



February 16, 2017

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
Department of Justice, Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

Peter Carr
Acting Director of Public Affairs
Office of Public Affairs
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001
Email: press@usdoj.gov

Via U.S. Mail, Email, and Online Request Form

**Re: Freedom of Information Act Request
(Expedited Processing & Fee Waiver/Limitation Requested)**

To Whom It May Concern,

The Campaign Legal Center (CLC) submits this Freedom of Information Act Request for records of communications to or from Supreme Court Nominee Neil Gorsuch during his tenure as Principal Deputy Associate Attorney General at the Department of Justice (“DOJ”). Our request includes, but is not limited to, emails, letters, memoranda, voicemails, records of phone conversations, or any other physical or electronic records of communications.

Background

Between 2005 and 2006, senior DOJ officials implemented hiring and firing procedures that were improperly and illegally motivated by politics, party, and pressure from the administration.¹ When these procedures came to light, they significantly damaged public confidence in the DOJ, prompted both internal investigations and a Congressional inquiry, and raised the specter of criminal charges for the officials involved.²

An internal investigation into the 2006 firing of several U.S. Attorneys found that senior DOJ leadership had “abdicated their responsibility to adequately oversee the [removal] process

¹ Department of Justice Office of the Inspector General, *An Investigation into the Removal of Nine U.S. Attorneys in 2006* 15-16, 325 (2008), <https://oig.justice.gov/special/s0809a/final.pdf> [hereinafter *2008 Removal Report*] (demonstrating that consideration for firing U.S. Attorneys began after the 2004 election, and that the firing of nine US Attorneys by the end of 2006 was motivated by improper partisan political considerations); Department of Justice Office of the Inspector General, *An Investigation into Allegations of Politicized Hiring And Other Improper Personnel Actions in the Civil Rights Division* 9, 64 (2008), <https://oig.justice.gov/special/s0901/final.pdf> [hereinafter *2008 Hiring Report*] (concluding that candidates were considered on the basis of their political and ideological affiliations, in violation of federal law and Department policy, during a period from 2003-2006).

² David Bowermaster, *Charges may result from firings, say two former U.S. Attorneys*, *The Seattle Times* (May 9, 2007), <http://www.seattletimes.com/seattle-news/charges-may-result-from-firings-say-two-former-us-attorneys/>; Theresa Cook, *Report Raps Bradley Schlozman, Former Justice Department Official, for Political Bias*, *ABC News* (Jan. 13, 2009), <http://abcnews.go.com/TheLaw/DOJ/story?id=6637861&page=1>.

and to ensure that the reasons for removal . . . were supportable and not improper.”³ The investigation found substantial evidence that several of the attorneys were removed due to political cronyism and infighting, or because they failed to aggressively investigate voter fraud complaints for partisan benefit.⁴ The investigative report acknowledged the DOJ’s “responsibility to protect its independence and the independence of federal prosecutors,” and found that its failure to do so “severely damaged the credibility of the Department and raised serious doubts about the integrity of Department prosecutive decisions.”⁵

A separate internal investigation determined that Bradley Schlozman, a senior official in the Civil Rights Division, violated federal law and DOJ policy by considering political and ideological affiliations in hiring and other personnel decisions.⁶ The investigation further determined that “Division managers failed to execute sufficient oversight” over Mr. Schlozman.⁷

Mr. Gorsuch served as Principal Deputy Associate Attorney General from July 2005 to June 2006.⁸ As principal deputy to the third-highest ranking officer in the Justice Department,⁹ Mr. Gorsuch assisted in managing the DOJ’s civil litigating components, including the Civil Rights Division.¹⁰ He also assisted in the development and implementation of department initiatives and policies, and acted as Associate Attorney General when his superior was unavailable.¹¹

The requested records will shed light on what role, if any, Mr. Gorsuch had in the disastrous hiring and firing initiatives implemented at DOJ during his time there. Even if Mr. Gorsuch had no active involvement, the requested records will shine light on his knowledge or ignorance of the improper policies pursued by his colleagues and staff, and any defense or condemnation he made regarding these policies and the threat to the DOJ’s independence and integrity they posed. Further, they will shed light on how Mr. Gorsuch operated as an independent official within the justice system, at a time of aggressive interference by the administration.

