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May 22, 2019

VIA FEDEX

Mary Ellyn Gormley
Office of the County Counsel for the County of Alameda
1221 Oak Street, Suite 450
Oakland, CA 94612-4296

VIA FIRST CLASS MAIL AND EMAIL

Wendy Still
Alameda County Probation Administration
P.O. Box 2059
1111 Jackson Street
Oakland, CA 94604-2059
wstill@acgov.org

**Re: Alameda County Public Probation Department - Records Act Requests
Dated April 3, 2018 and May 8, 2018**



To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Alameda County Probation Department ("ACPD") for records related to room confinement dated April 3, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 8, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue ACPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review ACPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding ACPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and ACPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to ACPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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As you may be aware, in a report published on May 22, 2019 by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Alameda County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in ACPD's treatment of youths in detention to underscore our interest in ACPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On June 22, 2018, ACPD raised a litany of general objections to the Room Confinement Request and stated:

"No documents will be produced where 'the public interest served by not disclosing the record clearly outweighs the public interest by the disclosure of the record' ... if they contain personnel, medical, private, confidential, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy ... [or] are the subject of ongoing litigation and/or pending investigations, and/or are law enforcement investigatory records ... [or] data found in an individual juvenile's files"

On July 20, 2018, ACPD raised similar objections to the Chemical Agent Request.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf. Inst. Code. § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent ACPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second,

the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* 19 *et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that ACPD now seeks to keep secret. *Id.*

Further, to the extent ACPD is withholding the disclosure of certain information or documents based on a “personal privacy” objection, ACLU SoCal again reiterates that its original request required that all “individual identifying information (names) be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent ACPD is redacting or withholding records based on copyright, attorney-client, work product, official information or deliberative process privileges, or any other privilege, ACLU SoCal demands that ACPD provide a privilege log identifying all withheld documents and the basis for the privilege.

Lastly, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

(b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

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new law further and explicitly allows for the redaction of personal data and information to preserve personal and confidential information.

For these reasons, ACLU SoCal demands that ACPD immediately produce withheld data responsive to the Requests and produce a privilege log specifically identifying each piece of withheld data.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,



Gurinder S. Grewal

cc: Ian Kysel, ACLU Foundation of Southern California

(ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....

(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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May 22, 2019

VIA FEDEX AND EMAIL

Lesha Roth
Contra Costa County Probation Department
50 Douglas Drive, Suite 201
Martinez, CA 94553
Lesha.Roth@prob.cccounty.us

**Re: Contra Costa County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**

To Whom It May Concern:



I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Contra Costa County Probation Department ("CCCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue CCCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review CCCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding CCCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and CCCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to CCCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

As you may be aware, in a report published on May 22, 2019 by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Contra Costa County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the

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heightened public interest in CCCPD's treatment of youths in detention to underscore our interest in CCCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. *See, e.g., ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 26, 2018 CCCPD stated in response to the Room Confinement Request that it would not produce records that "are exempt from disclosure pursuant to Gov. Code, § 6254(a), (b), (f), and (k), and Welf. & Inst. Code [WIC], § 827 et seq. and § 827.12, Evid. Code § 1040, and Cal. Const., art. I, § 1." CCCPD also stated, "[I]t is not in the public interest to disclose these records." On June 1, 2018, CCCPD raised similar objections to the Chemical Agent Request.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf. Inst. Code. § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent CCCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. *See American Civil Liberties Union Foundations of California, Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention 19 et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>.

Further, to the extent CCCPD is withholding the disclosure of certain information or documents based on a “personal privacy” objection, ACLU SoCal again reiterates that its original request required that all “individual identifying information (names) be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent CCCPD is redacting or withholding records based on copyrights, attorney-client, work product, official information or deliberative process privileges, or any other privilege, ACLU SoCal demands that CCCPD provide a privilege log identifying all withheld documents and the basis for the privilege. As ACLU SoCal let you know shortly after serving the Room Confinement Request, it does not seek emails that were part of CCCPD’s deliberative process in adopting a new room confinement policy that complies with SB 1143. However, we are entitled to CCCPD’s room confinement policies before and after implementation of SB 1143, all data on room confinement before and after implementation of SB 1143, information about the resulting changes in the use of room confinement before and after implementation of SB 1143, and related training on room confinement before and after SB 1143.

Lastly, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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new law further and explicitly allows for the redaction of personal data and information to preserve personal and confidential information.

For these reasons, ACLU SoCal demands that CCCPD immediately produce withheld data responsive to the Requests and produce a privilege log specifically identifying each piece of withheld data.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,



Gurinder S. Grewal

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

Philip Kader
(Interim) Chief Probation Officer
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VIA FEDEX

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VIA FEDEX AND EMAIL

Arthur Wille
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Fresno, CA 93721
awille@fresnocountyca.gov



**Re: Fresno County Probation Department - Public Records Act Requests
Dated March 23, 2018 and May 9, 2018**

Dear Mr. Kader, Ms. Beavers and Mr. Wille:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Fresno County Probation Department ("FCPD") for records related to room confinement dated March 23, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue FCPD's full compliance with

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the Public Records Act ("PRA"). ACLU SoCal continues to review FCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding FCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and FCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to FCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Fresno County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in FCPD's treatment of youths in detention to underscore our interest in FCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 26, 2018, FCPD responded to Section 3 of the Room Confinement Request that "[t]o the extent your request seeks such information, the Department is prohibited from producing such records, absent a court order." On July 31, 2018, FCPD responded that it "estimates that records responsive to Category 3 will be provided to you on or before August 17, 2018." Then, on August 14, 2018 FCPD further responded that "the information you are requesting is specifically exempt under Welfare and Institutions Code [WIC] section 827" and "[t]herefore, records responsive to Category 3 are being withheld." On May 18, 2018, the FCPD responded to the Chemical Agent Request stating that it required an extension until June 1, 2018 to respond. On June 1, 2018, the FCPD responded that "[t]o the extent your request seeks [juvenile court records] information, the Department is prohibited from producing such records; absent a court order." On September 7, 2018, FCPD responded that Category 3 of the Chemical Restraint Request would be produced "on or before September 14, 2018." On September 13, 2018, FCPD responded that some responsive records to Category 3 are being withheld because some of the information requested is "exempt under Welfare and Institutions Code [WIC] section 827."

