

June 17, 2020

SUBMITTED VIA PORTAL

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
U.S. Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Mr. Hibbard:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Department of Justice (“DOJ”) regulations.

First, CREW requests records sufficient to identify, as of the date of the search, the status of all pattern-or-practice reform agreements under 42 U.S.C. § 14141 with law enforcement agencies, including consent decrees and memorandums of agreement, that were open on or after January 20, 2017.

Second, CREW requests records sufficient to identify any changes made between January 20, 2017 and the date of the search to all open pattern-or-practice reform agreements under 42 U.S.C. § 14141 with law enforcement agencies.

Third, CREW requests all records, including but not limited to paper and digital communications, related to efforts by DOJ to comply with Attorney General William Barr’s commitment to Sen. Kamala Harris (D-CA) during his confirmation hearing that he would provide the Senate Judiciary Committee with “a list of all consent decrees that have been withdrawn” by DOJ under both his tenure and the tenure of former Attorney General Jeff Sessions.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as emails to which the subjects of this request were cc’ed or bcc’ed.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn*

v. Rosen, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DOJ regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

At the tail end of the Obama administration, on January 4, 2017, DOJ released a report examining the Civil Rights Division's police reform work under Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994.¹ The report concluded that while "Pattern-or-practice cases are not a panacea for problems in American policing," the Civil Rights Division's work, along with other federal tools and state and local efforts, was "laying the foundation for more positive and effective policing practices across the country."² The press release announcing the report noted that "Since 2009, the Civil Rights Division has opened 25 investigations into law enforcement agencies and is currently enforcing 19 agreements, including 14 consent decrees and one post-judgment order."³

Three months later, then-Attorney General Sessions issued a memorandum ordering the review of all of reform agreements between the Civil Rights Division and local police departments.⁴ The *Washington Post* noted that the agreements were "a key legacy of the Obama administration" and Attorney General Sessions' order called "into question whether all of the agreements will stay in place."⁵ During Attorney General Sessions' tenure, DOJ criticized a proposed consent decree in Baltimore negotiated by the Obama administration and opposed a

¹ Press Release, Department of Justice, Office of Public Affairs, Justice Department Releases Report on Civil Rights Division's Pattern and Practice Police Reform Work, January 4, 2017, available at <https://www.justice.gov/opa/pr/justice-department-releases-report-civil-rights-division-s-pattern-and-practice-police-reform>

² Department of Justice, Civil Rights Division, The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present, January 2017, available at <https://www.justice.gov/crt/file/922421/download>.

³ Press Release, Department of Justice, Office of Public Affairs, January 4, 2017.

⁴ Sari Horwitz, Mark Berman, and Wesley Lowery, Sessions orders Justice Department to review all police reform agreements, *Washington Post*, April 3, 2017, available at https://www.washingtonpost.com/world/national-security/sessions-orders-justice-department-to-review-all-police-reform-agreements/2017/04/03/ba934058-18bd-11e7-9887-1a5314b56a08_story.html?itid=lk_inline_manual_30.

⁵ *Id.*

draft police reform plan negotiated between the city of Chicago and the state of Illinois.⁶ Shortly before President Trump fired him, Attorney General Sessions signed another memorandum regarding consent decrees and settlement agreements with local governments that, in the words of the *New York Times*, “drastically limited the ability of federal law enforcement officials to use court-enforced agreements to overhaul local police departments accused of abuses and civil rights violations.”⁷

In his Senate confirmation hearing, Attorney General Barr said that he agreed with the policy in his predecessor’s memorandum constraining the department’s ability to enter into consent decrees.⁸ During the hearing, Sen. Harris asked Attorney General Barr if he would commit, if confirmed, to provide the Senate Judiciary Committee “with a list of all consent decrees that have been withdrawn since Attorney General Sessions” issued his policy on consent decrees, saying, “we would like some transparency and information about what consent decrees have been withdrawn during the Sessions’ administration of the Justice Department.”⁹ Attorney General Barr answered in the affirmative, saying “yes.” Sen. Harris also asked Attorney General Barr if he would “commit to providing this committee with a list of any consent decrees that you withdraw during your tenure,” to which he also answered “yes.” In her press release following the hearing, in which she announced her opposition to Attorney General Barr’s nomination, Sen. Harris emphasized the commitments Attorney General Barr made during his hearing, including “to provide a list of consent decrees that have been withdrawn by DOJ and any consent decree he may withdraw.”¹⁰

There is no public indication that Attorney General Barr followed through on his commitment to provide a list of withdrawn consent decrees to the Senate Judiciary Committee. In June 2019, nearly six months after the commitment was made, the *Washington Post* reported that DOJ had not yet provided a list to the Senate Judiciary Committee, citing an anonymous DOJ official who said the department was still working on turning over a list of withdrawn

