



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

August 21, 2020

Lauren White
Citizen for Responsibility
and Ethics in Washington
1101 K Street NW, Suite 201
Washington, D.C. 20005
lwhite@citizensforethics.org

Re: DOJ-2019-006390
19-cv-3626 (D.D.C.)
VRB:TAZ:AJH

Dear Lauren White:

This is a final response to your Freedom of Information Act (FOIA) request, dated and received in this Office on August 9, 2019, in which you requested records pertaining to the procurement of pentobarbital, pentobarbital sodium, or Nembutal to be used in federal executions, dating from February 14, 2019.

Please be advised that searches have been completed in response to your request, and fifteen pages containing records responsive to your request were located. I have determined that seven of these pages are appropriate for release in full, and eight of these pages are appropriate for release with certain information withheld pursuant to Exemptions 5, 6, 7(A), 7(B), 7(E) and 7(F) of the FOIA, 5 U.S.C. § 552(b)(5), (b)(6), (b)(7)(A), (b)(7)(B), (b)(7)(E) and (b)(7)(F), and copies are enclosed. Some of these withholdings have been made on behalf of the Federal Bureau of Prisons (BOP). Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy. Exemptions 7(A) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. Exemption 7(B) pertains to records or information compiled for law enforcement purposes, the release of which would deprive a person of a right to a fair trial or impartial adjudication. Exemption 7(E) pertains to records or information compiled for law enforcement purposes, the release of which would disclose certain techniques and procedures or guidelines for law enforcement investigations or prosecutions. Exemption 7(F) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to endanger the life or physical safety of an individual.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Jonathan Kossak of the Department of Justice Civil Division at 202-305-0612.

Sincerely,

A handwritten signature in blue ink, appearing to read 'V-R-B', followed by a horizontal line.

Vanessa R. Brinkmann
Senior Counsel

Enclosures

Perkins, Paul (ODAG)

From: Perkins, Paul (ODAG)
Sent: Monday, April 8, 2019 4:51 PM
To: Ellis, Corey F. (ODAG)
Cc: Peterson, Andrew (ODAG)
Subject: Death Penalty Update
Attachments: Processing Summary 016.docx

Corey,

I have attached a document that BOP provided today explaining (b) (5)

There are two important points:

(b) (5), (b) (7)(A)

Let me know if you would like to discuss.

