

February 2, 2018

VIA ELECTRONIC MAIL AND ONLINE PORTAL

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Via Online Portal

Re: Freedom of Information Act Request

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight and Dominique Bravo in her personal capacity submit the following request for records.

Earlier today, President Donald Trump declassified the information in a memo written by the Chairman of the House Permanent Select Committee on Intelligence (HPSCI), Devin Nunes, regarding alleged abuses in the use of Foreign Intelligence Surveillance Act (FISA) warrants.¹ In so doing, the White House officially acknowledged the existence of at least four FISA applications that were approved by the FISA court: one application that was sought and approved on October 21, 2016, targeting Carter Page, and three subsequent FISA renewal applications and approvals from the Foreign Intelligence Surveillance Court (FISC).²

In light of this official acknowledgement, we seek additional information about the FISA applications and warrants.

¹ See Memorandum from HPSCI Majority Staff to HPSCI Majority Members, *Foreign Intelligence Surveillance Act Abuses at the Department of Justice and the Federal Bureau of Investigation* (Jan. 18, 2018), <http://docs.house.gov/meetings/IG/IG00/20180129/106822/HMTG-115-IG00-20180129-SD001.pdf>.

² See *id.* at 1.

Requested Records

American Oversight and Dominique Bravo request that the National Security Division (NSD) and the Federal Bureau of Investigation (FBI) produce the following within twenty business days:

1. A copy of the FISA application submitted on or about October 21, 2016, seeking surveillance of Carter Page, as referenced in the declassified HPSCI memorandum, including any related certifications or exhibits.
2. Any order or other approval from the FISC regarding the FISA application submitted on or about October 21, 2016, seeking surveillance of Carter Page.
3. A copy of each of the three applications for renewal of the surveillance authority referenced in the HPSCI memorandum, including any related certifications or exhibits.
4. Any orders or approvals from the FISC regarding requests for renewal of the surveillance authority referenced in the HPSCI memorandum.

Please note that on February 2, 2018, the President declassified and officially acknowledged the existence of the FISA application seeking surveillance of Mr. Page as well as its approval by the FISC and three subsequent renewals, as well as at least some of the contents of those applications. Consequently, given this official acknowledgement, the existence of the applications and FISC approvals cannot be the subject of a so-called *Glomar* response. Similarly, in light of the official acknowledgements regarding the contents of the applications and approvals, it would not be appropriate to withhold these records in full. Rather, any reasonably segregable, non-exempt information must be disclosed. *See N.Y. Times v. Dep't of Justice*, 756 F.3d 100 (2d Cir. 2014).

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.”³ 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.”⁴ Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”⁵ 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.’”⁶

³ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁴ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁵ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

⁶ *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)).

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.⁷ 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. We intend 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, we welcome 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, we 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, please also provide responsive material on a 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 and Dominique Bravo request 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.⁸ Moreover, the request is primarily and fundamentally for non-commercial purposes.⁹

We request 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 activities.¹⁰ House Republicans have recently called significant public attention to the operations and activities of the FBI and NSD relating to the ongoing investigations into potential Russian interference in the 2016 presidential election. Rep. Devin Nunes recently released a previously classified memorandum purporting to describe politically motivated abuses

⁷ *Mead Data Central*, 566 F.2d at 261.

⁸ 28 C.F.R. § 16.10(k)(1).

⁹ *Id.*

¹⁰ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

of the FISA process by senior FBI and DOJ officials.¹¹ The requested records would shed significant light on whether the FISA applications in question were motivated by politics, rather than sound investigatory and legal principles. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available. As noted, the subject of this request is a matter of public interest, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.¹² Dominique Bravo has no commercial purpose for requesting these records. Her sole purpose for requesting the records is to facilitate the release of the records to the public. She has no intention or desire to monetize the release of these records or otherwise benefit from their release. Additionally, 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 uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.¹³ American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,¹⁴ American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.¹⁵ As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.¹⁶

Accordingly, American Oversight and Dominique Bravo qualify for a fee waiver.

¹¹ See *supra* note 1.

¹² 28 C.F.R. § 16.10(k)(1), (2)(iii).

