

IN THE FLORIDA SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

AMERICAN CIVIL LIBERTIES  
UNION OF FLORIDA, INC.,

Plaintiff,

Case No.: 37 2020 CA 000854

v.

Judge Dodson

FLORIDA DEPARTMENT OF  
CORRECTIONS;

Defendant.

/

**ACLU MOTION TO COMPEL DISCOVERY**

Pursuant to Fla.R.Civ.P. 1.380, American Civil Liberties Union of Florida, Inc. (“ACLU”) requests an order compelling Florida Department of Corrections (“FDOC”) to provide requested written discovery:

As required by law, FDOC must calculate each inmate’s tentative release date. § 944.275(3)(a), Fla. Stat.

The calculation is significant and complex. The release dates for each of the nearly 100,000 inmates detained by FDOC are obviously very important to the offender, the department, and the public generally. They determine when offenders may be freed. Furthermore, release dates help the Department make policy and budget decisions—it foretells how many people will be detained years

out. Accordingly, how the Department calculates release dates is the public business.

At the same time, the calculation is admittedly complex. A release date turns on the eligibility for good time credit, which can depend on the date of the offense, whether the offense is eligible for gain time for some or all of the sentence, and whether these ineligibility periods runs consecutive or concurrent to other sentences. As a result, how FDOC calculates the release date is not obvious. Accordingly, information about its calculations is necessary to ensure the department remains accountable and accurately carries out its legal duties.

*Forsberg v. Hous. Auth. of the City of Miami Beach*, 455 So. 2d 373, 378 (Fla. 1984) (“The purpose of the Public Records Act is to promote public awareness and knowledge of governmental actions in order to ensure that governmental officials and agencies remain accountable to the people.”).

The ACLU sought public access to FDOC’s formula used to calculate the tentative release date (“the formula”). When FDOC refused to provide any public records, the ACLU sued.

Now, the ACLU seeks discovery about (1) what records reflecting the formula does FDOC have, (2) are they “public,” or (3) are the public records simply exempt and why? FDOC refuses to answer these basic inquiries about its

justifications for denying public access. These three inquiries are considered in turn.

### **1. What records exist?**

FDOC asserts<sup>1</sup> that the formula is embedded in its Offender Based Information System (OBIS). Ajhar Aff., ¶ 5 (FDOC’s Resp. to Mot. for Summ. J. (filed July 17, 2020) at 9). True enough. But FDOC contends extracting the formula from OBIS would compromise security. FDOC’s Resp. to Mot. for Summ. J., at 4.

So, what about documents *outside* OBIS? Does FDOC have any materials reflecting the formula that would be responsive to the ACLU’s request, but that do not have to be extracted from OBIS? If so, then FDOC could produce those records without inviting security concerns. Likewise, this Court would not need to determine whether extracting the formula from OBIS would necessarily compromise security, as the ACLU disputes. The entire dispute may be thus avoided.

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<sup>1</sup> Cagily, FDOC questions whether any responsive records exist, couching their existence as a mere contention. FDOC’s Resp. to Mot. for Summ. J. at 1 (“documents which ACLU *contends* are in the possession of the Department”) (emphasis added).

Two reasons evince FDOC has records reflecting the formula *outside* OBIS. First, FDOC staff sometimes manually calculates inmates' tentative release dates. Admission No. 4 (FDOC's Resp. to First Set of Written Discovery (filed July 20, 2020) at 2) ("Department staff sometimes uses manual calculation to ensure that tentative release dates are correct."). To complete this calculation, FDOC staff members must first learn the steps that would need to be taken to perform this manual calculation. Accordingly, someone at FDOC would need to perpetuate the knowledge of the intricate details and steps to calculate the tentative release date in written form for staff members to follow in conducting their manual calculation. Any suggestion that this complex knowledge is not in fact in written form but is instead passed along inside the FDOC by word of mouth—an oral tradition—defies common sense, not to mention good governance (particularly concerning a matter of such critical importance to the State—the release of someone from confinement). Second, at the very least, FDOC had to have provided instructions to computer staff about how to code, verify, and validate the computer system's calculations. This information therefore obviously exists in some form outside OBIS, and thus the ACLU sought discovery about these documents *outside* OBIS.

