



P O Box 3952
Charleston WV 25339-3952

(304) 345-9246
www.acluww.org

February 22, 2017

Via Certified Mail

Acting Chief of Police
Elkins Police Department
Attn: FOIA Request
401 Davis Avenue
Elkins, WV 26241

Re: West Virginia Freedom of Information Act Request

To Whom It May Concern:

Pursuant to West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.* (“WV-FOIA”), the American Civil Liberties Union of West Virginia Foundation requests the following materials and any related records from the Elkins Police Department (“the department”). The term records as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, data, directives, documents, videotapes, audio tapes, e-mail, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, or studies. This includes both internal and external communications

In responding to this request, please note that the law enforcement exemption to the WV-FOIA, like all exemptions to the WV-FOIA, is to be strictly construed. *See* Syl. pt. 4, *Hechler v. Casey*, 333 S.E.2d 799 (W. Va. 1985). The law enforcement exemption only exempts “confidential investigative techniques and procedures” and “information compiled as part of an inquiry into specific suspected violations of the law.” Syl. pt. 11, 12, *id.* at 799; *see also Charleston Gazette v. Smithers*, 752 S.E.2d 603, 626 (W. Va. 2013). Documents related to routine administration and oversight are not exempted from disclosure. Syl. pt. 11, *Hechler*, 333 S.E.2d at 799. In the event that a requested record contains both exempt and non-exempt information, the State Police have a duty to redact or otherwise segregate the exempt information while still releasing the pertinent records. *See Farley v. Worley*, 599 S.E.2d 835, 847 (W. Va. 2004).

Additionally, pursuant to WV-FOIA, the public is entitled to investigatory materials regarding use of force incidents and internal or external complaints involving an officer once a decision has been made as to whether disciplinary action will be taken against the officer. *See Charleston Gazette*, 752 S.E.2d at 623-24. The public is similarly entitled to information regarding any officer’s entry into the Early Identification System, once a decision has been made regarding whether further action needs to be taken against the officer. *Id.* at 624. Whenever disclosure of

the requested information will not compromise an ongoing investigation into an officer, there is a public right of access under the WV-FOIA. See Syl. pt. 1, *Ogden Newspapers v. City of Williamstown*, 453 S.E.2d 631 (W. Va. 1994).

Keeping in mind the foregoing, I hereby request the following records:

1. Any and all records related to the employment and resignation of Craig Cross, including but not limited to:
 - a. Mr. Cross's personnel file;
 - b. Any and all complaints regarding Mr. Cross;
 - c. Any and all records regarding times Mr. Cross was reprimanded, officially or unofficially;
 - d. Any and all internal records and communications regarding what is commonly referred to as Mr. Cross's "cockroach memo."
2. Any and all civilian complaints regarding Mr. Cross.
3. Any and all civilian complaints from the time when Mr. Cross was the Chief of Police.
4. A list of all arrests made during Mr. Cross's tenure as Chief of Police.
5. A list of all criminal charges during Mr. Cross's tenure as Chief of Police, including case outcomes.
6. Any and all documents that use the word "cockroach."
7. Any and all internal investigations and communications regarding use of force during Mr. Cross's tenure as Chief of Police.
8. Any and all internal investigations and communications regarding improper search or seizure during Mr. Cross's tenure as Chief of Police.
9. Any and all documents or communications regarding the Watson house on Kerens Avenue and/or its residents or visitors during Mr. Cross's tenure as Chief of Police.
10. Any and all documents or communications regarding the Hartley house on Central Street and/or its residents or visitors during Mr. Cross's tenure as Chief of Police.
11. Any and all memoranda and/or communications made by Craig Cross regarding investigations, use of force, or specific residents of or visitors to Elkins.
12. Any and all communications regarding Craig Cross's resignation.
13. Any and all communications regarding the department's response to Craig Cross's "cockroach memo."

14. Any and all documents and communications regarding internal or external investigations related to Craig Cross or the “cockroach memo.”
15. Any and all documents and communications sent to the attorneys of people convicted under Mr. Cross or the defendants themselves.
16. Any and all documents and communications, external or internal in nature, regarding Craig Cross or the “cockroach memo.”

If you are not technically the custodian of the documents described in this request, I ask that you forward the request to the custodian(s) or advise me of the identity of the custodian(s) so that I can make the request directly to that person or those persons.

Please note that W. Va. Code § 29B-1-3 requires agencies to respond to requests for public records within **five business days**. If you anticipate that it will take longer than five business days, or have questions about the scope of this request, please call me at (304)-345-9246.

Additionally, while W. Va. Code § 29B-1-3(5) permits public agencies to assess fees associated with the reproduction of public records, as a not-for-profit advocacy organization we request a waiver of any fees associated with the furnishing of these documents. To limit costs, electronic production of documents would be acceptable. If you do intend to assess fees, however, please contact me for authorization of any fees in excess of \$100.

The WV-FOIA “shall be liberally construed with the view of carrying out” a policy of disclosure, while exemptions are to be narrowly construed. W. Va. Code §29B-1-1. Any party claiming that an exemption applies bears the burden of proving its applicability. *See Daily Gazette v. W. Va. Dev. Office*, 482 S.E.2d 180, 187 (W. Va. 1996). Documents regarding policies of public agencies after the policies have been formulated are not subject to the “internal memoranda or letters” exemption to the WV-FOIA provisions. *See id.* at 192. Finally, for any undisclosed or redacted records, we request a *Vaughn* index.

Thank you in advance for your prompt response. Please furnish all records to:

Jamie Lynn Crofts
ACLU of WV Foundation
P.O. Box 3952
Charleston, WV 25339-3952

If you have any questions or concerns, I can be reached at (304) 345-9246 ext. 102, or jcrofts@acluwv.org.

Regards,

A handwritten signature in blue ink, appearing to read "Jamie Lynn Crofts", with a stylized flourish at the end.

Jamie Lynn Crofts

Legal Director, ACLU of West Virginia Foundation