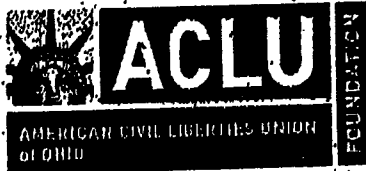


CORRESPONDENCE



Governor Ted Strickland
Riffe Center, 30th Floor
77 South High Street
Columbus, OH 43215-6108

Director Terry Collins
Ohio Department of Rehabilitation
and Corrections
1050 Freeway Drive North
Columbus, Ohio 43229

Warden Edwin C. Voorhies, Jr.
Southern Ohio Correctional Facility
1724 St. Rt. 728
P.O. Box 45699
Lucasville, Ohio 45699

May 31, 2007

RE: *Public Records Request*

Dear Sir or Madam:

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

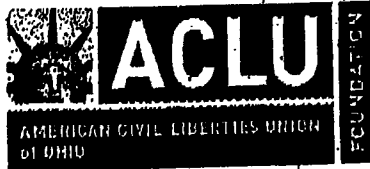


The nearly two-hour long execution of Christopher Newton on May 24, 2007, raised many questions about Ohio's execution procedures. Those procedures were purportedly revised following the hour-and-a-half-long execution of Joseph Clark on May 2, 2007. Yet the procedures did not provide a trouble-free execution for Mr. Newton, and they are the subject of the ongoing lawsuit *Cooley v. Strickland*. And still, Ohio continues to execute despite growing public concern over the methods we utilize.

Reports that it took the Newton execution staff 90 minutes to establish intravenous shunts, that Newton was visibly convulsing during the injection phase, and that it took 20 minutes rather than 8-10 minutes for the chemical cocktail to end Newton's life all raise serious questions about the execution procedures followed on May 24, 2007.

Therefore, pursuant to the Ohio Public Records Act, Revised Code §149.43, we hereby request copies of the following public documents:

- A copy of the Southern Ohio Correctional Facility execution log from the May 24, 2007, execution of Christopher Newton.
- The Southern Ohio Correctional Facility broadcasts a closed circuit video feed of the intubation phase from the inmate's holding cell into the main witness viewing room. We request a copy of that video feed for Newton. If no such recordings are kept, please provide whatever written reports exist documenting the protocol for and attempts to place the IV lines and shunts in Newton.



- A list of the ODRC personnel who oversaw the May 24, 2007, execution of Christopher Newton. Also, a list (such as a *curriculum vitae*) of any training in medical procedure for each member of the execution staff identified above, and records of the medical training that each has received.
- A copy of the current ODRC execution procedures and protocols, including but not limited to:
 - review of the inmate's prior medical records,
 - any assessment of the inmate's current medical condition,
 - intubation procedures,
 - procedures for what the execution team should do if they encounter difficulty or problems with intubation, and
 - the dosage instructions for each of the three chemicals used in lethal injection – the sedative, paralytic, and killing drug.
- A copy of the pre-execution medical evaluation and medical records review of Newton conducted by prison medical staff.
- The autopsy report, if an autopsy of Christopher Newton was conducted.

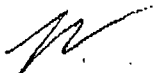
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The American Civil Liberties Union of Ohio Foundation, Inc. will pay reasonable postage and copying costs associated with the fulfillment of this request. Please notify me in advance if the cost of fulfilling this request is expected to exceed one hundred dollars (\$100.00).

I look forward to receiving your prompt reply. Please contact us if there are any questions pertaining to this request.

Sincerely,


Jeffrey M. Gamso, Legal Director
American Civil Liberties Union of Ohio Foundation, Inc.

Phone: (216) 472-2220
Fax: (216) 472-2210
Email: contact@acluohio.org



Ohio Department of Rehabilitation and Correction

1050 Freeway Drive North
Columbus, Ohio 43229

Ted Strickland, Governor

www.drc.state.oh.us

Terry J. Collins, Director

June 6, 2007

Jeffrey Gamso, Legal Director
American Civil Liberties Union of Ohio Foundation
4506 Chester Avenue
Cleveland, Ohio 44103-3621

Re: Your letter dated May 31, 2007

Dear Mr. Gamso:

I am responding to the above referenced letter on behalf of Director Collins and Warden Voorhies. There you make a public records request for the following information: a copy of the May 24th execution log for inmate Christopher Newton; a copy of the closed circuit video feed of the intubation phase of the execution procedure; written reports that document the protocol for and attempts to place IV lines and shunts in Mr. Newton; a list of personnel who oversaw the execution and a list of medical training that any received; a copy of the current ODRC execution procedure and protocol; a copy of the pre-execution medical evaluation and medical records review of Mr. Newton conducted by prison medical staff; and an autopsy report.

