

EXHIBIT A

April 3, 2016

William E. Bordley
FOIA/PA Officer
United States Marshals Service
Office of General Counsel
FOI/PA, CS4, 10th Floor
2604 Jefferson Davis Hwy
Alexandria, VA 22301

**Re: REQUEST UNDER FREEDOM OF INFORMATION ACT/
Expedited Processing Request**

To Whom It May Concern:

This letter is a request (“Request”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I, Seth Freed Wessler, a reporter, submit the request.

The Request seeks information about the actions of the United States Marshals Service (USMS) with respect to detention, contracting, Intergovernmental Agreements, monitoring, oversight, compliance and quality assurance programs as well as with regard to the safety and wellbeing of USMS detainees.

As of 2015, the USMS detained an average of over 52,000 people daily.¹ The majority of these detainees are held in private facilities or state and local jails that operate under agreements and/or contract with the USMS.² Because these facilities are run by a number of different operators, both private and public, they often function under varying rules. The work of the USMS has expanded at a rapid rate in recent decades. The prosecution of immigration-related crimes, and especially, zero-tolerance immigration enforcement policies, has been an especially potent driver of the growth of USMS detainee populations.

¹ “Defendant and Prisoner Custody and Detention.”
<http://www.usmarshals.gov/prisoner/detention.htm>

² “Defendant and Prisoner Custody and Detention.”
<http://www.usmarshals.gov/prisoner/detention.htm>

In late 2012, the USMS and the Office of the Federal Detention Trustee (OFDT) merged. Before the merger, government reports, including a January 2013 audit by the U.S. Department of Justice's Inspector General, found vast discrepancies between the USMS and the OFDT in their approaches to oversight and expectations of detention facility performance.³ The audit found that neither the USMS nor the OFDT were meeting their own internal goals for the number of detention facilities reviewed. The USMS disagreed with the OFDT's plans to expand quality review inspections to some small local facilities. Separate USMS and OFDT's reviews of the same facilities often gleaned inconsistent results. The OIG report recommended that the Office of the Deputy Attorney General should exert more effect oversight of USMS detention.

The merger of these two previously conflicting entities now raises questions about what standards are currently applied to detention operation and how USMS detention facilities are monitored. While the merger of the USMS and OFDT was intended to address some of the issues identified in the OIG report and other reviews, little is known about the current structure or effectiveness of USMS detention monitoring and oversight, or about facility operations, conditions of confinement, and levels of services in USMS contract and IGA facilities.

In order to shed light on these issues of great public interest, I here seek information about detainees in USMS custody, and in particular, about deaths, injuries, suicide attempts, disturbances and unrest in facilities used to hold USMS detainees. I also seek information about the USMS monitoring and oversight of these facilities, as well as the provision of medical and mental health care inside the facilities.

Unless otherwise noted in each of the following items, I request all information from January 1, 2010 through the time of processing this request. And unless otherwise noted, I request information pertaining to all facilities that hold USMS detainees including but not limited to Bureau of Prisons facilities; Immigration and Customs Enforcement facilities; private facilities; state and local facilities and any other facilities.

I. Requested Records

- 1) All facilities where USMS detainees are held and have been held, broken down by year, provided in a list or other form. For each facility, I seek the following information:
 - a. daily population, if possible, as an average, for each month since Jan 1, 2010.
 - b. total number of people held in each facility over the course of each year from 2010 to 2016;

³ "Audit of the U.S. Department of Justice's oversight of non-federal detention facility inspections." January 2013. <https://oig.justice.gov/reports/2013/a1306.pdf>

- c. name of the operator (private company name, state or local government, government agency, etc.), including prior operators if management has changed, for each year;
 - d. length of detention for detainees held in each facility, if possible, as an average, including average total length of detention AND average length of detention in the particular facility), if possible, as an average;
 - e. charge categories (e.g., immigration) and offense types (e.g., “illegal reentry”) of detainees, and length of detention broken down by each charge category, if possible, as an average;
 - f. number of people in each facility by time held including people held for 4 days or less, for more than 4 days, for more than 1 month, more than 6 months and more than 1 year, or broken down by similar time period categories;
 - g. per diem paid by USMS, or otherwise, to detain each inmate in facility;
 - h. security level of facility;
 - i. gender breakdown of detainees;
 - j. age of detainees held in each year, including people under the age of 18, between 18-25, 26-35, 36-45, 46-55, 56-65, older than 65, or broken down by other similar age ranges;
 - k. identity of arresting/detaining agencies for detainees, broken down by agency and number of corresponding detainees;
 - l. amount of time each facility is authorized to hold detainees;
 - m. type of operating agreement between USMS (including but not limited to IGA, contact, MOU);
 - n. all task orders or agreements with other federal agencies including Immigration and Customs Enforcement and the Bureau of Prisons; and
 - o. number of detainees who required medical reimbursement payments each year for each facility, reimbursement amount for detainee medical care paid to each facility as an annual aggregate, and average reimbursement amount per detainee.
- 2) For each year, broken down by region, if possible provided as averages:
- a. daily population;
 - b. time in detention, broken down by offense charged, charging agency, arresting agency, region and facility;
 - c. number of people booked by USMS;
 - d. per diem per person rate; and
 - e. time held in detention.
- 3) All records including but not limited to reports, memos, documents, lists, investigative files, letters and emails, pertaining to the monitoring, oversight and other review of all facilities where USMS detainees are held. These include but are not limited to:
- a. all facility review and inspection reports, with supporting documents;
 - b. all Quality Assurance Review reports and all other monitoring and/or oversight reports/reviews, with supporting documents;

