



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

APR 12 2017

Ref: 17-F-0807

Ian Bassin
The Protect-Democracy Project
P.O. Box 170521
New York, NY 11217

Dear Mr. Bassin:

This is an interim response to your April 7, 2017 Freedom of Information Act (FOIA) request for records reflecting, discussing, or otherwise relating to the April 6, 2017 military strike on Syria and/or the President's legal authority to launch such a strike., which is attached for your convenience. We received your request on April 10, 2017, and assigned it case number 17-F-0807. We ask that you use this number when referring to your request.

In your FOIA request, you requested expedited processing of your request. Expedited processing may be granted when the requester demonstrates a compelling need for the information and shows that the information has a particular value that would be lost if not processed on an expedited basis. A key word here is "demonstrates." Therefore, it is incumbent upon you to demonstrate that the requested records will serve an urgency purpose and that they will be meaningful in the sense that they will provide a greater understanding of actual or alleged federal government activity on the part of the public-at-large than that which existed before such information was disseminated. Consequently, it must be clearly demonstrated that such information has a particular value that will be lost if not disseminated quickly. After carefully reviewing and considering your request, this office finds that you have not clearly demonstrated how the information will lose its value if not processed on an expedited basis. For this reason, your request for expedited processing is denied.

Although we have already begun processing your request, we will not be able to respond within the FOIA's 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. The FOIA defines unusual circumstances as (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. At least one, if not more of these scenarios applies or would likely apply to your request. While this office handles FOIA requests for the Office of the Secretary of Defense (OSD), the Joint Staff (JS) and other component offices, we do not actually hold their records and our office is not geographically located with these organizations. As we do not hold the records, until the required records searches are complete, we are unable to estimate the potential volume of records or the number of consultations that will be required to make a release determination.

Your request has been placed in our complex processing queue and is being worked based on the order in which the request was received. Our current administrative workload is approximately 2400 open requests.

In some instances, we have found that requesters who narrow the scope of their requests experience a reduction in the time needed to process their requests. If you have any questions or wish to discuss the reformulation of your request or an alternative time frame for the processing of your request, you may contact Cheryl Jenkins, the Action Officer assigned to your case number, at cheryl.d.jenkins2.civ@mail.mil or 571-372-0445.

The OSD/JS FOIA Public Liaison, Jim Hogan, is available at 571-372-0462 or by email at OSD.FOIALiaison@mail.mil to answer any concerns about the foregoing.

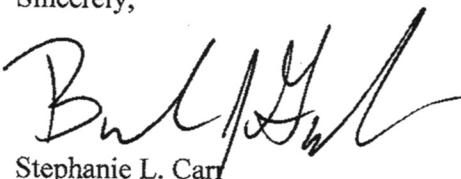
Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

You have the right to appeal to the appellate authority, Ms. Joo Chung, Director of Oversight and Compliance, Office of the Secretary of Defense, by writing directly to ODCMO Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: DPCLTD, FOIA Appeals, Mailbox# 24, Alexandria, VA 22350-1700. Your appeal must be postmarked within 90 calendar days of the date of this response. Alternatively, you may use the OSD FOIA request portal at <http://pal.whs.mil/palMain.aspx> or email your appeal to osd.foia-appeal@mail.mil. If you use email, please include the words "FOIA Appeal" in the subject of the email. Please also reference case number 17-F-0807 in any appeal correspondence.

We regret the delay in responding to your request and appreciate your patience.

Sincerely,


Stephanie L. Cary
Chief

Enclosures

17-F-0807

APR 10 2017

P.O. Box 170521
Brooklyn, NY 11217
Fax: (929) 777-8428
INFO@protectdemocracy.org

**The Protect -
Democracy
Project**

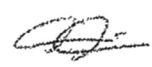
FAX

To: OSD/JS FOIA Requester Service Center	From: Ian Bassin, Counsel at Protect Democracy Project
Fax: (571) 372-0500	Pages: 3
Phone:	Date: 4/7/2017
Re: Freedom of Information Act Request - Expedited Processing	

To Whom It May Concern:

Please find enclosed a Freedom of Information Act request. To contact us, please either email us at FOIA@protectdemocracy.org, or fax us at (929) 777-8428. If you have any questions about the contents of the request, please reach out to Ben Berwick, Counsel, at ben.berwick@protectdemocracy.org

Sincerely,



Ian Bassin
Protect Democracy Project

The Protect - Democracy Project

April 7, 2017

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155
Fax (571) 372-0500

Re: Freedom of Information Act Request

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, The Protect Democracy Project hereby requests that your office produce within 20 business days the following records (see below for clarity on the types of records sought):

Any and all records, including but not limited to emails and memoranda, reflecting, discussing, or otherwise relating to the April 6, 2017 military strike on Syria and/or the President's legal authority to launch such a strike. This request includes, but is not limited to, internal Department of Defense communications, communications between Department of Defense employees and the Executive Office of the President, and communications between Department of Defense employees and other agencies.

The timeframe for this request is April 4, 2017 through the present.

EXPEDITED PROCESSING

We request that you expedite the processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 286.8(e). This request meets the criteria for expedited processing because "[t]he information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity." 32 C.F.R. § 286.8(e)(1)(i)(B). As explained below in more detail in the section of this request regarding a fee waiver, The Protect Democracy Project intends to disseminate the information obtained in response to this request.

There can be no question that the President's decision to initiate military action is of the utmost importance to the public. Similarly, whether the President has the legal authority to launch a military strike – or used military force without legal authorization – is a question that is fundamental to our democracy. The public has an immediate right to

PO Box 170521, Brooklyn, New York 11217
FOIA@protectdemocracy.org

understand the administration's position with respect to the legality of the recent strike against Syria, and to assess whether that position is justified.

The American people and their representatives have already begun debating this issue of utmost importance. As we expect the President will comply with the War Powers Resolution and notify Congress of his military actions by the evening of April 8, 2017, 48 hours after these strikes were launched, the public debate on how Congress should exercise its co-equal role in this serious matter will intensify at that time. There is no way for the American people to advise their representatives of the public's view on this matter without a full understanding of the legal justification on which the President acted.

It is therefore incumbent upon the government and urgent for your office to share any responsive records in an expedited fashion because that is only way in a democracy for citizens and other branches of government to assess the actions that have been undertaken on our behalf in time to affect the present debate.

This request is made all the more urgent by the possibility that the President may decide to engage in further military action at any time.

Under penalty of perjury, and pursuant to 32 C.F.R. § 286.8(e)(3), I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

FEE WAIVER

FOIA provides that any fees associated with a request are waived if "disclosure of the information is in the public interest because it 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 core mission of The Protect Democracy Project, a new organization awaiting 501(c)(3) status, is to inform public understanding on operations and activities of the government. This request is submitted in consort with the organization's mission to gather and disseminate information that is likely to contribute significantly to the public understanding of executive branch operations and activities. The Protect Democracy Project has no commercial interests.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, The Protect Democracy Project is entitled to a waiver of all fees except "reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as a representative of the news media. *Id.* The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as "news media organizations." Like those organizations, the purpose of The Protect Democracy Project is to "gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience." *Nat's Sec. Archive*

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v. Dep't of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989). We intend to give the public access to documents transmitted via FOIA on our website, www.unitedtoprotectdemocracy.org, and to provide information about and analysis of those documents as appropriate.

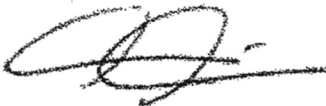
RESPONSIVE RECORDS

We ask that all types of records and all record systems be searched to discover records responsive to our request. We seek records in all medium and format. This includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; e-mails; e-mail attachments; talking points; faxes; training documents and guides; tables of contents and contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials. We ask that you search all systems of record, including electronic and paper, in use at your agency. The Protect Democracy Project would prefer records in electronic format, saved as PDF documents, and transmitted via email or CD-rom.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. § 552(b).

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact me at FOIA@protectdemocracy.org or (202) 599-0466 if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,



Ian Bassin
Executive Director
The Protect Democracy Project

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