



U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building

July 20, 2020

BY EMAIL

Jason E. Foy
Foy & Sepowitz LLC

Re: *United States v. Tova Noel*, No. 19 Cr. 830

Dear Mr. Foy:

We write in response to your discovery request letter, dated June 5, 2020. Many of the items requested in your letter were previously produced to the defendant in discovery, and to the extent they were not, that is because they were not in the Government's possession. While, as the Court has already ruled, the Government has no obligation to gather additional documents from the Bureau of Prisons ("BOP") in response to a discovery request, and you identify no authority to the contrary in your request, as a courtesy, the Government made a supplemental request to the BOP for certain records responsive to your requests and that appear to have at least some relevance to the issues related to this case. Pursuant to that supplemental request, the BOP began producing records to our Office on or around June 24, 2020, and we are now producing those materials to you. This letter and the content herein is designated as "Protected Materials" pursuant to the Protective Order entered in this matter. By contrast, as set forth herein, the Government has not requested materials not already in its possession that do not seem to have any relevance to this case, although we are happy to discuss the basis for any such request at your convenience.

Request No. 1. Defendant Noel's complete personnel and training file.

The Government has already produced the entirety of the defendant's training and personnel file in its possession at SDNY_00006228-06273.

The Government received Noel's training record from the BOP on or about June 24, 2020, and is producing it at SDNY_TN_00020855-020857.

Request No. 2. The BOP and MCC Employee Code of Conduct, Code of Ethics, and corresponding employee acknowledgement forms for Defendant Noel.

On or about June 24, 2020, the Government received from the BOP copies of the BOP Program Statement regarding Employee Code of Conduct, P.S. 3420.11; Noel's acknowledgement form; and the U.S. Department of Justice Ethics Handbook for On and Off-Duty Conduct from

06.20.2018

EFTA00023756

January 2016. We are producing those records at SDNY_00008394-08427, SDNY_TN_0020854, and SDNY_00008352-08370, respectively.

Request No. 3. The MCC institutional familiarization training outline.

On or about June 25, 2020, the Government received from the BOP a document entitled Introduction to Correctional Techniques from July 2019 and is producing it at SDNY_00008388-08393.

Request No. 4. The MCC annual training outlines for 2018 and 2019.

The Government has already produced the MCC annual training outlines for 2018 and 2019 in its possession at SDNY_00005109-05129.

Request No. 5. A copy of the internal memorandums, letters, and/or emails addressing the death of Jeffrey Epstein including, but not limited to, the memorandums drafted by Employee Number 5, Employee Number 6, and Employee Number 13.

The Government has already produced the requested documents at SDNY_00000796-0857. The memorandum drafted by Employee 5 is at SDNY_00000820; the memorandum drafted by Employee 6 is SDNY_00000813; and the memorandum drafted by Employee 13 is SDNY_00000823.

Request No. 6. The email referenced in Employee Number 7's witness statement that was sent to MCC employees regarding Jeffrey Epstein's need for a cellmate.

The Government has already produced this email at SDNY_00008119-08122.

Request No. 7. Psychology Services post-suicide watch report drafted by Employee Number 12 on July 24, 2019.

The Government has already produced the July 24, 2019 Psychology Services post-suicide watch report at SDNY_00006425-06427.

Request No. 8. A copy of the memorandum sent by Employee Number 22 to the evening watch officers stating that Jeffrey Epstein needed a cellmate.

To the extent that this request is seeking a "memo" referenced in the interview of Employee Number 22, which was not sent by Employee Number 22, the Government has already produced a copy of this memorandum at SDNY_00000823.

Request No. 9. The BOP and MCC policy on cellmates and local Institutional Supplement on Special Housing Unit Regulations, including Institutional Supplement/Program Statement Number P.S. NYM 5270.10.

The Government received from the BOP a copy of the BOP Program Statement regarding Special Housing Units, P.S. 5270.11,¹ on or about June 24, 2020, and is producing it at SDNY_00008428-08445.

According to a representative of the BOP and MCC, he is unaware of any written policy regarding cellmates.

Request No. 10. The BOP and MCC policy on SHU quarterly training.

On or about June 24, 2020, the Government received from the BOP a copy of the BOP Program Statement regarding Suicide Prevention, P.S. 5324.08; a PowerPoint presentation entitled Suicide Prevention for Inmates from 2014; a PowerPoint Presentation entitled MCC SHU Training from 2014; and the BOP Program Statement regarding Special Housing Units, P.S. 5270.11, and is producing them at SDNY_00008446-08470, SDNY_00008338-08351, SDNY_00008554-08585, SDNY_00008284-08337, and SDNY_00008428-08445, respectively.