WIC 827 provides that a “juvenile case file” shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf & Inst. Code § 827. By law, “juvenile case file” means “a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.” Welf. & Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent FCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency’s Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* 19 et seq. (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that FCPD now seeks to keep secret. *Id.*

ACLU SoCal also reiterates that its original request required that all “individual identifying information (names) [should] be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent FCPD is withholding production of records in certain personnel files, based on Government Code section 6254 or 6255, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

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Page 4

the redaction of personal data and information in certain personnel files to preserve personal and confidential information.

ACLU SoCal demands that FCPD immediately produce any data FCPD has unlawfully withheld pursuant to WIC 827 and any documents or data withheld pursuant to Government Code section 6254 or 6255.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, reading "Homaira Hosseini". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Homaira Hosseini

cc: Ian Kysel, ACLU Foundation of Southern California

(b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

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(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

Alicia Ekland
County Counsel, County of Glenn
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Brandon D. Thompson
Chief Probation Officer
Glenn County Probation Department
541 West Oak Street
Willows, CA 95988
bthompson@countyofglenn.net

**Re: Glenn County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018.**



Dear Ms. Ekland and Mr. Thompson:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Glenn County Probation Department ("GCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue GCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review GCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding GCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and GCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to GCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Glenn County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in GCPD's treatment of youths in detention to underscore our interest in GCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 25, 2018, GCPD responded to Section 3(a) of the Room Confinement Request that records sought "are confidential juvenile records exempt from disclosure pursuant to Government Code section 6254(k) and Welfare and Institutions Code (WIC) section 827." GCPD further responded that "given the small population of youth in Glenn County's juvenile hall during the time period in question, redacting identifying information would likely be insufficient to protect the youth's identities." On May 11, 2018, GCPD responded that "the department is not in possession of" information for Requests 2-4 of the Chemical Agent Request, despite GCPD's Juvenile Hall Policy and Procedures Manual stating that "Oleoresin Capsicum pepper aerosol sprays" is a "defensive force control instrument" and that in "cases where...chemical agents have been used", certain documentation procedures are required. Article 5, Section 1357, Use of Force, Nos. 1.F.4; 2.D, 4.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf & Inst. Code § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. & Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent GCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second,

the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention 19 et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that GCPD now seeks to keep secret. *Id.*

ACLU SoCal also reiterates that its original request required that all "individual identifying information (names) [should] be replaced with unique identifiers." See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent GCPD is withholding production of records in certain personnel files, based on Government Code section 6254, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose

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the redaction of personal data and information in certain personnel files to preserve personal and confidential information.

ACLU SoCal demands that GCPD immediately produce any data GCPD has unlawfully withheld pursuant to WIC 827 and any documents or data withheld pursuant to Government Code section 6254.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,



Minna L. Naranjo

cc: Ian Kysel, ACLU Foundation of Southern California

or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

Sean Quincey
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VIA FEDEX

Tim Toste
Detention Services Director
Humboldt County Probation
2002 Harrison Avenue
Eureka, CA 95501

**Re: Humboldt County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018.**



Dear Mr. Quincey and Mr. Toste:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Humboldt County Probation Department ("HCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue HCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review HCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding HCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and HCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to HCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Humboldt County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in HCPD's treatment of youths in detention to underscore our interest in HCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 23, 2018, HCPD responded to Section 3(a) of the Room Confinement Request by noting that the records sought "regarding juvenile cases file documents (such as incident reports) seeks information that is exempt from disclosure pursuant to Government Code § 6254(k) and Welfare and Institutions Code § 827 [WIC] and will not be produced."

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf & Inst. Code § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. & Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent HCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not *per se* place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not *per se* place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* 19 *et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that HCPD now seeks to keep secret. *Id.*

ACLU SoCal also reiterates that its original request required that all “individual identifying information (names) [should] be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent HCPD is withholding production of records in certain personnel files, based on Government Code section 6254 or 6255, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance

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the redaction of personal data and information in certain personnel files to preserve personal and confidential information.

ACLU SoCal demands that HCPD immediately produce any data HCPD has unlawfully withheld pursuant to WIC 827 and any documents or data withheld pursuant to Government Code section 6254 or 6255. Also, to date, ACLU SoCal has not received any response or data responsive to the Chemical Agent Requests. ACLU SoCal notes, however, that the Humboldt County Juvenile Hall Procedural Manual allows for the use of "Oleoresin Capsicum (OC) - pepper spray" for "punishment, retaliation, or disciplinary purposes" and requires certain documentation procedures when "OC is deployed." See Humboldt County Juvenile Hall Procedural Manual, Behavior Policies and Standards, Use of Force, Section 1101-03 (III)(2), 1101-03 (VI). ACLU SoCal demands that HCPD immediately produce any such documents, data, or materials responsive to the Chemical Agent Request.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, reading "Homaira Hosseini". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Homaira Hosseini

cc: Ian Kysel, ACLU Foundation of Southern California

process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

Sarah Sauer

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Daniel Prince

Imperial County Probation Department

324 Applestill Road

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danprince@co.imperial.ca.us

**Re: Imperial County Probation Department - Public Records Act Requests
Dated March 29, 2018 and May 9, 2018**

To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Imperial County Probation Department ("ICPD") for records related to room confinement dated March 29, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue ICPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review ICPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding ICPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and ICPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to ICPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.


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As you may be aware, in a report published on May 22, 2019 by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Imperial County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in ICPD's treatment of youths in detention to underscore our interest in ICPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 26, 2018, ICPD objected to portions of the Room Confinement Request because "the training materials that ICPD has used are copyrighted materials and as such are exempted from disclosure pursuant to Cal. Gov. Code section 6254(k)." ICPD also stated that the data requested in the Room Confinement Request "is specifically exempt pursuant to California Welfare and Institutions Code (WIC) section 827." As to the implementation documents requested by the Room Confinement Request, ICPD stated that "[t]he additional documents requested are exempt pursuant to Cal. Gov. Code sections 6254(a) and (p)." On May 31, 2018, ICPD raised similar objections to the Chemical Agent Request.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf. Inst. Code. § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent ICPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC

827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* 19 *et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that ICPD now seeks to keep secret. *Id.*

Further, to the extent ICPD is withholding the disclosure of certain information or documents based on a “personal privacy” objection, ACLU SoCal again reiterates that its original request required that all “individual identifying information (names) be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent ICPD is redacting or withholding records based on copyrights, attorney-client, work product, official information or deliberative process privileges, or any other privilege, ACLU SoCal demands that ICPD provide a privilege log identifying all withheld documents and the basis for the privilege.

Lastly, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any

May 22, 2019

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new law further and explicitly allows for the redaction of personal data and information to preserve personal and confidential information.

