



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

January 10, 2025

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001

Office of Information Policy
Department of Justice
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Director of Public Affairs
Office of Public Affairs
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Expedited Freedom of Information Act Request

Dear FOIA Officers:

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

Specifically, CREW requests records submitted by Special Counsel John L. Smith to the Attorney General on January 7, 2025 regarding his now-concluded investigation pursuant to Attorney General Order 5559-2022, including a two-volume final report with appendices, a transmittal letter, a letter from counsel for President Trump, and a letter from Special Counsel Smith in response.¹

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,

¹ Letter from Merrick B. Garland, Attorney General, U.S. Dep’t of Justice, to Sen. Charles Grassley, Sen. Dick Durbin, Rep. Jim Jordan, Rep. Jamie Raskin, U.S. Congress (Jan. 8, 2025), <https://www.justice.gov/sco-smith/media/1383641/dl?inline>.

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 rights under FOIA. Accordingly, because litigation is reasonably foreseeable, the agency should institute an agency wide preservation hold on all 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 *id.* § 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).

The federal prosecutions of President-elect Donald J. Trump seek accountability for an unprecedented alleged criminal scheme to overturn a presidential election and disenfranchise millions of Americans, as well as the willful mishandling and wrongful retention of highly-sensitive classified documents and national defense information. After losing a presidential election, President Trump allegedly led a conspiracy of public deception, corrupt pressure on government officials, fraud, and calls for and exploitations of violence, with the goal of preventing the transfer of power to the person of the people's choosing.² Separately, President Trump, along with Waltine Nauta and Carlos De Oliveira, allegedly violated criminal prohibitions on possession of documents including "information regarding defense and weapons capabilities of both the United States and foreign countries; United States nuclear programs; potential vulnerabilities of the United States and its allies to military attack; and plans for possible retaliation in response to a foreign attack," and refused to fully cooperate with the National Archives and Records Administration and the Federal Bureau of Investigation.³ In the aftermath, the Attorney General appointed Special Counsel John L. Smith to investigate and prosecute crimes related to such conduct.⁴

² Indictment, *United States v. Trump*, No. 23-cr-257 (D.D.C., Aug. 1, 2023), https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf.

³ Superseding Indictment, *United States v. Trump*, No. 23-cr-80101 (S.D. Fla. July 27, 2023), <https://www.justice.gov/storage/US-v-Trump-Nauta-De-Oliveira-23-80101.pdf>.

⁴ Appointment of John L. Smith as Special Counsel, Order No. 5559-2022 (2022), https://www.justice.gov/d9/press-releases/attachments/2022/11/18/2022.11.18_order_5559-2022.pdf.

On November 5, 2024, Trump was re-elected as the next President of the United States. On January 8, 2025, the Attorney General informed leaders of the Committee on the Judiciary in the United States Senate and United States House of Representatives, Sen. Charles Grassley, Sen. Dick Durbin, Rep. Jim Jordan, and Rep. Jamie Raskin, that Special Counsel Smith has concluded his investigation, and on January 7, 2025, consistent with 28 C.F.R. § 600.8(c), submitted a two-volume final report with appendices, a transmittal letter, a letter from counsel for President Trump, and a letter from Special Counsel Smith in response. Especially given that the criminal prosecutions will no longer take place against President Trump, the American public has a right to know the findings of the Special Counsel regarding the allegations of crimes committed by the Chief Executive of the nation. As the Supreme Court wrote regarding President Nixon's criminal prosecution, our "historic commitment to the rule of law . . . [is] nowhere more profoundly manifest than in our view that 'the twofold aim (of criminal justice) is that guilt shall not escape or innocence suffer.'" *Nixon v. United States*, 418 U.S. 683, 708-09 (1974).

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 disseminates information obtained through FOIA to the public in several ways. For example, CREW's website receives hundreds 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. These reports frequently rely on government records obtained through FOIA. CREW also posts the documents it obtains through FOIA on its website. Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Expedited Processing Request

CREW is entitled to expedited processing because **(1)** there is an "urgency to inform the public about an actual or alleged federal government activity," and CREW "is primarily

engaged in disseminating information,” 28 C.F.R. § 16.5(e)(1)(ii); and **(2)** the requested records involve a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence,” *id.* § 165(e)(1)(iv).

