



May 03, 2013

Sent via UPS

Ms. Wanda M. Hunt
Chief, FOIA/PA Section
FOIA/Privacy Act Requests
Federal Bureau of Prisons
Department of Justice
Room 841, HOLC Building
320 First Street, N.W.
Washington, DC 20534

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

Re: Request for Information Concerning the Placement of Juvenile Offenders in Isolated Confinement

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), The American Civil Liberties Union (ACLU) requests documents concerning the placement of youth in various forms of isolated confinement while in the custody of Bureau of Prisons (BOP) Contract Secure Juvenile Facilities. We ask for expedited processing, a public interest fee waiver, and representative of the news media status for this request.

I. Definitions

For purposes of this request, the following definitions apply:

1. The term "BOP" refers to any entity of the Bureau of Prisons that maintains records related to any and all Contract Secure Juvenile Facilities, including the relevant BOP Community Corrections Managers and any Technical Representatives.
2. The term "youth" refers to individuals under 18 who have been convicted of a federal criminal offense and individuals under 21 who have been adjudicated delinquent in a federal delinquency proceeding.
3. The terms "facility" and "facilities" refer to BOP Contract Secure Juvenile Facilities operated by contract to house youth in BOP custody,

including the following facilities and any others that were or have been established or held or hold youth in BOP custody:

- a. Mountain View Youth Development facility in Charleston, Maine
- b. Lake Region Law Enforcement Center in Devils Lake, North Dakota
- c. Pennington County Juvenile Detention facility in Rapid City, South Dakota
- d. Southwest Multi-County Correctional Center in Dickinson, North Dakota
- e. Juvenile Detention Center in Post, Texas
- f. Galen Juvenile Detention Center (Reintegrating Youthful Offender Correctional Facility) in Deer Lodge, Montana
- g. Eastern Arizona Juvenile Detention Center in Safford, Arizona
- h. Five County Detention Center in St. Anthony, Idaho
- i. DC Department of Corrections in Washington, District of Columbia
- j. Avera McKennan Hospital in Sioux Falls, South Dakota
- k. Juvenile Detention Center in Sioux Falls, South Dakota
- l. McCrossan Boys Ranch in Sioux Falls, South Dakota
- m. North Dakota Youth Corrections in Mandan, North Dakota
- n. Our Home, Inc. in Parkston, South Dakota
- o. Our Home, Inc. in Huron, South Dakota
- p. Youth Services International in Chamberlain, South Dakota
- q. Maine Department of Correction in Charleston, Maine
- r. Cornerstone Programs in Post, Texas
- s. Ami Kids, Non-Secure Juvenile Mental in Cuba, New Mexico
- t. Ami Kids, Non-Secure Juvenile in Cuba, New Mexico
- u. Pathway House in Clovis, New Mexico
- v. Twin Pines Ranch in Banning, California
- w. New Beginnings Treatment Center in Tucson, Arizona

4. The term “isolated confinement” refers to room restriction, disciplinary confinement to a secure unit, confinement to a special management housing unit, confinement for purposes of direct monitoring for suicide risk, and any other form of confinement involving physical and social isolation for at least the majority of waking hours.

5. The term “gender identity” refers to a person’s internal, deeply felt sense of being male or female, or something other than or in between male and female, such as for those whose gender identity or gender expression (those characteristics and behaviors which societies define as ‘masculine’

or ‘feminine’) differ from the physical characteristics (or ‘sex’) of their body at birth (sometimes referred to as transgender people).

II. Records Requested

Please provide the following records for the past **five years**, or the most recent years available:

1. All contracts between the BOP and every facility used to house youth in BOP custody.
2. The Operations Manual for each facility.
3. All annual monitoring reports prepared by the BOP or submitted to BOP, including those which include findings on or recommendations for any facility related to isolated confinement, and in particular:
 - a. Room restriction;
 - b. Disciplinary confinement to a secure unit;
 - c. Confinement to special management housing units;
 - d. Confinement for purposes of direct monitoring for suicide risk or risk of self-harm.

Please disaggregate all data provided by age, gender, race, ethnicity, sexual orientation, gender identity, and offense of adjudication or conviction.

4. All BOP “close out” letters prepared regarding any facility and indicating any deficiencies that were corrected, or outlining plans and time frames for their correction, and relating to isolated confinement and in particular:
 - a. Room restriction;
 - b. Disciplinary confinement to a secure unit;
 - c. Confinement to special management housing units;
 - d. Confinement for purposes of direct monitoring for suicide risk or risk of self-harm.

