

Demonstration Support Committee  
National Lawyers Guild, DC Chapter  
2000 P St. NW, Suite 415  
Washington, DC 20036



Defending Rights & Dissent  
1100 G St. NW, Suite 500  
Washington, DC 20005

July 11, 2017

Donald Kaufman  
Metropolitan Police Department  
300 Indiana Avenue NW, Room 4153  
Washington, DC 20001

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1350 Pennsylvania Avenue NW, Suite 300  
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Office of the District of Columbia Auditor  
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Brackett Smith  
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Council of the District of Columbia  
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**RE: FOIA Request - MPD use of force on Inauguration Day**

Dear Mr. Kaufman, Ms. Satterlee, Ms. Bellanca, and Mr. Smith:

This is a request under the D.C. Freedom of Information Act (FOIA), D.C. Code 2-531 *et seq.*, on behalf of the D.C. Chapter of the National Lawyers Guild (DC-NLG) and Defending Rights and Dissent. We request public records and/or data regarding the use of force on January 19 and 20, 2017, by the Washington, D.C. Metropolitan Police Department (MPD) against

demonstrators and bystanders, including D.C. NLG Legal Observers. We also request public records, including records containing data, regarding actions involving the monitoring and surveillance of public protest.

The Requesters seek any and all records responsive to the requests herein that were made, maintained, kept on file, or received by MPD, the Executive Office of the Mayor, the Office of the District of Columbia Auditor, or the Council of the District of Columbia.

### **Purpose of Request.**

This request seeks to obtain information for the Requestors and the public on the use of force against, and the surveillance and monitoring of, protesters exercising their First Amendment constitutional rights on January 19, 2017 and January 20, 2017 (Inauguration Day), during protests in Washington, D.C. The request is specifically directed at the excessive use of force by MPD, which culminated in the deployment of lethal and less-lethal weapons against demonstrators and bystanders on January 19 and 20, 2017.

### **Background**

On the evening of January 19, 2017, demonstrators chanted and protested against the pending Presidential Inauguration of Donald Trump outside a pre-Inauguration ball taking place at the National Press Club in Washington, DC.<sup>1</sup> Sometime after 7:30 p.m., MPD and other law enforcement officers indiscriminately deployed less-lethal weapons against the crowd of demonstrators, including pepper spray and tear gas.<sup>2</sup>

On January 20, 2017, MPD and other law enforcement officers attacked large numbers of demonstrators and bystanders in Washington, D.C. throughout the day, beginning around 7:00 a.m. This culminated in a large-scale, early-afternoon attack by MPD and other law enforcement officers in and near Franklin Square Park in Washington, D.C.<sup>3</sup> Thousands were indiscriminately assaulted, and hundreds were arrested without probable cause.<sup>4</sup> The police assaults included attacks on children, journalists, NLG Legal Observers, passersby, and peaceful protesters.<sup>5</sup>

According to indictments filed by prosecutors, some property destruction allegedly occurred on January 20 near Franklin Square from 10:00 a.m. until around 10:45 a.m.<sup>6</sup> However, the first police attack against demonstrators occurred around 7:00 a.m., far from Franklin Square

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<sup>1</sup> See Nika Knight, *D.C. Protests Against Trump Supporters' "DeploraBall" Met With Tear Gas, Riot Police*, CommonDreams (Jan. 20, 2017), <http://bit.ly/2spMGe8>.

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

<sup>3</sup> See Robin Seemangal, *Police Use Force Against Peaceful Protesters in DC*, Observer (Jan. 20, 2017), <http://bit.ly/2stBVIO>.

<sup>4</sup> See Steven Nelson, *Inauguration Mass Arrest Follows Generous Use of Pepper Spray, Batons*, U.S. News & World Report (Jan. 20, 2017), <http://bit.ly/2sBMl8N>.

<sup>5</sup> Seemangal, *supra* note 3.

<sup>6</sup> See, e.g., Superseding Indictment, *United States v. Jaffe*, No. 2017 CF2 001147 (DC Super. Ct. filed Apr. 28, 2017).