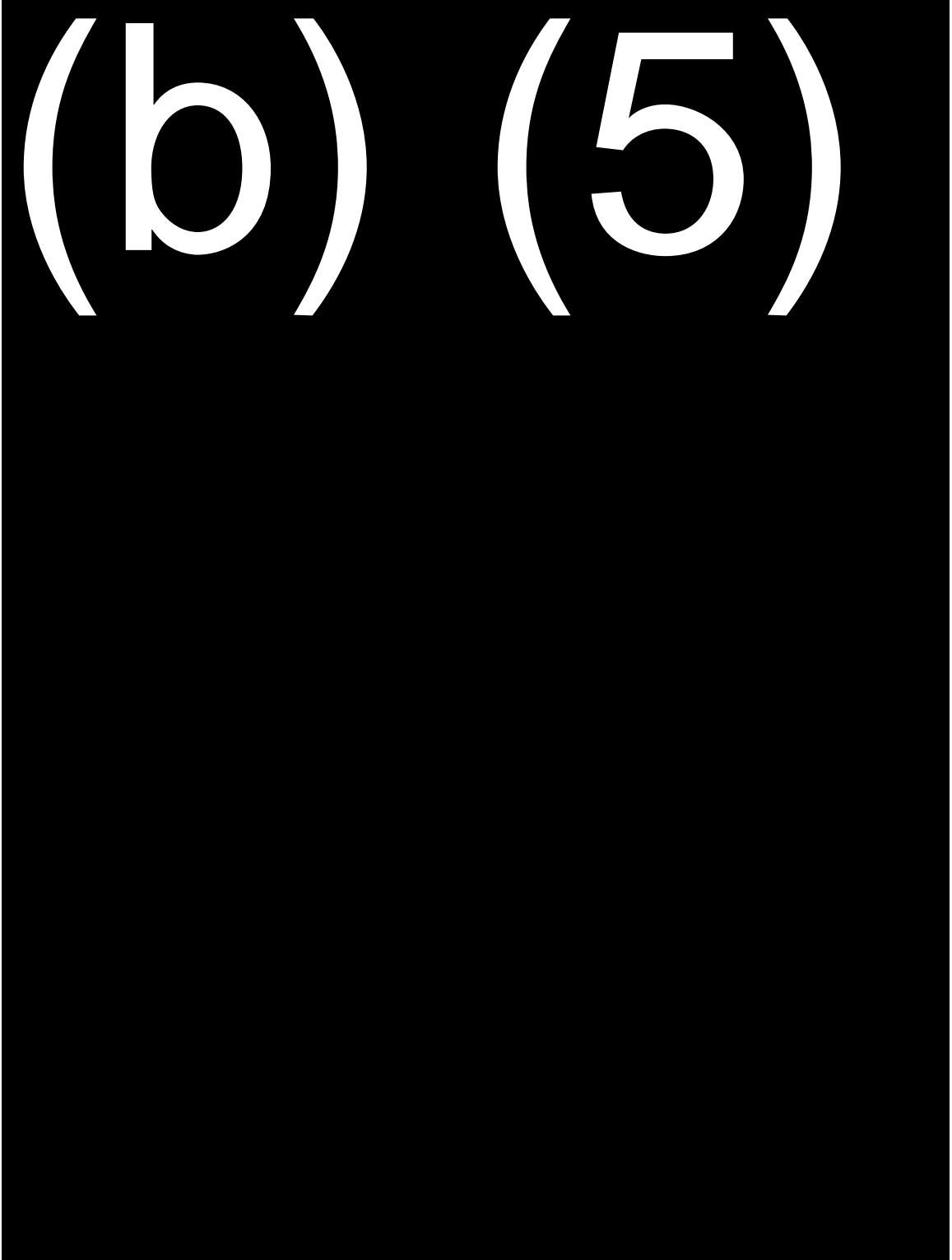
Thanks,
Paul

Paul Perkins
Senior Counsel to the Deputy Attorney General
United States Department of Justice
(202) 307-1045
Paul.Perkins@usdoj.gov

AG/DAG Meeting – Federal Death Penalty Process and Procedure

March 29, 2019

(b) (5)



Peterson, Andrew (ODAG)

From: Peterson, Andrew (ODAG)
Sent: Thursday, March 28, 2019 10:19 AM
To: Rosenstein, Rod (ODAG)
Cc: Ellis, Corey F. (ODAG)
Subject: FW: BOP Document (b) (5)
Attachments: Processing Summary 010.docx

From: Perkins, Paul (ODAG) <pperkins@jmd.usdoj.gov>
Sent: Thursday, March 28, 2019 10:19 AM
To: Ellis, Corey F. (ODAG) <cfellis@jmd.usdoj.gov>; Peterson, Andrew (ODAG) <anpeterson@jmd.usdoj.gov>
Subject: BOP Document on Current Status

BOP has prepared the attached document explaining (b) (5) This will be discussed at the 11am meeting, but it may be helpful for the DAG to read through this beforehand.

Paul

Paul Perkins
Counsel to the Deputy Attorney General
United States Department of Justice
(202) 307-1045
Paul.Perkins@usdoj.gov

Kenneth Hyle

From: Kenneth Hyle
Sent: Wednesday, March 27, 2019 1:51 PM
To: Paul Perkins
Cc: Hugh Hurwitz; Kevin Pistro
Subject: Processing Memo
Attachments: Processing Summary 010.docx

Paul - attached is the updated processing information. If you need anything further, please let us know. Thanks-

Ken

Kevin Pistro

From: Kevin Pistro
Sent: Friday, July 5, 2019 11:02 AM
To: Perkins, Paul (ODAG)
Subject: Update

(b) (7)(A), (b) (7)(B), (b) (7)(E), (b) (7)(F)

Sutton, Sarah E. (OPA)

From: Sutton, Sarah E. (OPA)
Sent: Monday, August 19, 2019 2:02 PM
To: Grieco, Christopher (ODAG)
Cc: Perkins, Paul R. (CIV)
Subject: Re: Reuters / New execution protocol

Thank you both!

Sent from my iPhone

> On Aug 19, 2019, at 13:01, Grieco, Christopher (ODAG) <cgrieco@jmd.usdoj.gov> wrote:

>

(b) (5)

> -----Original Message-----

> From: Perkins, Paul R. (CIV) <pperkins@CIV.USDOJ.GOV>

> Sent: Monday, August 19, 2019 1:59 PM

> To: Sutton, Sarah E. (OPA) <sesutton@jmd.usdoj.gov>

> Cc: Grieco, Christopher (ODAG) <cgrieco@jmd.usdoj.gov>

> Subject: RE: Reuters / New execution protocol

>

(b) (5)

>

> -----Original Message-----

> From: Perkins, Paul R. (CIV)

> Sent: Monday, August 19, 2019 1:58 PM

> To: Sutton, Sarah E. (OPA) <sesutton@jmd.usdoj.gov>

> Cc: Grieco, Christopher (ODAG) <cgrieco@jmd.usdoj.gov>

> Subject: RE: Reuters / New execution protocol

>

> Chris is now covering from ODAG.