Please disaggregate all data provided by age, gender, race, ethnicity, sexual orientation, gender identity, and offense of adjudication or conviction.

5. All records, including any portion of a Contractor Evaluation Form or other forms used by the BOP to perform an annual assessment of any facility, that relate to isolated confinement and in particular:

- a. Room restriction;
- b. Disciplinary confinement to a secure unit;
- c. Confinement to special management housing units;
- d. Confinement for purposes of direct monitoring for suicide risk or risk of self-harm.

Please disaggregate all data provided by age, gender, race, ethnicity, sexual orientation, gender identity, and offense of adjudication or conviction.

6. All records, including any portion of Form 583 (Report of Incident) or other forms detailing any serious incident at any facility that led to or included placement of any youth in isolated confinement, and any measures taken in response to such an incident. Please disaggregate all data provided by age, gender, race, ethnicity, and offense of adjudication or conviction. Names and other identifying information can be redacted, where necessary.

7. All records relating to disciplinary hearings of youth at any facility - including the decision, disposition, and summary of the findings - that resulted in or were followed by the placement of any youth in isolated confinement and in particular:

- a. Room restriction;
- b. Disciplinary confinement to a secure unit;
- c. Confinement to special management housing units;
- d. Confinement for purposes of direct monitoring for suicide risk or risk of self-harm.

Please disaggregate all data provided by age, gender, race, ethnicity, sexual orientation, gender identity, and offense of adjudication or conviction. Names and other identifying information can be redacted, where necessary.

8. Records of all policies and procedures listing the criteria for removing any youth from the general population of any facility through placement in isolated confinement, and for reintegrating any youth into the general population, and including any reports on specific incidents that required the placement of any youth in isolated confinement. Please disaggregate all data provided by age, gender, race, ethnicity, and offense

of adjudication or conviction. Names and other identifying information can be redacted, where necessary.

9. All policies and procedures, including individual reports, from each facility related to the placement of youth in isolated confinement for any reason, including specifically those policies and procedures concerning:

- a. Eligibility for and/or access to medical and psychological care in isolated confinement;
- b. Eligibility for and/or participation in all programming or services, in particular those related to education or special education, in isolated confinement.

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Please disaggregate all data provided by age, gender, race, ethnicity, sexual orientation, gender identity, and offense of adjudication or conviction. Names and other identifying information can be redacted, where necessary.

10. All reports from any facility to the BOP detailing:

- a. Disciplinary confinement in excess of five days;
- b. Denial of any services or programming (including but not limited to medical or psychological services and educational and other programming) to a youth in any form of isolated confinement;
- c. Suicide attempts of any youth;
- d. Referral of any youth to outside prosecutorial authorities.

Please disaggregate all data provided by age, gender, race, ethnicity, sexual orientation, gender identity, and offense of adjudication or conviction. Names and other identifying information can be redacted, where necessary.

11. All data or reporting generated by any facility relating to its use of isolated confinement, and in particular:

- a. Room restriction;
- b. Disciplinary confinement to a secure unit;
- c. Confinement to special management housing units;
- d. Confinement for purposes of direct monitoring for suicide risk or risk of self-harm.

Please disaggregate all data provided by age, gender, race, ethnicity, sexual orientation, gender identity, and offense of adjudication or

conviction. Names and other identifying information can be redacted, where necessary.

12. All data or research undertaken by the BOP related to use of isolated confinement on youth, and in particular:

- a. Room restriction;
- b. Disciplinary confinement to a secure unit;
- c. Confinement to special management housing units;
- d. Confinement for purposes of direct monitoring for suicide risk or risk of self-harm.

Please disaggregate all data provided by age, gender, race, ethnicity, sexual orientation, gender identity, and offense of adjudication or conviction. Names and other identifying information can be redacted, where necessary.

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III. Request for Public Interest Fee Waiver

The Freedom of Information Act specifies that fees should be waived entirely, or below the level of duplication costs, when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. §552(a)(4)(A)(iii). Further, Congress intended that the burden of showing a request is in the public interest be “minimal.” *Inst. for Wildlife Prot. v. U.S. Fish and Wildlife Serv.*, 290 F.Supp. 2d 1226, 1232 (D. Or. 2003).

This request meets the criteria laid out in Department of Justice regulations for determining whether disclosures are “in the public interest.”

First, the information requested concerns “the operations or activities of the government.” 28 C.F.R. § 16.11 (2011). The adjudication or conviction of youth, and the conditions of their confinement in BOP contract facilities are exclusively “the operations or activities of the government” and meet this requirement. 28 C.F.R. § 16.11 (2011).