Park, with indiscriminate baton beatings; and the most severe attack occurred at 1:30 p.m. at and around Franklin Square—which involved full-scale deployment of militarized pepper spray and stingers.<sup>7</sup> For reference, Stingers have a combined pepper spray, tear gas, rubber bullets, and flash bang deployment, and they were rolled and thrown indiscriminately into crowds of demonstrators and bystanders on Inauguration Day, which shot accompanying metal shrapnel from the ignition device upon detonation.<sup>8</sup>

Around 10:50 a.m. on January 20, 2017, MPD and other law enforcement officers confined over 230 demonstrators and bystanders on the corner of Franklin Square Park in a tight “kettle,” without warning as required by the First Amendment Rights and Police Standards Act of 2004, D.C. Code § 5-331.01 *et seq.*<sup>9</sup> These detainees were kettled for approximately eight hours and slowly mass-arrested throughout the day.<sup>10</sup> During this period, the detainees had no access to water, food, bathroom use, or medical care, and were exposed to the deployment, just feet away, of pepper-spray and other weapons.<sup>11</sup>

Moreover, police continued their attack throughout the day—victims included a five-year-old child, a disabled man, and an elderly woman, all who were among the hundreds of peaceful demonstrators pepper-sprayed in the face at point-blank range.

The Washington, D.C. Police Complaints Board issued a report and recommendations on February 27, 2017, based on first-hand observations by staff monitors.<sup>12</sup> The Police Complaints Board focused on two central concerns. First, the Board found that arrests made in the Franklin Square Park area may not have been carried out according to Standard Operating Procedures:

Of most concern are the potential violations of the First Amendment Assemblies Act related to: limiting arrests and citations to specific non-compliant demonstrators for whom there is probable cause; providing multiple audible warnings, a clear dispersal route, and sufficient time to disperse, when dispersal is deemed necessary; and refraining from using police lines to surround demonstrators unless there is widespread and unlawful conduct.<sup>13</sup>

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<sup>7</sup> See DC Off. Police Compl., *OPC Monitoring of the Inauguration – Report and Recommendations*, at 4 n.7, n.8 (Feb. 27, 2017).

<sup>8</sup> *Id.*; see also Mesloh & Wolf, *An Exploratory Study of Stingball Grenades*, at 7 (June 2011) (explaining how a Stinger’s metal ignition device will produce additional shrapnel upon detonation), <http://bit.ly/2tnHPY a>.

<sup>9</sup> OPC Report at 5–9, *supra* note 7; Superseding Indictment, *supra* note 6.

<sup>10</sup> DC Council Committee on the Judiciary & Public Safety, *Testimony in opposition to the confirmation of Interim Chief of Police Peter Newsham by people arrested while serving as Legal Observers during the Inauguration protests* (Mar. 27, 2017), <http://bit.ly/2s2pnGO>.

<sup>11</sup> *Id.*

<sup>12</sup> OPC Report, *supra* note 7.

<sup>13</sup> *Id.* at 9–10.

Second, the Board found it concerning “that less than lethal weapons were used indiscriminately and without adequate warnings in certain instances.”<sup>14</sup> Relatedly, the Board confirmed MPD’s indiscriminate deployment of Stingers, as well as instances where MPD officers threw Stingers in the air into the crowd – a possible violation of MPD training guidelines.<sup>15</sup> When used improperly, stingers can result in death or serious bodily injury.<sup>16</sup>

On January 21, 2017, the U.S. Attorney’s Office for the District of Columbia charged the over 230 demonstrators and bystanders who were kettled with at least one count of violating D.C.’s Riot Act.<sup>17</sup> Each charge carries a ten-year prison sentence and a \$25,000 fine.<sup>18</sup> As of this writing, over 200 of those people remain charged under an expanded superseding indictment with counts of rioting, felony incitement to riot, and conspiracy to riot.<sup>19</sup> As a result, those charged are each facing up to 75 years in federal prison.<sup>20</sup> *This is one of the largest, and harshest en-masse prosecutions of political demonstrators in U.S. history.*

The D.C. City Council passed the First Amendment Rights and Police Standards Act, D.C. Code 15-331.01 *et seq.*, in response to several high profile cases of police violations of First Amendment rights, including mass arrest similar in nature to the ones that took place on January 20, 2017.<sup>21</sup> This law was intended to prevent such abuses from reoccurring, imposed clearly demarcated guidelines for the policing of First Amendment activity, and imposed stringent record keeping requirements on the MPD.

