



State of West Virginia
Office of the Attorney General

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Attorney General

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Freedom of Information & Privacy Act Unit
Drug Enforcement Administration
8701 Morrissette Drive
Springfield, VA 22152

Re: Case Number 17-00308-F

Dear Sir or Madam:

As the Chief Legal Officer of the State, I am one of several state officials charged with fighting the drug epidemic in West Virginia and reversing its deadly consequences. West Virginia has the highest drug overdose death rate in the United States. In 2015, West Virginia had an age-adjusted drug overdose rate of 41.5 per 100,000 residents. This far exceeds the national average of 16.3 drug overdose deaths per 100,000. Our office is dedicated to resolving this serious issue in West Virginia.

The Controlled Substances Act ("CSA") created a closed regulatory system. It regulates the manufacturing, distributing, dispensing, and possessing of certain controlled substances. The Department of Justice's Drug Enforcement Administration ("DEA") enforces the CSA, and it plays a key role in addressing the misuse, abuse, and diversion of prescription drugs.

The CSA sorts controlled substances into five schedules based on their accepted medical uses, potential for abuse, and psychological and physical effects. Each schedule has a specific set of controls regarding the manufacture, distribution, and use of the substances. For example, Schedule II drugs demonstrate a high potential for abuse, and may potentially lead to severe psychological or physical dependence. Oxycodone, hydrocodone, and fentanyl are a few examples of Schedule II drugs.

The CSA requires the DEA to establish quotas for each basic class of Schedule I and II drugs, as well as ephedrine, pseudoephedrine, and phenylpropanolamine. The DEA utilizes its Office of Diversion Control to administer the DEA's Diversion Control Program, which includes establishing quotas for the total amount of each basic class of controlled substance that can be manufactured. The Office of Diversion Control establishes three types of quotas for Schedule II substances on an annual basis: (1) aggregate production quotas, (2) bulk manufacturing quotas, and (3) procurement quotas.

We seek to better understand the DEA's establishment and implementation of annual quotas for controlled substances under the CSA, as well as its work with other agencies. Accordingly, we request the following records under the Freedom of Information Act. Please limit each request to the time period between 2010 and 2016.

1. Any documents, letters, or communications from persons or entities requesting an upward or downward adjustment of the aggregate production quota of any opioid at year-end and any documents, letters, decisions, or communications from the DEA granting or denying the request.
2. Any documents, letters, or communications from persons or entities requesting an upward or downward adjustment of their bulk manufacturing quota of any opioid at year-end and any documents, letters, decisions, or communications from the DEA granting or denying the request.
3. Any documents, letters, or communications from persons or entities requesting an upward or downward adjustment of their procurement quota of any opioid at year-end and any documents, letters, decisions, or communications from the DEA granting or denying the request.
4. All policies and protocols the DEA and/or Office of Diversion Control utilize to set quotas.
5. Documents explaining, listing, or describing the information the DEA or Office of Diversion Control reviews, consults, or analyzes to recommend quotas, including policies or protocols listing the factors reviewed in proposing quotas.
6. All policies, procedures, or training materials regarding establishing, recommending, and implementing annual quotas.
7. Copies of internal communications regarding the efficiency and adequacy of the quota system and the sufficiency or insufficiency of the annual quotas.
8. Documents or internal communications regarding any regular process where the DEA coordinates or discusses with other agencies the annual quotas.
9. Copies of any agreement or memorandum of understanding regarding the quota process.

We request a fee waiver for this information because “disclosure of the information is in the public interest because it is likely to contribute significantly to the 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). This request for information about an important aspect of the DEA’s enforcement and administration of the CSA unquestionably satisfies these requirements. *First*, the request seeks documents related to the operations and activities of the DEA, specifically its enforcement of the CSA and establishment of quotas. *Second*, the information is likely to contribute to the public’s understanding of the DEA’s operations and activities. The requested records will provide the public with specific details on the DEA’s process for establishing quotas for each category of drugs. *Third*, our office will disseminate the information for the public through various means, including making any documents available to the general public at our main office.

The disclosure of the requested documents is directly in the public interest. Many heroin addictions begin with the use of prescription drugs and a significant number of drug-related overdoses are caused by the use of prescription drugs or heroin. This is a pervasive issue that disproportionately affects West Virginians. A fee waiver is thus appropriate, and we reserve our right to appeal a denial of such waiver. In the event that fees are not waived or reduced, please inform our office of the total charges in advance of fulfilling our request. Additionally, our office prefers the request be filled electronically, by e-mail attachment, flash drive, or CD-Rom.

In light of the importance of this inquiry to the public, we respectfully request that you disclose all responsive documents as soon as possible, but no later than the statutory timeframe of twenty business days from receipt of this letter. If our request is denied in whole or in part, we ask that you justify all denials by reference to specific exemptions. Should you assert that any of the material is exempt from disclosure, please redact the allegedly exempt sections and provide the remaining material. We reserve the right to appeal the withholding or deletion of any information.

Respectfully submitted,



Patrick Morrisey
West Virginia Attorney General