

August 17, 2020

By Email: oigfoia@usdoj.gov

Deborah M. Waller
Supervisory Government Information Specialist
Office of the Inspector General
Office of General Counsel
950 Pennsylvania Ave., NW
Room 4726
Washington, DC 20530

Re: Freedom of Information Act Request

Dear Deborah Waller:

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 investigations 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 were 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/>).

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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