### **Records requested.**

DC National Lawyers Guild and Defending Rights & Dissent request records created between March 1, 2016, and March 1, 2017, pertaining to the MPD’s handling of Inauguration-related First Amendment activity. Specifically, we request:

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<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 4, n.7, and 5–6, n. 8 (“An OPC investigator was informed during MPD training that stingers were only to be rolled on the ground when deployed, to avoid having a rubber pellet strike anyone in the face. However, several OPC monitors observed MPD officers throwing stingers toward the crowd in the air. OPC is not aware of any written MPD directives on the proper deployment of stingers.”).

<sup>16</sup> See e.g., Technical Specifications of Stinger CS Rubber Ball Grenade, The Safariland Group, available at: <https://www.safariland.com/products/less-lethal/tactical-devices/stinger-rubber-ball/stinger-cs-rubber-ball-grenade-1011580.html>.

<sup>17</sup> Mark Broomfield, *Anti-Trump protesters charged with ‘felony rioting’ face 10-year jail sentences*, INDEPENDENT (Jan. 22, 2017), <http://ind.pn/2sbCAeY>.

<sup>18</sup> *Id.*; See D.C. Code § 22-1322(d).

<sup>19</sup> Superseding Indictment, *supra* note 6.

<sup>20</sup> See Opinion, Carlo Piantini, *Why am I facing 75 years in prison? By threatening anti-Trump protesters with decades in prison, the state is attempting to criminalise civil disobedience*, AL JAZEERA (July 3, 2017), <http://www.aljazeera.com/indepth/opinion/2017/06/facing-75-years-prison-170629085740479.html>.

<sup>21</sup> See Henri E. Cauvin, *D.C. Settles Suit Over Protest Arrests*, WASH. POST (Mar. 1, 2007), <http://wapo.st/2rik0k1>.

1. All use of force records covering force used at protests that took place on January 19, 2017, and January 20, 2017. This includes, but is not limited to, use of force records created in response to:
  - a. The use of force against protesters outside the National Press Club that occurred on January 19, 2017, after approximately 7:30 p.m.;
  - b. The use of force against protesters that occurred on January 20, 2017, at approximately 7:00 a.m.;
  - c. The use of force against protesters in and around Franklin Square Park on January 20, 2017, that occurred approximately between 10:00 a.m. and 10:45 a.m.;
  - d. The use of force against protesters that occurred near Franklin Park on January 20, 2017 at approximately 1:30 p.m.
2. Records containing the types of weaponry, munitions, and ordnance, including less-lethal and lethal weaponry, munitions, and ordnance, used by MPD officers and other officers and agents working for or with MPD on January 19 and 20, 2017. This includes, but is not limited to, records containing the names of those weapons, a description of those weapons, a description of recommended use of such weapons, relevant training manuals and policy guidelines concerning use of such weaponry, and the exact amount (in numerical terms) of such weapons discharged or expended on January 19 and 20, 2017.
3. All contracts, and related memoranda of understanding or similar documents, between the MPD or other D.C. governmental agencies through which MPD or the D.C. government procured any weapons, munitions, or ordnance, including less-lethal and lethal weapons, used or expended on January 19 and 20, 2017, including but not limited to: all parties to such contracts; dates such contracts were signed; the purchase cost and terms; a description of any and all negotiations about said contracts (including negotiations about what to purchase and reasons therefore); the date, time, and content of any and all meetings about said contracts; and the persons present at any and all said meetings.
4. Records, notes, memoranda, field reports, or emails created by undercover agents, officers, or other individuals associated with MPD but who failed to identify themselves as such, and who engaged in planning protest activity to take place on January 19 and 20, 2017, in Washington, D.C., who engaged in protest activity on January 19 and 20, 2017, or who interacted or collected information about protests that occurred on January 19 and 20, 2017, pertaining to their infiltration of these groups or containing information learned as a result of the infiltration.
5. All reports compiled, completed, or issued by the Office of the District of Columbia Auditor, per D.C. Code § 5-333.12(d), relating to the planning of or engagement in protest activity on January 19 and 20, 2017, in Washington, D.C.
6. All communications between MPD and the Office of the District of Columbia Auditor, made in relation to the Auditor's duties under D.C. Code § 5-333.12(d), involving the planning of or engagement in protest activity on January 19 and 20, 2017, in Washington, D.C.
7. All FISA warrants, issued by the Foreign Intelligence Surveillance Court, directed towards individuals planning protests on January 19 or 20, 2017, in Washington, DC, or directed towards individuals who protested on January 19 or 20, 2017, in