The ACLU turns now to some those individual requests:

Interrogatory No. 14

The ACLU propounded an interrogatory to learn whether records existed *outside* OBIS:

14. Does FDOC have any [documents or material] that reflect all or any portion of the formula or calculation FDOC uses to determine inmates' tentative release dates? If so, for each material, identify the material's form, author, and date and what portion(s) (or the entirety) of the formula or calculation it reflects. Alternatively, please provide the material(s).

Interrog. No. 14, *infra* at 21-22. FDOC refused to say. *Id.* It begins its object with the generic objection—the inquiry is “overbroad, vague, burdensome, and is not reasonably calculated.” *Id.* Additionally, it asserts that the discovery is “inconsistent with ... Chapter 119” and protected by attorney work-product. *Id.* It proposes the documents may only be produced in an in camera evidentiary hearing at which the Court will determine whether the information is exempt. *Id.* These objections are considered in turn.

FDOC says the request is “overbroad, vague, burdensome, and is not reasonably calculated.” *Id.* But it is hard to see why and FDOC does not explain. “Documents” is well defined in Florida law. Fla.R.Civ.P. 1.350. The ACLU defined “tentative release date” means the same as the term is defined in § 944.275(3)(a), Fla. Stat. Definitions, ¶ C, *infra* at 27. Furthermore, the

interrogatory is limited to specific information germane to this lawsuit—what responsive records FDOC possesses. FDOC’s unsupported objection should be rejected.

Chapter 119 defines the right and scope of public access to agency records. However, it does not limit discovery in a lawsuit to enforce that right. Instead, the Florida Civil Rules of Procedure define the scope of permitted discovery. *See* FDOC’s Mot. for Protective Order (filed Nov. 9, 2020), at 2, ¶ 3. Fla.R.Civ.P. 1.280 permits discovery on disputed facts. FDOC says any public records it has are exempt because they cannot be extracted from OBIS without compromising security. *Am. Ans.* (filed Aug. 10, 2020), ¶¶ 29-30; FDOC’s Resp. to Mot. for Summ. J. The ACLU disputes whether FDOC really has no documents outside OBIS that involve no security concerns. It disputes the application of asserted exemptions. These are factual disputes that will be at issue in the trial. The ACLU has a right to discover information about these disputes. An agency cannot simply say “trust us, any records we have are exempt.” Chapter 119 cannot defeat reasonable discovery into an agency’s defenses about why it denied public records. An agency cannot deny public access and then refuse to answer questions that probe its justification on the theory that the public must simply make more records requests. *See* FDOC’s Mot. for Protective Order at 3, ¶ 6 (“Discovery in this case should not be and cannot be utilized” ... to “seek disclosure of

information never previously requested” in a public records request). FDOC’s objections would be better suited for a time when the ACLU actually “exceeds any imaginable interpretation of what Chapter 119 requires.” *Id.* But here, as outlined above, it is hardly far-fetched to believe FDOC actually has responsive documents outside OBIS that would resolve the dispute. Inquiring into the factual and legal predicate for FDOC’s defense is not a “fishing expedition.” *Id.* at 2, ¶ 4.

Accordingly, with questions abound about the actual defenses and the factual and legal basis for their application, discovery is appropriate.

Perhaps some of the materials outside OBIS are protected by attorney-work product. However, the ACLU did not seek *documents*. It sought a description of the documents—much like a privilege log. *See* Rule 1.280(b)(6). And just as a privilege log is not “privileged,” the description of the documents requested by the ACLU is not privileged. The ACLU does not seek to evade the “mental impressions” of FDOC’s counsel. *Hickman v. Taylor*, 329 U.S. 495, 510 (1947). The ACLU does not seek “[p]ersonal views” about the probative value of documents that will not be used at trial. *Northup v. Acken*, 865 So. 2d 1267, 1270 (Fla. 2004). The attorney-work product is inapplicable.