Request No. 11. The Inmate Accountability Institutional Supplement/Program Statement, Number I.S. NYM 5511.08, referenced in bates number SDNY_0005392.

The Government received from the BOP a copy of this document on or about June 24, 2020, and is producing it at SDNY_00008371-08387.

On or about June 24, 2020, the Government also received from the BOP a copy of the BOP Correctional Services Procedures Manual, P.S. 5500.14, and is producing it at SDNY_00008471-08553.

Request No. 12. The Security Inspections Institutional Supplement/Program Statement, Number I.S. NYM 5500.13, referenced in bates number SDNY_0005392.

The Government received from the BOP a copy of this document on or about June 24, 2020, and is producing it at SDNY_00008586-08595.

Request No. 13. An unredacted copy of SDNY_7551.

The redactions in SDNY_00007551 are solely the interviewee's name, which has already been provided to you on an attorney's eyes only basis. To the extent that this request refers to the redactions on the second page of the witness interview 302, SDNY_0007552, those redactions relate to an ongoing criminal investigation unrelated to the conduct with which Noel is charged.

Request No. 14. An unredacted copy of SDNY_883.

The document produced at SDNY_0000883 is a photograph that is not redacted.

¹ While you requested P.S. 5720.10, that Program Statement does not exist. Program Statement 5720.11 is the policy covering the Special Housing Unit.

Request No. 15. SHU Watch Call Logs from August 9, 2019 and August 10, 2019.

We are continuing to work to determine whether the Government or the BOP is in possession of any information responsive to this request.

Request No. 16. All SHU Watch Call Logs completed during Defendant Noel's assignment to the SHU post which began on June 26, 2019.

We are continuing to work to determine whether the Government or the BOP is in possession of any information responsive to this request.

Request No. 17. All SHU Control Center Logs completed during Defendant Noel's assignment to the SHU post which began on June 26, 2019.

On or about June 24, 2020, the Government received SHU Log Entries for the time period from June 26, 2019 to August 10, 2019, and is producing them at SDNY_00008596-08670.

Request No. 18. All SHU Operations Lieutenant Log Books completed during Defendant Noel's assignment to the SHU post which began on June 26, 2019.

The Government received Lieutenant Log Books for this time period on or about June 24, 2020, and is producing them at SDNY_00008137-08283.

Request No. 19. All SHU TRUSCOPE Log Books completed during Defendant Noel's assignment to the SHU post which began on June 26, 2019.

The Government has already produced the Truscope logs for the SHU in its possession for the period of July 1, 2019 through August 10, 2019 at SDNY_00003701-04098. The Government is not aware of the relevance of these logs for the earlier period in your request, and you have not identified the relevance of such logs.

Request No. 20. All High Risk Lists reviewed during weekly SHU meetings during Defendant Noel's assignment to the SHU post which began on June 26, 2019.

The Government received High Risk Lists for this time period on or about June 24, 2020, and is producing them at SDNY_00008671-08695.

Request No. 21. All SHU reports and SRO reviews completed by the SHU Lieutenant during Defendant Noel's assignment to the SHU post which began on June 26, 2019.

In response to our request to the BOP, on July 14, 2020, the Government received a SHU weekly review report dated August 8, 2019, and is producing it at SDNY_00008696-08723. According to a representative of the BOP, this is the only SHU report from the requested time period that could be located.

Beyond what has already been and is being provided to you in discovery, the Government is not in possession of such documents, is not under any legal obligation to obtain them, and you have not identified any legal basis or authority for your request. Moreover, the Government is not aware of the relevance of records for this time period to the conduct at issue in this case, and you have not identified the relevance of such records.

Request No. 22. A copy of the BOP Master Agreement.

To the extent that this request refers to the collective bargaining agreement between the union and the BOP, the Government is not in possession of this document, is not under any legal obligation to obtain it, and you have not identified any legal basis or authority for your request. Moreover, the Government not aware of the relevance of such a record to the conduct at issue in this case, and you have not identified the relevance of such a record.

Request No. 23. All surveillance camera records, logs, and orders since June 26, 2019, including, but not limited to, warden, captain, lieutenant, and/or supervisory personnel records of broken or malfunctioning surveillance cameras.

