

# April 19, 2018 Board Meeting

## Legal Update

# US 1373 Cover Letter



U.S. Department of Justice

Office of Justice Programs

*Bureau of Justice Assistance*

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Washington, D.C. 20531

January 24, 2018

Kathleen Howard  
Executive Director - California Board of State and Community Corrections  
2590 Venture Oaks Way, Suite 200  
Sacramento, California 95833

RE: Document request for Grant 2016-DJ-BX-0446, California Board of State and Community Corrections

Dear Director Howard:

Thank you for your ongoing response to our questions originating from your FY 2016 grant award conditions, regarding your jurisdiction's compliance with 8 U.S.C. § 1373, a federal law with which your jurisdiction must comply as an eligibility requirement for receiving Byrne Justice Assistance Grant (Byrne JAG) funding from the Department of Justice (Department or DOJ). After reviewing your response, the Department remains concerned that your jurisdiction's laws, policies, or practices may violate section 1373, or, at a minimum, that they may be interpreted or applied in a manner inconsistent with section 1373.

In light of these concerns, the Department is requesting certain documents as described below. This request is made consistent with 2 CFR § 200.336, as adopted by Department regulation 2 CFR § 2800.101. In your FY 2016 Byrne JAG award, you agreed to the following (listed as special condition #23):

[The recipient agrees to] cooperate with [the Bureau of Justice Assistance ("BJA")] and [Office of the Chief Financial Officer ("OCFO")] on all grant monitoring requests.... The recipient [also] agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including but not limited to withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

Please respond to the below request by providing to Chris Casto, BJA, at [Chris.Casto@usdoj.gov](mailto:Chris.Casto@usdoj.gov) by no later than February 23, 2018, all responsive documents, consistent with the instructions in Attachment A.

Documents Requested:

All documents reflecting any orders, directives, instructions, or guidance to your law enforcement employees (including, but not limited to, police officers, correctional officers, and contract employees), whether formal or informal, that were distributed, produced, and/or in effect during the relevant timeframe, regarding whether and how these employees may, or may not, communicate with the Department of Justice, the Department of Homeland Security, and/or Immigration and Customs Enforcement, or their agents, whether directly or indirectly.

BJA will review your submissions and seek additional information, if necessary. The Department fully anticipates your complete cooperation in this matter. Should you fail to respond in a complete and timely manner, the Department will subpoena these documents in accordance with 34 U.S.C. §§ 10225, 10221, 10230, 10151 – 10158, 10102(a)(6), 10110, and 10110 note.

These materials are critical to our ongoing review. Should the Department determine your jurisdiction is out of compliance with section 1373, the Department may, as detailed in your award documents, seek return of your FY 2016 grant funds, require additional conditions for receipt of any FY 2017 Byrne JAG funding for which you have applied, and/or deem you ineligible for FY 2017 Byrne JAG funds.

Thank you for your prompt attention to this request. We look forward to working through this matter with you. Any specific questions concerning this request can be sent to directly to Tracey Trautman, BJA Deputy Director, at [Tracey.Trautman@usdoj.gov](mailto:Tracey.Trautman@usdoj.gov) or call (202) 305-1491.

Sincerely,



Jon Adler  
Director  
Bureau of Justice Assistance  
Office of Justice Programs  
810 7<sup>th</sup> Street NW  
Washington, DC 20531

# US 1373

# Document Instructions

## **Attachment A**

### **Instructions**

1. These requests apply to all documentary material in your possession, custody, or control regardless of their location and regardless of whether such documents are held by your employees, attorneys, consultants, accountants, investigators, representatives or agents, or any other person acting on your behalf. To the extent that responsive documents are not in your possession, custody, or control, these requests require Respondent to identify those documents with specificity, as well as the individuals and/or entities that currently maintain possession, custody, or control over such documents.
2. The term “document” includes all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term “document” specifically includes electronically stored information.
3. The term “relevant timeframe” means the period from September 30, 2015 through January 24, 2018.
4. The terms “you” and “your” refer to the California state law enforcement agencies.
5. These requests are continuing in nature. If you become aware of or acquire possession, custody, or control of additional responsive documents, you shall promptly submit copies of such additional documents to the Office of Justice programs, consistent with these instructions.
6. If any documents are withheld based upon a claim of privilege, work product doctrine, or any other protection from discovery:
  - a. identify the document in writing with a description of each such document or part thereof, including, as applicable, the type of document (e.g., letter, memorandum, or handwritten notes); subject matter, date of preparation, number of pages, name, contact

