

STATE OF VERMONT
SUPERIOR COURT
CIVIL DIVISION

Prison Legal News,
Plaintiff

v.

Washington Unit
Docket No. 332-5-13 WNCV

Corrections Corporation of America,
Defendant

Complaint

In this action, a periodical seeks to dislodge records showing a private corporation's performance of duties delegated to it by the Vermont Department of Corrections. When providing for the custody of and care for inmates committed to the Department of Corrections by this Court, the defendant stands in the shoes of the Department and is a "public agency" under the Access to Public Records Act. Vt. Stat. Ann. tit. 1, §317(b)(1). Documents produced or acquired during the defendant's performance of delegated duties are public records, and must be produced to the plaintiff.

Jurisdiction and Venue

1. This Court has jurisdiction to hear public records enforcement actions in accordance with Vt. Stat. Ann. tit. 1, § 319(a).
2. This Court has personal jurisdiction over the defendant by virtue of the defendant's availing itself of the laws of Vermont, and purposefully directing commercial activities to the State of Vermont.
3. Venue is proper in this Unit because the public records act expressly provides for it. *Id.*

Parties

4. Plaintiff Prison Legal News is a nationwide, monthly publication dealing with prisoner rights, prisoner litigation, and prison conditions. Prison Legal News also publishes and sells books aimed at incarcerated people.
5. Prison Legal News is published by the Human Rights Defense Center, a non-profit corporation headquartered in West Brattleboro, Vermont.
6. Defendant Corrections Corporation of America is a for-profit, publicly traded Maryland corporation headquartered in Tennessee.

Facts

7. For two hundred years, the Vermont Department of Corrections has been responsible for the custody, control, and rehabilitation of those persons committed to it by the Vermont judiciary. *See* 1808 Acts & Laws of Vermont 107-114 (establishing a state prison, and a five-member prison commission); 1947 Acts & Resolves (replacing the prison commission with the Department of Institutions and Corrections to oversee the state prison, reformatories, and work camps); 1970 Acts & Resolves 352 (creating the modern Department of Corrections within the Agency of Human Services “as the successor to and the continuation of” the prior administrative oversight mechanisms).
8. To fulfill some of its responsibilities, the Department of Corrections operates prisons in Newport, Swanton, South Burlington, St. Johnsbury, Rutland, Windsor, and Springfield.
9. For some time, however, more people have been committed to the Department’s custody than it has space for in its prisons.
10. From at least July 2007 until the present, the Department has delegated its responsibilities of custody and care for some prisoners to the defendant. *See* State of Vermont Contract

11660 [attached as Appendix A]; State of Vermont Contract # 11660, Am. # 1 [attached as Appendix B]; State of Vermont Contract # 11660, Am. # 2 [attached as Appendix C]; State of Vermont Contract # 11660, Am. # 3 [attached as Appendix D]; State of Vermont Contract # 19863 [attached as Appendix E].

11. Under its contracts with the Department, the defendant has housed Vermont inmates in prisons that it owns and/or operates in Beattyville, Kentucky; Sayre, Oklahoma; North Tutwiler, Mississippi; Mason, Tennessee, App. A at 16, and Florence, Arizona. App. C at 2.
12. Under the contracts, the Corrections Corporation of America has been, and is, required to provide inmates sent to it

with care and treatment; furnishing subsistence and all necessary routine medical care; providing for their physical needs; making programs of training and treatment consistent with inmates' needs available; retaining the inmates in safe, supervised custody; maintaining proper discipline and control; [and] making certain that sentences and orders of the committing court . . . are faithfully executed.

App. A at 17; App. E at 18.

13. To that end, the defendant has been, and is, responsible for providing Vermont inmates:
 - (a) uniform clothing to wear, App. A at 20; App. E at 20,
 - (b) work opportunities and occupational training, App. A at 21; App. E at 21;
 - (c) medical care "comparable to that available to inmates in Vermont," App. A at 29; App. E at 29,
 - (d) "a total pharmaceutical system" suitable for inmates' needs, App. A at 34; App. E at 33,
 - (e) "preventive and restorative" dental care, App. A at 35; App. E at 34,
 - (f) "all services related to the mental health needs of State inmates," App. A at 36; App.

- E at 34,
- (g) suicide prevention screening, App. A at 37; App. E at 35,
 - (h) access to state and federal legal materials, App. A at 43; App. E at 40,
 - (i) “on-site facilities for all attorney calls,” App. A at 44; App. E at 41,
 - (j) mail service, App. A at 44; App. E at 41, and
 - (k) indoor and outdoor recreational equipment, among other items. App. A at 22; App. E at 22.
14. The Department of Corrections does not furnish the personnel necessary to perform the defendant’s contractual duties.
15. The defendant is obligated to provide the Department with extensive information about the condition of Vermonters committed to its care under the contract.
16. The Department has “the right at all reasonable times to inspect or otherwise evaluate the work performed” by the defendant, App. A at 6; App. C at 5; App. D at 5; App. E at 6, including by entering any of the prisons housing Vermonters “at all reasonable times,” and by inspecting any documents “required for such evaluation purposes.” App. A at 19; App. E at 19. It is also entitled to inspect any Vermont inmate’s health records, App. A at 37; App. E at 35.
17. Additionally, the Corrections Corporation of America provides Vermont with extensive and frequent information about the Vermont prisoners in its care. Among other things, the defendant has been, and is, obligated to report:
- (a) all inmate discipline within seventy-two hours of its occurrence, App. A at 22; App. E at 23;
 - (b) a summary of all inmate grievances in a monthly report, App. A at 23; App. E at 24;
 - (c) a detailed monthly report on all inmates once a month, App. A at 24; App. E at 42;