The Government has already produced surveillance camera recordings and an explanation of the surveillance camera malfunctions at MCC. To the extent this request seeks additional materials, including materials about surveillance camera malfunctions unrelated to the events of August 9-10, 2019, the Government is not in possession of such materials, is not under any legal obligation to obtain them, and you have not identified any legal basis or authority for your request. Moreover, the Government is not aware of the relevance of such records to the conduct at issue in this case, and you have not identified the relevance of such records.

Record No. 24. All records and logs completed by the warden, lieutenant, and/or supervisory personnel in relation to the monitoring of counts and rounds.

The Government notes, at the outset, that this request does not appear to have an applicable time or date range. All records or logs of counts by supervisory personnel for time periods relevant to the conduct at issue in this case were produced at SDNY_00000076-795. Additionally, lieutenant's logs, which contain records of counts for time periods relevant to the conduct at issue in this case, were produced at SDNY_00002201-SDNY_00002330. Finally, thirty minute round reports, which include supervisors' signatures, for time periods relevant to the conduct at issue in this case, were produced at SDNY_00007109-7548. To the extent this request seeks additional materials regarding time periods unrelated to the conduct at issue in this case, the Government is not in possession of such materials, is not under any legal obligation to obtain them, and you have not identified any legal basis or authority for your request. Moreover, the Government is not aware of the relevance of such records to the conduct at issue in this case, and you have not identified the relevance of such records.

Request No. 25. All facility maintenance logs since June 26, 2019.

The Government is not in possession of these materials, is not under any legal obligation to obtain them, and you have not identified any legal basis or authority for your request. Moreover,

the Government is not aware of the relevance of such records to the conduct at issue in this case, and you have not identified the relevance of such records.

Request No. 26. All incident reports (583 and 586 forms) drafted after Jeffrey Epstein's death.

A Form 583 incident report related to Epstein's suicide was produced at SDNY_00000796-SDNY_00000819. To the extent this request seeks additional materials, including any Form 583 and/or Form 586 incident reports unrelated to the death of Epstein, the Government is not in possession of them and is not under any legal obligation to obtain them, and you have not identified any legal basis or authority for your request. Moreover, the Government is not aware of the relevance of such records to the conduct at issue in this case, and you have not identified the relevance of such records.

Request No. 27. A copy of the After Action Internal Report completed after the death of Jeffrey Epstein and Board of Inquiry Report.

The Government is not in possession of this report, and the Court has already ruled that reports generated by investigators within the BOP that are not in the possession of the Government are not subject to disclosure. (Dkt. No. 36 at 7-8).

Request No. 28. A copy of the Suicide Reconstruction Report

The Government is not in possession of a final version of the Suicide Reconstruction Report. As a courtesy, we have requested that the BOP provide us with a copy when the report is complete, and we will produce that to you upon receipt.

Request No. 29. All MCC Correctional Services, Operational Reviews, and Program Reviews relating to the SHU and completed during Defendant Noel's employment at the MCC which began on June 24, 2018.

The Government is not in possession of these materials, is not under any legal obligation to obtain them, and you have not identified any legal basis or authority for your request. Moreover, the Government is not aware of the relevance of such records to the conduct at issue in this case, and you have not identified the relevance of such records.

Request No. 30. Who is the author of the 4Chan message produced as bates number SDNY_00006978?

The Government has produced all records we have obtained regarding the 4Chan post. The poster used a dynamic IP, and therefore the records obtained did not disclose the author of the post.

Request No. 31. All internal and external investigation records related to the suicide of Kenneth Houck at the MDC, death of inmate Jamel Floyd at the MDC, and smuggling of a firearm into the MCC.

This Office is not in possession of materials relating to the death of Kenneth Houck and Jamel Floyd at the MDC, is not under any legal obligation to obtain them, and you have not identified any legal basis or authority for your request. Moreover, the Government is not aware of the relevance of such records—which pertain to events that significantly post-date the conduct giving rise to the charges in the Indictment—to the conduct at issue in this case, and you have not identified the relevance of such records.

Materials relating to the smuggling of a firearm into the MCC also post-date the defendant's arrest and have no relevance to the conduct at issue this case. Moreover, you have not identified the relevance of such records to this case, or the basis under which they would be subject to disclosure or discovery in this case.

We are available at your convenience to discuss anything further.

Very truly yours,

AUDREY STRAUSS
Acting United States Attorney for the
Southern District of New York

By: [REDACTED] /s/ [REDACTED]
Assistant United States Attorneys
[REDACTED]