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13 California

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**07/02/2013**  
**awoodward**  
**By \_\_\_\_\_, Deputy**  
**Case Number:**  
**34-2013-80001552**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SACRAMENTO

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12 American Civil Liberties Union of Northern ) Case No.  
13 California, )  
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Petitioner,

v.

County of Sacramento and  
Scott Jones, Sheriff of Sacramento County,

Respondent.

Judge:  
Department:

INTRODUCTION

1. On April 29, 2013, Petitioner American Civil Liberties Union of Northern California (“ACLU”) requested public records from the Sacramento County Sheriff’s Department pertaining to its newly enacted postcards-only inmate mail policy, under the California Public Records Act (“PRA”). Nearly two months later, despite the PRA’s mandatory deadlines and after Petitioner made several attempts to confirm the date of production, the Sacramento County Sheriff’s Department finally responded and provided some documents on June 20, 2013. However, it failed to provide many of the records that the ACLU had requested.

1 2. The ACLU therefore brings this suit to enforce the PRA and the right of access to government  
2 records pursuant to Article I, section 3 of the California Constitution because it believes, and on that  
3 basis alleges, that the Department possesses many more responsive documents than it provided.

4 3. The ACLU asks this court for: (1) a writ of mandate compelling the government to produce  
5 each and every record specified in the Petitioner’s request, as authorized by Government Code section  
6 6259 and Code of Civil Procedure sections 1085 and 1086; (2) to the extent there are exceptional  
7 circumstances that make it unreasonable for the government to provide any non-exempt records  
8 immediately, a preemptory writ of mandate to compel Respondent to provide a date when it will make  
9 these records available, as required by Government Code section 6253, subdivision (c), and provide  
10 the records on or before that date; and (3), if the government assert that any of the requested records  
11 are exempt from disclosure, that the Court determine whether the government has met its burden to  
12 justify withholding public records and order disclosure of all non-exempt records.

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14 **PARTIES**

15 4. Petitioner American Civil Liberties Union of Northern California (hereinafter “ACLU” or  
16 “Petitioner”) is a non-profit public interest organization with a longstanding goal of advancing open  
17 government and free speech rights. The ACLU is a member of the public, as defined by Government  
18 Code section 6252, subdivision (b), and is beneficially interested in the outcome of these proceedings.  
19 Petitioner has a clear, present, and substantial right to the relief requested herein and no plain, speedy,  
20 or adequate remedy at law other than the relief sought herein.

21 5. Respondent County of Sacramento is a local agency within the meaning of Government Code  
22 section 6252, subdivisions (a) and (d).

24 6. Respondent Scott Jones is the Sheriff of Sacramento County and the head of the Sacramento  
25 County Sheriff’s Department (“Department”), which is itself a Department of Respondent County of  
26 Sacramento and which possesses the records at issue. Sheriff Jones is sued in his official capacity  
27 only.

1 7. Petitioner believes, on that basis alleges, that Respondent is in possession of the requested  
2 records.

3  
4 **JURISDICTION and VENUE**

5 8. This court has jurisdiction pursuant to Government Code section 6258 and 6259; Code of Civil  
6 Procedure section 1085; and California Constitution Article VI, section 10.

7 9. Venue is proper in this court under Government Code section 6259 because the requested  
8 records or some part of them are located in Sacramento County, and under Code of Civil Procedure  
9 section 393 and section 394, subdivision (a), because this action arose in, and is brought against, the  
10 County of Sacramento.

11  
12 **PERTINENT FACTS**

13 10. On December 11, 2012, the Department disseminated a press release describing its new  
14 postcard-only inmate mail policy to become effective on February 11, 2013. (A true and correct copy  
15 of the Department's press release dated December 11, 2012, is attached hereto at Exhibit "A.")

16 11. On or about February 15, 2013, the ACLU submitted a letter to the Department requesting  
17 termination of the policy on legal and policy grounds. Thereafter, the Department posted its postcard-  
18 only policy on its website. (A true and correct copy of the postcards-only policy posted on the  
19 Sacramento County Sheriff's Department website is attached hereto as "Exhibit B.")<sup>1</sup> The Department  
20 did not respond to the February letter submitted by the ACLU.  
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22 12. On April 29, 2013, the ACLU submitted another letter to the Department again requesting  
23 termination of the postcard-only policy, and included in this letter a request to inspect and copy  
24 documents pursuant to the PRA.  
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27 <sup>1</sup> The current status of the postcards-only mail policy is unclear. The Department has removed the policy from its website,  
28 but it is unknown at this time whether the policy will be re-instated in the future. Additionally, the Operations Policy sent by  
the Department still includes the postcard-only inmate mail policy.