Mr. Gorsuch’s history of independence in the judicial system is particularly relevant today. His nomination to the Supreme Court has been widely covered, and has raised important questions about judicial independence generally, and Mr. Gorsuch’s independence from the current administration in particular.¹² How Mr. Gorsuch navigated the issue of the DOJ’s

³ 2008 *Removal Report* at 357.

⁴ 2008 *Removal Report* at 331-35.

⁵ 2008 *Removal Report* at 113, 358.

⁶ 2008 *Hiring Report* at 64.

⁷ 2008 *Hiring Report* at 64.

⁸ Neil Gorsuch, *U.S. Senate Committee on the Judiciary: Questionnaire for Judicial Nominees* 43 (2017), [https://www.judiciary.senate.gov/imo/media/doc/Neil%20M.%20Gorsuch%20SJQ%20\(Public\).pdf](https://www.judiciary.senate.gov/imo/media/doc/Neil%20M.%20Gorsuch%20SJQ%20(Public).pdf) [hereinafter 2017 *Questionnaire*].

⁹ Department of Justice, *Organization, Mission & Function: Attorney General, Deputy and Associate*, <https://www.justice.gov/jmd/organization-mission-and-functions-manual-attorney-general#asg> (last accessed Feb. 14, 2017).

¹⁰ 2017 *Questionnaire* at 43.

¹¹ 2017 *Questionnaire* at 43.

¹² See, e.g., Robert Barnes, *Trump’s blasts at judge raise questions for Gorsuch on independence*, The Washington Post (Feb. 5, 2017), https://www.washingtonpost.com/politics/courts_law/trumps-blasts-at-judge-raise-questions-

independence under an administration bent on interfering for political gain has significant bearing on how he might approach similar troubling interference as a nominee to, and as a Justice on the Supreme Court.

FOIA entitles the American public to information relevant to how senior agency officials carry out the responsibility of their office, and at the DOJ this includes the responsibility to protect and maintain public confidence in the DOJ's independence from political pressure. The Campaign Legal Center seeks such information through this FOIA request, pursuant to 5 U.S.C. § 552, *et. seq.*, and 28 C.F.R. § 16.

Request

CLC requests records of all communications initiated or received by, copied to, or otherwise disseminated to and/or by Neil Gorsuch during the period June 2005 to July 2006 involving:

- a. The independence of the DOJ and of federal prosecutors, including but not limited to the role of the DOJ as it relates to the President, his administration, and the partisan interests of the party to which the President belongs.
- b. Investigations by the DOJ and/or U.S. Attorneys of voter fraud, including but not limited to decisions by the DOJ and/or US Attorneys not to investigate, or not to bring civil or criminal charges related to voter fraud;
- c. Investigations by the DOJ and/or U.S. Attorneys of political corruption, including but not limited to decisions not to investigate, or not to bring civil or criminal charges related to political corruption;
- d. The replacement or retention of U.S. Attorneys, generally, during the period January 2005 and July 2006;
- e. Any of the following individuals
 - i. Then Missouri Secretary of State Robin Carnahan
 - ii. Then U.S. Attorney Todd Graves
 - iii. Timothy Griffin

for-gorsuch-on-independence/2017/02/05/1642212c-ebc2-11e6-b4ff-ac2cf509efe5_story.html?utm_term=.58176bfd5eb; Tessa Berenson, *The Tricky Politics of Neil Gorsuch and President Trump's Insult to Judges*, Time (Feb. 9, 2017), <http://time.com/4665259/neil-gorsuch-donald-trump-judges-supreme-court/>; Howard Kurtz, *Did Neil Gorsuch distance himself from Donald Trump? It's complicated*, Fox News (Feb. 10, 2017), <http://www.foxnews.com/politics/2017/02/10/did-neil-gorsuch-distance-himself-from-donald-trump-its-complicated.html>; Hayley Miller, *Chuck Schumer: Neil Gorsuch's 'Behind Closed Doors' Criticism of Trump Is Self-Serving*, The Huffington Post (Feb. 10, 2017), http://www.huffingtonpost.com/entry/chuck-schumer-neil-gorsuch-criticism-trump_us_589e1951e4b094a129eafb68; Editorial, *Trump's trash talk on judges makes trouble for Gorsuch*, The Los Angeles Times (Feb. 10, 2017), <http://www.latimes.com/opinion/editorials/la-ed-trump-judges-20170210-story.html>; James Pindell, *Richard Blumentha, Neil Gorsuch, and the making of a so-called White House controversy*, The Boston Globe (Feb. 9, 2017), <https://www.bostonglobe.com/news/politics/2017/02/09/groundgame/TourncewnefM53ITjNm7hTK/story.html>.