- (1)** CREW is “primarily engaged in disseminating information” to the public. This “standard ‘requires that information dissemination be the main [and not merely an incidental] activity of the requestor,’” but “publishing information ‘need not be [the organization’s] sole occupation.’” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017). CREW routinely disseminates information obtained through FOIA to the public in several ways. For example, CREW’s website receives hundreds 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. These reports frequently rely on government records obtained through FOIA. CREW also posts the documents it obtains through FOIA on its website. CREW is a credible requestor and disseminator of information often relied on by major media outlets.⁵

The re-election of Donald J. Trump as the next President of the United States raises an “urgency to inform the public about [] actual or alleged federal government activit[ies]” before he is inaugurated—namely, the criminal investigations and prosecutions of the President himself. President Trump’s prosecution attracted months of the nation’s most intense and widespread

⁵ See, e.g., *Citizens for Responsibility and Ethics in Washington*, N.Y. Times, <https://www.nytimes.com/topic/citizens-for-responsibility-and-ethics-in-washington> (last visited Nov. 20, 2024) (list of numerous New York Times articles referencing CREW spanning over a decade); Ed Pilkington and Dharna Noor, *Top US ethics watchdog investigating Trump over dinner with oil bosses*, *The Guardian* (May 15, 2024), <https://www.theguardian.com/us-news/article/2024/may/15/ethics-watchdog-investigating-trump-big-oil> (referring to CREW as “Top US ethics watchdog”).

attention.⁶ The Special Counsel's conclusion of investigation and report alone generated widespread national coverage.⁷

⁶ Eric Tucker, Jill Colvin, Alanna Durkin Richer, & Lindsay Whitehurst, *Donald Trump stored, showed off and refused to return classified documents, indictment says*, AP (Jun. 9, 2023), <https://apnews.com/article/trump-justice-department-indictment-classified-documents-miami-8315a5b23c18f27083ed64eef21efff3>; *Trump Indicted, Trump Is Charged in Classified Documents Inquiry*, NY Times (Jun. 8, 2023), <https://www.nytimes.com/live/2023/06/08/us/trump-indictment-documents#justice-department-charges-trump-in-documents-case>; Rachel Weiner and Perry Stein, *Details of the 40 charges Trump faces in classified documents case*, Wash. Post (Aug. 1, 2023), <https://www.washingtonpost.com/dc-md-va/2023/06/09/trump-charges-classified-documents/>; Devlin Barrett, Spencer S. Hsu, Perry Stein, Josh Dawsey and Jacqueline Alemany, *Trump charged in probe of Jan. 6, efforts to overturn 2020 election*, Wash. Post (Aug. 1, 2023), <https://www.washingtonpost.com/national-security/2023/08/01/trump-indictment-jan-6-2020-election/>; Alan Feuer and Charlie Savage, *Special Counsel Revises Trump Election Indictment to Address Immunity Ruling*, NY Times (Aug. 28, 2024), <https://www.nytimes.com/2024/08/27/us/politics/trump-indictment-election-jan-6.html>; Kyle Cheney and Josh Gernstein, *Trump indicted again in election subversion case brought by Jack Smith*, Politico (Aug. 28, 2024), <https://www.politico.com/news/2024/08/27/trump-indicted-2020-election-subversion-00176503>; Kyle Cheney and Josh Gernstein, *The fruits of Jack Smith's 2-year investigation into Trump will land on Tanya Chutkan's desk today*, Politico (Sept. 26, 2024), <https://www.politico.com/news/2024/09/26/jack-smith-trump-investigation-dossier-00181108>; Eric Tucker, *Trump election subversion case returned to trial judge following Supreme Court opinion*, AP (Aug. 2, 2024), <https://apnews.com/article/trump-jack-smith-supreme-court-jan-6-47eebf01d4158ef808d850625df2c89e>; Andrew Goudswaard and Sarah N. Lynch, *Donald Trump faces revised US indictment in election subversion case*, Reuters (Aug. 27, 2024), <https://www.reuters.com/legal/us-brings-new-indictment-against-trump-election-subversion-case-2024-08-27/>; Eric Tucker, *Federal judge dismisses Trump classified documents case over concerns with prosecutor's appointment*, AP (Jul. 15, 2024), <https://apnews.com/article/trump-classified-documents-smith-c66d5ffb7ba86c1b991f95e89bdeba0c>; John Kruzel and Andrew Chung, *US Supreme Court rules Trump has broad immunity from prosecution*, Reuters (Jul. 1, 2024), <https://www.reuters.com/legal/us-supreme-court-due-rule-trumps-immunity-bid-blockbuster-case-2024-07-01/>; Tag Axelrod, *Trump's 3 indictments mark unprecedented moment in presidential history An expert says the only other president who came close to this fate*, ABC News (Aug. 3, 2023), <https://abcnews.go.com/Politics/trump-indictment-marks-unprecedented-moment-presidential-history/story?id=97948293>.

