

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

AMERICAN CIVIL LIBERTIES )  
UNION OF DELAWARE, )

Plaintiff, )

v. )

Civil Action No. )

STANLEY W. TAYLOR, JR., )  
in his official capacity as the )  
COMMISSIONER OF THE )  
DELAWARE DEPARTMENT )  
OF CORRECTION, )

Defendant. )

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**COMPLAINT UNDER DELAWARE FREEDOM OF INFORMATION ACT**

Plaintiff American Civil Liberties Union of Delaware, by its undersigned attorneys, for its Complaint against Defendant, alleges:

**NATURE OF ACTION**

1. This action seeks to compel compliance with the Delaware Freedom of Information Act, 29 Del. C. §§ 10001 *et seq.* Pursuant to the Act, Plaintiff requested that Defendant disclose certain public records pertaining to the provision of health care in Delaware prisons. Defendant has refused to provide the requested records. Defendant claims that the requested records are not public records subject to disclosure under the Act because they are “trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature.” *See* 29 Del. C. § 10002(g)(2).

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 10 Del. C. § 541 and venue is proper under 29 Del. C. § 10005(b).

## **PARTIES**

3. Plaintiff American Civil Liberties Union (ACLU) of Delaware is a non-profit public interest organization with its principal place of business in Wilmington, Delaware. Since its founding in 1961, the ACLU of Delaware has worked before the legislature and in the courts to advance the civil liberties of all Delawareans and to educate the public on a wide range of civil liberties issues. In particular, the ACLU of Delaware has engaged in advocacy and litigation on behalf of Delaware's inmate population.
4. Defendant Stanley W. Taylor, Jr. is the Commissioner of the Delaware Department of Correction. Defendant Taylor is sued in his official capacity.

## **FACTS**

5. The Delaware Freedom of Information Act (FOIA) declares: "It is vital in a democratic society that public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy; and further, it is vital that citizens have easy access to public records in order that the society remain free and democratic." 29 Del. C. § 10001.
6. The Delaware FOIA provides that "[a]ll public records shall be open to inspection and copying by any citizen of the State . . . ." 29 Del. C. § 10003(a).

7. By letter dated June 12, 2006, a copy of which is attached as **Exhibit 1**, the ACLU of Delaware, pursuant to the Delaware FOIA, requested that Defendant provide a copy of five categories of documents.
8. By letter dated June 27, 2006, a copy of which is attached as **Exhibit 2**, Defendant responded to the ACLU's FOIA request. In that letter, Defendant informed the ACLU that he had authorized disclosure of the first three categories of documents requested, but Defendant refused to produce any documents from the fourth and fifth categories of documents requested by the ACLU.
9. The fourth category of documents sought by the ACLU was treatment protocols for the following illnesses or conditions: HIV/AIDS, hepatitis, diabetes, heart disease, cancer, sexually transmitted diseases, pregnancy and gynecological care, high blood pressure, high cholesterol, dental care, and chronic pain. Defendant has not produced any such treatment protocols to the ACLU.
10. The fifth category of documents sought by the ACLU was operating procedures with respect to wellness visits, including routine gynecological care. Defendant has not produced any such operating procedures to the ACLU.
11. In the June 27, 2006 letter, Defendant also asserted that the requested treatment protocols and operating procedures "do not fit the definition of 'public record'" as used in the Delaware FOIA "because they are 'trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature.'" *See* 29 Del. C. § 10002(g)(2). In support of this assertion, Defendant stated only that "[t]he treatment protocols you have requested consist

entirely of Proprietary information held by the Department's contracted medical provider Correctional Medical Services, Inc. ("CMS")."

12. The only basis asserted by Defendant to justify its refusal to disclose the requested treatment protocols and operating procedures is Defendant's claim that the requested documents are exempt from disclosure under 29 Del. C. § 10002(g)(2).
13. Because the Delaware Department of Correction is a state agency, there is no administrative process by which the ACLU can appeal Defendant's decision. *See* 29 Del. C. § 10005(f); 29 Del. C. § 2540(2). Plaintiff ACLU of Delaware has no mechanism to enforce the Delaware FOIA other than by bringing suit.
14. All conditions precedent have been performed or have occurred.
15. Plaintiff ACLU of Delaware has a right to the records it seeks, and there is no legal basis for Defendant's refusal to provide them to Plaintiff.

