

July 1, 2020

**SUBMITTED VIA PORTAL**

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: Freedom of Information Act Request

Dear Mr. Hibbard:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Department of Justice (“DOJ” or “the Department”) regulations.

Specifically, CREW requests records sufficient to identify, as of February 15, 2019, criminal cases where the Attorney General recommended a change in individual sentencing decisions.

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 November 15, 2019, Roger Stone, a close confidant of President Trump, and an informal advisor to the President's ultimately successful campaign, was convicted on seven counts in a federal indictment that accused him of lying to Congress, tampering with a witness and obstructing the House of Representatives' investigation into whether the Trump campaign coordinated with Russia to gain an advantage in the 2016 election.<sup>1</sup> In the evening of February 10, 2020, career federal prosecutors in the United States Attorney's Office ("USAO") for the District of Columbia issued a sentencing memorandum recommending that Stone be sentenced to seven to nine years in prison.<sup>2</sup> The memorandum described Stone as having conducted a "direct and brazen attack on the rule of law" that "took place over an extended period of time, and it was intentional, extensive, and brazen." In the early hours of the next morning, President Trump took to Twitter to call the sentencing memorandum "horrible and very unfair" and a "miscarriage of justice."<sup>3</sup>

That same day, February 11, 2020, the Department filed an updated sentencing memorandum, recommending a far lighter sentence for Stone.<sup>4</sup> Notably, the updated memorandum was not signed by any of the four career prosecutors who prosecuted the case. The following day, all four prosecutors, including Assistant United States Attorney ("AUSA") Aaron Zelinsky, resigned from the case in protest.<sup>5</sup> On June 24, 2020, Zelinsky testified before the House Judiciary Committee in the capacity of a whistleblower, and explained that he chose to resign because "Roger Stone was being treated differently from any other defendant because of

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<sup>1</sup> Ashraf Khalil and Michael Balsamo, "Roger Stone guilty of witness tampering, lying to Congress," *Associated Press*, Nov. 15, 2019, <https://bit.ly/2VCR0o7>.

<sup>2</sup> Government's Sentencing Memorandum, *United States v. Roger Stone*, No. 19-cr-18-ABJ (D.D.C. Feb. 10, 2020), <https://bit.ly/38gy114>.

<sup>3</sup> President Donald Trump, Tweet of February 11, 2020, <https://bit.ly/2ZIIsmI>.

<sup>4</sup> Government's Supplemental and Amended Sentencing Memorandum, *United States v. Roger Stone*, No. 19-cr-18-ABJ (D.D.C. Feb. 11, 2020), <https://bit.ly/2YMnZZ7>.

<sup>5</sup> Matt Zapotosky, Devlin Barrett, Ann E. Marimow and Spencer S. Hsu, "Prosecutors quit amid escalating Justice Dept. fight over Roger Stone's prison term," *Washington Post*, Feb. 11, 2020, <https://wapo.st/2NKQ4JZ>.

his relationship to the President” and that circumstance “undermined the fundamental principles of the Department of Justice.”<sup>6</sup>

In an interview with Steve Inskeep of National Public Radio (“NPR”) Attorney General William Barr explained that he was personally behind the decision to issue an updated sentencing memorandum.<sup>7</sup> When Inskeep asked Attorney General Barr whether he had ever intervened in a case in this manner, the Attorney General said, “there were a number of cases since I've been here that I've done that.” That, of course, meant personally intervening in a criminal case to change a sentencing recommendation issued by career prosecutors --an intervention that AUSA Zelinsky had testified was “virtually unprecedented.”

During this unprecedented period in American history it is of absolutely critical national importance that the public have confidence that the Attorney General is properly exercising his enormous power. The events surrounding the Stone sentencing suggest that the Attorney General may be wielding this power unequally, benefiting those who find themselves in favor with the President. This is why it is critical that the public know whether and where the Attorney General is intervening in criminal cases to change sentencing recommendations. Attorney General Barr himself admitted that he exercises this power “frequently,” though he could not produce an example when pressed by NPR.<sup>8</sup> If the Attorney General is telling the truth, the public has a right to know for whom he takes such a “virtually unprecedented” step. The integrity of our justice system requires that everyone, no matter the political or social power they wield, be treated equally under the law. The public must have confidence in this maxim that no one is above the law--which is precisely why the public must know whether the Attorney General is “frequently” granting extraordinary favors, and to whom.

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](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

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<sup>6</sup> Testimony of Aaron Zelinsky before the House Judiciary Committee, Jun. 24, 2020, <https://bit.ly/3im2xSs>.

<sup>7</sup> National Public Radio, “Transcript: NPR’s Full Interview With Attorney General William Barr,” *NPR*, Jun. 25, 2020, <https://n.pr/2YRtWnQ>.

<sup>8</sup> *Id.*

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.

**Conclusion**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (917) 675-2509 or at [glezra@citizensforethics.org](mailto:glezra@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 [glezra@citizensforethics.org](mailto:glezra@citizensforethics.org) or Gabriel W. Lezra, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005.

Sincerely,

A handwritten signature in black ink, appearing to read 'GWL', with a long horizontal flourish extending to the right.

Gabriel Lezra  
Counsel