

June 14, 2017

**Via Federal Express and
Email (DOJ.OIP.FOIA@usdoj.gov)**

Office of Information Policy
U.S. Department of Justice
Suite 11050, 1425 New York Avenue, N.W.
Washington, DC 20530-0001

Re: **FREEDOM OF INFORMATION ACT REQUEST**

To the Office of Information Policy:

This is a request submitted to the Department of Justice, Office of the Attorney General, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the Department of Justice’s implementing regulations, 28 C.F.R. § 16 *et seq.* The requester is the Center for Constitutional Rights (“CCR”). CCR asks that you direct this request to all appropriate officials, agencies, offices, components and/or departments within the Department of Justice, Office of the Attorney General (“AG”).

Background

On June 13, 2017, Attorney General Jeff Sessions testified under oath before the Senate Select Committee on Intelligence (SSCI) concerning ongoing investigations of Russian interference in the 2016 U.S. presidential election. AG Sessions testified in an open session, but refused to answer questions posed by SSCI members concerning communications, conversations and/or discussions with President Donald Trump and/or other senior White House officials about their desire, requests and/or efforts to intervene, interfere and/or undermine the ongoing Russia investigations, including without limitation by firing former FBI Director James Comey and/or stopping the FBI’s ongoing criminal investigation of former National Security Advisor Michael Flynn.

When questioned by SSCI members about the basis for his refusal to answer such questions, AG Sessions testified that President Trump had not invoked executive privilege to prevent him from answering such questions. Rather, he testified that he did not believe it would be appropriate for him to comment, and that he could not comment, on communications, conversations and/or discussions with President Donald Trump and/or other senior White House officials. He testified that “[i]t’s a long standing policy [for] [t]he Department of Justice not to comment on conversations that the Attorney General had with the President of the United States for confidential reasons.” He further testified that “it would be inappropriate for me to answer and reveal private conversations with the president when he has not had a full opportunity to review the questions and to make a decision on whether or not to approve such an answer, one. There are also other privileges that could be invoked grounded in the separation of powers.”



In addition, when questioned by Senator Kamala Harris about these assertions and the purported long-standing policy within the Department of Justice that he had referenced as a basis for his refusal to answer questions about communications, conversations and/or discussions with President Donald Trump and/or other senior White House officials, AG Sessions testified that he believed the policy existed in writing, and that he had “talked about it” with his staff prior to his testimony. He testified that he and his staff “talked about the real principle that’s at stake . . . , and that principle is that the Constitution provides the head of the Executive Branch certain privileges and that members -- one of them is confidentiality of communications, and it is improper for agents of any of the department -- any departments in the Executive Branch to waive that privilege without a clear approval of the president.”¹

Records Requested

CCR seeks two categories of records related to AG Sessions’s testimony before the SSCI on June 13, 2017:

1. The purported long-standing Department of Justice policy referenced by AG Sessions in his testimony as a basis for his refusal to answer questions posed by SSCI members concerning communications, conversations and/or discussions with President Donald Trump and/or other senior White House officials about their desire, requests and/or efforts to intervene, interfere and/or undermine the ongoing Russia investigations, including without limitation by firing former FBI Director James Comey and/or stopping the FBI’s ongoing criminal investigation of former National Security Advisor Michael Flynn.
2. All records related to any legal opinions, analysis, or recommendations concerning the legal and/or policy basis for AG Sessions’s refusal to answer questions posed by SSCI members, as referenced in the preceding paragraph, absent a prior invocation of executive privilege by President Trump.

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM or DVD;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- “Parent-child” relationships maintained, meaning that the requester must be able to identify the attachments with emails;
- Any data records in native format (i.e., Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields; and

¹ AG Sessions’s complete testimony is available at <http://www.politico.com/story/2017/06/13/full-text-jeff-session-trump-russia-testimony-239503>.

- With any other metadata preserved.

The Requester

CCR is a non-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of U.S. and international law, including issues concerning the separation of powers under the U.S. Constitution. CCR's diverse dockets include litigation and advocacy in the areas of national security, government misconduct and racial justice, and international human rights. In connection with its work, CCR often litigates against and otherwise participates in meetings, discussions and/or negotiations with senior officials in the White House, including the National Security Council staff, the Department of Justice, the FBI, and the Department of State. CCR is also a member of national coalitions and networks comprised of non-government organizations that meet with members of Congress, including SSCI members, to discuss issues concerning federal law and policy. CCR also publishes newsletters, know-your-rights handbooks, legal analysis of current issues, and other similar materials for public dissemination, including concerning abuses of Executive power and Department of Justice policy. These and other materials are available to the general public through CCR's Development, Communications, and Legal & Advocacy Departments. CCR operates a website, <https://ccrjustice.org>, which addresses the issues on which CCR works. The website includes materials on topical issues and materials concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases, has a social media reach of more than 85,000 followers, operates a listserv of more than 50,000 members, and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members also often serve as sources for journalists and media outlets, including relating to the Russia investigations described above.²

Fee Waiver

CCR requests and is entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of Justice's implementing regulations, for several reasons.

