

September 9, 2020

VIA EMAIL AND ONLINE PORTAL

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Re: Freedom of Information Act Request

Dear FOIA Officers:

The Cities of New York, Oakland, Portland, Chicago, Atlanta, Seattle, and Philadelphia (“Cities”) submit the following Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, request for records to the United States Department of Homeland Security (“DHS”), United States Department of Justice (“DOJ”), and their departments and subagencies. The request seeks records pertaining to Presidential Executive Order 13933, agency policies, practices, and/or procedures, both formal and informal, regarding protests, state and/or local policing, federal protection and/or policing in cities and/or other localities, and/or planned and actual deployment of federal agents to United States’ cities and/or localities. The Cities make this request in response to uninvited federal interventions in U.S. cities, and because of ongoing, related threats to cities, such as to redirect federal funds away from them pursuant to the Presidential Memorandum on Reviewing Funding to State and Local Government Recipients that are Permitting Anarchy, Violence, and Destruction in American Cities (September 2, 2020).

The request seeks records created on or after May 25, 2020, unless stated otherwise in the request, to the date the search(es) of records are conducted. In addition, if the responsive record *created* on or *after* May 25, 2020, revised, replaced, revoked, overruled, added to, provided further guidance to, or otherwise modified an *existing record*, the request also seeks the *existing record* that was revised, replaced, revoked, overruled, added to or otherwise modified by the record created on or after May 25, 2020.

I. Definitions

For the purposes of this request, the following terms are to be read as having the following meanings:

- a. “Communications” includes, is not limited to, but at minimum, specifically refers to: electronic mail (“email”), with all available metadata and attachments; text, MMS, or SMS messages; WhatsApp or other forms of electronic messages (e.g., Google Hangouts, WeChat); paper records, whether typed or hand-written, including notes memorializing phone or video calls, conferences, and meetings; photographs; motion pictures; videotapes; audio recordings; and/or social media messages or posts.
- b. “DHS Agencies” include, are not limited to, but at minimum, specifically refer to the following agencies, components, departments, or offices within the Department of Homeland Security: Homeland Security Investigations (“HSI”); U.S. Customs and Border Patrol (“CBP”); the Border Patrol Tactical Unit (“BORTAC”); U.S. Immigration and Customs Enforcement (“ICE”); Federal Protective Services (“FPS”); the Office for Civil Rights and Civil Liberties (“CRCL”); the Cybersecurity and Infrastructure Security Agency (“CISA”); the Federal Law Enforcement Training Center (“FLETC”); the Office of Intelligence & Analysis (“I&A”); and the United States Secret Service (“USSS”).

- c. “DHS records” includes, is not limited to, but at minimum, specifically refers to: decision memoranda; legal opinions; regulations; rules; opinions; orders; advice memoranda; policy interpretations; administrative rulings; job aids; instructions; internal directives; documents created in response to presidential policy directives; management directives; management instructions; memoranda regarding discretion; guidance memoranda; onsite investigation memoranda; contracting and acquisitions information; agency or attorneys’ manuals; policy manuals; staff manuals; staff instructions; agency or attorneys’ bulletins; requests for proposals; contracts; terms of service; Cabinet reports; Congressional correspondence; requests; minutes; logs; Privacy Impact Assessments; policy statements; and policy memoranda.
- d. “DOJ Agencies” includes, is not limited to, but at minimum, specifically refers to the following agencies, components, departments, or offices within the Department of Justice: the Office of the Attorney General; the Office of the Deputy Attorney General; the Office of the Associate Attorney General; the Federal Bureau of Investigation (“FBI”); the Office of the General Counsel for the FBI; the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”); the Drug Enforcement Administration (“DEA”); the National Security Division; the Civil Division; the Office of Community Oriented Policing Services; the Office of Enforcement Operations; the Office of Policy and Legislation in the Criminal Division; the Executive Office for U.S. Attorneys; the Office of Privacy and Civil Liberties; the Office of the Solicitor General; the Office of Legal Counsel; the Office of Legal Policy; the U.S. Marshals Service; and the Office of Justice Programs.
- e. “DOJ records” includes, is not limited to, but at minimum, specifically refers to: decision memoranda; legal opinions; regulations; rules; orders; directives; policy interpretations; job aids; indictment memoranda; prosecution or “pros” memoranda; memoranda seeking authorization to open an investigation; memoranda approving an investigation; justification to sue memoranda (“J-Memos”); advice memoranda; memoranda regarding prosecutorial discretion; other memoranda regarding discretion; guidance memoranda; agency or attorneys’ manuals; policy manuals; staff manuals; staff instructions; agency or attorneys’ bulletins; service directives; requests; minutes; Congressional correspondence; Cabinet reports; Privacy Impact Assessments; policy statements; and policy memoranda.
- f. “Federal police” and “federal agents” and “federal police agents” include, are not limited to, but at minimum, specifically refer to employees, contractors, agents, or other personnel from: the FBI, ICE, ATF, DHS (not otherwise specified), DOJ (not otherwise specified), DEA, USSS, and/or the U.S. Marshals Service, and any sub-agencies within any enumerated agency.
- g. “Protest” includes, is not limited to, but at minimum, specifically refers to: its ordinary meaning under local, state, and/or federal law, including gatherings to express political views through words and/or expressive conduct.

