

August 17, 2020

BY eFOIPA

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Department of Justice (“DOJ”) regulations.

CREW requests copies of all records of the investigation referred to by Former FBI Director James Comey in his November 16, 2017 interview with the Department of Justice Office of the Inspector General into unauthorized contact between any agents or employees of the Federal Bureau of Investigation (“FBI”) to any members of the media or non-media figures about the Clinton investigation from July 4, 2016 to present. The relevant portion of the interview is attached as Exhibit A.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DOJ regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

FBI Director James B. Comey announced on July 5, 2016 that the FBI recommended to DOJ that no “charges were appropriate” with regard to former Secretary of State Hillary Clinton’s use of a personal email system.¹ Following Mr. Comey’s announcement, Rudy Giuliani made several public statements about FBI agents contacting him to discuss the investigation. For example, Mr. Giuliani claimed that the decision “perplexes numerous FBI agents who talk to me all the time.”² Director Comey, concerned about media coverage that may have been based on FBI “communications reporters or non-reporters like Rudy Giuliani” began an investigation into potential leaks, including pulling phone records and text messages.³ Members of FBI leadership later stated that fear of leaks was a part of the decision making process for Director Comey’s sending a letter to Congress October 28, 2016 about the reopening of the investigation into Secretary Clinton’s email system.⁴ Director Comey was dismissed from the FBI before any results of the investigation could be determined.

The Department of Justice Inspector General also conducted investigations into potential leaks between the FBI and members of the media, including Mr. Giuliani, after receiving notice

¹ FBI, Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton’s Use of a Personal E-Mail System, July 5, 2016 (*available at*

<https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>).

² CNN, Transcript, New Day, Aug. 11, 2016 (*available at* <http://transcripts.cnn.com/TRANSCRIPTS/1608/11/nday.05.html>); *see also* Wayne Barrett, Meet Donald Trump’s Favorite FBI Fanboy, *Daily Beast*, Nov. 3, 2016 (quoting Mr. Giuliani’s appearance on a radio program saying he knew “from a few active agents” of a “kind of revolution” at the FBI over the decision not to charge Secretary Clinton) (*available at*

<http://www.thedailybeast.com/articles/2016/11/03/meet-donald-trump-s-top-fbi-fanboy.html?via=desktop&source=twitter>); Fox News, Transcript, Giuliani: Case is Clearer Against Clinton Foundation, Nov. 2, 2016 (stating that FBI agents reached out to Mr. Giuliani and were

“outraged at being turned down by the Justice Department to open a grand jury.” (*available at* <http://www.foxnews.com/transcript/2016/11/02/giuliani-case-is-clearer-against-clinton-foundation-comey-adviser-his-silence/>).

³ Bryan Tau and Natalie Andrews, Comey Tells House Panel He Suspected Giuliani Was Leaking FBI Information to Media, *Wall Street Journal*, Dec. 8, 2018 (*available at* <https://www.wsj.com/articles/comey-tells-house-panel-he-suspected-giuliani-was-leaking-fbi-information-to-media-1544322346>).

⁴ OIG, A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election, 376, June 2018 (*available at* <https://www.justice.gov/file/1071991/download>).

that FBI employees were violating FBI policies regarding media contacts.⁵ These investigation continued after Director Comey was dismissed from the FBI May 9, 2017. Recent responsive records provided by the Office of the Inspector General (OIG) to CREW included portions of an interview of Former Director Comey discussing the investigation and Andrew McCabe's involvement in pulling emails and phone records that showed contacts that were concerning to the FBI. This is attached as Exhibit A.

Any unauthorized disclosure of information about an FBI investigation would violate the Privacy Act, 5 U.S.C. § 552a(b), and the Hatch Act, 5 U.S.C. § 7323(a)(1), if the disclosure was made with the purpose of affecting the result of the election. The requested records, therefore, would shed light on whether agents and employees violated federal law by disclosing information about active investigations to members of the media.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit as a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts all documents it receives under the FOIA its website, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

⁵ Igor Derysh, [DOJ IG Michael Horowitz: Investigation into Anti-Clinton FBI Leaks "Continues to This Day"](https://www.salon.com/2019/12/12/doj-ig-michael-horowitz-investigation-into-anti-clinton-fbi-leaks-continues-to-this-day/), *Salon*, Dec. 12, 2019 (available at <https://www.salon.com/2019/12/12/doj-ig-michael-horowitz-investigation-into-anti-clinton-fbi-leaks-continues-to-this-day/>).

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (757) 812-4513 or agerstner@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. If you are not able to produce the records electronically please contact me at agerstner@citizensforethics.org to arrange an alternative method. Thank you for your assistance in this matter.

Sincerely,

Alyssa Gerstner
Legal Intern

EXHIBIT A

1 [redacted] So is it more likely that your team knows to
2 give you a head's up [redacted]

b6 Per OIG
b7C Per OIG

b7E -1

3

4

5 MR. COMEY: Yeah, yeah.

6

[redacted] Okay.

b6 Per OIG
b7C Per OIG

7

8 MR. COMEY: I'm usually receiving on those because I'm
9 not able to keep in my head all those cases, so I trust them to
10 tell me when there is a significant development.

11

[redacted] All right. 14 minutes.

b6 Per OIG
b7C Per OIG

12

MR. BECKHARD: Let me see if I can --

13

MR. COMEY: I've got more than 14 minutes.

