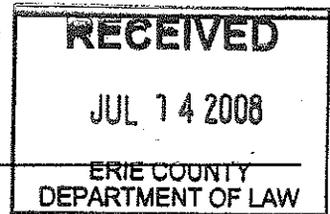




U.S. Department of Justice  
Civil Rights Division



SYC:DHW:GG:ZIL  
DJ 168-53-41, 168-53-42

*Special Litigation Section - PHB  
950 Pennsylvania Avenue, NW  
Washington, DC 20530*

July 11, 2008

**VIA FIRST CLASS MAIL AND FACSIMILE**

Cheryl A. Green  
County Attorney  
Erie County  
69 Delaware Avenue  
Buffalo, NY 14202

RE: Investigation of the Erie County Holding Center and  
the Erie County Correctional Facility

Dear Ms. Green:

We write in response to your June 16, 2008 letter stating that Erie County will no longer cooperate with our investigation of the Erie County Holding Center ("ECHC") and the Erie County Correctional Facility ("ECCF"). We will be in Buffalo in the upcoming weeks, conducting our investigation. Accordingly, we would like to find a mutually-agreeable time to meet with you to discuss, and hopefully resolve, the concerns which the County perceives as obstacles to cooperation.

As you know, we are conducting an investigation of ECHC and ECCF pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, which gives the Attorney General standing to address alleged deprivations of rights, privileges, or immunities secured or protected by the Constitution of the United States. We initiated our investigation of ECHC and ECCF following several reports of inmate suicide and excessive use of force by facility staff. In 2008 alone, months after we notified the County of our investigation, there have been two suicides at ECHC within a month of each other. Last year, in 2007, another inmate reportedly committed suicide by diving off a 15-foot railing in an ECHC common area; reportedly in plain view of ECHC deputies. Reportedly, ECHC forensic staff evaluated the inmate on entry to ECHC and did not identify him as a suicide risk. Also in 2007, another inmate reportedly died of pneumonia brought on by starvation and dehydration after just four months in ECHC. There have also been reports of the indiscriminate application of

force by ECCF deputies upon inmates. In 2007, an ECCF deputy reportedly assaulted an inmate by smashing his head against a wall; the inmate's injuries were allegedly ignored, despite noticeable signs of distress (such as an inability to control his motor skills) resulting in the inmate's death. These are just a few examples of incidents and allegations that concern us regarding ECHC and ECCF's ability to provide constitutionally adequate medical and mental health care to protect its inmates from harm.

We notified Erie County of our investigation on November 13, 2007. Since then, we have been working with your office on document requests and the scheduling of our on-site tour of the facilities. We had originally planned to conduct our on-site tours at the end of March 2008, but at the County's request, we agreed to postpone the tours until August 11-15, 2008 because of the pendency of your appointment as County Attorney. By letter dated May 7, 2008, we sought to open the channels of communication with you, following your recent appointment. Unfortunately, despite several calls, we were unable to schedule a time to discuss this investigation or any of the outstanding concerns that remained. Our first communication from you was your June 16 letter. Frankly, given the progress we had made with the attorneys in your office regarding our document request and tour schedule, we were surprised by the apparent change of position reflected in that letter.

In conducting investigations, our goal is to have a fair, balanced, and thorough review of facility operations, which includes providing the jurisdiction with an opportunity to participate in the investigation and to be heard through its cooperation. For example, we often find a jurisdiction's cooperation helpful in providing positive information that may impact upon the Department's findings, as well as decisions regarding post-investigation options. Bear in mind also that each investigation is unique and does not necessarily result in a formal agreement. Indeed, prior to your appointment, we provided your office with examples of recent investigations that our office conducted and concluded without a formal agreement.

We encourage and routinely receive cooperation in our investigations. In over 20 years of enforcing CRIPA, the good faith efforts of state or local jurisdictions working with us have enabled us routinely to resolve our investigations without resort to contested litigation. Importantly, however, we must inform you that a jurisdiction's failure to cooperate will not halt our investigation. Moreover, you should be aware that in the event a jurisdiction chooses not to cooperate, the Department will draw appropriate negative inferences from the unwillingness to cooperate and issue its findings accordingly.

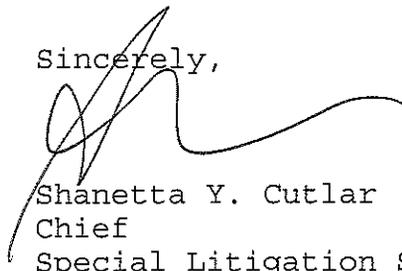
See, Investigation of Mercer County Geriatric Center at <http://www.usdoj.gov/crt/split/documents/mercercounty.htm>.

In your letter, you indicate that the County has reconsidered its decision to cooperate with our investigation based upon its perception that the investigative findings and consent decrees listed on our website impose a "much higher standard" than what is constitutionally required. We respectfully disagree with this perception of our investigations and agreements. We take the statutory responsibilities and limitations under CRIPA quite seriously. Accordingly, negotiated agreements between the Department and other jurisdictions are the result of thorough, objective investigations and contain mutually agreed upon language and standards that best fit the particular institution or facility. These agreements result only after a comprehensive examination of the issues involved, the appropriate application of governing law, and extensive negotiations between the Department and the jurisdiction. Notably, federal judges have approved our agreements as narrowly tailored, as required by the Prison Litigation Reform Act, 18 U.S.C. § 3626(a). See, U.S. v. Ohio, No. 08 cv 475 (S.D. Ohio filed June 24, 2008); U.S. v. Texas, No. 08 cv 00038 (S.D. Tex. filed May 5, 2008); and U.S. v. Dallas County, Texas, No. 307 cv 1559-n (N.D. Tex. filed Nov. 6, 2007).

As we cannot leave such serious allegations of constitutional deficiencies unaddressed, it is our hope that our two governmental agencies can work cooperatively and resolve this matter without litigation. Given the allegations that we have received of constitutional deficiencies at ECHC and ECCF, we are concerned that the County's refusal to cooperate with our investigation may foreclose our opportunity to avoid litigation concerning these facilities. A jurisdiction's cooperation and, where necessary, willingness to address identified constitutional deficiencies, often allows us to resolve investigations without the burden and expense of contested litigation.

Again in conjunction with our investigation of ECHC and ECCF, we will be in Buffalo in August. We would welcome the opportunity to discuss this investigation with you in person then, or at another mutually-agreeable date in the near future, to address any questions you may have about our investigative process. Should you wish to discuss this matter further, or to schedule a meeting, please feel free to contact me at [REDACTED]

Sincerely,



Shanetta Y. Cutlar  
Chief  
Special Litigation Section

cc: Terrance P. Flynn  
United States Attorney  
Western District of New York