

November 8, 2018

By email: [JMDFOIA@usdoj.gov](mailto:JMDFOIA@usdoj.gov)

Karen McFadden  
FOIA Contact  
Justice Management Division  
Department of Justice  
Room 1111 RFK, 950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Re: Expedited Freedom of Information Act Request

Dear Ms. McFadden:

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.

First, CREW requests copies of all ethics waivers or authorizations granted to now-Acting Attorney General Matthew Whitaker under Executive Order 13770, 5 C.F.R. § 2635.502(d), and/or 28 C.F.R. § 45.2(b) from September 1, 2017 to the present.

Second, CREW requests copies of all communications concerning ethics advice given to Acting Attorney General Whitaker, including but not limited to any ethics advice provided to him, from September 1, 2017 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, as well as emails to which the subjects of this request were cc’ed or bcc’ed.

### **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 November 7, 2017, Attorney General Jeff Sessions tendered his resignation in response to a request from President Donald Trump that he resign. President Trump named Mr. Whitaker, Attorney General Sessions' chief of staff, as acting Attorney General rather than Deputy Assistant Attorney General Rod J. Rosenstein, who is next in the line of succession. In that capacity Mr. Whitaker will assume oversight responsibility for the ongoing investigation by Special Counsel Robert Mueller into the activities of President Trump and his campaign, as well as other investigations and prosecutions related to President Trump, his businesses, and his campaign. This unusual appointment has raised concerns that Mr. Whitaker, who has publicly and repeatedly made statements about the Special Counsel's investigation that reflect personal bias and prejudgment,<sup>1</sup> was selected to hinder or shut down that investigation. The requested documents will shed light on whether Mr. Whitaker has sought and been granted a waiver or authorization and the timing of any waiver or authorization or any ethics advice about recusal given his numerous public statements that cast doubt on his impartiality.

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](http://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 reports on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to

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<sup>1</sup> *See, e.g.*, Matthew Whitaker, *Comey served faithfully, but the president made the right decision*, *The Hill*, May 10 2017, available at <https://thehill.com/blogs/pundits-blog/the-administration/332812-jim-comey-served-faithfully-but-the-president-made-the>; Wolf, *Transcript*, *CNN*, June 8, 2017, available at <http://transcripts.cnn.com/TRANSCRIPTS/1706/08/wolf/01.html>; Mornings on the Mall, *Former U.S. Attorney MATTHEW WHITAKER gives us an overview on Comey's testimony*, *WMAL*, June 9, 2017, available at <http://www.wmal.com/2017/06/09/listen-former-u-s-attorney-matthew-whitaker-gives-us-an-overview-on-comeys-testimony/>; *CNN Tonight*, *Transcript*, *CNN*, June 13, 2017, available at <http://transcripts.cnn.com/TRANSCRIPTS/1706/13/cnnt.02.html>.

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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 that request to the Director of Public Affairs; a copy of the 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](mailto: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](mailto: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.