

EJ Hurst II[†]

LIMITED TO FEDERAL AND CAPITAL CRIMINAL MATTERS

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FREEDOM OF INFORMATION ACT REQUEST

Friday, February 18, 2005

VIA USPS PRIORITY MAIL, RETURN RECEIPT REQUESTED

Ms. Wanda M. Hunt, Chief
Freedom of Information Act/Privacy Act Section
Office of General Counsel, Room 841
Federal Bureau of Prisons
320 First Street, N.W.
Washington, D.C. 20534

Mr. Harlan Penn, Western Regional Counsel
Federal Bureau of Prisons
Western Regional Office
7950 Dublin Boulevard, 3d Floor
Dublin, California 94568

**RE: INMATE REMOVALS FROM USP VICTORVILLE TO FCI VICTORVILLE MED II
ON OR ABOUT JANUARY 10, 2005**

Dear Ms. Hunt and Mr. Penn:

I respectfully request records from the Federal Bureau of Prisons (BOP) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. I request these records in my personal capacity, and will not seek attorneys fees in any outcome. Given time-sensitive features of this health-and-safety related request, and the substantial due process rights implicated by the Control Unit questions, I have taken the liberty of including the Western Regional Counsel in this request for expedition. I look forward to the Bureau of Prisons' full response within the statutory 20-day period, as will be tracked by a Return Receipt.

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The records here requested pertain to a incident of armed inmate violence on or about last January 1, 2005; a series of violent cell extractions by FCC Victorville's Special Operations and Response Team ("SORT") on or about January 10, 2005; and subsequent confinement conditions at Federal Correctional Complex (FCC) Victorville, California. They further pertain to BOP's obscured and seemingly understaffed correctional missions at both USP and FCI Victorville Medium II, and thus involve health and safety risks to BOP employees and inmates at all of FCC Victorville.

The public does not know whether the violent extractions were justified or rose beyond reasonable force, and cannot know without release of the requested records. Neither can the public know FCI Victorville II's actual correctional mission – medium-security or SHU or Control Unit or high-risk transfer center – without the public records here requested. These records thus have significant public value that substantially outweighs redactable and protectable privacy interests or other grounds the BOP might assert to deny this request. I thus respectfully request immediate and full disclosure of all records requested herein, in the least expensive format available.

Requests for Expedition and Guarantee of Preservation, 5 U.S.C. § 552(a)(6)(E)

I believe the security videotapes, and perhaps other records, relevant and essential to this FOIA Request are at immediate risk of destruction in the normal course of BOP policy and practice, and possibly for more insidious motives. Compelling reason for this request's expedited processing thus exists under 5 U.S.C. § 552(a)(6)(E). *See also* Gail Gibson, *Baltimore Sun* National Staff Writer, "Soldiers tried to cover up alleged abuses, files reveal," published at <http://www.baltimoresun.com/news/nationworld/iraq/bal-te.abuse18feb18,1,7987589.story?coll=bal-iraq-headlines&ctrack=1&csset=true>, Friday, February 18, 2005 [true copy as printed Friday, February 18, 2005, enclosed hereafter].

Any requested records BOP fails to produce in the first instance may still become subject to production after administrative appeal or judicial review. Such records may also stand subject to State or Federal subpoena authorities, and should already be in the hands of BOP's own Internal Affairs investigators. Because some of these records have limited life spans, like the 90-day life of USP Victorville security tapes, I respectfully request the BOP's written assurance that all existing records at, of, or pertaining to the institutions comprising FCC Victorville will be preserved until final adjudications issue regarding their potential release.

If the BOP refuses to offer an express guarantee of records preservation, an additional compelling reason for expedited response exists. Further, if BOP refuses to offer such guarantee, I respectfully ask for immediate written notification so I may seek appropriate judicial stay of destruction.

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Fee Waiver Request, 5 U.S.C. § 552(a)(4)(A)(iii)

I am a Maryland-authorized attorney regularly engaged in matters pertaining to Federal criminal sentencing and BOP custody matters. I regularly contribute to widely accessible venues that disseminate criminal justice information, including filings in Federal courts across the country, internet list-serves, and judicially noticed web logs (“blogs”). The records released under this FOIA Request will also be published on the website of my pending Maryland Law Office. I possess the ability to understand and process the information here requested, and I intend to actually disseminate it.

I will realize no immediate commercial gain from seeking this information, and file this request as a *pro bono publico* service per my Maryland ethical obligations. However the records requested might professionally benefit me in the future, my public dissemination of this information will negate any special value to me. Calculating cost of services and administration, then, the instant request is actually made at my net personal expense. As such, the public will be the primary beneficiary of the information, and the request is not primarily in the requester’s commercial interest.

Open dissemination of requested BOP data will improve public understanding of the BOP’s use of force policies at FCC Victorville on or about January 10, 2005, including whether such force was justified. Such data will also improve the public understanding of general use of force policies, SORT qualifications, medical care provided at FCC Victorville, and assundry other issues related to one of the BOP’s newest and least-known correctional complexes. Given the frequent leadership changes within the FCC since opening last fall – which even required West Regional Director Joseph E. Gunja to briefly act as USP Victorville’s warden – the public deserves pubic records and a full report regarding the complex’s good order and security.

