

April 22, 2020

Director, Office of Information Policy (OIP)
United States Department of Justice
441 G Street, NW, 6th Floor
Washington, D.C. 20530

Re: Freedom of Information Act Appeal – Request No. EOUSA 2020-001427

Dear Director:

Citizens for Responsibility and Ethics in Washington (“CREW”) hereby appeals the March 5, 2020 determination of the Executive Office for United States Attorneys (“EOUSA”) with respect to the above-referenced Freedom of Information Act (“FOIA”) request. As set forth below, EOUSA failed to search for records located in a U.S. Attorney’s Office specifically identified in CREW’s request.

On February 4, 2020, CREW submitted a FOIA request to EOUSA seeking “copies of all records of communications between DOJ and: (1) President Trump; (2) White House employees, including but not limited to anyone with an eop.gov domain; and/or (3) personal attorneys for President Trump regarding investigations, requests for investigations, or other inquiries concerning past and current candidates for president in the 2020 election.” CREW requested that EOUSA search “the Office of United States Attorney for the District of Connecticut John H. Durham, and the Office of the United States Attorney of Utah John W. Huber.” For your convenience, a copy of this request is enclosed as Exhibit A.

By letter dated March 5, 2020, Kevin Krebs advised CREW that EOUSA had searched “for records located in the United States Attorney’s Office for the District of Utah” and located “no responsive records.” Mr. Krebs’s letter did not explain why the search was limited to the United States Attorney’s Office for the District of Utah. A copy of this communication is enclosed as Exhibit B.

CREW contacted the EOUSA Public Liaison on March 19, 2020 to confirm that—as Mr. Krebs’s letter indicated—EOUSA’s search did not encompass records located in the United States Attorney’s Office for the District of Connecticut. The EOUSA Public Liaison indicated that she would research CREW’s question and someone on the EOUSA FOIA staff would contact CREW. To date, CREW has received no response. CREW left voicemail messages attempting to follow up with the EOUSA Public Liaison on March 27, 2020; April 3, 2020; and April 21, 2020.

EOUSA’s initial determination should be reversed. In responding to a FOIA request, an agency must “make a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (quotation and citation omitted); *Valencia-Lucena v. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (noting an

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agency's search must be "reasonably calculated to uncover all relevant documents"). Here, CREW's FOIA request specifically asked for records located in the United States Attorney's Office for the District of Connecticut. *See* Ex. A at 1. Yet EOUSA did not search for records located in this Office. Nor did EOUSA explain why it would not reasonably expect to find responsive records in the United States Attorney's Office for the District of Connecticut—an impossible showing in light of CREW's specific request for EOUSA to search for documents located in this Office. EOUSA's search was therefore inadequate.

CREW respectfully requests that you direct EOUSA to promptly conduct a search for records located in the United States Attorney's Office for the District of Connecticut.

Sincerely,

/s/ Hajar I. Hammado

Hajar I. Hammado
Policy Associate

Exhibit A

February 3, 2020

Kevin Krebs
Assistant Director
FOIA/Privacy Unit
Executive Office for United States Attorneys
Department of Justice
175 N Street, N.E.
Suite 5.400
Washington, DC 20530-0001

Re: Expedited Freedom of Information Act Request

Dear Mr. Krebs:

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 seeks copies of all records of communications between DOJ and: (1) President Trump; (2) White House employees, including but not limited to anyone with an eop.gov domain; and/or (3) personal attorneys for President Trump regarding investigations, requests for investigations, or other inquiries concerning past and current candidates for president in the 2020 election. The term "past and current candidates for president in the 2020 election" means Michael Bennet, Joe Biden, Michael Bloomberg, Cory Booker, Steve Bullock, Pete Buttigieg, Julian Castro, Bill De Blasio, Roque De La Fuente, John Delaney, Tulsi Gabbard, Kirsten Gillibrand, Kamala Harris, John Hickenlooper, Jay Inslee, Amy Klobuchar, Wayne Meesam, Seth Moulton, Richard Ojeda, Beto O'Rourke, Deval Patrick, Tim Ryan, Bernie Sanders, Mark Sanford, Joe Sestak, Tom Steyer, Eric Swalwell, Joe Walsh, Elizabeth Warren, William (Bill) F. Weld, Marianne Williamson, and Andrew Yang. CREW respectfully requests that DOJ search the records of the Executive Office for United States Attorneys, including but not limited to the Office of United States Attorney for the District of Connecticut John H. Durham, and the Office of the United States Attorney of Utah John W. Huber.

