

December 13, 2017

BY EMAIL: oigfoia@usdoj.gov

Deborah M. Waller
Government Information Specialist
U.S. Department of Justice
Office of the Inspector General
Office of General Counsel
950 Pennsylvania Ave., N.W.
Room 4726
Washington, D.C. 20530

Re: Freedom of Information Act Request

Dear Ms. Waller:

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.

Specifically, CREW requests all communications concerning the decision to invite reporters to DOJ on December 12, 2017, for the purpose of sharing with them private text messages sent during the 2016 presidential campaign by two former FBI investigators on Special Counsel Robert Mueller’s team. This request includes, but is not limited to: (1) communications with reporters regarding this meeting; (2) communications within DOJ about whether, when, and how to share the text messages with reporters including, *inter alia*, the Office of the Inspector General, the Attorney General, the Office of Legislative Affairs, the Deputy Attorney General, the Associate Attorney General, the Office of Public Affairs, and any individual within the senior leadership offices of DOJ; and (3) communications with any member of Congress and/or their staff regarding this matter.

CREW further requests documents reflecting who made the decision to release this material to reporters on the evening of December 12, 2017.

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). 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).

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).

It was just reported that last evening, in advance of Deputy Attorney General Rod J. Rosenstein's testimony today before the House Judiciary Committee, DOJ took the unprecedented step of inviting a group of reporters to its offices to view private text messages, which were critical of President Trump and sent during the 2016 campaign by two former FBI investigators who, until recently, served on Special Counsel Robert Mueller's team. Natasha Bertrand, *In 'highly unusual' move, DOJ secretly invited reporters to view texts sent by ousted FBI agents*, *Business Insider*, Dec. 13, 2017, *available at* <http://www.businessinsider.com/peter-strzok-page-texts-mueller-russia-trump-2017-12>. The article cites a source who "said the texts were given to reporters in case they did not leak in time for Deputy Attorney General Rod Rosenstein's public hearing on Wednesday morning." *Id.* Deputy Attorney General Rosenstein acknowledged during his testimony that there had been a decision that the texts "were fit for public consumption," and that the inspector general had been consulted "to determine that he had no objection to releasing the material." *Id.*

Given this highly unusual, if not unprecedented, action to secretly leak the contents of documents currently under review by your office, the public has a clear and pressing interest in learning whether the leak was properly authorized and the extent to which the interests of the texts' authors, the inspector general, and DOJ's interests in the orderly administration of justice were appropriately considered and protected. This need is made more compelling by the concern expressed by a former DOJ official that the leak was done "so Rosenstein can get credit from House Republicans at his hearing today." *Id.* Only through the full disclosure of the facts and circumstances surrounding this decision can the public have confidence in the actions and integrity of the Justice Department.

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 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 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.

Request for Expedition

Finally, please be advised that CREW also has requested expedition of this request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity that affect public confidence. Pursuant to 28 C.F.R. § 16.5(2), CREW submitted that request to the Director of Public Affairs; a copy of this request is enclosed.

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 aweismann@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 aweismann@citizensforethics.org or Anne L. Weismann, Citizens for

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Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W. Washington, D.C.
20001. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

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