



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

February 22, 2021

BY EMAIL: usaeo.foia.requests@usdoj.gov

Arla Witte-Simpson
FOIA Public Liaison
Executive Office for United States Attorneys
Department of Justice
175 N Street, N.E.
Suite 5.400
Washington, DC 20530-0001

Re: Freedom of Information Act Request

Dear Ms. Witte-Simpson:

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

Specifically, CREW requests:

1. All internal communications within the U.S. Attorney's Office for the Southern District of New York relating to any planned or actual warrant, subpoena, or investigative demand directed to Rudy Giuliani from May 2020 to the date the request is processed.
2. All communications between the U.S. Attorney's Office for the Southern District of New York and DOJ's Office of the Attorney General or Office of the Deputy Attorney General relating to any planned or actual warrant, subpoena, or investigative demand directed to Rudy Giuliani from May 2020 to the date the request is processed.

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). In the event 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).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation reasonably is foreseeable, the State Department should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and agency 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).

Last summer FBI agents and prosecutors in Manhattan prepared to seek a search warrant for electronic records relating to Rudy Giuliani's communications with Ukrainian officials and oligarchs. This effort was squashed by senior DOJ officials who did not want to pursue any "aggressive investigative actions" so close to the presidential election, although the warrant was sought before the sixty day cutoff. Prosecutors sent the warrant again after the election, but it was rejected by officials at the Attorney General's office on the grounds that the election results were under dispute in several states.¹

The investigation centers around Giuliani's attempts to influence the 2020 presidential election and his dealings with Ukrainian oligarchs who claimed to have damaging information about Hunter Biden. Prosecutors also scrutinized Giuliani's relationship with Dmitry Firtash, who is under indictment in the United States. Firtash hired two lawyers close to Giuliani to avoid being extradited to the U.S., and at the same time Giuliani sought Firtash's help finding negative information about the Bidens. Prosecutors are additionally exploring the theory that Giuliani violated the Foreign Agents Registration Act in his efforts to remove Ambassador Marie Yovanovitch from office.²

The requested records will shed light on Rudy Giuliani's activities in Ukraine and will show if he illegally lobbied the Trump Administration on behalf of the Ukrainian government to alter the outcome of the 2020 Presidential election.

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

¹ Ben Protess and William K. Rashbaum, Trump Justice Department Sought to Block Search of Giuliani Records, *New York Times*, February 10, 2021, available at <https://www.nytimes.com/2021/02/10/nyregion/giuliani-trump-subpoena.html?referringSource=articleShare>

² *Id.*

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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 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 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 blogposts that report on and analyze 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 documents it receives under the FOIA on its website, which has been visited hundreds of thousands of times.

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

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at rjacobs@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. Please send the requested records to me at either rjacobs@citizensforethics.org or Rebecca Jacobs, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance.

Sincerely,



Rebecca Jacobs
Research Associate