- h. “Regarding” includes, is not limited to, but at minimum, specifically refers to: anything that, in whole or in part, analyzes, comments on, concerns, constitutes, contains, describes, discusses, embodies, explains, identifies, mentions, reflects on, refers to, respond to, states, or is otherwise relevant.

II. Requested Records

a. Department of Homeland Security (“DHS”)

1. All DHS records, and communications related thereto, drafted, signed, approved, and/or otherwise adopted in response to Presidential Executive Order 13933 on Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence, dated June 26, 2020, 85 Fed. Reg. 40081 (July 2, 2020) (“Executive Order 13933”);
2. All prior DHS records, and communications related thereto, that have been revised, replaced, revoked, overruled, added to, provided further guidance to, or otherwise modified pursuant to, in response to, or otherwise concerning Executive Order 13933;
3. All DHS records and communications created, contributed to, and/or received by DHS Agencies—including from the Office of the President of the United States—authorizing or concerning the deployment, sending, calling up, activating, and/or cross-designation of Rapid Deployment Teams (“RDT”), federal police, other federal personnel, national guard, and/or military personnel to the cities of Albuquerque, Baltimore, Chicago, Detroit, Kansas City, Memphis, New York, Oakland, Philadelphia, Portland, San Francisco and/or Seattle, including for the purpose of protecting federal property;
4. All DHS records and communications created, contributed to, and/or received by DHS Agencies providing or concerning the authority to deploy, send, call up, activate, and/or cross-designate federal police, other federal personnel, national guard, and/or military personnel to United States cities regarding, in response to, or in anticipation of protests, including for the purpose of protecting federal property;
5. All DHS records and communications created, contributed to, and/or received by DHS Agencies regarding the scope of deployment and/or rules of engagement for federal police, national guard, and/or military personnel responding to protests in United States cities, including for the purpose of protecting federal property;
6. All DHS records and communications created, contributed to, and/or received by DHS Agencies regarding information collected about or otherwise concerning Mayor Bill de Blasio (New York), Mayor Libby Schaaf (Oakland), Mayor Ted Wheeler (Portland), Mayor Lori Lightfoot (Chicago),

Mayor Keisha Lance Bottoms (Atlanta), Mayor Jenny Durkan (Seattle), and Mayor James Kenney (Philadelphia);

7. All DHS records and communications created, contributed to, and/or received by DHS Agencies regarding the deployment, sending, calling up, activating, and/or cross-designation of federal police, other federal personnel, national guard, and/or military personnel to United States cities in connection with the November 3, 2020 federal election, including for the purpose of protecting federal property;
8. All DHS records and communications created, contributed to, and/or received by DHS Agencies titled or concerning “Job Aid: DHS Office of Intelligence & Analysis (I&A) Activities in Furtherance of Protecting American Monuments, Memorials, Statues, and Combatting Recent Criminal Violence”;
9. All DHS records and communications created, contributed to, or received by the Protecting American Communities Task Force (“PACT”) authorizing or concerning the deployment and prepositioning of: (a) RDT in United States cities, including for the purpose of protecting federal property; (b) the tactical or support gear (including weapons, uniforms, vehicles, non-lethal munitions, etc.) to be deployed in conjunction with RDT; and (c) federal police to Portland, Oregon as part of “Operation Diligent Valor”;
10. All DHS records and communications created, contributed to, or received by PACT regarding the selection of federal police, other federal personnel, national guard, and/or military personnel for RDT to implement Executive Order 13933;
11. All DHS records and communications created, contributed to, or received by DHS Agencies and the Federal Law Enforcement Officers Association, the National Treasury Employees Union, the American Federation of Government Employees, and/or the National Border Patrol Council authorizing or concerning the deployment, sending, calling up, activating, and/or cross-designation of RDT, federal police, other federal personnel, national guard, and/or military personnel to United States cities, including for the purpose of protecting federal property;
12. All DHS records in effect on May 25, 2020, and communications related thereto, governing the selection, hiring, training, and/or employment of private contractors to serve as members of the Federal Protective Service;
13. All DHS records in effect on May 25, 2020 and communications related thereto describing any/all training in securing the peace, de-escalation, crowd control, civilian interaction, and/or policing of riot or mass gatherings provided to or by: (a) federal police, national guard, and/or military personnel responding to protests in United States cities, including for the purpose of

