Coordinator with input from the Assistant Director of Communications and the Data Center. This form is updated on a periodic basis and is modified to support specific processes that are unique within CDC. The form requesting approval to create a home page needs to be accompanied by a CDC Form 1855 when a Web site will be established requiring the acquisition of hardware, software, and/or communication devices. This form will be available through Electronic Distribution on the CDC Intranet.

The CDC Form 1857, must be on file for each employee using workgroup computing technologies, accessing departmental networks, and/or accessing the Internet. This form notifies the users of their responsibilities as they pertain to using these technologies; it also notifies them that the information maintained and distributed by the user is not considered "private." It is the policy of CDC that each new employee completes the CDC Form 1857 as part of their employee orientation process. The CDC Form 1857 should be maintained in the employee's official personnel file. If a CDC Form 1857 is not currently on file when