

February 13, 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 from December 1, 2019 to the date this request is processed concerning the sentencing recommendation for Michael T. Flynn in the case of *United States v. Flynn*, Crim. No. 17-232 (EGS) (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 Michael Flynn; 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 11, 2020, *NBC News* reported that “[s]enior officials at the Justice Department . . . intervened [in January 2020] to help change the government’s sentencing recommendation for [President] Trump’s former national security adviser Michael Flynn, who pleaded guilty to lying to the FBI. While the prosecutors had once recommended up to six months in jail, their latest filing now says they believe probation would be appropriate.”<sup>1</sup> This appears to be part of a broader pattern of interference by DOJ leadership in cases involving President Trump’s personal associates, which includes similar interference in the sentencing of Trump associate Roger Stone, and Attorney General Barr’s removal of former U.S. Attorney for the District of Columbia Jesse Liu, who oversaw the prosecutions of both Flynn and Stone.<sup>2</sup>

The requested records will shed light on whether DOJ’s sentencing recommendation was influenced by the President and DOJ officials seeking to accommodate the President. This highly unusual and unprecedented interference by senior DOJ officials with respect to the sentencing of an individual who pleaded guilty to making multiple false statements to the FBI 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

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<sup>1</sup>Carol E. Lee, et al., [Barr takes control of legal matters of interest to Trump, including Stone sentencing](https://www.nbcnews.com/politics/justice-department/barr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231), *NBC News*, Feb. 11, 2020, available at <https://www.nbcnews.com/politics/justice-department/barr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231>.

<sup>2</sup> *Id.*

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 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**

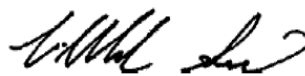
Finally, please be advised that CREW also has requested expedition of this request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity which affect public confidence. Pursuant to 28 C.F.R. § 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](mailto: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](mailto: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 13, 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 from December 1, 2019 to the date the request is processed concerning the sentencing recommendation for Michael T. Flynn in the case of *United States v. Flynn*, Crim. No. 17-232 (EGS) (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 Michael Flynn; 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 11, 2020, *NBC News* reported that “[s]enior officials at the Justice Department . . . intervened [in January 2020] to help change the government’s sentencing recommendation for [President] Trump’s former national security adviser Michael Flynn, who pleaded guilty to lying to the FBI. While the prosecutors had once recommended up to six months in jail, their latest filing now says they believe probation would be appropriate.”<sup>1</sup> This appears to be part of a broader pattern of interference by DOJ leadership in cases involving President Trump’s personal associates, which includes similar interference in the sentencing of

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<sup>1</sup>Carol E. Lee, et al., Barr takes control of legal matters of interest to Trump, including Stone sentencing, *NBC News*, Feb. 11, 2020, available at <https://www.nbcnews.com/politics/justice-department/barr-takes-control-legal-matters-interest-trump-including-stone-sentencing-n1135231>.

Trump associate Roger Stone, and Attorney General Barr's removal of former U.S. Attorney for the District of Columbia Jesse Liu, who oversaw the prosecutions of both Flynn and Stone.<sup>2</sup>

The requested records will shed light on whether DOJ's sentencing recommendation was influenced by the President and DOJ officials seeking to accommodate the President. This highly unusual and unprecedented interference by senior DOJ officials with respect to the sentencing of an individual who pleaded guilty to making multiple false statements to the FBI raises serious questions about the integrity of DOJ's processes and the extent to which those processes have been improperly influenced by political considerations. There is widespread media interest in this matter, as evidenced by numerous articles that have been published on it to date. It is also a topic in which the American public has a strong interest in being fully informed, and that need is particularly urgent given the upcoming presidential election. 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. To 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

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<sup>2</sup> *Id.*