



March 15, 2021

**VIA ONLINE PORTAL**

Lisa Archie-Mills  
Acting FOIA Officer  
Metropolitan Police Department  
300 Indiana Ave., NW  
Room 4125  
Washington, DC 20001  
Via Online Portal

**Re: D.C. Freedom of Information Act Request**

Dear FOIA Officer:

Pursuant to the District of Columbia Freedom of Information Act (FOIA), D.C. Code §§ 2-531 et seq., and implementing regulations at 1 DCMR §§ 400 et seq., American Oversight makes the following request for records.

On June 1, 2020, the Metropolitan Police Department (MPD) allegedly unlawfully “kettled” numerous protesters in the area surrounding Swann Street near DuPont Circle.<sup>1</sup> Protesters and residents also reported that officers shoved, beat, and used pepper spray on protesters during or surrounding the alleged kettling.<sup>2</sup> Last week, during testimony to the City Council, acting MPD Chief Robert Contee III reneged on a commitment to make public the results of MPD’s investigation of the June 1, 2020 Swann Street incident, justifying his decision to withhold the investigation’s findings on grounds that it could open MPD to legal liability.<sup>3</sup> Even as acting Chief Contee refused to make the MPD report public, he acknowledged that the investigation was complete and stated that the substance of the report differed from a recent American Civil Liberties Union (ACLU) report.<sup>4</sup> Specifically, Contee said that MPD spoke to members of the community and protesters who reported different information than the information reported by the ACLU. Contee acknowledged that his predecessor, Chief Newsham, had committed to making the report on MPD’s investigation public within six months.<sup>5</sup> Also last week, the D.C. Attorney General’s office announced that it would

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<sup>1</sup> Debbie Truong, *‘We Were All Terrified’: Protesters Describe Chaos On Swann Street*, NPR, June 11, 2020, <https://www.npr.org/local/305/2020/06/11/874736062/we-were-all-terrified-protesters-describe-chaos-on-swann-street>.

<sup>2</sup> *Id.*

<sup>3</sup> Hearing, Committee on the Judiciary & Public Safety, Performance Oversight Hearing, March 11, 2021, at 7:13:00–7:22:08, [http://dc.granicus.com/viewpublisher.php?view\\_id=2](http://dc.granicus.com/viewpublisher.php?view_id=2).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*



not prosecute any of the 194 protesters arrested in the June 1, 2020 Swann Street incident.<sup>6</sup>

### **Requested Records**

American Oversight requests that MPD produce the following records within fifteen business days:

All documents, records, or recordings relied on (including reports, witness statements, complaints, audio and video files, or other records) in completing the report (or other similar compilation of investigatory filings) reflecting MPD's investigatory findings regarding the June 1, 2020 Swann Street incident where MPD officers allegedly "kettled" protesters and ultimately arrested 194 individuals.

Public reports suggest that the Internal Affairs Bureau likely conducted this investigation. Acting Chief Contee has testified that the investigation is complete, and the D.C. Attorney General's office has stated that none of the arrested protesters will be prosecuted.

Please provide all responsive records from June 1, 2020, through the date of the search.

### **Fee Waiver Request**

In accordance with D.C. Code § 2-532(b), American Oversight requests a waiver of fees associated with processing this request for records. A waiver of fees for this request "is in the public interest because furnishing the information can be considered as primarily benefiting the general public."<sup>7</sup>

The general public has a significant interest in whether MPD conducts actions in a lawful manner, uses force appropriately, and, specifically, how MPD acted in the vicinity of Swann Street on June 1, 2020, when many individuals allege that MPD officers used illegal kettling techniques and excessive force. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the D.C. government, including by showing MPD's own understanding of the events that transpired on Swann Street on and around June 1, 2020, particularly given acting Chief Contee's comments stating that MPD's investigation has significantly different findings than an ACLU investigation.

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<sup>6</sup> Nathan Baca, *None of the 194 Protesters Who Were 'Kettled' and Then Arrested by DC Police Last Year Will Be Charged, AG's Office Says*, WUSA9 (Mar. 11, 2021, 11:03 PM), <https://www.wusa9.com/article/news/local/protests/dc-attorney-general-wont-pursue-charges-against-any-of-194-blm-black-lives-matter-protestors-arrested-on-swann-street-last-year/65-5b36eac6-bb2a-4006-91e4-68155ad04724>.

<sup>7</sup> D.C. Code § 2-532(b); *see also* DCMR § 408.10.

American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the general public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>8</sup>

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.<sup>9</sup> Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;<sup>10</sup> the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;<sup>11</sup> posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;<sup>12</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>13</sup> posting records and analysis relating to the federal government's

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<sup>8</sup> American Oversight currently has approximately 15,700 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 15, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Mar. 15, 2021).

<sup>9</sup> *News*, American Oversight, <https://www.americanoversight.org/blog>.

<sup>10</sup> *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

<sup>11</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>12</sup> *See generally Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

<sup>13</sup> *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

efforts to sell nuclear technology to Saudi Arabia;<sup>14</sup> and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.<sup>15</sup>

Finally, this request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest.

Accordingly, furnishing the information sought through this request can be considered as primarily benefiting the general public, and American Oversight thus qualifies for a fee waiver.

### **Guidance Regarding the Search & Processing of Requested**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks "communications," please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all

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<sup>14</sup> *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

<sup>15</sup> *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

prior messages sent or received in that email chain, as well as any attachments to the email.

- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages.
- 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. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency 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 on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

### **Conclusion**

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at [records@americanoversight.org](mailto:records@americanoversight.org) or 202.897.4213. Also, if American Oversight's request

for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Daniel McGrath  
Daniel McGrath  
on behalf of  
American Oversight