Second, the request concerns information that will significantly and meaningfully contribute to the public’s understanding of government activities concerning youthful offenders. This information is not already in the public domain, and will therefore greatly increase the public’s understanding by enabling access and engagement. Further, the ACLU

will compile the requested information into a digestible report and distribute the findings widely.

Third, ACLU has the necessary “expertise in the subject area and ability and intention to effectively convey information to the public.” 28 C.F.R. § 16.11(k)(i)(2)(iii) (2011). The ACLU will contribute to public understanding by reaching a very broad and diverse audience.

The ACLU is a national organization dedicated to the defense of civil rights and civil liberties. Dissemination of information to the public is a critical and substantial component of the ACLU's mission and work. Specifically, the ACLU broadly disseminates newsletters, news briefings, right-to-know documents, and other educational and informational materials to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students, and educational faculty, for no cost or for a nominal fee through its public education department and web site.

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Fourth, disclosure will significantly contribute to greater public understanding of the issues that are the subject of this request. The requested information is not available to the public, yet it concerns issues of importance to the public. The information requested will add to the public debate on, among other things, the use of isolated confinement for youthful offenders, and the general effectiveness of contract juvenile facilities to detain and manage youth.

This information will help sensitize the public to these pressing issues and further the debate on isolated confinement recently taken up by the United States Senate in a hearing of the Judiciary Committee on June 19, 2012. Without it, informed public debate on these critical issues will be stymied, impeding the public's ability to effectively engage with government officials who establish and implement the relevant policies and practices.

Fifth, the information requested is not in the ACLU's commercial interest. *See* 28 C.F.R. § 16.11(k)(ii) (2011). The ACLU is a non-profit organization; it has no commercial interest in obtaining the information. The ACLU's interest in obtaining this information is in furtherance of its effort to inform the public.

This request meets all the statutory and regulatory requirements for a public interest fee waiver. Consequently, the ACLU asks that you disclose the requested information without charge.

IV. Request for Fee Waiver for Representatives of the News Media

The ACLU also requests a fee waiver because it is a representative of the news media. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU is “an entity that is organized and operated to publish or broadcast...information that is about current events or that would be of current interest to the public.” 28 C.F.R. § 16.11(b)(6) (2011). It is therefore appropriate to waive fees for this request, as Congress intended a broad interpretation of the term “representative of the news media.” *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1383 (D.C. Cir. 1989).

As explained above, the ACLU has a large national staff and membership that includes journalists and academics, and produces dozens of written reports, newsletters, and issue briefings each year which are disseminated in paper and electronic form. The ACLU web site addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which ACLU staff focus. The website includes documents obtained through FOIA and features articles, blog posts and reports discussing those documents.

For example, the ACLU's “Accountability for Torture FOIA” webpage, <http://www.aclu.org/torturefoia>, contains commentary about the ACLU’s FOIA request for documents related to policies and practices on the treatment of detainees in the custody of U.S. officials in Afghanistan, Iraq and Guantanamo, press releases relating to that request, analyses of FOIA documents subsequently disclosed, and an advanced search engine permitting webpage visitors to search the documents obtained. *See Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F.Supp. 2d 52, 53-54 (D. D.C. 2000) (finding Judicial Watch to be a news media requester because it posted documents obtained through the FOIA on its website).

The ACLU publishes a newsletter at least twice a year that reports on and analyzes civil liberties related current events. The newsletter is distributed to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to approximately 300,000 subscribers (both ACLU members and non-members) by e-mail. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. *cf. Elec. Privacy Info. Ctr. v. Dep’t. of Def.*, 241 F.Supp. 2d 5, 13-14 (D. D.C. 2003) (finding Electronic Privacy Information Center to be a representative of the news media under Department of Defense regulations because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues,

and trends and technological advancements”).

ACLU staff also regularly publish books,¹ “know your rights” publications,² fact sheets,³ and educational brochures and pamphlets designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties.

Accordingly, we request that you grant a fee waiver to the ACLU as a representative of the news media.

V. Appropriate Withholding of Identifying Information

Exemption 6 permits an agency to withhold records “the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). To invoke this exemption, the government must demonstrate that the interest in privacy outweighs the public’s interest in disclosure. *Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1972) (stating that Exemption 6 “require[s] a balancing of the individual’s right of privacy against the preservation of the basic purpose of the Freedom of Information Act ‘to open agency action to the light of public scrutiny’”) (citation omitted).