14

15 MR. BECKHARD: -- race through this. And there may be
16 a couple of things that you guys didn't cover --

17

[redacted] One or two.

b6 Per OIG
b7C Per OIG

18

19 MR. BECKHARD: Okay. I hope you'll take my word for
20 this. You declined to confirm the existence of the Clinton
21 Foundation investigation in you testimony to Congress in July
22 2016.

23

MR. COMEY: Okay.

24

25 MR. BECKHARD: Does that sound right? This is one of
the situations where you're asked a question about the Clinton
Foundation and you said, don't confirm or --

26

MR. COMEY: Yeah, that sounds right, about right.

27

MR. BECKHARD: Yeah. Did there come a time

1 subsequently when anyone in the FBI was authorized to publically
2 confirm the Clinton Foundation investigation?

3 MR. COMEY: Not that I remember sitting here. Did we
4 ever, did we confirm it while I was Director?

5 MR. BECKHARD: Well that's a -- we'll get to that.

6 MR. COMEY: Oh that's a question, sorry. Look at me
7 following a thread.

8 MR. BECKHARD: So if you don't remember, I suspect I
9 know what the answer to the next couple of questions are, but
10 did you ever authorize anybody to publically disclose the
11 existence of that foundation investigation?

12 MR. COMEY: Not that I recall. I don't know why, so
13 not that I recall. I don't know why I would.

14 MR. BECKHARD: Do you recall if anybody ever asked you
15 for authority to discuss the Clinton Foundation investigation
16 publically?

17 MR. COMEY: I don't. I don't recall that.

18 MR. BECKHARD: All right. I'll just show you a
19 December 2016 email and it's an email from Pete Strzok to Andy
20 McCabe and it says that, "Received word via Jen that tomorrow
21 morning Mike S. wants to talk about whether we've opened a leak
22 investigation into the publicity surrounding the C Foundation.
23 He said he would like to discuss as the D 'Would like to do
24 something.'"

25 [OFF RECORD CONVERSATION.]

1 MR. BECKHARD: Did you know what Strzok was talking
2 about in this email, the desire to do something?

3 MR. COMEY: I think he's talking about my -- there
4 were media stories about the Clinton Foundation investigation in
5 some form or fashion and it bugged me and I wanted to find out.
6 I wanted it investigated and I think the challenge we faced was
7 it wasn't classified information, so we couldn't open a leak
8 investigation in the normal way. It was the criminal case and
9 I'm pretty sure of this. I told him I don't care, I want to
10 know. I want to find who is making disclosures and nail them to
11 the wall and so see if we can do it internally. I have some
12 recollection of that.

13 And then I remember Andy periodically telling me, we
14 were pulling phone records, we were pulling text records to see
15 if we could figure out what was going on and I remember him
16 telling me that we were finding a disturbing number of contacts
17 between the FBI in New York executives and media figures, not
18 that executives can't talk to media figures, but a concerning
19 number of contacts. I think that's what, that's a follow on to
20 this. So I think it was me saying, I'm sick of reading about
21 the Clinton Foundation in the newspaper, I want to find out
22 what's going on. Sorry, that's what I think this is.

23 MR. BECKHARD: So did anything come of this effort
24 that you were hoping would take place other than just
25 determining that there were a disturbing number of contacts?

1 MR. COMEY: I don't think by the time I was fired five
2 months later, I remember periodically being told they're making
3 progress and that they were, I can't remember the names of the
4 people, but they were finding things that were concerning to
5 them, but I don't know what happened after I left.

6 MR. BECKHARD: Okay. So on the issue, the general
7 issue of your concern about media articles about the Clinton
8 Foundation investigation, did you have any discussions with
9 Mr. McCabe about that?

10 MR. COMEY: Yeah, I think that was the one to whom I
11 communicated my discomfort and said I want something done about
12 this. This is terrible. It's making us look bad. I know we
13 can't, it's not classified, so we can't make a referral, but
14 let's find out what's going on.

15 MR. BECKHARD: Okay. Do you recall anything about
16 what Mr. --

17 MR. COMEY: So I'm highly confident I talked to Andy
18 about that.

19 MR. BECKHARD: -- what Mr. McCabe might have said to
20 you?

21 MR. COMEY: No, other than he was going to march on.

22 MR. BECKHARD: Other than, yes sir.

23 MR. COMEY: He was going to march out and execute on
24 it and I'm pretty sure he came back to me and said, I found a
25 lot of stuff in New York and we're still working through it and

1 I was only there another five months, but I remember at least
2 one or two more updates on that.

3 MR. BECKHARD: So could you please describe generally
4 who in the FBI is authorized to disclose the existence of a
5 pending investigation?

6 MR. COMEY: That's a great question. I think it's
7 confined to the Director and the Deputy Director. We're the
8 two, when I was there, we were the two authorized to make public
9 statements. You mean publically, make a public statement not -?

10 MR. BECKHARD: To disclose it.

11 MR. COMEY: Yeah, and so it would be the Director or
12 the Deputy Director and there's a delegation for public comment,
13 a limited delegation, below that I think, but I think the core
14 of it is the two of us, one of us could do it.

15 MR. BECKHARD: And was there a set of criteria you
16 would consider before doing that kind of disclosure?

17 MR. COMEY: Sure, similar to what we did with the
18 email investigation and the Russia investigation, that is
19 consider whether because the default is we don't talk about it.
20 Consider whether, I'm going to forget the language of the policy
21 but, --

22 Um-hum.

23 MR. COMEY: -- consider whether the public interest
24 requires it and public interest would typically be connected to
25 things like we need to reassure the public. They were

b6 Per OIG
b7C Per OIG