If the ACLU sought to obtain existing documents outside OBIS reflecting the formula, an in camera hearing may be necessary to assess the appropriateness

of a claimed exemption. *Holley v. Bradford County Sheriff's Dept.*, 171 So. 3d 805 (Fla. 1st DCA 2015). However, FDOC's insistence on holding records until an in camera examination has two faults. First, FDOC only takes issue with providing access to the formula embedded within OBIS. It asserts no exemption to documents outside OBIS. Am. Ans.; FDOC's Resp. to Mot. for Summ. J. Thus, no in camera examination is necessary because FDOC asserts no exemption to the documents *outside* OBIS. Second, FDOC claims it cannot extract the formula from OBIS. In its view, the only way to provide the formulas is to provide the *entire* Offender Based Information System (OBIS). Cook Aff., ¶ 10 (FDOC's Resp. to Mot. for Summ. J., at 12) ("CDC/OBIS system ... would have to be provided to the ACLU to fulfill these requests"). And providing the entire OBIS system would compromise security, FDOC says. FDOC's Resp. to Mot. for Summ. J. In light of this contention, it is questionable what documents the FDOC envisions producing at an any evidentiary hearing. Does FDOC intend to submit to the court *entire* OBIS system at the evidentiary hearing? The answer can wait another day. To be clear, here, the ACLU has only sought information about the documents *outside* OBIS.



Interrogatory No. 17

The ACLU focused its inquiry and asked the question another way: Is the formula only within OBIS?

17. Does FDOC contend that the sole location of the formula or calculation FDOC uses to determine inmates' tentative release dates is within its computer system, e.g., OBIS—it has no record of the formula or a part of the formula or calculation outside its computer system? If not, identify the other location(s) and the form of the material(s) outside its computer system.

Interrog. No. 17, *infra* at 22. FDOC refused to answer, citing its objections in Interrogatory No. 14. *Id.* Again, the objections are unfounded. The terms are not vague—they are clearly defined or have an obvious meaning. Nor is the request overbroad or unduly burdensome—indeed, begins with a yes-or-no question and then seeks discovery about specific documents material to this lawsuit. Moreover, as stated, above, FDOC's contention that it sometimes manually calculates tentative release dates almost certainly means that the answer to the interrogatory above is “no.” It is unfathomable why FDOC refuses to answer such basic questions and instead relies on unfounded boilerplate objections that are untethered to the actual request.

Document Request No. 5

FDOC “sometimes uses manual calculation to ensure that tentative release dates are correct.” Admission No. 4 (FDOC’s Resp. to First Set of Written Discovery at 2). At the same time, the calculation is complex because the formula it employs depends on the particular characteristics of the inmate. Ajhar Aff., ¶¶ 3-4 (FDOC’s Resp. to Mot. for Summ. J. at 8-9) (comparing the formula to IRS tax calculations). Presumably, forms and instructions guide FDOC staff in completing this complex calculation. The ACLU directly requested:

5. Forms and instructions used to assist or guide persons in the calculation of an inmate’s tentative release date without entirely relying entirely on OBIS.

Document Request No. 4, *infra* at 24. FDOC refused to answer, citing its objections in Interrogatory No. 14. *Id.* Again, the objections are unfounded. The terms are not vague—they are clearly defined or have an obvious meaning. Nor is the request overbroad or unduly burdensome—if the FDOC provides these documents to their employees to conduct the calculation, then they are readily accessible. The objections are unfounded boilerplate objections that are untethered to the actual request.

## 2. Are the records “public”?

Initially, FDOC alleged that the requested formula is not a “public record.” Ans. (filed June 23, 2020), at 4 (Second Affirmative Defense). The ACLU moved for summary judgment arguing that the formula was indeed a public record. In response, FDOC did not contest this. Resp. to Mot. for Summ. J. Yet, when it amended its Answer, FDOC again alleged the formula was not a “public record.” Am. Ans. at 4 (Second Affirmative Defense).

Its defense is indeed questionable. “Public record” is broadly defined to include anything “made or received pursuant to law ...or in connection with the transaction of official business by any agency.” § 119.011(12), Fla. Stat.; *see also Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980) (defining “public record” as materials “that have been prepared with the intent of perpetuating or formalizing knowledge”).