- iv. Then U.S. Attorney Bud Cummins
 - v. Then Maryland Gov. Robert L. Ehrlich, Jr.
 - vi. Then U.S. Attorney Thomas DiBiagio
 - vii. Then U.S. Attorney Kasey Warner
 - viii. Bradley Schlozman;
- f. Changes to the law related to the confirmation of U.S. Attorneys;
 - g. Changes to the law related to the residency requirements for U.S. Attorneys;
 - h. Formal or informal hiring and personnel practices, policies, procedures, and/or attorney qualifications for the Civil Rights Division.

Withholding of Documents

If OIP determines that any of the requested documents are exempt from disclosure, please provide a *Vaughn* index describing any such document(s) or parts of document(s) withheld; and the justification for withholding any document(s) or any part of any document(s), including the specific exemption claimed and the consequences of providing the withheld information. *See Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973); *Mead Data Central, Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977) (“we require that when an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply”); *King v. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (“A withholding agency must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information”). For any document or record for which an exemption is claimed, please disclose any reasonably segregable non-exempt portion of the requested document or record. 5 U.S.C. § 522(b).

Request for Expedited Processing

The Campaign Legal Center requests expedited processing of this records request. 5 U.S.C. § 522(a)(6)(E); 28 C.F.R. §§ 16.5(e)(1)(iii), 16.5(e)(1)(iii)(iv). The following serves as a true and correct statement detailing the basis for our request for expedited processing. As per the Department’s regulations, 28 C.F.R. §16.5(e)(2), we have filed this statement with Mr. Peter Carr, Acting Director of Public Affairs for the Department of Justice.

Statement of Basis

CLC requests expedited processing because there is an “urgent need” for the information requested, and CLC is an organization “primarily engaged” in disseminating information to the public regarding “actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. §16.5(e)(1)(iii). Further, the information requested “involves a matter of widespread and exceptional media interest,” and raises “possible questions about the government’s integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv).

A. *Request for Expedited Processing Under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(1)(iii)*

CLC is primarily engaged in disseminating information to the public about actual or alleged government activity because it is an “entity that 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)(III); *see also, ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that such organizations are “representative[s] of the news media” and are “primarily engaged in disseminating information”).

CLC maintains a website¹³ that provides a wealth of editorial content about democracy law issues, including campaign finance, voting rights, redistricting, and ethics. CLC also publishes a regularly updated blog with original editorial and educational content,¹⁴ and communicates its research analysis through multiple social media platforms such as Facebook, Twitter, and Medium.¹⁵ CLC also disseminates original editorial and educational content to the public through op-eds,¹⁶ press releases,¹⁷ email newsletters, public reports,¹⁸ fact sheets,¹⁹ videos,²⁰ and other materials. CLC staff is frequently interviewed for news stories.²¹ CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC’s work.

CLC is not filing this request to further its commercial interest. CLC is a nonprofit, nonpartisan 501(c)(3) organization. Any information disclosed to CLC by way of this request will be made available to the public at no cost. CLC will also use documents responsive to the request to create analytical content—from op-eds to reports to blogs—that will further educate the public about these matters.

An “urgent need” for expedited processing exists where the records requested touch on an issue that is “the subject of current news coverage.” *Al-Fayed v. CIA*, 245 F.3d 300, 308 (D.C.

¹³ The Campaign Legal Center, www.campaignlegalcenter.org.

¹⁴ Blog, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/262>.

¹⁵ Campaign Legal Center, Facebook, <https://www.facebook.com/CampaignLegalCenter/>; Campaign Legal Center, Twitter, <https://twitter.com/CampaignLegal>; Campaign Legal Center, Medium, <https://medium.com/clc-blog>.

¹⁶ *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.

¹⁷ Press Releases, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/286>.