protecting federal property; (b) Immigration and Customs Enforcement personnel for policing functions at detention facilities; and (c) CBP personnel, including BORTAC for policing at ports of entry;

14. All DHS records and communications, including any memoranda of understanding, in effect since May 25, 2020, governing the division of duties between the United States Marshals Service and the FPS at federal facilities;

b. Department of Justice (“DOJ”)

15. All DOJ records, and communications related thereto, drafted, signed, approved, and/or otherwise adopted in response to Executive Order No. 13933;
16. All prior DOJ records, and communications related thereto, that have been revised, replaced, revoked, overruled, added to, provided further guidance to, or otherwise modified per Executive Order No. 13933;
17. All DOJ records and communications created, contributed to, and/or received by DOJ Agencies regarding data or intelligence collected from or otherwise concerning the state of the protests or civil disturbances in the cities of Albuquerque, Atlanta, Baltimore, Chicago, Detroit, Kansas City, Memphis, New York, Oakland, Philadelphia, Portland, San Francisco, and/or Seattle;¹
18. All DOJ records and communications created, contributed to, and/or received by DOJ Agencies authorizing or concerning the deployment, sending, calling up, activating, and/or cross-designation of federal police, other federal personnel, national guard, and/or military personnel to the cities of Albuquerque, Baltimore, Chicago, Detroit, Kansas City, Memphis, New York, Oakland, Philadelphia, Portland, San Francisco and/or Seattle;²
19. All DOJ records and communications created, contributed to, and/or received by DOJ Agencies regarding information collected about or otherwise concerning Mayor Bill de Blasio (New York), Mayor Libby Schaaf (Oakland), Mayor Ted Wheeler (Portland), Mayor Lori Lightfoot (Chicago), Mayor Keisha Lance Bottoms (Atlanta), Mayor Jenny Durkan (Seattle), and Mayor James Kenney (Philadelphia);

¹ See, e.g., Peter Baker, Zolan Kanno-Youngs & Monica Davey, *Trump Threatens to Send Federal Law Enforcement Forces to More Cities*, N.Y. TIMES, Updated July 24, 2020, <https://www.nytimes.com/2020/07/20/us/politics/trump-chicago-portland-federal-agents.html>. (last accessed Aug. 14, 2020).

² See, e.g., Steve Vladeck & Benjamin Wittes, *DHS Authorizes Domestic Surveillance to Protect Statues and Monuments*, LAWFAREBLOG.COM, July 20, 2020, <https://www.lawfareblog.com/dhs-authorizes-domestic-surveillance-protect-statues-and-monuments/> (last accessed Aug. 14, 2020).

20. All DOJ records and communications created, contributed to, and/or received by DOJ Agencies providing or concerning the authority to deploy, send, call up, activate, and/or cross-designate federal police, other federal personnel, national guard, and/or military personnel to United States cities in response to or in anticipation of protests, including for the purpose of protecting federal property;³
21. All DOJ records and communications created, contributed to, and/or received by DOJ Agencies regarding the scope of deployment and/or rules of engagement for federal police, national guard, and/or military personnel responding to protests in United States cities, including for the purpose of protecting federal property; and
22. All DOJ records and communications created, contributed to, and/or received by DOJ Agencies regarding the deployment, sending, calling up, activating, and/or cross-designation of federal police, other federal personnel, national guard, and/or military personnel to United States cities in connection with the November 3, 2020 federal election, including for the purpose of protecting federal property.

II. Fee Waiver Request

Pursuant to § 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, the Cities seek a waiver of fees associated with processing this request for records. The subject of the request concerns federal government operations and activities and the disclosures will likely contribute to an increased public understanding of those operations and activities in a significant way. Furthermore, the request is not primarily in the commercial interest of the Cities.

