



U.S. DEPARTMENT OF JUSTICE

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MEMORANDUM OF UNDERSTANDING:

FROM: Donald S. Boyce
United States Attorney, Southern District of Illinois;

TO: Jails contracting with the USM to house federal detainees

SUBJECT: Handling discovery and other case-related materials for federal detainees

DATE: September 22, 2017

I. PURPOSE:

This MOU establishes guidelines for providing federal detainees access to electronic case-related materials. These materials remain property of the Department of Justice and are to remain in the custody and control of the confining institution. Detainees do not own the materials and acquire no possessory interest in them.

The purpose of this policy is to permit detainees reasonable access to case-related materials while simultaneously limiting the risks associated with disseminating the content of those materials.

II. SCOPE:

Criminal discovery typically includes police reports, witness statements, photographs, video and audio recordings, and similar materials. The US Attorney prepares these materials and tenders them to defense counsel in electronic format.

Other materials within the scope of this MOU include presentence reports (PSR), sentencing memoranda, supplements to sentencing memoranda, and any other sensitive materials that identify witnesses, informants, cooperators, police investigative techniques, and the like.

These items are collectively referred to as "electronic case-related materials." Federal detainees may have access to electronic versions of these materials, but detainees shall not possess paper copies in jail facilities.

III. EQUIPMENT:

The US Attorney for the Southern District of Illinois purchased and delivered “E-Discovery computers” to each jail. This computer remains federal property and may only be used by federal detainees to view electronic case-related materials.

The Jail administrator will maintain the E-Discovery Computer and ensure that it works. Computer issues that cannot be resolved by the Jail staff should be directed to the US Attorney’s Law Enforcement Coordinator.

The E-Discovery computer may not be connected to any network and is configured to preclude copying or storing data. The E-Discovery computer must not be modified to permit a user to access the internet, create a document, print, email, copy, save, or disseminate the contents of any case-related materials. Detainees are prohibited from sharing any electronic case-related materials on this computer, or otherwise.

IV. CD-ROM FORMAT

The US Attorney will provide appropriate materials to defense counsel in an electronic format. The disc will be identified as the “JAIL COPY”, and appear as follows:



V. DEFENSE COUNSEL

Defense counsel remains solely responsible for communicating with the detainee, preparing for trial, and ensuring that the detainee sufficiently understands the nature of the evidence. Nothing about this policy shifts any obligation to the United States or the confining institution.

Counsel will decide whether to deliver electronic case-related materials to the detainee at the confining institution. If counsel chooses to provide the materials, then the attorney will deliver them to the Jail Administrator or his/her designee, as directed. Defense counsel will deliver other case-related materials, such as presentence reports (PSR), sentencing memoranda, and supplements to sentencing memoranda, to the confining institution in an electronic format.

Defense counsel should separately notify the detainee that electronic case-related materials were delivered to the jail so the detainee knows to ask for access to those materials.

VI. JAIL PROCEDURES:

The jail will establish a procedure to receive, securely maintain, and make electronic case-related materials reasonably accessible to detainees.

The detainee is responsible to notify staff when they wish to view electronic case-related material.

Detainees may only view electronic case-related materials in a location when no other inmates are present. The jail may permit the inmate to view those materials with counsel.

No detainee may view another inmate's electronic case-related materials.

After the detainee is finished viewing the materials, or the allotted time has expired, jail staff will collect all media and verify that the inmate returned all of the materials. The electronic case-related materials are then to be returned to the designated storage location.

Electronic case-related materials will remain under the jail's control at all times. The jail will not transfer those materials to another jail facility and will not release the materials to the detainee or to any third party. The jail will destroy the electronic media when a detainee is transferred or released.

VII. RECORD KEEPING:

The jail will inventory the electronic case-related materials upon receipt. Within a reasonable time thereafter, the jail will notify the detainee that electronic materials are available to view. The jail will record the date/time of that notification.

The jail will document each time the detainee accesses the materials. The jail will also document any instance when the jail refuses to grant access to those materials.

The jail will document the destruction of the materials when the detainee is transferred or released.

VIII. RIGHTS:

This policy is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, administrative, civil, or criminal. Nor does this policy place any limitations on the otherwise lawful prerogatives of the Department of Justice.

The United States Attorney, or any attorney for the Government to whom the United States Attorney may designate such authority, may authorize exemptions to the provisions of this policy in his or her discretion.

Detainees acquire no rights because of this MOU.

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