



February 23, 2015

FOIA/PA Mail Referral Unit  
Department of Justice  
Room 115  
LOC Building  
Washington, DC 20530-0001  
E-mail: [MRUFOIA.Requests@usdoj.gov](mailto:MRUFOIA.Requests@usdoj.gov)

**VIA UPS and E-mail**

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
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**Re: Request Under Freedom of Information Act  
(Expedited Processing Requested)**

To Whom It May Concern:

This letter constitutes a request by the American Civil Liberties Union and the American Civil Liberties Foundation (collectively “ACLU”)<sup>1</sup> under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. This request concerns information pertaining to a statistic the Department of Justice has been circulating within international human rights fora, regarding the number of federal criminal prosecutions brought against police officers within the last five years.

**I. Background**

During a hearing before the Inter-American Commission on Human Rights on “Reports on Racism in The Justice System of the United States,” which took place on October 27, 2014, U.S. Attorney of the Southern District of Ohio, Carter Stewart, stated:

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<sup>1</sup> The American Civil Liberties Union is a non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union Foundation is a separate 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators.

“In the past 5 fiscal years, the Department of Justice’s Civil Rights Division has opened over 20 investigations into police departments to address unconstitutional policing practices—more than twice as many investigations than were opened in the previous 5 fiscal years... In addition to this civil work, we have criminally prosecuted 337 individual police officers for misconduct in the last 5 years. The Department believes in broad reform as a key tool to addressing racial tensions in the justice system.”<sup>2</sup>

Similarly, during the U.S. Review before the United Nations Committee Against Torture on November 12-13, 2014, Deputy Assistant Attorney General David Bitkower claimed that over 330 police officers have been criminally prosecuted in the past five years:

“In the civil context, the Department’s Civil Rights Division has opened over 20 investigations into allegations of systemic police department violations over the past five years. During that time, we have reached 15 ground-breaking settlement agreements to implement reforms in these police departments. In the criminal realm, we have prosecuted over 330 police officers for misconduct in the last five years.”<sup>3</sup>

Despite offering this number as a measure of police accountability, the Department of Justice has failed to provide further information or statistics on the details of criminal civil rights prosecutions of police officers, a fact the Committee Against Torture highlighted in its Concluding Observations to the United States:

“While noting the information provided by the delegation that over the past five years 20 investigations were opened into allegations of systematic police department violations, and over 330 police officers were criminally prosecuted, the Committee regrets the lack of statistical data available on allegations of police brutality and the lack of information on the result of the investigations undertaken in respect of those allegations.”<sup>4</sup>

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<sup>2</sup> Inter-American Commission on Human Rights, EEUU: Racismo en Sistema de Justicia (at 33:58-35:12), <https://www.youtube.com/watch?v=ieG0tPqIHLm>.

<sup>3</sup> David Bitkower, Opening Statement before the Committee Against Torture (Nov. 12, 2014), available at <https://geneva.usmission.gov/2014/11/12/david-bitkower-justice-department-plays-critical-role-in-upholding-us-obligations-under-convention-against-torture/>.

<sup>4</sup> U.N. Comm. Against Torture, *Concluding Observations of the Committee Against Torture: United States of America* ¶ 26 (Nov. 28, 2014), U.N. Doc. CAT/C/USA/CO/3-5, available at [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT\\_CAT\\_COC\\_USA\\_18893\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_COC_USA_18893_E.pdf).

Most recently, the U.S. government reiterated this statistic within its Universal Periodic Review (UPR) Report, which was submitted to the U.N. High Commissioner for Human Rights on February 6, 2015. Unlike previous instances, the U.S. specified the official number of DOJ convictions of police officers within the past five years in its UPR Report, but failed again to provide additional pertinent information:

“13. In addition, in the last five years, DOJ has criminally prosecuted more than 335 individual police officers for misconduct, including use of excessive force, and obtained 254 convictions as of January 1, 2015.”<sup>5</sup>

## II. Requested Records

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For all information requests below, the Requestor seeks that responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agencies’ possession, and in discrete, labeled files. All electronic records should be sent to [jdakwar@aclu.org](mailto:jdakwar@aclu.org).

We also request that you provide an estimated date on which you will complete the processing of this request. *See* 5 U.S.C. § 552(a)(7)(B).