#### **CLAIMS FOR RELIEF**

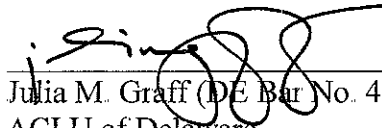
Plaintiff requests that this Court:

1. Declare that Defendant's failure to disclose the requested treatment protocols and operating procedures violates 29 Del. C. § 10003 and is unlawful;
2. Order Defendant to make the requested records available to Plaintiff;
3. Award Plaintiff its attorneys' fees and costs pursuant to 29 Del. C. § 10005(d); and
4. Grant all other appropriate relief.

Wilmington, Delaware

August 8, 2006

Respectfully submitted,

  
\_\_\_\_\_  
Julia M. Graff (DE Bar No. 4708)  
ACLU of Delaware  
100 W. 10th Street, Suite 309  
Wilmington, DE 19801  
Tel. (302) 654-5326, ext. 103  
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June 12, 2006

Mr Stanley W Taylor, Jr  
Commissioner  
Delaware Department of Correction  
245 McKee Road  
Dover, DE 19904

Re: **FOIA REQUEST**

Dear Commissioner Taylor:

This is a request under the Freedom of Information Act, 29 Del Code § 10001 et seq

I respectfully request a copy of the following:

- 1 The disciplinary rules whose violation would result in action against an inmate;
- 2 and the policies and procedures controlling disciplinary infractions, including Department of Correction policies and procedures and the Bureau of Prisons policies and procedures;
- 2 The prison grievance procedures for medical grievances as well as non-medical grievances;
- 3 Treatment protocols for the following illnesses or conditions:
  - a HIV/AIDS;
  - b Hepatitis;
  - c Diabetes;
  - d Heart Disease;
  - e Cancer;
  - f Sexually Transmitted Diseases;
  - g Pregnancy and Gynecological Care;
  - h High Blood Pressure;
  - i High Cholesterol;
  - j Dental Care;
  - k Chronic pain; and
- 4 Operating procedures with respect to wellness visits, including routine gynecological care

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*Executive Director*

To permit me to reach an intelligent and informed decision about whether to file an administrative appeal of any denied material, please describe any withheld records (or portions thereof) and explain the basis for your exemption claims

I also request a waiver of all fees for this request. Disclosure of the requested information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in my commercial interest

To help to determine my status for the purpose of assessing fees, please note that I am requesting such information on behalf of the American Civil Liberties Union of Delaware, a public interest organization that seeks the information for public use, and not for private or commercial use

If you have any questions regarding the scope of the request or any other matters, please call me at (302) 654-5326, ext 102. I look forward to receiving your response by June 27, 2006<sup>1</sup>

Sincerely,



Julia M. Graff  
Staff Attorney  
ACLU of Delaware

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<sup>1</sup> See Letter from Attorney General (June 3, 2004): "This Office has determined that 'reasonable access means that a public body should, within 10 days of receipt of a definitive request, issue a written determination to the requestor stating which of the requested records will, and will not be released and the reasons for any denial of a request. Att'y Gen. Op. 91-IO03 (Feb 1, 1991)," available at [http://www.state.de.us/attgen/main\\_page/opinions/2003/03-ib13.htm](http://www.state.de.us/attgen/main_page/opinions/2003/03-ib13.htm). See also Letter from Attorney General (June 2, 2003): "Statutes in a number of other states exclude Saturdays, Sundays and holidays in calculating the required response time for public records. See e.g., D.C. Code S 1-522(c); I.A. Rev. Stat. S 41:31; S.C. Code Ann. S 30-4-40. We think it appropriate to exclude weekends and holidays in Delaware as well. In addition, just as the courts do not count the day of filing, the time-line for a FOIA response to a public records request begins the next business day after the public body received the request," available at [http://www.state.de.us/attgen/main\\_page/opinions/2003/03-ib13.htm](http://www.state.de.us/attgen/main_page/opinions/2003/03-ib13.htm)