⁷ Alexander Mallin, Pierre Thomas, Katherine Faulders, Aaron Katersky, and Peter Charalambous, *Attorney General Merrick Garland informs Congress special counsel Jack Smith's Trump probes have concluded*, ABC News (Jan. 9, 2025), <https://abcnews.go.com/Politics/attorney-general-merrick-garland-informs-congress-special-counsel/story?id=117500334>; Chris Pandolfo, *AG Merrick Garland intends to release Special Counsel Jack Smith report on Trump election case*, FOX News (Jan. 8, 2025), <https://www.foxnews.com/politics/ag-merrick-garland-intends-release-special-counsel-jack-smith-report-trump-election-case>; Rebecca Beitsch, *Trump pushes court to block Smith report entirely*, The Hill (Jan. 9, 2025), <https://thehill.com/regulation/court-battles/5077168-trump-asks-court-block-jack-smiths-report/>; Kyle Cheney, *Garland prepares to release Jack Smith's report on 2020 election subversion case against Trump*, Politico (Jan. 8, 2025), <https://www.politico.com/news/2025/01/08/garland-prepares-to-release-jack-smiths-report-on-2020>

These news stories demonstrate that (i) the request concerns a matter of current exigency to the American public; (ii) the consequences of delaying a response would compromise a significant recognized interest; and (iii) the request concerns federal government activity. *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001).

First, the requested records concern a matter of current exigency to the American public insofar as they are “the subject of a currently unfolding story” about Special Counsel Smith’s report. *Id.* at 310. As mentioned above, there has already been tremendous coverage over the details of the report’s release, including the Attorney General’s decision and the federal court’s injunction.⁸

Second, while Attorney General Garland has pledged to make the reports public, the Trump administration can decide otherwise after January 20, which will deprive the American public of the findings of the Special Counsel regarding President Trump’s allegedly criminal conduct. “[A] democracy is effective only if the people have faith in those who govern, and that faith is bound to be shattered when high officials . . . engage in activities which arouse suspicions of malfeasance and corruption.” *United States v. Mississippi*, 364 U.S. 520, 562 (1961). President Trump is the criminal defendant in these investigations and prosecutions. As such, delaying a FOIA response beyond inauguration, and especially beyond the next Attorney General’s confirmation, would place the American public’s access to the

[0-election-subversion-case-against-trump-00197056](#); Carrie Johnson, *Justice Department wants to release only part of its report on Trump cases*, NPR (Jan. 8, 2025), <https://www.npr.org/2025/01/08/g-s1-41562/jack-smith-trump-appeal>; Paula Reid, Tierney Sneed and Devan Cole, *Special counsel Jack Smith drops election subversion and classified documents cases against Donald Trump*, CNN (Nov. 25, 2024), <https://www.cnn.com/2024/11/25/politics/trump-special-counsel-jack-smith/index.html>; Pierre Thomas, Alexander Mallin, and Aaron Katersky, *Special counsel Jack Smith expected to wind down Trump prosecutions: Sources*, ABC News (Nov. 6, 2024), <https://abcnews.go.com/Politics/special-counsel-jack-smith-expected-wind-trump-prosecutions/story?id=115571646>; Molly Bohannon, *Trump Federal Cases Officially End: Appeals Court Drops Documents Case At Jack Smith’s Request*, Forbes (Nov. 26, 2024), <https://www.forbes.com/sites/mollybohannon/2024/11/26/trump-federal-cases-officially-end-appeals-court-drops-documents-case-at-jack-smiths-request/>; Katelyn Polantz, *Garland tells Congress he plans to make Jack Smith report on Trump cases available once courts allow*, CNN (Jan. 9, 2025), <https://www.cnn.com/2025/01/09/politics/merrick-garland-special-counsel-report-trump/index.html>; Erin Doherty and Ivana Saric, *Garland plans to release Jack Smith’s Jan. 6 report over Trump’s objections*, Axios (Jan. 8, 2025), <https://www.axios.com/2025/01/08/doj-jack-smith-trump-2020-election-classified-docs>; Ivana Saric, *Oversight Dems want Jack Smith’s report on Trump’s classified documents case*, Axios (Jan. 9, 2025), <https://www.axios.com/2025/01/09/oversight-dems-doj-letter-trump-classified-documents>; Rebecca Beitsch, *Garland tells Congress he’ll provide Trump special counsel report to leaders when courts allow*, The Hill (Jan. 9, 2025), <https://thehill.com/policy/national-security/5076281-donald-trump-merrick-garland-jack-smith-special-counsel-report/>.

