

**PAUL D. KAMENAR, ESQ.**

1629 K Street, N.W., Suite 300

Washington, D.C. 20006

[paul.kamenar@gmail.com](mailto:paul.kamenar@gmail.com)

(301) 301-257-9435

August 12, 2019

Via e-mail

[OGC\\_EFOIA@BOP.GOV](mailto:OGC_EFOIA@BOP.GOV)

FOIA/PA Section

Office of General Counsel, Room 924

Federal Bureau of Prisons

320 First Street, N.W.

Washington, D.C. 20534

**Re: FREEDOM OF INFORMATION ACT REQUEST- RE: JEFFREY EDWARD EPSTEIN, REGISTER NO. 76318-054 - EXPEDITED PROCESSING REQUESTED**

Dear BOP FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 USC 552, et seq. and Justice Department FOIA regulations, 28 C.F.R. 16.1-16.11, the National Legal and Policy Center (NLPC) hereby requests that the following records be released regarding the circumstances of the death of Jeffrey Edward Epstein, Register No. 76318-054 (Epstein) on August 10, 2019, while incarcerated at the Metropolitan Correctional Center (MCC) in New York City:

1. All photographs and videos of Epstein, both while he was alive and found unconscious in his cell, from Thursday, August 8, 2019, 0900 EST to Saturday, August 10, 2019, 0900 EST (48 hours), whether taken on MCC equipment or on the personal cameras of MCC correctional officers or staff.
2. All photographs and videos of Epstein, on or about July 23, 2019, when he was found unresponsive in his cell with marks on his neck, whether taken on MCC equipment or on the personal cameras of MCC correctional officers or staff.
3. All photographs or videos of the interior and exterior of the jail cell that was occupied by Epstein on July 23, 2019, the jail cell he occupied after he was placed on suicide watch, and the jail cell he was transferred to after he was taken off suicide watch, whether taken on MCC equipment or on the personal cameras of MCC correctional officers or staff.
4. All log records of MCC correctional officers or staff from Thursday, August 8, 2019, 0900 EST to Saturday, August 10, 2019, 0900 EST and similar records,

regardless of how they are recorded, reflecting visual checks made of Epstein and his cell, noting the time of the cell check and the condition of Epstein and any conversation between Epstein and correctional officer.

5. All internal MCC records, including emails, text messages, voicemails, telephone records, and other documents between and among MCC's Duty Officers, Warden, Chief Psychologist (Suicide Program Coordinator), correctional officers, employees, and staff, whether created on MCC equipment or personal electronic devices, regarding the physical and mental condition of Epstein on July 23, 2019, Duty Officer Incident Reports, records regarding Epstein's subsequent placement on suicide watch, including the Suicide Risk Assessment, the use of staff or inmate observers or cellmates, records regarding Epstein being taken off suicide watch, including the Watch Termination and Post-Watch Report, his transfer to the Special Housing Unit, and his condition on August 10, 2019 to the time that this FOIA request is received and processed.
6. All external MCC records, including emails, text messages, voicemails, telephone records, and other documents sent or received by MCC Duty Officers, Warden, Chief Psychologist, correctional officers, employees, and staff and to and from the Bureau of Prisons staff, including but not limited to or from Hugh J. Hurwitz, Acting Director of the Bureau of Prisons (BOP), J. Ray Ormond, Regional Director of the Northeast Region, or their assistants, deputies, or Duty Officers, regarding the physical and mental condition of Epstein on July 23, 2019, Epstein's subsequent placement on suicide watch, the use of any staff or inmate observers, Epstein being taken off suicide watch, and any subsequent use of staff or inmate observers or the placement of a cellmate, and his condition on August 10, 2019 to the time that this FOIA request is received and processed.
7. All external MCC records, including emails, text messages, voicemails, telephone records, and other documents sent or received (whether as a direct recipient or cc'd) by the MCC Warden, Duty Officers, Chief Psychologist, correctional officers, employees, and staff to or from the Main Department of Justice, including the Attorney General, the U.S. Attorney's Office in the Southern District of New York, the U.S. Marshals Service, and the Federal Bureau of Investigation, regarding the physical and mental condition of Epstein on July 23, 2019, Epstein's subsequent placement on suicide watch, Epstein being taken off suicide watch, and his condition on August 10, 2019 to the time that this FOIA request is received and processed.
8. All records and reports and drafts thereof created by MCC personnel regarding the circumstances of the death of Epstein from the time of his apparent death on Saturday, August 10, 2019, 0630 EST to the time this FOIA is processed, including any photographs or diagrams attached thereto.
9. All copies of MCC policies and protocols for Duty Officers and correctional officers and staff to follow to check on the condition of inmates housed in the

Special Housing Unit in general and any for those regarding Epstein in particular, whether the inmate is on suicide watch or not, and reports to be made regarding their observations.

10. All visitor logs of Epstein from July 23, 2019 to August 10, 2019.

Because these records are readily obtainable since they were created or received by MCC within the last couple weeks, this is a “simple” rather than “complex” request and their production should be on a “track one” and thus promptly processed. 28 C.F.R. 16.5(b).

Moreover, NLPC hereby requests and so certifies that this FOIA be expedited within 10 calendar days pursuant to 28 C.F.R. 16.5 (e)(1)(iv) because the records requested are “A matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” (Emphasis added).

