

October 31, 2017

BY FACSIMILE: (202) 514-1009

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
Suite 11050
1425 New York Ave., N.W.
Washington, D.C. 20530-0001

Re: Expedited Freedom of Information Act Request

Dear Ms. Day:

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 the Justice ("DOJ") regulations.

Specifically, CREW requests:

- (1) copies of all memoranda, directives, and guidance related to the Attorney General's succession plan under 28 U.S.C. § 508 since January 21, 2017;
- (2) a copy of Attorney General Order 2877-2007 and documents sufficient to identify whether this order is still in effect;
- (3) copies of all memoranda and internal and external communications since January 21, 2017, including but not limited to communications and correspondence with congressional members or staff, concerning DOJ regulations governing the special counsel, 28 C.F.R. § 600,
- (4) documents sufficient to show the budget approved for Special Counsel Robert Mueller's investigation and any budget requests submitted by Mr. Mueller pursuant to 28 C.F.R. § 600.8;
- (5) copies of all material relating to the letter sent by the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit in August or September 2013, to the Attorney General at the direction of the Court in *United States v. Bartko*, 728 F.3d 327 (4th Cir. 2013);
- (6) copies of all documents pertaining to the September 2013 decision of the U.S. Attorney for the Eastern District of North Carolina to remove Robert J. Higdon, Jr., from

his role as head of the office's criminal division and his assignment to DOJ's Public Integrity Section;

(7) copies of curriculum vitae submitted pursuant to their employment at DOJ for:

- Dana Boente, U.S. Attorney, Eastern District of Virginia
- Stephen Elliott Boyd, Assistant Attorney General, Office of Legal Affairs
- Rachel Brand, Associate Attorney General
- Makan Delrahim, Assistant Attorney General, Antitrust Division
- Noel Francisco, Solicitor General
- Robert J. Higdon, U.S. Attorney, Eastern District of North Carolina
- John R. Parker, U.S. Attorney, Northern District of Texas
- Rod Rosenstein, Deputy Attorney General
- Beth Ann Williams, Assistant Attorney General, Office of Legal Policy; and

(8) copies of all documents pertaining to any ethics or conflicts of interest waivers or analyses conducted regarding Mr. Mueller and his role as Special Counsel.

For each of these categories, CREW requests that a search be conducted of the Offices of the Attorney General, the Deputy Attorney General, the Associate Attorney General, the Office of Legal Policy, the Office of Legislative Affairs.

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 emails to which the subjects of this request were cc'ed or bcc'ed.

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).

President Trump's decision to fire then-FBI Director James Comey set off a chain of events that led to the appointment of Special Counsel Robert Mueller by Deputy Attorney General Rod Rosenstein following Attorney General Jeff Session's recusal decision. Since that appointment, the President has voiced repeatedly his opposition to the appointment and the work of the special counsel, raising widespread fears that he would take steps to have Mr. Mueller removed. All of this has called particular attention to the line of succession at DOJ. Recent events, such as the resignation of Dana Boente, U.S. Attorney for the Eastern District of Virginia, and the appointment and confirmation of Robert Higdon to be the U.S. Attorney for the Eastern District of North Carolina, highlight these concerns as each is in the line of succession spelled out in the executive order President Trump issued on March 31, 2017, *Providing an Order of Succession Within the Department of Justice*.

The requested records would shed light on these issues by informing the public about the currently effective line of succession at DOJ, what if any steps DOJ has taken to constrain the work of the special counsel in any way, and the appointment of Mr. Higdon as U.S. Attorney notwithstanding his actions that led him to be removed from his position after a sharp rebuke from the U.S. Court of Appeals. At a time of great upheaval in our country, when the President and his top campaign officials are under investigation for their potential role in Russia's interference with the 2016 presidential election, the public has a significant and heightened interest in the requested documents. The requested documents would help answer some of the questions that have been raised about the integrity of DOJ and this administration.

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 blog posts 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, which has 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(e)(2), CREW submitted a 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 on an expedited basis, 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 at aweismann@citizensforethics.org or Anne Weismann, Citizens for 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

Encl.