

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAMPAIGN LEGAL CENTER
1411 K Street NW, Suite 1400
Washington, DC 20005,

Plaintiff,

v.

DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue NW
Washington, DC 20530,

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE RELIEF

(1) This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff seeks injunctive and other appropriate relief to compel Defendant Department of Justice to disclose requested records.

Jurisdiction and Venue

(2) This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

The Parties

(3) Plaintiff Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization that works to strengthen American democracy through, among other activities, local, state, and federal efforts to ensure that the public has access to information regarding the

financing of our election campaigns and the influence campaign donations have on governmental policy decisions. As part of this effort, CLC conducts research, authors reports and articles, and regularly provides expert analysis to the media. CLC is also involved in litigation throughout the country regarding campaign finance matters, participates in rulemaking and advisory opinion proceedings before the Federal Election Commission (“FEC”) to ensure that the agency is properly interpreting and enforcing federal election laws, and files FEC complaints requesting that enforcement actions be taken against individuals or organizations that violate the law. To support these efforts and to educate the public, CLC regularly seeks information under FOIA regarding federal agency decisionmaking.

(4) Defendant Department of Justice (“DOJ”) is a department of the Executive Branch of the United States Government. The Office of the Inspector General (“OIG”) and the Office of Legal Counsel (“OLC”) are offices within defendant DOJ, and the Federal Bureau of Prisons (“BOP”) is a component of defendant DOJ. Defendant DOJ is an “agency” within the meaning of 5 U.S.C § 552(f).

Background

(5) In August 2016, the DOJ OIG issued a report concluding that “contract prisons incurred more safety and security incidents per capita than comparable BOP institutions.”¹

(6) The OIG report highlighted in particular the problems at private prisons operated by GEO Group Inc. (“GEO Group”), one of the largest private prison contractors. Specifically, the report noted that GEO Group’s “contract prisons had more incidents per capita compared to those operated by [other contractors] for contraband finds, several types of reports of incidents,

¹ Office of Inspector General, U.S. Dep’t of Justice, *Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons* at 2 (Aug. 2016), <https://oig.justice.gov/reports/2016/e1606.pdf#page=2>.

lockdowns, guilty findings on inmate discipline charges, positive drug test results, and sexual misconduct.”²

(7) On August 18, 2016, then-Deputy Attorney General Sally Yates issued a memo instructing the Bureau of Prisons to phase-out the use of privately operated correctional facilities, writing that private prisons “compare poorly to our own Bureau facilities” and “do not provide the same level of correctional service, programs, and resources; . . . do not save substantially on costs; and as noted in a recent report by the Department’s Office of Inspector General, . . . do not maintain the same level of safety and security.”³

(8) The next day, August 19, 2016, GEO Group’s wholly-owned subsidiary, GEO Corrections Holdings, Inc., contributed \$100,000 to Rebuilding America Now, a “super PAC” supporting Donald Trump’s campaign for president.

(9) Rebuilding America Now had the blessing of the Trump campaign as one of its preferred super PACs. According to media reports, President Trump’s then-campaign manager, Paul Manafort, called into a July 2016 meeting with top donors to Rebuilding America Now informing them that they were the only super PAC he was addressing.⁴

(10) At the same meeting of the super PAC’s donors, attendees were shown a quote from then-Governor Mike Pence, who stated that “[s]upporting Rebuild [*sic*] America Now is one of the best ways to stop Hillary Clinton and help elect Donald Trump our next president!”⁵

² *Id.* at 15.

³ See Memorandum from Sally Q. Yates (Aug. 18, 2016), <https://www.justice.gov/archives/opa/file/886311/download>.

⁴ Alex Isenstadt and Kenneth P. Vogel, *Trump Blesses Major Super PAC Effort*, Politico (July 20, 2016), <http://www.politico.com/story/2016/07/trump-super-pac-donors-225892>.

⁵ *Id.* The Politico article mistakenly quotes Pence as referring to “Rebuild America Now”; the link to the slide shown at the meeting shows the actual quote, which referred to Rebuilding

(11) Federal law prohibits a federal contractor from “directly or indirectly . . . mak[ing] any contribution of money or other things of value, or . . . promis[ing] expressly or impliedly to make any such contribution . . . to any person for any political purpose or use.” 52 U.S.C. § 30119(a)(1). Federal law likewise prohibits any person from “knowingly . . . solicit[ing] any such contribution for any such person for any such purpose.” *Id.* § 30119(a)(2).

