

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON,	)	
	)	
Plaintiff,	)	Case No. 1:21-cv-01014-BAH
	)	
v.	)	
	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendant.	)	

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**ANSWER TO COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Defendant United States Department of Justice (DOJ), by and through its undersigned counsel, hereby answers the individually numbered paragraphs of the Complaint, ECF No. 1, filed by Plaintiff Citizens for Responsibility and Ethics in Washington (CREW) in the above-captioned case, as follows:

1. Paragraph 1 consists of Plaintiff’s characterization of this lawsuit, to which no response is required.

2. Paragraph 2 consists of Plaintiff’s characterization of this lawsuit and conclusions of law, to which no response is required.

3. Paragraph 3 consists of conclusions of law as to jurisdiction and venue, to which no response is required.

4. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 4.

5. Defendant admits that DOJ is a federal agency. The second sentence of paragraph 5 consists of conclusions of law, to which no response is required.

6. Paragraph 6 consists of Plaintiff's characterization of the contents of a letter, to which no response is required. To the extent a response is deemed to be required, Defendant respectfully refers the court to the letter referenced in paragraph 6, for a complete and accurate statement of its contents.

7. Paragraph 7 consists of Plaintiff's characterization of the contents of a letter and quotations from it, to which no response is required. To the extent a response is deemed to be required, Defendant respectfully refers the court to the letter referenced in paragraph 7 for a complete and accurate statement of its contents.

8. Paragraph 8 consists of Plaintiff's characterization of the contents of a letter, to which no response is required. To the extent a response is deemed to be required, Defendant respectfully refers the court to the letter referenced in paragraph 8 for a complete and accurate statement of its contents.

9. Paragraph 9 consists of Plaintiff's characterization of the contents of a news article, to which no response is required. To the extent a response is deemed required, Defendant respectfully refers the Court to the news article referenced in paragraph 9 for a complete and accurate statement of its contents.

10. Paragraph 10 consists of Plaintiff's characterization of the contents of several news articles, to which no response is required. To the extent a response is deemed required, Defendant respectfully refers the Court to the news articles referenced in paragraph 10 for a complete and accurate statement of their contents.

11. Paragraph 11 consists of Plaintiff's characterization of the contents of news articles, to which no response is required. To the extent a response is deemed required,

Defendant respectfully refers the Court to the news articles referenced in paragraph 11 for a complete and accurate statement of their contents.

12. Defendant admits that DOJ's Office of Information Policy ("OIP")<sup>1</sup> received a FOIA request from Plaintiff dated February 14, 2020. The remainder of paragraph 12 consists of Plaintiff's characterization of that FOIA request, to which no response is required. To the extent a response is deemed to be required, Defendant respectfully refers the Court to the FOIA request for a complete and accurate statement of its contents. *See* CREW FOIA Request to DOJ (Feb. 14, 2020) (attached as Ex. A).

13. Admitted.

14. Defendant admits that OIP sent a letter to Plaintiff dated March 16, 2020 acknowledging receipt of Plaintiff's request and assigning it reference number FOIA-2020-00228. Defendant respectfully refers the Court to that letter, which speaks for itself, for a full and accurate statement of its contents. *See* OIP Letter of Acknowledgement (March 16, 2020) (attached as Ex. B).

15. Defendant admits that, as of the date of the filing of Plaintiff's Complaint, OIP had not provided Plaintiff with a final determination on its request for a fee waiver. Defendant denies the remainder of paragraph 15, to the extent OIP communicated information to Plaintiff within its acknowledgement letter.

16. Paragraph 16 consists of a conclusion of law, to which no response is required.

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<sup>1</sup> OIP's Initial Request Staff is responsible for processing FOIA requests for records within OIP and from six senior leadership offices of the Department of Justice, specifically the Offices of the Attorney General (OAG), the Deputy Attorney General (ODAG), and the Associate Attorney General (OASG), and the Offices of Legislative Affairs (OLA), Legal Policy (OLP), and Public Affairs (PAO).

17. Paragraph 17 repeats and re-alleges the allegations contained in paragraphs 1-16 of the Complaint. To the extent a response is deemed to be required, Defendant refers the Court to its responses to paragraphs 1-16.

18. Paragraph 18 consists of a conclusion of law, to which no response is required.

19. Paragraph 19 consists of a conclusion of law, to which no response is required.

20. Paragraph 20 consists of a conclusion of law, to which no response is required.

21. Paragraph 21 consists of a conclusion of law and Plaintiff's request for relief, to which no response is required

The remaining paragraphs of the Complaint consist of Plaintiff's requests for relief, to which no response is required. To the extent a response is deemed to be required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief at all.

Defendant hereby denies all allegations in Plaintiff's Complaint not expressly admitted or denied herein.

