

July 23, 2020

VIA EMAIL: usms.foia@usdoj.gov

Charlotte M. Luckstone
FOIA/PA Officer
Office of General Counsel, CG-3, 15th Floor
Washington, DC, 20350-0001

Re: Expedited Freedom of Information Act Request

Dear Ms. Luckstone:

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

Specifically, CREW requests all documents and communications from June 2, 2020 to the present that explain or pertain to:

1. The decision to deploy federal law enforcement agents, officers, or other personnel in response to the ongoing protests over racial justice in Portland, Oregon and Chicago, Illinois;
2. Any decisions or plans to deploy federal law enforcement agents, officers, or other personnel in response to the ongoing protests over racial justice in Albuquerque, New Mexico; Baltimore, Maryland; Detroit, Michigan; Kansas City, Missouri; New York City; Oakland, California; and Philadelphia, Pennsylvania;
3. Any policies to which law enforcement officers under the auspices of the U.S. Marshals Service are bound governing the treatment of protesters in the above-mentioned cities.

The foregoing requests include but are not limited to communications with:

1. President Trump;
2. White House employees, including anyone with an “*.eop.gov” email domain;
3. Attorneys or representatives acting on behalf of President Trump;
4. Employees of the U.S. Marshals Service;
5. Employees of the Department of Justice and linked agencies including at the Federal Bureau of Investigation, U.S. Drug Enforcement Administration, and Bureau of Alcohol, Tobacco, Firearms, and Explosives;
6. Employees of the Department of Homeland Security and linked agencies including those within the Federal Protective Services, and U.S. Customs and Border Protection.

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 those who were cc'ed or bcc'ed on any emails.

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). In the event 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-*/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 DHS 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).

For approximately the last 60 days, Portland, Oregon, and cities around the country have been the sites of major anti-racism protests in response to the killing of George Floyd in police custody.¹ These protests, while mostly peaceful have at times tested the limits of local law enforcement, and have earned the ire of President Trump, who is portraying such protests, especially in Democratic Party-led cities, as attempts by the “Radical Left Democrats” to “destroy our Country [sic] as we know it.”² The administration’s narrative has coalesced around a single political point – that there is growing lawlessness and violence in this country, and that it is the fault of Democrats. On Monday, July 20, Trump told reporters that “I’m going to do something — that, I can tell you,” “Because we’re not going to let New York and Chicago and Philadelphia and Detroit and Baltimore and all of these — Oakland is a mess.”³ We continue to see evolving government justifications for these deployments. Most recently, on July 22, President Trump, Attorney General Barr, and Acting DHS Secretary Wolf jointly announced

¹ Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis and Robin Stein, *How George Floyd Was Killed In Police Custody*, N.Y. TIMES, May 31, 2020, available at <https://nyti.ms/30ATXaD>.

² Donald Trump (@realDonaldTrump), TWITTER (Jul. 19, 2020 12:56 P.M.), <https://twitter.com/realDonaldTrump/status/1284894845614600194>.

³ Peter Baker, Zolan Kanno-Youngs, and Monica Davey, *Trump Threatens to Send Federal Law Enforcement Forces to More Cities*, N.Y. TIMES, July 20, 2020, available at <https://nyti.ms/3hoygBj>.

‘Operation LeGend.’⁴ While Attorney General Barr characterized this expansion of federal operations as “classic crime fighting” distinct from “the tactical teams we use to defend against riots and mob violence,” President Trump’s running commentary on these matters undermines that assertion.⁵

As became apparent last week in Portland, senior administration officials have operationalized the President’s rhetoric by authorizing an increasingly aggressive and militarized response to the ongoing protests.⁶ DHS activated approximately 2,000 officials from Customs and Border Protection, Immigration and Customs Enforcement, the Transportation Security Administration and the Coast Guard on standby for rapid deployment to protect federal buildings from protesters⁷, and that number may increase now through Operation LeGend. To this point, state and local reactions to such deployments, over which localities have effectively zero control, have ranged from lukewarm to hostile. In Portland, Deputy Police Chief Chris Davis stated his “preference would be to not have [federal agents] outside their buildings unless it’s a life/safety kind of an issue... I would prefer to police the outside of [federal] buildings and all of the others downtown with local and state resources.”⁸

With this summer’s deployments of mixed units of militarized federal law enforcement have come a steady stream of allegations of excessive use of force and abuses of power. In one incident, federal agents outside Portland’s federal courthouse on Saturday, July 15 were filmed repeatedly striking Navy veteran Christopher David –who approached the police line unarmed and with no apparent malice– with batons and mace.⁹ When asked about the video DHS Deputy Secretary Kenneth Cuccinelli stated that “maintaining an appropriate [federal] response is an ongoing obligation.”¹⁰ In other even more alarming incidents, roving federal officers outfitted in fatigues, carrying rifles, but wearing no visible agency identification, were filmed pulling protesters including one Mark Pettibone, into unmarked minivans.¹¹ U.S. Customs and Border Patrol claimed responsibility in that instance, alleging that Pettibone “had information indicating the person in the video was suspected of assaults against federal agents or destruction of federal property.”¹² Despite this justification, they ultimately declined to charge him or even inform him of why he was detained, dropping him back on the street in front of the federal courthouse.¹³

⁴ President Donald Trump, Address at the White House East Room: Operation LeGend: Combatting Violent Crime in American Cities (July 22, 2020), available at <https://bit.ly/3hnTXRU>.