The ACLU now turns to discovery requests that bear on this question:

Interrogatory No. 13

The ACLU asked FDOC to explain why any materials reflecting the formula would not be public record as alleged in its affirmative defense:

13. Describe the factual and legal basis for each affirmative defense asserted by FDOC.

Interrog. No. 13, *infra* at 20-21. FDOC repeated the inquiry is “overbroad, vague, burdensome, and is not reasonably calculated,” it is protected by attorney work-product, and “would literally require counsel to draft a brief on the case.” But basic discovery about affirmative defenses is appropriate. FDOC should be required to answer.

Interrogatory No. 15

The ACLU also wanted the benefit of FDOC’s position about documents outside OBIS (whose description was requested in Interrog. No. 14)—are they too not “public records”? It asked:

15. Does FDOC contend any of the materials identified in response to the immediately preceding interrogatory are not “public records,” as defined in § 119.011(12), Fla. Stat., and interpreted by courts? If so, please describe the factual and legal basis for this contention.

Interrog. No. 15, *infra* at 22. FDOC refused to answer, citing its objections in Interrogatory No. 14. *Id.* Again, the objections are unfounded.

### 3. What exemptions apply?

FDOC claims three provision of Florida law make the requested records exempt from disclosure. The ACLU sought discovery about these defenses.

#### Interrogatory No. 13—Security Plan: § 119.071(3) (First Affirmative Defense)

In its original answer, FDOC asserted the records were “security or firesafety system plans” that could compromise the physical security of a government facility and thus exempt pursuant to § 119.071(3), Fla. Stat. Answer at 4 (First Affirmative Defense). The ACLU moved for summary judgment because this exemption plainly does not apply. Instead of explaining how the formula is a “security plan,” FDOC apparently abandoned this defense and pivoted to another exemption. Resp. to Mot. for Summ. J. Yet, when this Court ordered it to include all affirmative defenses in an amended answer, Order Denying Summ. J. (July 30, 2020), the FDOC again asserted that the “security plan” exemption applied. Am. Ans. At 4 (First Affirmative Defense).

“Security plans” broadly include records that concern or would compromise the “physical security or firesafety of [a] facility,” like threat assessments, evacuation plans, and manuals for security equipment. § 119.071(3)(a)(1), Fla. Stat. But the formula is not a security plan. How FDOC calculates tentative release dates or overall terms cannot possibly compromise FDOC’s ability to

safely and securely detain persons. Indeed, the release dates themselves are published for every inmate online for any member of the public to review at any time. If the release date itself is public, it defies reason to suggest that manner in which the date is calculated could compromise the physical security or firesafety of a facility. The security plan exemption does not provide FDOC with a blanket excuse—wholly exempt from judicial review—to refuse to provide any information about its workings and thereby evade accountability.

The ACLU propounded an interrogatory to learn why FDOC still contends the formula is an exempt security plan. Interrog. No. 13, *infra* at 20-21. FDOC repeated the inquiry is “overbroad, vague, burdensome, and is not reasonably calculated,” it is protected by attorney work-product, and “would literally require counsel to draft a brief on the case.” But basic discovery about affirmative defenses is appropriate. FDOC should be required to answer.

Interrogatory Nos. 13, 16 & 18—Software controlling access:  
§ 119.071(1)(f) (Third Affirmative Defense)

FDOC asserts that the formula is “inextricably intertwined” with “sensitive” information in OBIS. Am. Ans., at 5 (Third Affirmative Defense). It submitted affidavits stating a conclusion—the formula cannot be safely extracted from OBIS. FDOC’s Resp. to Mot. for Summ. J. But a mere conclusion does not explain why it is true. The ACLU sought to understand why this exemption applies. Interrog.

No. 13, *infra* at 20-21. FDOC objected to providing an explanation. *Id.* Yet no basis for refusing to explain its objection exists.

