

EXHIBIT E

(Attachments omitted
as duplicative)



**Murder
Accountability
Project.**

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September 24, 2020

Federal Bureau of Investigation
United States Department of Justice
Attn: Director, Office of Information Policy (OIP)
1425 New York Avenue, N.W., Suite 11050
Washington, D.C. 20530-0001

**Re: FREEDOM OF INFORMATION ACT APPEAL
FOIA Request for Homicide Records
FOIPA Request No. NFP-123614**

Dear Madam or Sir:

This constitutes the appeal of Murder Accountability Project (“MAP”) to the determination in response to its above-referenced request under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), which purports to “close,” – that is, *fully deny* – the request for assertedly “not provid[ing] enough detail ... to locate records with a reasonable amount of effort,” being “overly broad in scope” and “seek[ing] information in vague and undefined terms.” A copy of the FOIA request (“MAP’s FOIA Request”) and the FBI’s determination (“Closure Letter”) are enclosed as Attachments 1 and 2, respectively. Because the FBI’s “reasons” for closing the Request – which are unelaborated upon and unexplained – are without basis, the agency must grant this appeal, process MAP’s FOIA Request, and produce the records to which it is statutorily entitled.

As your Office is aware, “a proper FOIA request ... simply must ... reasonably describe such records” as the requester seeks, and follow procedures specified in the agency’s rules. *Property of People v. DOJ*, 310 F. Supp. 3d 57, 66 (D.D.C. 2018) (quoting 5 U.S.C. § 552(a)(3)(A)) (internal quotation marks omitted).¹ MAP’S FOIA Request satisfies this standard, for both of the (related) categories of records it seeks.

First, MAP’s FOIA Request seeks from the FBI electronic “records ... that contain details about any murders, homicides and/or manslaughters for which [the] agency had primary jurisdiction or was lead investigative agency” starting in January 1, 1989, through the present. This reasonably describes the records sought, and there is nothing vague about the subject-matter or record-formats encompassed by the Request. In fact, the FBI is required by the Uniform Federal Crime Reporting Act of 1988, 34 U.S.C. § 41303 (“UCRA”) to report data regarding crimes within its jurisdictions, including homicides, to the Uniform Crime Report (“UCR”), and its Supplementary Homicide Report (“SHR”) component. *See*

¹ There is no suggestion in the Closure Letter that proper procedures were not followed.

28 U.S.C. § 534. This presupposes the FBI has the records specified in the MAP FOIA Request, which seeks them dating back to the beginning of this statutory obligation.

The fact the Request specifies that it seeks those records only to the extent the FBI has them in electronic form (and provides preferred electronic file formats, and means of delivery) does nothing to take away from the Request's clarity or the propriety of its scope. Nor does the fact that the Request goes on to specify bulleted demographic and other data fields that MAP expects to be in the electronic records (and to identify other fields that MAP pre-consents to have redacted). In fact, these are data fields that comprise the UCR and SHR, and if anything help to *focus* the FBI on the types of records MAP seeks. The same is true of the extent to which this part of MAP's FOIA Request suggests places for the FBI to search for responsive records (its Sentinel records-management system and any similar database), which is neither "vague" nor "undefined." The Closure Letter claims the Request "does not comport" with the FBI's FOIA-request rule, 28 C.F.R. § 16.3(b), but these guiding points adhere to the rule's instruction that "requesters should include as much detail as possible about the specific ... types of records they are seeking."

The second part of the MAP FOIA Request also reasonably describes the records sought. Specifically, it asks that, if any records produced in response to the first part of the Request are missing data for any of the bulleted fields, the FBI should also produce records, even if they are not electronic, that provides the missing data. For example, if the electronic record of a given homicide is missing information on the age, race, gender, etc., of a victim or offender, but that information exists in other records maintained by the FBI, those additional records should be produced. The Request goes on to ask that, if due to pre-consented redactions any electronic records and their corresponding supplemental or non-electronic records cannot be easily paired, the FBI should use a mechanism to indicate which records pertain to the same homicide(s), such as by replacing redacted personal information with unique identifiers. To the extent these records supplemental to electronic homicide records sought in the principal request are voluminous (*i.e.*, is what the Closing Letter refers to in mentioning a "broad ... scope"), MAP is willing to confer with FBI staff to avoid duplicative production and otherwise keep the production manageable.

Against this backdrop, the Closing Letter is an opaque and in some ways self-contradictory denial of MAP's FOIA Request. The Closing letter does not explain *how* the Request is purportedly "vague" or "undefined," nor what it means in labeling the Request "compound," or what makes it "overly broad." Ironically, the Closing Letter asserts that MAP's FOIA Request "does not comport with ... § 16.3(b)" – though it does, for reasons stated above – but the Closing Letter itself, in stringing together the foregoing adjectives, fails to adhere to the rule's requirement that the FBI "inform the requester what additional information is needed" to process the request. In short, there is nothing in the Closing Letter that indicates what further information or explanation the FBI requires to deem the records sought by the Request to be "reasonably described" (not that MAP agrees this is necessary, but if it is the FBI's view that further information would be useful, it should identify that information). Moreover, the Closing Letter on one hand claims MAP did not "provide enough detail," but then seems to complain that, in specifying the format of the records sought, the data fields it is anticipated they will contain, and the places the FBI should include in its search, the Request is "compound" or "overly broad." Again, MAP is prepared to confer with the FBI to provide any clarification that might help, but the FBI

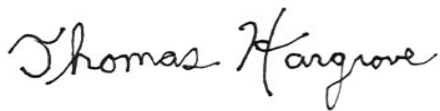
cannot deny MAP access to records on the supposed grounds that its FOIA Request both says too much and too little.

Regarding the asserted concern that the records described in MAP's FOIA Request cannot be found "with a reasonable amount of effort," at least one obvious starting point would be electronically querying the Sentinel system for cases of homicide, which should readily identify responsive material. According to the FBI's own resources, when conducting investigations, it is "required to record all activity and document all information using case files" that form a "central system for ... managing investigative resources" that "includes documentation from the inception of a case to its conclusion." *Privacy Impact Assessment for the SENTINEL System*, found at <https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/sentinel>. The Sentinel System "include[s] investigative, intelligence ... and administrative data collected by the FBI in the course of conducting its mission," including "numerous types of information that will either directly identify an individual (such as name, address, Social Security number, telephone number, e-mail address, photograph, or other unique identifying number, code, or characteristic) or that will indirectly identify an individual (such as gender, race, date of birth, place of birth, geographic indicator, license number, vehicle identifier including license plate, and other descriptors)." Information contained in Sentinel is thus precisely the kind of case-level data that MAP'S FOIA Request seeks. Any suggestion that it cannot be queried "with a reasonable amount of effort" to identify the records MAP seeks is disingenuous.

* * * *

For the reasons above, your Office must grant the instant appeal and require the FBI to process MAP's FOIA Request. We will look forward to your response within twenty (20) working days from the date you receive this appeal, as required by 5 U.S.C. § 552(a)(6)(A)(ii). Thank you for your attention in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Thomas Hargrove".

Thomas Hargrove
Chairman
Murder Accountability Project