- c. all USM-218 and USM-218a reports and filings, or their equivalent if the form name has changed, including all Detention Facility Investigative Reports and Limited Use Inspection Certifications, with supporting documents;
 - d. all records of deficiencies, including significant findings, notices of concern and any other findings of problems, with supporting documents;
 - e. all reports by subject matter experts about the performance of facilities used to hold USMS detainees, with supporting documents;
 - f. all notices of concern or letters of concern issued by USMS, with supporting documents;
 - g. all internal quality assessments or reviews from or about private facility contractors submitted to the USMS;
 - h. all state and local government inspection reports and other monitoring regarding the operation and performance of facilities used to hold Marshals detainees that were submitted to USMS, including to USMS district offices;
 - i. any other reviews, monitoring information/reports from USMS or other federal agencies regarding performance and compliance by facilities that hold USMS detainees; and
 - j. All materials that explain the structure and operation of monitoring and oversight by the USMS of private facilities, and state and local facilities.
- 4) All Cure Notices related to private facilities or state and local facilities, with supporting documents.
- 5) All responses, objections and appeals by private facility operators and state and local facility operators to the findings in USMS, OFDT or other government (whether federal, state or local) monitoring reports and inspection findings.
- 6) All reports, papers, documents, correspondence, lists, and any other records of corrective actions, modifications, recommendations, and/or remediation, including penalties, fines, fee deduction and other consequences associates with deficiencies, cure notices, inspection reports or any other problems associated with all facilities used to hold US Marshals detainees, identified during monitoring.
- 7) Current version of the Federal Performance Based Detention Standards and all revisions to the standards since Jan 1, 2010, including all revised language.
- 8) All records of standards, rules, program statements, guidelines and all other policies that state and local facilities, private facilities and other facilities that hold USMS detainees are required to follow, broken down by type of facility. This includes but is not limited to a copy of the USMS Conditions of Confinement Training and related materials, including presentations, slides and manuals.
- 9) For each facility, the total number of suicide attempts, by year.

- 10) All after-action or critical incident reports or investigations performed by the USMS, private companies, or state and local authorities about disturbances, deaths, violence or any other major incidents in USMS facilities, private facilities or state or local facilities.
- 11) All notifications by facility operators to the USMS/Federal Government (excluding attorney-client privileged communications) of any activity, event, incident or other occurrence regarding the possibility of litigation.
- 12) All notifications from facility operators about the death, injury or assault of a federal detainee.
- 13) All medical reimbursements paid by the USMS to private facility operators, state and local facility operators or other operators of facilities that hold USMS inmates.
- 14) All internal USMS correspondence (electronic or written) and USMS correspondence with and between the Bureau of Prisons, Willacy County, Texas (and subsidiary county entities), Management and Training Corporation, members of Congress, the White House, local elected officials and other companies or entities since February 1, 2015 related to the USMS contract with MTC and the riot on February 20, 2015.
- 15) All contracts, contracting documents, contract agreements and contract solicitations pertaining to the Willacy County Regional Detention Center including USMS agreements with Willacy County, Management and Training Corporation and other entities.
- 16) The following information, broken down by facility and year, of each person who has died while a USMS detainee (this includes all people under USMS custody including people held in USMS facilities, Bureau of Prisons facilities, private facilities, state and local facilities and any other facilities that hold USMS detainees) since Jan 1, 1998 including:
 - a. full name;
 - b. date of death;
 - c. date of birth;
 - d. location of death;
 - e. gender;
 - f. country of origin;
 - g. total time spent in USMS custody and amount of time in each facility where held;
 - h. citizenship status;
 - i. charge;
 - j. prosecuting/charging agency;
 - k. arresting agency; and

1. detailed cause of death.