In addition to Interrogatory No. 13, the ACLU specifically inquired why the formula cannot be extracted:

18. Does FDOC contend that the formula or calculation FDOC uses to determine inmates' tentative release dates may not be extracted from its computer system, e.g., OBIS, without compromising security? If so, please describe the factual and legal basis for this contention.

Interrog. No. 18, *infra* at 22-23. FDOC refused to answer, citing its objections in Interrogatory No. 14. *Id.*

Furthermore, the ACLU sought clarification whether FDOC contends the formula itself is exempt—or only that it cannot be safely extracted from OBIS without revealing exempt information? It inquired:

16. Does FDOC contend the formula or calculation FDOC uses to determine inmates' tentative release dates—the formula or calculation **themselves**, as opposed to their location or whether they are intertwined with other exempt information—are confidential, exempt, sensitive, or proprietary? If so, please describe the factual and legal basis for this contention.

Interrog. No. 16, *infra* at 22. FDOC refused to answer, citing its objections in Interrogatory No. 14. *Id.*

Interrogatory No. 13—Risk assessments: § 282.318(5) (Fourth Affirmative Defense)

FDOC asserts that the formula is a “risk assessment” and thus exempt pursuant to § 282.318(5), Fla. Stat. Am. Ans., at 5-6 (Fourth Affirmative Defense). It is far from clear why the formula is an exempt “risk assessment.” The ACLU requested FDOC explain its affirmative defense—why the risk assessment exemption applies to a formula. Interrog. No. 13, *infra* at 20-21. FDOC objected to providing an explanation. *Id.* No basis for refusing to explain its objection exists.

**Other Denied Discovery**

Document Request No. 4

Marquis Software Development, Inc. (“Marquis”), maintains or manages OBIS for FDOC. Marquis is a potential witness and may have documents responsive to the ACLU’s request. *See* § 119.0701(3)(a), Fla. Stat. (requiring requests for public records held by a contractor to “be made directly to the public agency”). The ACLU wants to know the services Marquis provides FDOC to assess the need and prepare for a deposition. The ACLU requested:

4. Agreements, contracts, word order, and purchase orders with Marquis Software Development, Inc., in effect at any time in 2020 to write, revise, modify, or maintain a computer system for FDOC, including OBIS.



Document Request No. 4, *infra* at 24. FDOC refused to answer, citing its objections in Interrogatory No. 14. *Id.*

**REASONABLE ATTORNEY’S FEES**

If a moving party prevails on a motion to compel, absent exceptions the court “shall require the [opposing] party ... to pay to the moving party the reasonable expenses incurred in obtaining the order that may include attorneys’ fees.” Rule 1.380. No exception applies. The ACLU’s counsel conferred with FDOC’s counsel in a good faith attempt to resolve this dispute without court action. FDOC’s refusal to provide discovery and opposition to this motion was not substantially justified. An award of expenses is just.

Benjamin Stevenson spent the following time on the following days preparing this motion to compel:

<b>Date</b>	<b>Hours</b>
12/7/2020	3.4
12/8/2020	2.0
12/9/2020	2.6
12/10/2020	0.8

Total: **8.8 hours**

U.S. District Court Judge Walker recently approved an hourly rate for Stevenson of \$525. *Prison Legal News v. Inch*, 4:12CV239-MW/CAS, 2019 WL 5394614, at \*3-4 (N.D. Fla. Oct. 22, 2019) (noting Stevenson’s request for \$525/hour and finding “Plaintiff’s proposed rates to be reasonable”).

**DECLARATION**

I performed the legal work identified above. This claimed time was necessarily incurred to complete this Motion to Compel. Some of my time was excluded as billing judgment. I have also excluded telephone conferences with co-counsel and co-counsel’s time.

I have been a licensed attorney since 2002.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Dec. 11, 2020

s/Benjamin Stevenson  
Benjamin Stevenson

WHEREFORE, the ACLU requests the following relief:

A. An order compelling FDOC to substantively respond to the following discovery: Interrogatory Nos. 13-18 and Request for Documents Nos. 4-5.

B. Pursuant to Rule 1.380(a)(4), an order directing FDOC to pay the ACLU \$4,620 (8.8 hours x \$525/hour) for attorney’s fees associated with this motion.