¹⁸ *See e.g.*, Make Democracy Count: Ending Partisan Gerrymandering, Campaign Legal Center (Aug. 10, 2016), <http://www.campaignlegalcenter.org/document/make-democracy-count-ending-partisan-gerrymandering>; Ruth Greenwood, Analysis: Partisan Gerrymandering in the 2016 Election, Campaign Legal Center (Jan. 9, 2017), <http://www.campaignlegalcenter.org/news/blog/analysis-partisan-gerrymandering-2016-election>; Funding the Presidential Nominating Conventions: How a Trickle of Private Money Turned Into a Flood, Campaign Legal Center (June 14, 2016), <http://www.campaignlegalcenter.org/document/funding-presidential-nominating-conventions-how-trickle-private-money-turned-flood>.

¹⁹ *See e.g.*, Backgrounder: Record of Supreme Court Nominee Neil Gorsuch on Democracy Law, Campaign Legal Center (Feb. 2, 2017), <http://www.campaignlegalcenter.org/news/update/backgrounder-record-supreme-court-nominee-neil-gorsuch-democracy-law>.

²⁰ *See e.g.*, <http://www.campaignlegalcenter.org/news/press-releases/meet-victims-texas-voter-photo-id-law>.

²¹ Media Coverage, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/241>.

Cir. 2001). Mr. Gorsuch's nomination to the Supreme Court is currently the subject of widespread coverage in the media.²² Further, Senate leadership has indicated that they intend to hold hearings for Mr. Gorsuch's confirmation within the next six weeks, which demonstrates an urgency to provide the public with any information related to his intention and ability to act independently despite political pressure or pressure from the administration.²³

The nomination of a Supreme Court Justice is a significant occurrence of critical importance to the public. In order to comment on Mr. Gorsuch's nomination in a timely manner, the public should have expedited access to information that speaks to his ability to remain independent of political, partisan, or administrative pressure. The requested records would give the public access to information about how Mr. Gorsuch carried himself and perceived the responsibility of his office during a time when his colleagues, and at least one subordinate, were engaged in activities that compromised the independence of the Department of Justice and undermined public confidence in the role of the executive branch in the federal justice system.

B. Request for Expedited Processing Under 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(1)(iv)

CLC requests expedited processing because the requested records involve “a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv).

As noted above, Mr. Gorsuch's nomination to the Supreme Court has generated widespread and exceptional media coverage, and serious public debate regarding his independence from the executive branch.²⁴ The debate over judicial independence necessarily

²² See, e.g., Robert Barnes, *Trump's blasts at judge raise questions for Gorsuch on independence*, The Washington Post (Feb. 5, 2017), https://www.washingtonpost.com/politics/courts_law/trumps-blasts-at-judge-raise-questions-for-gorsuch-on-independence/2017/02/05/1642212c-ebc2-11e6-b4ff-ac2cf509efe5_story.html?utm_term=.58176bffd5eb; Tessa Berenson, *The Tricky Politics of Neil Gorsuch and President Trump's Insult to Judges*, Time (Feb. 9, 2017), <http://time.com/4665259/neil-gorsuch-donald-trump-judges-supreme-court/>; Howard Kurtz, *Did Neil Gorsuch distance himself from Donald Trump? It's complicated*, Fox News (Feb. 10, 2017), <http://www.foxnews.com/politics/2017/02/10/did-neil-gorsuch-distance-himself-from-donald-trump-its-complicated.html>; Hayley Miller, *Chuck Schumer: Neil Gorsuch's 'Behind Closed Doors' Criticism of Trump Is Self-Serving*, The Huffington Post (Feb. 10, 2017), http://www.huffingtonpost.com/entry/chuck-schumer-neil-gorsuch-criticism-trump_us_589e1951e4b094a129eafb68; Los Angeles Times Editorial Board, *Trump's trash talk on judges makes trouble for Gorsuch*, The Los Angeles Times (Feb. 10, 2017), <http://www.latimes.com/opinion/editorials/la-ed-trump-judges-20170210-story.html>; James Pindell, *Richard Blumenthal, Neil Gorsuch, and the making of a so-called White House controversy*, The Boston Globe (Feb. 9, 2017), <https://www.bostonglobe.com/news/politics/2017/02/09/groundgame/TourncwnefM53ITjNm7hTK/story.html>.