>

> -----Original Message-----

> From: Sutton, Sarah E. (OPA) <sesutton@jmd.usdoj.gov>

> Sent: Monday, August 19, 2019 1:54 PM

> To: Perkins, Paul R. (CIV) <pperkins@CIV.USDOJ.GOV>

> Subject: FW: Reuters / New execution protocol

>

> Paul,

>

> See the inquiry from Reuters below. (b) (5) If you're not handling the DP stuff anymore, could you direct me to who I would need to speak to?

>

> Thanks!

>

> Sarah

>

> -----Original Message-----

> From: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>

> Sent: Monday, August 19, 2019 1:24 PM

> To: Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>

> Cc: Sutton, Sarah E. (OPA) <sesutton@jmd.usdoj.gov>

> Subject: Re: Reuters / New execution protocol

>

(b) (5) I believe but Sarah would have info.

>

>> On Aug 19, 2019, at 1:18 PM, Carr, Peter (OPA) <pcarr@jmd.usdoj.gov> wrote:

>>

>> By chance do you have any info on this execution protocol issue? I heard that Fed Programs may be involved?

>>

>> -----Original Message-----

>> From: Allen, Jonathan (Reuters) <jonathan.allen@thomsonreuters.com>

>> Sent: Friday, August 16, 2019 3:37 PM

>> To: Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>

>> Subject: RE: Reuters / New execution protocol

>>

>> Hi Peter

>> Thanks for getting back to me. Forgive me: I pondered and I think that seems an undue delay for basic information about a major policy/procurement the DOJ announced three weeks ago. However, to simplify things for now, do you think you could at least share the following, which I understand to be simple public records/subject to public disclosure per FAR etc. and which I also figure would be a quick and easy pull, though I'm happy to hear if I'm mistaken:

>>

>> Please send the RFP number and/or any contract/notice of solicitation for pentobarbital if this has already happened. If there has been a purchase order, please send a copy, or at least the Award ID or its FPDS reference. (The only FPDS records I can see for pentobarbital procurement are four years-old purchase orders by Veterans Affairs, presumably for other purposes.) If this procurement is being placed against an already existing contract, including, for example, an ongoing GSA contract, please let me know which contract. If the pentobarbital procurement is being withheld from normal public disclosure in some way, please let me know, as well as the basis.

>>

>> My understanding from the BOP is that the BOP itself is not the procuring/contracting agent for the pentobarbital and that it's some other division at DOJ - I'd be glad to know which one!

>>

>> If you could share these requested records by Monday afternoon I'd be most grateful! (And if they don't exist, do please say so.) Perhaps the other broader elements of the query we can pick up subsequently, but I hope this narrow request seems feasible, though always happy to chat on either number below.

>>

>> I appreciate your time and help with this.

>> j.

>>

>> Jonathan Allen

>> Correspondent

>> Reuters

>> Thomson Reuters

>>

>> Office: 646-223-5371

>> (b) (6)

>> (b) (6)

>>

>> jonathan.allen@reuters.com

>>

>>

>> -----Original Message-----

>> From: Carr, Peter (OPA) <Peter.Carr@usdoj.gov>

>> Sent: Wednesday, August 14, 2019 4:43 PM

>> To: Allen, Jonathan (Reuters) <jonathan.allen@thomsonreuters.com>

>> Subject: RE: Reuters / New execution protocol

>>

>> Hi Jonathan,

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>> The only information I have at the moment is the release you included below. If you're able to wait until he returns, might be best. I don't have any additional information at this time.

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>>

>> -Peter

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>> -----Original Message-----

>>

>> From: Allen, Jonathan (Reuters) <jonathan.allen@thomsonreuters.com>

>>

>> Sent: Wednesday, August 14, 2019 4:10 PM

>>

>> To: Carr, Peter (OPA) <pcarr@jmd.usdoj.gov>

>>

>> Subject: Reuters / New execution protocol

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>> Hi Peter - Wyn's OOO message sent me your way! Might you be able to help with the query below regarding the new execution protocol in his absence?

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>> 1. Am I right to think the new execution protocol (a copy of which I now see was recently posted to the Roane case docket) is NOT going through an APA rulemaking process? (Federal defenders involved in the cases scheduled for December say they believe that the new protocol *should* be seen as a new rule under APA, with public comment period etc., but my understanding is that the DOJ disagrees.)

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>> 2. And are there any restrictions on disclosing details regarding the procurement of the pentobarbital the DOJ said it would use in this protocol for the executions commencing in December? (If there are no restrictions I'd welcome information about how the supply is being obtained, of course!)

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>>

>> If you're able to get back to me before Thursday is out I'd be most grateful - let me know if that seems feasible. Happy to chat on either number below.

