

CREW | citizens for responsibility and ethics in washington

July 18, 2019

By Email: crm.foia@usdoj.gov

Amanda M. Jones
Chief, FOIA/PA Unit
Criminal Division
U.S. Department of Justice
Suite 1127, Keeney Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Expedited Freedom of Information Act Request

Dear Ms. Jones:

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 Justice (“DOJ”) regulations.

Specifically, CREW requests all records related to the now closed investigation conducted by the U.S. Attorney’s Office for the Southern District of New York into (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Mr. Cohen pled guilty; and (2) whether certain individuals made false statements, gave false testimony, or otherwise obstructed justice in connection with this investigation. The nature of this investigation is outlined in the attached letter submitted on July 15, 2019, to U.S. District Court Judge William H. Pauley III in *United States v. Cohen*, Crim. No. 18-cr-602 (S.D.N.Y.). For your convenience a copy of this letter is attached. This request includes, but is not limited to witness statements, investigative reports, prosecution memoranda, and FBI 302s.

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 those who were cc’ed or bcc’ed on any emails.

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 Department of Justice 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).

In his memorandum opinion and order of July 17, 2019 (attached), ordering the unsealing of a subset of the documents requested here, Judge Pauley described the campaign finance violations that were under investigation as “a matter of national importance.” He also deemed it “time that every American has an opportunity to scrutinize the Materials,” referencing the documents related to the campaign finance investigation. Like the records Judge Pauley ordered be unsealed, the requested records would shed light on the extent, if any, that President Donald Trump or any of his businesses or associates has violated campaign finance laws and, if so, why the government has closed its investigation without prosecuting these crimes, with the exception of Michael Cohen. The American people deserve to know whether their president and his business associates have complied fully with the laws of our land and if they have not, why DOJ declined to prosecute them. The president is the most powerful and visible official of our country, and the truth about his actions and those of his campaign, businesses, and associates should not be shielded from public scrutiny.

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 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.

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 DOJ’s Director of Public Affairs; a copy of that request is enclosed.

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. 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, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

Encls.



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

July 15, 2019

EX PARTE and UNDER SEAL

BY EMAIL and HAND

The Honorable William H. Pauley III
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: United States v. Michael Cohen, 18 Cr. 602 (WHP)

Dear Judge Pauley:

Pursuant to the Court's February 7, 2019 opinion and order (the "Order") and May 21, 2019 order, the Government respectfully submits this sealed, *ex parte* status report explaining the need for continued redaction of the materials subject to the Order. (*See* Order at 30).

By way of background, several media organizations filed a request to unseal the affidavits, warrants, and riders associated with several different searches that were conducted in connection with a grand jury investigation into Michael Cohen and others (the "Materials"). The Government opposed that request, citing the need to protect an ongoing investigation and the personal privacy of certain individuals named in the Materials. On February 7, 2019, this Court granted the motion in part and denied it in part. Although the Court directed that certain parts of the Materials be unsealed (with limited redactions to protect privacy interests), the Court denied the motion to unseal all of the Materials. Relevant here, the Court held that "the portions of the Materials relating to Cohen's campaign finance crimes shall be redacted" to protect the ongoing law enforcement investigation. (Order at 11). On May 21, 2019, after receiving a status update from the Government on the need for continued sealing, the Court issued an order permitting continued sealing of the campaign finance portions of the Materials to protect an ongoing investigation, and directed that the Government provide another update by this date.

The Government is no longer seeking to maintain the campaign finance portions of the Materials under seal in order to protect an ongoing investigation.¹ However, while the majority of

¹ The Government has effectively concluded its investigations of (1) who, besides Michael Cohen, was involved in and may be criminally liable for the two campaign finance violations to which Cohen pled guilty [REDACTED]; and (2) whether certain individuals, [REDACTED], made false statements, gave false testimony or otherwise obstructed justice in connection with this investigation [REDACTED]

the campaign finance portions of the Materials can now be unsealed, the Government respectfully submits that some redactions should be maintained in order to protect the personal privacy of certain individuals. In particular, consistent with the Court's prior Order, the Government seeks to redact references to individuals who are either (1) "peripheral characters' for whom the Materials raise little discernable inference of criminal conduct" but who "may nonetheless be 'stigmatized'" by their inclusion in the Materials; or (2) people "around Cohen from which the public might infer criminal complicity." (Order at 14). However, while most references to such individuals are redacted, the Government does not seek to redact references to those individuals that are either (a) facts that have been publicly confirmed, either by the individual in public statements or the Government in public filings; or (b) facts sourced from publicly available materials. (*See* Order at 15 ("Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.")).

