

FILED

2015 SEP -9 A 11:10

CIVIL DISTRICT COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2015-8680

SECTION: "C" 10

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF LOUISIANA

VERSUS

ORLEANS PARISH SHERIFF'S OFFICE AND MARLIN GUSMAN

FILED: \_\_\_\_\_

DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS, INJUNCTION  
AND DECLARATORY RELIEF UNDER THE PUBLIC RECORDS  
ACT, PLUS ATTORNEY'S FEES AND COSTS

NOW INTO COURT, comes Plaintiff, American Civil Liberties Union Foundation of Louisiana ("ACLU"), a Louisiana corporation with its principal place of business in New Orleans, Louisiana, who respectfully alleges as follows:

1.

Jurisdiction herein is based upon the Louisiana Public Records Act, La R.S. 44:1 et seq.

2.

Made Defendant herein is the Orleans Parish Sheriff's Office ("OPSO"), a political subdivision and/or public agency located in New Orleans, Louisiana.

3.

Made Defendant herein is Marlin Gusman, Sheriff of the Orleans Parish Sheriff's Office, and a domiciliary of Orleans parish, who, at all times, was the "custodian" of the public records held by OPSO, as that term is defined under the Public Records law.

4.

In media interviews and/or newspaper articles, Sheriff Gusman has indicated that OPSO needs additional beds and/or facilities to house "acute mentally ill inmates who require a specialized treatment environment."

5.

On or about July 29, 2015 the ACLU sent a Public Records Request to Sheriff Gusman as custodian of the OPSO's public records (Exhibit 1).

6.

In its Public Records Request, the ACLU asked for:

Documents sufficient to show the number of acutely mentally ill inmates currently housed at Orleans Parish Prison or under the custodial control of the Orleans Parish Sheriff's Office. "Acutely mentally ill" means those inmates determined to require special housing as a result of their mental illness.

Documents sufficient to show the average daily population of acutely mental ill inmates housed in Orleans Parish Prison between January 1, 2010 and July 29, 2019.<sup>1</sup>

7.

The ACLU also sent a courtesy copy of the letter to Blake Arcuri, who has represented OPSO in the past. Mr. Arcuri acknowledged receipt and responded that "I am not authorized to accept service of public record requests....".

8.

Under La R.S. 44:31 Plaintiff, ACLU, has the right to inspect and/or obtain copies of public records held by OPSO and the custodian Gusman.

9.

Under the Public Records law OPSO and its custodian, Gusman, have 3 days, exclusive of Saturdays, Sundays and holidays, from receipt of the request to respond.

10.

To date, neither OPSO nor Sheriff Gusman has responded to the Public Records Request from the ACLU.

11.

Pursuant to La R.S. 44:35 (A) because the ACLU was denied the right to inspect and/or obtain copies of these public records and because OPSO and Gusman failed to respond, ACLU has the right to institute these proceedings.

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<sup>1</sup> The 2019 date is a typo and since the date of the letter is July 29, 2015 was meant to be 2015. To date neither OPSO nor Gusman has indicated that they are aware of the typo, suggesting that they have not begun gathering the records requested.

12.

ACLU seeks declaratory relief holding that the records requested are public records subject to production, without exception, by OPSO and Gusman under the Public Records law.

13.

ACLU seeks an order requiring OPSO and Gusman to produce the records requested by Mandamus and/or injunction.

14.

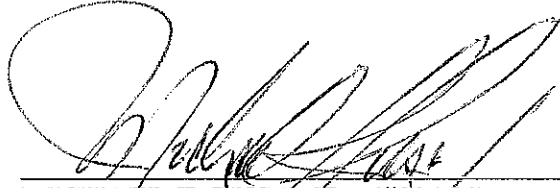
Under the La R.S. 44:35 (D) ACLU is entitled to an award of costs and reasonable attorney's fees against OPSO for OPSO's failure to properly respond to the Public Records request and/or to produce the records.

15.

In addition, pursuant to La R.S. 44:35 (E)(2), Gusman, as custodian, should be held "personally liable" and liable *in solido* with OPSO for the payment of ACLU's attorney's fees and costs in this litigation.

**WHEREFORE**, Plaintiff, American Civil Liberties Union Foundation of Louisiana, prays that its lawsuit is proper and after summary proceedings there be (a) declaratory judgment entered indicating the records it requested are public records; (b) mandamus and/or injunction entered compelling OPSO and Gusman to produce such records; and (c) an award of reasonable attorney's fees and costs against OPSO and Gusman, *in solido*, plus all other general and equitable relief.