(12) On November 1, 2016, CLC and an individual, Catherine Hinckley Kelley, filed a complaint with the FEC against Rebuilding America Now and GEO Corrections Holdings, Inc., seeking enforcement for apparent violation of the ban on federal contractor donations.⁶ The same day, GEO Corrections Holdings, Inc. contributed an additional \$125,000 to Rebuilding America Now.

(13) On February 21, 2017, two weeks after being confirmed, Attorney General Jeff Sessions issued a memo rescinding the August 18, 2016 directive from Ms. Yates to phase-out the use of private prisons.

(14) Attorney General Sessions’s single-paragraph memo stated that Ms. Yates’ decision “changed long-standing policy and practice, and impaired the Bureau’s ability to meet the future needs of the federal correctional system,” and he thus “direct[ed] the Bureau to return to its previous approach.”⁷

America Now. *See* <http://static.politico.com/82/37/a220e5774f6e893fadcc4d48abfe/rebuilding-america-now-pac-slide.jpg>.

⁶ *See* Complaint, <http://www.campaignlegalcenter.org/sites/default/files/11-01-16%20Rebuilding%20America%20Now%20Contractor%20Complaint.pdf>.

⁷ *See* Memorandum from Jefferson B. Sessions III (Feb. 21, 2017), https://www.bop.gov/resources/news/pdfs/20170224_doj_memo.pdf.

(15) Attorney General Sessions' rescission of the earlier memo attracted significant attention among the press and public,⁸ and caused the stock prices of private prisons to rise significantly.⁹ Many news reports pointed out that the private prison companies, including GEO Group, that benefitted from the policy reversal had financially supported President Donald Trump's campaign and inauguration.¹⁰

(16) In April 2017, GEO Group was awarded a \$110 million contract to build the first immigrant detention center under the Trump administration.¹¹

Plaintiff's FOIA Requests and Defendant's Responses

(17) By letter to DOJ dated February 28, 2017 (addressed to the Office of the Attorney General, the Office of Legal Counsel, BOP, OIG, and the Office of Public Affairs ("OPA")), plaintiff requested records pertaining to how and why DOJ reversed its decision to phase-out the

⁸ E.g., Eric Lichtblau, *Justice Department Keeps For-Profit Prisons, Scrapping an Obama Plan*, N.Y. TIMES (Feb. 23, 2017), <https://www.nytimes.com/2017/02/23/us/politics/justice-department-private-prisons.html>; Jon Schuppe, *Private Prisons: Here's Why Sessions' Memo Matters*, NBC NEWS (Feb. 26, 2017), <http://www.nbcnews.com/news/us-news/private-prisons-here-s-why-sessions-memo-matters-n725316>; Christopher Dean Hopkins, *Private Prisons Back in Mix for Federal Inmates as Sessions Rescinds Order*, NPR (Feb. 23, 2017) <http://www.npr.org/sections/thetwo-way/2017/02/23/516916688/private-prisons-back-in-mix-for-federal-inmates-as-sessions-rescinds-order>

⁹ Robert Martin, *The GEO Group, Corecivic Inc Up on Sessions Memo*, NASDAQ (Feb. 23, 2017), <http://www.nasdaq.com/article/the-geo-group-inc-geo-corecivic-inc-cxw-up-on-sessions-memo-cm752487>

¹⁰ E.g., Fredereka Schouten, *Private Prisons Back Trump and Could See Big Payoffs With New Policies*, USA Today (Feb. 23, 2017) <http://www.usatoday.com/story/news/politics/2017/02/23/private-prisons-back-trump-and-could-see-big-payoffs-new-policies/98300394/>; Betsy Woodruff, *Trump Moves to Make Private Prisons Great Again*, DAILY BEAST (Feb. 23, 2017) <http://www.thedailybeast.com/articles/2017/02/23/trump-moves-to-make-private-prisons-great-again.html>, David Dayen, *Memo Restoring Use of Private Prisons Is Good News for One Company*, THE NATION (Feb. 24, 2017), <https://www.thenation.com/article/memo-restoring-use-of-private-prisons-is-good-news-for-one-company/>

¹¹ Meredith Hoffman, *Immigrant Detention Center to Be Built in Texas for \$110M*, ASSOCIATED PRESS (Apr. 13, 2017), <https://www.usnews.com/news/best-states/texas/articles/2017-04-13/texas-getting-first-immigrant-lockup-built-under-trump>.

use of private prisons and the relationship between that decision and the financial support GEO Group and its subsidiary GEO Corrections Holdings, Inc. provided Rebuilding America Now and President Trump's inauguration.

