



50 Federal Street, 4th Floor
Boston, MA 02110
Tel: 617-482-2773
Fax: 617-451-6383
plsma.org

September 2, 2021

Via Electronic Mail

Jessica L. Kenny
Deputy General Counsel
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, MA 02360
jkenny@pcsdma.org

Re: Public Records Request

Dear Ms. Kenny:

The American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") and Prisoners' Legal Services of Massachusetts ("PLS") (collectively, "the Requestors") submitted a request for public records to the Plymouth County Sheriff's Department (the "PCSD") dated August 12, 2021 (the "Request"). The Request seeks 19 categories of records, as well as a waiver of any fees or copying costs. On August 18, 2020, the PCSD responded in writing (the "Response"). The Response poses certain questions to the Requestors concerning the Request. Our responses to those questions as to each category of records are below, identified by the number listed in the Request.

1. This category seeks "[r]ecords reflecting the current number of immigration detention units at PCCF and the current number of Immigration Detainees in each unit." PCSD states that it will produce the requested records, but that "[t]he records will need to be redacted to comply with CORI laws." Although we do not necessarily agree with PCSD's interpretation of the CORI statute, we nevertheless assume the PCSD is referring to redacting from a detainee roster solely the detainees' names, dates of birth, and alien numbers. If that is the case, we assent to those redactions. Please collect and produce the records.

2. This category seeks “[r]ecords reflecting the number of immigration detention units and number of Immigration Detainees in each unit for the months of May, June, and July 2021.” PCSD states that it will produce the requested records, but “[t]hese reports will need to be redacted to comply with CORI laws.” As with category 1, we do not necessarily agree with PCSD’s interpretation of the CORI statute, but we nevertheless assume the PCSD is referring to redacting from a detainee roster solely the detainees’ names, dates of birth, and alien numbers. If that is the case, we assent to those redactions. Please collect and produce the records.
3. This category seeks “[r]ecords of any COVID-19 exposures and infections among people living and working at PCCF from July 1, 2021, to the present.” PCSD states that it will produce the requested records, but certain “[r]eports will need to be redacted to comply with CORI laws.” As with category 1, we do not necessarily agree with PCSD’s interpretation of the CORI statute, but we nevertheless assume the PCSD is referring to redacting the detainees’ and prisoners’ names, dates of birth, and (where applicable) alien numbers. If that is the case, we assent to those redactions. Please collect and produce the records.
4. This category seeks “[r]ecords reflecting COVID-19 testing at PCCF from July 1, 2021, to the present, including the number of tests administered to staff, third party contractors, and Immigration Detainees, and any criteria or guidance concerning which persons to test.” PCSD states that it will produce the requested records, but that redactions will be required “consistent with CORI laws and privacy laws.” Furthermore, PCSD states that reporting “immigration detainees from other types of pre-trial detainees” will require the records to be segregated. As with category 1, we do not necessarily agree with PCSD’s interpretation of the CORI statute, but we nevertheless assume the PCSD is referring to redacting the detainees’ and prisoners’ names, dates of birth, and (where applicable) alien numbers. If that is the case, we assent to those redactions. Please collect and produce the records responsive to our request as written, including by reporting information pertaining to immigration detainees separately from other types of prisoners.
5. This category seeks “[a]ll policies, procedures, guidelines, and instructions concerning the vaccination of staff, contractors, and Immigration Detainees at PCCF against COVID-19, and records reflecting the current number and percentage of PCCF staff, contractors, and Immigration Detainees who are fully vaccinated against COVID-19.” PCSD states that it will produce the policies but not the procedures, since procedures “are not public” and are “related solely to internal personnel rules and practices of the government unit, and proper performance of necessary government functions requires withholding of this information. G.L. c. 4 §7 cl. Twenty-sixth (b).” However, the

claimed exemption is not applicable to the requested “procedures,” including because procedures may be withheld “only to the extent that proper performance of necessary governmental functions requires such withholding.” *See id.* Releasing vaccination procedures could not conceivably interfere with any governmental function, and accordingly PCSD has not met its burden to justify withholding such procedures. PCSD should collect and produce the procedures, in addition to the other responsive records it has agreed to provide. Requestors also ask that PCSD maintain our request as written by reporting information concerning Immigration Detainees separately from other types of prisoners.