**CERTIFICATE OF CONFERRAL (RULE 1.380(A)(4))**

Plaintiff conferred with Defendant FDOC's counsel about this motion to compel in a good faith effort to obtain discovery without court action.

**CERTIFICATE OF SERVICE**

I certify that the foregoing document has been furnished to the following persons on the E-filed date of this document by filing the document with service through the e-Service system (Fla.R.Jud.Admin. 2.516(b)(1)):

**William D. Hall** (whall@deanmead.com, bgsanders@deanmead.com)  
**John L. Wharton** (jwharton@deanmead.com, hschack@deanmead.com)  
*Counsel for FDOC*

Respectfully Submitted,

s/Benjamin James Stevenson  
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*Counsel for the Plaintiff*

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

AMERICAN CIVIL LIBERTIES UNION OF  
FLORIDA, INC.,

Plaintiff,

v.

CASE NO. 2020 CA 000854

FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant.

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**FLORIDA DEPARTMENT OF CORRECTIONS' RESPONSES TO ACLU'S  
SECOND COMPOSITE DISCOVERY REQUEST**

Defendant FLORIDA DEPARTMENT OF CORRECTIONS ("FDOC"), by and through undersigned counsel, hereby responds to Plaintiff, AMERICAN CIVIL LIBERTIES UNION OF FLORIDA, INC.'s, Second Composite Discovery Requests. In response thereto, Defendant would answer as follows:

**ADMISSIONS**

Pursuant to Fla.R.Civ.P. 1.370, ACLU propounds the following request for admissions and requests that FDOC admit the truth of the facts set forth as follows:

None.

**INTERROGATORIES**

Pursuant to Fla. R. Civ. P. 1.340, ACLU requests that FDOC answer in writing and under oath the following interrogatories. When the interrogatory requests you to identify a person, then identify each person by name, mailing address, telephone number, and email address.

13. Describe the factual and legal basis for each affirmative defense asserted by FDOC.

**ANSWER:** Objection. This request is overbroad, vague, burdensome, and is not

reasonably calculated to lead to the discovery of admissible evidence. The interrogatory on its face calls for legal conclusions and/or attorney work product, and would literally require counsel to draft a brief on the case.

14. Does FDOC have any computer codes, documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material that reflect all or any portion of the formula or calculation FDOC uses to determine inmates' tentative release dates? If so, for each material, identify the material's form, author, and date and what portion(s) (or the entirety) of the formula or calculation it reflects. Alternatively, please provide the material(s).

**ANSWER:** Objection. This request is overbroad, vague, burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence and is beyond the scope of Chapter 119. This request has no bearing on, or is inconsistent with, anything Chapter 119 requires to be produced or to the public records request at issue.

Unless exempt or confidential, the requested information must be provided in the manner in which it is kept at the Department. That is all that is required by Chapter 119. Any explanation or interpretation beyond that is outside the scope of Chapter 119. *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).

Additionally, the interrogatory on its face calls for legal conclusions and/or attorney work product.

Further, it is the Department's position that the information demanded to be produced by

ACLU in this case is protected information by Florida Statute and that an *in camera* evidentiary proceeding will be the appropriate procedural mechanism for the Court to determine whether the information requested exists and/or is confidential or protected. The Department will imminently file a Motion for Protective Order to establish the appropriate parameters of discovery in this case. Until that motion is heard, as well as the pending Motion to Consolidate which has been filed in this case, no further discovery should be had.

15. Does FDOC contend any of the materials identified in response to the immediately preceding interrogatory are **not** “public records,” as defined in § 119.011(12), Fla. Stat., and interpreted by courts? If so, please describe the factual and legal basis for this contention.

**ANSWER:** See objection to interrogatory 14, incorporated by this reference.

16. Does FDOC contend the formula or calculation FDOC uses to determine inmates’ tentative release dates—the formula or calculation **themselves**, as opposed to their location or whether they are intertwined with other exempt information—are confidential, exempt, sensitive, or proprietary? If so, please describe the factual and legal basis for this contention.

