



West Virginia

P O Box 3952
Charleston WV 25339-3952

(304) 345-9246
www.acluww.org

June 17, 2020

Kin Sayre, Esq.
City Attorney for the City of Martinsburg
Sent via email: ksayre@bowlesrice.com

Martinsburg Police Department
Attn: FOIA Request
232 North Queen St.
Martinsburg, WV 25401
Sent via mail and fax: 304-264-2110

Re: May 30 and May 31 Protests and Arrests in Martinsburg

Mr. Sayre,

I am writing on behalf of the Berkeley Unity Coalition, a group of concerned community groups and members, regarding protests in Martinsburg that took place on Saturday, May 30, and Sunday, May 31 and resulted in at the arrest of approximately 11 individuals. Pursuant to the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.* (“FOIA”), I request the following materials and any related records with regards to the above-referenced incident.

This request includes but is not limited to all records or communications preserved in electronic or written form, *including but not limited to* correspondence, data, directives, documents, videotapes, audio tapes, e-mail, **text messages**, faxes, files, guidance, guidelines, evaluations, instructions, **messages sent on social media platforms**, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, or studies. Please note that this request also includes a request for any communications sent using personal phones, email accounts, and social media accounts.¹

Requests Relating to the Protests

1. Any and all correspondence and documents relating to the May 30 and May 31 protests.
2. Any and all audio and video (including, but not limited to, dashcam and bodycam footage shared with individuals and organizations outside of the Martinsburg Police Department) relating to the May 30 and May 31 protests.
3. The name of any person arrested or taken into custody at the scene of the May 30 and May 31 protests.
4. The names and badge numbers of all department personnel who were at the scene of the May 30 and May 31 protests.

¹ Official records in the personal control of a government official are government records and subject to sunshine laws. *See, e.g., Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) (“[A]n agency always acts through its employees and officials. If one of them possesses what would otherwise be agency records, the records do not lose their agency character just because the official who possesses them takes them out the door or because he is the head of the agency.”)

5. Any notes or reports in possession of the City, including but not limited to law enforcement, from the May 30 and 31 protests.

Martinsburg Police Department Policies and Procedures

1. Procedures and/or guidelines relating to the interaction of law enforcement with individuals at protests.
2. Procedures and/or guidelines relating to required protocol to be taken by law enforcement prior to an arrest at a protest (including, but not limited to, announcements of “unlawful assembly”).
3. Procedures and/or guidelines relating to the interaction of law enforcement with Black individuals.
4. Procedures and/or guidelines relating to use of force by law enforcement.
5. Procedures and/or guidelines relating to mask usage by law enforcement and interactions with individuals with regards to the dangers posed by COVID-19.

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 preferable. If you do intend to assess fees, however, please contact me for authorization of any fees in excess of \$100.

West Virginia’s Freedom of Information Act is “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 lstark@acluwv.org.

If you have any questions or concerns, I can be reached at lstark@acluwv.org.

Regards,



Loree Stark
Legal Director, ACLU-WV