- information, and title of author(s); and the name, contact information, and title of all actual and intended recipients;
- b. state the privilege(s), work product doctrine(s), or other protection(s) from discovery relied upon for withholding the document; and
  - c. state all facts supporting the claim of privilege(s), work product doctrine(s), or other protection(s) from discovery in sufficient detail to allow an assessment of its validity.
7. To the extent that you produce copies of documents, the originals must be maintained and safeguarded and made available upon request.
8. Identify all responsive documents that have been lost, discarded, or destroyed. In so doing, state the type of document, its date, the approximate date it was lost, discarded, or destroyed, and the identity of each person having knowledge of the contents thereof. Please explain why any related documents were destroyed. Was the document disposed of in accordance with established policies?
9. Production of documentary material shall be made in such a manner as to ensure that the source and location of such material may be readily determined.
10. File folders, index or file tabs, binder covers, labels and other materials identifying documentary material responsive to these requests, or in which documentary material responsive to these requests are contained, shall be produced intact with such documentary material.
11. Documentary material attached to each other shall not be separated unless sufficient records are kept to permit reconstruction of such grouping and separation is identified.

# February 23, 2018 Response





LINDA M. PENNER  
*Chair*

KATHLEEN T. HOWARD  
*Executive Director*

STATE OF CALIFORNIA

BOARD OF STATE AND COMMUNITY CORRECTIONS

600 BERGUT DRIVE • SACRAMENTO CA 95811 • 916.445.5073 • BSCC.CA.GOV



EDMUND G. BROWN, JR.  
*Governor*

February 23, 2018

Mr. Chris Casto  
Bureau of Justice Assistance  
Office of Justice Programs  
810 7<sup>th</sup> Street NW  
Washington, DC 20531

Dear Mr. Casto,

I am writing in response to your January 24, 2018 letter requesting documents from the Board of State and Community Corrections ("BSCC") regarding the BSCC's compliance with 8 U.S.C. § 1373 ("Section 1373"). We understand your letter as requesting "orders, directives, instructions, or guidance to your law enforcement employees." Preliminarily, the BSCC is not a law enforcement agency and does not have any law enforcement employees. Consequently, the BSCC does not have any "order, directives, or guidance" to provide.

Notwithstanding the above, and without waiving the BSCC's right to challenge your authority to make this document request, the BSCC attaches here two communications from it to entities that received a JAG subgrant from the BSCC during the relevant time period, including one California state law enforcement agency, that link to Bureau of Justice Assistance guidance about compliance with Section 1373. The BSCC represents that these communications are the only documents in its possession, custody, and control that are related to any guidance provided to other law enforcement entities regarding compliance with Section 1373.

In addition to the request for documents from the BSCC, you have asked that we identify other responsive documents that are not in the custody and control of the BSCC from other state law enforcement agencies. We assume this request applies to the only California state law enforcement agency that receives a JAG subgrant from the BSCC: the Bureau of Investigation within the California Department of Justice. The designated person that has custody control of responsive documents is John Marsh, Director, Bureau of Investigation who can be reached at John.Marsh@doj.ca.gov.

We have been informed that the Bureau of Investigation will voluntarily produce responsive documents and contact you separately about making a production within a reasonable time.

Finally, we want to reiterate, that the BSCC's position remains that it is in compliance with Section 1373. The U.S. Department of Justice ("USDOJ") has not provided any evidence to the BSCC demonstrating that the BSCC, or any state recipient of JAG funds, is not in compliance with Section 1373. While the BSCC has cooperated with every request that USDOJ has made of it, the USDOJ has failed to establish any basis to justify its continued review of this jurisdiction's compliance with Section 1373.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron R. Maguire", with a long horizontal flourish extending to the right.