⁵ *Id.*

⁶ *Portland Protests: US Federal Agents ‘Will Not Retreat’, Chad Wolf Says*, BBC NEWS, July 21, 2020, available at <https://www.bbc.com/news/world-us-canada-53489995>.

⁷ Peter Baker, Zolan Kanno-Youngs, and Monica Davey, *Trump Threatens to Send Federal Law Enforcement Forces to More Cities*, N.Y. TIMES, July 20, 2020, available at <https://nyti.ms/3hoygBj>.

⁸ *They’re Not Under Our Control: Deputy Police Chief Testifies About Portland Protests, Federal Response*, KGW8 (NBC), July 20, 2020, 5:28 P.M., available at <https://bit.ly/32PMIUt>.

⁹ John Ismay, *A Navy Veteran Had A Question for the Feds in Portland. They Beat Him In Response*, N.Y. Times, July 20, 2020, available at <https://nyti.ms/3fSHrtr>.

¹⁰ *Id.*

¹¹ Katie Shepherd, Mark Berman, *‘It Was Like Being Preyed Upon’: Portland Protesters Say Federal Officers in Unmarked Vans are Detaining Them*, WASH. POST, July 17, 2020, available at <https://wapo.st/2WMiw39>.

¹² *Id.*

¹³ Jonathan Levinson, *Federal Law Enforcement Use Unmarked Vehicles to Grab Protesters Off Portland Streets*, OR. PUB. RADIO, July 16, 2020, 2:45 P.M., available at <https://bit.ly/3hscBs0>.

The federal policing tactics in Portland – and worries that such tactics will be exported elsewhere in the country via Operation LeGend – are raising serious constitutional concerns and worry for the state of the Republic, prompting comment from Senator Jeff Merkley (D-OR) on July 16 that "authoritarian governments, not democratic republics, send unmarked authorities after protesters."¹⁴ On July 17, the U.S. Attorney for the District of Oregon formally requested a DHS investigation into the matter. By the weekend, numerous constitutional experts joined the chorus calling for these tactics to be halted. One such expert, Andrew Crespo, a professor of criminal procedure at Harvard Law, stated that at least in the Pettibone incident, there were clear violations of Pettibone's right to be free from unlawful search and seizure under the Fourth Amendment.¹⁵ At least one state concurs and has already taken legal action to halt the federal government responses to these protests. On July 17, the State of Oregon sued DHS, CBP, the US Marshals and the Federal Protective Services in the District Court for the District of Oregon.¹⁶ Oregon is asserting that federal snatch-and-grab tactics are violating protesters First, Fourth, and Fifth Amendment rights, and are seeking a permanent injunction against such behavior.¹⁷ "Ordinarily, a person exercising his right to walk through the streets of Portland who is confronted by anonymous men in military-type fatigues and ordered into an unmarked van can reasonably assume that he is being kidnapped and is the victim of a crime. [Federal officers] are injuring the occupants of Portland by taking away citizens' ability to determine whether they are being kidnapped by militia... or arrested."¹⁸

Shocking images of violent and potentially unconstitutional federal police interactions with protesters are reaching television screens across America nearly every night. The public has an overwhelming interest in understanding how exactly the federal government is justifying sending paramilitary units into American cities, often against the wishes of the local governments in these jurisdictions. The records CREW requests will shed light on the factors DOJ considered in making these decisions, including what outside interests may have been brought to bear in the process. The American public has the right to understand the particulars of the decision-making in these paramilitary operations and the parameters of the federal deployments to Portland, Chicago, and should President Trump be believed, other cities around the country as well.

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. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to share the information responsive to this request 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.

¹⁴ Amir Vera, Konstantin Toropin, and Josh Campbell, *US Attorney Requests DHS Investigation After Video Shows Masked, Camouflaged Federal Authorities Arresting Protesters in Portland*, CNN, July 20, 2020, available at <https://cnn.it/2Ct6y7L>.

¹⁵ Andrew Crespo (@AndrewMCrespo), TWITTER (July 21, 2020), available at <https://bit.ly/30QE6VB>.

¹⁶ Complaint at 1, *Rosenblum v. John Does 1-10*, ECF No. 3:20-cv-01161-HZ (D. Or. 2020)

¹⁷ *Id.* at 4-6.

¹⁸ *Id.* at 5.

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”).

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 blogposts that report on and analyze 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 documents it receives under the FOIA on 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.

Expedition

Please be advised that CREW is seeking expedition of this request and pursuant to DOJ FOIA regulations has separately submitted its request for expedition to the DOJ Office of Public Affairs. A copy of that request is enclosed.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at aweismann@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 me at aweismann@citizensforethics.org. If the records are not available in digital form please contact me to discuss an alternative method of production. Thank you for your assistance in this matter. Thank you for your assistance in this matter.

Sincerely,



Anne Weismann
Chief FOIA Counsel

Encl.