1 13. The PRA request was sent via First Class United States mail to 711 G Street, Sacramento, CA,  
2 95814 and via electronic mail to Sacramento County Sheriff Scott Jones at [sheriff@sacsheriff.com](mailto:sheriff@sacsheriff.com).

3 (A true and correct copy of the Petitioner's PRA request is attached hereto as Exhibit "C.")

4 Specifically, Petitioners requested the following:

- 5
- 6 a. All records that describe your Department's current policies and procedures relating to
- 7 incoming and outgoing mail, including rules for what mail may be sent and received, as
- 8 well as policies and procedures for handling, screening, searching, accepting, or rejecting
- 9 such mail, and notifying senders or intended recipients of any rejected mail.
- 10 b. All records that relate to the postcard-only policy described on your website, including
- 11 records that show when and why your Department decided to consider adopting it, any
- 12 specific incidents that led your Department to consider adopting it, and any alternative
- 13 policies the Department considered, and whether it is currently in effect.
- 14 c. All records that relate to any plans the Department has to change its current policies and
- 15 procedures relating to incoming and outgoing mail, including any plans to adopt or rescind
- 16 the post-card policy.
- 17
- 18 d. Any and all communications between your Department and any other sheriff's department
- 19 in the State of California pertaining to the postcard-only policy.

20 14. Petitioner requested response within ten days of receipt of the request, citing Government Code  
21 section 6253, subdivision (c), and section 6255. (See Exhibit "C" attached hereto.)

22

23 15. All of the records requested in Exhibit "C" are public records within the meaning of the PRA,  
24 and in possession of the Respondent. (Gov. Code, § 6252, subd. (e); *See Versaci v. Superior Court*  
25 (*Palomar Community College District*) (2005) 127 Cal.App.4th 805, 812 [26 Cal.Rptr.3d 92].)

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1 16. On May 6, 2013, ACLU attorney Kimberly A. Horiuchi (hereinafter “Horiuchi”) received a  
2 voicemail from Deputy Tess Detterting, of the Department. Deputy Detterting left her phone number,  
3 and confirmed that the Department received Petitioner’s request, but would need more time to comply.

4 17. Horiuchi returned Deputy Detterting’s call on the same day the voicemail was received - May  
5 6, 2013. Deputy Detterting did not answer the call, and Horiuchi left message requesting information  
6 as to when the requested documents would be made available. Deputy Detterting did not respond to  
7 this message.

8  
9 18. On May 14, 2013, Horiuchi phoned Deputy Detterting again and left a voice message  
10 requesting a specific date as to when the documents listed in Petitioner’s PRA request would be made  
11 available. Deputy Detterting did not respond to this message.

12 19. May 22, 2013, Horiuchi phoned Deputy Detterting again and left a message requesting the date  
13 that documents would be made available. Deputy Detterting did not respond to this message.

14  
15 20. On May 24, 2013, Petitioner sent an email to Sacramento County Sheriff, Scott Jones, at  
16 [sheriff@sacsheriff.com](mailto:sheriff@sacsheriff.com), again requesting compliance with Petitioner’s request for documents. (A true  
17 and correct copy of this email is attached hereto as Exhibit “D.”)

18 21. On June 20, 2013 – almost two months after the initial request - the Department sent Ms.  
19 Horiuchi a written response and provided some but not all of the requested records. A true and correct  
20 copy of this response, including the Department’s cover letter, the records, and the postmarked  
21 envelope, is attached hereto as Exhibit “E.” The Bates numbers were added by Petitioner.

22 22. The cover letter stated the following:

23  
24 "This Department is in receipt of and has evaluated your request for the referenced policies.  
25 There is no substantive objections to the furnishing of such policies that affect the public.  
26 Unfortunately, the above mentioned policy was inadvertently posted on our website, the  
27 language has since been removed as this policy is at the proposed stage only and has not been  
28 implemented. Inmate handbooks and other relevant instructions have not been drafted or

1 amended to reflect the proposed policy. Therefore, your request is for policy and associated  
2 records that are not yet in existence." Exhibit E at 1 .

3 23. The Department included with this letter only the following records:  
4

5 a. A copy of its operations order for inmate mail, which states, "incoming prisoner mail,  
6 with the exception of legal mail and other approved correspondence listed below, shall be  
7 limited to postcards." Exhibit E at 4. Each page of this Order is marked "6/15 (REV  
8 12/12)," apparently indicating adoption and revision dates. *See id.* at 2-9.

