



COPY

County of Erie

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February 1, 2008

Gregory Gonzalez, Senior Trial Attorney
U. S. Department of Justice, Civil Rights Division
Special Litigation Section-PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530

**Re: Investigation of the Erie County Holding Center
and the Erie County Correctional Facility
Our File No. 31.20070052**

Dear Mr. Gonzalez:

I am in receipt of your letter dated January 30, 2008, and the Document Request which accompanied it. I have distributed this to the proper Departments within the County so they may begin gathering items responsive to the Request. There is, however, one matter which must be addressed.

When Dan Weiss and I spoke on January 14, I told him that there could be issues of privilege regarding documents you might wish to look at. As I recall, he said we should wait for the demand. Now that I see the demand, I see that I was correct. I note that Document Request § I (C) (2) (d) - (h) and § II (A)(1)(b) & (e); (B) (1), (9) and (11) ask for records protected by the mental health privilege (see New York Mental Hygiene Law § 33.13, New York Civil Procedure Law and Rules §§ 4507 and § 4508); Document Request § II (A)(1)(d); (B) (1) - (4) & (8) ask for records protected by the medical records privilege (see New York Civil Procedure Law and Rules § 4504); and Document Request § II (A)(1) asks for parts of the personnel records of police and corrections officers which are privileged in New York (See New York Civil Rights Law § 50-a). I think that it is also clear that Document Request §§ I (C) (2) (d) - (h); II (A)(1)(b), (d) & (e); (B)(1) - (4), (8), (9) & (11) ask for documents that are confidential under HIPPA regulations. (see 45 CFR § 164.500, *et. seq.*).

I am aware that Federal Courts do not automatically recognize state privileges, however, we are not in Federal Court. I am also aware that there are exceptions in HIPPA and New York law for authorized investigations. However, C.R.I.P.A. (42 U.S.C 1997, *et. seq.*) does not

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provide for U.S.D.O.J. investigations. It is, essentially, a standing statute. (See Patsy v. Board of Regents of State of Fla. 457 U.S. 496, 102 S.Ct. 2557 (1982) and U.S. v. Com. of Pa. 902 F.Supp. 565 (W.D.Pa., 1995)). I know of no other statute which provides the U.S.D.O.J. or the United States Attorney General with the authority to investigate local jails and correctional facilities, and, therefore, access confidential materials.

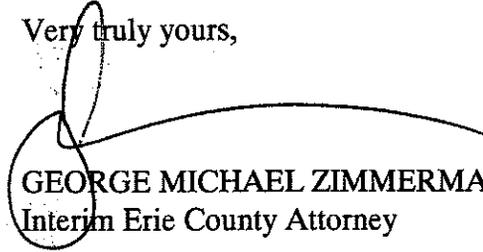
We are, of course, more than happy to provide you with the documents requested, with the identifying information redacted, so that protected information will not be revealed. If I this is acceptable, please let me know.

It is, of course, quite possible that I am either misreading the above statutes, or am unaware of other, more relevant, provisions which would allow you unfettered access to the above documents. If so, I would be most appreciative if you would provide me with the appropriate citations. Having investigated other New York institutions, I am sure these issues do not come as a surprise to you.

Let me assure you that Erie County remains ready and willing to cooperate in your investigation, and will provide you with everything we are allowed to disclose by law. However, we can not violate the law, or the confidentiality rights of our employees and inmates.

I look forward to hearing from you and thank you for your kind attention in this matter.

Very truly yours,



GEORGE MICHAEL ZIMMERMANN
Interim Erie County Attorney

GMZ/mow

cc: Chris Collins, Erie County Executive
Timothy Howard, Erie County Sheriff