



Texas

August 14, 2020

Texas Department of Public Safety
Office of General Counsel – Open Records
Box 4087
Austin, TX 78773-0140

Via email: OGC.Webmaster@dps.texas.gov

Re: Texas Public Information Act Request

Dear Public Information Officer:

This letter constitutes a request pursuant to the Texas Public Information Act (“TPIA”), Texas Government Code Ch. 552. This request is submitted on behalf of the American Civil Liberties Union of Texas (“ACLU of Texas”).¹ After George Floyd was killed on May 25, 2020, by Minneapolis police officers, people across the state of Texas and across the country gathered to protest police brutality and white supremacy. U.S. Customs and Border Protection (“CBP”) reportedly deployed personnel and equipment—including unmarked vehicles, aircraft, and drones—to cities and counties throughout the United States. Reportedly, at least eleven state and local agencies in Texas requested that CBP deploy personnel and/or assets to their jurisdictions in the wake of George Floyd’s death.²

A CBP document identifies the Texas Department of Public Safety as making at least five requests for the deployment of CBP personnel and/or assets to your agency’s jurisdiction since late May 2020. The document describes your agency as requesting CBP personnel and/or assets for:

- “Crowd control and physical security at one location,” in a request from your agency and the El Paso Police Department.³

¹ The ACLU of Texas, a 501(c)(3) organization, is dedicated to protecting and defending the individual rights and liberties guaranteed by the Constitution and laws. The ACLU of Texas monitors government conduct, provides free legal representation in civil rights and civil liberties cases, educates the public about their rights and liberties and abuses of power, and provides analyses to the public of government activities and their civil rights implications.

² Throughout this request, “CBP” includes the U.S. Border Patrol, including specialized Border Patrol units like the Border Patrol Tactical Unit (BORTAC), the Border Patrol Search, Trauma and Rescue Unit (BORSTAR), and Special Response teams.

See Ken Klippenstein, *The Federal Response to Protests Extends Far Beyond Portland*, *The Nation*, July 23, 2020, <https://www.thenation.com/article/society/cbp-deployment-harris/>.

³ Customs and Border Protection, *Responses to Questions from June 5, 2020 Letter from Senator Kamala Harris, et al* at 16, https://www.scribd.com/document/470148634/Responses-to-Questions#download&from_embed.

- “Crowd control and physical security at two locations,” in a request from your agency and the El Paso Police Department.⁴
- “Provide assistance with crowd control and medical response capability,” in two requests from your agency and the Pearland Police Department.⁵
- “Provide assistance with crowd control and life safety protection measures for the general public and first responders should the need arise,” in a request from your agency and the Ector County Sheriff’s Office.⁶

The ACLU of Texas seeks any and all information related to any request by the Texas Department of Public Safety and/or deployment of CBP personnel and assets to your agency’s jurisdiction between May 25, 2020 and today.

In the interest of open government, please be mindful of your duty to make a good-faith effort to fulfill the below requests and provide any relevant information that you hold. The TPIA “contains a strong statement of public policy favoring public access to governmental information and a statutory mandate to construe the Act to implement that policy and to construe it in favor of granting a request for information.” *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (2000) (citing Tex. Gov’t Code § 552.001). Pursuant to the TPIA, the ACLU of Texas requests the following information⁷ written, produced, collected, assembled, or maintained by the Texas Department of Public Safety and its employees and agents, or to which the Texas Department of Public Safety and its employees and agents have a right of access:

1. Any and all information related to any request by the Texas Department of Public Safety for the deployment of CBP personnel and/or assets—including but not limited to aviation assets,⁸ marked vehicles, unmarked vehicles, armored vehicles, ATVs, and vessels—to your agency’s jurisdiction between May 25, 2020 and today;
2. Any and all information related to the deployment of CBP personnel and/or assets—including but not limited to aviation assets, marked vehicles, unmarked vehicles, armored vehicles, ATVs, and vessels—to your agency’s jurisdiction between May 25, 2020 and today, including but not limited to the following information:
 - a. Information sufficient to show the total number of CBP personnel deployed to your agency’s jurisdiction between May 25, 2020 and today;
 - b. Information sufficient to show the total number and type of CBP assets deployed to your jurisdiction—including but not limited to aviation assets, marked vehicles,

⁴ *Id.* at 16.

⁵ *Id.* at 9, 11.

⁶ *Id.* at 12.

⁷ The term “information” as used in this request includes all records or communications in written or electronic form, including but not limited to correspondence, circulars, directives, documents, data, videotapes, audio tapes, emails, faxes, telephone messages, logs, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, training manuals, other manuals, or studies.

⁸ “Aviation assets” include but are not limited to rotor wing aircraft, fixed wing aircraft, and unmanned aircraft systems (drones).

unmarked vehicles, armored vehicles, ATVs, and vessels—between May 25, 2020 and today;

- c. Information sufficient to show the number of flight hours for any and all aviation assets deployed by CBP to your agency's jurisdiction between May 25, 2020 and today, including but not limited to the number of flight hours for rotor wing, fixed wing, and unmanned aircraft systems;
 - d. All records regarding, listing, logging, or describing surveillance or monitoring flights using CBP assets over your agency's jurisdiction from May 25, 2020 to the present;
 - e. During the deployment of any CBP personnel to your jurisdiction, information sufficient to show the total number of individuals:
 - i. Apprehended with the assistance or involvement of CBP;
 - ii. Detained with the assistance or involvement of CBP;
 - iii. Arrested with the assistance or involvement of CBP;
 - iv. Apprehended, detained, or arrested with the assistance or involvement of CBP and transferred to your agency's custody;
 - v. And, for each of the above categories, whether the individual was a U.S. citizen or a foreign national (including immigration status, where applicable).
3. Any and all information regarding policies, practices, and procedures related to requests for deployment and/or deployment of CBP personnel and/or assets to your jurisdiction, including but not limited to the expected role and conduct of CBP personnel, the use of CBP assets, surveillance by CBP, and information exchange between your agency and CBP.

The TPIA mandates that if you are unable to produce the requested information within 10 business days of this request, you certify that fact in writing and set a date within a reasonable time when the information will be available. Should you elect to withhold or delete any information, please justify your decision by referencing specific exemptions under the Act. Under provisions of the Texas Public Information Act, the ACLU of Texas reserves the right to appeal should you determine to withhold any information sought in my request.

This request is made for public and non-commercial purposes by the American Civil Liberties Union Foundation of Texas, which is a nonprofit organization whose mission is to defend and preserve individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States. Because we request this information for the benefit of the general public, we request the waiver of fees associated with this request pursuant to Tex. Gov't Code § 552.267.

To the extent possible, the ACLU of Texas requests that the requested information be provided electronically. Please do not hesitate to contact us if you have any questions or concerns by email or by telephone at the contact information provided below. Thank you for your assistance in this matter.

Sincerely,

/s/ Kathryn Huddleston
Kathryn Huddleston
ACLU Foundation of Texas
P.O. Box 8306
Houston, TX 77288
713.942.8146
khuddleston@aclutx.org

/s/ Shaw Drake
Shaw Drake
ACLU of Texas, Border Rights Center
P.O. Box 8306
Houston, TX 77288
713.942.8146
sdrake@aclutx.org