

EXHIBIT F



September 1, 2017

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
Phone: (202) 514-FOIA
Fax: (202) 514-1009

Melissa Golden
Lead Paralegal and FOIA Specialist
Department of Justice
Room 5511, 950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
Phone: (202) 514-2053
Email: usdoj-officeoflegalcounsel@usdoj.gov

Arnetta Mallory
FOIA Initiatives Coordinator
National Security Division
Department of Justice
Room 6150, 950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
Phone: (202) 233-0754
Email: nsdfoia@usdoj.gov

Via E-Mail

Re: Freedom of Information Act

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):

2020 Pennsylvania Avenue, NW, #163, Washington, DC 20006
FOIA@protectdemocracy.org

1. Any and all records that reflect, discuss, or otherwise refer to advice provided to the White House concerning the President's legal authority to launch military strikes or conduct armed conflict against North Korea. This request includes, but is not limited to, internal Department of Justice communications, communications between Department of Justice employees and the Executive Office of the President, and communications between Department of Justice employees and other agencies. The timeframe for the records sought in this paragraph is January 20, 2017 through the date that searches are conducted for records responsive to this FOIA request.
2. Any and all records that reflect, discuss, or otherwise refer to consulting with Congress or obtaining Congressional authorization with respect to launching military strikes or initiating armed conflict against North Korea. This request includes, but is not limited to, internal Department of Justice communications, communications between Department of Justice employees and the Executive Office of the President, communications between Department of Justice employees and other agencies, and communications between Department of Justice employees and Members of Congress, Congressional Committees, or their staffs. The timeframe for the records sought in this paragraph is January 20, 2017 through the date that searches are conducted for records responsive to this FOIA request.
3. Any and all records that reflect, discuss, or otherwise refer to President Trump's statement or tweet of August 8, 2017 threatening that North Korea will be "met with fire and fury." This includes any records reacting or responding to the President's tweet. The timeframe for the records sought in this paragraph is August 1, 2017 through the date that searches are conducted for records responsive to this FOIA request.
4. Any and all records that reflect, discuss, or otherwise refer to President Trump's statement or tweet of August 30, 2017 stating: "the U.S. has been talking to North Korea, and paying them extortion money, for 25 years. Talking is not the answer!" The timeframe for the records sought in this paragraph is August 1, 2017 through the date that searches are conducted for records responsive to this FOIA request.
5. In addition to the records requested above, we also request 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.

We ask that you search for records from all components of the Department that may be reasonably likely to produce responsive results, and in particular the Office of the Attorney General, Office of the Deputy Attorney General, Office of Legal Counsel, National Security Division, the Office of Public Affairs, and the Office of Legislative Affairs.

EXPEDITED PROCESSING REQUEST

We request that you expedite the processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e). This request meets the criteria for expedited processing because it concerns “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence,” 28 C.F.R. §16.5(e)(1)(iv), and because there is an urgent need “to inform the public about an actual or alleged Federal Government activity.” 28 C.F.R. § 16.5(e)(1)(ii).

There is no question that the subject matter of this request, an issue of foreign and military affairs, is a matter of “actual or alleged Federal government activity.” President Trump signaled major shifts in American foreign and military policy towards North Korea by advocating an abandonment of diplomacy in favor of military action, and may be engaging in military preparations. This request seeks the Department of Justice’s records on those topics, especially as they relate to congressional and legal authorities for military action. Whether the President has the legal authority to initiate a military confrontation with North Korea, especially in the current absence of Congressional authorization, is a question that is fundamental to our democracy. The public has an immediate right to understand the administration’s position with respect to its authority for carrying out military actions against North Korea, and assess whether that position is justified. There exist possible questions about the integrity of the administration in threatening military action where it may lack the legal authority to support its contemplated course of action.

Additionally, the information sought in this request is “urgently needed,” as defined in 22 C.F.R. 171.11 as “[o]rordinarily” related to “a breaking news story of general public interest.” National news publications immediately and widely reported on the possible consequences of the President’s tweets, including from other government and congressional officials, including analysis of his authority to carry out his threatened military action.¹ Few areas of government action can be more “urgent” than

¹ See, e.g., Jennifer Rubin, *The Administration’s Incoherence on North Korea Intensifies*, Wash. Post, Aug. 30, 2017, https://www.washingtonpost.com/blogs/right-turn/wp/2017/08/30/the-administrations-incoherence-on-north-korea-intensifies/?utm_term=.48b88648cc76; Matthew Pennington, *Talking is Not the Answer.* *President Trump Dismisses Diplomacy with North Korea*, Time, Aug. 30, 2017, <http://time.com/4922732/donald-trump-north-korea-diplomacy-tweet/>; Zachary Cohen and Nicole Gaouette, *Trump Administration’s Mixed North Korea Signals Raise Questions about US Strategy*, CNN, Aug. 31, 2017; Michael R. Gordon, *Mattis Insists He and Trump are on the Same Page on North Korea*, N.Y. Times, Aug. 31, 2017, <https://www.nytimes.com/2017/08/31/us/politics/mattis-trump-north->

contemplating military action – “fire and fury” – with a known nuclear-armed country, North Korea.

