

**NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

**NO.** \_\_\_\_ **DIVISION** \_\_\_\_ **SECTION:** \_\_\_\_  
**CHRIS KAISER**  
**VERSUS**  
**MALCOLM MYER**

**FILED:** \_\_\_\_\_  
**DEPUTY CLERK**

**PETITION FOR WRIT OF MANDAMUS**  
**PURSUANT TO THE LOUISIANA PUBLIC RECORDS LAW**

NOW INTO COURT, through undersigned counsel, comes petitioner Chris Kaiser, who requests, pursuant to Article XII, Section 3 of the Louisiana Constitution of 1974, La. R.S. 44:31 *et seq.*, and other applicable law cited herein, that this Court issue a Writ of Mandamus directing Louisiana Department of Public Safety and Corrections Deputy Secretary Malcolm Myer, in his official capacity as records custodian for DOC, to provide Petitioner with public records in DOC’s possession. In addition, Petitioner seeks penalties for violation of the State public records law. In support of this Petition, Petitioner states the following:

**I. INTRODUCTION**

1. In response to the public health threat that COVID-19 poses to Louisiana’s prisons, the Louisiana Department of Public Safety and Corrections (“DOC,” the “Department”) in April 2020 created a special “review panel” to grant furloughs to certain incarcerated persons.<sup>1</sup> This case is brought under Louisiana’s Public Record Law (“PRL”) about DOC’s failure to provide public records of the review panel’s meetings and operations.

2. DOC announced the COVID-19 Furlough Review Panel (the “review panel”) on April 14, 2020 “to reduce the inmate population in a way that maintains public safety and promotes

---

<sup>1</sup> WAFB Staff, *La. Department of Corrections creates COVID-19 panel to consider release of non-violent inmates*, WAFB.COM, April 14, 2020, available at: <https://www.wafb.com/2020/04/14/la-department-corrections-creates-covid-panel-consider-furloughs-certain-inmates/>

public health,” according to a DOC press release.<sup>2</sup> The Department said the panel would “review inmates on a rolling, case by case basis until the public health emergency declared by the Governor is terminated.”<sup>3</sup>

3. Public bodies’ meetings are generally open to the public under Louisiana’s Open Meetings Law. *See* La. R.S. 42:11 et seq. From its inception, however, the review panel met in secret, behind closed doors. “These are internal administrative reviews, and not open to the public,” DOC spokesman Ken Pastorick told a reporter.<sup>4</sup>

4. On June 5, 2020, the review panel was suspended when Louisiana entered “Phase 2” of its reopening, and it will be officially disbanded once a state of emergency declaration has been lifted.<sup>5</sup> Of the state prison population’s approximately 32,000, the review panel examined fewer than 600 cases and approved 100 for release, though only 63 were expected to be released.<sup>6</sup>

5. It is unclear how often the review panel met, and the identities of its members are apparently also secret.

6. In an effort to obtain more information about the review panel’s meetings and operations, Petitioner Chris Kaiser sent a public-records request to DOC on May 5, 2020. As of this date, DOC has produced only one document in response, claiming an exception to the PRL and asserting—three months later—that it is still collecting responsive documents. The Department’s failure to provide the requested public records forms the basis for this petition.

## II. PARTIES

7. Petitioner Chris Kaiser is a resident of New Orleans and Advocacy Director for the American Civil Liberties Union of Louisiana. His employer strives to protect the civil liberties and constitutional rights of all Louisianans. He sought DOC documents about its review panel’s operations to better understand the State’s efforts to reduce its prison population.

---

<sup>2</sup> Louisiana Department of Public Safety and Corrections, “DOC Creates COVID-10 Furlough Review Panel,” April 14, 2020, <https://doc.louisiana.gov/covid-19-information/>; release available at: <https://myemail.constantcontact.com/DOC-Creates-COVID-19-Furlough-Review-Panel.html?soid=1125804998217&aid=wmjUOLgveg0>

<sup>3</sup> *Id.*

<sup>4</sup> Lea Skene, *Panel will meet behind closed doors to decide Louisiana inmate releases amid coronavirus threat*, THE ADVOCATE (Apr. 17, 2020), [https://www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_fd295732-80e2-11ea-9437-cfac6cd49a20.html](https://www.theadvocate.com/baton_rouge/news/coronavirus/article_fd295732-80e2-11ea-9437-cfac6cd49a20.html)

<sup>5</sup> Lea Skene, *Panel meant to reduce Louisiana prison population during pandemic has negligible impact--2%*, THE ADVOCATE, June 30, 2020, available at: [https://www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_39acdb9a-ba3e-11ea-ac28-df318eb8fe9b.html](https://www.theadvocate.com/baton_rouge/news/coronavirus/article_39acdb9a-ba3e-11ea-ac28-df318eb8fe9b.html)

<sup>6</sup> *Id.*

8. DOC is a Louisiana State agency headquartered in Baton Rouge, comprising public safety services and corrections services. It is a “public body” as defined by the PRL. La. R. S. 44:1(A)(1).

