

February 6, 2015

Via U.S. Mail & OIP eFOIA Portal

Melanie Ann Pustay
Director, Office of Information Policy
U.S. Department of Justice
1425 New York Avenue, NW, Suite 11050
Washington, D.C. 20530-0001

RE: Freedom of Information Appeal—FOIPA Request No. 1313776-000

Dear Ms. Pustay:

I write to appeal Section Chief Hardy's December 16, 2014 denial of my above-referenced FOIA request (12/16/14 letter attached as exhibit 1) (copy of 11/17/14 FOIA request attached as exhibit 2). The Department of Justice should approve my Freedom of Information Act request and provide me with responsive documents for the reasons that follow:

I am appellate counsel for Antonio Mance, who is serving a life sentence in the State of Wisconsin for an act of self-defense. On November 24, 2009, Mr. Mance shot into a car containing Martell Rodgers and Derrick Kimber. Mance, Rodgers, and Kimber were rival drug dealers in the City of Beloit, Wisconsin. Prior to the 24th of November, Mr. Mance apparently stole contraband from Rodgers and Kimber, which led Rodgers and Kimber to instruct their confederates to kill Mr. Mance. Then, on November 24th, Mr. Mance saw Rodgers and Kimber driving towards him as Mance walked down a residential street. Mr. Mance likewise saw Kimber and Rodgers with guns that they pointed and attempted to fire at Mr. Mance. However, Kimber's gun misfired and Mr. Mance fired into their vehicle. Kimber was killed and Rodgers was injured.

Mr. Mance was arrested and charged with murder. At trial, Mr. Mance testified that he acted in self-defense, as his life had been threatened and he saw Rodgers and Kimber with guns.

Conversely, Rodgers testified to a lack of rivalry between he and Mr. Mance. Rodgers also testified that he did not have a gun on November 24th. During closing arguments, prosecutors affirmatively implied that Rodgers had no prior convictions.

However, leading up to my client's trial, State prosecutors never disclosed that Martell Rodgers had a prior felony drug conviction out of Illinois, a fact I learned through an open records request to the Illinois State Police earlier this year. I also have reason to believe that those same prosecutors ran not only Rodgers' background check through NCIC, but also other witnesses, all of whom testified to having prior convictions.


Thereafter, I made my FOIA request—seeking information about whether Rodgers' NCIC background check was run, and, if so, when, and by whom. The information I have requested is of vital importance to my client and his liberty. Moreover, if prosecutors knew of Rodgers' record and withheld exculpatory evidence (after all, a witness with a felony conviction has a motive to lie about having a gun), then that information is of vital public importance, for society must know if the powerful prosecuting arm of the State of Wisconsin is playing by the rules or, instead, is denying citizens their basic due process rights.

Whereas my client and the public have weighty interests in the information requested, Rodgers has zero personal privacy interests at stake. As stated above, I already know through publicly-available information that Rodgers has a felony drug conviction from Illinois in 2006. He was recently released from the Wisconsin State Prison system for other felony drug crimes committed in 2012. Accordingly, the questions of whether his record was run, and, if so, when and by whom, does not affect his privacy interests in any way.

Therefore, I am asking that you find that, as it relates to my request, the public's interest in disclosure is extraordinary and significantly outweighs Rodgers' personal privacy interests. Finding that, I am asking you to grant my appeal and fulfill my FOIA request.

Please let me know if you have any questions. Thank you very much for your time and consideration in this matter.

Regards,



Geoffrey R. Misfeldt, Esq.

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