



January 9, 2018

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*Via U.S. Mail and Email*

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

Dear Department of Homeland Security FOIA Officials,

Campaign Legal Center ("CLC") submits this Freedom of Information Act ("FOIA") request for all Department of Homeland Security ("DHS" or the "Department") records pertaining to the Presidential Advisory Commission on Election Integrity (the "Commission"), its termination, any shift of the Commission's duties to DHS, and any role DHS has or will play in review the Commission's findings or furthering its investigation into the issues of voter fraud or voting irregularities. Given the national importance and urgency of this issue, we ask that the Department expedite processing of this request.

## Background

Last week, President Trump issued an executive order terminating the Presidential Advisory Commission on Election Integrity.<sup>1</sup> In the accompanying press statement, the White House indicated that President Trump “has asked the Department of Homeland Security to review [the Commission’s] initial findings and determine next courses of action.”<sup>2</sup> Moreover, in an interview with Breitbart News, former Vice-Chair of the Commission, Kansas Secretary of State Kris Kobach indicated that the termination of the Commission was no more than “a tactical shift where the mission of the commission is being handed off to Homeland Security without the stonewalling by Democrats.”<sup>3</sup> He said that he would be “working closely with the White House and DHS to ensure the investigations continue” and that the “investigations will continue now, but they won’t be able to stall it through litigation.”<sup>4</sup> He continued to say that the “investigation . . . will continue more efficiently and more effectively.”<sup>5</sup> Referring to Democratic members of the Commission and outside groups that demanded transparency from the Commission, he said “[b]y throwing their food in the air, they just lost their seat at the table.”<sup>6</sup>

CLC does not believe that the American people should lose their seat at the table if the Administration plans to continue its search to justify President Trump’s false and thoroughly debunked claims of rampant voter fraud that he claims cost him the popular vote in the 2016 election<sup>7</sup> through DHS. Nor should the American people

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<sup>1</sup> Executive Order on the Termination of Presidential Advisory Commission on Election Integrity (Jan. 3, 2018), <https://www.whitehouse.gov/presidential-actions/executive-order-termination-presidential-advisory-commission-election-integrity/>.

<sup>2</sup> Statement by the Press Secretary on the Presidential Advisory Commission on Election Integrity (Jan. 3, 2018), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-presidential-advisory-commission-election-integrity/>.

<sup>3</sup> John Binder, Exclusive—Kris Kobach: Voter Fraud Commission ‘Being Handed Off’ to DHS, Will No Longer Be ‘Stonewalled’ By Dems, Breitbart News (Jan. 3, 2018), <http://www.breitbart.com/big-government/2018/01/03/exclusive-kris-kobach-voter-fraud-commission-being-handed-off-to-dhs-will-no-longer-be-stonewalled-by-dems/>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Donald Trump, Twitter (Nov. 27, 2016, 1:30 PM EST), <https://twitter.com/realDonaldTrump/status/802972944532209664>; *see also id.* (Nov. 27, 2016, 5:31 PM EST) <https://twitter.com/realDonaldTrump/status/803033642545115140> (alleging “serious voter fraud in Virginia, New Hampshire and California” without evidence); *id.* (Jan. 27, 2017, 6:12 AM EST), <https://twitter.com/realDonaldTrump/status/824968416486387713>. There is wide bipartisan consensus that these claims are not credible. Republican leaders, including Senate Majority Leader Mitch McConnell and House Speaker Paul D. Ryan, have affirmed that these allegations have no basis in fact. *See* Eric Bradner, *McConnell: No federal money should be spent on Trump’s voter fraud investigation*, CNN (Feb. 5, 2017), <http://www.cnn.com/2017/02/05/politics/mitch-mcconnell-voter-fraud-states-trump/index.html>; Dan Balz, *Trump’s voter fraud claims undermine the democratic process and his presidency*, Wash. Post (Jan. 25, 2017), [https://www.washingtonpost.com/politics/trumps-voter-fraud-claims-undermine-the-voting-system-and-his-presidency/2017/01/24/a71d58ee-e288-11e6-a453-19ec4b3d09ba\\_](https://www.washingtonpost.com/politics/trumps-voter-fraud-claims-undermine-the-voting-system-and-his-presidency/2017/01/24/a71d58ee-e288-11e6-a453-19ec4b3d09ba_)

lose their seat at the table in any investigation into our electoral system and our voting rights. It is vital that the public receive up-to-date information as soon as possible about any shift of the Commission's findings, duties, or current investigations to DHS.