The Cities seek this fee waiver because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government." 5 U.S.C. § 552(a)(4)(iii). The public has a significant interest in understanding the authorities under which the federal government operates and how the federal government is responding to recent protests, including whether the federal government is using unjustifiable force against protestors. Further, the public has a significant public interest in understanding what orders the deployed federal officers have been given. Moreover, the public also has significant interest in knowing whether the deployments are used or will be used in connection with the November 3, 2020 federal election. Records with the potential to shed light on these matters would contribute significantly to public understanding of operations of the federal government, including whether DHS Acting Secretary Wolf and Attorney General Barr have responded to protests with inappropriate uses of force and rules of engagement. The Cities are committed to make the responses provided to the FOIA request

³ See, e.g., *Myth vs. Fact: 50+ Nights of Violence, Chaos, and Anarchy in Portland, Oregon*, U.S. DEPARTMENT OF HOMELAND SECURITY, July 27, 2020, <https://www.dhs.gov/news/2020/07/27/myth-vs-fact-50-nights-violence-chaos-and-anarchy-portland-oregon> (last accessed Aug. 14, 2020).

publicly available, and the public's understanding of the government's activities would be enhanced through the Cities' publication of these records.

This request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(iii). The Cities are government entities and they do not have a commercial purpose in making this FOIA request and the release of information requested is not in their financial interest. The Cities represent the interests of their residents and will make the information and materials gathered from the FOIA request available on its public websites and promote their availability on social media and press releases.

Accordingly, the Cities qualify for a fee waiver.

III. Guidance on the Search and Processing of Requested Records

In connection with this request for records, the Cities provide the following guidance regarding the scope of the records sought and the search and processing of records:

1. Please search all locations and systems likely to have responsive records, regardless of format, medium, and/or physical characteristics; for example, do not exclude responsive records from files, email accounts, devices, etc. in the personal custody of agency officials, as such records are also subject to the FOIA;
2. Please produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. Please also produce all versions of responsive materials (i.e., draft and final form). However, to the extent that a response to this request would involve the production of multiple copies of identical material, the request is limited so that only one copy of the identical material is requested;
3. With respect to the form of production, the Cities request that the responsive electronic records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, the Cities request that the records be provided electronically in the agency's possession, and that the records be provided in separate, Bates-stamped files;
4. If your agency determines that it does not maintain records responsive to any of the aforementioned requests, the Cities request that the agency confirm so in writing and further state which other agencies or offices within DHS and DOJ may maintain such records, including the specific type of record maintained;
5. Please take appropriate steps to ensure that responsive records are not deleted before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including in the ordinary course of business, please take steps to prevent that deletion; and

6. If this request is denied in whole or in part, the Cities ask that you justify all denials by reference to specific exemptions to the FOIA. The Cities request the release of all segregable portions of otherwise exempt material. *See* 5 U.S.C. § 552(b).

IV. Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E), 28 CFR § 16.5(e)(1)(iv), and 6 CFR § 5.5(e)(iv), the Cities request that your agency expedite the processing of this request.

We certify to be true and correct to the best of our knowledge and belief that the information requested relates to a matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity that affect public confidence.

Since the June 26, 2020 signing of Executive Order 13933, Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence (the "Executive Order"), there have been media reports covering the deployment of over one hundred federal law enforcement officers to Portland, Oregon, in an operation called "Operation Diligent Valor." Reports emerged from Portland that federal officers were using excessive and violent tactics against protesters, including indiscriminate use of "less-lethal" weapons.⁴ In response, protesters, journalists, legal observers, Oregon state legislators, churches, and social justice organizations filed a number of lawsuits arising out of the deployment of federal officers to Portland, alleging a litany of legal violations.⁵

In the face of widespread public outcry, the federal government not only steadfastly defended the deployment, but asserted it would expand deployments to other cities

⁴ Marisa J. Lan et al., *Operation Diligent Valor: Trump Showcased Federal Power in Portland, Making a Culture War Campaign Pitch*, WASH. POST, July 24, 2020, https://www.washingtonpost.com/national/portland-protests-operation-diligent-valor/2020/07/24/95f21ede-cce9-11ea-89ce-ac7d5e4a5a38_story.html (last accessed August 13, 2020); Ainara Tiefertthaler et al., *Videos Show How Federal Officers Escalated Violence in Portland*, N.Y. TIMES VIDEO REPORT, July 24, 2020, <https://www.nytimes.com/video/us/100000007243995/portland-protests-federal-government.html> (last accessed August 13, 2020); Mike Baker, "Enough is Enough: A 'Wall' of Veterans Joins Portland Protesters", N.Y. TIMES VIDEO REPORT, July 25, 2020, <https://www.nytimes.com/video/us/politics/100000007256689/portland-protest-wall-of-vets.html> (last accessed August 13, 2020); Nilo Tabrizy, Caroline Kim and Derek Knowles, "They Pushed Portland Too Far": How Trump's Crackdown Strengthened Protests, N. Y. TIMES VIDEO REPORT, July 23, 2020 <https://www.nytimes.com/video/us/100000007250985/they-pushed-portland-too-far-trump-crackdown-strengthens-protests.html> (last accessed on July 29, 2020).

