



January 11, 2018

By Electronic Mail (osfoia@ios.doi.gov; BOEMFOIA@boem.gov)

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RE: Freedom of Information Act Request

Dear FOIA Officer(s):

The Campaign Legal Center ("CLC") submits this request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, for records pertaining to the Department's January 9, 2018 decision to exempt Florida from expanded offshore drilling.

I. Requested Records

This request encompasses the following records **from April 1, 2017 to date**:

- All factual materials, reports, and other evidence that the Department of the Interior considered in reaching its conclusion to exempt Florida from expanded offshore drilling;

- The written request that Secretary Ryan Zinke told the *Washington Post* he received from Governor Scott in which Scott “expressed in writing a desire to have a meeting,” according to the Secretary;¹
- All correspondence with the office of Florida Governor Rick Scott;
- All correspondence with the White House regarding the decision to exempt Florida from expanded offshore drilling.

The request also encompasses the following records **from January 4, 2018 to date**:

- All correspondence mentioning Governor Rick Scott;
- All correspondence mentioning “Florida”;
- All correspondence mentioning “Mar-a-Lago”;
- All correspondence mentioning “Palm Beach”;
- All correspondence mentioning “Golf Club”;
- All correspondence mentioning “Doral”;
- All correspondence mentioning “Miami”;
- All correspondence mentioning “Jupiter”;
- All correspondence mentioning “Trump Towers”;
- All correspondence mentioning “Sunny Isles”;
- All correspondence mentioning “National Outer Continental Shelf Oil and Gas Leasing Program”;
- All correspondence mentioning “National OCS Program”;
- All correspondence mentioning “OCS Program.”

This request encompasses both digital and physical records.

Please note that this request applies to all emails, sent and received, on governmental email addresses, as well as to all emails, sent and received, on all other email addresses and accounts used to conduct official business.

If some portions of the requested records are exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. 5 U.S.C. § 552(b). If any portion of the requested records is exempt from disclosure, please provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972).

II. Background

On January 9, 2017, Secretary Zinke announced that he had decided to “remov[e] Florida from consideration for any new oil and gas platforms.”² This announcement

¹ See David Weigel, Darryl Fears, and John Wagner, *Decision to exempt Florida from offshore drilling prompts bipartisan uproar*, WASH. POST (Jan. 10, 2018), https://www.washingtonpost.com/politics/decision-to-exempt-florida-from-offshore-drilling-prompts-bipartisan-uproar/2018/01/10/1f5befa4-f625-11e7-beb6-c8d48830c54d_story.html?hpid=hp_rhp-top-table-main_drillingpolitics-840pm%3Ahomepage%2Fstory&utm_term=.a9cf45bb472a.

² Secretary Ryan Zinke, *Read my full statement*, TWITTER (Jan. 9, 2017), <https://twitter.com/SecretaryZinke/status/950876846698180608>.

came five days after the administration announced the opening up of formerly protected coastal waters to offshore drilling.³

Since the January 9th announcement, the decision has been the subject of extreme media interest.⁴ It has also prompted a number of statements by public officials, including governors and other officeholders, questioning the decision.⁵

III. Application for Fee Waiver or Limitation of Fees

A. The request is made for non-commercial purposes and will contribute significantly to public understanding of the operations or activities of government.

FOIA provides that the agency shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

As described above in Part II, the requested materials involve matters of significant public interest. Records likely to be disclosed in response to this request will contribute significantly to the public’s understanding of the Department’s decision to exempt Florida from offshore drilling. These details are not already publicly available and the records would provide a more thorough public understanding of the operations of the government.

CLC will use records responsive to this request in the creation of widely disseminated materials and analysis that will educate the public about these matters and the operations of the government. CLC anticipates analyzing the

³ Lisa Friedman, *Trump Moves to Open Nearly All Offshore Waters to Drilling*, N.Y. TIMES (Jan. 4, 2018), <https://www.nytimes.com/2018/01/04/climate/trump-offshore-drilling.html>.