- 17) For each person in item #16, since Jan 1, 2010, all records pertaining to medical or mental health care that they received while in USMS custody and all records pertaining to their death/cause of death. This includes the inmate's full medical file including but not limited to:
- a. all medical records from the detention facility and previous detention facilities, hospitals or other facilities where care was provided;
 - b. all medical and mental health intake forms and notes;
 - c. all doctor, nurse and other medical notes, forms, and logs;
 - d. all autopsy/medical examiner/coroner reports;
 - e. investigative reports, after action reviews/reports or critical incident reports, including mortality reviews;
 - f. correspondence with relatives, other federal agencies, contractors or local governments/administrations, consulates/foreign governments/courts;
 - g. internal medical system tracking and documentation system reports, notes, summaries and timelines including but not limited to records in the Electronic Prisoner Medical Request system;
 - h. lab reports, lab orders, and medication orders; and
 - i. all other medical and mental health related information.
- 18) For each person in item #16, since Jan 1, 2010, all grievances, complaints, requests and other documents generated by the individual or their advocates, attorneys, relatives or other party related to issues including but not limited to their confinement or health.
- 19)

II. Application for Expedited Processing

III.

I hereby request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); and 28 C.F.R. § 16.5(d). Expedited processing of this request is required because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" exists because the information I seek is urgently needed in my function as a journalist "primarily engaged in disseminating information" in order to "inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(d)(1)(ii). As a journalist, dissemination of information to the public is the central and primary purpose of my work.

Specifically, I write and have written and reported for outlets including The Nation, NBC News, ProPublica, The Center for Investigative Reporting, This American Life, Al Jazeera and Elle Magazine. I am a Senior Fellow at the Schuster Institute for Investigative Journalism of Brandeis University. I have received recognition for the quality their reporting, including a Hillman Prize for web journalism, Ippie Awards from the New York Community Media Alliance for excellence in ethnic and community journalism, a Reporting Award from New York University, honorable mention for a Casey Medal, and a 2014 Soros Media Justice Fellowship.

Further, the requested records are directly related to an issue of pressing and current public interest that concerns actual or alleged Federal Government activity. 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(d)(1)(ii). Specifically, there is an urgent need for information on the detention of individuals on federal charges as the population comprises a large segment of the federal prison and detention population. And there is an urgent need for information on the USMS detention, which since 2013 has been through a series of internal adjustments and reforms intended to fix operational problems. Incarceration is now an issue of major public concern, with regular press coverage of changes in federal incarceration practices and standards, as well as of the practices of detaining and incarnating agencies. The USMS has also been a subject of growing attention by the public and the press.

III. Fee Waiver

I seek a waiver of search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest because “it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.11(k)(1).

I have a proven track-record of compiling and disseminating information to the public about government functions and activities and public policy issues.⁴

Access to the information sought in this Request is in the public interest in part because detention of any kind impacts not only the detained individuals but also the communities and families that the inmate comes from. The public also has an interest in knowing the details of the federal government’s use of private contract facilities and state and local jails to hold detainees. There is a significant public interest in detention and incarceration.⁵

I am also entitled to a waiver of search and review fees because I am “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii); 28 C.F.R. § 16.11(d). As described above, I am journalist and a Senior Fellow at the Schuster Institute for Investigative Journalism of Brandeis

⁴ “The True Story of a Texas Prison Riot,” The Nation. June 2015. <http://www.thenation.com/article/210449/true-story-texas-prison-riot>; “This man will almost certainly die,” The Nation, January 2016. <http://www.thenation.com/article/privatized-immigrant-prison-deaths/>; “Private Prison operator sued over death at immigrant facility” Reveal News, March 2016. <https://www.revealnews.org/author/seth-freed-wessler/>

⁵ Google Ngram Viewer, “Prison: 1985-2016,” Accessed: April 2016. https://books.google.com/ngrams/graph?content=Prison&year_start=1985&year_end=2016&corpus=15&smoothing=3&share=&direct_url=t1%3B%2CPrison%3B%2Cc0

University. In these functions, I am engaged in the dissemination of information to the public and am a “representative of the news media” within the meaning of FOIA. Under FOIA, “a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii).”

Accordingly, no search fees should be charged for this Request. 6 C.F.R. § 5.11(d)(1); 28 C.F.R. § 16.11(d)(1).

* * *

Pursuant to the FOIA statute and the applicable regulations, I expect a determination regarding expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(d)(4); 28 C.F.R. § 16.5(d)(4).

If the Request is denied in whole or in part, please justify all deletions by reference to specific exemptions to FOIA. All segregable portions of otherwise-exempt material should be released. I reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records by email in digital form, where possible in excel or CCS files and/or searchable PDFs, to:


sfwessler@gmail.com

Or by mail to:

Seth Wessler
591 Prospect Pl. A2
Brooklyn, NY
11238

I affirm and certify that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



Seth Wessler