Respectfully submitted,



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**Attorney for American Civil Liberties  
Union Foundation of Louisiana**

**PLEASE SERVE:**

**ORLEANS PARISH SHERIFF'S OFFICE**  
819 South Broad Street  
New Orleans, LA 70119

and

**SHERIFF MARLIN N. GUSMAN**  
819 South Broad Street  
New Orleans, LA 70119



FILED

July 29, 2015

2015 SEP -9 A 11: 10

Via regular mail  
Orleans Parish Sheriff  
Sheriff Marlin N. Gusman  
819 South Broad Street  
New Orleans, LA 70119

CIVIL  
DISTRICT COURT

Re: Public Records Request

Dear Mr. Gusman,

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
LOUISIANA  
PO BOX 36157  
NEW ORLEANS, LA 70156  
T:504 522 0617  
WWW.LAACLU.ORG

Pursuant to the Public Records Act of Louisiana, R.S. 44:1 et seq., we request copies of the public records described below. For purposes of this request, the term "documents" includes, but is not limited to, any memoranda, letters, electronic mail or "e-mail," handwritten, typed, or electronic notes, recordings of any kind and in any form (video, audio, digital, etc.)

- Documents sufficient to show the number of acutely mentally ill inmates currently housed at Orleans Parish Prison or under the custodial control of the Orleans Parish Sheriff's Office. "Acutely mentally ill" means those inmates determined to require special housing as a result of their mental illness.
- Documents sufficient to show the average daily population of acutely mental ill inmates housed in Orleans Parish Prison between January 1, 2010 and July 29, 2019.

Under the provisions of R.S. 44:32, if you raise a question as to whether any of the records requested is a public record, you are required to notify in writing the person making the request of your determination and the reasons, including the legal basis therefore. Notice shall be made within three days of the receipt of the request, exclusive of Saturdays, Sundays and legal public holidays. If you claim exemption for a record or records under the Public Records Act, or any other statute, include for each record the section of law under which exemption is claimed and your reasons for believing the statute is applicable to the record.

Under the provisions of R.S. 44:33, if the public record is not immediately available, you are required to certify this in writing promptly, and in your certificate fix a day and hour within three days, exclusive of Saturdays, Sundays and legal public holidays, for the exercise of the right granted in the Public Records Act.

Under R.S. 44:34, "If any public record applied for by any authorized person is not in the custody or control of the person to whom the application is made, such person shall promptly certify this in writing to the applicant, and shall in the certificate state in detail to the best of his knowledge and belief, the reason for the absence of the record from his custody or control, its location, what person has custody of the record and the manner and method in which, and the exact time at which it was taken from



July 29, 2015

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his custody and control. He shall include in the certificate ample and detailed answers to inquiries of the applicant which may facilitate the exercise of the right granted by this Chapter.”

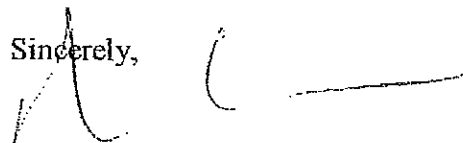
If you are invoking R.S. 44:34 to deny this request, please answer the following questions in detail:

1. Is a copy of the requested public record usually located in your office?
2. Why is your copy of the requested public record absent from your office?
3. Where is your copy of the requested public record?
4. Who has received a copy of the requested public record?
5. How and from whom did the present custodian gain control of your copy of the requested public record?
6. What was the exact time your copy of the public record was taken from your custody and control?
7. When will your copy of the requested public record be returned to your office?
8. Is there any other public official who has a copy of the requested record?
9. What is/are the name(s) of anyone who has a copy of the requested public record?
10. What is/are the location(s) where the public record can be viewed?
11. What are the hours and dates when the requested public record can be viewed?

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Please contact us at the number above when the requested materials are ready to be mailed. We request that any and all documents that are available be made available in electronic form. This request includes any documents that are in paper form but that can be scanned to electronic form, as well as digital copies of any recordings. For those documents that cannot be produced in electronic form, if the cost of copies does not exceed \$50.00, proceed without further approval and send us an invoice with the records; otherwise, call to advise and gain approval to proceed. As you are aware, failure to abide by the Public Records Law may result in certain penalties and the award of attorney's fees. We trust that you will comply without the necessity of any further action on our part.

Sincerely,

  
Marjorie Esman  
Executive Director

Cc: Blake Arcuri, Usry, Weeks & Matthews  
Via email [barcuri@uwmlaw.com](mailto:barcuri@uwmlaw.com)