⁴ See, e.g., Weigel, Fears, and Wagner, *supra* note 1; Richard Gonzales, *Interior Secretary Zinke: Florida Offshore Oil Drilling is ‘Off the Table,’* NPR (Jan. 9, 2018), <https://www.npr.org/sections/thetwo-way/2018/01/09/576938087/interior-secretary-zinke-florida-offshore-oil-drilling-is-off-the-table>; Coral Davenport, *Florida Is Exempted From Coastal Drilling. Other States Ask, ‘Why Not Us?’* N.Y. TIMES (Jan. 10, 2018), <https://www.nytimes.com/2018/01/10/climate/coastal-drilling-florida-exempt-zinke.html>; Associated Press, *Florida dropped from offshore oil drilling plan after Republican governor intervenes*, NBC NEWS (Jan. 9, 2018), <https://www.nbcnews.com/news/us-news/florida-dropped-offshore-oil-drilling-plan-after-republican-governor-intervenes-n836326>.

⁵ See, e.g., Andrew Cuomo, *New York doesn’t want drilling*, TWITTER (Jan. 9, 2018); Xavier Becerra, *California is also ‘unique,’* TWITTER (Jan. 9, 2018), <https://twitter.com/AGBecerra/status/950889680962138112>; Phil Murphy, *We’d like equal treatment for NJ*, TWITTER (Jan. 10, 2018), <https://twitter.com/PhilMurphyNJ/status/951102361359081472>.

materials gathered through this FOIA request to develop reports,⁶ write blogs,⁷ and author op-eds.⁸ CLC's research and reports are widely disseminated on its blog,⁹ through its own website,¹⁰ through social media platforms like Facebook¹¹ and Twitter,¹² and regular emails to its supporters, among other communications outlets.¹³

CLC staff have significant knowledge in ethics and government accountability, and news media regularly rely upon CLC's analysis and expertise.¹⁴ In addition to its own blogs and reports, CLC anticipates analyzing the requested records and disseminating the materials among traditional news outlets.

Requester CLC is a non-profit public interest organization organized under Section 501(c)(3) of the Internal Revenue Code and this request is made for non-commercial purposes.

⁶ See, e.g., Lawrence M. Noble and Brendan M. Fischer, *Funding the Presidential Nominating Conventions: How a Trickle of Money Turned Into a Flood*, Campaign Legal Center (July 26, 2016), <http://www.campaignlegalcenter.org/sites/default/files/Funding%20the%20Presidential%20Nominating%20Conventions%20Report.pdf>.

⁷ See, e.g., Brendan M. Fischer, *How Trump's Plan to Repeal the Johnson Amendment Could Unleash 'Super Dark Money' Into Our Elections*, Campaign Legal Center blog (Feb. 3, 2017), <http://www.campaignlegalcenter.org/news/blog/how-trump-s-plan-repeal-johnson-amendment-could-unleash-super-dark-money-our-elections>; *Filling the Swamp: Inauguration and Transition Funding*, Campaign Legal Center blog (Jan. 19, 2017), <http://www.campaignlegalcenter.org/news/blog/filling-swamp-inauguration-and-transition-funding>;

⁸ See, e.g., Trevor Potter, *Donald Trump Hasn't Solved Any of His Conflicts of Interest*, WASH. POST (Jan. 11, 2017), https://www.washingtonpost.com/posteverything/wp/2017/01/11/donald-trump-hasnt-solved-any-of-his-conflicts-of-interest/?utm_term=.0e80b538fb8f.

⁹ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹⁰ See Campaign Legal Center "Reference Materials" library, <http://www.campaignlegalcenter.org/research/reference-materials>.

¹¹ <https://www.facebook.com/CampaignLegalCenter/>

¹² <https://twitter.com/CampaignLegal>

¹³ See Campaign Legal Center blog at MEDIUM, <https://medium.com/clc-blog>.