I am enclosing a copy of the execution log. Please be advised that the Department considers this an inmate record that falls outside the scope of the public record statute pursuant to section 5120.21 of the revised code. Nonetheless, the Director has authorized its release in the public interest. I am also providing a copy of the Department's execution policy

No recordings are made of the closed circuit video feed. There are no documents responsive to your request for reports on attempts to place IV lines and shunts in Mr. Newton. We do not release the identities of personnel who participate in the conduct of an execution. Inmate medical records are outside the scope of public records law pursuant to section 5120.21 of the revised code. The Department does not possess an autopsy report.

Very Truly Yours,

Vincent Lagana
Legal Counsel

Copies: Director

Warden, SOCP

0619



June 18, 2007

Vincent Lagana, Legal Counsel
Ohio Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, OH 43229

Re: Your letter dated June 6, 2007

Dear Mr. Lagana:

Thank you for your prompt response to our public records request dated May 31, 2007 and for the documents you enclosed.

I am writing to inquire about the reason for your decision to withhold the *curriculum vitae* and list of training in any medical procedures each member of the execution staff may have and records thereof. In your letter you did not provide us with a reason for doing so, or a citation to the relevant portion of the Ohio Revised Code justifying the denial.

I am aware that releasing documents that would reveal family and residential information and information that would cause a substantial risk to the individuals is exempt from being released. However, it is my opinion the names of the individuals involved in the Newton execution are not exempt. Conley v. Correctional Reception Ctr., 141 Ohio App. 3d 412, 751 N.E. 2d 528 (Ohio App. 4 Dist., 2001).

Furthermore, in the event the *curriculum vitae* or list of training in medical procedures that the personnel who carried out Christopher Newton's executions contain exempted information, I ask that you redact that information and submit the remainder of those documents to us. State ex. rel. Outlet Communications, Incl. v. Lancaster Police Dept., 38 Ohio St.3d 324, 528 N.E.2d 175 (Ohio 1988); State ex. rel. Dispatch Printing Co. v. Wells, 18 Ohio St.3d 382, 481 N.E.2d 632 (Ohio 1985).

Pursuant to the Ohio Public Records Act, Revised Code § 149.43, we hereby request again that you send:

A list of the ODRC personnel who oversaw the May 25, 2007 execution of Christopher Newton and a list (such as a *curriculum vitae*) of any training in medical procedures for each member of the execution staff identified above and records of the medical training that each has received.

AMERICAN CIVIL
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OF OHIO FOUNDATION
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The American Civil Liberties Union of Ohio Foundation, Inc. will pay reasonable postage and copying costs associated with the fulfillment of this request. Please notify me in advance if you expect the cost of fulfilling this request to exceed one hundred dollars (\$100.00).

Once again I look forward to receiving your prompt reply. Please contact us if you have any questions pertaining to this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey M. Gamso'. The signature is fluid and cursive, with a large initial 'J' and 'G'.

Jeffrey M. Gamso
Legal Director



Ohio Department of Rehabilitation and Correction

1050 Freeway Drive North
Columbus, Ohio 43229

Ted Strickland, Governor

www.drc.state.oh.us

Terry J. Collins, Director

June 29, 2007

Jeffrey Gamso, Legal Director
American Civil Liberties Union of Ohio Foundation
4506 Chester Avenue
Cleveland, Ohio 44103-3621

Re: Your letter dated June 18, 2007

Dear Mr. Gamso:

I am responding to the above referenced letter. It is a follow up to a records request you made on May 31st and to which I replied on June 6th. Among other things you requested on May 31st was a list of ODRC staff that oversaw Christopher Newton's execution, and a list of any medical training each member of the team may have received. In my reply, I indicated that the Department does not release the identities of team members. I did not specifically address the issue of individual training because I tied it to the identity request.

You now reiterate your request and furnish citations which you believe present a legal basis for the provision of the information. Although you do not ask that I do so, you mention that I did not provide a reason for our refusal, or a citation to the Ohio Revised Code justifying the denial. Please be advised that the Department does not reveal the identities of the execution team in order to protect them from harassment and physical harm. I appreciate you furnishing case law that you believe supports your position; however, I do not think this correspondence is the appropriate forum to engage in a conversation over the legal considerations involved here.