- (d) inmate injuries, escapes, or deaths within two hours of their occurrences, App. A at 24; App. E at 25;
 - (e) results of a random urinalysis program that tests inmates for controlled substances, App. E at 42;
 - (f) results of a “shakedown” program that requires the contractor to empty and search the cells of ten percent of all Vermont inmates per month, *id.*; *id.* at 28;
 - (g) prison rape statistics, *id.* at 42;
 - (h) information about educational programs and participation, *id.*;
 - (i) information about work programs and participation, *id.*; and
 - (j) information about the religious services offered in each prison. *Id.*
18. The defendant must also keep the state apprised of lawsuits filed by Vermont inmates. It is required to notify the state “within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omission” occurring in the performance of the contract. App. A at 5; App. C at 4; App. D at 4; App. E at 5. And, it is required to provide the state with a monthly report on new and pending lawsuits by Vermont inmates. App. E at 42.
19. For its performance of these and other contractual duties, the Department of Corrections has paid the defendant at least \$72.6 million since July 1, 2007.

Prison Legal News’s Records Request

20. Prison Legal News has reported extensively on the growth of private prison industry, and on conditions in private prisons.
21. Prison Legal News frequently reports about the occurrence of lawsuits against private

prison operators, and about the resolution of those suits, whether by settlement or judgment.

22. Prison Legal News reports the resolution of prisoner suits against private prison operators in part to enable the public to assess the merit of the claims, and the wisdom of private prison use by government agencies.
23. In furtherance of its reporting on the subject, Prison Legal News tendered a request to the defendant seeking:

All records related to any payments made by any entity to any claimants or their attorneys pursuant to judgments against, or settlements with, the State of Vermont (or any of its agencies) and/or the Corrections Corporation of America (CCA) in connection with services provided to the Vermont Department of Corrections by CCA. Your response should include, but not be limited to: (a) for each judgment and/or settlement, the most recent claim or complaint or amended complaint detailing the legal demand; (b) all settlement agreements, releases and documents related to disbursement of settlement funds; (c) any record of the imposition of sanctions by a court, and payment thereof; and (d) if payment was made pursuant to a judgment, the jury verdict and/or findings of fact and conclusions of law forming the basis for the judgment.

Letter from Prison Legal News to Corrections Corp. of Am. 1 (Sep. 10, 2012)

(attached as Appendix F).

24. The defendant ignored the Prison Legal News request.
25. Prison Legal News construed the defendant's failure to respond as a constructive denial, and appealed the denial in writing. Letter from Prison Legal News to Corrections Corp. of Am. (Oct. 23, 2012) (attached as Appendix G).
26. The defendant ignored the Prison Legal News appeal.
27. Both the plaintiff's request and appeal were sent to Corrections Corporation of America by postage-prepaid, certified mail.
28. The United States Postal Service's tracking system confirmed that both the plaintiff's request and appeal were delivered to the defendant. *See* Screenshot, USPS Track &

Confirm for Item 7011 2970 0000 2452 4604,
https://tools.usps.com/go/TrackConfirmAction_input (Sep. 13, 2012) (attached as Appendix H); Screenshot, USPS Track & Confirm for Item 7009 2250 0000 9564 7804,
https://tools.usps.com/go/TrackConfirmAction_input (Oct. 26, 2012) (attached as Appendix I).

Prison Legal News's Count Against the Defendant

29. By substituting for the Department of Corrections in housing and caring for Vermont prisoners, the defendant is a “public agency” as that term is defined by Vt. Stat. Ann. tit. 1, § 317(b).
30. The information requested by Prison Legal News comprises public records as that term is defined by Vt. Stat. Ann. tit. 1, § 317(b).
31. By failing to provide Prison Legal News with copies of public records, the defendant has contravened the Access to Public Records Act.

Request for Relief

32. Accordingly, Prison Legal News is entitled to have this Court:
- (a) declare that the defendant is a public agency inasmuch as it substitutes for the Department of Corrections;
 - (b) declare that the data sought are public records;
 - (c) declare that the defendant's continued withholding of the requested records is unlawful;
 - (d) enjoin the defendant from continuing to withhold the requested records; and
 - (e) award Prison Legal News reimbursement of its costs and attorney fees reasonably incurred in bringing this action as provided by Vt. Stat. Ann. tit. 1, § 319(d)(1).

The American Civil Liberties Union Foundation of Vermont

_____/s/_____
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