¹⁴ See, e.g., Elizabeth Williamson, *Highflying Mnuchins Take the Country for a Ride*, N.Y. TIMES (Sept. 14, 2017), <https://www.nytimes.com/2017/09/14/opinion/mnuchin-funds-honeymoon.html>; Walter M. Shaub, Jr., *Walter Shaub: How to Restore Government Ethics in the Trump Era*, N.Y. TIMES (July 18, 2017), <https://www.nytimes.com/2017/07/18/opinion/walter-shaub-how-to-restore-government-ethics-in-the-trump-era.html>; Philip Bump, *Why Ben Carson's appearance in Phoenix was likely a violation of federal law*, WASHINGTON POST (Aug. 23, 2017), https://www.washingtonpost.com/news/politics/wp/2017/08/23/why-ben-carsons-appearance-in-phoenix-was-likely-a-violation-of-federal-law/?utm_term=.175a1f707481; Manu Raju, *Trump's Cabinet Pick Invested in Company, Then Introduced a Bill to Help It*, CNN (Jan. 17, 2017), <http://www.cnn.com/2017/01/16/politics/tom-price-bill-aiding-company/>; Christina Wilkie and Paul Blumenthal, *Trump Just Completely Entangled His Business and the U.S. Government*, HUFFINGTON POST (Jan. 11, 2017), http://www.huffingtonpost.com/entry/trump-business-conflicts-of-interests-treasury_us_5876928de4b092a6cae4ec7b

As such, we request that any applicable fees associated with this request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver in this instance would fulfill Congress' intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

B. CLC qualifies for a fee waiver as a “representative of the news media.”

CLC additionally requests that it not be charged search or review fees for this request because the organization meets the definition of a “representative of the news media” for purposes of the FOIA, since CLC “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II)-(III).

As the D.C. Circuit has held, the “representative of the news media” test is focused on the requestor rather than the specific FOIA request. *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121 (D.C. Cir. 2015). CLC satisfies this test because (as noted in Part III(A)) CLC applies its expertise and editorial skills to turn raw materials into reports, articles, and op-eds that are widely disseminated on its blog,¹⁵ through its own website,¹⁶ through social media platforms and regular emails to its supporters, and through other communications outlets.¹⁷ CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC's work. The D.C. Circuit has held that an requester may qualify as a news media entity if it “‘distribute[s] [its] work’ by issuing press releases to media outlets in order to reach the public indirectly” 799 F.3d. at 1125-26.

Courts have found that other organizations with functionally similar missions and engaged in similar public education activities qualify as “representatives of the news media,” even if engaged in litigation or other advocacy beyond educating the public about the operations of government. *See e.g. Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121-25 (D.C. Cir. 2015) (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA a news media requester); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding “public interest law firm” Judicial Watch a news media requester); *Elec. Privacy Info. Ctr. V. DOD*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that published a biweekly email newsletter a news media requester).

“It is critical that the phrase ‘representative of the news media’ be interpreted broadly if the act is work as expected, . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for*

¹⁵ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹⁶ See Campaign Legal Center “Reference Materials” library, <http://www.campaignlegalcenter.org/research/reference-materials>.

¹⁷ See Campaign Legal Center, MEDIUM, <https://medium.com/clc-blog>.

waivers as a 'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986), cited in *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

In the event the fee waiver is not granted, I may not be charged for the first two hours of search time, or for the first hundred pages of duplication. Please contact me and advise me of the cost of this request if processing costs exceed \$100.

IV. Application for Expedited Processing

I request that the processing of this request be expedited pursuant to 28 C.F.R. § 16.5(e)(1)(iv).

As described in Part II, the subject of the request involves a matter of significant public interest.¹⁸

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

* * *

In order to expedite delivery of these requested documents and in order to reduce possible fees incurred, I am requesting that these documents be delivered to me either digitally via email (in PDF format), or on a data disk via the U.S. Postal Service.

Please email copies of responsive documents to:

mchrist@campaignlegalcenter.org

Or, please mail copies of responsive documents to:

**Maggie Christ
Campaign Legal Center
1411 K St NW, Suite 1400
Washington, D.C. 20005**

Should you elect, for any reason, to withhold, redact, or deny the release of any record responsive to this request, I request that you provide me with an explanation for each withholding/redaction, along with pertinent legal citations.

Please confirm receipt of this request and provide me with an estimate of processing time.

Thank you.

Sincerely,

¹⁸ See sources cited *supra* at nn. 4, 5.

/s/ Maggie Christ

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