CCR is entitled to a fee waiver on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." *Id.*; see also, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). CCR meets these requirements because the subject of the request concerns the operations or activities of the government; the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities due to CCR's expertise in the subject area and ability to convey the information; CCR's primary interest is in disclosure; and it has no

² For examples of recent media appearances by CCR staff discussing the Russia investigations, see https://www.democracynow.org/2017/6/9/is_the_president_a_serial_fabricator, https://www.democracynow.org/2017/6/9/will_obstruction_of_justice_in_comey, and <https://www.facebook.com/salon/videos/10154919145616519/>.

commercial interest in the information. In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), CCR qualifies as a “representative[] of the news media,” defined as “any person or 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.” *Id.* § 552(a)(4)(A)(ii).

As described above, CCR is a non-profit organization with a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including abuses of Executive power and Department of Justice policy. CCR has undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public’s understanding of a purported long-standing Department of Justice policy that impacts the separation of powers, including hindering ongoing congressional investigations of meddling by a hostile foreign power in the 2016 U.S. presidential election. Access to this information is crucial for CCR and the communities it serves to evaluate such actions and their potential detrimental effects. As explained, CCR is an advocacy organization that publishes reports, conducts know-your-rights and other informational trainings, and engages in litigation.

Also as stated above, CCR has no commercial interest in this matter. CCR will make any information that it receives as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters.’”).

In the alternative, CCR requests a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media.”). If no fee waiver is granted and the fees exceed \$250.00, please contact CCR’s undersigned counsel to obtain consent to incur additional fees.

Expedited Processing

CCR requests and is entitled to expedited processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E)(i)(I), and the Department of Justice’s implementing regulations, based on a compelling need for the information in two respects. First, CCR is primarily engaged in disseminating information, as explained above, and there is urgency to inform the public concerning actual or alleged government policies and procedures that are the subject of this request. Second, failure to obtain the requested information on an expedited basis would pose an imminent threat to the life or physical safety of an individual, impair substantial due process rights, and/or impact possible questions about the government’s integrity which affect public confidence.

Simply stated, there is an urgent need to clarify and inform the public about AG Sessions’s refusal to answer questions posed by SSCI members concerning communications, conversations and/or discussions with President Donald Trump and/or other senior White House officials about their desire, requests and/or efforts to intervene, interfere and/or undermine the ongoing Russia investigations – events that have thrown the country into turmoil in recent months and now threaten the presidency of

Donald Trump, who fired former FBI Director James Comey and may otherwise have attempted to obstruct justice by stopping the FBI's ongoing criminal investigation of former National Security Advisor Michael Flynn. As is plainly obvious to anyone who turns on the television or radio, goes online, or walks into the streets, these are matters of grave national importance that have already resulted not only in the firings of Mr. Comey and Mr. Flynn, but in congressional investigations, an FBI investigation, the recusal of the AG Sessions, and the appointment of a special counsel to oversee the FBI investigation (who President Trump is reportedly considering firing), and may well result in impeachment of the president. To say that these events have resulted in turmoil within the government would be a gross understatement. It is therefore necessary for the requested information to be made available immediately so that the public can understand and engage meaningfully with the political and legal issues surrounding these matters, including not least whether the president is violating the Constitution or other applicable law and is possibly subject to impeachment. Indeed, there can be no serious dispute that the turmoil and public uncertainty surrounding AG Sessions's testimony – including his refusal to answer questions from Congress absent an invocation of executive privilege – constitutes a “matter of widespread and exceptional media interest.” Correspondingly, the media has raised serious questions about these issues related to the “government's integrity which affect public confidence.” Members of Congress have also publicly called for AG Sessions to resign.

Conclusion

CCR certifies that the above information is true and correct to the best of its knowledge. If this FOIA request is denied in whole or in part, CCR asks the AG to justify all withholdings or deletions by reference to specific FOIA exemptions. CCR expects the AG to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or portions of records, or to deny the requests for a fee waiver and expedited processing.

Please furnish all applicable records as specified above to Mr. J. Wells Dixon, one of the undersigned counsel listed below.

If you have any questions regarding the processing of this request, please do not hesitate to contact Mr. Dixon directly on behalf of CCR.

Very truly yours,



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