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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

February 10, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

On August 29, 2013, John Geer was fatally shot by Officer Adam Torres of the Fairfax County Police Department (FCPD) while standing in his home with both hands raised up, according to four other FCPD officers who were also present at the scene.¹ These four officers' accounts of the shooting conflict with the account of Officer Torres. Officer Torres claimed that Geer "brought both of his hands down in a quick motion towards his waist" and "near his waist," where he may have had a gun.²

According to the Incident Report, FCPD Chief Edwin Roessler "responded to the shooting and then went to the [station] to meet with the officers . . . [and] noted that . . . [one of those officers, Officer Barnes] was not in agreement with Officer Torres' decision to shoot."³ On September 25, 2013, another of those officers – Officer Parker – stated to an FCPD detective, "It's not good. [Officer Torres] killed that guy and he didn't need to."⁴ Yet, in November 2013, and in January 2014, FCPD refused to provide the Commonwealth Attorney with Officer Torres' internal affairs file, which was deemed necessary to a proper investigation of the shooting.⁵

This refusal led to the transfer of the case to the U.S. Attorney's Office of the Eastern District of Virginia on January 6, 2014.⁶ On February 10, 2014, the Civil Rights Division of the

¹ Fairfax County, Virginia, *Documents Published in John Geer Case*, Jan. 30, 2015, <http://www.fairfaxcounty.gov/news/2015/geer-case-materials.htm>, [hereinafter Fairfax County Documents], at DEF 000273, 000622, 000661, 000780; *see also* Tom Jackman, "John B. Geer had hands up when shot by police, four officers say in documents," *The Washington Post*, January 31, 2015.

² Fairfax County Documents, at DEF 000167; DEF 008934 (page 27 of the Incident Report).

³ *Id.* at DEF 008947 (page 40 of the Incident Report); *see also* DEF 008967 (page 60 of the Incident Report).

⁴ *Id.* at DEF 008944 (page 37 of the Incident Report).

⁵ Letter from Raymond F. Morrogh, Commonwealth's Attorney for Fairfax County, to Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Judiciary (December 19, 2014).

⁶ *Id.*

U.S. Department of Justice also initiated an investigation into the shooting.⁷ According to Assistant Attorney General Peter Kadzik, “litigation concerning evidence sought from the Fairfax County Police Department [] consumed over two months,” but, ultimately, “[i]ssues concerning withheld materials were favorably litigated by the Department”⁸

On January 21, 2015, FCPD produced more than 11,000 documents under court order to Geer’s family, including the above-mentioned Incident Report prepared by FCPD’s Criminal Investigative Bureau (CIB).⁹ FCPD had approved the majority of this 103-page report by March 2014.¹⁰ Yet, it appears that FCPD’s Internal Affairs Bureau (IA) did not initiate its own internal investigation of the shooting until Geer’s family filed a wrongful death suit in September 2014.¹¹

On February 6, 2015, Fairfax County Circuit Court Judge Randy I. Bellows ordered FCPD to produce to Geer’s family files from this ongoing IA investigation, but only the factual materials from that investigative file and not any material that would show internal deliberations.¹² FCPD was also ordered to produce the entirety of its closed IA file regarding a separate incident in March 2013 in which Officer Torres cursed out a county prosecutor at a courthouse.¹³ This latter file was apparently part of the records that the Commonwealth Attorney had unsuccessfully sought in 2013 in order to assess whether Officer Torres had “anger issues.”¹⁴

In issuing the February 6th ruling, Judge Bellows reportedly refused FCPD’s request for a protective order that would prevent those materials from becoming public, unless the Justice Department makes a request for such an order by February 20, 2015.¹⁵ Whether or not such a protective order is issued, the February 6th ruling appears to have removed any state law grounds for withholding these records from the Commonwealth Attorney, who requested them in 2013.

Accordingly, please provide responses to the following questions by February 20, 2015:

1. Would the Justice Department object to FCPD’s provision of these IA files to the Commonwealth Attorney? If so, please explain.

⁷ Letter from Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Ranking Member, Sen. Comm. on the Judiciary (November 21, 2014).

⁸ *Id.*

⁹ Fairfax County Documents, at DEF 008908 – DEF 009010.

¹⁰ *Id.*

¹¹ Tom Jackman, “Judge orders police to release files in John Geer case,” *The Washington Post*, February 6, 2015, http://www.washingtonpost.com/local/crime/fairfax-judge/2015/02/06/ea1e8a26-ae3e-11e4-ad71-7b9eba0f87d6_story.html.

¹² *Id.* See also Order on Plaintiff’s Motion to Compel Production of Factual Materials from Current IA Investigative File, Motion to Compel Closed IA File of Officer Adam Torres, and Motion to Compel and Overrule Certain Relevancy and Other Objections, *Maura Harrington v. Colonel Edwin Roessler, et al.*, Circuit Court of Fairfax County, Case No. CL 2014-11477, February 6, 2015 [hereinafter February 6th Order].

¹³ *Id.*; see also February 6th Order and DEF 008947- DEF 008948 (pages 40 and 41 of the Incident Report).

¹⁴ *Id.*; see also DEF 008947- DEF 008948 and note 5, *supra*.

¹⁵ See note 11, *supra*.

2. Did FCPD provide the Justice Department with Officer Torres' IA files? If so, which ones?
3. Would the Justice Department object to the Commonwealth Attorney conducting a concurrent investigation of the Geer shooting for possible violations of state law? If so, please explain.

Please number your responses according to their corresponding questions. Should you have any questions, please contact Jay Lim of my Committee staff at (202) 225-5225. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley
Chairman