For these reasons, ACLU SoCal demands that ICPD immediately produce withheld data responsive to the Requests and produce a privilege log specifically identifying each piece of withheld data.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,



Gurinder S. Grewal

cc: Ian Kysel, ACLU Foundation of Southern California

person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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May 22, 2019

VIA FIRST CLASS MAIL AND EMAIL

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**Re: Inyo County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**



To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Inyo County Probation Department ("ICPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue ICPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review ICPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding ICPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and ICPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to ICPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Inyo County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in ICPD's treatment of youths in detention to underscore our interest in ICPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 26, 2018, ICPD responded to Section 3 of the Room Confinement Request by noting that data is kept in "juvenile files that are exempt from disclosure under Welfare and Institutions Code [WIC] section 827" and that "records sought in category 3 are exempt from disclosure pursuant to the right of privacy" citing California Government Code sections 6254 and 6255. To date, we have not received any responsive documents or objections with regard to the Chemical Agent Request.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf. & Inst. Code § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. & Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent ICPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties

and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* 19 *et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that ICPD now seeks to keep secret. *Id.*

ACLU SoCal also reiterates that its original request required that all “individual identifying information (names) [should] be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent ICPD is withholding production of records in certain personnel files, based on Government Code section 6254 or 6255, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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the redaction of personal data and information in certain personnel files to preserve personal and confidential information.

ACLU SoCal demands that ICPD immediately produce any data ICPD has unlawfully withheld pursuant to WIC 827 and any documents or data withheld pursuant to Government Code section 6254 or 6255.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,



Minna L. Naranjo

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

Rishi P. Satia
Associate
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May 22, 2019

VIA FEDEX AND EMAIL

TR Merickel
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Kern County Probation Department
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merickelt@kernprobation.org

Frank Herrera
Assistant Probation Division Director
Kern County Probation Department
2005 Ridge Road
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HerreraF@Kernprobation.org

**Re: Kern County Probation Department – Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**



To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California (“ACLU SoCal”) in the above-referenced matter and write to follow up on its request to the Kern County Probation Department (“KCPD”) for records related to room confinement dated April 2, 2018 (“Room Confinement Request”) and its request for records related to chemical agents dated May 9, 2018 (“Chemical Agent Request”) (collectively “Requests”). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal’s right to pursue KCPD’s full compliance with the Public Records Act (“PRA”) in relation to the Requests. ACLU SoCal continues to review KCPD’s record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding KCPD’s policies, procedures, and training materials governing the use of force, data on use of room confinement, and KCPD’s implementation of California’s new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to KCPD’s use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Kern County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019) , available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in KCPD's treatment of youths in detention to underscore our interest in KCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 26, 2018, KCPD responded to the Room Confinement Request with some documents responsive to the Request, but for several requests simply indicated that the request was "N/A" because "[Camp Erin Owen] is an open dorm setting" where "[r]oom confinement does not apply." Even if Kern County does not enforce room confinement at the Camp Erin Owen facility, Kern County has failed to produce the requested materials for the James G. Bowles Juvenile Hall and the Larry J. Rhoades Kern Crossroads Facility. Documents produced by KCPD in response to the Chemical Agent Request indicate that Kern County enforces room confinement policies at its other facilities. See, e.g., James G. Bowles Juvenile Hall Administrative Manual (Revised: 2014-2015) at p. 236 ("The only type of disciplinary action permitted is privilege withdrawal or room restriction" at the James G. Bowles Juvenile Hall). ACLU SoCal demands that KCPD produce documents responsive to the Room Confinement Request for *all* facilities operated by the KCPD, including the James G. Bowles Juvenile Hall and the Crossroads Facility.

Further, on May 31, 2018, KCPD provided responses to many of the Chemical Agent Requests, but did not address several requests. Specifically, ACLU SoCal demands that KCPD immediately provide the following information requested by ACLU SoCal on May 9, 2018:

- 2(a): Training materials related to the use of chemical agents;
- 3(a)(ii): For each specific instance of the use of chemical agents, a description of the incident (including the situation alleged to precipitate the use);
- 3(a)(ii): Demographic information about the juveniles and staff involved in specific instances of the use of chemical agents at any Kern County facilities. The requested demographic information includes, but is not limited to age, race, national origin, gender identity and gender expression; and
- 3(a)(ix): Records of injury to staff or youth related to the use of chemical agents.

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Page 3

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "Rishi Satia" with a stylized flourish at the end.

Rishi P. Satia

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

Rob Howe
Chief Probation Officer
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VIA FEDEX AND EMAIL

Wendy Mondfrans
Chief Deputy Probation Officer
Lake County Probation Department
201 S. Smith St
Lakeport, CA 95453
Wendy.mondfrans@lakecountyca.gov

**Re: Lake County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018.**



Dear Mr. Howe and Ms. Mondfrans:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Lake County Probation Department ("LCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue LCPD's full compliance with the Public Records Act ("PRA") in relation the Requests. ACLU SoCal continues to review LCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding LCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and LCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to LCPD's use of

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chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Lake County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in LCPD's treatment of youths in detention to underscore our interest in LCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

LCPD responded to Section 3(a) of the Room Confinement Request by noting that the records sought are "confidential pursuant to Welfare and Institutions Code [WIC] section 827." LCPD further responded that it "has an average of 6 juveniles in custody at any one time" yet asserts, "the breadth and scope of [ACLU's] request and the enormous public and governmental resources required to attempt to fully respond would be unduly burdensome."

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf & Inst. Code § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. & Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent LCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not *per se* place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not *per se* place such records within the parameters of WIC

827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* 19 *et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that LCPD now seeks to keep secret. *Id.*

ACLU SoCal reiterates that its original request required that all “individual identifying information (names) [should be] be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent LCPD is withholding production of records in certain personnel files, based on Government Code section 6254 or 6255, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline,

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the redaction of personal data and information in certain personnel files to preserve personal and confidential information.

