



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

June 14, 2021

Arnetta Mallory
Government Information Specialist
3 Constitution Square
175 N Street N.E., 12th Floor
Washington, DC 20530

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:

1. All records from January 1, 2017 to June 1, 2021 relating to any investigation of alleged unauthorized disclosures of information in which DOJ sought—through subpoenas or other means—communication records of any member of the U.S. House Intelligence Committee, their staff, or their family members, including without limitation Representatives Adam Schiff or Eric Swalwell.

The above request includes without limitation:

- a. Responsive records relating to the grand jury subpoenas issued to Apple and another electronic communications service provider in 2017 and 2018 seeking communication records of people associated with the House Intelligence Committee;
- b. Responsive records relating to any biweekly or other periodic updates regarding the investigations described above; and
- c. Responsive records created, sent, or received by the following DOJ officials:
 - William Barr
 - Jeff Sessions
 - Rod Rosenstein
 - Osmar Benvenuto
 - Seth DuCharme

- John Demers
- Julie Edelstein
- Matt Blue
- Craig Carpenito

2. All records from January 1, 2017 to June 1, 2021 reflecting DOJ's policies, procedures, or parameters governing the issuance of grand jury subpoenas seeking information relating to members of Congress or their staff or family members, or members of the news media.

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 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).

On June 10, 2021, the New York Times reported that DOJ under former President Trump took the "highly unusual step" of subpoenaing "Apple for data from the accounts

of at least two Democrats on the House Intelligence Committee” and their “aides and family members,” including one minor.¹ DOJ was reportedly “hunting for the sources behind news media reports about contacts between Trump associates and Russia.”² The investigations commenced under Attorney General Jeff Sessions and continued under Attorney General William Barr.³ The “extraordinary step of subpoenaing communications metadata from members of Congress”—a “nearly unheard-of move” in “leak investigations”⁴—has rightfully drawn intense scrutiny from Congress and the media. The requested records will shed light on this issue 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 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

¹ Katie Benner, Nicholas Fandos, Michael S. Schmit, and Adam Goldman, [Hunting Leaks, Trump Officials Focused on Democrats in Congress](https://www.nytimes.com/2021/06/10/us/politics/justice-department-leaks-trump-administration.html), *New York Times*, June 10, 2021, <https://www.nytimes.com/2021/06/10/us/politics/justice-department-leaks-trump-administration.html>.

² *Id.*

³ *Id.*

⁴ *Id.*

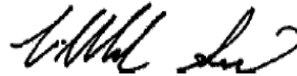
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nsus@citizensforethics.org. Also, if CREW's request for a fee waiver is denied, please contact our office immediately upon making such a determination.

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,

A handwritten signature in black ink, appearing to read "Nikhel Sus", written in a cursive style.

Nikhel Sus
Senior Counsel