9 b. Two identical copies of the "Inmate Mail and Correspondence Information" page of its  
10 website, dated June 3, 2013, stating that "effective February 10, 2013, all incoming inmate  
11 mail, with the exception of legal mail and other approved correspondence listed below,  
12 will be limited to postcards." Exhibit E at 10-13.

13 c. An undated copy of what appears to be part of a prisoner rulebook or orientation book,  
14 which suggests that prisoners are allowed to send and receive actual letters, not just  
15 postcards. Exhibit E at 14.  
16

17 24. The response does not adequately respond to Petitioner's PRA request. First, it completely  
18 ignores most of the request. Petitioner requested a variety of records relating to the Department's  
19 reasons for considering or adopting a postcard-only policy, its correspondence with other agencies  
20 about the policy, alternative policies that it might have considered, and any plans to adopt a different  
21 policy. The Department's response neither includes any of these records nor denies that they exist.  
22

23 25. In addition, the postcard-only policy was announced in December 2012, and posted on the  
24 Department's website from at least February through May of 2013; it was then removed from the  
25 website. The Department must have engaged in some process of deciding to adopt the policy, drafting  
26 it, reviewing it, and then ultimately deciding to postpone and then completely stop implementation of  
27 the policy. It seems very unlikely that this process resulted in absolutely no memoranda, emails, or  
28 other records. No such records were provided.

1 26. Moreover, the Department’s response states that the postcards-only policy was  
2 “inadvertently” posted on the Department website and that it no longer in effect. However, the records  
3 that the Department provided – both its Operation Order and the copies of its website – indicate that  
4 the postcard-only policy *is* in effect. The only record that suggests otherwise is an undated section of  
5 what appears to be a prisoner-orientation manual. California law requires the Department to have  
6 “written policies and procedures for inmate correspondence” and that are “available for review” by the  
7 “public.” (Cal. Code Regs., tit. 15, §§ 1045, subd. (b)(4), 1063.) The Department has not provided  
8 any such policy, other than the postcard-only policy it says is not in effect. Although it has posted a  
9 different policy on its website, one of the reasons the Petitioner submitted a PRA request for the  
10 Department’s mail policy was that it believed that the website was inaccurate, a belief that the  
11 Department has since confirmed.

12 27. Petitioner therefore believes, and on that basis alleges, that the Department possesses  
13 responsive documents that it has failed to provide.

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15 **CALIFORNIA PUBLIC RECORDS ACT**

16 28. Under the PRA, all records that are prepared, owned, used, or retained by any public agency,  
17 and that not subject to specified statutory exemptions, must be made available to the public for  
18 inspection and copying upon request. (Gov. Code, § 6250, *et seq.*, Gov. Code, § 6253.) In enacting  
19 the PRA, the Legislature recognized that a “requester, having no access to agency files, may be unable  
20 to precisely identify the documents sought. Thus, writings may be described by their content. The  
21 agency must then determine whether it has such writings under its control and the applicability of any  
22 exemption. An agency is thus obligated to search for records based on criteria set forth in search  
23 request.” (*California First Amendment Coalition v. Superior Court (Pete Wilson)* (1998) 67  
24 Cal.App.4th 159, 165-166 [78 Cal.Rptr.2d 847]; *See* Gov. Code, §§ 6253, subd. (b), 6253.1.)

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26 29. The PRA requires a public agency to locate responsive documents and determine whether  
27 disclosure is proper within ten days of receiving a request, unless “unusual circumstances” justify an  
28 extension of not more than fourteen days. (Gov. Code, § 6253, subd. (c).) After making this

1 determination, the public agency must promptly notify the requesting party of which records will be  
2 disclosed and provide an estimate of when said records will made available. (*Id.*) The public agency  
3 must also promptly provide a copy of the records to the requesting party or allow inspection of the  
4 requested records. (*Id.*; Gov. Code, § 6253, subd. (d).)

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6 30. Government Code section 6258 creates a mechanism by which to compel production of  
7 documents pursuant to the PRA: if the government fails to comply with the statutory requirements, a  
8 requesting party may file a verified petition to the superior court of the county wherein the records, or  
9 some portion thereof, are located, alleging that public record are being improperly withheld from a  
10 member of the public. If it appears from the petition that the government is failing to comply with the  
11 law, the court shall order the officer or the person charged with withholding the records to disclose the  
12 requested documents or show cause why the officer is not required to do so. The court shall decide the  
13 case after examination of the record in camera, if permitted by the Evidence Code, papers filed by the  
14 parties, oral argument, and any additional evidence as the court may allow. The court must send the  
15 times for responsive pleadings and for a hearing in these proceedings with the object of securing a  
16 decision as to these matters at the earliest possible time.

