

Patently Unnecessary

Exploring the life of an FOIA request and the continued delays by the Federal Bureau of Prisons to release the information.

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On December 4, 2020, I surrendered to the Federal Bureau of Prisons El Reno, Oklahoma facility to begin serving a 60 month Conspiracy to Distribute Cocaine conviction. It was my first offense and I was classified as a Minimum and placed at the FCI Camp to serve the sentence. What truly was an eye opening experience leading me to believe that nothing could be worse became worse. Little did I know after being approved for Direct Home Confinement (DHC) and released from "Incarcerated Custody" to Home Confinement would that mindset change!

Having transferred twice from El Reno to the Lee, VA Camp to obtain my CDL and then to the Pensacola, FL Camp for the remainder of my term, I was released to DHC on 4/11/2023 after serving just 859 days in custody under the CARES Act. I took a Greyhound from Pensacola to Dallas in a total ecstatic state, no guards looking over me, I'm in civilian clothes, I can buy what ever I wanted for dinner, breakfast, etc, in total bliss (I bought a can of Coca Cola and a pack of smokes with a lighter). That chapter of my life was closed for good! I had been given approximately 21 hours to report from the bus station in Pensacola to the Volunteers of America's Hutchins House Residential Reentry Center located about 20 miles south of the Dallas metroplex. Having already earned 365 days towards early release to Supervised Release under the First Step Act, I would spend the next 324 days in custody at home, sporting the latest and greatest fashion, the Attenti AT1 ankle monitor to track my every step and under the watchful eyes of the RRC.

Happy to be home, worn weary from a long bus ride, I went to bed pretty early that night. When I awoke the next morning, my cell phone had recorded 26 missed phone calls between the hours of 11:30 PM and 5:30 AM, all calls from the same place, Hutchins House RRC. I immediately called the facility as was informed that I had to return to the facility that day for what amounted to a severe ass chewing and a warning that I am required to answer all phone calls regardless of the time of the call. Got it. But I didn't expect it to continue.

From April 12 to June 30, 2023, I received a nightly phone call between 11:30 PM and 5:30 AM without fail. In April, the latest call came at 3:29 AM, lasting just 9 seconds. May was slightly better, with the latest call at 2:40 AM for 6 seconds. June was the least disruptive, with the latest call at 1:41 AM, lasting 5 seconds. Each time, the caller either stated, "This is the VOA in Hutchins, this is a random call, good night," or simply asked, "Where are you?"

The "Where Are You?" question threw me for a loop and I started getting argumentative with the caller for asking the most ridiculous question I had heard in a long time. After all, I have the Israeli built, latest and greatest Attenti AT1 Ankle Monitor on my ankle. This device is considered the best in the GPS Tracker industry. From their own owners manual, *"The benefits of the AT1 include multiple tracking technologies, LTE and Wi-Fi communication, live pursuit mode, and the widest array of interference detection in the industry. The location accuracy of the AT1 device is stated to be within a range of 4 meters."* FOUR METERS. Live Pursuit Mode. Pretty impressive. Four meters is the distance from my side of the bed to the bedroom door.

I was really struggling with these phone calls and the constant "Where Are You" question, so I decided to bring it up to my Case Manager attentions during one of our bi-weekly meetings asking what was going on. I was informed that that's the way it is and if I didn't like their procedures I could always talk to the Director of Corrections, Mr. Shawn Sales. Well this should be fun.

Prior to my meeting Mr. Shawn Sales, the “Director of Corrections”, I sent him an email asking what was up with the after hours calls and never received a reply. I met with Sales on June 3, 2023 and followed it up with a lengthy letter outlining the issues with after hours calls, the potential harm it could cause with sleep deprivation, work place safety issues, etc. On June 29, 2023, Sales sent me an email stating “*Our technical proposal states the following, which BOP holds us to - Hutchins is required to contact all HD clients twice daily but one of these contacts will be made between 23:30 and 05:30.*” Hmmm. Well he told me. Gotta love that Zulu time stamping too. I had no plan on arguing with him, he is the “Director of Corrections”, and who was I to question his “Technical Proposal”? Nor was I going to inform him that not once during my HC, to date, had I received two “random calls” in a 24 hour period (don’t want to mess up a good thing). In fact, during my entire time at both Hutchins and the VOA Avenue J, Fort Worth, TX RRC (I had transferred in August, 2023 and Sales has direct control over both facilities) had I ever received 2 random calls in a day. Not Once in 324 days! Hmmm.