ACLU SoCal demands that LCPD immediately produce any data LCPD has unlawfully withheld pursuant to WIC 827 and any documents or data withheld pursuant to Government Code section 6254 or 6255. To the extent, LCPD's staff used OC spray the OC Policy contains documentation procedures, and ACLU SoCal also requests immediate production of such documents. See Lake County Juvenile Hall Oleoresin Capsicum (OC) Policy, Article V, Section 5.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, reading "Homaira Hosseini". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Homaira Hosseini

cc: Ian Kysel, ACLU Foundation of Southern California

any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

Jennifer Branning

Lassen County Probation Department

2950 Riverside Drive, Suite 101

Susanville, CA 96130

jbranning@co.lassen.ca.us

**Re: Lassen County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018.**

To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Lassen County Probation Department ("LCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue LCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review LCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding LCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and LCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to LCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

As you may be aware, in a report published on May 22, 2019 by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Lassen County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public


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interest in LCPD's treatment of youths in detention to underscore our interest in LCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. *See, e.g., ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On May 8, 2018, LCPD objected to portions of the Room Confinement Request contending that "[t]he information you are requesting is specifically exempt pursuant to California Welfare and Institutions Code (WIC) section 827." On June 11, 2018, LCPD raised a similar objection to the Chemical Agent Request under WIC section 827, and stated that "[p]ortions of this request also fall under the investigative records exemption under section 6254(f)" and "that the privacy interest of the individuals who may be involved outweigh the public interest in disclosure."

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf. Inst. Code. § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent LCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. *See American Civil Liberties Union Foundations of California, Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention 19 et seq.* (May 22, 2019), available at

<https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that LCPD now seeks to keep secret. *Id.*

Further, to the extent LCPD is withholding the disclosure of certain information or documents based on a “personal privacy” objection, ACLU SoCal again reiterates that its original request required that all “individual identifying information (names) be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent LCPD is redacting or withholding records based on the deliberative process privilege, or any other privilege, ACLU SoCal demands that LCPD provide a privilege log identifying all withheld documents and the basis for the privilege.

Lastly, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for the redaction of personal data and information to preserve personal and confidential information.

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

May 22, 2019

Page 4

For these reasons, ACLU SoCal demands that LCPD immediately produce withheld data responsive to the Requests and produce a privilege log specifically identifying each piece of withheld data.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Gurinder S. Grewal', is positioned above the printed name.

Gurinder S. Grewal

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

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Chereise Simmons
Administrative Services Manager, Civil Litigation Unit
Los Angeles County Probation Department
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Chereise.Simmons@probation.lacounty.gov

**Re: Los Angeles County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018.**



To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Los Angeles County Probation Department ("LACPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue LACPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review LACPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding LACPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and LACPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to LACPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Los Angeles County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in LACPD's treatment of youths in detention to underscore our interest in LACPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On May 31, 2018, LACPD responded for Section 3(a), items (i) through (xiii) and Section 3(b), items (i) through (xiii) of the Room Confinement Request that "[t]he Department does not track this data in an aggregate manner as detailed in your request. Any data tracked related to this request is tracked in an individualized manner which would be exempt from disclosure", citing to Welfare and Institutions Code (WIC) 827, and further objecting that the "request is unreasonably voluminous and burdensome". On June 4, 2018, LACPD objected to Section 3(a), items (i) through (xvi) of the Chemical Agent Request based on WIC 827, the deliberative process privilege, attorney-client privilege, and personal privacy.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf & Inst. Code § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. & Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent LACPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the

parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. *See American Civil Liberties Union Foundations of California, Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention 19 et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that LACPD now seeks to keep secret. *Id.*

To the extent LACPD is redacting or withholding records based on attorney-client, official information and deliberative process privileges, or any other privilege, ACLU SoCal demands that LACPD provide a privilege log identifying all withheld documents and the basis for the privilege.

ACLU SoCal also reiterates that its original request required that all “individual identifying information (names) [should] be replaced with unique identifiers.” *See Room Confinement Request*, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); *Chemical Agent Request*, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. *See, e.g., Govt. Code. 6253(a); ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent LACPD is withholding production of records in certain personnel files, based on Government Code section 6254 or 6255, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. *See Senate Bill 1421*.¹ This new law further and explicitly allows for

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and

the redaction of personal data and information in certain personnel files to preserve personal and confidential information.

LACPD has publicly demonstrated that aggregate data relating to safe crisis interventions exist in its Regular Meeting of the County of Los Angeles Probation Commission on March 22, 2018 – nearly two months prior to ACLU SoCal’s request. See Minutes of Regulator Meeting, March 22, 2018, at 3, available at http://file.lacounty.gov/SDSInter/probation/1039083_ProbationCommissionMinutes03-22-2018.pdf (“A manual poll was conducted for **every single incident**” and reviewed... Once the data is finalized it must be presented to the Board of Supervisors and then it may be shared with the Probation Commission.”) (emphasis added); see also County of Los Angeles Probation Commission, 2017 Annual Report (Nov. 19, 2017), at 10 (“Some of our other projects for 2018 are:...[c]onducting routine reviews **of data** surrounding the use of force and pepper spray within Probation Department camps and halls...”). LACPD also subsequently released aggregate data regarding the use of pepper spray and HOPE centers **to the media and public**. See J. Krandel and L. Lopez, “Other Juvenile Lockups Are Shunning Pepper Spray, But Its Use is on the Rise in LA”, NBC News (Dec. 13, 2018), available at <https://www.nbclosangeles.com/news/local/Los-Angeles-County-Probation-Department-Pepper-Spray-Use-Skyrockets-Juvenile-Halls-502069662.html>; M. Stiles, “‘Unreliable’ data threatening reforms at L.A. County’s juvenile detention centers”, Los Angeles Times (Mar. 16, 2019), available at <https://www.latimes.com/local/lanow/la-me-county-juvenile-detention-pepper-spray-20190316-story.html>; LA County Juvenile Detention – Assaults on Staff Data, available at <https://www.documentcloud.org/documents/5750493-Raw-Statistics-Assaults-on-Staff-2015-2017-Halls.html> (obtained by the Los Angeles Times under the California Public Records Act); L.A. County Probation Data, available at <https://probation.lacounty.gov/data/> (showing 2017-2018 Hope Center Data, Institutions Statistical Report, and 2018 4th Quarter Juvenile Facilities Data).

Given that such data has been compiled, ACLU SoCal demands that LACPD immediately produce all aggregate data and underlying data responsive to the Requests. See Room Confinement Request, §§ 3(a)(i-ii) and 3(b)(i-ii); Chemical Agent Request, §§ 3(a)(i).

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.


agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

May 22, 2019

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Thank you for your time and attention to this matter.