STATE OF DELAWARE  
DEPARTMENT OF CORRECTION  
245 McKee Road  
Dover, Delaware 19904

Stan Taylor  
Commissioner

(302) 739-5601  
Fax: (302) 739-8221  
E-Mail: staylor@state.de.us

June 27, 2006

***VIA Hand Delivery and U.S. Mail***

Julia M. Graff, Esquire  
Staff Attorney  
ACLU of Delaware  
100 W. 10<sup>th</sup> Street, Suite 309  
Wilmington, DE 19801

Re: The ACLU's FOIA request to DOC dated June 12, 2006

Dear Ms. Graff:

Please accept this letter as a response to your written FOIA request dated June 12, 2006. Your recent request for information was made under the State of Delaware's Freedom of Information Act (FOIA), 29 *Del. C.* § 10001, *et seq.* Therein, you requested the following information:

1. **The disciplinary rules whose violation would result in action against an inmate;<sup>1</sup>**
2. **The policies and procedures controlling disciplinary infractions<sup>2</sup>, including Department of**

<sup>1</sup> Presumably, the phrase "action against an inmate" refers to disciplinary sanctions short of criminal prosecution for disciplinary infractions committed by inmates. Please advise if you intended a different meaning.

<sup>2</sup> Presumably, the term "policies and procedures controlling disciplinary infractions" refers to the notice, hearing, and appeal provisions associated with the inmate disciplinary process. Please advise if you intended a different meaning.



Julia M. Graff, Esquire

June 27, 2006

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**Correction policies and procedures and the Bureau of Prisons policies and procedures;**

3. **The prison grievance procedures for medical grievances as well as non medical grievances;**
4. **Treatment Protocols for the following illnesses or conditions:**
  - a. **HIV/AIDS**
  - b. **Hepatitis**
  - c. **Diabetes**
  - d. **Heart Disease**
  - e. **Cancer**
  - f. **Sexually Transmitted Diseases**
  - g. **Pregnancy and Gynecological Care**
  - h. **High Blood Pressure**
  - i. **High Cholesterol**
  - j. **Dental Care**
  - k. **Chronic Pain**
5. **Operating Procedures with respect to wellness visits, including routine gynecological care.**

As you may be aware, the FOIA statute contains a number of exceptions to the definition of "public record". See 29 Del. C. § 10002(g). Legally speaking, the records requested in paragraphs 1 – 3 are exempted from the definition of public records because they are subject to statutory privilege. See 11 Del. C. § 4322(d)<sup>3</sup> in conjunction with 29 Del. C. § 10002(g)(6). Nonetheless, pursuant to my authority under 11 Del. C. § 4322(d), I authorize the disclosure of these policies in response to your request. They are enclosed herein.

With respect to the remainder of your requests, these records do not fit the definition of "public record" because they are "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." See 29 Del. C. § 10002(g)(2). The treatment protocols you have requested consist entirely of

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<sup>3</sup> "The Department of Correction Policies and Procedures, including any Policy, Procedure, Post Order, Facility Operational Procedure or Administrative Regulation adopted by a Bureau, facility or department of the Department of Correction shall be confidential, and not subject to disclosure except upon the written authority of the Commissioner."

Judith M. Graff, Esquire

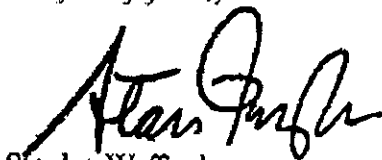
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Proprietary information held by the Department's contracted medical provider  
Correctional Medical Services, Inc. ("CMS").

Thank you for your interest in these issues. The Department looks forward to  
engendering a continued working relationship with the ACLU of Delaware.

Very truly yours,



Stanley W. Taylor  
Commissioner of Correction

cc: Dr. Robert M. Hooper

Enclosures