17 31. If the court finds that failure to disclose is not justified, it shall order the public official to make  
18 the requested records available to the requesting party. (Gov. Code, § 6559, subd. (b).)

19 32. Finally, the California Constitution provides an independent right of access to government  
20 records: “The people have the right of access to information concerning the conduct of the people’s  
21 business, and, therefore, the meetings of public bodies and the writings of public officials and agencies  
22 shall be open to public scrutiny.” (Cal. Const., art. I, § 3, subd. (b), par. (1).)

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24 33. Traditional mandamus exists to require the government to comply with the PRA and the  
25 California Constitution. (*See* Code of Civ. Proc., § 1085, *et seq.*)  
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2 39. ACLU is without a plain, speedy, and adequate remedy in the ordinary course of law. (Code of  
3 Civ. Proc., § 1086.)

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5 **SECOND CAUSE OF ACTION**

6 **For Writ of Mandate for Violation of the California Public Records Act, Government Code**  
7 **section 6250, et seq., and Article I, section 3 of the California Constitution**

8 (Against the County of Sacramento; Scott Jones, Sheriff of Sacramento County)

9  
10 40. Petitioner incorporates by reference herein each and every allegation made above as if set  
11 forth in full.

12  
13 41. California Constitution Article I, section 3, subdivision (b), paragraph (1) provides, “The  
14 people have the right of access to information concerning the conduct of the people’s business, and,  
15 therefore, the meetings of public bodies and the writings of public officials and agencies shall be open  
16 to public scrutiny.”

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18 42. Petitioner believes, and on that basis alleges, that the Respondent has not fully complied with  
19 its PRA request dated April 29, 2013, and hence, has failed to release the requested records to  
20 Petitioner as required by the PRA and Article I, section 3 of the California Constitution.  
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1           WHEREFORE, Petitioner prays for judgment as to each and every cause of action as set forth  
2 herein, as follows:

3           1.       That the Court issue a preemptory writ of mandate directing Respondents County of  
4 Sacramento and Sheriff Jones to provide Petitioner ACLU with all non-exempt records, immediately  
5 and without further delay;

6           2.       To the extent there are exceptional circumstances that make it unreasonable for them to  
7 provide any non-exempt records immediately, that the Court issue a preemptory writ of mandate  
8 directing Respondent to provide Petitioner ACLU with an estimated date that those records will be  
9 available;

10           3.       If Respondents assert that any of the requested records are exempt from disclosure, that the  
11 Court determine whether the government has met its burden to justify withholding public records and  
12 order disclosure of all non-exempt records. *See American Civil Liberties Union of Northern Cal. v.*  
13 *Superior Court (California Department of Corrections)* (2011) 202 Cal.App.4th 55, 82-88 [134  
14 Cal.Rptr.3d 472].)

15           4.       That Petitioners be awarded their attorneys' fees and costs pursuant to Government Code  
16 section 6259, subdivision (d);

17           5.       For such other and further relief as the Court deems proper and just.  
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21 Dated: \_\_\_\_\_

22 By: \_\_\_\_\_  
23 Michael T. Risher  
24 Attorney for Petitioner  
25 ACLU Northern California  
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**VERIFICATION**

I, Abdi Soltani, am the Executive Director of the American Civil Liberties Union of Northern California. I have read the foregoing Verified Petition for Writ of Mandate in the matter of *American Civil Liberties Union of Northern California v. County of Sacramento*. I am informed, and do believe, that the matters herein are true. On that basis, I verify that the matters stated herein are true.

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

DATED: \_\_\_\_\_

\_\_\_\_\_  
Abdi Soltani

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**VERIFICATION**

I, Kimberly A. Horiuchi, am an Attorney for the American Civil Liberties Union of Northern California. I have read paragraphs ten (10) through twenty six (26) of the foregoing Verified Petition for Writ of Mandate in the matter of *American Civil Liberties Union of Northern California v. County of Sacramento*. The facts alleged in those paragraphs are within my own knowledge and I know these facts to be true. Because of my familiarity with the facts pertaining to my communications with Respondent in this case, I also verify this portion of the Petition. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Kimberly A. Horiuchi