**ANSWER:** See objection to interrogatory 14, incorporated by this reference.

17. Does FDOC contend that the sole location of the formula or calculation FDOC uses to determine inmates’ tentative release dates is within its computer system, e.g., OBIS—it has no record of the formula or a part of the formula or calculation outside its computer system? If not, identify the other location(s) and the form of the material(s) outside its computer system.

**ANSWER:** See objection to interrogatory 14, incorporated by this reference.

18. Does FDOC contend that the formula or calculation FDOC uses to determine inmates’ tentative release dates may not be extracted from its computer system, e.g., OBIS, without compromising security? If so, please describe the factual and legal basis for this contention.

**ANSWER:** See objection to interrogatory 14, incorporated by this reference. Without waiving the objection, FDOC would state: as described in the pleadings and affidavits on file in this case, ACLU's request is for a formula which cannot be produced without also exposing intertwined highly-sensitive information. This intertwined information controls and directs access authorizations and security measures for the Department's automated systems.

Additionally, as the affidavits attest, to attempt to pull all of these individual factors out of the system or combine them into a single "formula" that could be provided to someone outside of the Department would be to create an entirely new record or set of records that do not currently exist within the Department's possession the information requested to be produced by ACLU is both a) protected by each of these subsections, and b) is inextricably intertwined with information protected statute.

19. Does FDOC contend it has **no duty to extract** from its computer system, e.g., OBIS (which may contain exempt information) the formula or calculation FDOC uses to determine inmates' tentative release dates, if the formula or calculations themselves are not exempt from public access under Florida's Public Records Law? If so, please describe the factual and legal basis for this contention.

**ANSWER:** See objection to interrogatory 14, incorporated by this reference.

20. Does FDOC contend that extracting multiple portions of the formula or calculation FDOC uses to determine inmates' tentative release dates from its computer system, e.g., OBIS, and producing them in response to the ACLU's public records request would necessarily entail creating a new record as opposed to providing multiple, existing records? If so, please describe the factual and legal basis for this contention.

**ANSWER:** See objection to interrogatory 14, incorporated by this reference, and the

response to interrogatory 18.

### **DOCUMENTS**

Pursuant to Fla.R.Civ.P. 1.350, ACLU requests that FDOC either (a) produce the originals or copies for inspection and copying by the ACLU's attorneys, or (b) provide copies (with an invoice, so the ACLU can reimburse FDOC for copying and mailing costs) at the ACLU's attorney's office (3 W. Garden St., Ste. 712, Pensacola, Florida) in no later than 30 days:

4. Agreements, contracts, word order, and purchase orders with Marquis Software Development, Inc., in effect at any time in 2020 to write, revise, modify, or maintain a computer system for FDOC, including OBIS.

**RESPONSE:** See objection to interrogatory 14, incorporated by this reference.

5. Forms and instructions used to assist or guide persons in the calculation of an inmate's tentative release date without entirely relying entirely on OBIS.

**RESPONSE:** See objection to interrogatory 14, incorporated by this reference.

Respectfully submitted this 9<sup>th</sup> day of November, 2020.

*/s /John L. Wharton*  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing document has been furnished this 9th day of November 2020, via electronic mail through the Florida E-Filing Portal to the following:

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\_\_\_\_\_  
/s/ John L. Wharton

FLORIDA SECOND JUDICIAL CIRCUIT COURT  
LEON COUNTY, FLORIDA

AMERICAN CIVIL LIBERTIES UNION  
OF FLORIDA, INC.,

Plaintiff,

Case No.: 37 2020 CA 000854

v.

FLORIDA DEPARTMENT OF  
CORRECTIONS,

Defendant.

