



Jason Leopold <jasonleopold@gmail.com>

## Request for records under the Freedom of Information Act

2 messages

**Jason Leopold** <jasonleopold@gmail.com> Mon, Mar 6, 2017 at 11:43 AM  
Reply-To: jasonleopold@gmail.com  
To: FOIA <Foia@usss.dhs.gov>, FOIA <FOIA@hq.dhs.gov>, "Burch, Ashley" <l&afoia@hq.dhs.gov>, "FOIA, NPPD" <NPPD.foia@hq.dhs.gov>, FOIAOPS <FOIAOPS@hq.dhs.gov>, FOIA@dhs.gov, crcl@dhs.gov

This is a request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. This request should be considered under both statutes to maximize the release of records.

### REQUESTER INFORMATION

**Name:** Jason Leopold  
**Affiliation:** Senior Investigative Reporter/BuzzFeed News  
**Address:** 1669 Benedict Canyon Drive  
Beverly Hills, CA 90210  
**Email:** [jasonleopold@gmail.com](mailto:jasonleopold@gmail.com)  
**Phone:** [213-270-4334](tel:213-270-4334)

### RECORDS SOUGHT

I request disclosure from the Department of Homeland Security (DHS) and its sub offices listed in the email address the following records:

1. Any and all records, which includes but is not limited to emails, memos, letters, text messages, instant messages, among all DHS staff, including senior officials within the agency itself and in sub agency offices, that mentions or refers to President Donald Trump's use of Twitter and his tweets and constitutes discussions about his tweets. The timeframe for this request is November 8, 2016 through the date the search for responsive records is conducted. . These records should
2. Any and all records, which includes but is not limited to emails, memos, letters, text messages, instant messages, among DHS staff, including senior officials within the agency and in DHS sub agencies, that mentions or refers to and constitutes discussions about President Donald Trump's March 4, 2017 tweet that said, "Terrible! Just found out that Obama had my "wires tapped" in Trump Tower just before the victory. Nothing found. This is McCarthyism!" [<https://twitter.com/realDonaldTrump/status/837989835818287106>]
3. Any and all records, which includes but is not limited to emails, memos, letters, text messages, instant messages, among DHS staff, including senior officials within the agency and in sub agencies, that mentions or refers to and constitutes discussions about President Donald Trump's March 4, 2017 tweet that said, "Is it legal for a sitting President to be "wire tapping" a race for president prior to an election? Turned down by court earlier. A NEW LOW!" [<https://twitter.com/realDonaldTrump/status/837993273679560704>]

### INSTRUCTIONS REGARDING SEARCH

As required by the relevant case law, the agencies should follow any leads it discovers during the conduct of its searches and perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

2. *Request for Public Records:*

Please search for any records even if they are already publicly available.

3. *Request for Electronic and Paper/Manual Searches:*

I request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of my request be conducted. I further request that the agencies conduct a search of its "soft files" as well as files in its locked cabinets.

4. *Request for Search of Filing Systems, Indices, and Locations:*

I request that the agencies conduct a search of all of its directorates and indices, filing systems, and locations to locate responsive records.

5. *Request regarding Photographs and other Visual Materials:*

I request that any photographs or other visual materials responsive to my request be released to me in their original or comparable forms, quality, and resolution. For example, if a photograph was taken digitally, or if the agencies maintains a photograph digitally, I request disclosure of the original digital image file, not a reduced resolution version of that image file nor a printout and scan of that image file. Likewise, if a photograph was originally taken as a color photograph, I request disclosure of that photograph as a color image, not a black and white image. Please contact me for any clarification on this point.

6. *Request for Duplicate Pages:*

I request disclosure of any and all supposedly "duplicate" pages. Scholars analyze records not only for the information available on any given page, but also for the relationships between that information and information on pages surrounding it. As such, though certain pages may have been previously released to me, the existence of those pages within new context renders them functionally new pages. As such, the only way to properly analyze released information is to analyze that information within its proper context. Therefore, I request disclosure of all "duplicate" pages.

7. *Request to Search Emails:*

Please search for emails relating to the subject matter of my request.

8. *Request for Search of Records Transferred to Other Agencies:*

I request that in conducting its search, the agencies disclose releasable records even if they are available publicly through other sources outside the agencies, such as NARA.

10. *Regarding Destroyed Records*

If any records responsive or potentially responsive to my request have been destroyed, my request include, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

INSTRUCTIONS REGARDING SCOPE AND BREADTH OF REQUESTS

Please interpret the scope of this request broadly. The agencies is instructed to interpret the scope of this request in the most liberal manner possible short of an interpretation that would lead to a conclusion that the request does not reasonably describe the records sought.

EXEMPTIONS AND SEGREGABILITY

I call your attention to President Obama's 21 January 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA [...] The presumption of disclosure should be applied to all decisions involving FOIA. <sup>[1]</sup>

In the same Memorandum, President Obama added that government information should not be kept confidential "merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Finally, President Obama ordered that "The Freedom of Information Act should be administered with a clear presumption: In the case of doubt, openness prevails."