⁵ *See, e.g., Don't Shoot Portland et al. v. Wolf et al.*, No. 20-cv-02040, D.D.C. (July 27, 2020); *Black Lives Matter Chi. et al. v. Wolf et al.*, No. 20-cv-04319, N.D. Ill. (July 23, 2020); *W. States Ctr., Inc. et al. v. U.S. Dep't of Homeland Security et al.*, No. 20-cv-1175, D. Or. (July 21, 2020); *Rosenblum v. Does 1-10 et al.*, No. 20-cv-1161, D. Or. (July 17, 2020); *Woodstock et al. v. City of Portland et al.*, No. 20-cv-1035, D. Or. (June 28, 2020).

notwithstanding the opposition of state and local governments.⁶ The deployment of federal law enforcement officers to use tear gas and pepper spray, flashbang grenades, impact munitions, rubber bullets, pepper balls, and batons against peaceful protesters—in some cases far from the federal properties that the officers are purportedly there to protect—undermines the public’s confidence in and the integrity of the federal government. The deployment also threatens the relationship between local law enforcement and their residents, including lawfully protesting members of the community. Even though federal officers allegedly agreed to withdraw from Portland, on or about July 29, 2020, the alleged abuses remain the subject of continued news coverage, particularly in light of the potential for redeployment to other cities.⁷ As indicated by the recent and continuing, widespread and exceptional media coverage of alleged abuses that occurred during the deployment of federal law enforcement officers to Portland, there are possible questions about the government’s integrity that affect public confidence.

Based on the foregoing, the Cities request that your agency expedite the processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E), 28 CFR § 16.5(e)(1)(iv), and 6 CFR § 5.5(e)(iv). Specifically, the Cities request that the DHS and DOJ Agencies produce the following records within 20 working days per 5 U.S.C. § 552, unless otherwise permitted by statute.

V. Conclusion

Thank you for your attention to this matter. If there are any questions about this request for records, please contact Cynthia Weaver (for DHS and its subagencies) and Zoe Savitsky (for DOJ and its offices) at the information below, in order to facilitate the processing of this request. Please furnish the applicable records to:

⁶ John Bowden, *Cuccinelli Defends Federal Response in Portland, Says Could Extend to Other Cities*, THE HILL, July 20, 2020, <https://thehill.com/policy/national-security/department-of-homeland-security/508107-cuccinelli-defends-federal-response> (last accessed July 29, 2020); John Bowden, *Acting DHS Secretary: I Don’t Need “Invitation” from Portland to Deploy Officers*, THE HILL, July 20, 2020, <https://thehill.com/policy/national-security/department-of-homeland-security/508176-acting-dhs-secretary-i-dont-need> (last accessed July 29, 2020); Peter Baker et al., *Trump Threatens to Send Federal Law Enforcement Forces to More Cities*, N.Y. TIMES, July 20, 2020, <https://www.nytimes.com/2020/07/20/us/politics/trump-chicago-portland-federal-agents.html> (last accessed July 29, 2020).

⁷ Reuters, *Homeland Security Chief Says Department Is Reviewing Complaints Excessive Force Used in Portland*, N.Y. TIMES, August 6, 2020, <https://www.nytimes.com/reuters/2020/08/06/us/politics/06reuters-global-race-protests-senate.html?searchResultPosition=7> (last accessed August 13, 2020); Betsy Woodruff Swan, *Leaked audio: Lawyers praised ‘beauty’ of controversial protest-response tactics*, POLITICO, Aug. 3, 2020, <https://www.politico.com/news/2020/08/03/federal-protest-response-tactics-390859> (last accessed August 13, 2020); Michelle Hackman et al., *DHS Involvement in Portland Clashes Fuels Debate Over Role of Agency and Its Chief*, WALL ST. J., July 30, 2020, https://www.wsj.com/articles/dhs-involvement-in-portland-clashes-fuels-debate-over-role-of-agency-and-its-chief-11596112360?st=gi9ck8nk8saoqj6&reflink=article_email_share (last accessed August 13, 2020).

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Sincerely,

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