



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 1, 2016

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letters to Channing Phillips, the nominee to be the United States Attorney for the District of Columbia, dated May 25, 2016, and June 15, 2016, [REDACTED]

[REDACTED]

[REDACTED]

FOIA Litigation (*Krepp v. United States*, No. 16-CV-00926-KBJ (D.D.C.))

As an initial matter, it is important to note that the Department sincerely believes that the Freedom of Information Act (FOIA) plays a vital part in our democracy. Further, as the lead federal agency responsible for implementation of the FOIA across the federal government, the Department is committed to encouraging compliance with the Act by all agencies. The Department firmly believes that a proper understanding of the FOIA, including the correct application of the statute's provisions and the Department's 2009 FOIA Guidelines, is the first step towards a successful FOIA operation. As the federal office responsible for encouraging

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government-wide compliance with the FOIA, OIP conducts a wide range of training activities to educate FOIA personnel at all federal agencies on the FOIA's legal requirements and the policy directives of the President and the Department. In 2015 alone, OIP trained nearly 2,000 employees by hosting and participating in a variety of training sessions addressing issues ranging from utilizing proper administrative procedures, understanding exemptions, applying the FOIA's fee and fee waiver provisions, achieving transparency through proactive disclosures, improving customer service, and ensuring an effective FOIA administration.

In keeping with the Department's commitment to the FOIA, the D.C. U.S. Attorney's Office makes every effort to make data about its work available to the community it serves. As you noted, the Department publishes an annual statistical report that includes the number of arrests reviewed, as well as the number of convictions, pleas, and dismissals in cases handled by the Office. In addition, at community meetings held every month in each police district, the D.C. U.S. Attorney's Office makes available a "Court Report," which contains data on every new case that is papered by case number and charge. The report also is either emailed or, for people who do not have email, mailed to those community members who request it. The report can be used to track a particular case through the D.C. Superior Court website in order to ascertain its disposition.

As to the particular matter noted in your letter, Ms. Denise Krepp is now the Plaintiff in *Krepp v. United States*, No. 16-CV-926-KBJ (D.D.C.). Although the litigation is currently pending, we can address information in the public record. We understand that the Plaintiff sought the following information, for the years 2010 to 2015, for the specific crimes of homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft and arson: (1) the number of arrests reviewed by the D.C. U.S. Attorney's Office; (2) the number of prosecutions; (3) the number of convictions; and (4) the number of cases resolved through a plea agreement rather than a trial. The Plaintiff also specifically requested that the data be sorted by "wards," which are the political subdivisions defining the areas of representation of council members in the District of Columbia.

As you may know, there are eight council wards and seven Metropolitan Police Department districts in the District of Columbia. Although there is overlap between them, their boundaries are not identical. Please see the attached map showing both the wards and the districts. Because the D.C. U.S. Attorney's Office works closely with the Metropolitan Police Department in fulfilling its law enforcement functions, it compiles and maintains data according to the boundaries used by the police districts, *i.e.*, the seven districts noted above, not by the city council, *i.e.*, the eight wards noted above. Therefore, the requested information is maintained by police district and also can be sorted by smaller units known as Patrol Service Areas (PSAs). Not only is this the manner in which our data is maintained and accessible, the Department also believes that the PSA data is the best method to determine crime information relevant to a smaller, more specific neighborhood area.

The D.C. U.S. Attorney's Office does not have an automated method to sort this information by council ward, nor is it feasible to conduct a highly burdensome review of individual case files to extract the address where each crime occurred. Furthermore, the D.C. U.S. Attorney's Office does not have any electronic tool to match each address with a particular ward. The data simply does not exist in the format requested and cannot be created in a

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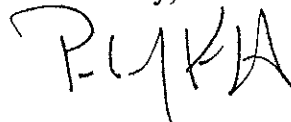
reasonable manner. While the Department's pleadings in the litigation will detail the Department's position in this matter going forward, we do note that it is well established that FOIA does not require the agency to create records that do not exist; it obligates them to provide access to those which it in fact has created or retained.

Consistent with the Department's commitment to transparency, however, we understand that the D.C. U.S. Attorney's Office attempted to satisfy the Plaintiff's informational needs by offering the data in the format in which it is maintained in the normal course.<sup>1</sup> Despite this attempt, the Plaintiff opted to pursue her desire for data sorted by council wards, rather than police districts or PSAs, through litigation.

The Department would be pleased to provide the Committee with the requested information sorted by the seven police districts, which again, is our closest approximation of the eight wards and the manner in which we maintain such data in the usual course. The D.C. U.S. Attorney's office is already in the process of compiling that data and we will provide it as soon as that process is completed. We also would be happy to work with your staff to refine this request if, for example, the Committee would prefer the data sorted by particular PSAs.

We hope this information is helpful. Given the good faith efforts by Mr. Phillips and the Department to respond promptly and thoroughly to your requests for additional information, it is our sincere hope that the Committee will proceed as soon as possible in advancing this nomination. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik  
Assistant Attorney General

Enclosures

cc: The Honorable Patrick J. Leahy  
Ranking Member

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<sup>1</sup> In Exhibit 1 of her complaint, the Plaintiff stated that she was told "DOJ could only provide [her] with information on a case by case basis instead of categories divided by ward." *Krepp v. United States*, No. 16-CV-926-KBJ, Dkt. 1 (D.D.C. May 5, 2016). In Exhibit 4, the Plaintiff was informed that "[p]olice service areas, also known as the districts, are used for reporting purposes. The USAO does not track this information by ward or in the specific manner which [she] . . . request[s]." The footnote to this sentence states that she may "wish to make a new request to EOUSA for prosecutions and convictions by crime or by district." *Id.*