CREW

CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

May 20, 2021

Kevin Krebs
Assistant Director, FOIA/Privacy Staff
Executive Office for United States Attorneys
Department of Justice
175 N Street, NE
Suite 5.400
Washington, DC 20530-0001

Re: Freedom of Information Act Request

Dear FOIA Officer:

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 the following:

1. All records from September 1, 2020 to the date this request is processed reflecting any written or oral communications, meetings, or phone calls relating to the @NunesAlt Twitter account between the U.S. Attorney's Office for the District of Columbia ("DC USAO") and any of the following:
   - U.S. Capitol Police;
   - Any other DOJ component, including the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, or Legislative Affairs;
   - Senator Mitch McConnell, any member of his staff, or any representative acting on his behalf; or
   - Congressman Devin Nunes, any member of his staff, or any representative acting on his behalf, including without limitation communications with attorney Steven S. Biss sent by or received from stevenbiss@earthlink.net or stevensbiss@protonmail.ch.

2. All records from September 1, 2020 to May 15, 2021 relating to any tips, complaints, inquiries, referrals, or investigations involving the @NunesAlt Twitter account.

3. All records from September 1, 2020 to May 15, 2021 relating to the November 24, 2020 grand jury subpoena issued to Twitter, Inc.

(#GJ2020111968168; USAO#2020R00007),[1] including without limitation all records relating to either the issuance or withdrawal of the subpoena.

4. Any DOJ or DC USAO policies or procedures in effect since January 1, 2020, governing the issuance of grand jury subpoenas to electronic communications service providers to "unmask" (or obtain personally-identifiable information of) the subpoenaed entity's customers or subscribers, including without limitation any policies addressing the potential First Amendment implications of such subpoenas.

5. Any DOJ or DC USAO policies or procedures in effect since January 1, 2020, governing applications for nondisclosure orders under 18 U.S.C. § 2705 relating to grand jury subpoenas issued to electronic communications service providers to "unmask" (or obtain personally-identifiable information of) the subpoenaed entity's customers or subscribers, including without limitation any policies addressing the potential First Amendment implications of such nondisclosure orders.

The above request excludes news articles, press clippings, public court filings, and other publicly-available materials lacking any accompanying discussion by government officials.

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, and anyone who was cc'ed or bcc'ed on any emails.

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).

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

[1] The subpoena and related filings are publicly available on the court's docket due to an unsealing order, which DOJ did not oppose. *See* May 16, 2021 Minute Order, *In re Grand Jury Subpoena GJ2020111968168*, 20-sc-03082-BAH (D.D.C.) (granting Twitter's unopposed motion to unseal case and certain filings).

reasonably is foreseeable, the agency 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).

According to recently unsealed court filings, DOJ obtained a grand jury subpoena in November 2020 in an attempt to identify the person behind a Twitter account, @NunesAlt, dedicated to mocking Congressman Devin Nunes.[2] Twitter opposed the subpoena and a related gag order on First Amendment grounds, arguing that it "may be related to Congressman . . . Nunes's repeated efforts to unmask individuals behind parody accounts critical of him."[3] Later reporting indicates the investigation concerns a "purported online threat to Senator Mitch McConnell, not Mr. Nunes."[4] Although DOJ withdrew the subpoena on March 17, 2021,[5] many questions remain about the circumstances surrounding the Trump DOJ's attempt to unmask the @NunesAlt Twitter user, as well as DOJ's policies and procedures, if any, governing such unmasking subpoenas issued to electronic communications service providers. The requested records will shed light on these matters of considerable public interest.

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

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[2] See *In re Grand Jury Subpoena GJ2020111968168*, 20-sc-03082-BAH (D.D.C.); Charlie Savage, Trump Justice Dept. Tried to Use Grand Jury to Identify Nunes Critic on Twitter, *New York Times*, May 17, 2021, https://nyti.ms/3wx7tdN.

[3] Twitter Mot. to Quash, *In re Grand Jury Subpoena GJ2020111968168*, 20-sc-03082-BAH, ECF No. 3 (D.D.C.), https://bit.ly/33VxtD8.

[4] Charlie Savage, Subpoena to Twitter Is Said to Concern a Purported Threat to McConnell, Not Nunes, *New York Times*, May 19, 2021, https://nyti.ms/3fwbyrI.

[5] DOJ Mem. in Opp., *In re Grand Jury Subpoena GJ2020111968168*, 20-sc-03082-BAH, ECF No. 4 (D.D.C.), https://bit.ly/3yr30La.

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 the documents it receives under the FOIA on its website.

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 (202) 408-5565 or nsus@citizensforethics.org. Also, if CREW's request for a fee waiver is denied, 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 nsus@citizensforethics.org or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005.

Sincerely,

Nikhel Sus
Senior Counsel