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October 19, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Channing D. Phillips
United States Attorney for the District of Columbia
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear United States Attorney Phillips:

On May 25, 2016, and June 15, 2016, I sent you letters regarding several matters, including a Freedom of Information Act (FOIA) request for your office's prosecution data.¹ Your office provided responsive data to this Committee on July 14, 2016,² but has not produced this information to the original FOIA requester. The resources that the Department has allocated to obstructing a simple FOIA request is perplexing.

On November 5, 2015, Denise Krepp, the Commissioner of Advisory Neighborhood Commission 6B10—which is located within PSA 108—submitted a FOIA request to the U.S. Department of Justice.³ Ms. Krepp requested the Department's prosecution rates for crimes in Washington, D.C., from 2010 to 2015.⁴ The Department denied Ms. Krepp's FOIA request and appeal because Ms. Krepp requested the prosecution data to be sorted by city council ward,

¹ Letter from Hon. Charles E. Grassley, Chairman, Senate Committee on the Judiciary, to Hon. Channing D. Phillips, U.S. Attorney for D.C., U.S. Department of Justice (May 25, 2016); Letter from Hon. Charles E. Grassley, Chairman, Senate Committee on the Judiciary, to Hon. Channing D. Phillips, U.S. Attorney for D.C., U.S. Department of Justice (June 15, 2016).

² Letter from Peter J. Kadzik, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, to Hon. Charles E. Grassley, Chairman, Senate Committee on the Judiciary (July 15, 2016).

³ Letter from K. Denise Rucker Krepp, Advisory Neighborhood Commissioner 6B10, to Susan B. Gerson, Acting Assistant Director, FOIA/Privacy Unit, Executive Office for United States Attorneys, U.S. Department of Justice (Nov. 5, 2015).

⁴ *Id.*

whereas the U.S. Attorney's Office compiles this data by police district.⁵ Ms. Krepp subsequently filed a lawsuit on May 16, 2016, to obtain the prosecution data.⁶

The Department's actions conflict with the intent of FOIA, the Department's guidelines for processing FOIA requests, and the Obama administration's guidance on FOIA, all of which promote transparency and openness. President Obama's guidance on FOIA instructs that "[i]n responding to requests under the FOIA, [agencies] should act promptly and in a spirit of cooperation," and that "[t]he presumption of disclosure should be applied to all decisions involving FOIA."⁷ Guidance from the Attorney General further instructs that "[u]nnecessary bureaucratic hurdles have no place in the 'new era of open Government.'"⁸

Yet, the Department's actions can only be characterized as "unnecessary bureaucratic hurdles." The Department continues to refuse to produce information to Ms. Krepp in response to a FOIA request that she filed nearly a year ago, on the basis that Ms. Krepp requested the data in a format that differs slightly from the format that is available. Notably, Ms. Krepp has clarified to the Department that she would accept the data in the available format.

Throughout the FOIA process, the Department has failed to embody the administration's proclaimed "spirit of cooperation." Despite being aware that the data Ms. Krepp sought was available by police district, the Department declined to engage in informal communications with Ms. Krepp to clarify whether the available formatting would satisfy her request. Even in the FOIA request denial, the Department did not explain that the requested information was available in a different format, but merely stated that the Department did not locate any responsive records.⁹ Eventually, after months of bureaucratic delay, the Department notified Ms. Krepp that the data was available by police district.¹⁰ However, rather than seeking an efficient and cooperative resolution, the Department suggested that Ms. Krepp start the process all over again with a new FOIA request.¹¹

Because of the Department's stonewalling and its imposition of unnecessary, bureaucratic hurdles, Ms. Krepp and the residents of her neighborhood have been deprived of access to important information and the Department is wastefully expending taxpayer dollars to

⁵ See *id.*; Letter from Susan B. Gerson, Acting Assistant Director, FOIA/Privacy Unit, Executive Office for United States Attorneys, U.S. Department of Justice, to K. Denise Rucker Krepp, Advisory Neighborhood Commissioner 6B10 (Jan. 5, 2016) [hereinafter "January 2016 FOIA Request Denial"]; Letter from Matthew Hurd, Associate Chief, Administrative Appeals Staff, Office of Information Policy, U.S. Department of Justice, to K. Denise Rucker Krepp, Advisory Neighborhood Commissioner 6B10 (Mar. 16, 2016) [hereinafter "March 2015 FOIA Appeal Denial"].

⁶ Plaintiff's Complaint for Declaratory and Injunctive Relief (May 16, 2016).

⁷ Presidential Documents: Memorandum of January 21, 2009: Freedom of Information Act, 74 Fed. Reg. 4,683 (Jan. 26, 2009).

⁸ Memorandum from Hon. Eric Holder, Attorney General, U.S. Department of Justice, to Heads of Executive Departments and Agencies (Mar. 19, 2009).

⁹ January 2016 FOIA Request Denial. The FOIA denial stated: "A search for records located in the United States Attorney's Office(s) for the District of Columbia has revealed no responsive records regarding the above subject. The USAO does not track this information and has no means of search for or retrieving." *Id.*

¹⁰ March 2015 FOIA Appeal Denial.

¹¹ *Id.*

engage in needless litigation. I urge the Department to promptly produce the responsive data to Ms. Krepp that the Department produced to this committee more than three months ago.

Should you have any questions, please contact Samantha Brennan of my Committee staff at (202) 224-5225. Thank you for your immediate attention to this matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Judiciary Committee

cc: The Honorable Patrick Leahy
Ranking Member
Senate Judiciary Committee