



November 16, 2017

By Electronic Mail

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RE: Freedom of Information Act Request

Dear FOIA Officers:

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 of Justice (“DOJ”) decision to assign Department lawyers to cases concerning President Donald Trump’s private businesses.

I. Background

The active cases related to President Trump’s private businesses and potential violations of the Constitution’s Emoluments Clause have received substantial attention from the press and have generated exceptional public interest this year. The first lawsuit, filed January 23, 2017, received significant press attention the

week it was filed,¹ and the oral argument in October was also widely covered by media outlets.² Since January, three additional lawsuits related to the Emoluments Clause have been filed against President Trump; they all similarly have become matters of significant public interest.³

On November 15, 2017, *USA Today* reported that at least ten DOJ lawyers and paralegals have been assigned to work on these cases:

The Justice Department lawyers' involvement is "strange," said U.S. Sen. Dianne Feinstein, D-Calif., who pressed Attorney General Jeff Sessions in a hearing last month about how his department determined it was appropriate to defend Trump in the cases about his private businesses.

Sessions said he "believed" DOJ's Office of Legal Counsel was consulted. Spokesmen for both the DOJ and the Office of Legal Counsel would not answer questions whether the office reviewed the appropriateness of DOJ attorneys working on the case.

"It's the responsibility of the Department of Justice to defend the Office of the Presidency in carrying out its activities against charges that are not deemed meritorious," Sessions said. "We believe that this is defensible and we've taken the position that our top lawyers' believe is justified."⁴

¹ See, e.g., Eric Lipton and Adam Liptak, *Foreign Payments to Trump Firms Violate Constitution, Suit Will Claim*, N.Y. TIMES (Jan. 22, 2017), <https://www.nytimes.com/2017/01/22/us/politics/trump-foreign-payments-constitution-lawsuit.html>; Robert Siegel, *Non-Profit Lawsuit Alleges Trump Violates the Constitution*, NPR (Jan. 23, 2017), <https://www.npr.org/2017/01/23/511267224/non-profit-lawsuit-alleges-trump-violates-the-constitution>; Jimmy Vielkind, *Teachout says emoluments suit could result in more financial disclosure for Trump*, POLITICO (Jan. 27, 2017), <https://www.politico.com/states/new-york/albany/story/2017/01/teachout-explains-emoluments-suit-against-trump-109117>; Eric Segall, *Let the emoluments case against Trump go forward*, L.A. TIMES (Jan. 25, 2017), <http://www.latimes.com/opinion/op-ed/la-oe-segall-emoluments-case-should-go-forward-20170125-story.html>.

² See, e.g., Peter Overby, *Federal Judge Hears Arguments In Emoluments Clause Lawsuit Against Trump*, NPR (Oct. 18, 2017), <https://www.npr.org/2017/10/18/558614329/federal-judge-hears-arguments-in-emoluments-clause-lawsuit-against-trump>; Jennifer Rubin, *A day in court: Trump's emoluments problem, his challengers' standing problem*, WASH. POST (Oct. 19, 2017), https://www.washingtonpost.com/blogs/right-turn/wp/2017/10/19/a-day-in-court-trumps-emoluments-problem-his-challengers-standing-problem/?utm_term=.ab9248002fc3.

³ See, e.g., Andy Kroll and Russ Choma, *Here Are the 4 Lawsuits That Could Force Trump to Release His Taxes*, MOTHER JONES (July 6, 2017), <http://www.motherjones.com/politics/2017/07/here-are-the-4-lawsuits-that-could-force-trump-to-release-his-taxes/#>; Sheelah Kolhatkar, *A Lawsuit Attacks the Marketing of the Presidency*, THE NEW YORKER (June 13, 2017), <https://www.newyorker.com/business/currency/a-lawsuit-attacks-the-marketing-of-the-presidency>.

⁴ Nick Penzenstadler, *Taxpayers pay legal bill to protect Trump business profits*, USA TODAY (Nov. 15, 2017), <https://www.usatoday.com/story/news/2017/11/15/taxpayers-pay-legal-bill-protect-trump-business-profits/848354001/>.

The next day, the report generated coverage in multiple other media outlets as well.⁵

II. Requested Records

This request encompasses:

- All factual materials, reports, research, and other evidence that the DOJ considered in reaching its conclusion that it is permissible for Department lawyers to work on cases related to President Trump's private businesses, and
- All OLC correspondence pertaining to the use of Department lawyers on cases related to President Trump's private businesses.

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 from January 20, 2017 to date.

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

⁵ See, e.g., Rebecca Savransky, *Taxpayers footing legal bill for Trump's private business lawsuits: report*, THE HILL (Nov. 16, 2017), <http://thehill.com/homenews/administration/360632-taxpayers-footing-legal-bill-for-justice-dept-to-work-on-lawsuits>; Eric Levitz, *Trump is Using DOJ Lawyers to Defend His Right to Profit From the Presidency*, NEW YORK MAGAZINE (Nov. 16, 2017), <http://nymag.com/daily/intelligencer/2017/11/doj-is-defending-trumps-right-to-profit-from-the-presidency.html>.

contribute significantly to the public's understanding of how decisions about the allocation of taxpayer funds are made. 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 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

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.*

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 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 a 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

Government, HUFFINGTON POST (Jan. 11, 2017), http://www.huffingtonpost.com/entry/trump-business-conflicts-of-interests-treasury_us_5876928de4b092a6cae4ec7b

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>.

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 28 C.F.R. § 16.5(e)(1)(iv).

As described in Part I, the subject of the request involves a matter of significant media interest,¹⁸ and the initial revelations about the use of DOJ lawyers for these cases raise questions about the government’s integrity that can affect public confidence.¹⁹

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**

¹⁸ See sources cited *supra* at nn. 1-5.

¹⁹ See sources cited *supra* at n. 4, 5.

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,

/s/ Maggie Christ

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