



1411 K Street NW, Suite 1400
Washington, DC 20005

tel: 202-736-2200 fax: 202-736-2222

February 8, 2017

Melissa Golden, Lead Paralegal and FOIA Specialist
Office of Legal Counsel, Department of Justice
950 Pennsylvania Avenue, N.W.-Room 5511
Washington, D.C. 20530-0001
usdoj-officeoflegalcounsel@usdoj.gov

FOIA Requester Center (HIF)
U.S. General Services Administration
1800 F Street, N.W.-Room 7308
Washington, D.C. 20405-0001
GSA.FOIA@gsa.gov

FOIA Requester Service Center
U.S. Office of Personnel Management
1900 E Street, N.W.-Room 5415
Washington, D.C. 20415-7900
foia@opm.gov

RE: Freedom of Information Act Request

To whom it may concern:

The Campaign Legal Center submits this request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, for records pertaining to the Executive Order titled “Ethics Commitments by Executive Branch Employees” signed by President Donald J. Trump on January 28, 2017, and for non-disclosure agreements in the executive office of the president.

I. Background

In the final weeks of the 2016 presidential election, then-candidate Donald Trump made “draining the swamp” a central campaign theme and as part of that theme announced that, if elected, he would enact a five-point plan to reform federal ethics and lobbying laws.¹ After

¹ Russell Berman, *Donald Trump’s Last-Ditch Plan to “Drain the Swamp*, THE ATLANTIC (Oct. 18, 2016), <http://www.theatlantic.com/politics/archive/2016/10/donald-trumps-plan-to-drain-the-swamp/504569/>; *see also*

winning election, some questioned whether the president-elect's pledge to "drain the swamp" and enact ethics reforms would be "Trump's first broken campaign promise."² On January 28, 2017, President Donald J. Trump signed an Executive Order titled "Ethics Commitments by Executive Branch Employees" that incorporated one element of the five-point ethics plan, yet which revised the previous administration's ethics commitments.³ According to recent polling, issues surrounding ethics in the White House are a matter of concern for a majority of voters.⁴

Records likely to be disclosed in response to this request will contribute significantly to the public's understanding of how the Trump administration developed this executive order, how it is being implemented, and who was involved in its development, among other matters of public interest.

II. Requested Records

CLC is requesting copies of all following records:

- All correspondence pertaining to the development and implementation of the "Ethics Commitments by Executive Branch Appointees" Executive Order;
- All legal opinions, memoranda, advisories, or other records addressing lobbying, the Lobbying Disclosure Act, ethics, post-employment restrictions, the "revolving door" and the development and implementation of the "Ethics Commitments by Executive Branch Appointees" Executive Order;
- All non-disclosure agreements sought by the White House;
- All non-disclosure agreements sought by the White House and signed by staff;
- All policy, educational, or program-management memoranda, advisories, or evaluations pertaining to ethics for executive branch appointees.

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.

The timeframe for this request is November 9, 2016 to February 8, 2017.

Press Release, *Donald J. Trump's Five Point Plan for Ethics Reform*, Donald J. Trump website, <https://www.donaldjtrump.com/press-releases/donald-j.-trumps-five-point-plan-for-ethics-reform>.

2 Isaac Arnsdorf, Josh Dawsey, and Daniel Lippman, *Will 'drain the swamp' be Trump's first broken promise?*, Politico (Dec. 22, 2016), <http://www.politico.com/story/2016/12/trump-drain-swamp-promise-232938>.

³ Press Release, *Ethics Commitments by Executive Branch Employees*, White House website, (Jan. 28, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>.

⁴ ABC News / Washington Post poll, *Public Splits on Trump's Ethics Compliance; Three-Quarters Want Tax Returns Released* (Jan. 16, 2017), <http://www.langerresearch.com/wp-content/uploads/1185a1TrumpandTransparency.pdf>.

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).

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 U.S.C. § 552(a)(4)(A)(iii).

As described above in Part I, 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 how the Trump administration developed this executive order, how it is being implemented within the White House, and who was involved in its development, among other matters of public interest. These details are not already publicly available and the records would provide a more thorough public understanding of the operations of the administration.

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 materials gathered through this FOIA request to develop reports,⁵ write blogs,⁶ and author op-eds.⁷ CLC’s research and reports are widely disseminated on its blog,⁸ through its own website,⁹ through social media platforms like

⁵ 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>.

⁶ 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>;

⁷ 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.

⁸ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

⁹ See Campaign Legal Center “Reference Materials” library, <http://www.campaignlegalcenter.org/research/reference-materials>.

Facebook¹⁰ and Twitter,¹¹ and regular emails to its supporters, among other communications outlets.¹²

CLC staff have significant knowledge in ethics and government accountability, and news media regularly rely upon CLC's analysis and expertise,¹³ including on stories related to the executive order at issue in this request.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.

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

¹⁰ <https://www.facebook.com/CampaignLegalCenter/>

¹¹ <https://twitter.com/CampaignLegal>

¹² See Campaign Legal Center blog at MEDIUM, <https://medium.com/clc-blog>.

¹³ See e.g. 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; Emma Brown and Danielle Douglas-Gabriel, *Betsy DeVos's ethics review raises further questions for Democrats and watchdogs*, WASH. POST (Jan. 24, 2016)

¹⁴ See, e.g., Bill Allison and Ben Brody, *Trump's Ethics Order Seen as Boost for Shadow Lobbying*, BusinessWeek (Jan. 30, 2017) <https://www.bloomberg.com/politics/articles/2017-01-30/trump-s-ethics-order-seen-as-potential-boost-for-shadow-lobbying>; Isaac Arnsdorf, *Trump Lobbying Ban Weakens Obama Rules*, POLITICO (Jan. 28, 2017), <http://www.politico.com/story/2017/01/trump-lobbying-ban-weakens-obama-ethics-rules-234318>.

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

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[] [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 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.

* * *

Please contact me and advise me of the cost of this request if processing costs exceed \$100.

I request that the processing of this request be expedited. Additionally, 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:

Bfischer@campaignlegalcenter.org

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>.

Or, please mail copies of responsive documents to:

Brendan Fischer
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 the receipt of this request and provide me with an estimate of processing time.

Thank you,

/s/

Brendan Fischer
Associate Counsel
Campaign Legal Center
bfischer@campaignlegalcenter.org