¹³ American Oversight currently has approximately 11,700 page likes on Facebook and 39,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Feb. 2, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Feb. 2, 2018).

¹⁴ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

¹⁵ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹⁶ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 28 C.F.R. § 16.5(b), (e)(1)(ii), (e)(1)(iv), American Oversight and Dominique Bravo request that DOJ expedite the processing of this request for two independent reasons: (1) there is an urgency to inform the public about an actual or alleged federal government activity, and American Oversight is primarily engaged in disseminating information to the public,¹⁷ and (2) the matter is of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.¹⁸

We certify to be true and correct to the best of our knowledge and belief, that there is an “urgency to inform the public about an actual or alleged Federal Government activity.” The Republican members of the House Permanent Select Committee on Intelligence (HPSCI) have written a memo about the FBI’s actions over the course of the agency’s investigation of Russian interference in the 2016 presidential election. On January 24, 2018, DOJ warned Congress that release of the classified memo written without DOJ review “would be extraordinarily reckless.”¹⁹ Nevertheless, on January 29, HPSCI voted to release the memo, and it was released to the public earlier today.²⁰ Congress—a branch of the federal government—has taken an extraordinary action on an accelerated timeline in the face of counsel against such action from DOJ. The primary justification for that extraordinary action was to shed light on alleged abuses of the investigatory process by the FBI, which House Republicans say was politically motivated. The requested records would shed significant light on the veracity of the HPSCI memo, including whether the FISA applications in question were motivated by politics, rather than sound investigatory and legal principles.

We further certify that American Oversight is primarily engaged in disseminating information to the public. 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.²¹ Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,²² American Oversight “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.”²³ American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.²⁴ As discussed previously, American Oversight has

¹⁷ 28 C.F.R. § 16.5(e)(1)(ii).

¹⁸ 28 C.F.R. § 16.5(e)(1)(iv).

¹⁹ See Laura Jarrett, *Justice Dept.: ‘Reckless’ to Release Nunes Memo Without Review*, CNN (Jan. 24, 2018, 9:11 PM), <https://www.cnn.com/2018/01/24/politics/nunes-memo-fbi/index.html>.

²⁰ See *supra* note 1.

²¹ 28 C.F.R. § 16.5(e)(1)(ii).

²² See *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep’t of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

²³ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

²⁴ American Oversight currently has approximately 11,700 page likes on Facebook, and 39,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/>

demonstrated its commitment to the public disclosure of documents and creation of editorial content.²⁵

Additionally, we certify to be true and correct that the circumstances surrounding the FISA applications—and approvals thereof—are of widespread and exceptional media interest raising possible questions of the government’s integrity, which affect public confidence.²⁶ The HPSCI memo levies serious charges of misconduct against the FBI and garnered significant media scrutiny even before it was released, including a social media campaign to “#releasethememo.”²⁷ The

(last visited Feb. 2, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Feb. 2, 2018).

²⁵ See *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>; *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

²⁶ 28 C.F.R. § 16.5(e)(1)(iv).