(18) Specifically, plaintiff's February 28, 2017 request sought:

1. "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";
2. "All correspondence with David Stewart";
3. "All correspondence with Ryan Robichaux";
4. "All correspondence with Michael Scrivner";
5. "All correspondence with Peter Leon";
6. "All correspondence with Leo Aguirre";
7. "All correspondence with Mark Smith"; and
8. "All records that mention 'Rebuilding America Now.'"

See Ex. 1 (2/28/17 FOIA Letter).

(19) Plaintiff's February 28, 2017 letter noted that its request encompassed both physical and digital records, including emails sent or received on governmental email addresses as well as all other email addresses and accounts used to conduct official business.

(20) The letter also provided a limited timeframe for plaintiff's requests—November 9, 2016 to February 21, 2017.

(21) Plaintiff's February 28, 2017 letter also requested that any search, review, or duplication fees associated with its FOIA request be "without or at a reduced charge" pursuant to 5 U.S.C. §§ 552(a)(4)(A)(iii) and (a)(4)(A)(ii)(II)-(III). Plaintiff sought these waivers because it has no commercial interest in the information, will use the information to inform the public about

the operations of government, and qualifies as a representative of the news media. *See* Ex. 1 at III.A-B.

(22) Plaintiff also sought expedited processing of its request pursuant to 28 C.F.R. § 16.5(e)(1)(iv) because the information sought involves a matter of exceptional media interest and “DOJ’s sudden reversal of a policy first established in response to safety and security concerns raises questions about the government’s integrity which can affect public confidence.” Ex. 1 at IV.

(23) By email and telephone exchanges with BOP on March 1, 2017, plaintiff clarified that its request was properly directed to BOP in addition to DOJ and the Office of the Attorney General, and clarified that it also sought “[a]ll 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” for the same November 9, 2016 to February 21, 2017 timeframe. *See* Ex. 2 (3/1/17 Emails with BOP).

(24) On March 2, 2017, BOP sent plaintiff an email with an attached letter acknowledging receipt of the request and assigned it FOIA number 2017-03002.

(25) On March 7, 2017, OIG sent plaintiff an email with an attached letter acknowledging receipt of the FOIA request and assigned it control number 17-OIG-143.

(26) On March 24, 2017, OLC sent plaintiff an email with an attached letter acknowledging receipt of the FOIA request and assigned it tracking number FY17-134. OLC also noted that on March 22, 2017, OPA had granted plaintiff’s request for expedited processing pursuant to 28 C.F.R. § 16.5(e)(2).

(27) On April 13, 2017, plaintiff sent an email to OIG and OLC seeking a status update regarding its request.

(28) On April 14, 2017, OLC Paralegal and FOIA Specialist Melissa Golden replied to plaintiff's April 13, 2017 email to OLC stating that, despite the grant of expedited processing, "our best estimate is that we hope to complete the processing of your request by the *end of the calendar year*" (emphasis added). Plaintiff did not receive a response from OIG.

(29) On May 15, 2017, plaintiff left a voicemail message with BOP FOIA Public Liaison, Mr. C. Darnell Stroble, seeking a status update on its request. The next day, May 16, Linda Bowe from BOP's Central Office called plaintiff to say that the request had been sent to BOP's component offices and that it was on the "complex" track and would take some time to complete.

(30) Plaintiff informed Ms. Bowe that the request had been granted expedited processing, and in response she noted that the "wires had been crossed" and that Mr. Stroble would follow up by phone within 24 hours.

(31) Mr. Stroble never followed up, nor did he respond to a voicemail plaintiff left for him on May 18, 2017.

(32) On May 18, 2017, plaintiff left a voicemail with Ms. Jeanetta M. Howard of OLC inquiring as to the status of the request, but she has not returned plaintiff's phone call.

(33) On May 22, 2017, plaintiff sent a letter by email and certified mail to OLC, BOP, and OIG stating that if document production did not commence within two weeks, or a timely schedule for compliance was not agreed to within two weeks, plaintiff would file a lawsuit challenging DOJ's unreasonable delay in fulfilling its FOIA obligations. Ex. 3 (5/22/17 Letter).