9. Defendant Malcolm Myer is deputy secretary of DOC. Mr. Myer is the official records custodian for DOC, and he serves as the central point for all public records requests. La. R. S. 44:1(A)(3).

### **III. STATEMENT OF FACTS**

10. On May 6, 2020, Mr. Kaiser made the following public records request to Mr. Myer at DOC:

1. Documents reflecting or sufficient to show the number of people and identities of people who have been approved for release by the COVID-19 Furlough Review Panel;
2. Documents reflecting or sufficient to show all criteria for determining whether a person is granted furlough;
3. Documents reflecting or sufficient to show all processes or criteria used to determine whether a person is eligible to be considered for furlough by the COVID-19 review panel, including, but not limited to, the process for determining whether a person has a home ready to receive them if released on furlough;
4. Documents reflecting or sufficient to show notes, minutes, agendas and all other memorialization of all meetings of the COVID-19 Furlough Review Panel;
5. Documents supporting, reflecting or sufficient to show the Department’s position that the COVID-19 Furlough Review Panel is exempt from Louisiana’s Open Meetings Law;
6. All communications sent to any incarcerated person pertaining to the COVID-19 Furlough Review Panel, whether by DPSC memoranda, posted policy, U.S. Mail, J-Pay, Farm Mail or otherwise;
7. All documents reflecting or sufficient to show the identities of every individual present at each COVID-19 Furlough Review Panel, and the date(s) on which s/he attended;
8. Any and all documents reflecting or sufficient to show any review process available to individuals determined not eligible for furlough.

A copy of this request is attached at Exhibit A.

11. On May 11, 2020, a DOC paralegal responded via e-mail that the request was received and provided a letter of acknowledgement. The e-mail said that, after completing a search, the DOC would review the records “for privileges and exemptions.” The letter said DOC would not

produce documents falling within the “39 exceptions given in Title 44 of the Louisiana Revised Statutes.” The Department anticipated that it would take three to four weeks “to gather the requested information and respond to your request.”

Copies of this e-mail and letter are attached at Exhibit B.

12. Mr. Kaiser responded on May 14, 2020, referring to provisions of the PRL that required DOC’s custodian to notify him, if the custodian questioned whether the requested record(s) were public, in writing within three business days. *See* La. R.S. 44:32(D). He also noted that the law requires the custodian to refer to any legal basis for an exemption from the PRL. *Id.*

A copy of this letter is attached as Exhibit C.

13. Six weeks later, a DOC attorney claimed an exception to the PRL in an e-mail dated June 23, 2020. In response to No. 8 of Mr. Kaiser’s request, the attorney said, “the documents are not a public record under La. R.S. 15:574.12.” In response to Nos. 2 & 3, she provided one document, “Furlough Program for COVID-19 Regulation.” For the remaining requests, the attorney said, “we are still collecting those documents.”

A copy of the e-mail response and Furlough Program for COVID-19 Regulation (“regulation”) are attached as Exhibit D.

14. Three weeks later, on July 14, 2020, Mr. Kaiser wrote a follow-up letter to the DOC attorney noting that the responsive documents were overdue. “Please notify me when I can expect to receive these documents,” he wrote.

A copy of the letter is attached as Exhibit E.

15. On July 24, 2020, the DOC attorney responded by e-mail, saying, “we expect to have these documents on or before August 21, 2020.”

A copy of the e-mail is attached as Exhibit F.

#### **IV. STATEMENT OF LAW**

16. The public’s right of access to public records is a fundamental right, guaranteed by the Constitution. *Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984) (citing La. Const. art. 12, § 3, which must be “construed liberally in favor of free and unrestricted access to the records”). Access can be denied “only when a law, specifically and unequivocally, provides

otherwise.” *Id.* “Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public’s right to see.” *Id.*

17. A writ of mandamus “may be directed to a public officer to compel the performance of a ministerial duty required by law,” La. C.C.P. art. 3863. This writ is appropriate to compel Defendant to abide by his statutory duty to produce the records requested by Petitioner.

18. Suits filed under the PRL “shall be tried by preference and in a summary manner.” La. R.S. 44:35(C).

19. The burden of proving “that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.” La. R.S. 44:31(B)(3).

## V. CLAIM

20. Defendant’s response to Petitioner’s request violates the PRL in several respects. DOC’s custodian was required to notify Mr. Kaiser in writing within three business days if the custodian questioned whether the requested record(s) were public. La. R.S. 44:32(D). The custodian’s required notice must “contain a reference to the basis under law which the custodian has determined exempts a record[.]” *Id.*

21. In contravention of this requirement, DOC asserted that it would, first, take three to four weeks to conduct a search, review the records “for privileges and exemptions,” then notify Mr. Kaiser of any exemptions it claimed. However, DOC instead notified Mr. Kaiser of an alleged exception to the PRL *seven weeks* after his request.