²³ Michele Gorman, *Neil Gorsuch's Supreme Court Nomination: What Happens Next?*, Newsweek (Feb. 1, 2017), <http://www.newsweek.com/neil-gorsuch-supreme-court-nomination-what-next-551412>.

²⁴ See, e.g., Robert Barnes, *Trump's blasts at judge raise questions for Gorsuch on independence*, The Washington Post (Feb. 5, 2017), https://www.washingtonpost.com/politics/courts_law/trumps-blasts-at-judge-raise-questions-for-gorsuch-on-independence/2017/02/05/1642212c-ebc2-11e6-b4ff-ac2cf509efe5_story.html?utm_term=.58176bffd5eb; Tessa Berenson, *The Tricky Politics of Neil Gorsuch and President Trump's Insult to Judges*, Time (Feb. 9, 2017), <http://time.com/4665259/neil-gorsuch-donald-trump-judges-supreme-court/>; Howard Kurtz, *Did Neil Gorsuch distance himself from Donald Trump? It's complicated*, Fox News (Feb. 10, 2017), <http://www.foxnews.com/politics/2017/02/10/did-neil-gorsuch-distance-himself-from-donald-trump-its-complicated.html>; Hayley Miller, *Chuck Schumer: Neil Gorsuch's 'Behind Closed Doors'*

raises questions regarding the integrity of the government, and affects public confidence.

Application for Waiver or Limitation of Fees

CLC requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure 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 discussed above, cited news reports demonstrate overwhelming public and media interest into Mr. Gorsuch’s ability as Supreme Court Justice to maintain independence from an administration with a track record of undermining the judiciary. There is little to no information available publically about Mr. Gorsuch’s time as a senior official at the DOJ. Mr. Gorsuch had left the DOJ before the investigations into improper activities commenced, and thus did not participate in any internal or congressional review. The requested records will provide the public with critical information about Mr. Gorsuch’s approach to maintaining the independence of the justice system.

As noted above, CLC is not filing this request to further its commercial interest. A fee waiver would further Congress’ intent in providing for waivers for noncommercial requesters. *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.”).

CLC also requests a fee waiver on the grounds that CLC qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). As noted above, CLC meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that 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)(III).

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.” *Cause of Action*, 799 F.3d. at 1125-26. Courts have found that other organizations with functionally similar missions 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., id.* at 1121-25 (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA 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); *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).

Criticism of Trump Is Self-Serving, The Huffington Post (Feb. 10, 2017), http://www.huffingtonpost.com/entry/chuck-schumer-neil-gorsuch-criticism-trump_us_589e1951e4b094a129eafb68; Los Angeles Times Editorial Board, *Trump’s trash talk on judges makes trouble for Gorsuch*, The Los Angeles Times (Feb. 10, 2017), <http://www.latimes.com/opinion/editorials/la-ed-trump-judges-20170210-story.html>; James Pindell, *Richard Blumentha, Neil Gorsuch, and the making of a so-called White House controversy*, The Boston Globe (Feb. 9, 2017), <https://www.bostonglobe.com/news/politics/2017/02/09/groundgame/TourncwnefM53ITjNm7hTK/story.html>.

“It is critical that the phrase ‘representative of the news media’ be interpreted broadly if the act is to 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). Given the foregoing, there can be no doubt that CLC performs important functions as a “representative of the news media,” as defined by the relevant statute and regulations.

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. You can contact me at 202-736-2200 or at dlang@campaignlegalcenter.org.

Conclusion

Pursuant to department regulations, CLC expects notification of a decision on its request for expedited processing within ten days, 28 C.F.R. § 16.5(e)(4). Even should expedited processing be rejected, CLC expects a response to this Request within twenty working days, as required by statute. 5 U.S.C. § 552(a)(6)(A).

Thank you for your prompt attention to this matter. Where possible, please send the requested record electronically to dlang@campaignlegalcenter.org. Please furnish all applicable paper records to: Campaign Legal Center, c/o Danielle Lang, 1411 K Street NW Suite 1400, Washington, DC 20005.

Respectfully,



Danielle Lang
Deputy Director of Voting Rights
Campaign Legal Center