AARON R. MAGUIRE  
General Counsel

cc: Tracey Trautman, BJA Deputy Director

# July 2016 Email

## Jolls, Mary@BSCC

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**From:** Wise, Brian@BSCC  
**Sent:** Wednesday, July 27, 2016 2:21 PM  
**To:** 'jdarlington@buttecounty.net'; 'DMcKay@chicousd.org'; 'elyon@buttecounty.net'; 'khonea@buttecounty.net'; 'tsturm@co.calaveras.ca.us'; 'Jmacedo@co.calaveras.ca.us'; 'Smunson@co.calaveras.ca.us'; 'Rwhiting@co.calaveras.ca.us'; 'Mhinsey@co.calaveras.ca.us'; 'dlevine@ehsd.cccounty.us'; 'jlynn-whaley@ehsd.cccounty.us'; 'rwarren@countyofglenn.net'; 'mbstanbery@countyofglenn.net'; 'elamb@countyofglenn.net'; 'whonsal@co.humboldt.ca.us'; 'ivonneperaza@co.imperial.ca.us'; 'joseflores@co.imperial.ca.us'; 'susanasalgado@co.imperial.ca.us'; 'stellachan@co.kern.ca.us'; 'dickinsonw@co.kern.ca.us'; 'Cassandra.Mann@co.kings.ca.us'; 'Robert.balderama@co.kings.ca.us'; 'Dave.robinson@co.kings.ca.us'; 'mbs@co.lake.ca.us'; 'cjm@co.lake.ca.us'; 'Greg.Hosman@lakecountyca.gov'; 'Nancy.McCarrick@lakecountyca.gov'; 'rmcabata@lasd.org'; 'llmcbriid@lasd.org'; 'atstanfi@lasd.org'; 'J1wolak@lasd.org'; 'jamoss@lasd.org'; 'mmcfarland@co.lassen.ca.us'; 'lbernard@co.lassen.ca.us'; 'salewis@lasd.org'; 'todd.miller@co.madera.ca.gov'; 'jay.varney@co.madera.ca.gov'; 'eoutfleet@co.madera.ca.gov'; 'msalvador@madera-county.com'; 'canuto.garza@doj.ca.gov'; 'gloria.pingrey@doj.ca.gov'; 'patricia.perez@doj.ca.gov'; Pearce, Connie@Mariposa; 'cavnessk@co.mendocino.ca.us'; 'pearcet@co.mendocino.ca.us'; 'scott.campbell@mendocino.courts.ca.gov'; 'acm@mendocino.courts.ca.gov'; 'sjimenez@co.merced.ca.us'; 'hszakala@co.merced.ca.us'; 'jkettering@co.merced.ca.us'; 'uvinaalbright@co.modoc.ca.us'; 'jordanfunk@co.modoc.ca.us'; 'lchapman@mono.ca.gov'; 'mknowles@mono.ca.gov'; 'tkendall@mono.ca.gov'; 'mgiacomi@placer.ca.gov'; 'krobbins@placer.ca.gov'; 'RDreher@placer.ca.gov'; 'jholder@placer.ca.gov'; 'kchamber@placer.ca.gov'; 'vvalenzu@placer.ca.gov'; 'robertaallen@countyofplumas.com'; 'stephanietanaka@countyofplumas.com'; 'etaylor@sbcsheriff.org'; 'Pmacdonald@sbcsheriff.org'; 'etaylor@sbcsheriff.org'; Allen, Veronica@CDSS-CONTACTS; 'Christine.Prue@sdcounty.ca.gov'; 'Margie.Deleon@sdcounty.ca.gov'; 'amiscevic@sbc.org'; 'Leo.chyi@dcyf.org'; 'Jasmine.dawson@dcyf.org'; 'emily.fox@dcyf.org'; Kawano, Rod@San Joaquin; 'jalejandre@sjgov.org'; 'jvansteyn@sjgov.org'; 'jsaco@smcgov.org'; 'Cjuarez-diroll@smcgov.org'; 'kkennedy@sbcsheriff.org'; 'mcallagy@smcgov.org'; 'Michelle.Rodriguez@santacruzcounty.us'; 'Lisa\_Russell@janussc.org'; 'angie@appliedsurveyresearch.org'; 'jeff.marsh@santacruzcounty.us'; 'craig.wilson@santacruzcounty.us'; 'bmuir@co.shasta.ca.us'; 'mlindsey@co.shasta.ca.us'; 'jbodner@co.shasta.ca.us'; 'dwarren@co.shasta.ca.us'; 'tneal@co.shasta.ca.us'; 'emagrini@co.shasta.ca.us'; 'lames@reddingpolice.org'; 'tbozenko@co.shasta.ca.us'; 'christine.williams@sonoma-county.org'; 'robert.halverson@sonoma-county.org'; 'david.koch@sonoma-county.org'; 'lisa.valente@sonoma-county.org'; 'srogers@stanislaussheriff.com'; 'davisk@modestopd.com'; 'chradam@stanislaussheriff.com'; 'davisk@modestopd.com'; 'caldridge@tehamaso.org'; 'lfrech@tehamaso.org'; 'dthomas@tehamaso.org'; 'TLaenz@co.tulare.ca.us'; 'Logan.S.Robertson@gmail.com'; 'Rgridley@co.tulare.ca.us'; 'Mbowen@co.tulare.ca.us'; 'andrew.kish@ventura.org'; 'kelley.barry@ventura.org'; 'Geoff.dean@ventura.org'; 'debbie.geisser@yolocounty.org'; 'debbie.bair@yolocounty.org'; 'jonathan.raven@yolocounty.org'; 'reberle@co.yuba.ca.us'; 'jroper@CO.YUBA.CA.US'; 'jarnold@co.yuba.ca.us'; 'amartinez@co.yuba.ca.us'  
**Cc:** McDaniel, Daryle@BSCC; Jolls, Mary@BSCC