22. Moreover, DOC’s custodian is required to *immediately* present public records that are not in use to the requestor. La. R.S. 44:33. If the record is not immediately available, the custodian “shall promptly certify this in writing” and “fix a day and hour within three days” for the requestor to examine or receive a copy. *Id.*

23. Although the law recognizes that reasonable delay may be necessary to compile and review records for production, DOC’s delay in producing responsive records is unreasonable and unjustified. Its response demonstrates an attempt to evade its legal obligations under the PRL, to stonewall Mr. Kaiser, and to deny his constitutional right of access to public information.

24. Although DOC originally estimated a response within three to four weeks, it took seven weeks from the original request to produce one document, a readily available regulation that was

promulgated on April 15, 2020—weeks before Mr. Kaiser’s request was made. Now, nearly 14 weeks after Mr. Kaiser’s request was made, that one document remains the only one produced, and DOC has estimated production may take another 10 to 11 days.

25. DOC’s review panel was in existence less than two months. Although it is unclear how often the panel met, the universe of responsive documents related to its composition and operation must be circumscribed by its limited duration and scope. Consequently, a three-month delay in production of the requested documents is unreasonable.

26. Additionally, DOC relied on an exception to the PRL that only prohibits the release of certain specified documents, such as a presentence investigation report. The statute, “Information as to offenders and ex-offenders; confidentiality,” provides that only certain enumerated documents “shall not be subject to public inspection nor be disclosed,” La. R.S. 15:574.12(A). Notwithstanding that provision, information of a general nature including an individual’s age, offense, date of conviction, disposition of criminal charges, length of sentence, discharge date, etc., “shall be released to the general public at any time upon request.” La. R.S. 15:574.12(G)(1)(a).

27. DOC cited this alleged exception in response to a request that sought “any and all documents reflecting ... any review process available to individuals determined not eligible for furlough.” The cited exception does not render all the requested documents nonpublic. It is neither a specific nor an unequivocal exception to a request for documents reflecting “any review process” available to individuals seeking release.

28. DOC’s reliance on the aforementioned statute, coupled with its pattern of demurral and delay, shows a deliberate attempt to shirk the Department’s obligation under the PRL and cloak the review panel’s operations in secrecy, in defiance of the public’s constitutional right of access to public information. The review panel is a public body, doing the public’s work, using public tax dollars. Documents reflecting its composition and operations must be disclosed.

## **VI. RELIEF REQUESTED**

WHEREFORE, Petitioner prays:

1. That a writ of mandamus be issued directing the Defendant to disclose the records requested or show cause why Defendant should not be ordered to do so, and

2. For an award of attorneys' fees, damages, sanctions, and costs as provided by law, including, specifically, penalties for intentional, unreasonable, and arbitrary denial of a valid public records request pursuant to La. R.S. 44:35(E) and 44:37.

Respectfully submitted,



Bruce Hamilton, La. Bar No. 33170  
ACLU Foundation of Louisiana  
P.O. Box 56157  
New Orleans, Louisiana 70156  
Telephone: (504) 522-0628  
Facsimile: (888) 534-2996

*Counsel for Chris Kaiser*

Sheriff please serve:

Malcolm Myer  
In His Capacity as Records Custodian, Louisiana Department of Public Safety & Corrections  
504 Mayflower Street  
Baton Rouge, Louisiana 70802

**NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA**

**NO.** \_\_\_\_ **DIVISION** \_\_\_\_ **SECTION:** \_\_\_\_

**CHRIS KAISER**

**VERSUS**

**MALCOLM MYER**

**FILED:** \_\_\_\_\_  
\_\_\_\_\_ **DEPUTY CLERK**

**ORDER**

Considering the foregoing Petition for Writ of Mandamus filed herein by the Petitioner, Chris Kaiser;

**IT IS HEREBY ORDERED** that the Defendant, Malcolm Myer, in his official capacity as custodian of record for The Louisiana Department of Public Safety and Corrections, be served with the foregoing Petition and a copy of this Order, and that an alternative writ of mandamus shall issue herewith, directing and compelling the Defendant to immediately produce the public record requested, or show cause to the contrary.

**IT IS FURTHER ORDERED** that a hearing shall be held on the \_\_\_\_ day of \_\_\_\_\_, 2020, at \_\_\_\_\_ o'clock \_\_\_\_ .m., and the Defendant shall show cause as to:

- Why said record should not be produced as requested, and why the alternative writ of mandamus issued by this Order shall not be made peremptory and permanent;
- Why Defendant should not be taxed with costs and attorneys' fees, as well as penalties for an arbitrary and capricious failure to comply with the law, and all other equitable and just relief as may be permitted by law.

New Orleans, Louisiana, this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
J U D G E

**PLEASE SERVE:**

Malcolm Myer  
In His Capacity as Records Custodian, Louisiana Department of Public Safety & Corrections  
504 Mayflower Street  
Baton Rouge, Louisiana 70802