Respectfully submitted,


Minna L. Naranjo

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

Gurinder S. Grewal

Associate

+1.415.442.1206

gurinder.grewal@morganlewis.com

May 22, 2019

VIA FEDEX AND EMAIL

Marcia Parsons

Monterey County Probation Department

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parsonsm@co.monterey.ca.us

**Re: Monterey County Probation Department - Public Records Act Requests
Dated March 29, 2018 and May 9, 2018**

To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Monterey County Probation Department ("MCPD") for records related to room confinement dated March 29, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue MCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review MCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding MCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and MCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to MCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

As you may be aware, in a report published on May 22, 2019 by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Monterey County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the



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heightened public interest in MCPD's treatment of youths in detention to underscore our interest in MCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. *See, e.g., ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On May 10, 2018, MCPD objected to portions of the Room Confinement Request "pursuant to Welfare and Institutions Code section 827[,] "HIPAA (45 CFR)[,]" "attorney client privilege, attorney work product privilege, and the Deliberative Process Privilege." On May 31, 2018, MCPD raised similar objections to the Chemical Agent Request under Welfare and Institutions Code ("WIC") section 827.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf. Inst. Code. § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent MCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. *See American Civil Liberties Union Foundations of California, Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention 19 et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino,

Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that MCPD now seeks to keep secret. *Id.*

Further, to the extent MCPD is withholding the disclosure of certain information or documents based on a “personal privacy” objection, ACLU SoCal again reiterates that its original request required that all “individual identifying information (names) be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent MCPD is redacting or withholding records based on copyright, attorney-client, work product, official information or deliberative process privileges, or any other privilege, ACLU SoCal demands that MCPD provide a privilege log identifying all withheld documents and the basis for the privilege.

Lastly, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for the redaction of personal data and information to preserve personal and confidential information.

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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For these reasons, ACLU SoCal demands that MCPD immediately produce withheld data responsive to the Requests and produce a privilege log specifically identifying each piece of withheld data.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Gurinder S. Grewal', is positioned above the printed name.

Gurinder S. Grewal

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

Homaira Hosseini
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May 22, 2019

VIA FEDEX AND EMAIL

Brett D. Holt
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VIA FEDEX AND EMAIL

Marshall Hopper, Chief Probation Officer
Placer County Probation Department
2929 Richardson Drive, Ste. B
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**Re: Placer County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018.**



Dear Mr. Holt and Mr. Hopper:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Placer County Probation Department ("PCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue PCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review PCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding PCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and PCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to PCPD's use of

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chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Placer County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in PCPD's treatment of youths in detention to underscore our interest in PCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 25, 2018, PCPD responded to the Room Confinement Request with some exceptions noting that it did not track selective data responsive to Sections 3(a/b)(ii-iii), 3(a)(v-xii), 3(a/b)(xi-vi), 3(a/b)(xiii) and 3(a/b)(xiv) of the Room Confinement Request. Specifically, PCPD asserts that it does not track data with regard to the:

- description of the incident;
- programming offered during room confinement;
- demographics of the staff involved in the incident; and
- total number of hours past 2, except to say All Dayroom.

In accordance with PCPD's Separation Policies, Procedures, and Operations Section II (A)(1)(a), separations that exceed 15 minutes require an Institutional Incident Report, which "must be completed by the officer detailing the circumstances and facts of the incident, as well as one or more of the conditions that necessitated temporary room time." Section II (A)(1)(b) also requires the "time in/out" information to be collected. Given these procedures, which require PCPD to track data responsive to the description of the incident and total number of hours, please confirm that PCPD does not have another source of tracking such data. Also, please confirm that PCPD's document production is now complete with regard to the Room Confinement Request, and that PCPD is not withholding any responsive documents.

To date, ACLU SoCal has not received any response, documents, data, or material responsive to the Chemical Agent Requests. ACLU SoCal demands that PCPD immediately produce withheld documents, data, or materials responsive to the Chemical Agent Request, or provide a valid objection, to the extent PCPD is withholding documents.

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We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, reading "Homaira Hosseini". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Homaira Hosseini

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

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May 22, 2019

VIA FIRST CLASS MAIL AND EMAIL

Mark A. Hake
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VIA FEDEX AND EMAIL

Kevin Slusarski
Public Information Officer
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**Re: Riverside County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**



To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Riverside County Probation Department ("RCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue RCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review RCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding RCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and RCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to RCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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May 22, 2019

Page 2

As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Riverside County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in RCPD's treatment of youths in detention to underscore our interest in RCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 10, 2018, RCPD responded to the Room Confinement Request indicating the County needed additional time to respond and represented that the County would contact the ACLU SoCal "on or before Friday, July 13 with an update as to whether [RCPD would] need additional time. Further, on May 18, 2018, RCPD responded to the Chemical Agent Requests and indicated the County needed until November 18, 2018 to respond to the Request because "[g]athering and reviewing these records will involve the same people who are already working on the room confinement PRA." To date, ACLU SoCal has not received any documents, data, or material responsive to either of the Requests.

Given that over six months has passed since RCPD's anticipated completion date, ACLU SoCal demands that RCPD immediately produce any documents, data, or materials responsive to these Requests. We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,



Rishi P. Satia

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

Lee Seale
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VIA FEDEX AND EMAIL

Rick Heyer
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County of Sacramento
700 H St Ste 2650
Sacramento, CA 95814
heyerr@sacounty.net

**Re: Sacramento County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018.**



Dear Mr. Seale and Mr. Heyer:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Sacramento County Probation Department ("SCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue SCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review SCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding SCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and SCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks

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documents regarding data, policies, procedures, and training documents related to SCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Sacramento County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in SCPD's treatment of youths in detention to underscore our interest in SCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 27, 2018, SCPD responded to Section 3(a) of the Room Confinement Request by noting that the juvenile records sought are "exempt under Welfare and Institutions Code (WIC) section 827 and Government Code section 6254(k)." On May 18, 2018, SCPD responded that "Probation does not have data associated with" information for Request 3 of the Room Confinement Request.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf & Inst. Code § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. & Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent SCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC

827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention 19 et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that SCPD now seeks to keep secret. *Id.*

ACLU SoCal reiterates that its original request required that all “individual identifying information (names) [should be] be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent SCPD is withholding production of records in certain personnel files, based on Government Code section 6254, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for the redaction of

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

(b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....

(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any

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personal data and information in certain personnel files to preserve personal and confidential information.

ACLU SoCal demands that SCPD immediately produce any data SCPD has unlawfully withheld pursuant to WIC 827 and any documents or data withheld pursuant to Government Code section 6254 or 6255.