### Request

CLC requests copies of the following documents pursuant to the Freedom of Information Act, 5 U.S.C. §552. We ask that you search for responsive documents from the following components: National Protection and Programs Directorate, U.S. Citizenship & Immigration Services, United States Immigration & Customs Enforcement, and the Privacy Office.

For the time period from May 11, 2017 to the present, any and all documents—including draft and final memoranda, recommendations, legal opinions, policy advisories or evaluations, educational materials, and all correspondence and communications, including emails,<sup>8</sup> letters, social media posts, and Twitter direct messages—within the following categories:

- Any documents to, from, or mentioning Kris Kobach;
- Any documents to, from, or mentioning the other commissioners (with the exception of Vice President Mike Pence): Hans von Spakovsky, J. Christian Adams, Connie Lawson, Bill Gardner, Matthew Dunlap, Ken Blackwell, Christy McCormick, David Dunn, Mark Rhodes, and Alan King;
- Any documents containing the following phrases: “vote fraud,” “voter fraud,” “voting fraud,” “fraudulent voting,” “fraudulent voter registration,” “registration fraud,” “improper voting,” “improper voter registration,” “alien voting,” “alien voter registration,” “illegal voting,” “immigrant voting,” “undocumented voting,” “election fraud,” “voter confidence,” “voter integrity,” or “election integrity”;
- Any documents containing the phrase “Presidential Advisory Commission for Election Integrity,” “PACEI,” or “Election Integrity Commission.”

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story.html?utm\_term=.3f13af8489c6&wpisrc=nl\_politics&wpmm=1. Secretaries of State from across the nation, who are charged with administering elections, also have rebutted these claims. National Association of Secretaries of State, Jan. 24 Statement by NASS (Jan. 24, 2017), <http://www.nass.org/node/231> (“We are not aware of any evidence that supports the voter fraud claims made by President Trump, but we are open to learning more about the Administration’s concerns. In the lead up to the November 2016 election, secretaries of state expressed their confidence in the systemic integrity of our election process as a bipartisan group, and they stand behind that statement today.”).

<sup>8</sup> 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.

## **Request for Expedited Processing**

Campaign Legal Center requests expedited processing of this records request. 5 U.S.C. § 552(a)(6)(E); 6 C.F.R. 5.5(e)(1)(ii), (iv). CLC certifies that this is a true and correct statement detailing the basis for our request for expedited processing. As per the Department's regulations, 6 C.F.R. 5.5(e)(2), we have filed this statement with Nicole Barskdale-Perry, the Senior Director of FOIA Operations in the Privacy Office.

CLC requests expedited processing because there is an "urgency to inform the public" about the "actual or alleged federal government activity" covered by the request and CLC is an organization "primarily engaged" in "disseminating information." 6 C.F.R. 5.5(e)(1)(ii); 5 U.S.C. § 552(a)(6)(E)(v)(II). Further, the information requested involves "a matter of widespread and exceptional media interest," and raises "possible questions about the government's integrity which affect public confidence." 6 C.F.R. 5.5(e)(1)(iv).

*A. Request for Expedited Processing Under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. 5.5(e)(1)(ii).*

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 website<sup>9</sup> 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,<sup>10</sup> and communicates its research analysis through multiple social media platforms such as Facebook, Twitter, and Medium.<sup>11</sup> CLC also disseminates original editorial and educational

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<sup>9</sup> The Campaign Legal Center, [www.campaignlegalcenter.org](http://www.campaignlegalcenter.org).

<sup>10</sup> Blog, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/262>.