²⁷ See Spencer Ackerman, *House Republicans Declare War on FBI, Vote to Spill Its Secrets and Investigate It*, DAILY BEAST (Jan. 29, 2018, 7:10 PM), <https://www.thedailybeast.com/fbi-scrambling-to-get-more-info-on-explosive-nunes-memo-ahead-of-vote-to-release-it>; Nicholas Fandos, *House Republicans Vote to Release Secret Memo on Russia Inquiry*, N.Y. TIMES, Jan. 29, 2018, <https://www.nytimes.com/2018/01/29/us/politics/release-the-memo-vote-house-intelligence-republicans.html>; Jennifer Jacobs, *On Flight to Davos, Trump Erupted over DOJ Role in Russia Probe*, BLOOMBERG POLITICS (Jan. 29, 2018, 3:07 PM), <https://www.bloomberg.com/news/articles/2018-01-29/on-flight-to-davos-trump-erupted-over-doj-role-in-russia-probe>; Laura Jarrett, *Justice Dept.: ‘Reckless’ to Release Nunes Memo Without Review*, CNN (Jan. 24, 2018, 9:11 PM), <https://www.cnn.com/2018/01/24/politics/nunes-memo-fbi/index.html>; Jen Kirby, *House Republicans Voted to Release a Controversial Memo on the Trump-Russia Probe*, VOX (Jan. 29, 2018, 8:26 PM), <https://www.vox.com/2018/1/29/16948382/house-vote-trump-russia-release-the-memo>; Daniel Politi, *Trump Wants Classified Russia Memo Released Despite Justice Department Objections*, SLATE (Jan. 28, 2018, 11:12 AM), <https://slate.com/news-and-politics/2018/01/although-there-are-rational-concerns-to-releasing-the-memo-the-president-sides.html>; Brett Samuels, *Sen. King: Releasing Memo Would Be ‘Reckless,’ ‘Could Expose Sources,’* THE HILL (Jan. 30, 2018, 9:30 AM), <http://thehill.com/homenews/senate/371359-sen-king-releasing-memo-would-be-reckless-could-expose-sources>; Jason Chaffetz, *Jason Chaffetz: Congress Has Options on #ReleaseTheMemo FBI Investigation*, FOX NEWS, Jan 29, 2018, <http://www.foxnews.com/opinion/2018/01/29/jason-chaffetz-congress-has-options-on-releasethememo-fbi-investigation.html>; Chas Danner, *Trump Aide Confirms Trump Wants to #ReleaseTheMemo*, NEW YORK (Jan. 28, 2018, 4:01 PM), <http://nymag.com/daily/intelligencer/2018/01/trump-aide-confirms-trump-wants-to-releasethememo.html>; David French, *Release the Memo and Release the Evidence*, NAT’L REVIEW (Jan. 24, 2018, 1:35 PM), <http://www.nationalreview.com/article/455727/release-nunes-memo-release-all-evidence>; Sarah Lee, *Why the Memo Matters*, REDSTATE (Jan. 30, 2018, 1:58 PM), <https://www.redstate.com/slee/2018/01/30/why-the-memo-matters/>; Ashley Parker et al.,

records sought in this request would help shed light on the allegations in the memo—whether by corroborating or refuting them—that certain recent FBI investigations were politically motivated. This entire episode has called into question the integrity of several of our nation’s top law enforcement authorities, thereby dramatically affecting public confidence in our government. The requested records are necessary to help the public answer those questions, one way or another.

Accordingly, this request satisfies the criteria for expedition.

Conclusion

We share a common mission to promote transparency in government. We look 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 Cerissa Cafasso at foia@americanoversight.org or 202.869.5244. Also, if our request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Dominique Bravo
Dominique Bravo

/s/ Austin R. Evers
Austin R. Evers
Executive Director
American Oversight

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

Trump Sought Release of Classified Russia Memo, Putting Him at Odds with Justice Department, WASH. POST, Jan. 27, 2018, https://www.washingtonpost.com/politics/trump-sought-release-of-classified-russia-memo-putting-him-at-odds-with-justice-department/2018/01/27/a00f2a4c-02bb-11e8-9d31-d72cf78dbeee_story.html?hpid=hp_rhp-top-table-main_trumpreconstruct546pm%3Ahomepage%2Fstory&utm_term=.c770785d2264; Jeremy Herb, *Disputed GOP-Nunes Memo Released with Trump’s Approval*, CNN (Feb. 2, 2018, 3:32 PM), <https://www.cnn.com/2018/02/02/politics/republican-intelligence-memo/index.html>; Philip Ewing, *Controversial Nunes Memo Released Following Formal Approval from Trump*, NPR (Feb. 2, 2018, 10:41 AM), <https://www.npr.org/2018/02/02/582666768/trump-leans-into-attack-on-fbi-as-clock-ticks-toward-release-of-nunes-memo>; Sebastian Murdock, *Sen. John McCain On Nunes Memo Release: ‘We Are Doing Putin’s Job for Him,’* HUFFPOST (Feb. 2, 2018, 12:55 PM), https://www.huffingtonpost.com/entry/sen-john-mccain-nunes-memo-putin_us_5a749987e4b06ce97af24494.