To date, ACLU SoCal has not received any response to the Chemical Agent Requests. ACLU SoCal notes, however, that the Sacramento County Probation Department's Youth Detention Facility Policy and Procedure on Use of Force allows for the use of "Chemical Restraints (OC)" for "subduing imminent or actual violent behavior where such behavior presents a clear danger to any person" and requires certain documentation procedures when OC is deployed. See Sacramento County Youth Detention Facility Policy and Procedure, Use of Force, Title XV Section 1357 (E), (G). ACLU SoCal demands that SCPD immediately produce any such documents, data, or materials responsive to the Chemical Agent Request.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, reading "Homaira Hosseini", with a stylized flourish at the end.

Homaira Hosseini

cc: Ian Kysel, ACLU Foundation of Southern California

documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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May 22, 2019

VIA FEDEX AND EMAIL

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Hollister, CA 95023
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**Re: San Benito County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**



To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the San Benito County Probation Department ("SBCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue SBCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review SBCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding SBCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and SBCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to SBCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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As you may be aware, in a report published on May 22, 2019 by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, San Benito County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in SBCPD's treatment of youths in detention to underscore our interest in SBCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 26, 2018, SBCPD objected to portions of the Room Confinement Request contending that "the information you are requesting is specifically exempt under California Welfare and Institutions Code [WIC] section 827, and Government Code sections 6254(f)&(k) and 6255." SBCPD also raised a litany of general objections "assert[ing] any and all applicable exemptions and privileges including, but not limited to ... the attorney-client privilege ... attorney work product ... [and] all documents otherwise privileged or provided in confidence to the County." On June 4, 2018, SBCPD raised similar objections to the Chemical Agent Request.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf. Inst. Code. § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent SBCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* 19 *et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that SBCPD now seeks to keep secret. *Id.*

Further, to the extent SBCPD is withholding the disclosure of certain information or documents based on a “personal privacy” objection, ACLU SoCal again reiterates that its original request required that all “individual identifying information (names) be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent SBCPD is redacting or withholding records based on copyrights, attorney-client, work product, official information or deliberative process privileges, or any other privilege, ACLU SoCal demands that SBCPD provide a privilege log identifying all withheld documents and the basis for the privilege.

Lastly, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and

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new law further and explicitly allows for the redaction of personal data and information to preserve personal and confidential information.

For these reasons, ACLU SoCal demands that SBCPD immediately produce withheld data responsive to the Requests and produce a privilege log specifically identifying each piece of withheld data.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,



Gurinder S. Grewal

cc: Ian Kysel, ACLU Foundation of Southern California

agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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May 22, 2019

VIA FEDEX AND EMAIL

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San Diego County Probation Department

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Dana B. Maier

County of San Diego Office of County Counsel

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**Re: San Diego County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**

To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the San Diego County Probation Department ("SDCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue SDCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review SDCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding SDCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and SDCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to SDCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.



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As you may be aware, in a report published on May 22, 2019 by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Chemical Spray in California Juvenile Detention*, San Diego County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019) [<https://www.aclusocal.org/toxictreatment>]. We note the heightened public interest in SDCPD's treatment of youths in detention to underscore our interest in SDCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On May 4, 2018, SDCPD objected to portions of the Room Confinement Request because "this information is exempt under Welfare and Institutions Code section 827." SDCPD also stated that certain "records are exempt for one or more of the following reasons...Government Code section 6254(a)...[t]he deliberative process privilege...official information [privilege]...attorney-client privilege...[and] attorney work product...." On June 15, 2018, SDCPD raised similar objections to the Chemical Agent Request. As a result, SDCPD failed to produce information on the discipline of staff involved in incidents with the juveniles. SDCPD also failed to produce records related to the number and volume of tear gas weapons it has purchased.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf. Inst. Code. § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent SDCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to incidents included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced. Second, individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to incident reports or documents maintained in a detention facility, do not fall within the parameters of WIC 827, and thus must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. *See American Civil Liberties Union Foundations of California, Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention 19 et seq.* (May 22, 2019) [<https://www.aclusocal.org/toxictreatment>].

Further, to the extent SDCPD is withholding the disclosure of certain information or documents based on a "personal privacy" objection, ACLU SoCal again reiterates that its original request required that all "individual identifying information (names) be replaced with unique identifiers." *See Room Confinement Request*, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); *Chemical Agent Request*, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. *See, e.g., Govt. Code. 6253(a); ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent SDCPD is redacting or withholding records based on copyrights, attorney-client, work product, official information or deliberative process privileges, or any other privilege, ACLU SoCal demands that SDCPD provide a privilege log identifying all withheld documents and the basis for the privilege.

Lastly, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. *See Senate Bill 1421*.¹ This

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance

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Page 4

new law further and explicitly allows for the redaction of personal data and information to preserve personal and confidential information.

For these reasons, ACLU SoCal demands that SDCPD immediately produce withheld data responsive to the Requests and produce a privilege log specifically identifying each piece of withheld data.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,



Gurinder S. Grewal

cc: Ian Kysel, ACLU Foundation of Southern California

process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

Tanja Heitman
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**Re: Santa Barbara County Probation Department – Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**

To Whom It May Concern:



I represent the American Civil Liberties Union of Southern California (“ACLU SoCal”) in the above-referenced matter and write to follow up on its request to the Santa Barbara County Probation Department (“SBCPD”) for records related to room confinement dated April 2, 2018 (“Room Confinement Request”) and its request for records related to chemical agents dated May 9, 2018 (“Chemical Agent Request”) (collectively “Requests”). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal’s right to pursue SBCPD’s full compliance with the Public Records Act (“PRA”) in relation to the Requests. ACLU SoCal continues to review SBCPD’s record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding SBCPD’s policies, procedures, and training materials governing the use of force, data on use of room confinement, and SBCPD’s implementation of California’s new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to SBCPD’s use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Santa Barbara County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May

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The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. *See, e.g., ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 26, 2018, SBCPD responded to the Room Confinement Request with logs that admittedly "do not reflect many of the data elements that are included in the request." On June 1, 2018, SBCPD responded to Section 3 of the Chemical Agent Request based on exemptions under Government Code §§ 6254 and 6255 and the confidentiality requirements under Welfare & Institutions Code (WIC) § 827.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf & Inst. Code § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. & Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent SBCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. *See*

American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>.

ACLU SoCal also reiterates that its original request required that all “individual identifying information (names) [should] be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent SBCPD is withholding production of records in certain personnel files, based on Government Code section 6254 or 6255, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for the redaction of personal data and information in certain personnel files to preserve personal and confidential information.

ACLU SoCal demands that SBCPD immediately produce any data SBCPD has unlawfully withheld pursuant to WIC 827 and any documents or data withheld pursuant to Government Code section 6254 or 6255.