Very Truly Yours,

Vincent Lagana
Legal Counsel

Copies: Director
Chief Counsel
Corrections Litigation
Warden, SOCF

0622



Arbogast 341405 ✓
Ohio Department of Rehabilitation and Correction

1050 Freeway Drive North
Columbus, Ohio 43229

Ted Strickland, Governor

www.drc.state.oh.us

Terry J. Collins, Director

Kreig J. Brusnahan Esq.
158-A Lear Road
Avon Lake, Ohio 44012

June 6, 2007

Re: Subpoena - State of Ohio v. Ruben Rivera, Case No. 04CR065940

Dear Mr. Brusnahan:

I am responding on behalf of Director Collins to the above referenced subpoena. I am forwarding copies of the current and previous execution policies, the timelines for all executions conducted since 1999, a review of execution procedures, correspondence on the subject sent to Governor Taft, incident reports relating to the Clark execution, and policies that address death row inmates or contain references to some aspect of an execution. They are being sent via DHL, overnight delivery. Please be advised that the Department considers the timelines inmate records outside the scope of public record law pursuant to section 5120.21 of the revised code, and I ask that you handle them accordingly.

As we discussed, the demands for documents in the subpoena are numerous and very broad. You ask for documents that relate in any way to seventeen different subject areas. I received the subpoena on Friday June 1st. You demanded they be produced by Thursday June 7th. In this regard I have requested assistance of the Corrections Litigation Section of the Ohio Attorney General's Office in transmitting objections to the court. I understand they have discussed the matter with you, and that this package will suffice for the purposes of the Thursday hearing.

Sincerely,

Vincent Lagana
Legal Counsel

Copy: Director
Chief Counsel
Corrections Litigation

0623

Lorain County Common Pleas Court

STATE OF OHIO

PRECIPE, SUBPOENA AND SHERIFF'S RETURN

PLAINTIFF

VS.

CASE NO. 04CR065940

RUBEN RIVERA

DEFENDANT
LEGAL SERVICES
JUN - 1 2007
P. R. C.

Attorney KREIG J. BRUSNAHAN

Atty. for DEFENDANT

PHONE (440) 930-2600

TO: Name and Address

Terry J. Collins, Director

SUBPOENA DUCES TECUM

Ohio Department of Rehabilitation & Correction

PLEASE DELIVER THE REQUESTED DOCUMENTS ON THE ATTACHED PAGES IN EITHER PAPER OR ELECTRONIC FORMAT TO THE UNDERSIGNED ON OR BEFORE THE HEARING DATE LISTED BELOW, IN LIEU OF YOUR APPEARANCE

1050 Freeway Drive, North

Columbus, OH 43229

YOU ARE HEREBY COMMANDED to appear before the Court of Common Pleas within and for the said County of Lorain on the 7th day of June, 2007, at 9 o'clock A M., Courtroom # 705, and so from day to day until discharged, to testify as a witness on behalf of Defendant Ruben Rivera

PLEASE REPORT TO THE CLERK OF COURTS OFFICE, SECOND FLOOR, ROOM 210, LORAIN COUNTY COURT HOUSE, 308 SECOND STREET, ELYRIA, OHIO.

If you have any questions concerning this subpoena contact the attorney whose name and phone number are listed above.

WITNESS my signature and the seal of said Court at Elyria, Ohio, this 1st day of June, 2007

RON NABAKOWSKI

Clerk of the Court of Common Pleas
Lorain County, Ohio

By: Isabel Rosero
Deputy Clerk

WHITE—TO WITNESS

YELLOW—PROCESS SERVER'S RETURN

Terry Collins and/or The Ohio Department of Rehabilitation and Corrections are directed to produce the documents specified below by June 7, 2007, to Attorney Kreig J. Brusnahan, 158-A Lear Road, Avon Lake, OH 44012. The term ODRC as used herein refers to The Ohio Department of Rehabilitation and Corrections.

DOCUMENTS DEMANDED

1. All documents with reference to any and all policies, procedures, and guidelines related in any way to any or all aspects of the lethal injection procedures and protocol. By propounding certain more specific document demands herein, Defendant in no way intends to limit the fact that he is seeking all documents that bear in any way whatsoever on any and all aspects of the ODRC's (acting individually, separately, or through agents) execution procedures, protocols, and/or methods, whether the responsive documents were generated during your tenure or your predecessors' tenure.