First, there can be no doubt that the circumstances surrounding Mr. Epstein’s death has generated “widespread and exceptional media interest.” Second, not only do “possible questions” exist “about the government’s integrity that affect public confidence,” but actual questions have been raised about the government’s conduct in its care and handling of such a high-profile detainee who was already found to have possibly attempted suicide, that affect the “public confidence” in the Bureau of Prisons in general and the operation of the MCC in particular.<sup>1</sup> Indeed, Attorney General William P. Barr issued the following statement on August 10, 2019: “I was appalled to learn that Jeffrey Epstein was found dead early this morning from an apparent suicide while in federal

---

<sup>1</sup> See, e.g., Katie Benner, et al., New York Times, “**Before Jail Suicide, Jeffrey Epstein Was Left Alone and Not Closely Monitored: The disclosures about apparent failures in Mr. Epstein’s detention deepened the questions about his death**” (Aug. 11, 2019) (“Epstein was supposed to have had another inmate in his cell, three officials said. But the jail had recently transferred his cellmate and allowed Mr. Epstein to be housed alone, a decision that also violated the jail’s procedures, the two officials said.”)

<https://www.nytimes.com/2019/08/11/nyregion/epstein-death-manhattan-correctional-center.html>

Bill Hutchinson, et al., ABC News, “**Jail protocols for checking on Jeffrey Epstein were not followed in hours before he died by suicide: Sources**” (“Epstein should have been checked on by a correctional officer every 30 minutes, according to Bureau of Prison protocols. But sources told ABC News that protocol was not followed prior to Epstein’s death by suicide”) (Aug. 11, 2019) <https://abcnews.go.com/US/jail-protocols-checking-jeffrey-epstein-hours-died-suicide/story?id=64909860>

custody. Mr. Epstein's death raises serious questions that must be answered." (emphasis added).<sup>2</sup>

Some of those questions include why Epstein was taken off suicide watch, whether he was given anti-depressant medication, why he did not have a cellmate on August 10, and why he was put in a cell that has pipes, ceiling vents, or anchors, that would enable him to tie a makeshift noose to hang himself, whether or not he was on suicide watch.

NLPC requests that if any of the records requested contain information that are exempt from disclosure under FOIA, that those redacted portions indicate what exemption is being invoked to deny their release, and that the segregable portions that are not exempt be released. For those records that are denied in their entirety, a *Vaughn v. Rosen* index be provided with the dates of the documents that are withheld and other descriptive information justifying their non-release

NLPC submits that any photographs of the body of Epstein are not exempt from disclosure under FOIA. While it is true that in 2004, the Supreme Court upheld the withholding of the photographs of the body of Vincent Foster who committed suicide on the grounds it would constitute an invasion of privacy under Exemption 7(C) of FOIA, it did so only because of the "unwarranted" invasion of the personal privacy of Mr. Foster's family. *National Archives and Records Administration v. Favish*, 541 U.S. 157 (2004).

In that case, an Affidavit was filed by Mr. Foster's sister regarding the severe impact on her privacy and that of her mother, Mr. Foster's widow and her three children. *Id.* at 167. In this case, Jeffrey Epstein's only living close relative is his brother, Mark Epstein, who is unlikely to object to the release of the photos and indeed, may prefer their release to aid in the understanding of the circumstances of his brother's apparent suicide in custody of the government. And even if he did object, the public interest in releasing the photos would outweigh any privacy interest asserted, and thus, do not constitute an "unwarranted" invasion of his personal privacy.

Moreover, any invocation of FOIA Exemption 5 regarding internal agency records is not required by law but is discretionary on the part of the agency. The presumption is that such pre-decisional documents should be released to the public for transparency sake.

This policy was codified by the 2016 amendments to FOIA which requires the agency to justify invoking an exemption to counter past practice where agencies routinely abused their discretion by unnecessarily withholding such documents from the public by blindly and reflexively invoking an exemption:

5 USC 552 (a)(8)(A) An agency shall –  
(i) withhold information under this section only if –

---

<sup>2</sup> <https://www.justice.gov/opa/pr/statement-attorney-general-william-p-barr-death-jeffrey-epstein>

- (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or
- (II) disclosure is prohibited by law; and
- (ii)(I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and
- (II) take reasonable steps necessary to segregate and release nonexempt information;

\*\*\*\*

(emphasis added).

In addition, NLPC requests that any search and copy fees be waived inasmuch as NLPC is a non-profit public interest organization. Founded in 1991, NLPC promotes ethics in public life and government accountability through research, investigation, education and legal action. See [www.nlpc.org](http://www.nlpc.org). NLPC has filed other FOIA requests and lawsuits, including one seeking the release of a secret two-page DOJ memorandum describing the conflict of interest of Special Counsel Robert Mueller and the basis for giving him a retroactive conflict of interest waiver on May 18, 2019, the day after his appointment as Special Counsel. *NLPC v. DOJ*, No. 19-cv-1086 (JDB) (D.D.C.).

The release of these records is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. The public and especially the victims of Epstein's sexual abuse deserve to know how and why he was allowed to apparently commit suicide and escape justice while in the custody of the Justice Department. In any event, NLPC is prepared to pay \$200 in search and copy costs but reserves the right to appeal their imposition.

If you have questions regarding this request, please contact the undersigned by email at [paul.kamenar@gmail.com](mailto:paul.kamenar@gmail.com) or by cell phone at 301-257-0435 since time is of the essence.

### CERTIFICATION

I hereby certify that this FOIA request satisfies the requirement of expedited treatment under 28 C.F.R. 16.5(e)(3) because pursuant to 28 C.F.R. 16.5 (e)(1)(iv), the records requested are “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.”

/s/ Paul D. Kamenar  
Paul D. Kamenar, Esq.  
Counsel for NLPC