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action

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We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "Rishi Satia" with a stylized flourish at the end.

Rishi P. Satia

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

Gurinder S. Grewal

Associate

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May 22, 2019

VIA FEDEX AND EMAIL

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David Koch

Sonoma County Probation Department

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Santa Rosa, CA 95403

david.koch@sonoma-county.org

**Re: Sonoma County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**

To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Sonoma County Probation Department ("SCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue SCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review SCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding SCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and SCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to SCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.



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As you may be aware, in a report published on May 22, 2019 by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Sonoma County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in SCPD's treatment of youths in detention to underscore our interest in SCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 11, 2018, SCPD raised a litany of general objections to the Room Confinement Request,

"[T]o the extent it seeks records that are confidential, privileged and/or otherwise exempt from public disclosure based on, but not limited to, the following: the records are preliminary drafts, notes, or memoranda that are not retained in the ordinary course of business and the public interest in withholding those records clearly outweighs the public interest in disclosure; the records pertain to pending litigation; the records contain private, personnel, medical, or similar information, the disclosure of which would constitute an unwarranted invasion of privacy; the records are complaints or records of investigations or investigatory files; the records contain intelligence information or security procedures; the records contain attorney-client communications and/or contain attorney work product; the records pertain to closed sessions regarding pending litigation; the records contain official information; the records contain probation file and/or youth information, the disclosure of which is prohibited pursuant to federal or state law; the records contain deliberative process; and/or the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the record."

On May 16, 2018, SCPD raised similar objections to the Chemical Agent Request.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf. Inst. Code. § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent SCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* 19 et seq. (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>.

Further, to the extent SCPD is withholding the disclosure of certain information or documents based on a "personal privacy" objection, ACLU SoCal again reiterates that its original request required that all "individual identifying information (names) be replaced with unique identifiers." See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent SCPD is redacting or withholding records based on copyrights, attorney-client, work product, official information or deliberative process privileges, or any other privilege, ACLU SoCal demands that SCPD provide a privilege log identifying all withheld documents and the basis for the privilege.

Lastly, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

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new law further and explicitly allows for the redaction of personal data and information to preserve personal and confidential information.

For these reasons, ACLU SoCal demands that SCPD immediately produce withheld data responsive to the Requests and produce a privilege log specifically identifying each piece of withheld data.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,



Gurinder S. Grewal

cc: Ian Kysel, ACLU Foundation of Southern California

(ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....

(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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May 22, 2019

VIA FIRST CLASS MAIL AND EMAIL

Tim Rogers, Chief Probation Officer
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VIA FEDEX AND EMAIL

Sophia R. Meyer
Prentice Long & Epperson
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Sophia@plelawfirm.com

**Re: Trinity County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**



To Whom It May Concern:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Trinity County Probation Department ("TCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue TCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review TCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding TCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and TCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to TCPD's use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Trinity County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in TCPD's treatment of youths in detention to underscore our interest in TCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 25, 2018, TCPD responded to Section 3 of the Room Confinement Request that "the information you are requesting is specifically exempt under Welfare and Institutions Code (WIC) section 827" and that "data requested...may also be covered by Government Code section 6254(a)(f)(k)(p) and Government Code section 6255." On June 4, 2018, TCPD objected to Section 3 of the Chemical Agent Request based on WIC 827 and 831.

WIC 827 provides that a "juvenile case file" shall be confidential and only inspected by/disclosed to a number of specified individuals or persons as ordered by the juvenile court. Welf & Inst. Code § 827. By law, "juvenile case file" means "a petition filed in any juvenile court proceeding, reports of the probation officers, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." Welf. & Inst. Code. § 827. For information that falls outside of the case file, however, disclosure is thus the rule and secrecy the exception.

To the extent TCPD is withholding production of documents based on WIC 827, first, the fact that aggregate data might reveal individualized incidents of room confinement or use of chemical agents, such as but not limited to that included in logs maintained in a unit within a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing aggregate data (redacted to preserve anonymity) must be produced. Second, the fact that individual data or reports revealing incidents of room confinement or use of chemical agents, such as but not limited to that included in incident reports or other similar documents maintained in a detention facility, does not per se place such records within the parameters of WIC 827, and thus responsive records containing individual data (redacted to preserve anonymity) must be produced.

One compelling indication that efforts to use WIC 827 to keep the extent of the use of room confinement or of chemical agents against youths in detention secret is that 26 California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* 19 et seq. (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that TCPD now seeks to keep secret. *Id.*

ACLU SoCal also reiterates that its original request required that all “individual identifying information (names) [should] be replaced with unique identifiers.” See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent TCPD is withholding production of records in certain personnel files, based on Government Code section 6254 or 6255, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for the redaction of personal data and information in certain personnel files to preserve personal and

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:

- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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confidential information. The document entitled "Policy 601: Records Maintenance and Release", which you provided on June 4, 2018, is thus outdated.

ACLU SoCal demands that TCPD immediately produce any data TCPD has unlawfully withheld pursuant to WIC 827 and any documents or data withheld pursuant to Government Code section 6254 or 6255.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

Thank you for your time and attention to this matter.

Respectfully submitted,


Minna L. Naranjo

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

Homaira Hosseini
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May 22, 2019

VIA FEDEX AND EMAIL

Mark Varela
Chief Probation Officer
Ventura County Probation Department
800 South Victoria Avenue
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mark.varela@ventura.org

VIA FEDEX

Joseph Moore
Division Manager, Administrative Services
Ventura County Probation Department
800 South Victoria Avenue
Ventura, CA 93009

**Re: Ventura County Probation Department - Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**



Dear Mr. Varela and Mr. Moore:

I represent the American Civil Liberties Union of Southern California ("ACLU SoCal") in the above-referenced matter and write to follow up on its request to the Ventura County Probation Department ("VCPD") for records related to room confinement dated April 2, 2018 ("Room Confinement Request") and its request for records related to chemical agents dated May 9, 2018 ("Chemical Agent Request") (collectively "Requests"). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal's right to pursue VCPD's full compliance with the Public Records Act ("PRA") in relation to the Requests. ACLU SoCal continues to review VCPD's record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding VCPD's policies, procedures, and training materials governing the use of force, data on use of room confinement, and VCPD's implementation of California's new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to VCPD's use of

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chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Ventura County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in VCPD's treatment of youths in detention to underscore our interest in VCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

On April 12, 2018, VCPD responded to the Room Confinement Request indicating the County needed "at least an additional 50 days to complete any response" and represented that the County would contact the ACLU SoCal "in the coming weeks." To date, ACLU SoCal has not received any documents, data, or materials in response to the Room Confinement Request or Chemical Agent Requests. ACLU SoCal demands that VCPD immediately produce withheld documents, data, or materials responsive to the Requests, or provide a valid objection, to the extent VCPD is withholding documents.

