

February 11, 2020

By Email

Douglas Hibbard
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: Expedited Freedom of Information Act Request

Dear Mr. Hibbard:

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 concerning the sentencing recommendation for Roger J. Stone Jr. in the case of *United States v. Stone*, Crim. No. 19-18 (ABJ) (D.D.C.), including without limitation all communications between DOJ and any of the following entities: (1) President Trump; (2) White House employees, including anyone with an “*.eop.gov” email domain; (3) personal attorneys or representatives acting on behalf of President Trump; (4) attorneys or representatives acting on behalf of Roger Stone; or (5) the United States Attorney’s Office for the District of Columbia.

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, and anyone who was 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).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation reasonably is foreseeable, DOJ should institute an agency-wide preservation hold on documents potentially responsive to this request.

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 February 10, 2020, the United States filed its sentencing memorandum with the court in *United States v. Stone*, recommending that the court impose on Mr. Stone a sentence of seven to nine years for obstructing a congressional investigation, making false statements to Congress, and witness tampering. *See* Crim. No. 19-18 (ABJ) (D.D.C.) (ECF No. 279). Prosecutors argued that their recommended sentence was “consistent with the applicable advisory Guidelines” and “would accurately reflect the seriousness of his crimes and promote respect for the law.” *Id.* According to public reporting on this filing, it “came after days of tense debate within the U.S. attorney’s office in Washington,” with “[f]ront-line prosecutors” arguing “for a sentence on the higher end for Stone than some of their supervisors were comfortable with[.]”¹ Early the following morning President Trump in a tweet described the sentencing recommendation as “horrible and very unfair[.]”² Following this tweet it was reported that senior DOJ officials had intervened to overrule the front-line prosecutors and would be recommending “a more lenient sentencing for Roger J. Stone Jr.” *Id.* According to a DOJ official, the prosecutors’ sentencing recommendation “took officials at Justice Department headquarters by surprise.” *Id.* A DOJ official also described the recommendation as “higher than what the United States attorney’s office had told Justice Department officials it would suggest[.]” *Id.*

The requested records will shed light on the process DOJ used to arrive at a sentencing recommendation and the extent to which that recommendation was influenced by the President and DOJ officials seeking to accommodate the President. This highly unusual and somewhat unprecedented interference by senior DOJ officials in the prosecution of an individual who was convicted for his efforts to thwart a congressional investigation that threatened the President

¹ Spencer S. Hsu, Ann E. Marimow & Devlin Barrett, Roger Stone deserves 7 to 9 years prison for lying to Congress in Russia probe, U.S. says in sentencing recommendation for Trump confidant, *Washington Post*, Feb. 10, 2020, available at https://www.washingtonpost.com/local/legal-issues/trump-confidant-roger-stone-deserves-7-to-9-years-in-prison-for-lying-to-congress-prosecutors-say-in-new-filing/2020/02/10/90bc6e9a-4906-11ea-9164-d3154ad8a5cd_story.html.

² Katie Benner, Justice Dept. to Seek Shorter Sentence for Roger Stone, Overruling Its Prosecutors, *New York Times*, Feb. 11, 2020, available at <https://www.nytimes.com/2020/02/11/us/politics/roger-stone-sentencing.html?action=click&module=Top%20Stories&pgtype=Homepage>.

raises serious questions about the integrity of DOJ's processes and the extent to which those processes have been improperly influenced by political considerations.

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.

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 which 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, please contact me at (202) 408-5565 or nsus@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 at either nsus@citizensforethics.org or Nikhel Sus, Citizens for Responsibility and



Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance.

Sincerely,

Nikhel Sus
Senior Counsel

Attachment

February 11, 2020

By Email

Kerri Kupec
Director, Office of Public Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Request for Expedition of Freedom of Information Act Request

Dear Ms. Kupec:

Pursuant to Department of Justice (“DOJ”) regulations, 28 C.F.R. § 16.5(e)(2), Citizens for Responsibility and Ethics in Washington (“CREW”) requests that you authorize the expedition of a Freedom of Information Act (“FOIA”) request CREW made today to the Office of Information Policy. I have enclosed a copy of this request.

The FOIA request seeks all records concerning the sentencing recommendation for Roger J. Stone Jr. in the case of *United States v. Stone*, Crim. No. 19-18 (ABJ) (D.D.C.), including without limitation all communications between DOJ and any of the following entities: (1) President Trump; (2) White House employees, including anyone with an “*.eop.gov” email domain; (3) personal attorneys or representatives acting on behalf of President Trump; (4) attorneys or representatives acting on behalf of Roger Stone; or (5) the United States Attorney’s Office for the District of Columbia.

CREW seeks expedition because the subject matter of the request is of widespread and exceptional media interest. Additionally, the requested information involves possible questions about the government’s integrity, which clearly affect public confidence.

On February 10, 2020, the United States filed its sentencing memorandum with the court in *United States v. Stone*, recommending that the court impose on Mr. Stone a sentence of seven to nine years for obstructing a congressional investigation, making false statements to Congress, and witness tampering. *See* Crim. No. 19-18 (ABJ) (D.D.C.) (ECF No. 279). Prosecutors argued that their recommended sentence was “consistent with the applicable advisory Guidelines” and “would accurately reflect the seriousness of his crimes and promote respect for the law.” *Id.* According to public reporting on this filing, it “came after days of tense debate within the U.S. attorney’s office in Washington,” with “[f]ront-line prosecutors” arguing “for a sentence on the higher end for Stone than some of their supervisors were comfortable with[.]”¹ Early the

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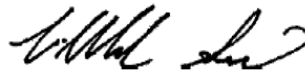
following morning President Trump in a tweet described the sentencing recommendation as “horrible and very unfair[.]”² Following this tweet it was reported that senior DOJ officials had intervened to overrule the front-line prosecutors and would be recommending “a more lenient sentencing for Roger J. Stone Jr.” *Id.* According to a DOJ official, the prosecutors’ sentencing recommendation “took officials at Justice Department headquarters by surprise.” *Id.* A DOJ official also described the recommendation as “higher than what the United States attorney’s office had told Justice Department officials it would suggest[.]” *Id.*

The requested records will shed light on the process DOJ used to arrive at a sentencing recommendation and the extent to which that recommendation was influenced by the President and DOJ officials seeking to accommodate the President. This highly unusual and somewhat unprecedented interference by senior DOJ officials in the prosecution of an individual who was convicted for his efforts to thwart a congressional investigation that threatened the President raises serious questions about the integrity of DOJ’s processes and the extent to which those processes have been improperly influenced by political considerations. It is crucial that the American public is informed fully about these matters. And given the upcoming presidential election, there is an urgent need for access to this information warranting expedited treatment. CREW’s request will ensure the public’s right to this information is fully realized.

CREW’s primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials. Toward that end, CREW uses statutes like the FOIA to gather information the public needs to hold public officials accountable. The request for which CREW seeks expedition will further those goals.

I certify the above is true and correct.

Sincerely,



Nikhel Sus
Senior Counsel

Attachment

² Katie Benner, [Justice Dept. to Seek Shorter Sentence for Roger Stone, Overruling Its Prosecutors](https://www.nytimes.com/2020/02/11/us/politics/roger-stone-sentencing.html?action=click&module=Top%20Stories&pgtype=Homepage), *New York Times*, Feb. 11, 2020, available at <https://www.nytimes.com/2020/02/11/us/politics/roger-stone-sentencing.html?action=click&module=Top%20Stories&pgtype=Homepage>.