2. All documents related in any way to any or all aspects of the process by which ODRC chose the initial lethal injection execution procedures and protocols used in Ohio, including but not limited to (a) the drugs used; (b) the sequence and dosages in which the drugs are administered; (c) the person or persons involved in making the decision(s); (d) how the decision was made; (e) why it was made; and (f) when it was made.

3. All documents with reference to any and all policies, procedures, and guidelines related in any way to every aspect of the personnel employed, engaged, and/or relied upon to carry out a lethal injection, including but not limited to (a) the number of persons involved; (b) the duties assigned to each person; (c) the qualifications, expertise, and training required for the different personnel performing any and all tasks involved in the lethal injection procedure; and (d) any procedure, protocol, or process whether mandatory or discretionary - undertaken after an

execution takes place, including but not limited to de-briefings, counseling, scheduling, etc.

4. All documents related in any way to any or all aspects of the process by which ODRC proposed changes to, considered changes to, or implemented changes to any and all aspects of the lethal injection execution procedures and protocols, starting from the time the initial procedures and/or protocols were adopted to the present, including but not limited to any documents generated in response to a specific execution. For example, any changes or modifications undertaken, or other documents generated, as a result of difficulties encountered with gaining intravenous access during the execution of Wilford Berry, Joseph Clark, Christopher Newton or other executed persons; and any documents related to the decision to change from the practice of inserting drug-delivery equipment into the condemned person's body after the person is strapped to the execution table, to the practice of inserting drug-delivery equipment into the condemned person's body before the person is taken into the execution chamber and strapped to the table.

5. All documents related in any way to any or all aspects of the process by which ODRC keeps records of each execution carried out in Ohio since January 1, 1999, including but not limited to copies of notes taken by ODRC or their agents starting from the time a condemned inmate is taken into custody at the Southern Ohio Correctional Facility (S.O.C.F.) and ending at whatever point in time the note taking and record keeping ceases upon completion of an execution. This request includes but is not limited to any 'after action' summaries and records generated by ODRC or agent for ODRC, which records may not be deemed "contemporaneously" generated during ODRC's execution protocol. For example, this request targets, but is not limited to, (1) the contemporaneous notes taken and records generated by the corrections officers assigned to the "death house" area where the condemned inmate is housed during the last hours of his life; (2) the contemporaneous notes taken and records generated by ODRC and/or their agents who are assigned to the control center (which may not be the exact name ODRC use to refer to this function) that is established for executions and (3) the contemporaneous notes taken and records generated by the personnel ODRC or their agents assign to stay with representatives of the condemned inmate and representatives of the victim(s) when they arrive at S.O.C.F. for an execution.

6. All documents related in any way to any or all aspects of the process by which ODRC or their agents and/or employees reviewed, summarized, described, "de-briefed," filed reports for the file and/or for their superiors after any or all executions carried out in Ohio by means of lethal injection.

7. All documents with reference to any and all policies, procedures and guidelines related in any way to every aspect of all activities or procedures, medical or otherwise, initiated prior to and upon the condemned person's arrival at the Southern Ohio Correctional Facility at Lucasville and thereafter, including but not limited to (a) the timing and/or sequence of events that start when ODRC initiate their execution procedures (including but not limited to moving the condemned person from one part to another part of the Mansfield Correctional Institution); (b) any medication or drug, prescription or non-prescription, administered to or offered to the condemned person, which medication is not itself designed to cause the condemned person's death (e.g., tranquilizers, sedatives, anxiety related medication, sleep-inducing medication, nausea related medication, laxatives, etc.); (c) procedures designed to give the condemned person the opportunity to have contact with family members, attorneys, spiritual advisors, execution team members, etc.; and (d) the limitations on and definition of the types and numbers of witnesses permitted to view the execution, including all documents pertaining to any exceptions to the presumption rules governing witnesses to an execution (e.g., the procedures employed to accommodate witnesses to Alton Coleman's execution; any procedures employed or available for times when a person not related by blood or law wants to witness for the victim(s)).

8. All documents with reference to any and all policies, procedures and guidelines related in any way to any aspect of all invasive or non-invasive procedures, medical or otherwise, that are either performed or prepared in advance for use during the lethal injection procedures at the Southern Ohio Correctional Facility at Lucasville, including but not limited to documents pertaining to how members of the execution team should respond if the condemned person physically resists any aspect of the execution process.