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). In the event 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).

In July 2019, on a call with Ukrainian President Zelensky, President Trump, sought personal favors from a foreign leader, including the investigation into one of his 2020 political rivals, Vice President Joe Biden.¹ President Trump was not the only individual involved; in fact, his personal attorney, Rudy Giuliani along with senior U.S. officials also pressured Zelensky to

¹ Michael D. Shear & Maggie Haberman, 'Do Us a Favor': Call Shows Trump's Interest in Using U.S. Power for His Gain, *The New York Times*, September 25, 2019, available at <https://www.nytimes.com/2019/09/25/us/politics/ukraine-transcript-trump.html>

pursue investigations.² These actions resulted in the House of Representatives launching an impeachment inquiry and ultimately impeaching President Trump.³

As CREW detailed in a recent report, President Trump likely has committed criminal offenses, including bribery (18 U.S.C. § 201), soliciting foreign campaign contributions (52 U.S.C. §§ 30109, 30121), coercion of political activity (18 U.S.C. § 610), misappropriation of federal funds (18 U.S.C. § 641), and obstruction of Congress (18 U.S.C. §§ 1505, 1512).⁴ The evidence suggests not only that President Trump abused the power of his office, but did so multiple times. It is therefore imperative that the public have access to records that, if they exist, would shed further light on communications between President Trump, White House employees, or personal attorneys to President Trump and the Department of Justice regarding investigations, requests for investigations, or other inquiries regarding past and current candidates for President in the 2020 election are important to the American people's knowledge of the extent of the abuses of power by President Trump.

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").

² Kyle Cheney, 'Of course I did': Giuliani acknowledges asking Ukraine to investigate Biden, *Politico*, September, 19, 2019, available at <https://www.politico.com/story/2019/09/19/giuliani-biden-ukraine-trump-1506009>

³ Nicholas Fandos & Michael D. Shear, Trump Impeached for Abuse of Power and Obstruction of Congress, December 18, 2019, available at <https://www.nytimes.com/2019/12/18/us/politics/trump-impeached.html?searchResultPosition=1>

⁴ Criminal Abuse of Power: Trump's Five Crimes Connected to Ukraine, available at <https://www.citizensforethics.org/criminal-abuse-of-power-trumps-crimes-ukraine/>

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, which 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 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 on an expedited basis, please contact me at (202) 894-7058 or hhammado@citizensforethics.org. Where possible, please produce records in electronic format. Please send the requested records to me either at hhammado@citizensforethics.org or Hajar I. Hammado, 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 'Hajar Hammado', with a stylized, flowing script.

Hajar Hammado
Policy Associate

encl.

Exhibit B



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

*Suite 5.400, 3CON Building
175 N Street, NE
Washington, DC 20530*

*(202) 252-6020
FAX (202) 252-6048*

March 5, 2020

Hajar Hammado
1101 K St. NW
Washington, DC 20005

Request Number: EOUSA 2020-001427
Date of Receipt: February 4, 2020
Subject of Request: Records of Communication

Dear Hajar Hammado:

In response to your Freedom of Information Act and/or Privacy Act request, the paragraph checked below apply:

1. ☐ A search for records has revealed no responsive records regarding the above subject.
2. ☒ A search for records located in the United States Attorney's Office for the District of Utah has revealed no responsive records regarding the above subject.
3. ☐ After an extensive search, the records which you have requested cannot be located.
4. ☐ Your records have been destroyed pursuant to Department of Justice guidelines.
5. ☐ Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number (listed below), for which you will receive a separate response:

This is the final action on this above-numbered request. If you are not satisfied with the Executive Office for U.S. Attorneys' determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may contact our FOIA Public Liaison at the Executive Office for United States Attorneys (EOUSA) for any further assistance and to discuss any aspect of your request. The

contact information for EOUSA is 175 N Street, NE, Suite 5.400, Washington, DC 20530; telephone at 202-252-6020; or facsimile 202-252-6048. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin Krebs', is written over a light pink rectangular background.

Kevin Krebs
Assistant Director