(34) On June 1, 2017, BOP attorney Michael North called plaintiff and requested that it revise its request to include the email address domain names of the individuals named in the request and the names of specific BOP employees to whom the request is directed. Plaintiff

informed Mr. North that the previous two BOP representatives with whom plaintiff had spoken had not stated that the request need be revised in this manner. Plaintiff also informed Mr. North that the request had been granted expedited processing by OPA, about which Mr. North asserted that he was unaware.

(35) On June 6, 2017, plaintiff sent a revised version of the request to BOP's North narrowing the request to the email domain names of the specified non-government individuals. Ex. 4 (6/6/17 revised BOP request).

(36) On June 9, 2017, plaintiff sent an email to BOP's North inquiring as to the status of the request.

(37) On June 12, 2017, BOP's North replied, "Your revised request is being processed on our expedited track. We are still gathering records responsive to your request. I am hopeful to have all responsive records in hand by the end of next week, at which time we will have a better feel for the time needed to process the records."

(38) To date, defendant and its components have not produced any documents in response to plaintiff's request described in paragraphs 18, 23, and 35. OLC and OIG have not informed plaintiff of a reasonable anticipated date for the completion of the processing of the requests. And although BOP has provided several updates, none of those updates has included even a basic estimate of when production of documents might begin.

(39) DOJ's delay—and OLC's projection that *expedited* processing will take until the *end of the calendar year*—contravenes the grant of expedited processing, which requires DOJ to give plaintiff's request "priority" and process it "as soon as practicable." 28 C.F.R. § 16.5(e)(4).

(40) Moreover, even in the absence of the grant of expedited processing, DOJ has exceeded the generally applicable twenty-day deadline for the processing of *any* FOIA request.

(41) Plaintiff has exhausted the applicable administrative remedies with respect to all of its FOIA requests referenced herein. *See* 5 U.S.C. § 552(a)(6)(C)(i).

(42) Defendant has wrongfully withheld the requested records from plaintiff.

CAUSES OF ACTION

Violation of the Freedom of Information Act for Failure to Expedite Processing

(43) Plaintiff repeats and realleges paragraphs 1-42.

(44) Defendant has violated FOIA and DOJ regulations by failing to actually expedite the processing of plaintiff's FOIA request despite granting expedited processing.

(45) Plaintiff has exhausted the applicable administrative remedies with respect to defendant's failure to follow through with its grant of expedited processing because there is no administrative process to challenge defendant's failure to comply with its own decision to *grant* expedited processing.

(46) Plaintiff is entitled to injunctive relief with respect to the expedited processing of the requested agency records.

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

(47) Plaintiff repeats and realleges paragraphs 1-42.

(48) Defendant has wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limits for the processing of FOIA requests.

(49) Plaintiff has exhausted the applicable administrative remedies with respect to defendant's failure to comply with the applicable time limits.

(50) Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

REQUESTED RELIEF

WHEREFORE, plaintiff requests that this Court:

- (1) order defendant and its components to process immediately the requested records in their entirety, with all processing fees waived;
- (2) order defendant and its components, upon completion of such expedited processing, to disclose the requested records in their entirety to plaintiff;
- (3) award plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- (4) grant such other relief the Court may deem just and proper.

Dated: June 15, 2017

Respectfully submitted,

/s/ Paul M. Smith
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EXHIBIT 1



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February 28, 2017

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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 Department of Justice's decision to reverse the previous administration's position on the use of privately-operated correctional facilities.

I. Background

On August 18, 2016, then-Deputy Attorney General Sally Yates issued a memo instructing the Bureau of Prisons to phase-out the use of privately-operated correctional facilities, writing that private prisons "compare poorly to our own bureau facilities:"

They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security.¹

The OIG report referenced in the August 18 memo found that privately-operated prisons had more safety and security-related incidents per capita than BOP institutions.²

On February 8, 2017, Jeff Sessions was confirmed as Attorney General, and on February 21, Attorney General Sessions issued another memo rescinding the earlier directive:

The memorandum changed long-standing policy and practice, and impaired the Bureau's ability to meet the future needs of the federal correctional system. Therefore, I direct the Bureau to return to its previous approach.³

Attorney General Sessions' rescission of the earlier memo attracted significant attention among the press and public,⁴ and caused the stock prices of private prisons to rise significantly.⁵ Many

¹ Memorandum from Sally Q. Yates, Deputy Attorney General, to the Acting Director Federal Bureau of Prisons, *Reducing Our Use of Private Prisons* (Aug. 18, 2016); see also Matt Zapotosky and Chico Harlan, *Justice Department Says it Will End Use of Private Prisons*, Wash. Post (Aug. 18, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/08/18/justice-department-says-it-will-end-use-of-private-prisons/?utm_term=.627d452ac499.

