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March 6, 2017

Via FAX: 877-807-9215 and 202-874-5484

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RE: Freedom of Information Act Request (Expedited Processing Requested)

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 President Donald Trump's pledge to donate profits earned in his hotels to the U.S. Treasury.

I. Background

On January 11, 2017, in response to ethical and constitutional concerns, President Trump held a press conference, and his attorney, Sheri Dillon, stated:

“President-elect Trump has decided, and we are announcing today, that he is going to voluntarily donate all profits from foreign government payments made to his hotels to the United States Treasury. This way it is the American people who will profit.”¹

The announcement attracted significant attention among the press and public, and many ethics experts questioned how the pledge would be followed and whether it would effectively alleviate ethical and constitutional concerns.²

On March 5, 2017, the *Associated Press* reported:

Last week, Kuwait's ambassador, Salem Al-Sabah, and his wife hosted a reception in the hotel's presidential ballroom, in what was one of the first known instances of foreign money changing hands with the hotel division of the Trump Organization since he became president. A spokeswoman for the Trump Organization did not respond to questions about whether the money from the Kuwait Embassy has been or will be donated.³

Records likely to be disclosed in response to this request will contribute significantly to the public's understanding of whether President Trump is complying with his pledge to donate hotel profits to the U.S. Treasury and how such a pledge is being carried out, and how the agency has responded to that pledge, which are matters of significant public interest.

II. Requested Records

CLC is requesting copies of all following records:

- All records pertaining to Trump hotels, including but not limited to all potential or actual payments received or requested, all guidance provided to Trump Organization or White House officials, and all correspondence otherwise pertaining to Trump hotels and the President's plans to donate profits to the U.S. Treasury.

This request encompasses both digital and physical records.

¹ Sarah Begley, Donald Trump to Donate Money Foreign Governments Spend at His Hotels to U.S. Treasury, TIME (Jan. 11, 2017), <http://time.com/4631595/donald-trump-hotels-treasury-foreign-government/>; Trump's Attorney: Hotel Profits From Foreign Govts Will Be Donated to US Treasury, FOX NEWS (Jan. 11, 2017), <http://insider.foxnews.com/2017/01/11/trumps-attorney-all-hotel-profits-foreign-govts-will-be-donated-us-treasury>.

² Meghan Keneally, *Trump Plan to Donate Hotel Profits Doesn't Erase Ethics Concerns: Experts*, ABC NEWS (Jan. 12, 2017), <http://abcnews.go.com/Politics/trump-plan-donate-hotel-profits-erase-ethics-concerns/story?id=44718344>; Christina Wilkie, Paul Blumenthal, *Trump Just Completely Entangled his Business and the U.S. Government*, HUFFINGTON POST (Jan. 12, 2017), http://www.huffingtonpost.com/entry/trump-business-conflicts-of-interests-treasury_us_5876928de4b092a6cae4ec7b; Jill Disis, *Trump's Foreign Profits Plan Is Doable, But Ethics Experts Say it's an Ethics Minefield*, CNN (Jan. 26, 2017) <http://money.cnn.com/2017/01/26/news/trump-hotels-foreign-profits/>.

³ Julie Bykovicz, *Trump Hotel May Be Political Capital of the Nation's Capital*, ASSOCIATED PRESS (Mar. 5, 2017), <http://bigstory.ap.org/article/cc2e2c2b6b4d4417aff3aa5f768be10/trump-hotel-may-be-political-capital-nations-capital>.

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 January 1, 2017 to March 6, 2017.

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 President Trump’s compliance with his pledge to donate profits to the Treasury and how the agency has responded to that pledge. These details are not already publicly available and the records would provide a more thorough public understanding of the operations of the agency.

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,⁴ write blogs,⁵ and author op-eds.⁶ CLC’s research and reports are widely

⁴ 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>.

⁵ 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>;

disseminated on its blog,⁷ through its own website,⁸ through social media platforms like Facebook⁹ and Twitter,¹⁰ and regular emails to its supporters, among other communications outlets.¹¹

CLC staff have significant knowledge in ethics and government accountability, and news media regularly rely upon CLC's analysis and expertise.¹² 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) and 40 C.F.R. § 2.107(l). 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); *see also* 40 C.F.R. § 2.107(b)(6).

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

⁶ 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.

⁷ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

⁸ See Campaign Legal Center "Reference Materials" library, <http://www.campaignlegalcenter.org/research/reference-materials>.

⁹ <https://www.facebook.com/CampaignLegalCenter/>

¹⁰ <https://twitter.com/CampaignLegal>

¹¹ See Campaign Legal Center blog at MEDIUM, <https://medium.com/clc-blog>.

¹² 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)

(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,¹³ through its own website,¹⁴ through social media platforms and regular emails to its supporters, and through other communications outlets.¹⁵ 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.

IV. Application for Expedited Processing

I request that the processing of this request be expedited pursuant to 31 C.F.R. § 1.5(e)(2)(ii). As described in Part I, the subject of this request involves a matter of exceptional public interest,¹⁶ and as described in Part III, requester CLC is primarily engaged in disseminating information and educating the public. The requested records pertain to matters of current exigency to the American public, specifically whether the president is violating the U.S. Constitution's

¹³ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹⁴ See Campaign Legal Center "Reference Materials" library, <http://www.campaignlegalcenter.org/research/reference-materials>.

¹⁵ See Campaign Legal Center, MEDIUM, <https://medium.com/clc-blog>.

¹⁶ See sources cited *supra* nn. 1-3.

Emoluments Clause or ethical standards. and whether the president has followed through on his promise to donate all profits received from foreign governments to the U.S. Treasury. Delaying a response to this request could allow any such violations of the constitution or of the public trust to continue without public knowledge or recourse.

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:

Bfischer@campaignlegalcenter.org

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
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