ACLU SoCal has limited funds to reimburse your agency for the direct costs of copying these records or postage and requests that you reconsider your intent to charge fees or costs for production of the documents, as the ACLU SoCal is requesting these documents in order to further the public interest. *N. Cty. Parents Org. v. Dept of Educ.*, 23 Cal. App. 4th 144, 28 Cal. Rptr. 2d 359 (1994).

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

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Thank you for your time and attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, reading "Homaira Hosseini". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Homaira Hosseini

cc: Ian Kysel, ACLU Foundation of Southern California

Morgan Lewis

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May 22, 2019

VIA FEDEX AND EMAIL

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Carrie Scarlata
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**Re: Yolo County Probation Department – Public Records Act Requests
Dated April 2, 2018 and May 9, 2018**



Dear Mr. Fruchtenicht:

I represent the American Civil Liberties Union of Southern California (“ACLU SoCal”) in the above-referenced matter and write to follow up on its request to the Yolo County Probation Department (“YCPD”) for records related to room confinement dated April 2, 2018 (“Room Confinement Request”) and its request for records related to chemical agents dated May 9, 2018 (“Chemical Agent Request”) (collectively “Requests”). The focus on certain deficiencies within this letter should not be construed as a waiver of ACLU SoCal’s right to pursue YCPD’s full compliance with the Public Records Act (“PRA”) in relation to the Requests. ACLU SoCal continues to review YCPD’s record production and reserves all rights to compel production of any improperly withheld records through legal action.

As you are aware, the Room Confinement Request seeks documents regarding YCPD’s policies, procedures, and training materials governing the use of force, data on use of room confinement, and YCPD’s implementation of California’s new law, Senate Bill 1143, which forbids the use of solitary confinement on youths detained in juvenile facilities. The Chemical Agent Request seeks documents regarding data, policies, procedures, and training documents related to YCPD’s use of chemical agents (e.g., tear gas weapons such as aerosolized *oleoresin capsicum*) on detained youths.

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As you may be aware, in a report published by the ACLU Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention*, Yolo County was categorized as one of 39 counties in California in which youth are at risk of the use of tear gas weapons such as aerosolized *oleoresin capsicum*. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. We note the heightened public interest in YCPD's treatment of youths in detention to underscore our interest in YCPD's compliance with its legal obligations to respond to ACLU SoCal's Requests.

The California Supreme Court has repeatedly made clear that the California Constitution (as amended in 2004 by Proposition 59) and the PRA establish that (a) access to information concerning the conduct of the people's business is a fundamental and necessary right, (b) this right extends to every public record unless the Legislature has expressly provided to the contrary, (c) any limitation on the right to access must be narrowly construed, and (d) the fact that part of a responsive document falls within an applicable exception to this obligation of disclosure does not justify withholding the entire document. See, e.g., *ACLU of Southern California v. Super. Ct. of LA Cty*, 3 Cal. 5th 1032, 1038-39 (2017); *LA Bd. of Supervisors et. al. v. Super. Ct. & ACLU of Southern California*, 2 Cal. 5th 282, 291 (2016).

YCPD responded to the entirety of Section 3(a) of the Room Confinement Request by noting that "No responsive document or report exist." This specifically indicates that YCPD maintains no aggregate records regarding the use of force involving room confinement. YCPD further responded to Section 3(b)(xiv), which requests "[a]ny and all incident reports or other reports related to room confinement", by objecting that "such records are exempt from disclosure" pursuant to Gov. Code § 6254. To date, ACLU SoCal has not received any response or data responsive to the Chemical Agent Request.

Twenty-six California counties and the state prison agency's Division of Juvenile Justice produced voluminous amounts of data in response to a comparable version of the Chemical Agent Request served on them in May 2018. See American Civil Liberties Union Foundations of California, *Toxic Treatment: The Abuse of Tear Gas Weapons in California Juvenile Detention 19 et seq.* (May 22, 2019), available at <https://www.aclusocal.org/toxictreatment>. More significantly, Contra Costa, Madera, Mendocino, Merced, Orange, San Diego, San Luis Obispo, Santa Barbara, Sonoma, Siskiyou, Tulare and Yuba Counties provided redacted individual incident reports showing important details about use of force involving chemical agents – precisely the kind of information that YCPD now seeks to keep secret with respect to the Room Confinement Request. *Id.*

ACLU SoCal reiterates that its original request required that all "individual identifying information (names) [should] be replaced with unique identifiers." See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv); Chemical Agent Request, §§ 3(a)(ii-ix). Such instruction eliminates any personal privacy concerns and comports with the statutory obligation to disclose all reasonably segregable portions of records subject to disclosure. See, e.g., Govt. Code. 6253(a); *ACLU Foundation v. Deukmejian* 32 Cal.3d 440, 458 (1982).

To the extent YCPD is withholding production of records in certain personnel files, based on Government Code section 6254, as you may know, as of January 1, 2019, the California Legislature mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421.¹ This new law further and explicitly allows for the redaction of personal data and information in certain personnel files to preserve personal and confidential information.

ACLU SoCal reiterates that its original request required that all "individual identifying information (names) [should be] be replaced with unique identifiers." See Room Confinement Request, §§ 3(a)(iii-xiv) and 3(b)(iii-xiv). Such instruction eliminates any personal privacy concerns. To the extent YCPD is withholding production of documents based on Government Code section 6254, as you may know, as of January 1, 2019, California mandated that certain records relating to specified incidents in which the use of force by custodial officers resulted in bodily injury are to be made publicly available pursuant to the California Public Records Act. See Senate Bill 1421. This new law allows for the redaction of personal data and information to preserve personal and confidential information.

ACLU SoCal demands that YCPD immediately produce any data YCPD has unlawfully withheld pursuant to Government Code section 6254.

We are happy to meet and confer telephonically to address questions or concerns you may have in order to ensure that the public can be informed about these matters urgently and without the need for any further adversarial action.

¹ Senate Bill 1421 amended Section 832.7 of the Penal Code to read as follows:


- (b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):
 - (A) A record relating to the report, investigation, or findings of any of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury....
- (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

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Thank you for your time and attention to this matter.

Respectfully submitted,



Minna L. Naranjo

cc: Ian Kysel, ACLU Foundation of Southern California