² Office of Inspector General, U.S. Department of Justice (DOJ), *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*, (Aug. 2016), <https://oig.justice.gov/reports/2016/e1606.pdf#page=2>.

³ Memorandum from Jefferson B. Sessions, Attorney General, to the Acting Director Federal Bureau of Prisons, *Rescission of Memorandum on Use of Private Prisons* (Feb. 21, 2017); see also Matt Zapotosky, *Justice Department Will Again Use Private Prisons*, WASH. POST (Feb. 23, 2017), https://www.washingtonpost.com/world/national-security/justice-department-will-again-use-private-prisons/2017/02/23/da395d02-fa0e-11e6-be05-1a3817ac21a5_story.html?utm_term=.ed54e5b56a53.

⁴ Eric Lichtblau, *Justice Department Keeps For-Profit Prisons, Scrapping an Obama Plan*, N.Y. TIMES (Feb. 23, 2017) <https://www.nytimes.com/2017/02/23/us/politics/justice-department-private->

news reports pointed out that the private prison companies that benefitted from the policy reversal had financially supported President Donald Trump's campaign and inauguration.⁶

Records likely to be disclosed in response to this request will contribute significantly to the public's understanding of how the DOJ decided to reverse its earlier decision on the use of private prisons, such as what factors and evidence were considered, among other matters of public interest.

II. Requested Records

CLC is requesting copies of all 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"

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 21, 2017.

[prisons.html](#); Jon Schuppe, *Private Prisons: Here's Why Sessions' Memo Matters*, NBC NEWS (Feb. 26, 2017), <http://www.nbcnews.com/news/us-news/private-prisons-here-s-why-sessions-memo-matters-n725316>; Christopher Dean Hopkins, *Private Prisons Back in Mix for Federal Inmates as Sessions Rescinds Order*, NPR (Feb. 23, 2017) <http://www.npr.org/sections/thetwo-way/2017/02/23/516916688/private-prisons-back-in-mix-for-federal-inmates-as-sessions-rescinds-order>

⁵ Robert Martin, *The GEO Group, Corecivic Inc Up on Sessions Memo*, NASDAQ (Feb. 23, 2017), <http://www.nasdaq.com/article/the-geo-group-inc-geo-corecivic-inc-cxw-up-on-sessions-memo-cm752487>

⁶ Fredereka Schouten, *Private Prisons Back Trump and Could See Big Payoffs With New Policies*, USA Today (Feb. 23, 2017) <http://www.usatoday.com/story/news/politics/2017/02/23/private-prisons-back-trump-and-could-see-big-payoffs-new-policies/98300394/>; Betsy Woodruff, *Trump Moves to Make Private Prisons Great Again*, DAILY BEAST (Feb. 23, 2017) <http://www.thedailybeast.com/articles/2017/02/23/trump-moves-to-make-private-prisons-great-again.html>, David Dayen, *Memo Restoring Use of Private Prisons Is Good News for One Company*, THE NATION (Feb. 24, 2017), <https://www.thenation.com/article/memo-restoring-use-of-private-prisons-is-good-news-for-one-company/>

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 the DOJ’s decision to rescind an earlier memo on private prisons. These details are not already publicly available and the records would provide a more thorough public understanding of the operations of the Department.

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,⁷ write blogs,⁸ and author op-eds.⁹ CLC’s research and reports are widely disseminated on its blog,¹⁰ through its own website,¹¹ through social media platforms like

⁷ 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>.

⁸ 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>;

⁹ 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.

¹⁰ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹¹ See Campaign Legal Center “Reference Materials” library, <http://www.campaignlegalcenter.org/research/reference-materials>.

Facebook¹² and Twitter,¹³ and regular emails to its supporters, among other communications outlets.¹⁴

CLC staff have significant knowledge in ethics and government accountability, and news media regularly rely upon CLC's analysis and expertise.¹⁵ 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,¹⁶ through its own website,¹⁷ through social media platforms and

¹² <https://www.facebook.com/CampaignLegalCenter/>

¹³ <https://twitter.com/CampaignLegal>

¹⁴ See Campaign Legal Center blog at MEDIUM, <https://medium.com/clc-blog>.

