

March 19, 2018

BY FAX: (540) 868-4391

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

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this expedited 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 all documents related to any investigation or inquiry conducted by the FBI's Office of Professional Responsibility ("OPR") of, involving, or relating to former FBI Deputy Director Andrew McCabe, who was fired by Attorney General Jeff Sessions on March 16, 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, 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).

On the evening of March 16, 2018, Attorney General Sessions announced he had fired Mr. McCabe less than two days before Mr. McCabe was to retire. The attorney general justified the firing by citing investigations by both DOJ's Office of Inspector General and the FBI's OPR that reportedly had found "that Mr. McCabe had made an unauthorized disclosure to the news media and lacked candor – including under oath – on multiple occasions."¹ Reportedly, OPR had recommended that Mr. McCabe be fired.² Since this announcement, there has been widespread speculation that the decision to fire Mr. McCabe was a political one made at the urging of President Donald Trump. The requested records will shed light on the underlying basis for Mr. McCabe's termination and allow the public to access the credibility of allegations of political motivation and the role the president may have played in the attorney general's decision. As a top FBI official, Mr. McCabe's privacy interests clearly are outweighed by the public interest in the requested information, especially given what the attorney general already has revealed in explaining his decision to terminate Mr. McCabe's employment.

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)

¹ Matt Zapotosky, *Andrew McCabe, Trump's Foil at the FBI, Is Fired Hours Before He Would Retire*, *Washington Post*, Mar. 17, 2018 (quoting Attorney General Sessions), available at https://www.washingtonpost.com/world/national-security/fbis-andrew-mccabe-is-fired-a-little-more-than-24-hours-before-he-could-retire/2018/03/16/e055a22a-2895-11e8-bc72-077aa4dab9ef_story.html?utm_term=.48644c46b565.

² *Id.* See also Associated Press, *Sessions Fires Former FBI Deputy Director McCabe*, *New York Times*, Mar. 16, 2018, available at <https://www.nytimes.com/aponline/2018/03/16/us/politics/ap-us-clinton-emails-inspector-general.html>.

(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 reports 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, and that site 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 at Anne L. 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.