**Subject:**

FY 2016 Byrne/JAG Solicitation - BJA Requirement

To All Byrne/JAG Recipients:

As part of the FY 2016 Byrne/JAG Solicitation, the Bureau of Justice Assistance reiterated its longstanding requirement that applicants for state and local JAG formula grants are required to certify compliance with all applicable federal laws at the time of application, including 8 U.S.C. section 1373. Recently, the Bureau of Justice Assistance posted additional guidance regarding the applicability of 8 U.S.C. section 1373 to JAG recipients. This guidance can be found at: <https://www.bja.gov/funding/8uscsection1373>

Please review this guidance and consult your legal counsel for any questions.

**Brian Wise**  
Associate Governmental Program Analyst  
Board of State and Community Corrections  
2590 Venture Oaks Way, Suite 200  
Sacramento, CA 95833  
<http://www.bscc.ca.gov>  
phone 916.341.7326  
email [brian.wise@bscc.ca.gov](mailto:brian.wise@bscc.ca.gov)  
**LEADERSHIP ★ EXCELLENCE ★ SUPPORT**

# October 2016 Email

## Jolls, Mary@BSCC

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**From:** Wise, Brian@BSCC  
**Sent:** Friday, October 7, 2016 3:49 PM  
**To:** 'jdarlington@buttecounty.net'; 'DMcKay@chicousd.org'; 'elyon@buttecounty.net'; 'khonea@buttecounty.net'; 'tsturm@co.calaveras.ca.us'; 'Jmacedo@co.calaveras.ca.us'; 'Smunson@co.calaveras.ca.us'; 'Rwhiting@co.calaveras.ca.us'; 'Mhinsey@co.calaveras.ca.us'; 'dlevine@ehsd.cccounty.us'; 'jlynn-whaley@ehsd.cccounty.us'; 'whonsal@co.humboldt.ca.us'; 'ivonneperaza@co.imperial.ca.us'; 'joseflores@co.imperial.ca.us'; 'susanasalgado@co.imperial.ca.us'; 'stellachan@co.kern.ca.us'; 'dickinsonw@co.kern.ca.us'; 'Cassandra.Mann@co.kings.ca.us'; 'Robert.balderama@co.kings.ca.us'; 'Dave.robinson@co.kings.ca.us'; 'rmcabata@lasd.org'; 'llmcbri@lasd.org'; 'atstanfi@lasd.org'; 'J1wolak@lasd.org'; 'jamoss@lasd.org'; 'mmcfarland@co.lassen.ca.us'; 'lbernard@co.lassen.ca.us'; 'rschaap@co.lassen.ca.us'; 'salewis@lasd.org'; 'todd.miller@co.madera.ca.gov'; 'jay.varney@co.madera.ca.gov'; 'eoutfleet@co.madera.ca.gov'; 'msalvador@madera-county.com'; 'canuto.garza@doj.ca.gov'; 'gloria.pingrey@doj.ca.gov'; 'patricia.perez@doj.ca.gov'; Pearce, Connie@Mariposa; 'cavnessk@co.mendocino.ca.us'; 'pearcet@co.mendocino.ca.us'; 'scott.campbell@mendocino.courts.ca.gov'; 'acm@mendocino.courts.ca.gov'; 'sjimenez@co.merced.ca.us'; 'hszakala@co.merced.ca.us'; 'jkettering@co.merced.ca.us'; 'luvinaalbright@co.modoc.ca.us'; 'jordanfunk@co.modoc.ca.us'; 'lchapman@mono.ca.gov'; 'mknowles@mono.ca.gov'; 