



April 12, 2017

VIA ONLINE REQUEST FORM

David M. Hardy, Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
170 Marcel Drive
Winchester, VA 22602-4843
Online Request via <https://efoia.fbi.gov>

Re: Expedited Freedom of Information Act Request

Dear Mr. Hardy:

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 investigations related to the 2016 presidential campaign, including with respect to potential Russian

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), <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), https://www.franken.senate.gov/?p=press_release&id=3632.



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 what information was known prior to Mr. Sessions's confirmation.

Requested Records

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

1. All records reflecting communications (including emails, telephone call logs, calendar entries, meeting agendas, or any other records reflecting communications) between the FBI and any member of Congress or his or her staff related to communications between Jeff Sessions (or anyone acting on his behalf) and Sergey Kislyak or any other Russian official. Please provide all responsive records from June 1, 2016, to the date the search is conducted.
2. All materials prepared in response to the letter sent by the House Judiciary Committee Democrats to FBI Director James Comey on March 2, 2017 (attached hereto as Exhibit A),⁵ including briefing materials and correspondence, material provided to Congress in response to that letter, and material responsive to the letter that was not provided to Congress for any reason.

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>; Thomas Frank, *One Week, Three More Trump-Russia Connections*, CNN POLITICS, Apr. 6, 2017, <http://www.cnn.com/2017/04/05/politics/trump-associates-russians-meetings/>.

⁵ The letter is also available here: https://democrats-judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/1174_001%20%282%29_0.pdf).

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.⁶ **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 official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**⁷

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 FBI’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.**⁸ **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 FBI’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DOJ

⁶ 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).

⁷ 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)).

⁸ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <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), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

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.”⁹ 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.”¹⁰ 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.”¹¹ 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.’”¹²

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.¹³ 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, FBI 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 FBI can decrease the likelihood of costly and time-consuming litigation in the future.

⁹ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹⁰ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹¹ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹² *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)).

¹³ *Mead Data Central*, 566 F.2d at 261.

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.¹⁴ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹⁵

Disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government operations.¹⁶ 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 FBI Director James Comey asking Mr. Comey to investigate evidence of planned tampering by the Russians.¹⁷ 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.¹⁸

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.¹⁹ 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

¹⁴ 28 C.F.R. § 16.10(k)(2).

¹⁵ 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(2).

¹⁶ 28 C.F.R. § 16.10(k)(2)(i), (ii)(A)-(B).

¹⁷ 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>.

¹⁸ 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>.

¹⁹ 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>.

position on recusal from any FBI investigation into the matter.²⁰ During the inquiries, Mr. Sessions stated that he “did not have communications with the Russians.”²¹

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 what was known about Mr. Sessions’s communications with Russian officials before his confirmation hearing.

This request is primarily and fundamentally for non-commercial purposes.²² 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 and promote their availability on social media platforms, such as Facebook and Twitter.²³ One example of American Oversight’s demonstrated public disclosure of documents and creation of editorial content is in its recently launched “Audit the Wall” effort, 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.²⁴

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

²⁰ 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/>.

²¹ Karimi, *supra* note 19.

²² 28 C.F.R. § 16.10(k)(iii)(A)-(B).

²³ American Oversight currently has over 10,400 page likes on Facebook, and over 13,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 11, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 11, 2017).

²⁴ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

questions regarding the truthfulness of Mr. Sessions's testimony before the Senate.²⁵ Since Mr. Sessions's confirmation, there have been countless stories *every day* about the relationship between Russia and persons affiliated with Mr. Trump's campaign.²⁶ The requested documents will shed light on these issues of considerable interest to the public. The nature of Mr. Sessions's contacts with Russia, and his testimony regarding those contacts, are 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."²⁷

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

²⁵ See, e.g., Entous, *supra* note 1; Seipel, *supra* note 2; Sanger, *supra* note 17; Davis, *supra* note 19; Kim *supra* note 20; Karimi, *supra* note 20.

²⁶ See, e.g., Adam Entous et al., *Blackwater Founder Held Secret Seychelles Meeting to Establish Trump-Putin Back Channel*, WASH. POST, Apr. 3, 2017, https://www.washingtonpost.com/world/national-security/blackwater-founder-held-secret-seychelles-meeting-to-establish-trump-putin-back-channel/2017/04/03/95908a08-1648-11e7-ada0-1489b735b3a3_story.html?hpid=hp_rhp-banner-main_no-name%3Ahomepage%2Fstory&tid=a_inl&utm_term=.f7c81ee27369; Ali Watkins, *A Former Trump Adviser Met with a Russian Spy*, BUZZFEED (Apr. 3, 2017, 6:39 PM), https://www.buzzfeed.com/alimwatkins/a-former-trump-adviser-met-with-a-russian-spy?utm_term=.cnzwlB6Jw#.yuNKPvOjK; Frank, *supra* note 4.

²⁷ 28 C.F.R. § 16.5(e)(1)(iv).

EXHIBIT A

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216

One Hundred Fifteenth Congress

March 2, 2017

The Honorable James Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.

