



# COUNTY OF ERIE

CHERYL A. GREEN  
COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE

KRISTIN KLEIN WHEATON  
FIRST ASSISTANT COUNTY ATTORNEY

MARTIN A. POLOWY  
SECOND ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

October 6, 2008

**VIA EMAIL AND VIA FEDERAL EXPRESS/STANDARD OVERNIGHT**

Gregory Gonzalez, Senior Trial Attorney  
Special Litigation Section  
United States Department of Justice  
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:

We recently learned that investigators from your office have been soliciting information by electronic mail from third parties relative to the above investigation. Specifically, your office has requested information from the United States Public Defender's Office and other third parties regarding the conditions at the Erie County Holding Center and Erie County Correctional Facility and/or experiences of inmates who have been confined therein. It is our further understanding that other federal agencies, including but not limited to, the Federal Bureau of Investigation and/or New York State agencies may have been assisting your office with its investigation.

By this letter, you and your client are hereby given notice not to destroy, conceal, or alter any paper or electronic files, other data generated by and/or stored on either your or your client's computer systems and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice-mail. This includes, but is not limited to: e-mail and other electronic communications; word processing documents; spreadsheets; databases; calendars; telephonic logs; contact manager information; Internet usage files; offline storage of information stored on removable media; information contained on laptops or other portable devices; and network access information.

Through discovery, we expect to obtain from you and your client a number of documents and other data, including files stored on your computer system and your client's computers and storage media. In particular, we will seek information related to the above mentioned investigation and facts discovered therein, as well as witnesses who provided information to your office in connection with the investigation of the Erie County Holding Center and Erie County Correctional Facility. We will also seek all physical evidence, statements, audio recordings, documents (both electronic and paper) and all other documentation obtained by your office and/or third parties which is relevant to the investigation.

Although we may bring a motion for an order preserving documents and other data from destruction or alteration, your office and client's obligation to preserve documents and other data for discovery in this case arises independently from any order on such motion.

Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond what may be found in printed documents. Therefore, even where a paper copy exists, we will seek all documents in their electronic form along with metadata or information about those documents contained on the media. We will seek paper printouts of only those documents that contain unique information created after they were printed (e.g., paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlights and redactions), along with any paper documents for which no corresponding electronic files exist.

The law and rules prohibiting destruction of evidence apply to electronically stored information in the same manner as they apply to other evidence. Due to its format, electronic information is easily deleted, modified or corrupted. Accordingly, you and your client must take every reasonable step to preserve this information until the final resolution of this matter. This may include, but would not be limited to, an obligation to discontinue all data destruction and backup tape recycling policies.

With regard to electronic data created subsequent to the date of delivery of this letter, relevant evidence should not be destroyed and you and your client are to take the appropriate steps required to avoid destruction of such evidence.

Please forward a copy of this letter to all persons and entities with custodial responsibility for the items referred to in this letter.

Failure to abide by this request could result in extreme penalties against you and your client and could form the basis of legal claims for spoliation.

*Letter to Gregory Gonzalez, Senior Trial Attorney*

*October 6, 2008*

*Page 3*

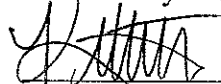
If this correspondence is in any way unclear, please contact me immediately.

Very truly yours,

CHERYL A. GREEN

Erie County Attorney

By:



KRISTIN KLEIN WHEATON

First Assistant County Attorney

cc: Terrance P. Flynn, United States Attorney via first class mail