'tkendall@mono.ca.gov'; 'mgiacomi@placer.ca.gov'; 'krobbins@placer.ca.gov'; 'RDreher@placer.ca.gov'; 'jholder@placer.ca.gov'; 'kchamber@placer.ca.gov'; 'robertaallen@countyofplumas.com'; 'stephanietanaka@countyofplumas.com'; 'etaylor@sbcsheriff.org'; 'Pmacdonald@sbcsheriff.org'; 'etaylor@sbcsheriff.org'; Allen, Veronica@CDSS-CONTACTS; 'Christine.Prue@sdcounty.ca.gov'; 'Jefferson.Baker2@sdcounty.ca.gov'; 'Margie.Deleon@sdcounty.ca.gov'; 'amiscevic@sbc.org'; 'Leo.chyi@dcyf.org'; 'Jasmine.dawson@dcyf.org'; 'emily.fox@dcyf.org'; Kawano, Rod@San Joaquin; 'jalejandre@sjgov.org'; 'jvansteyn@sjgov.org'; 'jsaco@smcgov.org'; 'Cjuarez-diroll@smcgov.org'; 'kkennedy@sbcsheriff.org'; 'mcallagy@smcgov.org'; 'Michelle.Rodriguez@santacruzcounty.us'; 'Lisa\_Russell@janussc.org'; 'angie@appliedsurveyresearch.org'; 'jeff.marsh@santacruzcounty.us'; 'craig.wilson@santacruzcounty.us'; 'bmuir@co.shasta.ca.us'; 'mlindsey@co.shasta.ca.us'; 'jbodner@co.shasta.ca.us'; 'dwarren@co.shasta.ca.us'; 'tneal@co.shasta.ca.us'; 'emagrini@co.shasta.ca.us'; 'lames@reddingpolice.org'; 'tbosenko@co.shasta.ca.us'; 'christine.williams@sonoma-county.org'; 'robert.halverson@sonoma-county.org'; 'david.koch@sonoma-county.org'; 'lisa.valente@sonoma-county.org'; 'srogers@stanislaussheriff.com'; 'davisk@modestopd.com'; 'chradam@stanislaussheriff.com'; 'davisk@modestopd.com'; 'caldridge@tehamaso.org'; 'lfrech@tehamaso.org'; 'dthomas@tehamaso.org'; 'TLaenz@co.tulare.ca.us'; 'Logan.S.Robertson@gmail.com'; 'Rgridley@co.tulare.ca.us'; 'Mbowen@co.tulare.ca.us'; 'jgreen@co.tuolumne.ca.us'; 'andrew.kish@ventura.org'; 'kelley.barry@ventura.org'; 'Geoff.dean@ventura.org'; 'debbie.geisser@yolocounty.org'; 'debbie.bair@yolocounty.org'; 'jonathan.raven@yolocounty.org'; 'reberle@co.yuba.ca.us'; 'jroper@CO.YUBA.CA.US'; 'jarnold@co.yuba.ca.us'; 'amartinez@co.yuba.ca.us'  
**Cc:** McDaniel, Daryle@BSCC  
**Subject:** \*\*JAG Information

**Importance:**

High

Dear Grantees,

On October 6, 2016, the Office of Justice Programs posted additional guidance on the applicability of 8 U.S.C. section 1373 to Byrne/JAG funding and FY 2016 funding. Please see: <https://www.bja.gov/funding/Additional-BA-Guidance-on-Section-1373-October-6-2016.pdf>. As it relates to the Year 3 JAG Request For Application, we anticipate that it will go out the week of October 9<sup>th</sup>.

Have a nice weekend.

Brian Wise

Associate Governmental Program Analyst

Board of State and Community Corrections

2590 Venture Oaks Way, Suite 200

Sacramento, CA 95833

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