<sup>11</sup> 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>.

content to the public through op-eds,<sup>12</sup> press releases,<sup>13</sup> email newsletters, public reports,<sup>14</sup> fact sheets,<sup>15</sup> videos,<sup>16</sup> and other materials. CLC staff is frequently interviewed for news stories.<sup>17</sup> 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*, 254 F.3d 300, 308 (D.C. Cir. 2001). The Commission's controversial activities were a continuous source of significant news coverage and public interest throughout its short tenure. Its termination and the potential shift of its work to DHS has garnered a great deal of public attention.<sup>18</sup> Over the course of the Commission's short tenure, it was

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<sup>12</sup> 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](https://www.washingtonpost.com/posteverything/wp/2017/01/11/donald-trump-hasnt-solved-any-of-his-conflicts-of-interest/?utm_term=.0e80b538fb8f).

<sup>13</sup> Press Releases, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/286>.

<sup>14</sup> 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>.

<sup>15</sup> 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>.

<sup>16</sup> See e.g., Meet the Victims of Texas' Voter Photo ID Law, Campaign Legal Center (Apr. 28, 2015), <http://www.campaignlegalcenter.org/news/press-releases/meet-victims-texas-voter-photo-id-law>.

<sup>17</sup> Media Coverage, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/241>.

<sup>18</sup> See, e.g., Charles Stewart III, *Trump's controversial election integrity commission is gone. Here's what comes next*, Wash. Post (Jan. 4, 2018), [https://www.washingtonpost.com/news/monkey-cage/wp/2018/01/04/trumps-controversial-election-integrity-commission-is-gone-heres-what-comes-next/?utm\\_term=.b53be9e756e2](https://www.washingtonpost.com/news/monkey-cage/wp/2018/01/04/trumps-controversial-election-integrity-commission-is-gone-heres-what-comes-next/?utm_term=.b53be9e756e2); Jessica Taylor, *Trump Dissolves Controversial Election Commission*, Jan. 3, 2018, NPR, <https://www.npr.org/2018/01/03/575524512/trump-dissolves-controversial-election-commission>; Josh Gerstein & Matthew Nussbaum, *Trump disbands voter fraud commission: Kobach says Homeland Security immigration officials will take over probe*, Politico (Jan. 3, 2018), <https://www.politico.com/story/2018/01/03/trump-disbands-voter-fraud-commission-322621>; Elizabeth Landers, Eli

abundantly clear that the public is greatly concerned about both the privacy issues surrounding the data the Commission sought to collect and its potential voter suppression motives and methods. That public interest is equally applicable if DHS is taking over the Commission's responsibilities and mission.

*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). For the reasons discussed above, it is clear that how any of the Commission's work will continue under the auspices of the DHS is a question of enormous media and public interest that affects public confidence in the government. Indeed, it goes to the heart of the public's confidence in our democratic system of government.

**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). The requested records will provide the public with critical information about any ongoing investigations into our democratic voting systems and any alleged voter fraud or voting irregularities.

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

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Watkins & Kevin Liptak, *Trump dissolves voter fraud commission; adviser says it went 'off the rails'*, CNN (Jan. 4, 2018), <http://www.cnn.com/2018/01/03/politics/presidential-election-commission/index.html>; Michael Tackett & Michael Wines, *Trump Disbands Commission on Voter Fraud*, N.Y. Times (Jan.3, 2018), [https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&\\_r=0](https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news&_r=0).

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 v. FTC*, 799 F.3d 1108, 1125-26 (D.C. Cir. 2015). Courts have found that other organizations with functionally similar missions engaged in similar public education activities qualify as “representative[s] 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).

“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, CLC 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 202-856-7911 or at [dlang@campaignlegalcenter.org](mailto:dlang@campaignlegalcenter.org).

### Withholding of Documents

If DHS 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. § 552(b).

### Conclusion

Pursuant to Department regulations, CLC expects notification of a decision on its request for expedited processing within ten days, 6 C.F.R. 5.5(e)(4). Even if expedited processing should 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](mailto:dlang@campaignlegalcenter.org). Please furnish all applicable paper records to: Danielle Lang, Campaign Legal Center, 1411 K Street NW, Suite 1400, Washington, DC 20005. If you have any questions, please contact me by email or by telephone at 202-856-7911.

Sincerely,

s/ Danielle M. Lang

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\*Admitted in New York and California only; practice limited to U.S. courts and federal agencies