⁶ Peter Hermann and Justin Jouvenal, *Justice Dept. expresses skepticism in court over Baltimore consent decree*, *Washington Post*, April 6, 2017, available at https://www.washingtonpost.com/local/public-safety/justice-department-expresses-skepticism-in-court-over-baltimore-police-consent-decree/2017/04/06/64d2a756-1a40-11e7-9887-1a5314b56a08_story.html?itid=lk_inline_manual_32; *Trump Administration opposes Chicago police reform plan*, *CBS News*, October 10, 2018, available at <https://www.cbsnews.com/news/trump-administration-opposes-chicago-police-reform-plan/>.

⁷ Katie Benner, *Sessions, in Last-Minute Act, Sharply Limits Use of Consent Decrees to Curb Police Abuses*, *New York Times*, November 8, 2018, available at <https://www.nytimes.com/2018/11/08/us/politics/sessions-limits-consent-decrees.html>.

⁸ Confirmation Hearing on the Nomination of Hon. William Pelham Barr to be Attorney General of the United States, *Hearing before the Senate Committee on the Judiciary*, (Serial 116-65), 116th Cong. (2019), available at <https://www.congress.gov/116/chrg/CHRG-116shrg36846/CHRG-116shrg36846.htm>.

⁹ *Id.*

¹⁰ Press Release, Sen. Kamala D. Harris, *Senator Harris Statement on the Nomination of William Barr to be United States Attorney General*, January 17, 2019, available at <https://www.harris.senate.gov/news/press-releases/senator-harris-statement-on-the-nomination-of-william-barr-to-be-united-states-attorney-general>.

consent decrees.¹¹ A search of Sen. Harris' Senate website for the phrase "consent decree" does not yield any results for a list of withdrawn consent decrees provided by the Barr DOJ.¹²

At a time when the challenges of systemic police misconduct and efforts to reform unconstitutional policing are once again at the center of the national debate in the wake of the tragic killing of George Floyd by Minneapolis police officers, the requested records will contribute to greater public understanding of the extent to which DOJ under President Trump has backtracked on efforts to enforce police reforms established by earlier administrations.¹³ The records will also shed light on the extent to which Attorney General Barr, who has vocally resisted calls to open a pattern-or-practice investigation into the Minneapolis Police Department,¹⁴ complied with a commitment he made under oath during his confirmation hearing to provide Congress with information about the department's actions related to consent decrees with local police departments.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

¹¹ Matt Zapotosky, *Barr promised to convene civil rights leaders to discuss police reform efforts. It didn't go quite as planned.*, *Washington Post*, June 5, 2019, available at https://www.washingtonpost.com/world/national-security/barr-promised-to-convene-civil-rights-leaders-to-discuss-police-reform-efforts-it-didnt-go-quite-as-planned/2019/06/05/c9147652-87a5-11e9-a491-25df61c78dc4_story.html.

¹² *See* https://www.google.com/search?rlz=1C5CHFA_enUS735US735&sxsrf=ALeKk02x2aoWDv7T3w2idNFUY3ek_bDi1Q%3A1592257345503&ei=QevnXu2THvHhxgGqn47wDQ&q=site%3Aharris.senate.gov+%22consent+decree%22&oq=site%3Aharris.senate.gov+%22consent+decree%22&gs_lcp=CgZwc3ktYWlQA1CWDFiWDGDGD2gAcAB4AIABMYgBYZIBATKYAQCgAQGqAQQnd3Mtd2l6&scient=psy-ab&ved=0ahUKEwituODr5ITqAhXxsDEKHqPA94Q4dUDCAw&uact=5.

¹³ Matt Zapotosky, Mark Berman, and Erica Werner, *The Trump administration abandoned Obama-era police reform efforts. Now critics want them restored.*, *Washington Post*, June 1, 2020, available at https://www.washingtonpost.com/national-security/the-trump-administration-abandoned-obama-era-police-reform-efforts-now-critics-want-them-restored/2020/06/01/4615bc1c-a413-11ea-b473-04905b1af82b_story.html.

¹⁴ *Transcript: Attorney General William Barr on "Face the Nation," June 7, 2020*, *CBS News*, June 7, 2020, available at <https://www.cbsnews.com/news/bill-barr-george-floyd-protests-blm-face-the-nation-transcript/>.

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts all documents it receives under the FOIA its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records on an expedited basis, please contact me at mcorley@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to either the email listed above or Matt Corley, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201 Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Matthew Corley
Chief Investigator