The requested records separately relate to BOP’s opening of a new and seemingly unauthorized Control Unit Program or Special Housing Unit (“SHU”) at a facility structurally designed for medium-security populations. Inmates deemed the highest-risk high-security inmates from USP Victorville are now housed in 23-hour lockdown at a facility whose official designation still includes the words “FCI II Medium.” See <http://www.bop.gov/locations/institutions/vvm/index.jsp>, last visited Friday, February 18, 2005.

If FCI Med II is a medium-security facility by architect’s design and intended mission, then these highest-scrutiny inmates are at a facility that does not meet their designated security needs. These inmates now live in a lockdown segregation more akin to ADX Florence than an FCI or USP, though, which raises questions whether BOP has opened a new Control Unit to house close-scrutiny inmates. This confusion clearly demonstrates how the requested BOP records will substantially improve public understanding of FCC Victorville and its component facilities’ correctional missions. Such differeing correctional missions substantially affect inmates’ due process rights under various BOP policies and program statements, and so merit heightened public scrutiny.

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As shown above, the requested records are in the public interest because they are likely to contribute significantly to public understanding of the operations and activities of the Government, and they are not primarily in the commercial interest of the requestor. Accordingly, I respectfully request full waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii).

Requested Records

Each item requested below is sought for all institutions comprising Federal Correctional Complex (FCC) Victorville, California. Every item seeks appropriate records from the United States Penitentiary (USP), Federal Correctional Institution (FCI) I, FCIMED II, and the satellite minimum-security camp. The items below seek to identify officers performing BOP duties and their professional qualifications, but do not ask for private employee data. I have no objection or preference to any record format, and will readily accept certified electronic documents, where possible and if deemed least expensive.

I respectfully request true copies of the following records:

1. Each and all security camera video tapes made at USP Victorville between and including January 10 and January 12, 2005. Of particular interest are all videos covering Block 5B, including ingresses and egresses, and the Special Housing Unit.
2. The Program/Policy Statement and Victorville institutional supplement, inclusive of all "records" as liberally construed under FOIA, creating and defining the "step down program" in which FCI MED II inmates are now engaged.
3. Duty Rosters and all other records providing the names, ranks, and former duty stations of all FCC Victorville's Special Operations and Response Team (SORT) officers.
4. The certified documents including curriculum vitae, demonstrating each SORT officer's training, experience, and qualifications for SORT duty, including compliance and certification course certificates provided by the BOP or the United States Department of Justice (DOJ).
5. Daily duty logs showing present and absent SORT officers at FCC Victorville between and including Wednesday, December 29, 2004, and Saturday, January 15, 2005.

6. Daily duty logs showing present and absent staff at FCC Victorville between and including Wednesday, December 29, 2004, and Saturday, January 15, 2005, inclusive of all positions.
7. Special Housing Review Reports, including but not limited to Form BP-A295, for all Victorville facilities between and including the date of each facility's opening and the date of response to this request.
8. Duty Rosters providing the names, ranks, and former duty stations of all FCC Victorville's Medical staff including, but not limited to, physicians, nurses, physicians assistants, and pharmacists.
9. The certified documents including curriculum vitae and licensure information demonstrating each medical division agent's training, experience, and qualifications for duty on Victorville's Medical Staff.
10. Monthly Reports of Health Services Staff, including but not limited to Form BP-A811.060, between and including the date of each Victorville facility's opening and the date of response to this request.
11. Any and all reports summarizing caseloads, inmate visitation documentation (redacted if necessary), or other demonstrations of services rendered to inmates, from Victorville's Psychological Services staffs, between and including the date of each Victorville facility's opening and the date of response to this request.
12. Any and all medical reports, including medical visit and medical request logs, and other records, maintained by FCI Med II between and including January 9 and the date of response to this request.
13. The reasonably segregable portion of inmate medical requests and treatment records for all Victorville institutions between and including Wednesday, December 29, 2004, and the date of response to this request.

The Requestor understands these segregated records will be redacted such that all personally identifying information is removed, and released records thus will not constitute unwarranted invasions of personal privacy. The intent of this item is to retrieve data

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including, but not limited to, a compilation of medical services rendered to inmates in the target timeframe, infirmary reports, sick call logs, natures of medical complaints, treatment regimen and outcomes, and average duration of infirmary stays, to review the types and quality of health care recently received by FCC Victorville inmates.

14. Names of all attendees at the Federal Bureau of Prisons Recruitment events hosted by FCI Victorville Medium II, Saturday & Sunday, August 28-29, 2004.

I thank the Bureau in advance for its timely assistance in this time-sensitive request. I remain available at any of the letterhead contacts for questions or concerns, and assure the BOP of my willingness to assist an expeditious response.

Respectfully submitted,

/s/

EJ Hurst II

Enc.

Cc: Mr. J. Wrigley, Warden, FCI Victorville Medium II (via USPS Priority Mail, Return Receipt Requested)
Mr. J. Norwood, Warden, USP Victorville (via USPS Priority Mail, Return Receipt Requested)