I decided to take this a step further and proceeded to file an FOIA Request to the BOP. The information I was requesting was pretty basic:

1. Any communication between the BOP and Residential Reentry Centers instructing the RRCs that they must call home confinement residents between the hours of 11:30 PM and 05:30 AM or similar time frame daily.
2. Any communication between the BOP and Residential Reentry Centers instructing the RRCs that they must contact home confinement residents who are subject to GPS Location Monitoring (random calls) between the hours of 11:30 PM and 05:30 AM, or similar time frame daily.
3. Any Statement of Work document or Program Statement or BOP Policy issued that requires RRCs to physically call home confinement residents daily (random calls) subject to GPS Location Monitoring between the hours of 11:30 PM and 05:30 AM, or similar time frames.
4. Any documentation between the BOP and RRC’s or other staff members, agencies, etc., acknowledging sleep deprivation caused by continuous calls after 11:30 PM and 05:30 AM subjecting those individuals receiving the calls to potential driver error/accidents, work place accidents and other hazardous conditions.

The BOP acknowledged receipt of the FOIA Request on September 18, 2023 and assigned the FOIA Request as FOIA/PA Request Number: 2023-05025. Note that the FOIA request was filed several months earlier, yet it took until September to acknowledge its existence. They further deemed the request ineligible for expedited processing: “*Your request fails to meet the criteria for which expedited treatment is granted. You did not demonstrate why the lack of expedited processing could either reasonably be expected to pose an imminent threat to anyone's life or physical safety or would result in the loss of substantial due process rights. Therefore, your request will be processed in the order in which it was received.*” So let’s just ignore the whole potential work place safety issues and sleep deprivation health issues.

The document also shared a time frame for “normal” handling with: “*We determined unusual circumstances exist as the documents responsive to your request must be searched for and collected from a field office, and/or the documents responsive to your request are expected to be voluminous and will require significant time to review. Because of these unusual circumstances, we have extended the time limit to respond to your request for the ten additional days provided by statute. Processing complex requests may take up to nine months. In accordance with 28 C.F.R. § 16.5(b) and (c), you may narrow or modify your request in an effort to reduce the processing time.*”

So by all calculations, based on the acknowledgement letter, I should have received my FOIA response somewhere on or about June of 2024. I held my breath and waited, waited and waited. June, 2024 came and went and I decided to do a little research. Logging on to the BOP website, I searched the 2023 BOP FOIA Log, a chronicle listing by date of all FOIA requests submitted to the BOP. Little to my surprise, BOP FOIA/PA Request Number 2023-05025 is missing. On August 20, 2024, I sent an inquiry email to the BOP asking for an update on the FOIA request and received a reply on 8/25/2024 stating that *"It appears some records responsive to your request have been located. However, your request has yet to be assigned for processing. Generally, once records have been located, they need to be processed and reviewed prior to release. Additionally, requests are processed in the order they were received. Our anticipated date of completion is May, 2025. Please note: this is only an estimate as records could be produced earlier."* Ever hear of hurry up and wait?

Records are processed in the order received. Go it. When one looks that the 2023 BOP FOIA Log, there are literally hundreds of FOIA requests that have been processed, be it granted, denied in part, denied outright with FOIA dates later than the September 18, 2023 FOIA date. Yet 2023-05025 has yet to be listed and now the BOP wants additional time to answer 4 simple questions, or perhaps delay the release. On June 2, 2025, I submitted another request to the BOP requesting the same information, "What is the Status of FOIA Request 2023-05025" and On June 11, 2025 I received the same response, yet with the following message: *"It appears some records responsive to your request have been located. However, your request has yet to be assigned for processing. Generally, once records have been located, they need to be processed and reviewed prior to release. Additionally, requests are processed in the order they were received. Our anticipated date of completion is October, 14th, 2025. Please note: this is only an estimate as records could be produced earlier."*

When one searches the web for what constitutes sleep deprivation, eventually they will come up with this great find: "Sleep Deprivation/Fatigue and Work/Driving <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4591134/>

Laboratory research has shown that sleep loss and disruptions of circadian rhythms result in impaired performance and increased incident and accident risk at workplaces and on roads. Regularly experiencing insufficient sleep has been linked with serious health issues such as cardiovascular disease, cancer and weight gain and impairments to mental functions such as diminished memory and decision making, and increased risk of anxiety and depression. A lack of adequate sleep also increases the risk of road accidents and injuries. Furthermore, fatigue and human error have been linked to major operational catastrophes such as the grounding of the oil tanker Exxon Valdez and the Challenger Space Shuttle disaster. There is also a large financial cost to employers of fatigued employees, estimated at between US\$2,968 to US\$4,042 (2023 adjusted) per sleep deprived employee annually, depending on the extent of sleep deprivation. Approximately 3% (\$411 Billion Dollars) of the United States GDP is lost to sleep deprivation.

