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MARJORIE R. ESMAN
EXECUTIVE DIRECTOR

January 5, 2011

by fax 504-826-7038

and by regular mail

Marlin N. Gusman

Orleans Parish Criminal Sheriff

819 South Broad Street

New Orleans, LA 70119

**Re: Public Records Act Request Related to Orleans Parish
Prison Rebuilding Efforts**

Dear Sheriff Gusman:

This letter constitutes a public records act request pursuant to the Louisiana public records act, La. Rev. Stat. §44:1 *et seq.*, and Louisiana Constitution art. 12, § 3.

BACKGROUND

Even before Hurricane Katrina, New Orleans had the highest incarceration rate of any major city in the United States.^[1] Today, even though it has a much smaller population and a somewhat smaller jail, New Orleans still holds that dubious title, and its incarceration rate is still three times the national average.^[2]

It is against this backdrop that Mayor Landrieu convened the Criminal Justice Working Group (“CJWG”) by executive order.^[3] The CJWG is chaired by deputy mayor and chief administrative officer Andy Kopplin, and its other members are Deputy Mayor Cedric Grant; Deputy Mayor Jerry Sneed; City Attorney Nannette Jolivette-Brown; yourself; Superintendent of Police Ronal Serpas; District Attorney Leon Cannizzaro; Chief Judge Paul Sens of the New Orleans Municipal Court; Chief Judge Julian Parker of the New Orleans Criminal District Court; Deputy Chief Judge Terry Alarcon of the New Orleans Criminal District Court; Judge Keva Landrum-Johnson of the New Orleans Criminal District Court; Chief Judge Dennis Dannel of the New Orleans Traffic Court; Council member Jackie Clarkson; Council member Susan Guidry; Council member Stacy Head; Orleans Parish Public Defender Derwyn Bunton; The Rev. Antione Barriere of Household of Faith; Judge Calvin Johnson (ret.); Nolan Rollins of the Urban League of New Orleans; Rafael Goyeneche of the Metropolitan Crime Commission; Flozell Daniels of the Louisiana Disaster Recovery Foundation; Michael Cowan of Common Good; and Lucas Diaz of Puentes New Orleans. The group’s mandate is to identify the optimal size for the Orleans Parish Prison complex (“OPP”).

To inform its decision, the CJWG commissioned a ten-year inmate population projection and policy simulation of alternative options by outside expert Dr. James Austin, a nationally-renowned expert on prison and jail population projections and prisoner classification systems. Using data provided by your office, Dr. Austin made a ten-year base population projection and conducted simulations of the impact of various policy changes on that base projection.

Dr. Austin's base projection (assuming that no policy changes are made and OPP continues to house substantial numbers of state prisoners) is that OPP's population in 2020 would be approximately 2,900, which would require a 3,121-bed facility to accommodate seasonal fluctuations and classification-based separation of people.

In his policy simulations, however, Dr. Austin found that adopting various commonsense policy changes would significantly reduce OPP's size requirements. These policy changes include many cost-effective, public safety-enhancing ideas that the Vera Institute and others have long advocated: implementing a pre-trial services agency, reducing the number of state inmates, increased use of police summonses instead of jailing, greater efficiency in the processing of judicial dockets, and reduction in jail stays for probation violators. With these changes in place, Dr. Austin projected that you could meet all of the city's reasonable needs with room for seasonal fluctuation, as well as house some state prisoners, with fewer than 1500 beds.

Relying on Dr. Austin's policy simulations, the CJWG voted to approve a 1438-bed facility and recommended that you demolish or decommission the existing excess beds. In recent public comments, however, you objected to the working group's recommendation and stated, "There ought to be another 1,800 beds so we can get to be about 3,200."[\[4\]](#) To our knowledge, you have not provided any objective support for this asserted need for 1,800 additional beds. This PRA request seeks to identify any as-yet-undisclosed studies or reports that purport to provide such support.

THE REQUESTOR

The ACLU is a nationwide, nonprofit, nonpartisan organization dedicated to protecting human rights and civil rights in the U.S. It is the largest civil liberties organization in the country, with offices in 50 states and over 500,000 members. The ACLU is specifically dedicated to holding the U.S. government accountable to universal human rights principles in addition to rights guaranteed by the U.S. Constitution.