### **DEFENSES**

1. Plaintiff is not entitled to compel production of any information exempt from disclosure by one or more of the exemptions enumerated in the FOIA, 5 U.S.C. § 552(b).

2. Plaintiff is not entitled to relief not provided for in the FOIA, 5 U.S.C. § 552.

Dated: May 26, 2021

Respectfully submitted,

BRIAN D. NETTER  
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO  
Deputy Branch Director

/s/ Kyla M. Snow  
KYLA M. SNOW  
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*Counsel for Defendant*

# **EXHIBIT A**



February 14, 2020

**BY DOJ-FOIA.ENTELLITRAK.COM**

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
Department of Justice  
6th Floor  
441 G Street, NW  
Washington, DC 20530

**Re: Freedom of Information Act Request**

Dear Mr. Hibbard:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes 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.

First, CREW seeks all documents between April 30, 2019 and February 4, 2020 concerning or reflecting any investigation, review, or other action taken by DOJ regarding or in response to Representative Adam Schiff’s request for an investigation into Erik Prince.

Second, CREW seeks all calendar entries from April 30, 2019 to the present for Attorney General William Barr reflecting appointments, including but not limited to in-person meetings or telephone conversations, related to Mr. Prince.

Third, CREW seeks all communications from April 30, 2019 to the present relating to Mr. Prince between DOJ and (1) President Trump; (2) employees within the Executive Office of the President; (3) Betsy DeVos; (4) Mr. Prince; (5) attorneys or representatives acting on behalf of Mr. Prince, including Matthew Schwartz and Victoria Toensing; or (6) the U.S. Attorney’s Office handling any investigation into Mr. Prince’s activities. This request includes without limitation the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General, and Legislative Affairs.

Fourth, CREW seeks all internal DOJ communications to or from General Barr relating to Mr. Prince between April 30, 2019 to the present.

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, as well as those who were cc’ed or bcc’ed on any emails.

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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).

### **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).

On April 30, 2019, Adam Schiff, Chairman of the House Permanent Select Committee on Intelligence (the “Committee”) referred Erik Prince to DOJ for criminal investigation.<sup>1</sup> Representative Schiff alleged that Mr. Prince misled the Committee during its investigation of Russian interference in the 2016 presidential election, and asked DOJ to determine whether Mr. Prince should be criminally charged with lying to Congress.<sup>2</sup> According to Representative Schiff, Mr. Prince’s November 2017 testimony before the Committee was “replete with manifest and substantial falsehoods that materially impaired the Committee’s investigation.”<sup>3</sup>

In February 2020, DOJ indicated that it would review Representative Schiff’s request for an investigation into Mr. Prince’s congressional testimony.<sup>4</sup> The Department provided no explanation as to why almost ten months passed before it acknowledged Representative Schiff’s request, although it apologized for the delay.<sup>5</sup> One week after DOJ indicated it would review the allegations, the *Wall Street Journal* reported that DOJ is nearing a decision on whether to charge

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<sup>1</sup> Letter from Adam Schiff, Chairman, House Permanent Select Comm. on Intelligence, to William P. Barr, Att’y Gen., Dep’t of Justice (Apr. 30, 2019), [https://intelligence.house.gov/uploadedfiles/20190430\\_cmn\\_letter\\_to\\_ag\\_re\\_prince.pdf](https://intelligence.house.gov/uploadedfiles/20190430_cmn_letter_to_ag_re_prince.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Letter from Stephen E. Boyd, Asst. Att’y Gen., Dep’t of Justice, to Adam Schiff, Chairman, House Permanent Select Comm. on Intelligence (Feb. 4, 2020), [https://s.wsj.net/public/resources/documents/DOJprinceletter02042020.pdf?mod=article\\_inline](https://s.wsj.net/public/resources/documents/DOJprinceletter02042020.pdf?mod=article_inline).

<sup>5</sup> See *id.*



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Mr. Prince.<sup>6</sup> In addition to charges related to making false statements to Congress, DOJ is apparently considering whether Mr. Prince violated U.S. export laws.<sup>7</sup>

Several individuals focused on the Prince case have raised concerns that Attorney General William Barr will “quash” the investigation against Mr. Prince.<sup>8</sup> Recently, *NBC News* reported that General Barr has been taking control of legal matters of personal interest to President Donald Trump.<sup>9</sup> For example, General Barr and his aides intervened to withdraw a stiff sentencing recommendation by career prosecutors in the case against Trump associate Roger Stone—shortly after President Trump tweeted that the sentencing recommendation was unfair.<sup>10</sup> Several former DOJ officials have argued that DOJ’s reversal on the recommendation suggests alarming political interference in the criminal justice process.<sup>11</sup> Mr. Prince, the brother of Secretary of Education Betsy DeVos, is also a Trump ally and was involved in President Trump’s campaign and transition.<sup>12</sup>

The requested records will shed light on the extent to which any DOJ investigation or review related to Mr. Prince has been influenced by political considerations or by DOJ officials seeking to accommodate the President. The records will also contribute to greater public understanding of the delay between Representative Schiff’s criminal referral and the public acknowledgement of DOJ’s review, including whether that delay politically motivated. The public has a significant interest in ensuring that DOJ’s investigations are not subject to improper interference and that DOJ conducts those investigations in a fair and impartial manner.