Washington, D.C., or directed towards individuals arrested on January 19 or 20, 2017, in Washington, D.C.

8. Memoranda, calendars, notes, or minutes from or reflecting meetings between MPD officials, employees, and agents, and U.S. Department of Justice officials, employees, and agents, including but not limited to officials, employees and agents of the U.S. Attorney's Office for the District of Columbia, the purpose or content of which involved preparations and planning for protest activity on January 19 and 20, 2017.
9. The names and identities of any and all individuals who attended meetings responsive to Request 8 herein.
10. All internal and external MPD communications and documents concerning the National Special Security Event designation obtained by MPD relating to January 19 and 20, 2017.
11. Records, memoranda, or notes containing information regarding monetary funds provided to MPD or the D.C. Government relating to the National Special Security Event designation noted in Request 10, including the originator of those funds, the date MPD of the D.C. Government received those funds, and the amount of such funds per contribution.
12. All insurance contracts that cover liabilities which may arise from MPD's use of force on January 19 and 20, 2017, including insurance contracts obtained through the previously mentioned National Special Security Event designation.
13. All memoranda submitted to receive the authorization of an investigation involving First Amendment activities, as required by D.C. Code § 5-333.05.
14. All written authorization by the Commander, Office of the Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations of an investigation involving First Amendment activity, as required by D.C. Code § 5-333.05.
15. All memoranda submitted to receive authorization of a preliminary inquiry involving First Amendment activities, as required by D.C. Code § 5-333.06.
16. All written authorization by the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations of a preliminary inquiry involving First Amendment activity, as required by D.C. Code § 5-333.06.
17. Any memorandum, teletype, or email pertaining to a preliminary inquiries relating to First Amendment assemblies, conducted under the authorities granted to the MPD under D.C. Code § 5-333.09.
18. All communications between MPD and the Washington Regional Threat Analysis Center, or any other DHS Fusion Center, relating to the planning for protest activity on January 19 and 20, 2017, in Washington, DC, or relating to protest activity on January 19 and 20, 2017, in Washington, D.C.
19. Any records, notes, memoranda, or emails containing information about the costs associated with MPD's use of force on January 19 and 20, 2017, including but not limited to the cost of weapons, munitions, and ordnance expended, the cost of deploying MPD officers at L and 12th Streets on January 20th, and the cost of holding those arrested on Inauguration Day in jail overnight.

**Definitions.** As defined under the D.C. FOIA statute, the term “public records” includes all “documentary materials, regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body,” including “information stored in an electronic format.” *See* D.C. Code 2-539 (incorporating by reference quoted language from D.C. Code 2-502).

1. All terms in this document are to take their plain dictionary meaning, unless otherwise defined in this chapter.
2. The terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
3. The term “communications” as used in this document means any oral, written or electronic or other exchange or transmission of information (in the form of facts, ideas, inquiries, opinions, analysis or otherwise), including correspondence, memos, reports, emails, electronic mail, electronic documents, telephone conversations, telephone or voicemail messages, face-to-face meetings or conversations, and Internet postings and discussions, video conferences, and voice-over-internet-protocol conversations and messages.
4. “Email” or “electronic mail” means any electronic communication made using computer communications software, whether through a local computer network or through the Internet, and whether maintained in electronic form and/or paper form. Email maintained in electronic form may be produced in electronic form.
5. The term “including” as used in this document is to be construed as a non-limiting preposition.
6. The terms “Metropolitan Police Department” and “MPD” as used in this document are to be construed as including any and all law enforcement officers working with or supporting MPD’s efforts surrounding its preparation for and activity during January 19 and 20, 2017.
7. The acronym “FISA” means the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. ch. 50.
8. The acronym “FISC” means Foreign Intelligence Surveillance Court.
9. “Document” or “documents” mean, including but not limited to, all writings, recordings or electronic data consisting of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, word processing, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, still photographs, X-ray films, video tapes, motion pictures, electronic mail messages (email), voice mail messages, electronic instant messages (IM), spreadsheets, databases, electronic calendars and contact managers, back-up data, and or other form of data compilation, stored in any medium from which information can be obtained (including but not limited to magnetic tape, magnetic disk, CD-ROM, DVD, optical disk, flash drive or other electronic or mechanical recording device), however produced, reproduced or stored, of every kind of description within your possession, custody or control, or within the possession, custody or control of any agent, employee, representative or other persons acting or purporting to act for or on behalf of you including but not limited to notes; memoranda; records; reports; correspondence; communications; telexes and faxes; agreements; contracts; accounting or financial records or worksheets; account books; journals; ledgers; bills; receipts; vouchers; transcripts or notes of conversations or meetings; minutes of

meetings; statements; directives in any form from general partners or other representatives; diary entries; studies; summaries and/or records of telephone conversations; interviews, meetings and/or conferences; tabulations; and shall include the original and all non-identical copies; all drafts even if not published, disseminated, or used for any purpose; all notes, schedules, footnotes, attachments, enclosures, and documents attached or referred to in any document to be produced pursuant to this FOIA Request.

**Justification for withholding.** If you determine that some or all of the records are exempt, you must provide a written explanation including a reference to the specific statutory exemption on which you rely. D.C. Code 2-533(a).

**Format of Production.** Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM, or DVD;
- In PDF or TIF format;
- In electronically searchable format;
- Each record in a separately saved PDF file;
- “Parent-child” relationships maintained, meaning that the requester must be able to identify the attachments with emails;
- Any data records in native format (i.e., Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

**Segregability.** For each segregable portion of a request is not exempt, you must provide that portion along with your explanation of the exemption. D.C. Code 2-534(c).

**Fee waiver.** We request a fee waiver pursuant to D.C. Code 2-532(b), which permits the waiver or reduction of any fee for searching and reproducing records if “furnishing the information can be considered as primarily benefiting the general public.” The National Lawyers Guild is a progressive bar association of limited resources dedicated to preserving demonstrators’ First Amendment rights. The public is the primary beneficiary of NLG’s work to protect First Amendment activities, whether by litigation, legislative advocacy, or publication. It is on this ground that federal and state agencies, as well as courts, generally grant waivers of fees for NLG FOIA requests.

Defending Rights & Dissent is a non-profit dedicated to fulfilling the promise of the Bill of Rights for everyone. As part of this mission, Defending Rights & Dissent engages in extensive public education campaigns. This includes running the Dissent NewsWire, a news site that specializes in stories about civil liberties and is the recipient of a Project Censored Democracy in Media Award. Defending Rights and Dissent has in the past run stories based on federal, state, and local public record requests and plans on using information learned from this request in both its public advocacy and its journalistic endeavors.



The present request satisfies the statutory criteria for a fee waiver.

If you determine no waiver is appropriate, and if the proposed fee is greater than \$25.00, we ask that you notify us prior to fulfilling the above requests.

**Delivery.** Please furnish all applicable records to Maggie Ellinger-Locke, NLG DC, 2019 Sheridan Street, Hyattsville, Maryland, 20782, or [ellinger.locke@gmail.com](mailto:ellinger.locke@gmail.com). Ms. Ellinger-Locke may also be reached at (314) 805-7335 or via the aforementioned email address should you have any questions.

**Timing.** We look forward to your reply to this request within 15 business days, as required by law. D.C. Code 2-532(c).

Thank you for your time and attention to this matter.

Sincerely,

Maggie Ellinger-Locke  
Co-Chair, Demonstration Support Committee  
DC-NLG