



State of West Virginia  
Office of the Attorney General

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Attorney General

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March 15, 2019

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

Re: Freedom of Information Act (FOIA) Request

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 attacking its deadly consequences. Unfortunately, West Virginia had an age-adjusted drug overdose rate of 57.8 per 100,000 residents in 2017. In my State, we are being ravaged by opioids, including many of the controlled substances currently regulated by the DEA.

We write to you seeking your assistance with the production of public records that will facilitate our efforts to combat the drug epidemic in West Virginia. As you know, the Controlled Substances Act ("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.

My office has been working with the Department of Justice to better understand the DEA's establishment and implementation of annual quotas for controlled substances under the CSA. Pursuant to emails between my office and the Department of Justice, the DEA has agreed to "use its best efforts to process a reasonable FOIA request from West Virginia as expeditiously as possible," including a commitment to "actively communicating with [the Office of the West Virginia Attorney

General], and in assisting with the narrowing of your request if DEA finds that it would prove too voluminous to conduct a search and begin rolling productions within 3 months.”

Accordingly, we request the following records under the Freedom of Information Act.

- 1) For years 2010 through 2016, inclusive, any communications that were sent to or from any of the following employees quantifying the scope and scale of opioid use, including in terms of overdoses, overdose-related deaths, average street value of prescription opioids, opioid prescriptions, or opioid wholesaler sales:
  - a) the Deputy Assistant Administrator in charge of the Office of Diversion Control; or
  - b) any Associate Deputy Assistant Administrator within the Office of Diversion Control; or
  - c) any Executive Assistant within the Office of Diversion Control; or
  - d) any Legislative/Diversion Policy Analyst within the Office of Diversion Control; or
  - e) any employee within the Diversion Planning & Resources Section; or
  - f) any employee within the Regulatory Section; or
  - g) any employee within the UN Reporting & Quota Section; or
  - h) any employee within the Liaison and Policy Section; or
  - i) any employee within the Pharmaceutical Investigations Section.
  
- 2) For years 2010 through 2016, inclusive, any reports, memoranda, or other communications quantifying the scope and scale of the “tactical diversion squad”/“TDS” program, whether at the national, regional, or individual squad level, in terms of any of the following:
  - a) funding, appropriations, and/or expenditures for tactical diversion squads; or
  - b) number of tactical diversion squads; or
  - c) number of cases and/or investigations by or involving tactical diversion squads; or
  - d) number of arrests by or involving tactical diversion squads; or
  - e) number or volume of controlled substance seizures made by or involving tactical diversion squads; or
  - f) number or volume of asset seizures made by or involving tactical diversion squads.
  
- 3) Any communications or other documents showing how and when the Office of Diversion Control accounted for diversion of prescription opioids in setting annual drug quotas for years 2010 through 2016, inclusive.

We request a fee waiver for this information, as “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. If any document responsive to a part of this request is withheld under an exemption from FOIA, we ask that you identify the specific exemption being asserted and the portion of the request that the document in question would otherwise be responsive to. 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,

A handwritten signature in blue ink that reads "PATRICK MORRISSEY". The signature is written in a cursive, slightly slanted style.

Patrick Morrissey  
West Virginia Attorney General