

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NAACP LEGAL DEFENSE &  
EDUCATIONAL FUND, INC.,

Plaintiff,

v.

MONTY WILKINSON, in his official  
capacity as Acting Attorney General of the  
United States, et al.,

Defendants.

Civil Action No. 20-1132 (JDB)

**ORDER**

Upon consideration of [57] defendants' renewed partial motion to dismiss, [61] plaintiff's motion to compel, and the entire record herein, and for the reasons stated in the accompanying Memorandum Opinion, it is hereby

**ORDERED** that [57] defendants' motion to dismiss is **DENIED**; it is further

**ORDERED** that defendants' alternative request for the Court to enter summary judgment in favor of plaintiff on plaintiff's claim under 5 U.S.C. app. 2 § 5(b)(3) is **GRANTED**; it is further

**ORDERED, ADJUDGED, and DECLARED** that Attorney General William P. Barr and the Department of Justice violated the Federal Advisory Committee Act ("FACA") by failing to ensure that the documents establishing the Presidential Commission on Law Enforcement and the Administration of Justice ("Commission") "contain[ed] appropriate provisions to assure that the advice and recommendations of the advisory committee [would] not be inappropriately influenced by the appointing authority or by any special interest, but [would] instead be the result of the advisory committee's independent judgment," as required by 5 U.S.C. app. 2 § 5(b)(3); it is further

**ORDERED** that, for any future issuance, and any existing electronic version, of the Commission's report, the statement included near the beginning of the report, see Nov. 2, 2020 Order [ECF No. 53] at 3–4, shall be amended to read:

Although the Commission which prepared this Report was subject to the Federal Advisory Committee Act (“FACA”), 5 U.S.C. app. 2, the Department of Justice (“DOJ”) and the Commission's officers violated FACA in forming and operating the Commission. In particular, DOJ and the Commission did not comply with FACA's requirements to ensure the Commission's membership is fairly balanced in terms of the points of view represented, ensure that the documents establishing the Commission contain appropriate provisions to assure that the Commission's recommendations will not be inappropriately influenced by the appointing authority or by any special interest, file a charter, select a designated federal officer, or provide timely notice of meetings in the Federal Register. For additional detail, the remedial orders of the federal district court that issued this decision are attached.

In accordance with the last sentence of the revised disclaimer, for any future issuance, and any existing electronic version, of the Commission's report, this Order shall be attached to the report along with the November 2, 2020 Order; it is further

**ORDERED** that [61] plaintiff's motion to compel is **GRANTED IN PART**; and it is further

**ORDERED** that, by not later than March 26, 2021, defendants shall (1) make an initial public release of materials covered by 5 U.S.C. app. 2 § 10(b) that have not yet been released, as described in the accompanying Memorandum Opinion;<sup>1</sup> (2) provide plaintiff an estimate of the volume of remaining materials that are subject to disclosure under Section 10(b) and a proposed

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<sup>1</sup> As explained in the accompanying Memorandum Opinion, Section 10(b) applies to documents “made available to or prepared for or by” the Commission and its working groups, which includes (1) documents submitted to the Commission (or a working group), to any Commissioner (or any working group member), or through the Commission's (or a working group's) official channels, for consideration by the full Commission (or full working group); and (2) documents authorized by Commissioners (or working group members) and represented as having been prepared on behalf of the full Commission (or full working group). Such documents were “prepared for or by” the Commission (or working group) even if they were not made available to every Commissioner (or every working group member). Specifically, defendants may not categorically withhold public comments submitted to the Commission's official email address, or documents in which the Commission solicited input from specific third parties in preparation for hearings (if authorized by at least one Commissioner and represented as being sent on behalf of the entire Commission) and any responses sent for consideration by the full Commission. Nor may defendants categorically withhold all working group records.

schedule for releasing those materials; and (3) provide plaintiff a description of any documents or categories of documents defendants continue to withhold based on a legal privilege or Freedom of Information Act exemption.

**SO ORDERED.**

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/s/  
JOHN D. BATES  
Senior United States District Judge

Dated: February 24, 2021