The Protect Democracy Project intends to disseminate the information obtained in response to this request. As the District Court for the District of Columbia “easily” determined in recent litigation in a separate FOIA request, “Protect Democracy satisfied these standards” of being “primarily engaged in disseminating information.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, No. 17-CV-00842 (CRC), 2017 WL 2992076, at *5 (D.D.C. July 13, 2017). 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’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Indeed, The Protect Democracy Project has routinely demonstrated the ability to disseminate information about its FOIA requests to a wide audience,² including on the very topic of this FOIA request.³ The Protect Democracy Project will disseminate information and analysis about this request – and any information obtained in response – through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protctdemocracy>), which has 11,000 followers; its email list of approximately 20,000 people; and sharing information with other members of the press.

It is therefore incumbent upon the government and urgent for your office to share any responsive records in an expedited fashion because that is the only way in a democracy for citizens and other branches of government to assess the actions that have been taken. Moreover, given the President’s escalation of public statements against diplomacy and prior U.S. foreign policy towards North Korea, time is of the essence for the public to receive and respond before his threats of military action become a reality.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

korea.html?_r=0; Garrett Epps, *Trump Doesn’t Have the Authority to Attack North Korea Without Congress*, The Atlantic, Aug. 30, 2017, <https://www.theatlantic.com/politics/archive/2017/08/trump-doesnt-have-the-power-to-attack-north-korea-without-congress/538425/>.

² See, e.g., Lisa Rein, *Watchdog group, citing “integrity of civil service,” sues Trump to find out if feds are being bullied*, Wash. Post, Apr. 27, 2017, https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/?utm_term=.8647ab128f3e; Ben Berwick, *Going to Court for Civil Servants*, Take Care, April 28, 2017, <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times, May 8, 2017, <https://nyti.ms/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare, May 8, 2017, <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>.

³ Justin Florence, *President Trump’s War Powers, Congress, and North Korea*, Huffington Post, Aug. 10, 2017, http://www.huffingtonpost.com/entry/president-trumps-war-powers-congress-and-north-korea_us_598cc264e4b063e2ae057e3f.

2020 Pennsylvania Avenue, NW, #163, Washington, DC 20006
FOIA@protectdemocracy.org

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the 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 501(c)(3) organization, 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 v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As the District Court for the District of Columbia “easily” determined in recent litigation in a separate FOIA request, The Protect Democracy Project is “primarily engaged in disseminating information.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, No. 17-CV-00842 (CRC), 2017 WL 2992076, at *5 (D.D.C. July 13, 2017). Indeed, The Protect Democracy Project has routinely demonstrated the ability to disseminate information about its FOIA requests to a wide audience.⁴ The Protect Democracy Project will disseminate information and analysis about this request – and any information obtained in response – through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protctdemocracy>), which has 11,000 followers; its email list of approximately 20,000 people; and sharing information with other members of the press.

⁴ See, e.g., Lisa Rein, *Watchdog group, citing “integrity of civil service,” sues Trump to find out if feds are being bullied*, Wash. Post (Apr. 27, 2017), <https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/>; Ben Berwick, *Going to Court for Civil Servants*, Take Care (April 28, 2017), <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times (May 8, 2017), <https://nyti.ms/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare (May 8, 2017), <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>; Allison Murphy, *Ten Questions for a New FBI Director*, Take Care (June 6, 2017), <https://takecareblog.com/blog/ten-questions-for-a-new-fbi-director>.

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 media and formats. 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. However, you need not produce press clippings and news articles that are unaccompanied by any commentary (e.g., an email forwarding a news article with no additional commentary in the email thread).

We ask that you search all systems of record, including electronic and paper, in use at your agency, as well as files or emails in the personal custody of your employees, such as personal email accounts, as required by FOIA and to the extent that they are reasonably likely to contain responsive records. 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 Allison.Murphy@protectdemocracy.org or 202-417-2341 if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,



Allison F. Murphy
Counsel
The Protect Democracy Project