A 2017 study published in the American Journal of Health Promotion discovered that employees who sleep less than or more than 8 hours per night had more daytime fatigue, less productivity, and more absenteeism from work. These proportions are higher than for any other chronic condition, with annualized US population projections of 274,000 costly insomnia-related workplace accidents and errors having a combined value of US \$31.1 billion."

Coupled with two cases defining what constitutes Cruel and Unusual Punishment:

In *Furman v. Georgia*, 408 U.S.238 (1972) Justice Brennan stated that one of the four principles by which we may determine whether a particular punishment is 'cruel and unusual' is a punishment that is patently unnecessary. I will acknowledge that being on home confinement is certainly better than being incarcerated; however it should be recognized that home confinement is still a form of incarceration, which is still considered and defined as "punishment."

I am of the firm belief that After Hours Phone Calls to those who are on Home Confinement and monitored 24 hours per day, 7 days per week are “Patently Unnecessary”!

In *Harper v. Showers*, 174 F.3d 716 (5th Cir. 1999), it held that any form of sleep deprivation could constitute cruel and unusual punishment. Sleep deprivation often leads to other more serious issues; studies have shown that sleep deprivation causes mental impairment and can boost hunger-stimulating hormones, leading to obesity, while “chronic sleep of five or fewer hours over a period of time is associated with a 45% elevated risk of heart attack” and increases the likelihood of cancer, heart disease, hypertension, diabetes, stroke, ADHD, alcoholism and mood disorders.

The health risks alone necessitates the cessation of after hours calls.

Repeated phone calls every night after midnight for 10 months can contribute to sleep deprivation by disrupting sleep patterns, reducing sleep duration, and causing stress or anxiety. Sleep deprivation occurs when an individual consistently gets insufficient sleep, leading to physical, mental, and emotional health issues. Below, I outline how such disturbances align with sleep deprivation and provide relevant sources.

Sleep Disruption: Calls after midnight can interrupt the sleep cycle, particularly during critical stages like deep sleep or REM sleep, which are essential for restoration. Frequent interruptions prevent achieving restorative sleep, a key factor in sleep deprivation. Source: National Institute of Neurological Disorders and Stroke (NINDS), "Brain Basics: Understanding Sleep": "Sleep deprivation occurs when someone does not get enough sleep, often due to frequent awakenings or inability to fall asleep."

Reduced Sleep Duration: If calls consistently wake someone or keep them awake, total sleep time is reduced. Adults need 7-9 hours of sleep per night, and chronic reduction below this threshold leads to sleep deprivation. Source: National Sleep Foundation, "How Much Sleep Do We Really Need?": "Consistently getting less than the recommended sleep duration can lead to sleep deprivation, impairing cognitive function and health."

Stress and Anxiety: Persistent late-night calls, especially if unwanted, can cause psychological stress, making it harder to fall back asleep. Chronic stress from harassment exacerbates sleep disturbances. Source: American Psychological Association, "Stress and Sleep": "Stress can cause hyperarousal, making it difficult to fall or stay asleep, contributing to insomnia and sleep deprivation."

Cumulative Effect Over 10 Months: Chronic sleep disruption over an extended period like 10 months compounds the effects of sleep deprivation, increasing risks of health issues such as impaired cognition, mood disorders, and weakened immune function. Source: Centers for Disease Control and Prevention (CDC), "Sleep and Sleep Disorders": "Chronic sleep deprivation can result from ongoing sleep disruptions and is linked to increased risks of obesity, diabetes, cardiovascular disease, and mental health issues."

Legal and Psychological Context

Persistent late-night calls may also constitute harassment, which can amplify sleep deprivation through emotional distress. While not a direct source on sleep deprivation, legal frameworks recognize such behavior as disruptive: Source: U.S. Code, Title 47, Section 223 (Obscene or Harassing Telephone Calls): Federal law notes that repeated calls intended to harass, especially at inconvenient hours, are actionable, implying recognition of their disruptive impact.

Conclusion

Calling someone every night after midnight for 10 months can lead to sleep deprivation by causing repeated sleep interruptions, reducing sleep duration, and inducing stress. The sources cited—NINDS, National Sleep Foundation, APA, and CDC—confirm that such disruptions align with the mechanisms and consequences of sleep deprivation.

The BOP is complicit in allowing RRCs to continue to harass individuals who are on home confinement by allowing the RRCs to proceed as usual, even after being notified multiple times of the ramifications of these actions. The BOP must release the information requested and identified in the FOIA Request 2023-05025. What are they hiding?

Days never called August 27, 28, 29, October 2, December 1, 7, 10, 11, 21, 24, 25, 29, 31 January 2024, 1, 3, 5, 12, 17, 26, 29, February 2024, 3, 4, 5, 8, 9, 10, 12, 14, 15, 25,

RRC Director Response to phone calls after midnight Letter sent on 6/20/2023.