⁸ See *supra* note 7.

findings of the Special Counsel in the hands of the defendant and his administration's Attorney General.

Finally, the alleged conduct of President Trump, as well as the investigation and prosecution conducted by Special Counsel Smith, concern quintessential federal government activity.

- (2) President Trump's now-concluded prosecution is also a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." As mentioned above, the prosecution of President Trump and the Special Counsel's report is a matter of widespread and exceptional media interest. Such media interest affects public confidence in two ways. First, as mentioned above, the investigations and prosecutions allegedly seek accountability for an unprecedented criminal scheme to overturn a presidential election and disenfranchise millions of Americans, as well as for the willful mishandling and wrongful retention of highly-sensitive classified documents and national defense information. Such alleged conduct of a then-former President itself raises serious questions about the integrity of the Executive Branch under his leadership.⁹ Second, the pace of the Special Counsel's prosecution has raised questions in the media about the Department of Justice's decisionmaking with respect to the high-stakes and high-profile prosecutions of President Trump, and has affected public confidence in the Department's ability to seek accountability of powerful figures such as President Trump.¹⁰

⁹ See, e.g., The Editorial Board, *Donald Trump Is Unfit to Lead*, N.Y. Times (July 11, 2024), <https://www.nytimes.com/interactive/2024/07/11/opinion/editorials/donald-trump-2024-unfit.html>; Mary Clare Jalonick, Eric Tucker, Farnoush Amiri, Jill Colvin, Michael Balsamo, & Nomaan Merchant, Trump 'lit that fire' of Capitol insurrection, Jan 6 Committee report says, PBS (Dec 23, 2022), <https://www.pbs.org/newshour/politics/trump-lit-that-fire-of-capitol-insurrection-jan-6-committee-report-says>; Jack Forrest, Tierney Sneed, Hannah Rabinowitz, & Holmes Lybrand, *Pence and Trump's frayed relationship leading up to Jan. 6 insurrection on full display in latest special counsel filing*, CNN (Oct. 3, 2024), <https://www.cnn.com/2024/10/03/politics/pence-trump-january-6-special-counsel-filing/index.html>; Times Union Editorial Board, *Editorial: Donald Trump is unfit*, Times Union (Oct. 26, 2024), <https://www.timesunion.com/opinion/article/editorial-donald-trump-unfit-19859910.php>; Mark S. Brodin, *Trump's insurrection should disqualify him for office*, Commw. Beacon (Sept. 4, 2023), <https://commonwealthbeacon.org/opinion/trumps-insurrection-should-disqualify-him-for-office/>; see also *supra* note 6.

¹⁰ See, e.g., Glenn Thrush & Adam Goldman, *Inside Garland's Effort to Prosecute Trump*, N.Y. Times (Mar. 27, 2024), <https://www.nytimes.com/2024/03/22/us/politics/trump-jan-6-merrick-garland.html>; Ankush Khardori, *Trump Got Away With It — Because of the Biden Administration's Massive Missteps*, Politico (Nov. 7, 2024), <https://www.politico.com/news/magazine/2024/11/07/trump-legal-failures-blame-column-00187945>; Andrea Beaty & Emma Marsano, *Justice's Slow Prosecution of Trump Is Just the Start of Their Sluggishness*, The American Prospect (April 11, 2024), <https://prospect.org/justice/2024-04-11-justice-department-slow-prosecution-trump-lisa-monaco/>; Chris Lehmann, *Why Did Trump's January 6 Indictment Take So Long?*, The Nation (Aug. 2, 2023),

The undersigned certifies that the above statement is true and correct.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please email me at [REDACTED] and [REDACTED] or call me at (202) 408-5565. 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 [REDACTED] and [REDACTED] or by mail to Chun Hin Jeffrey Tsoi, Citizens for Responsibility and Ethics in Washington, 1331 F St. NW, Suite 900, Washington, D.C. 20004. Thank you for your assistance in the matter.

Sincerely,



Chun Hin Jeffrey Tsoi
Senior Legal Fellow



Alex Goldstein
Associate Counsel

<https://www.thenation.com/article/politics/trump-indictment-merrick-garland/>; William Rivers Pitt, *Why Is Merrick Garland Throttling the Trump Investigation?*, Truthout (April 8, 2022), <https://truthout.org/articles/why-is-merrick-garland-throttling-the-trump-investigation/>; see also *supra* note 6-7.