

CREW | citizens for responsibility and ethics in washington

November 22, 2016

BY EMAIL: foiparequest@ic.fbi.gov

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

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 Department of Justice (“DOJ”) regulations.

CREW requests copies of all communications between any agents or employees of the Federal Bureau of Investigation (“FBI”) and James Kallstrom from October 1, 2015 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.

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 will likely 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).

In October 2015, President Obama said on 60 Minutes that Secretary of State Hillary Clinton's emails were not a national security issue.¹ In an interview follow that statement, Mr. Kallstrom was asked: "So you know a lot of the agents involved in the investigation. How angry must they be tonight?"² Mr. Kallstrom responded that he had discussed the investigation with FBI agents, saying: "I know some of the agents. I know some of the supervisors and I know the senior staff. And they're P.O.'d, I mean no question."³

In addition, FBI Director James B. Comey announced on July 5, 2016 that the FBI recommended to DOJ that no "charges were appropriate" with regard to former Secretary Clinton's use of a personal email system.⁴ According to Mr. Kallstrom, following that decision FBI agents again contacted him to him to discuss the investigation. For example, Mr. Kallstrom said he "talked to about 15 different agents today, both on the job and off the job, that are – you know, that are basically worried about the reputation of the agency they love."⁵ On September 28, 2016, Mr. Kallstrom said he had spoken to at least "a few [agents] on the job," and that those "involved in this thing feel like they've been stabbed in the back."⁶

Any unauthorized disclosure of information about an FBI investigation would violate the Privacy Act, 5 U.S.C. § 552a(b), and the Hatch Act, 5 U.S.C. § 7323(a)(1), if the disclosure was made with the purpose of affecting the result of the election. The requested records, therefore, would shed light on whether agents and employees violated federal law by disclosing information to Mr. Kallstrom.

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

¹ Wayne Barrett, *Meet Donald Trump's Favorite FBI Fanboy*, *Daily Beast*, Nov. 3, 2016 (available at <http://www.thedailybeast.com/articles/2016/11/03/meet-donald-trump-s-top-fbi-fanboy.html?via=desktop&source=twitter>).

² Fox News, Transcript, *FBI Reportedly Upset With Obama Over Clinton Server Scandal*, Oct. 16, 2015 (available at <http://www.foxnews.com/transcript/2015/10/16/fbi-reportedly-upset-with-obama-over-clinton-server-scandal-krauthammer-calls/>).

³ *Id.*

⁴ FBI, *Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System*, July 5, 2016 (available at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>).

⁵ Fox News, Transcript, *Brit Hume: Comey's Statement Blew Up Clinton's Network of Lies*, July 5, 2016 (available at <http://www.foxnews.com/transcript/2016/07/05/brit-hume-comey-statement-blew-up-clinton-network-lies-speaker-paul-ryan/>).

⁶ Barrett, *Daily Beast*, Nov. 3, 2016.

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, and through www.scribd.com. 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 a blog that reports on and analyzes 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 all of the documents it receives under the FOIA at www.scribd.com, and those documents have been visited hundreds of thousands of times.

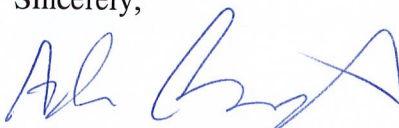
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

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 arappaport@citizensforethics.org. CREW also welcomes the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the FBI to process it within the FOIA's deadlines. In addition, 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 arappaport@citizensforethics.org or at Adam J. Rappaport, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., 6th Floor, Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Adam J. Rappaport
Chief Counsel