

April 26, 2018

BY FACSIMILE: (540) 868-4391/4997

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.

Specifically, CREW requests copies of all records pertaining to the FBI’s investigation of the source of the leak of information to Rudolph Giuliani in October 2016 that then-FBI Director James B. Comey was going to reopen the investigation into former Secretary of State Hillary Clinton’s use of a personal email system, which Mr. Comey announced on October 28, 2016.

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 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).

On October 28, 2016, 11 days before the election, then-FBI Director Comey sent a letter to Congress announcing that the FBI was reopening its investigation into Hillary Clinton's emails in light of new information found, but not yet examined by the FBI.¹ Two days earlier Mr. Giuliani telegraphed this announcement on Fox News, stating "I do think that all of these revelations about Hillary Clinton are beginning to have an impact. He's got a surprise or two that you're going to hear about in the next two days."² Mr. Giuliani subsequently admitted that he had received advanced notice of this development, stating on Fox News on November 4, 2016, "Did I hear about it? You're darn right I heard about it. And I can't even repeat the language that I heard."³ More recently, when asked whether Mr. Giuliani had received advance notice from the FBI about the FBI's reopening of its investigation, Mr. Comey stated:

I saw that same publicity and so I commissioned an investigation to see if we could understand whether people were disclosing information out of the New York office or any other place that resulted in Rudy's report on Fox News and other leaks that we were seeing in the media.⁴

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 FBI agents and employees violated federal law by disclosing information to Mr. Giuliani. Further, given Mr. Giuliani's newly acquired role as counsel for President Trump for the Mueller investigation and his very high public profile, the public has a significant interest in knowing to what extent he participated in the disclosure of information that many believe was responsible for then-candidate Clinton's defeat. Some have suggested his role

¹ The letter can be found at <https://www.politico.com/story/2016/10/full-text-fbi-letter-announcing-new-clinton-review-230463>.

² Erik Wemple, *Rudy Giuliani's Pre-election Comments on Fox News Prompted an FBI Leak Investigation*, *Washington Post*, Apr. 20, 2018, available at https://www.washingtonpost.com/blogs/erik-wemple/wp/2018/04/20/rudy-giulianis-pre-election-comments-on-fox-news-prompted-an-fbi-leak-investigation/?utm_term=.59eef07e566d (quoting Rudolph Giuliani).

³ *Id.* (quoting Rudolph Giuliani).

⁴ *Id.* (quoting James Comey).

as “an active purveyor of pre-election leaks about the FBI probe into Hillary Clinton’s emails” could pose a conflict if he becomes a witness in any case Special Counsel Mueller brings.⁵

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 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 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.

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

⁵ Josh Gerstein and Darren Samuelsohn, *Giuliani’s History Raises Legal Questions as He Takes on Trump Defense*, *Politico*, Apr. 21, 2018, available at <https://www.politico.com/story/2018/04/21/giuliani-trump-defense-questions-544703>.

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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,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', with a long horizontal flourish extending to the right.

Anne L. Weismann
Chief FOIA Counsel