The ACLU has long been concerned with conditions at OPP. In the year after Hurricane Katrina, the National Prison Project of the ACLU received and reviewed written accounts from over 1,300 prisoners who were in OPP when Katrina struck. The information gleaned from those reports—along with information obtained through Louisiana Public Records Act requests—was collected in a comprehensive report revealing what happened to the thousands of men, women, and children trapped in OPP before, during, and after the storm.[\[5\]](#) One year later, the ACLU released a follow-up report, describing continuing concerns about conditions inside of OPP buildings reopened since the storm.[\[6\]](#) Most recently, the ACLU released a report critiquing the rise of modern-day debtors' prisons, including OPP in New Orleans.[\[7\]](#) The ACLU has urged local officials to work with the Vera Institute to implement the recommendations in their report,[\[8\]](#) which would largely obviate the need to inject hundreds of millions of federal dollars into an expansion that is unnecessary, is not supported by local officials, does not promote public safety, and will subordinate the best interests of the city's residents to the political influence and coffers of the Orleans Parish Criminal Sheriff's Office.[\[9\]](#)

RECORDS REQUESTED

The ACLU is seeking disclosure of any and all record(s)[\[10\]](#) created after August 29, 2005, that constitute:

1. A study, report, or calculation generated by the Orleans Parish Criminal Sheriff's Office to (a) predict the Parish's future prisoner population and/or (b) identify an optimal size for the Parish's detention facilities.
2. A study, report, or calculation commissioned by the Orleans Parish Criminal Sheriff's Office to (a) predict the Parish's future prisoner population and/or (b) identify an optimal size for the Parish's detention facilities. This request does not include any work commissioned by the CJWG.
3. A description or summary of one or more studies, reports, or calculations responsive to requests 1 or 2 above.
4. Data or data compilations relied upon by one or more studies, reports, or calculations responsive to requests 1 or 2 above.

* * *

Thank you for your consideration of this request. 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 therefor. 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 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?

We request that any and all documents that are available, or that can be made available, be produced 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. We are not enclosing a CD-ROM disk with this request but will furnish one upon request. 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.

Thank you for your prompt attention to this matter. We eagerly await your response, and thank you for your assistance. Please furnish all responsive records to:

Sincerely,

Marjorie R. Esman
Executive Director

[1] Barry Gerharz and Seung Hong, *Down by Law: Orleans Parish Prison before and after Katrina*, DOLLARS & SENSE, March/April 2006, available at <http://www.dollarsandsense.org/archives/2006/0306gerharzhong.html>.

[2] Interview with Jon Wool, Vera Institute of Justice, Sept. 7, 2010. The figures were derived by combining the Bureau of Justice Statistics' midyear 2009 jail inmate data with the Census Bureau's July 2009 population estimates. See BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2009—STATISTICAL TABLES, NCJ 230122, tables 1 & 9a (June 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim09st.pdf>; U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR THE UNITED STATES, REGIONS, STATES, AND PUERTO RICO: APRIL 1, 2000

TO JULY 1, 2009, NST-EST2009-01, *available at* <http://www.census.gov/popest/states/tables/NST-EST2009-01.xls>; U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR COUNTIES (LOUISIANA): APRIL 1, 2000 TO JULY 1, 2009, *available at* <http://www.census.gov/popest/counties/tables/CO-EST2009-01-22.xls>. *See also* Gerharz & Hong, *supra*.

[3] *Mayor Mitch Landrieu names panel to recommend 'optimal size' for parish prison*, THE TIMES-PICAYUNE (New Orleans), Sept. 23, 2010.

[4] Matt Davis, *Despite recommendation by mayor's group, Gusman wants to double jail size to 3,200*, THE LENS (New Orleans), Dec. 9, 2010.

[5] ACLU, ABANDONED & ABUSED: ORLEANS PARISH PRISONERS IN THE WAKE OF HURRICANE KATRINA (Aug. 2006), *available at* <http://www.aclu.org/opp>.

[6] ACLU, BROKEN PROMISES: 2 YEARS AFTER KATRINA (Aug. 2007), *available at* <http://www.aclu.org/brokenpromises>.

[7] ACLU, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS (Oct. 2010), *available at* <http://www.aclu.org/prisoners-rights-racial-justice/penny-rise-americas-new-debtors-prisons>.

[8] *Id.* at 40.

[9] *See* David Morton, *Empire Falls: The Rise and Decline of the New Orleans Jail*, THE NEW REPUBLIC, Aug. 10, 2006.

[10] The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical specifications, training manuals, or studies.