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**ACLU'S SECOND COMPOSITE DISCOVERY REQUEST**

(Formulas)

To: **Will D. Hall**  
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*Counsel for FDOC*

Pursuant to the Florida Rules of Civil Procedure, American Civil Liberties Union, Inc., submits the following interrogatories and requests for admission and production:

## DEFINITIONS

- A. “ACLU” means American Civil Liberties Union, Inc.
- B. “FDOC” means Florida Department of Corrections.
- C. “Tentative Release Date” means the same as the term is defined in § 944.275(3)(a), Fla. Stat.
- D. “Overall Term” means the “overall term” reflected in the FDOC Form DC-14.
- E. “Validated” means the process of checking that a software system, computer program, or computer code meets specifications and that it fulfills its intended purpose. It may also be referred to as software quality control.
- F. “Outside Vendor” means a business association or person not employed directly by FDOC that performs work for FDOC.
- G. “OBIS” means FDOC’s Offender Based Information System.

**ADMISSIONS**

Pursuant to Fla.R.Civ.P. 1.370, ACLU propounds the following request for admissions and requests that FDOC admit the truth of the facts set forth as follows:

None.

## INTERROGATORIES

Pursuant to Fla.R.Civ.P. 1.340, ACLU requests that FDOC answer in writing and under oath the following interrogatories. When the interrogatory requests you to identify a person, then identify each person by name, mailing address, telephone number, and email address.

13. Describe the factual and legal basis for each affirmative defense asserted by FDOC.

14. Does FDOC have any computer codes, documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material that reflect all or any portion of the formula or calculation FDOC uses to determine inmates' tentative release dates? If so, for each material, identify the material's form, author, and date and what portion(s) (or the entirety) of the formula or calculation it reflects. Alternatively, please provide the material(s).

15. Does FDOC contend any of the materials identified in response to the immediately preceding interrogatory are **not** "public records," as defined in § 119.011(12), Fla. Stat., and interpreted by courts? If so, please describe the factual and legal basis for this contention.

16. Does FDOC contend the formula or calculation FDOC uses to determine inmates' tentative release dates—the formula or calculation **themselves**, as opposed to their location or whether they are intertwined with other exempt information—are confidential, exempt, sensitive, or proprietary? If so, please describe the factual and legal basis for this contention.

17. Does FDOC contend that the sole location of the formula or calculation FDOC uses to determine inmates' tentative release dates is within its computer system, e.g., OBIS—it has no record of the formula or a part of the formula or calculation outside its computer system? If not, identify the other location(s) and the form of the material(s) outside its computer system.

18. Does FDOC contend that the formula or calculation FDOC uses to determine inmates' tentative release dates may not be extracted from its computer system, e.g., OBIS, without compromising security? If so, please describe the factual and legal basis for this contention.

19. Does FDOC contend it has **no duty to extract** from its computer system, e.g., OBIS (which may contain exempt information) the formula or calculation FDOC uses to determine inmates' tentative release dates, if the formula

or calculations themselves are not exempt from public access under Florida's Public Records Law? If so, please describe the factual and legal basis for this contention.

20. Does FDOC contend that extracting multiple portions of the formula or calculation FDOC uses to determine inmates' tentative release dates from its computer system, e.g., OBIS, and producing them in response to the ACLU's public records request would necessarily entail creating a new record as opposed to providing multiple, existing records? If so, please describe the factual and legal basis for this contention.

## DOCUMENTS

Pursuant to Fla.R.Civ.P. 1.350, ACLU requests that FDOC either (a) produce the originals or copies for inspection and copying by the ACLU's attorneys, or (b) provide copies (with an invoice, so the ACLU can reimburse FDOC for copying and mailing costs) at the ACLU's attorney's office (3 W. Garden St., Ste. 712, Pensacola, Florida) in no later than 30 days:

4. Agreements, contracts, word order, and purchase orders with Marquis Software Development, Inc., in effect at any time in 2020 to write, revise, modify, or maintain a computer system for FDOC, including OBIS.

5. Forms and instructions used to assist or guide persons in the calculation of an inmate's tentative release date without entirely relying entirely on OBIS.

**CERTIFICATE OF SERVICE**

I certify that the foregoing document has been furnished to the following person(s) on July 27, 2020, by email:

**William D. Hall** (whall@deanmead.com, bgsanders@deanmead.com)  
**John L. Wharton** (jwharton@deanmead.com,  
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*Counsel for FDOC*

**Respectfully Submitted,**

s/Benjamin James Stevenson  
**Benjamin James Stevenson**  
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