6. This category seeks “[a]ll policies, procedures, guidelines, and instructions regarding the identification of LEP Immigration Detainees.” PCSD states that it will produce the policies but not the procedures, since procedures “are not public” and are “related solely to internal personnel rules and practices of the government unit, and proper performance of necessary government functions requires withholding of this information. G.L. c. 4 §7 cl. Twenty-sixth (b).” However, the claimed exemption is not applicable to the requested “procedures,” including because procedures may be withheld “only to the extent that proper performance of necessary governmental functions requires such withholding.” *See id.* Releasing procedures for identifying LEP Immigration Detainees could not conceivably interfere with any governmental function, and accordingly PCSD has not met its burden to justify withholding such procedures. PCSD should collect and produce the procedures, in addition to the other responsive records it has agreed to provide.
7. This category seeks “[r]ecords sufficient to identify the languages spoken by LEP Immigration Detainees from January 1, 2019, to the present, and the number of detainees speaking each language.” PCSD states that it will produce the records. Please collect and produce the records.
8. This category seeks “[r]ecords sufficient to determine whether there is a designated language access coordinator at PCCF, and, if so, that person’s identity and contact information at PCCF.” PCSD states that “[t]he Department possesses no records responsive to this request.” We consequently understand that the PCCF has no designated language access coordinator.
9. This category seeks “[a]ll policies, procedures, guidelines, and instructions pertaining to language interpretation and translation services for LEP Immigration Detainees, including without limitation with respect to: a) Admissions, booking, and intake; b) Release and transfer; c) Disciplinary proceedings; d) Placement in segregation; e) Medical care, including dental care; f) Mental health care; g) Sick calls and requesting sick calls; h) Classification; i) Religious services; j) Access to the grievance system; k)

Access to the law library and legal resources; l) Any communications related to the COVID-19 pandemic, including COVID-19 testing and vaccination; and m) Informal and formal staff-detainee communication.” PCSD states that it will produce the policies but not the procedures for the reasons explained in response to Category 5. *See* G.L. c. 4 §7 cl. Twenty-sixth (b). However, the claimed exemption is not applicable to the requested “procedures,” including because procedures may be withheld “only to the extent that proper performance of necessary governmental functions requires such withholding.” *See id.* Releasing procedures pertaining to language interpretation and translation services for LEP Immigration Detainees could not conceivably interfere with any governmental function, and accordingly PCSD has not met its burden to justify withholding such procedures. PCSD should collect and produce the procedures, in addition to the other responsive records it has agreed to provide.

10. This category seeks “[a]ny contracts for language translation services (including written, in-person, and telephonic) for Immigration Detainees.” PCSD states that “[t]he Department possesses records responsive to this request.” Requestors asks that PCSD collect and produce the records.
11. This category seeks “[a]ll policies, procedures, guidelines, and instructions concerning In-person Attorney Visitation for Immigration Detainees.” PCSD states that “[t]he Department possesses records responsive to this request” but will not produce the relevant procedures for the reasons explained in response to Category 5. *See* G.L. c. 4 §7 cl. Twenty-sixth (b). However, the claimed exemption is not applicable to the requested “procedures,” including because procedures may be withheld “only to the extent that proper performance of necessary governmental functions requires such withholding.” *See id.* Releasing procedures concerning In-person Attorney Visitation for Immigration Detainees could not conceivably interfere with any governmental function, and accordingly PCSD has not met its burden to justify withholding such procedures. PCSD should collect and produce the procedures, in addition to the other responsive records it has agreed to provide.
12. This category seeks “[a]ll policies, procedures, guidelines and instructions concerning Remote Attorney Visitation for Immigration Detainees.” PCSD states that “[t]he Department possesses records responsive to this request” but will not produce the relevant procedures for the reasons explained in response to Category 5. *See* G.L. c. 4 §7 cl. Twenty-sixth (b). However, the claimed exemption is not applicable to the requested “procedures,” including because procedures may be withheld “only to the extent that proper performance of necessary governmental functions requires such withholding.” *See id.* Releasing procedures concerning Remote Attorney Visitation for Immigration Detainees could not conceivably interfere with any

governmental function, and accordingly PCSD has not met its burden to justify withholding such procedures. PCSD should collect and produce the procedures, in addition to the other responsive records it has agreed to provide.

