IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA.

AMERICAN CIVIL LIBERTIES UNION OF FLORIDA, INC.,

CASE NO. 2019-CA-2747

Petitioner,

v.

FLORIDA DEPARTMENT OF CORRECTIONS;

Respondent.
_____/

**DEPARTMENT'S RESPONSE TO ORDER TO SHOW CAUSE**

COMES NOW, the Defendant, Department of Corrections, ("Department"), by and through undersigned counsel, and submits this response to the Court's December 13, 2019 Order to Show Cause. In response thereto, the Department would state the following:

1. On January 14, 2020, the Department provided the documents responsive to the Plaintiff, the American Civil Liberties Union of Florida, Inc.'s ("ACLU") Request for Database Extract of Information Used to Calculate Tentative Release Dates ("Request"). The ACLU was also provided with an estimate of the reasonable costs associated with producing those documents.

2. Of the 28 sub-requests included within the Request, only two did not return any responsive documents. Sub-request 7(d) sought any field or information used to determine "whether and why an offense is ineligible for gain time for a portion of the entire term of incarceration." The Department does not maintain any specific data field relating to this question. To the extent the ACLU is seeking an explanation for a certain policy or calculation, that is outside the scope of a Chapter 119 request. *See* Fla. A.G.O. 92-38; *In Re Report of the Sup. Ct. Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002); § 119.01(1), F.S. ("It is the policy of this state

that all state, county, and municipal *records* are open for personal inspection and copying by any person. Providing access to public *records* is a duty of each agency.") (emphasis added).

3. Further, sub-request 7(g) sought any field or information used to determine the "amount and type of gain time that might have been earned, but for (i) the 85% limitation in § 944.275(4)(f), Fla. Stat., or (ii) an offense being ineligible for gain time prior to serving the mandatory minimum sentence or during the entirety of an offense's sentence." In the event that sub-request could not be fulfilled, the ACLU requested "(i) the months in which an inmate's evaluation, disciplinary confinement, or other reason would result in less than the maximum gain time credit and (ii) the reason." Much like sub-request (7)(d), the Department does not maintain such data, and requested explanations for Department policy are outside the scope of Chapter 119.

4. Beyond that, to the extent either part of sub-request (7)(g) could be reasonably interpreted as asking the Department to "do the math" on what an inmate's sentence would be utilizing the data provided in response to the Request, that is also beyond the scope of Chapter 119. The entire stated purpose of the Request was for the ACLU to obtain the raw data so that it could undertake such analysis. *See Seigle v. Barry*, 422 So. 2d 63, 66 (Fla. 4th DCA 1982) ("It is not the intent of the law to put public officials in the business of compiling charts and preparing documentary evidence. The intent is rather to make available to the public information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers."). Therefore, at least those portions of the ACLU's Petition for Writ of Mandamus ("Petition") seeking documents and a production estimate were rendered moot on or before January 14, 2020 and no hearing relating to those portions of the Petition is necessary.

5. To the extent the ACLU argues that the information sought in sub-requests (7)(d), (7)(g) and or any other potential records still has not been sufficiently produced, the Department

would assert (for the reasons previously stated in this response) that such requests exceed the scope of Chapter 119 by seeking the documents in a particular form outside of that regularly kept or seeking further analysis of those document. The Department believes that such a dispute would not require a factual hearing to resolve, as they simply involve an application of the law to the plain-wording of the sub-request.

6. Other portions of the Petition could reasonably be construed as alleging that the ACU was not given "timely" access to even the documents now provided. There is no set time limit for an agency or other government entity to respond to a Chapter 119 request. Rather, such requests "demand[] prompt attention and a reasonable response time, not the quickest-possible response." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018). Florida's Circuit Courts have recognized that, as should be obvious, complex and voluminous requests will often take longer to respond to than others. *See Lang v. Reedy Creek Improvement District*, Case No. CJ-5546 (Fla. 9th Cir. Ct. October 2, 1995), *affirmed per curiam*, 675 So. 2d 947 (Fla. 5th DCA 1996); *Herskovitz v. Leon County*, Case No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998).

7. Although the ACLU sought records from a database, its request (as previously stated) had several subparts and sought a significant amount of information regarding **every single inmate currently in the Department's custody**. At the time the Request was received, the Department was working on other pending public records requests (which now remain pending due to focus on this action). However, upon receipt, the Department sought to determine whether it could retrieve the requested data and how to most efficiently do so. This involved direct coordination and meetings between the Department's records professionals and its information technology staff to ensure that those with the capacity to perform a data extract would understand

what data would be responsive to this request. Once this was worked out, the Department provided a quote for its time and the records themselves. However, by that point, it had already been sued.

8. Not all delay in providing records is unjustified so as to entitle the requesting party to attorney's fees. *See Consumer Rights, LLC v. Union County*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015), *review denied*, 177 So. 3d 1264 (Fla. 2015); *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.*, 195 So. 3d 396, 401 (Fla. 4th DCA 2016). In this case, it took the Department some time to determine how to fully respond to this highly technical and voluminous request. However, it was able to do so and the responsive records have been provided. The specific facts in this case do not support a finding of unreasonable delay. If the ACLU still wishes to contest this issue now that it has the responsive documents, the Department would not object to an evidentiary hearing being held on the issue of timeliness due to the need for the Court to make a highly fact-specific determination on this point.

9. Finally, in its Petition, the ACLU points to the Department's alleged refusal to provide records to a different organization regarding a different records request as evidence of an unlawful refusal in this case. *See* Petition, pg. 6. This is a red herring with no probative value in the present matter.

WHEREFORE, the Department respectfully requests that the Court enter an Order denying the portions of the Petition seeking a quote and production of records as moot and, to the extent the ACLU wishes to continue pursuing this portion of the Petition and the Court deems it necessary, hold an evidentiary hearing on the matter of timeliness.

Respectfully Submitted this 31st day of January, 2020,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing document has been furnished this 31st day of January 2020, via electronic mail through the Florida E-Filing Portal to the following:

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