>>

>> Many thanks

>>

>> j

>>

>>

>>

>> Jonathan Allen

>>

>> Correspondent

>>

>> Reuters

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>> Thomson Reuters

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>> Office: 646-223-5371
>>

(b) (6)



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>> jonathan.allen@reuters.com
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>> From: USDOJ-Office of Public Affairs
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>> Sent: Thursday, July 25, 2019 10:03 AM
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>> To: US-General-News
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>> Subject: FEDERAL GOVERNMENT TO RESUME CAPITAL PUNISHMENT AFTER NEARLY TWO
DECADE LAPSE
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the Acting Director of the BOP, Hugh Hurwitz, to schedule the executions of five death-row inmates convicted of murdering, and in some cases torturing and raping, the most vulnerable in our society—children and the elderly.

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>> “Congress has expressly authorized the death penalty through legislation adopted by the people’s representatives in both houses of Congress and signed by the President,” Attorney General Barr said. “Under Administrations of both parties, the Department of Justice has sought the death penalty against the worst criminals, including these five murderers, each of whom was convicted by a jury of his peers after a full and fair proceeding. The Justice Department upholds the rule of law—and we owe it to the victims and their families to carry forward the sentence imposed by our justice system.”

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>> The Federal Execution Protocol Addendum, which closely mirrors protocols utilized by several states, including currently Georgia, Missouri, and Texas, replaces the three-drug procedure previously used in federal executions with a single drug—pentobarbital. Since 2010, 14 states have used pentobarbital in over 200 executions, and federal courts, including the Supreme Court, have repeatedly upheld the use of pentobarbital in executions as consistent with the Eighth Amendment.

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>> Upon the Attorney General’s direction, Acting Director Hurwitz adopted the Addendum to the Federal Execution Protocol and, in accordance with 28 C.F.R.

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>> Part 26, scheduled executions for the following individuals:

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>> • Daniel Lewis Lee, a member of a white supremacist group, murdered a

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>> family of three, including an eight-year-old girl. After robbing and shooting the victims with a stun gun, Lee covered their heads with plastic bags, sealed the bags with duct tape, weighed down each victim with rocks, and threw the family of three into the Illinois bayou. On May 4, 1999, a jury in the U.S. District Court for the Eastern District of Arkansas found Lee guilty of numerous offenses, including three counts of murder in aid of racketeering, and he was sentenced to death. Lee’s execution is scheduled to occur on Dec. 9, 2019.

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>> • Lezmond Mitchell stabbed to death a 63-year-old grandmother and forced

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>> her nine-year-old granddaughter to sit beside her lifeless body for a 30 to 40-mile drive. Mitchell then slit the girl's throat twice, crushed her head with 20-pound rocks, and severed and buried both victims' heads and hands.

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>> On May 8, 2003, a jury in the U.S. District Court for the District of Arizona found Mitchell guilty of numerous offenses, including first degree murder, felony murder, and carjacking resulting in murder, and he was sentenced to death. Mitchell's execution is scheduled to occur on Dec. 11, 2019.

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>> • Wesley Ira Purkey violently raped and murdered a 16-year-old girl, and

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>> then dismembered, burned, and dumped the young girl's body in a septic pond. He also was convicted in state court for using a claw hammer to bludgeon to death an 80-year-old woman who suffered from polio and walked with a cane. On Nov. 5, 2003, a jury in the U.S. District Court for the Western District of Missouri found Purkey guilty of kidnapping a child resulting in the child's death, and he was sentenced to death. Purkey's execution is scheduled to occur on Dec. 13, 2019.

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>> • Alfred Bourgeois physically and emotionally tortured, sexually molested,

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>> and then beat to death his two-and-a-half-year-old daughter. On March 16, 2004, a jury in the U.S. District Court for the Southern District of Texas found Bourgeois guilty of multiple offenses, including murder, and he was sentenced to death. Bourgeois' execution is scheduled to occur on Jan. 13, 2020.

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>> • Dustin Lee Honken shot and killed five people—two men who planned to

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>> testify against him and a single, working mother and her ten-year-old and six-year-old daughters. On Oct. 14, 2004, a jury in the U.S. District Court for the Northern District of Iowa found Honken guilty of numerous offenses, including five counts of murder during the course of a continuing criminal enterprise, and he was sentenced to death. Honken's execution is scheduled to occur on Jan. 15, 2020.

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>> Each of these inmates has exhausted their appellate and post-conviction remedies, and currently no legal impediments prevent their executions, which will take place at U.S. Penitentiary Terre Haute, Indiana. Additional executions will be scheduled at a later date.

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>> AG

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>> 19-807

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>> Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202-514-2007.

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