We request that you produce all records including any legal memoranda, procedures, policies, directives, guidance, guidelines, or other documents related to prosecutions including convictions, acquittals, dismissal of charges and punishments under Title 18 U.S.C. § 241 and 18 U.S.C. § 242, and all records created between January 2009 and December 31, 2014 containing the following information:

1. Records and documents that memorialized prosecutions of police officers for criminal misconduct in violation of Title 18 U.S.C. § 241 and 18 U.S.C. § 242 including information about the precise charges in each prosecution, the race and/or ethnicity of the police officers and the race and/or ethnicity of the victims.
2. Records and documents that memorialized prosecutions of police officers for criminal misconduct in violation of Title 18 U.S.C. § 241 and 18 U.S.C. § 242 that resulted in convictions.

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<sup>5</sup> U.S. Dep’t of State, *Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review* ¶ 13 (Feb. 6, 2015), available at <http://m.state.gov/md237250.htm>.

3. Records and documents that memorialized guilty pleas by law enforcement officers charged with misconduct offenses under Title 18 U.S.C. § 241 and 18 U.S.C. § 242.
4. Records and documents that memorialized prosecutions that led to guilty verdicts against law enforcement officers for violations of Title 18 U.S.C. § 241 and 18 U.S.C. § 242.
5. Records and documents that memorialized prosecutions that led to officers being acquitted for violations of Title 18 U.S.C. § 241 and 18 U.S.C. § 242.
6. Records and documents that memorialized federal cases in which law enforcement officers had their charges (under Title 18 U.S.C. § 241 and 18 U.S.C. § 242) dismissed.
7. Records and documents that memorialized federal, state, or local law enforcement agencies the respective officers worked for when they were charged with misconduct under Title 18 U.S.C. § 241 and 18 U.S.C. § 242.
8. Records and documents that memorialized all criminal prosecutions for excessive use of force in violation of Title 18 U.S.C. § 241 and 18 U.S.C. § 242.
9. Records and documents that memorialized the number of prosecutions for violations of Title 18 U.S.C. § 241 and 18 U.S.C. § 242 involving killings of people of color; African Americans; Latinos.
  - a. Records and documents related to prosecutions that involved killings of African Americans that resulted in convictions, guilty pleas, or acquittals (under Title 18 U.S.C. § 241 and 18 U.S.C. § 242).
10. Records and documents that memorialized prosecutions for violations of Title 18 U.S.C. § 241 and 18 U.S.C. § 242 that involved excessive use of force against people with mental disabilities.
11. Records and documents that memorialized cases which have been considered for criminal prosecutions for violations of Title 18 U.S.C. § 241 and 18 U.S.C. § 242 but did not result in prosecutions in 2009, 2010, 2011, 2012, 2013, and 2014.

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### III. Request for Expedited Processing

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 22 C.F.R. § 171.12(b), 28 C.F.R. § 16.5(d), 32 C.F.R. § 299.5(f), and 32 C.F.R. § 286.4(d)(3). There is a “compelling need” for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged Federal government activity, and in light of the recent public debate around police brutality against minority populations in the United States following grand jury decisions not to pursue further investigations in the deaths of Michael Brown and Eric Garner. 5 U.S.C. § 552(a)(6)(E)(v); *see also* 22 C.F.R. § 171.12(b); 28 C.F.R. § 16.5(d); 32 C.F.R. § 299.5(f); 32 C.F.R. § 286.4(d).

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A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 22 C.F.R. § 171.12(b)(2); 28 C.F.R. § 16.5(d)(1)(ii); 32 C.F.R. § 299.5(f)(2); 32 C.F.R. 286.4(d)(3)(ii). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public is a critical and substantial component of the ACLU’s work and one of its primary activities. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information” (internal citation omitted)).

Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties and human rights. The ACLU’s regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; and heavily visited websites.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.

ACLU attorneys are interviewed frequently for news stories about documents.

#### **IV. Application for Waiver or Limitation of Fees and Costs**

A. *Release of the records is in the public interest.*

We request a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the [Government] and is not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); 22 C.F.R. § 171.17(a); 28 C.F.R. § 16.11(k); 32 C.F.R. § 286.28(d).

The ACLU is a non-profit organization with no commercial interest in obtaining the requested information. As mentioned above, the information gathered through this request will serve to enhance the public’s understanding of criminal prosecutions of law enforcement officers, at no charge to the public.

\* \* \*

Pursuant to the applicable regulations and statute, we expect the determination regarding expedited processing within ten calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I).

If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

Jamil Dakwar  
American Civil Liberties Union  
125 Broad Street, 18th Floor  
New York, NY 10004  
[jdakwar@aclu.org](mailto:jdakwar@aclu.org)

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I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



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