The Honorable Channing D. Phillips
United States Attorney for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20530

Washington, D.C. 20535

Dear Director Comey and U.S. Attorney Phillips:

The *Washington Post* reported last evening that Attorney General Jeff Sessions, who was heavily involved in Donald Trump's campaign, not only spoke with Russia's Ambassador on at least two occasions during the presidential campaign, but that when asked about such contacts during his confirmation hearings, failed to disclose them. This occurred with regard to his response to written questions from Senator Patrick Leahy and his oral testimony when questioned by Senator Al Franken.

Separately, *The Wall Street Journal* reported last evening that federal investigators have also been probing Attorney General Sessions's contacts with Russian officials during the presidential campaign, and noted that then Senator Sessions, who became a member of the Trump campaign national security advisory committee, softened his previously critical rhetoric about Russia after endorsing Trump for president. In addition, last night, *The New York Times* also reported evidence pointing towards a series of meetings between persons involved in the Trump campaign and the Russian government held in various European capitals.

Efforts by Attorney General Sessions to assert that his testimony was not false or even misleading because he met with the Russian Ambassador in his capacity as a Senator, rather than a campaign representative, appear to be disingenuous at best as the questions put to him did not in any way ask if the meeting was campaign related. In fact, the September 8 meeting took place well after allegations and concerns about Russian influence arose. The fact that one of the meetings reportedly took place at the Republican convention is also severely troubling to us. His efforts to down play the contacts as ordinary business for a Member of the Senate Armed Services Committee also seem questionable given that other Members of the Committee have not indicated that they had similar meetings with the Russians. Given the importance of this investigation and the severity of our concerns about these latest developments, we are making several urgent and imperative requests today.

First, we would ask the FBI and the United States Attorney's Office for Washington, DC to take up an immediate criminal investigation into these statements which could potentially implicate a number of criminal laws including Lying to Congress and Perjury, 18 U.S.C. §§ 1001 and 1621. We would also ask that the investigation consider any involvement or knowledge the Trump Administration and Trump

when asked for his view on whether Attorney General Sessions's statements constitute perjury, responded, "Looks like it to me: it was a knowing & deliberate falsehood made under oath on a clearly pertinent matter." Additionally, Richard W. Painter, the former chief ethics lawyer to President George W. Bush, stated about this situation, "Misleading the Senate in sworn testimony about one's own contacts with the Russians is a good way to go to jail."

This is obviously a very serious matter. In reaction to these revelations, a number of Members of Congress have called for Attorney General Sessions to recuse himself from the investigation of the issues related to Russian influence on our election and government (including Republicans Kevin McCarthy and Jason Chaffetz), and some have asked him to resign. The false statement made to the Senate Judiciary Committee was clearly material to the confirmation process and is now seen, on a bipartisan basis, as a reason to demand that the Attorney General recuse himself from this critical investigation, at a minimum.

Second, we repeat and urgently reiterate our request made to Director Comey on February 14, 2017 for a full briefing on these ongoing investigations into Russian involvement in the U.S. elections. We would note that this week Judiciary Committee Democrats voted in support of Representative Jerrold Nadler's Resolution of Inquiry, H. Res. 111, to request more information regarding these matters. Given these and other developments and the disclosures made last evening, as well as other recent disclosures relating to contacts between the FBI and the White House concerning these matters, the need for a full briefing and meeting have only grown exponentially since then.

Although we appreciate the FBI's traditional concerns about publicly commenting with regard to ongoing investigations, many of these concerns can be resolved if the briefing occurs on a classified basis, as we have received with regard to other matters many times in the past. In fact, the Director has already briefed Members of the Senate and House Intelligence Committees in closed sessions. We would also note that according to your own testimony before this Committee, "[t]here is an exception for that: when there is a need for the public to be reassured; [and] when it is obvious, it is apparent, given our activities, public activities, that the investigation is ongoing." That test is clearly met in this instance when we have an investigation that goes to the very core of our democratic process.

We would also note that, according to CNN, the Washington Post and other media outlets, officials within the Justice Department have also reportedly been discussing this matter with the White House—even though people who work in the White House are likely subjects of an investigation. Acting Attorney General Sally Yates was the one who informed White House Counsel that General Michael Flynn had lied to the Vice President and might be vulnerable to blackmail. FBI Deputy Director Andrew McCabe apparently had an informal discussion with White House staff about *The New York Times* coverage of the investigation before you, Director Comey, set him straight. If elements of Justice Department are willing to discuss the matter with possible targets and their associates, Members of Congress and the Judiciary Committee, in particular, are certainly entitled to receive relevant information. Such information is not only sought by congressional Democrats. As you know, Chairman Goodlatte has previously informally requested a briefing from the FBI on some of these matters.

Thank you for your prompt attention to this matter.

Sincerely,

John Lyons Jr.

Ter W. L.

Sam Lu

Pravile Jurgel

Jamie Rask

Zach

T.P. 1A02

Aed Deutch

Hank Johnson No. 04

~~Bullington Schneider~~

Helen G. NY-8

Joe T. Astor

Paul J. ...

A. H. V.

Gene Wallace

Judd Madler

Karban

Letter to Director Comey and U.S. Attorney Phillips

March 2, 2017

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cc: Bob Goodlatte, Chairman, House Committee on the Judiciary