



October 10, 2017

VIA Electronic Delivery

FOIA/PA Mail Referral Unit
U.S. Department of Justice
Room 115
LOC Building
Washington, D.C. 20530-0001

Re: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 et seq., and the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") FOIA regulations beginning at 28 C.F.R. Part 16, Democracy Forward Foundation makes this request on behalf of the Law Center to Prevent Gun Violence (the "Law Center"), the partner organization of the gun violence prevention organization founded by former Congresswoman Gabrielle Giffords and retired Navy combat veteran and NASA astronaut Captain Mark Kelly, Americans for Responsible Solutions ("ARS").

Background

On October 1, 2017, a gunman opened fire from his room inside a high-rise Las Vegas hotel into a large crowd of people attending a music festival below. Reports estimate the gunman killed at least fifty-eight people, and injured hundreds of others, before killing himself, making the incident the deadliest mass shooting in modern American history.¹

President Trump offered his "condolences" and "sympathies" in the wake of the shooting, but did not address the pressing need to strengthen the nation's gun laws.² Similarly, when the White House was asked to address calls for common sense gun reform, White House Press

¹ Heather Long and Mark Berman, *At least 50 dead, more than 400 injured after shooting on Las Vegas Strip*, The Washington Post (Oct. 2, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/10/02/police-shut-down-part-of-las-vegas-strip-due-to-shooting/?hpid=hp_rhp-banner-main_las-vegas-230am%3Ahomepage%2Fstory&utm_term=.afa23c7292a7.

² Donald J. Trump (@realDonaldTrump), Twitter (Oct. 2, 2017, 7:11 AM), <https://twitter.com/realDonaldTrump/status/914810093874671617>.

Secretary Sarah Huckabee Sanders refused, saying now was not the time for such a conversation.³ White House talking points reported by NBC news echoed the same themes promoted by Trump and Sanders.⁴

The Washington gun lobby conveyed a similar message. While the National Rifle Association (“NRA”) issued no public statement in the immediate aftermath of the shooting, Dana Loesch, a spokeswoman affiliated with the lobbyist group, called for “prayers,” and like the White House, a tempering of calls for a policy response.⁵ The NRA’s official response to the Las Vegas tragedy, issued on October 5, likewise rejected calls for discussion of effective policy that could reduce gun violence, and instead urged Congress to pass dangerous concealed carry “reciprocity” legislation that would put law enforcement at risk and allow dangerous people to carry guns nationwide without regard for the laws of the states they are in.⁶

The NRA’s post-Las Vegas statement did indicate, however, that the organization was open to having ATF “review” the regulation of devices, including so-called “bump stocks” that allow semi-automatic rifles to function like fully-automatic rifles.⁷ Shortly after release of the NRA’s statement, the White House shifted its position to align with the NRA’s. In response to a question about the NRA’s statement on bump stocks, Sarah Huckabee Sanders responded that “it’s something we’re very open to.”⁸ Sanders stated, “We know that members of both parties and multiple organizations are planning to take a look at bump stocks and related devices [and] [w]e certainly welcome that. We’d like to be part of that conversation.”⁹

Records Requested

In an effort to understand, and explain to the public, the extent to which officials from DOJ spoke to, consulted or engaged with, or were otherwise influenced by, individuals affiliated with the Washington gun lobby in the period immediately following news breaking of the mass

³ Callum Borchers, *White House: Now is not the time to talk about gun control. But ‘if you look to Chicago ...’*, The Washington Post (Oct. 2, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/10/02/white-house-now-is-not-the-time-to-talk-about-gun-control-but-if-you-look-to-chicago/?utm_term=.43b4c55d1a3b.

⁴ NBC Politics (@NBCPolitics), Twitter (Oct. 3, 2017, 1:48 PM), <https://twitter.com/nbcpolitics/status/915317663789928448>.

⁵ Dana Loesch (@DLoesch), Twitter (Oct. 2, 2017, 8:25 AM), <https://twitter.com/DLoesch/status/914828794640420864>.

⁶ Chris Cox (@ChrisCoxNRA), Twitter (Oct. 5, 2017, 3:02 PM), <https://twitter.com/ChrisCoxNRA/status/916015643664646144>.

⁷ *Id.*

⁸ Noah Bierman, *Trump administration ‘open’ to debate on banning bump stocks*, Los Angeles Times (Oct. 5, 2017), <http://www.latimes.com/politics/washington/la-na-pol-essential-washington-updates-trump-administration-open-to-debate-1507232723.htmlstory.html>.

⁹ *Id.*

shooting in Las Vegas, Nevada, the Law Center requests that DOJ produce the following within twenty (20) business days:

1. All records sent or received containing any of the following terms: NRA, NRA-ILA, national rifle association, rifle association, nra.org, nraila.org, Pete Brownell, Wayne LaPierre, Josh Powell, Chris Cox, Richard Childress, Carolyn Meadows, Wilson Phillips, John Frazer, Dana Loesch, Steve Sanetti, Larry Keane, the National Shooting Sports Foundation, NSSF, Gun Owners of America, gun lobby, silencer, suppressor, bump stock, CCR, reciprocity, SHARE Act, National Firearms Act, NFA, Las Vegas, Vegas, Mandalay Bay, shooting, Harvest Festival, Stephen Paddock, or derivations thereof.
2. Any and all records that refer or relate to the development of the White House talking points on the Las Vegas mass shooting, which were made public through NBC news reporting on October 3.¹⁰ This includes, but is not limited to, all drafts of the statement and communications regarding its content.
3. Any and all records that refer or relate to the NRA statement on the Las Vegas mass shooting that was made public on October 5. This includes, but is not limited to, all records containing a copy of the statement or excerpts thereof, and any communications regarding its content.

The time period for this search is from October 1, 2017 to October 8, 2017.

Please search the following DOJ components: the Office of Attorney General, the Office of Deputy Attorney General, the Office of Public Affairs, the Office of Legislative Affairs.

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. See 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable

¹⁰ NBC Politics (@NBCPolitics), Twitter (Oct. 3, 2017, 1:48 PM), <https://twitter.com/nbcpolitics/status/915317663789928448>.

and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Request for Fee Waiver

The Law Center requests a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The Law Center also requests a waiver of search fees on the ground that it qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because, as discussed above, news accounts underscore the substantial public interest in the records sought through this request. 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing and widespread media attention, the records sought will contribute significantly to public understanding of an issue of profound public importance. Moreover, the Law Center is a nonprofit organization organized under Internal Revenue Code § 501(c)(3) and is dedicated to promoting policy engagement and civic education. As a nonprofit organization, it does not have a commercial interest in the records. The records obtained from this request will be made available to the public at no cost.

The Law Center also requests a waiver of search fees because it is a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The Law Center meets the definition of “representative[s] of the news media” because it gathers information, exercises editorial discretion in selecting and organizing documents, and “distributes the resulting work to the public.” *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). It is therefore a “representative of the news media” for the

same reasons it is “primarily engaged in disseminating information.” 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), 552(a)(6)(E)(v)(II).¹¹

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact Robin Thurston as soon as possible at foia@democracyforward.org or 202-448-9090.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Robin Thurston
Democracy Forward Foundation
*Counsel for the Law Center to Prevent
Gun Violence*

¹¹ The Law Center routinely researches and publishes reports in support of commonsense solutions to the epidemic of gun violence in America. These resources are maintained in the Law Center’s online resource library. *See* Publications, Law Center to Prevent Gun Violence (last visited Oct. 5, 2017), <http://smartgunlaws.org/resources/publications/>.