

**New York Office**  
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**Washington, D.C. Office**  
700 14<sup>th</sup> Street NW, Suite 600  
Washington, D.C. 20005

T 202.682.1300  
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August 9, 2019

***Via Regular Mail and Online Form***

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
Department of Justice  
Suite 11050  
1425 New York Avenue, N.W.  
Washington, D.C. 20530

Tink Cooper  
Acting Chief  
FOIA/PA Branch  
Civil Rights Division  
BICN, Room 3234  
950 Pennsylvania, N.W.  
Washington, D.C. 20530  
Email: [CRT.FOIArequests@usdoj.gov](mailto:CRT.FOIArequests@usdoj.gov)

RE: Freedom of Information Act Request

Dear Mr. Hibbard and Ms. Cooper:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is the nation’s premier legal organization fighting for racial justice. LDF’s work to address unlawful and discriminatory policing practices dates back to its inception, when founder Thurgood Marshall represented African American men who were brutally beaten by police and forced to confess to crimes they did not commit.<sup>1</sup> Since then, LDF has advocated for unbiased and responsible policing through litigation, public education, and policy advocacy. In response to the U.S. Department of Justice’s (“DOJ”) July 16, 2019 decision to not charge New York Police Department (“NYPD”) Officer Daniel Pantaleo with federal criminal charges for killing Eric Garner, we hereby request copies of the documents below pursuant to the Freedom of Information Act, 5 U.S.C. §552.

For each request below, we seek all responsive documents as defined below from January 1, 2016 to the present of the Office of the Attorney General and components or divisions of the DOJ, including the Civil Rights Division, the United States Attorney’s Office for the Eastern District of New York, and the Federal Bureau of Investigation.

The term “document” is to be interpreted in the broadest possible sense within the meaning of the Freedom of Information Act and shall include, without limitation, any written, printed, typed, spoken, computerized, or other graphic, phonic, or recorded matter of any kind or nature, however produced or reproduced, whether sent or received or neither, including drafts and copies bearing notations or marks not found on the original.

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<sup>1</sup> See, e.g., *Shepherd v. Florida*, 341 U.S. 50 (1951). See generally Gilbert King, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America* (HarperCollins 2012).

1. All documents, memoranda, correspondence, opinions, and analyses, relating to the DOJ's consideration of filing federal criminal civil rights charges against Officer Daniel Pantaleo for the death of Eric Garner including, but not limited to, documents:
  - a. analyzing, reviewing, or summarizing the investigation into the death of Eric Garner;
  - b. reporting or responding to any component of the DOJ's view on the possibility of charging Officer Daniel Pantaleo, including prosecution and closing memos;
  - c. seeking or denying authorization to begin grand jury proceedings against Officer Pantaleo; and
  - d. making or responding to a recommendation on whether to seek an indictment against Officer Pantaleo.
2. All emails between the DOJ's attorneys, agents, or other staff or contractors regarding the consideration of filing charges against Officer Pantaleo for the death of Eric Garner.
3. All evidence reviewed in consideration of filing charges against Officer Pantaleo, including, but not limited to:
  - a. documents summarizing or recording interviews of witnesses or others claiming to have or having relevant information associated with the death of Eric Garner, including any FBI FD-302 forms;
  - b. audio and video recordings, including surveillance video, and dispatch or radio recordings or transmissions; and
  - c. all physical, forensic, crime scene evidence, medical and autopsy reports, including any independent autopsy performed by a federal agency.
4. All documents or correspondence to or from the NYPD or other New York officials related to their investigation of the death of Eric Garner and Officer Pantaleo's tenure at NYPD, including, but not limited to, the following:
  - a. documents addressing the timing or delay of NYPD's investigation or disciplinary process;

- b. personnel records, disciplinary files, and civilian complaints against Officer Pantaleo; and
- c. original or amended arrest records documenting the arrest of anyone involved in or witnessing the death of Eric Garner, including the subsequent arrest of witness Ramsey Orta.

We request your response no later than 20 business days after receipt of this letter. If necessary, please provide the information on a rolling basis, especially if some of the requested information must be retrieved from other components of the federal government.

Additionally, please provide the requested information in an electronic format that is searchable and analyzable. Please also provide any individual computer records or scanned documents in a searchable format such as Microsoft Word or searchable Adobe Acrobat pdf., and any data and statistical information in a format that is searchable and analyzable, such as a txt. or .csv file or an excel spreadsheet. Documents and data extracts should include necessary variable definitions and descriptions to facilitate understanding and analysis.

We request the entire record containing the responsive information. Accordingly, we seek each document in its entirety; please do not redact portions of any record as “non-responsive” or “out of scope.”

If it is your position that any of the requested documents are exempt from disclosure, please provide a Vaughn index describing any such document(s) or parts of document(s) withheld and the justification for withholding any document(s) or any part of any document(s), including the specific exemption claimed and the consequences of providing the withheld information. *See Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973); *Mead Data Central, Inc. v. U.S. Dep’t of Air Force*, 566 F. 2d 242, 251 (D.C. Cir. 1977) (“we require that when an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply”); *King v. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (“A withholding agency must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information”). For any document or record for which an exemption is claimed, please disclose any reasonably segregable non-exempt portion of the requested document or record.

### **Request for Waiver or Limitation of Fees**

We respectfully request a waiver of all fees associated with this request because we are a 501(c)(3) non-profit organization and do not seek the records for a commercial purpose.

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The disclosure of the records is in the public interest as it will contribute significantly to the public's understanding of steps taken by the federal government to ensure the death of Eric Garner was not caused by conduct in violation of federal law. If the DOJ declines our request for a waiver, we agree to pay the \$25 FOIA processing fee and request an invoice detailing additional reasonable standard charges prior to fulfilling this request.

Please do not hesitate to contact Rashida Ogletree-George, Managing Director, Policing Reform Campaign at LDF, at [rogletree-george@naacpldf.org](mailto:rogletree-george@naacpldf.org) or 202-682-1300 with any questions regarding this request.

Sincerely,

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Sherrilyn Ifill, President & Director Counsel  
NAACP Legal Defense & Educational Fund, Inc.  
40 Rector Street, 5th Floor  
New York, NY 10006