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Via Email and Certified Mail

May 22, 2017

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***RE: FOIA number 2017-03002; 17-OIG-143; FY17-134***

This letter is to inform you that the Campaign Legal Center (CLC) intends to file suit seeking a court order requiring the government to stop its unreasonable and unlawful delay in complying with the above captioned Freedom of Information Act (FOIA) request, unless the documents requested are produced, or a timely schedule for compliance is agreed upon, within two weeks from the date of this letter.

The FOIA request was filed almost three months ago and was granted expedited processing approximately two months ago. However, as set forth below, the government now appears to be stonewalling to delay the release of these documents.

This narrowly tailored request relates to a matter of widespread and exceptional media interest—namely, how and why the Department of Justice reversed its earlier decision on the use of private prisons, and whether the financial support that certain private prison companies had provided to President Trump’s candidacy and inauguration played a role.

The Office of Public Affairs properly granted this request expedited processing on March 22, 2017. No documents, however, have yet been produced.

CLC is currently engaged in administrative proceedings before another federal agency related to the activity that is the subject of this FOIA request. The requested documents may be critical to the resolution of those proceedings.

Accordingly, if document production does not begin within two weeks, or a timely schedule for compliance is not agreed upon within two weeks, CLC intends to file suit challenging the Department of Justice's unreasonable delay in fulfilling the above captioned request.

### **CLC's FOIA Request**

On February 28, 2017, CLC submitted a single request via email to the Office of Legal Counsel (OLC), Bureau of Prisons (BOP), and Office of Inspector General (OIG) for the following records:

- All factual materials, reports, and other evidence that the DOJ considered in reaching its conclusion to rescind the August 18, 2016 memo on private prisons
- All correspondence with David Stewart
- All correspondence with Ryan Robichaux
- All correspondence with Michael Scrivner
- All correspondence with Peter Leon
- All correspondence with Leo Aguirre
- All correspondence with Mark Smith
- All records that mention "Rebuilding America Now"

The request was for a narrow timeframe: November 9, 2016 to February 21, 2017. The request also sought a fee waiver and expedited processing, and provided an explanation for why such waivers were appropriate in this instance.

On March 22, 2017, the Office of Public Affairs (OPA) granted CLC's request for expedited processing, pursuant to 28 C.F.R. §16.5(e)(2), since the requested records pertain to "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence," *id.* § 16.5(e)(1)(iv). OPA's decision was communicated to CLC in a March 24, 2017 letter from OLC Special Counsel Paul P. Colburn.

As of May 22, 2017, none of the DOJ offices have provided records that are responsive to this request. BOP and OIG representatives have stopped replying to CLC's inquiries as to the status of the request. And despite the request being granted expedited processing, an OLC representative is asserting that responsive records will not be released until the end of the year—nearly 11 months after the request was filed.

Below is a summary of interactions with the relevant DOJ offices following CLC's February 28, 2017 request.

### **Bureau of Prisons**

On March 1, 2017, OGC.Electronic.Freedom.of.Information@usdoj.gov sent CLC an email with an attached letter signed by BOP Senior Counsel Ronald Rodgers stating that “It appears that your request was misdirected to this office and that you seek records pertaining solely to the DOJ and/or the Office of the Attorney General. As it appears that you already sent your request to other DOJ FOIA offices, we will not take any further action on this request.”

That same day, CLC replied via email that the request was properly directed to BOP, and in order to dispel any confusion clarified that the request was for:

- *All factual materials, reports, and other evidence that the BOP provided, or that the Attorney General’s office requested, with regards to the decision to rescind the August 18, 2016 memo on private prisons*
- *All correspondence between the BOP and David Stewart*
- *All correspondence between the BOP and Ryan Robichaux*
- *All correspondence between the BOP and Michael Scrivner*
- *All correspondence between the BOP and Peter Leon*
- *All correspondence between the BOP and Leo Aguirre*
- *All correspondence between the BOP and Mark Smith*
- *All records in the possession of the BOP that mention “Rebuilding America Now”*

Later that same day, March 1, 2017, CLC spoke on the phone with BOP FOIA Public Liaison, Mr. C. Darnell Stroble, and clarified that the request was properly directed to BOP. Following that conversation, CLC emailed:

*Per our conversation, I also would like to add the following to the items requested in the previous email:*

- *All inquiries to the BOP from the Attorney General’s office pertaining to the August 18, 2016 memo on private prisons, and all BOP responses to those inquiries*

*As stated in the initial request, the timeframe for this request is November 9, 2016 to February 21, 2017.*

On March 2, OGC.Electronic.Freedom.of.Information@usdoj.gov sent CLC an email with an attached unsigned letter acknowledging the receipt of the request, and assigning it FOIA number 2017-03002.

On May 15, CLC left a voice message for Mr. Stroble inquiring about the status of the request.

On May 16, Linda Bowe from BOP’s Central Office called CLC to say that document requests had been sent to BOP’s component offices, and stated that the request was on the “complex” track and could still take quite some time to complete. CLC informed Ms. Bowe that our request for expedited processing had been granted by OPA, and she said that “wires had been crossed” at the agency and said that Mr. Stroble would be calling to follow up within 24 hours.

Mr. Stroble did not follow up within 24 hours.

On May 18, CLC left a voice message for Mr. Stroble about the status of the request.

### **Office of Inspector General**

On March 7, OIGFOIA@usdoj.gov sent CLC an email with an attached letter signed by Government Information Specialist Jeanetta M. Howard acknowledging the receipt of the request, and assigned it control number 17-OIG-143.

On April 13, CLC sent an email inquiring as to the status of the request.

On May 18, CLC left a voice message with Ms. Howard inquiring as to the status of the request.

### **Office of Legal Counsel**

On March 24, USDOJ-OfficeofLegalCounsel@usdoj.gov sent an email signed by OLC's FOIA and Records Management Attorney Jared Kaprove, with an attached letter signed by Special Counsel Paul P. Colburn acknowledging the receipt of the request, and assigning it tracking number FY17-134.

Additionally, Mr. Colburn's letter noted that, on March 22, the Office of Public Affairs (OPA) had granted CLC's request for expedited processing, pursuant to 28 C.F.R. §16.5(e)(2).

On April 13, CLC sent an email to USDOJ-OfficeofLegalCounsel@usdoj.gov inquiring about the status of the request.

On April 14, OLC Paralegal and FOIA Specialist Melissa Golden replied from that email address that "our best estimate is that we hope to complete the processing of your request by the end of the calendar year."

\* \* \*

Given that CLC's request has been granted expedited processing, these delays in disclosing the requested records are unreasonable. Accordingly, CLC intends to file a lawsuit if the records are not timely disclosed.

Respectfully submitted,

/s/

Brendan Fischer  
Director, Federal and FEC Reform  
Campaign Legal Center