Nonetheless, if any responsive record or portion thereof is claimed to be exempt from production, FOIA/PA statutes provide that even if some of the requested material is properly exempt from mandatory disclosure, all segregable portions must be released. If documents are denied in part or in whole, please specify which exemption(s) is (are) claimed for each passage or whole document denied. Please provide a complete itemized inventory and a detailed factual justification of total or partial denial of documents. Specify the number of pages in each document and the total number of pages pertaining to this request. For "classified" material denied, please include the following information: the classification (confidential, secret or top secret); identity of the classifier; date or event for automatic declassification or classification review or downgrading; if applicable, identity of official authorizing extension of automatic declassification or review past six years; and, if applicable, the reason for extended classification beyond six years.

In excising material, please "black out" the material rather than "white out" or "cut out." I expect, as provided by FOIA, that the remaining non-exempt portions of documents will be released.

Please release all pages regardless of the extent of excising, even if all that remains are the stationery headings or administrative markings.

In addition, I ask that your agency exercise its discretion to release records which may be technically exempt, but where withholding serves no important public interest.

#### ADDITIONAL INSTRUCTIONS REGARDING REQUEST

Please produce all records with administrative markings and pagination included.

Please send a memo (copy to me) to the appropriate units in your office to assure that no records related to this request are destroyed. Please advise of any destruction of records and include the date of and authority for such destruction.

#### FORMAT

I request that any releases stemming from this request be provided to me in digital format (soft-copy) on a compact disk or other like media.

#### FEE CATEGORY AND REQUEST FOR A FEE WAIVER

I am willing to pay any reasonable expenses associated with this request, however, as the purpose of the requested disclosure is in full conformity with the statutory requirements for a waiver of fees, I formally request such a waiver. I request a waiver of all costs pursuant to 5 U.S.C. §552(a)(4)(A)(iii) ("Documents shall be furnished without any charge ... 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."). Disclosure in this case 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, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"). I incorporate by reference the explanation and attached materials in the above sections which demonstrates why the requested information is in the public interest.

Under 32 C.F.R. 1900.13(b), "Records will be furnished without charge or at a reduced rate whenever the Agency determines . . . (2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester."

Should my request for a fee waiver be denied, I request that I be categorized as a member of the news media for fee purposes pursuant to 32 C.F.R. 1900.02(h)(3). According to 5 U.S.C. § 552(a)(4)(A)(ii), which codified the ruling of *Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), the term "a representative of the news media" means 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. This is consistent with the definition provided in 32 C.F.R. 1900.02(h)(3)

As the legislative history of FOIA reveals, "It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132 Cong.

Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) "A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision." 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

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As the legislative history of FOIA reveals, "It is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original quotation); and 2) "A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision." 132 Cong. Rec. H9463 (Oct. 8, 1986) (emphasis in original quotation)). Therefore, in accordance with the Freedom of Information Act and relevant case law, I, Jason Leopold, should be considered a representative of the news media.

I have the intent and ability to disseminate this significant expansion of public understanding of government operations. The public interest in this significant expansion of public understanding of government operations far outweighs any commercial interest of my own in the requested release. Accordingly, my fee waiver request amply satisfies my request for a fee waiver. Legislative history and judicial authority emphatically support this determination. For these reasons, and based upon their extensive elaboration above, I request a full waiver of fees be granted. I will appeal any denial of my request for a waiver administratively and to the courts if necessary.

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[1] President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act," 21 January 2009; <[http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct/](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/)>



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Send me documents and tips, anonymously and securely: [contact.buzzfeed.com](http://contact.buzzfeed.com)

[My personal PGP](#)

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**Jason Leopold** <jasonleopold@gmail.com>

Thu, Mar 30, 2017 at 2:29 PM

Reply-To: jasonleopold@gmail.com

To: FOIA <FOIA@hq.dhs.gov>, "Burch, Ashley" <l&afoia@hq.dhs.gov>, "FOIA, NPPD" <NPPD.foia@hq.dhs.gov>, crcl@dhs.gov, ice-foia@dhs.gov, CBPFOIA@dhs.gov

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[REQUESTER INFORMATION](#)

**Name:** Jason Leopold

**Affiliation:** Senior Investigative Reporter/BuzzFeed News

**Address:** 1669 Benedict Canyon Drive

Beverly Hills, CA 90210

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**Phone:** 213-270-4334

### RECORDS SOUGHT

I request disclosure from the Department of Homeland Security (DHS) and its sub offices listed in the email address the following records:

1. Any and all records, which includes but is not limited to emails, memos, letters, text messages, instant messages, threat assessments, WASP reports, legal analyses, talking points, communications between the DHS divisions addressed here and the White House, mentioning or referring to a policy decision to bar passengers on more than a dozen Middle East and African airlines from bringing laptops and other large electronics into the cabin as carry-ons.

Details of this policy were reported by CNN on March 21, 2017.

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**Send me documents and tips, anonymously and securely:** [contact.buzzfeed.com](https://www.buzzfeed.com/contact)

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