¹⁵ 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)

¹⁶ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹⁷ See Campaign Legal Center "Reference Materials" library, <http://www.campaignlegalcenter.org/research/reference-materials>.

regular emails to its supporters, and through other communications outlets.¹⁸ 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 Fee Waiver or Limitation of Fees

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 exceptional media interest,¹⁹ and the DOJ's sudden reversal of a policy first established in response to safety and security concerns raises questions about the government's integrity which can affect public confidence.²⁰

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

* * *

¹⁸ *See* Campaign Legal Center, MEDIUM, <https://medium.com/clc-blog>.

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

²⁰ *See* sources cited *supra* at n.6.

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
Associate Counsel
Campaign Legal Center
bfischer@campaignlegalcenter.org

EXHIBIT 2

Brendan Fischer

From: Brendan Fischer
Sent: Wednesday, March 01, 2017 6:24 PM
To: OGC.Electronic.Freedom.of.Information@usdoj.gov; OGC_EFOIA@BOP.GOV
Subject: RE: FOIA #2017-02998

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.

From: Brendan Fischer
Sent: Wednesday, March 01, 2017 5:48 PM
To: 'OGC.Electronic.Freedom.of.Information@usdoj.gov'; 'OGC_EFOIA@BOP.GOV'
Subject: RE: FOIA #2017-02998

Thank you for the reply. I have called the number on the attached document and left a message for Mr. Stroble.

I am seeking records from BOP.

The request seeks the following:

- 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"

I can clarify the request accordingly:

- 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"

From: OGC.Electronic.Freedom.of.Information@usdoj.gov [<mailto:OGC.Electronic.Freedom.of.Information@usdoj.gov>]
Sent: Wednesday, March 01, 2017 5:34 PM

To: Brendan Fischer
Subject: FOIA #2017-02998

Please see attached.

EXHIBIT 3



1411 K Street NW, Suite 1400
Washington, DC 20005
tel: 202-736-2200 fax: 202-736-2222

Via Email and Certified Mail

May 22, 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
USDOJ-OfficeofLegalCounsel@usdoj.gov

C. Darnell Stroble, FOIA Public Liason
Federal Bureau of Prisons, Department of Justice
320 First Street, NW, Room 936
Washington, D.C. 20534
OGC.Electronic.Freedom.of.Information@usdoj.gov

Jeanetta Howard, Government Information Specialist
Office of the Inspector General, Department of Justice
950 Pennsylvania Avenue, N.W., Suite 4726
Washington, D.C. 20530
OIGFOIA@usdoj.gov

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

EXHIBIT 4

Brendan Fischer

From: Brendan Fischer
Sent: Tuesday, June 06, 2017 1:39 PM
To: 'mnorth@bop.gov'
Subject: FOIA #2017-03002

Michael:

In our conversation on June 1, 2017, you stated that in order for BOP to search for the email portion of CLC's February 28, 2017 request (FOIA 2017-03002), it would need the email domain names for the individual non-BOP employees named in the request, and the names of specific BOP employees to whom the request is directed.

We are willing to revise our request in order to identify the specific email domains for the non-BOP employees named in the request.

Accordingly, we request:

- 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 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.

All emails, sent to and received from, the following domains:

- @capitolcounsel.com
- @bradley.com
- @slgroupdc.com

All emails, sent and received, that mention:

- "Rebuilding America Now"

However, we are unable and unwilling to specify the names of particular BOP employees to whom this request pertains. This new demand from BOP could unduly narrow the scope of our request.

BOP's purported difficulties in searching the email component of CLC's February 28, 2017 request had not been raised before June 1, 2017, despite multiple interactions between CLC and BOP. It was not raised on March 1, 2017, when BOP FOIA Public Liaison Mr. C. Darnell Stroble spoke with CLC and requested that we tailor our request (which we did), nor was it raised on May 16, when BOP's Linda Bowe advised CLC that document requests had already been submitted to BOP's component offices.

As we discussed, CLC's request has been granted expedited processing by the Office of Public Affairs. We anticipate a timely response to this request.

Brendan M. Fischer
Federal and FEC Program Director
Campaign Legal Center

1411 K St. NW, Suite 1400
Washington, DC 20005
Direct: (202)856-7914
@brendan_fischer