13. This category seeks “[r]ecords reflecting any cost of Remote Attorney Visitation to the participating Immigration Detainee or attorney, including without limitation policies, procedures, and fee schedules.” PCSD states that “[t]he Department possesses no records responsive to this request” and that the records sought “may be in the possession of Jurislink.” This response is, frankly, implausible. Clearly the PCCF communicates the cost of Remote Attorney Visitation to detainees and other prisoners in some writing, whether by a hand-out or a posted notice that the detainees can review. PCSD is in possession of any such records, and they should be collected and produced.
14. This category seeks “[a]ny contracts for communications services used by the PCCF for Remote Attorney Visitation for Immigration Detainees.” PCSD states that “[t]he Department possesses records responsive to this request.” Please collect and produce the records.
15. This category seeks “[a]ll policies, procedures, guidelines, and instructions concerning Immigration Detainees’ access to paper or electronic law libraries.” PCSD states that “[t]he Department possesses records responsive to this request” but will not produce the relevant procedures for the reasons explained in response to Category 5. *See* G.L. c. 4 §7 cl. Twenty-sixth (b). However, the claimed exemption is not applicable to the requested “procedures,” including because procedures may be withheld “only to the extent that proper performance of necessary governmental functions requires such withholding.” *See id.* Releasing procedures concerning Immigration Detainees’ access to paper or electronic law libraries could not conceivably interfere with any governmental function, and accordingly PCSD has not met its burden to justify withholding such procedures. PCSD should collect and produce the procedures, in addition to the other responsive records it has agreed to provide.
16. This category seeks “[a]ll policies, procedures, guidelines, and instructions concerning Immigration Detainees’ access to Writing Materials.” PCSD states that “[t]he Department possesses records responsive to this request” but will not produce the relevant procedures for the reasons explained in response to Category 5. *See* G.L. c. 4 §7 cl. Twenty-sixth (b). However, the claimed exemption is not applicable to the requested “procedures,” including because procedures may be withheld “only to the extent that proper performance of necessary governmental functions requires such withholding.” *See id.* Releasing procedures concerning Immigration Detainees’ access to Writing

Materials could not conceivably interfere with any governmental function, and accordingly PCSD has not met its burden to justify withholding such procedures. PCSD should collect and produce the procedures, in addition to the other responsive records it has agreed to provide.

17. This category seeks “[a]ll policies, procedures, guidelines, and instructions concerning Immigration Detainees’ use of the mail to send or receive letters or other documents.” PCSD states that “[t]he Department possesses records responsive to this request” but will not produce the relevant procedures for the reasons explained in response to Category 5. *See* G.L. c. 4 §7 cl. Twenty-sixth (b). However, the claimed exemption is not applicable to the requested “procedures,” including because procedures may be withheld “only to the extent that proper performance of necessary governmental functions requires such withholding.” *See id.* Releasing procedures concerning Immigration Detainees’ use of the mail could not conceivably interfere with any governmental function, and accordingly PCSD has not met its burden to justify withholding such procedures. PCSD should collect and produce the procedures, in addition to the other responsive records it has agreed to provide.

18. This category seeks “[a]ll policies, procedures, guidelines, and instructions concerning attorneys’ use of the mail to communicate with Immigration Detainees or other persons incarcerated at the PCCF.” PCSD states that “[t]he Department possesses records responsive to this request” but will not produce the relevant procedures for the reasons explained in response to Category 5. *See* G.L. c. 4 §7 cl. Twenty-sixth (b). However, the claimed exemption is not applicable to the requested “procedures,” including because procedures may be withheld “only to the extent that proper performance of necessary governmental functions requires such withholding.” *See id.* Releasing procedures concerning attorneys’ use of the mail could not conceivably interfere with any governmental function, and accordingly PCSD has not met its burden to justify withholding such procedures. PCSD should collect and produce the procedures, in addition to the other responsive records it has agreed to provide.

19. This category seeks “[a]ny contracts between the PCCF and any third party engaged to review, inspect, copy, or otherwise process mail sent to or from Immigration Detainees.” PCSD states that “[t]he Department possesses records responsive to this request.” Please collect and produce the records.

Requestors make the above request without waiving our rights to contest any and all withholding and redaction, as well as the adequacy of the PCSD’s search for records.

In the Response, PCSD did not explicitly adjudicate our request for a fee waiver, but did ask for a payment of \$425 to produce the records. Please state whether our request for a waiver is allowed or denied, and in all events please begin producing the records immediately. If our request for a waiver is denied, we are prepared to pay the fees outlined in the Response (\$425). To the extent PCSD deems it necessary to incur chargeable fees and costs in excess of the \$425 figure quoted in the Response, the PCSD should not exceed \$800 in chargeable fees and costs without first contacting us for permission.

Thank you for your assistance. Please do not hesitate to contact us at koehlke@aclum.org if we can clarify any part of this letter.

Sincerely,
/s/ Krista Oehlke
Krista Oehlke
ACLU of Massachusetts

/s/ Mario N. Paredes
Mario N. Paredes
Prisoners' Legal Services