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

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<sup>6</sup> Aruna Viswanatha and Julie Bykowicz, [DOJ Nears Decision on Whether to Charge Blackwater Founder Erik Prince](https://www.wsj.com/articles/doj-nears-decision-on-whether-to-charge-blackwater-founder-erik-prince-11581442121), *Wall Street Journal*, Feb. 11, 2020, <https://www.wsj.com/articles/doj-nears-decision-on-whether-to-charge-blackwater-founder-erik-prince-11581442121>.

<sup>7</sup> *Id.*

<sup>8</sup> Alex Henderson, [Critics of Blackwater mercenary Erik Prince fear AG Barr will ‘quash’ DOJ case against him: report](https://www.rawstory.com/2020/02/critics-of-blackwater-mercenary-erik-prince-fear-ag-barr-will-quash-doj-case-against-him-report/), *RawStory*, Feb. 12, 2020, <https://www.rawstory.com/2020/02/critics-of-blackwater-mercenary-erik-prince-fear-ag-barr-will-quash-doj-case-against-him-report/>; Colin Kalmbacher, [Erik Prince Is Accused of Lying to Congress Multiple Times. Is William Barr About to Bury the Case?](https://lawandcrime.com/high-profile/erik-prince-is-accused-of-lying-to-congress-multiple-times-is-william-barr-about-to-bury-the-case/), *Law & Crime*, Feb. 11, 2020, <https://lawandcrime.com/high-profile/erik-prince-is-accused-of-lying-to-congress-multiple-times-is-william-barr-about-to-bury-the-case/>.

<sup>9</sup> Carol E. Lee, Ken Dilanian, and Peter Alexander, [Barr takes control of legal matters of interest to Trump, including Stone sentencing](https://www.nbcnews.com/politics/justice-department/barr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231), *NBC News*, Feb. 11, 2020, <https://www.nbcnews.com/politics/justice-department/barr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231>.

<sup>10</sup> Matt Zapotosky and Devlin Barrett, [Barr faces fresh scrutiny over Stone sentencing controversy](https://www.washingtonpost.com/national-security/barr-faces-fresh-scrutiny-over-stone-sentencing-controversy/), *Washington Post*, Feb. 12, 2020, <https://www.washingtonpost.com/national-security/barr-faces-fresh-scrutiny-over-stone-sentencing-fiasco/2020/02/12/3650c62e-4ddc-11ea-9b5c-eac5b16dafa story.html>.

<sup>11</sup> Lee, Dilanian, and Alexander, *NBC News*, Feb. 11, 2020.

<sup>12</sup> Viswanatha and Bykowicz, *Wall Street Journal*, Feb. 11, 2020; Jeremy Scahill and Matthew Cole, [The Persistent Influence of Trump’s “Shadow Adviser” Erik Prince](https://theintercept.com/2019/11/05/erik-prince-trump-ukraine-china/), *The Intercept*, Nov. 5, 2019, <https://theintercept.com/2019/11/05/erik-prince-trump-ukraine-china/>.

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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](http://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, and those documents have 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 (202) 408-5565 or [jlutkenhaus@citizensforethics.org](mailto:jlutkenhaus@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 either at [jlutkenhaus@citizensforethics.org](mailto:jlutkenhaus@citizensforethics.org) or at Jessica Lutkenhaus, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Jessica Lutkenhaus  
Legal Fellow

# **EXHIBIT B**



**U.S. Department of Justice**  
Office of Information Policy  
*Sixth Floor*  
441 G Street, NW,  
Washington, DC 20530-0001

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Telephone: (202) 514-3642

March 16, 2020

Jessica Lutkenhaus  
CREW  
11010 K Street, N.W., Suite 201  
Washington, DC 20005  
[jlutkenhaus@citizensforethics.org](mailto:jlutkenhaus@citizensforethics.org)

Re: FOIA-2020-00228

Dear Jessica Lutkenhaus:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on February 14, 2020 in which you requested various records of the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and Legislative Affairs pertaining to Erik Prince, dating from April 30, 2019.

The records you seek require a search in and/or consultation with another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2018). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request.

We regret the necessity of this delay, but we assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact this Office by telephone at the above number or you may write to the Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison, Valeree Villanueva, at the telephone number listed above to discuss any aspect of your request.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation

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services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448.

Sincerely,  
Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice