



March 13, 2017

VIA ONLINE REQUEST FORM

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

Re: Expedited Freedom of Information Act Request

Dear Ms. Day:

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. Part 16, American Oversight makes the following request for records.

On the evening of March 1, 2017, *The Washington Post* reported that then-Senator Jeff Sessions met with Russian Ambassador Sergey Kislyak on at least two occasions in 2016.¹ Soon after the conversations were reported, questions arose as to the truthfulness of Mr. Sessions's testimony to Congress during his confirmation hearing to lead the U.S. Department of Justice ("DOJ") as Attorney General.² Eventually, Mr. Sessions announced that he would recuse himself from any

¹ Adam Entous et al., *Sessions Met with Russian Envoy Twice Last Year, Encounters He Later Did Not Disclose*, WASH. POST, Mar. 1, 2017, https://www.washingtonpost.com/world/national-security/sessions-spoke-twice-with-russian-ambassador-during-trumps-presidential-campaign-justice-officials-say/2017/03/01/77205eda-feac-11e6-99b4-9e613afeb09f_story.html.

² See Brooke Seipel, *Bush's Ethics Lawyer On Sessions Talks with Russia Ambassador: 'Good Way To Go To Jail'*, THE HILL BLOG (Mar. 1, 2017, 10:34 PM), <http://thehill.com/blogs/blog-briefing-room/news/321936-ethics-lawyer-to-george-w-bush-on-sessions-talks-with-russia>; Press Release, Rep. Elijah E. Cummings, Ranking Member of the House Committee on Oversight and Government Reform, "Cummings Calls for Attorney General's Resignation After Revelation about Communications with Russians" (Mar. 1, 2017), *available at* <https://democrats-oversight.house.gov/news/press-releases/cummings-calls-for-attorney-generals-resignation-after-revelation-about>; Press Release, Sen. Al Franken, Member of the Senate Committee on the Judiciary, "Sen. Franken's Statement on Report that Attorney General Jeff Sessions Misled American Public Under Oath During Confirmation Hearing About His Contact with Russian Officials" (Mar. 2, 2017), *available at* https://www.franken.senate.gov/?p=press_release&id=3632.

investigations related to the 2016 presidential campaign, including with respect to potential Russian interference.³ As questions continue to arise about the ties between the Trump campaign and the Russian government,⁴ the American people deserve a full investigation into the circumstances behind Mr. Sessions's decision to recuse himself.

Requested Records

American Oversight requests that DOJ produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

1. A copy of the formal recusal document for Attorney General Jeff Sessions's recusal from matters relating to the 2016 presidential campaign, e.g., the written document specifically describing the scope of the recusal and designating the official in charge of the recused matter, if the recusal was documented other than by press statement.
2. Any decision memoranda provided to the Attorney General regarding whether or not he should recuse himself from matters relating to the 2016 presidential campaign.
3. All records containing or reflecting advice or analysis of the recusal issue prepared by the Departmental Ethics Office or the Professional Responsibility Advisory Office and provided to Mr. Sessions or his staff.
4. All records containing or reflecting advice or analysis of the recusal issue prepared by the Attorney General's staff or senior Department officials and provided to Mr. Sessions or his staff.

Please provide all responsive records from January 20, 2017, to the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

³ Karen Demirjian et al., *Attorney General Jeff Sessions Will Recuse Himself from Any Probe Related to 2016 Presidential Campaign*, WASH. POST (Mar. 2, 2017), https://www.washingtonpost.com/powerpost/top-gop-lawmaker-calls-on-sessions-to-recuse-himself-from-russia-investigation/2017/03/02/148c07ac-ff46-11e6-8ebe-6e0dbe4f2bca_story.html?hpid=hp_hp-top-table-main_gopreax-840a%3Ahomepage%2Fstory&tid=ptv_rellink&utm_term=.8ad634d0414c.

⁴ See, e.g., Margaret Hartmann, *What We Know About the Investigations Into Trump's Russia Scandal*, N.Y. MAG. (Mar. 7, 2017), <http://nymag.com/daily/intelligencer/2017/03/what-we-know-about-the-probes-into-trumps-russia-scandal.html>.

In processing this request, please note that Mr. Sessions expressly and publicly claimed to have relied upon advice he allegedly received from the ethics office and agency lawyers in explaining the basis for his decision to recuse himself. Specifically, the Attorney General stated:

[A]t my confirmation hearing, I promised that . . . [i]f a specific matter arose where I believed my impartiality might reasonably be questioned, I would “consult with the department ethics officials regarding the most appropriate way to proceed,” close quote.

...

I did and have done as I promised. I have met with senior officials shortly after arriving here. We evaluated the rules of ethics and recusal. I have considered the issues at stake. . . . I asked for their candid and honest opinion about what I should do about investigations, certain investigations. And my staff recommended recusal. They said that since I had involvement with the campaign, I should not be involved in any campaign investigation. I have studied the rules and considered their comments and evaluation. I believe those recommendations are right and just. Therefore, I have recused myself in the matters that deal with the Trump campaign.

Transcript of Attorney General Sessions’s News Conference, Mar. 2, 2017, *available at* https://www.washingtonpost.com/news/the-fix/wp/2017/03/02/transcript-of-jeff-sessions-press-conference-annotated/?utm_term=.2a040b8b1c69. Thus, Mr. Sessions adopted these recommendations in deciding to recuse himself.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.⁵ **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to**

⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

official systems or if officials have, through negligence or willfulness, failed to meet their obligations.⁶

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DOJ’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**⁷ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but DOJ’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DOJ use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”⁸ If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”⁹ Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing

⁶ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

⁷ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), available at <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), available at <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

⁸ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

the sought-after information.”¹⁰ Further, “the withholding agency must supply ‘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.’”¹¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹² Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, DOJ is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and the Department can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street, NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).¹³

¹⁰ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹¹ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹² *Mead Data Central*, 566 F.2d at 261.

¹³ *See, e.g., McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government operations and “is not primarily in the commercial interest of the requester.”¹⁴ The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how public funds are spent and how officials conduct the public’s business.

Allegations of Russian interference in the U.S. election and the Trump campaign’s closeness to Russian officials has been the subject of significant media coverage. On August 27, 2016, then-Senate Minority Leader Harry Reid wrote to F.B.I. Director James Comey asking Mr. Comey to investigate evidence of planned tampering by the Russians.¹⁵ Then on September 8, 2016, the same day as Mr. Sessions’s reported one-on-one meeting with Mr. Kislyak, the *New York Times* published an article quoting Mr. Sessions in which Mr. Trump’s campaign reaffirmed its embrace of Russian president Vladimir Putin.¹⁶

A week prior to Mr. Trump’s inauguration, reports surfaced that Michael T. Flynn, Mr. Trump’s first National Security Advisor, spoke with Mr. Kislyak the day before the Obama administration imposed sanctions on Russia as retaliation for the election interference.¹⁷ Members of Congress began pressing for an investigation into Flynn, Mr. Trump’s campaign, and Russia ties. During his confirmation process, Mr. Sessions answered written and oral questions from the Senate Committee on the Judiciary on the campaign’s communications with Russia and Mr. Sessions’s position on recusal from any investigation into the matter.¹⁸ During the inquiries, Mr. Sessions stated that he “did not have communications with the Russians.”¹⁹

The *Post*’s reporting reveals that Mr. Sessions’s responses were not wholly truthful. Mr. Sessions’s eventual recusal from any investigations related to the 2016 presidential campaign further calls into question his truthfulness on this issue. The American people deserve to know the reasoning upon

¹⁴ 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k).

¹⁵ David E. Sanger, *Harry Reid Cites Evidence of Russian Tampering in U.S. Vote, and Seeks F.B.I. Inquiry*, N.Y. TIMES, Aug. 29, 2016, <https://www.nytimes.com/2016/08/30/us/politics/harry-reid-russia-tampering-election-fbi.html>.

¹⁶ Jonathan Martin & Amy Chozick, *Donald Trump’s Campaign Stands By Embrace of Putin*, N.Y. TIMES, Sept. 8, 2016, <https://www.nytimes.com/2016/09/09/us/politics/hillary-clinton-donald-trump-putin.html>.

¹⁷ Julie Hirschfeld Davis et al., *Trump National Security Adviser Called Russian Envoy Day Before Sanctions Were Imposed*, N.Y. TIMES, Jan. 13, 2017, <https://www.nytimes.com/2017/01/13/us/politics/donald-trump-transition.html>.

¹⁸ Seung Min Kim, *Sessions Won’t Recuse Himself from DOJ Trump Probes*, POLITICO (Jan. 23, 2017, 8:38 PM), <http://www.politico.com/story/2017/01/jeff-sessions-trump-probes-234087>; Faith Karimi, *What Jeff Sessions Said About Russia Ties During Confirmation Hearings*, CNN (Mar. 3, 2017, 11:42 AM) <http://www.cnn.com/2017/03/02/politics/russia-jeff-sessions-confirmation-hearing/>.

¹⁹ Faith Karimi, *What Jeff Sessions Said About Russia Ties During Confirmation Hearings*, CNN (Mar. 3, 2017, 11:42 AM) <http://www.cnn.com/2017/03/02/politics/russia-jeff-sessions-confirmation-hearing/>.

which Mr. Sessions relied in deciding to recuse himself from investigations into the 2016 presidential campaign.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on our public website.

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 28 C.F.R. § 16.5(b), (e)(1)(iv), American Oversight requests that the Department of Justice expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional media interest and there exist possible questions concerning the government's integrity, which affect public confidence. As discussed above, media reporting raises significant questions regarding the truthfulness of Mr. Sessions's testimony before the Senate and the relationship between Russia and persons affiliated with Mr. Trump's campaign. Mr. Sessions's decision to recuse himself from any investigations into Mr. Trump's campaign raises further questions about his truthfulness in those hearings. The requested documents will shed light on these issues of considerable interest to the public. The circumstances surrounding the recusal of the Attorney General from an investigation into the integrity of the 2016 presidential election is a quintessential example of "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence."²⁰

²⁰ 28 C.F.R. § 16.5(e)(1)(iv); see, e.g., Adam Entous et al., *Sessions Met with Russian Envoy Twice Last Year, Encounters He Later Did Not Disclose*, WASH. POST, Mar. 1, 2017, https://www.washingtonpost.com/world/national-security/sessions-spoke-twice-with-russian-ambassador-during-trumps-presidential-campaign-justice-officials-say/2017/03/01/77205eda-feac-11e6-99b4-9e613afeb09f_story.html; Brooke Seipel, *Bush's Ethics Lawyer On Sessions Talks with Russia Ambassador: 'Good Way To Go To Jail'*, THE HILL BLOG (Mar. 1, 2017, 10:34 PM), <http://thehill.com/blogs/blog-briefing-room/news/321936-ethics-lawyer-to-george-w-bush-on-sessions-talks-with-russa>; David E. Sanger, *Harry Reid Cites Evidence of Russian Tampering in U.S. Vote, and Seeks F.B.I. Inquiry*, N.Y. TIMES, Aug. 29, 2016, <https://www.nytimes.com/2016/08/30/us/politics/harry-reid-russia-tampering-election-fbi.html>; Julie Hirschfeld Davis et al., *Trump National Security Adviser Called Russian Envoy Day Before Sanctions Were Imposed*, N.Y. TIMES, Jan. 13, 2017, <https://www.nytimes.com/2017/01/13/us/politics/donald-trump-transition.html>; Seung Min Kim, *Sessions Won't Recuse Himself from DOJ Trump Probes*, POLITICO (Jan. 23, 2017, 8:38 PM), <http://www.politico.com/story/2017/01/jeff-sessions-trump-probes-234087>; Faith Karimi, *What Jeff*

Accordingly, American Oversight's request satisfies the criteria for expedition.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at foia@americanoversight.org or 202-869-5246. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Austin R. Evers
Executive Director
American Oversight

cc: Sarah Isgur Flores, Director, Office of Public Affairs

Sessions Said about Russia Ties During Confirmation Hearings, CNN (Mar. 3, 2017, 11:42 AM) <http://www.cnn.com/2017/03/02/politics/russia-jeff-sessions-confirmation-hearing/>; Margaret Hartmann, *What We Know About the Investigations Into Trump's Russia Scandal*, N.Y. MAG. (Mar. 7, 2017), <http://nymag.com/daily/intelligencer/2017/03/what-we-know-about-the-probes-into-trumps-russia-scandal.html>; Karen Demirjian et al., *Attorney General Jeff Sessions Will Recuse Himself from Any Probe Related to 2016 Presidential Campaign*, WASH. POST (Mar. 2, 2017), https://www.washingtonpost.com/powerpost/top-gop-lawmaker-calls-on-sessions-to-recuse-himself-from-russia-investigation/2017/03/02/148c07ac-ff46-11e6-8ebe-6e0dbe4f2bca_story.html?hpid=hp_hp-top-table-main_gopreax-840a%3Ahomepage%2Fstory&tid=ptv_rellink&utm_term=.8ad634d0414c.