

CREW | citizens for responsibility and ethics in washington

May 29, 2019

By Facsimile: (202) 514-1009

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

Re: 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 Justice (“DOJ”) regulations.

First, CREW seeks all records related to the decision to provide the personal counsel for President Donald J. Trump an opportunity to read a final version of the redacted Report On The Investigation Into Russian Interference In The 2016 Presidential Election produced by Special Counsel Robert S. Mueller, III (“Mueller Report”) before it was publicly released, including but not limited to any guidance related to the now-expired provisions in the Ethics in Government Act related to independent counsels that Attorney General William Barr suggested impacted the decision to grant the request by President Trump’s lawyers.¹

Second, CREW requests records sufficient to demonstrate whether any individual other than President Trump who was named in the Mueller Report requested and/or was provided a similar opportunity to review the report before it was publicly released.

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

¹ Statement of William P. Barr Attorney General, Before the U.S. Senate Committee on the Judiciary, May 1, 2019, (“Barr May 1 Statement”), available at <https://www.judiciary.senate.gov/imo/media/doc/Barr%20Testimony1.pdf>.

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).

During his April 18, 2019 press conference ahead of the release of the Mueller Report, Attorney General Barr stated that earlier in the week “the President’s personal counsel requested and were given the opportunity to read a final version of the redacted report before it was publicly released. That request was consistent with the practice followed under the Ethics in Government Act, which permitted individuals named in a report prepared by an Independent Counsel the opportunity to read the report before publication.”² Attorney General Barr also stated during his May 1, 2019 testimony before the Senate Judiciary Committee that the Justice Department “permitted the Office of the White House Counsel and the President’s personal counsel to review the redacted report prior to its release, but neither played any role in the redactions process.”³ According to Attorney General Barr, “[r]eview by the president’s personal counsel was a matter of fairness in light of my decision to make public what would otherwise have been a confidential report, and it was consistent with the practice followed for years under the now-expired Ethics in Government Act.”⁴ Four of President Trump’s personal lawyers reportedly spent at least 10 hours reviewing the Mueller Report over the course of two days, taking notes on legal pads.⁵

The decision to share the report with President Trump’s lawyers prior to publication “sparked a debate over whether [Attorney General] Barr acted properly in sharing the report” before sending it to Congress, according to *CNN*.⁶ Paul Rosenzweig, who served as senior

² Press Release, Attorney General William P. Barr Delivers Remarks on the Release of the Report on the Investigation into Russian Interference in the 2016 Election, April 18, 2019, *available at* <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-release-report-investigation-russian>.

³ Barr May 1 Statement.

⁴ *Id.*

⁵ Karen Freifeld, *Trump lawyers reviewed Mueller report for 10 hours before it was made public*, *Reuters*, April 19, 2019, *available at* <https://www.reuters.com/article/us-usa-trump-russia-lawyers-idUSKCN1RV18M>.

⁶ Holmes Lybrand, *Fact check: Did Barr act improperly when he shared report with POTUS lawyers?*, *CNN*, April 18, 2019, *available at* <https://www.cnn.com/2019/04/18/politics/fact-check-barr-trump-lawyers-mueller-report/index.html>.

counsel to Kenneth Starr during the Whitewater investigation,⁷ observed that citing the Ethics in Government Act seemed “to be a remarkably strange justification” because the Act’s provisions relating to independent counsels lapsed in 1999.⁸ “Why and how is it that Barr could rely on practices from a now-defunct statute to justify his actions?” Rosenzweig asked. Rosenzweig also noted that the expired law “provided a statutory right for individuals named in a report by an independent counsel to review the portion related to them and comment on it,” prompting him to ask, “why was that right afforded only to President Trump’s attorneys and not to all the other individuals who were named in the report, as compliance with the expired act would seem to require? Why, contrary to the practice of the independent counsel act that he extolled, did Barr provide Trump’s lawyers (apparently) with access to the entire report, when the prior rule had been to provide a named individual only with access to the portions of the report that name him or her directly?”⁹

The requested records will shed light on the reasonableness of DOJ’s decision to provide President Trump’s personal lawyers early access to the Mueller Report as well Attorney General’s decision to cite an expired law to justify such an accommodation. The records will also provide insight into whether the President of the United States was provided special treatment that was not afforded to other individuals named in the Mueller Report.

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

⁷ Paul Rozenzweig and Jill Wine Banks, [Make the special counsel report public for the sake of Americans](https://thehill.com/opinion/judiciary/430344-make-the-special-counsel-report-public-for-the-sake-of-americans), *The Hill*, Feb. 16, 2019, available at <https://thehill.com/opinion/judiciary/430344-make-the-special-counsel-report-public-for-the-sake-of-americans>.

⁸ Paul Rosenzweig, [Some Questions for Attorney General Barr](https://www.lawfareblog.com/some-questions-attorney-general-barr), *Lawfare*, April 20, 2019, available at <https://www.lawfareblog.com/some-questions-attorney-general-barr>.

⁹ *Id.*

educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website.

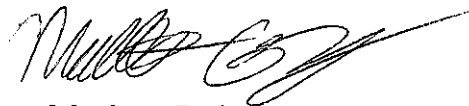
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

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 mcorley@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 mcorley@citizensforethics.org or Matthew Corley, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201 Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Corley', with a long, sweeping horizontal stroke extending to the right.

Matthew Corley
Chief Investigator