Together with this letter, the Government has transmitted a copy of one of the search warrant affidavits with the proposed redactions marked. *See* Ex. A, at 38-57, 66-67, 71, 73-74, 83-101. (The proposed redactions also include the privacy-based redactions previously authorized in the bank and tax portions of the Materials.) The Government respectfully requests that the Court approve these redactions, and will submit corresponding redactions to the other affidavits (which are substantially similar to the attached affidavit) once the Court has ruled on these proposed redactions.

Respectfully submitted,

AUDREY STRAUSS
Attorney for the United States,
Acting Under Authority Conferred by
28 U.S.C. § 515

By: 

Thomas McKay / Nicolas Roos
Assistant United States Attorneys
(212) 637-2200

cc: Counsel of Record (by ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :
 :
-against- : 18cr602
 :
MICHAEL COHEN, : MEMORANDUM & ORDER
 :
 :
Defendant. :

WILLIAM H. PAULEY III, Senior United States District Judge:

On April 9, 2018, the FBI executed searches of Defendant Michael Cohen’s residence, hotel room, office, safe deposit box, cell phones, and electronic communications pursuant to warrants authorized under Rule 41 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 2703. The New York Times Company, the American Broadcasting Companies, Inc., the Associated Press, Cable News Network, Inc., Daily News, L.P., Dow Jones & Co., Inc., Newsday LLC, NYP Holdings, Inc., and CBS Broadcasting, Inc. sought to unseal copies of the warrants, warrant applications, and supporting affidavits and riders relating to the April 9, 2018 searches (the “Materials”).

On February 7, 2019, this Court granted in part and denied in part the unsealing requests. In that Opinion & Order, this Court directed the Government to submit proposed redactions to the Materials, which were then publicly filed in redacted form on March 19, 2019 pursuant to an order dated March 18, 2019. The February 7, 2019 Opinion & Order also directed the Government to submit a status report by May 15, 2019 explaining the need for continued redaction of the Materials. United States v. Cohen, 366 F. Supp. 3d 612, 634 (S.D.N.Y. 2019).

On May 21, 2019, this Court authorized the continued redaction of portions of the Materials relating to Cohen’s campaign finance violations to protect the Government’s ongoing

investigation. The May 21, 2019 Order also directed the Government to submit a further status report by July 15, 2019 explaining the need for continued redaction of the Materials.

On July 15, 2019, the Government submitted a status report and proposed redactions to the Materials ex parte and under seal. The Government now represents that it has concluded the aspects of its investigation that justified the continued sealing of the portions of the Materials relating to Cohen's campaign finance violations. Although the Government agrees that the majority of the campaign finance portions of the Materials may be unsealed, it requests limited redactions to those portions to protect third-party privacy interests.

After reviewing the Government's status report and proposed redactions, this Court denies the Government's request. In particular—and in contrast to the private nature of Cohen's business transactions—the weighty public ramifications of the conduct described in the campaign finance portions warrant disclosure. See United States v. Amodeo, 71 F.3d 1044, 1051 (2d Cir. 1995) (explaining that “financial records of a wholly owned business, family affairs, illnesses, embarrassing conduct with no public ramifications, and similar matters will weigh more heavily against access than conduct affecting a substantial portion of the public”). Moreover, the involvement of most of the relevant third-party actors is now public knowledge, undercutting the need for continued secrecy. See United States v. Basciano, 2010 WL 1685810, at *4 (E.D.N.Y. Apr. 23, 2010) (“Shielding third parties from unwanted attention arising from an issue that is already public knowledge is not a sufficiently compelling reason to justify withholding judicial documents from public scrutiny.”). On balance, the “strong presumption of public access” to search warrants and search warrant materials under the common law far outweighs the weakened privacy interests at play here. See Cohen, 366 F. Supp. 3d at 621-22 (collecting cases).

The campaign finance violations discussed in the Materials are a matter of national importance. Now that the Government's investigation into those violations has concluded, it is time that every American has an opportunity to scrutinize the Materials. Indeed, the common law right of access—a right so enshrined in our identity that it “predate[s] even the Constitution itself”—derives from the public's right to “learn of, monitor, and respond to the actions of their representatives and representative institutions.” United States v. Erie Cty., 763 F.3d 235, 238-39 (2d Cir. 2014).

Accordingly, the Government is directed to file the July 15, 2019 status report and the Materials on the public docket on **July 18, 2019 at 11:00 a.m.** The July 15, 2019 status report shall be unredacted in its entirety, except that limited references in the footnote to an uncharged third-party may remain redacted. See United States v. Smith, 985 F. Supp. 2d 506, 526 (S.D.N.Y. 2013). The Materials shall be unredacted in their entirety, except that the names of law enforcement investigators, references to individuals who purportedly engaged in business transactions or contemplated business transactions with Cohen relating to taxi medallions, see Cohen, 366 F. Supp. 3d at 625, and personal information referenced in this Court's March 18, 2019 Order may remain redacted.

Dated: July 17, 2019
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.