In this case, there is an overwhelming public interest in information about whether juvenile facilities contracted by the BOP adequately protect persons that they detain and about how often and whether those youth are subjected to various forms of prolonged isolated confinement. Disclosure

¹ Some of the recent books published by the ACLU include: Susan N. Herman, *Taking Liberties: The War on Terror and the Erosion of American Democracy* (Oxford Univ. Press 2011); Lenora M. Lapidus, Emily J. Martin & Namita Luthra, *The Rights of Women: The Authoritative ACLU Guide to Women’s Rights* (NYU Press 4th ed. 2009); Jameel Jaffer & Amrit Singh, *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Columbia Univ. Press 2007) (a book based on documents obtained through FOIA).

² Some of the more recent “know your rights” publications include: ACLU, *Know Your Rights: Demonstrations and Protests* (2011), *available at* <http://www.aciu.org/files/assets/kyr/rotests.pdf>; ACLU, *Gender-Based Violence & Harassment: YOUR School, YOUR Rights* (2011), *available at* http://www.aclu.org/files/assets/genderbasedviolence_factsheet_O.pdf; ACLU, *Know Your Rights: What to Do If You’re Stopped by Police, Immigration Agents or the FBI* (2010), *available at* http://www.aclu.org/files/assets/lbustcard_eng_20100630.pdf.

³ *See, e.g.*, ACLU, *Military Abortion Ban in Cases of Rape and Incest* (Factsheet) (2011), *available at* <http://www.aclu.org/reproductive-reedom/military-abortion-ban-cases-rape-and-incest-factsheet>; ACLU, *The Facts About “The No Taxpayer Funding For Abortion Act”* (2011), *available at* http://www.aclu.org/files/assets/Chris_Smith_bill-_ACLUJact_Sheet-_UPDATED-4-30-II.pdf; ACLU, *Fact Sheet on H.R. 3, the No Taxpayer Funding/or Abortion Act* (2011), *available at* <http://www.aciu.org/reproductive-reedom/fact-sheet-hr-3-no-taxpayer-funding-abortion-act>.

of such information would serve the “core purpose of FOIA,” *i.e.*, “contribut[ing] significantly to public understanding of the operations or activities of the government.” *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989).

We acknowledge that Exemption 6 permits BOP to redact identifying information (such as names; case, file, or other numbers; and similar information) to protect the identities of youth subjected to isolated confinement. However, all reasonably segregable non-identifying information must be produced once appropriate redactions of identifying information have been made. *See* 5 U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt...”).

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Redactions of identifying information would eliminate any privacy interest in secrecy, and the public interest in disclosure of the remaining information would clearly prevail. *Rose*, 425 U.S. at 380-381 (public interest in disclosure outweighed privacy interest in redacted documents where plaintiff requested disciplinary records of Air Force Academy cadets “with personal references or other identifying information redacted.”). In short, Exemption 6 provides no basis for withholding the requested records, so long as personally identifying information is redacted.

VI. Request for Expedited Processing

The ACLU asks that the information requested be disclosed on an expedited basis. This request involves urgency to inform the public about specific government activities and the ACLU is an organization primarily engaged in disseminating information as a representative of the news media. 28 C.F.R. § 16.5(d)(4) (2011).

The ACLU will produce publications presenting this data that will be available in print and on the internet on this issue. The publications will allow the public to engage with government representatives in a position to make policy decisions regarding matters to be addressed in the publications. The ACLU will disseminate the publications, and key information contained in it, to local and national advocacy groups to generate additional publicity and to increase public awareness of these issues.

To inform the public on this issue, it is essential that the ACLU is able to quickly begin working with the disclosed information. Delayed disclosure of the records sought will seriously and irreparably harm the ability of the ACLU to inform the public about these aspects of government activities.

This would, in turn, seriously and irreparably harm the public's ability to engage with public officials on these matters at this critical time.

In addition, advocacy, public education, and outreach form integral parts of the ACLU's work. The ACLU will not be able to fully conduct this outreach and advocacy, undertaken with the desire and ability to inform the public, without the requested information.

The ACLU therefore asks that you grant this request on an expedited basis.

In compliance with 28 C.F.R. § 16.5(d)(3), the undersigned certifies that the above information pertaining to a request for expedited processing is true and correct to the best of the undersigned's knowledge and belief.

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We thank you for your attention to this matter and look forward to your response within ten calendar days. *See* 28 C.F.R. § 16.5(d)(4) (2011).

Please respond to this letter by email (ikysel@aclu.org), fax (212-549-2654), or mail (Ian Kysel, American Civil Liberties Union, Human Rights Program, 125 Broad Street, 18th Floor, New York, NY 10004)

Signed:

Ian Kysel, Esq.