9. All documents with reference to any and all policies, procedures and guidelines related in any way to any aspect of (a) the methods for selecting, obtaining, storing, mixing, and labeling the drugs used to cause the condemned person's death; (b) the qualifications and expertise required for the person who will be determining the concentration and dosage of each drug to give; (c) the criteria that shall be used in exercising this discretion; and (d) the sequence by which the drug or drugs used shall be administered to cause the condemned person's death.

10. All documents with reference to any and all policies, procedures, and guidelines related in any way to any or all aspects descriptive of the equipment used in the lethal injection procedures and protocols, including but not limited to (a) the intravenous tubing, three-way valve, saline solution, needles, and any other lethal injection apparatus and/or equipment that has been or might be used (e.g., equipment that would be used if the intravenous equipment cannot be used to deliver the lethal drugs into the condemned person's body); (b) the specifications of the equipment used in the lethal injection procedures and protocols; (c) the person(s) who have the responsibility and/or discretion to select the lethal injection equipment; (d) the criteria or basis upon which decisions are or were made to select certain equipment for use during ODRC's lethal injection procedures and protocols; and (e) the training and/or expertise of the person(s) who made and/or who make decisions related to the equipment used in ODRC's lethal injection procedures or protocols.

11. All documents with reference to any and all policies, procedures, and guidelines related in any way to any or all aspects of (a) the manner in which the intravenous tubing, three-way valve, saline solution, and other lethal injection apparatus and/or equipment shall be modified and/or fixed in the event it malfunctions during the execution process; (b) the qualifications and expertise required of the person who shall have the responsibility and/or discretion to decide to attempt such a corrective action; and (c) the criteria that is used in exercising this discretion.

12. All documents with reference to any and all policies, procedures, and guidelines related in any way to any or all aspects of the manner in which a device of any kind shall be inserted into a condemned person's body for the delivery of the lethal drug, including but not limited to equipment used for intravenous access and any alternatives that have been or may be relied upon in the event that intravenous access is not possible or successful.

13. All documents with reference to any and all policies, procedures, and guidelines related in any way to any or all aspects of (a) the qualifications and expertise required for the person who is given the responsibility and/or discretion to decide when efforts at inserting the intravenous catheters should be abandoned in favor of some other procedure; and (b) all documents with reference to any and all policies, procedures, and guidelines related in any way to any or all aspects of the manner in which the condition of the condemned person will be monitored to confirm that proceeding to the next or different procedure for delivering the lethal drugs into the condemned person's body would not cause the condemned person to experience pain as a result of the change in the procedure employed to cause the condemned person's death.

14. All documents with reference to any and all policies, procedures, and guidelines related in any way to any or all aspects of (a) the qualifications and expertise required of the person who is given the responsibility and/or discretion to order a change from any aspect of the established and/or presumptive lethal-injection procedures or protocols to different and/or modified lethal-injection procedures or protocols if such a change is deemed necessary for any reason to successfully cause the condemned person's death; (b) the criteria that shall be used in exercising this discretion; and (c) steps to take to avoid and/or to monitor any pain experienced by the condemned person as a result of any change in the lethal-injection procedures or protocols.

15. All documents with reference to any and all policies, procedures and guidelines related in any way to any or all aspects of (a) the qualifications and expertise required of the person who is given the responsibility and discretion to ensure that appropriate procedures are followed in response to any unanticipated problems or

events arising during the lethal injection procedure, and (b) the criteria that shall be used in exercising this discretion.

16. All documents with reference to any and all policies, procedures and guidelines related in any way to any or all aspects of (a) the manner in which a monitoring system (e.g., a device to monitor heart beat, pulse, breathing, brain waves, etc.) shall be installed and utilized to monitor the condemned person's bodily functions in such a way as to ensure that the condemned person is deeply sedated while dying; and (b) the qualifications and expertise required for the person who operates this equipment. If no such monitoring equipment is or ever has been utilized, then produce any and all documents related in any way to any activity related to the consideration of using such equipment and/or the decision not to use such equipment.

17. All documents with reference to any and all policies, procedures, protocols, and/or guidelines related in any way to ODRC's lethal injection procedures and/or protocols, which documents were not otherwise covered by any other demand herein for documents.