

EXHIBIT H



November 17, 2017

Via Online Portal (<https://foia.regulations.gov>)
Director, Office of Information Policy
U.S. Department of Justice
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Re: Freedom of Information Act Appeal
FOIPA Request No. 1375028-000

Dear Director:

I am writing to appeal the FBI's closure of the Protect Democracy Project's FOIA Request No. 1375028-000 regarding communications between the White House and the Department of Justice ("DOJ"). The FBI has failed to fulfill its duties under FOIA by closing this request without processing any search for responsive records.

Protect Democracy submitted the FOIA request (attached) to the FBI on May 19, 2017. On October 11, the FBI wrote Protect Democracy a letter (attached) that stated the FBI had "determined that the information requested would be under the purview of another agency," without providing other detail. On November 1, Cameron Bills, paralegal of Protect Democracy, spoke with Leanna Ramsey, of the FBI, to clarify the reason for the FBI's response. Ms. Ramsey asserted that the FOIA request, in seeking communications between the White House and the DOJ, did not sufficiently specify communications from the FBI.

FBI's reading of the FOIA request, and of its own jurisdiction, are incorrect and it should process the request without further delay. First, the FOIA request is directly addressed to the FBI. Furthermore, in the section headlined "Responsive Records," the request plainly states: "We ask that you search for records from all components of the Department of Justice... including but not limited to... the Federal Bureau of Investigation..." Second, the FBI is part of the Department of Justice. Under 28 U.S.C. Section 531, "the Federal Bureau of Investigation is in the Department of Justice." A request for DOJ records encompasses FBI records because FBI is a part of DOJ.

Given that six months have passed since this FOIA was submitted in May 2017, we expect DOJ to instruct the FBI to promptly process the request. 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,

A handwritten signature in blue ink that reads "Allison Murphy". The signature is written in a cursive, flowing style.

Allison F. Murphy
Counsel
The Protect Democracy Project

2020 Pennsylvania Ave NW
#163
Washington, DC 20006
Fax: (929) 777-8428
INFO@protectdemocracy.org



FAX

To Whom It May Concern:

Please see the enclosed fax transmission from The Protect Democracy Project. If you have questions about the contents of the fax, please contact us at INFO@protectdemocracy.org or via phone at (202) 599-0466.

We appreciate your prompt attention to this matter, and look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to be "Ian Bassin".

Ian Bassin
Protect Democracy Project

The Protect-
Democracy
Project

May 19, 2017

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001
Tel: (202) 514-FOIA
Fax: (202) 514-1009

Hirsch D. Kravitz
FOIA, Records and E-Discovery Office
Civil Division
Department of Justice
Room 8020
1100 L Street, NW
Washington, DC 20530-0001
Phone: (202) 514-2319
Fax: (202) 514-7866

Kevin Krebs
Assistant Director
FOIA/Privacy Unit
Department of Justice
Executive Office for U.S. Attorneys
Department of Justice
Room 7300, 600 E Street, N.W.
Washington, DC 20530-0001
Phone: (202) 252-6020
Fax: (202) 252-6047

Amanda M. Jones
Acting Chief, FOIA/PA Unit
Criminal Division
Suite 1127, Keeney Building
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
Phone: (202) 616-0307
Fax: (202) 514-6117

Susan Gerson, Acting Assistant Director
FOIA/Privacy Unit
Executive Office for U.S. Attorneys
Department of Justice
Room 7300, 600 E Street, N.W.
Washington, DC 20530-0001
Phone: (202) 252-6020
Phone: (540) 868-4500
Fax: (540) 868-4997

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
Fax: (540) 868-4391/4997

Nelson D. Hermilla, Chief
FOIA/PA Branch
Civil Rights Division
Department of Justice
BICN Bldg., Room 3234
950 Pennsylvania Avenue, NW
Washington, DC 20530
Phone: (202) 514-4209

Charles Smiroldo
FOIA Coordinator
Law and Policy Section
Environment and Natural Resources
P.O. Box 7415, Ben Franklin Station
Washington, DC 20044-7415
Phone: (202) 514-0424
Fax: (202) 514-4231

Fax: (202) 514-6195

Via Facsimile

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):

1. Any and all records, including but not limited to emails, phone records, calendar entries, meeting notes, and other communications related to contacts between White House staff, including email domain addresses ending in “eop.gov,” as well as private email addresses, and Department of Justice (DOJ) employees regarding:
 - a. Any pending or contemplated investigation or case, of either a civil or criminal nature;
 - b. Policies governing communications between the White House and DOJ, including but not limited to:
 1. the Memorandum issued by Counsel to the President Donald F. McGahn dated January 27, 2017, titled *Communications Restrictions with Personnel at the Department of Justice*;
 2. the Memorandum issued by Attorney General Eric Holder dated May 11, 2009, titled *Communications with the White House and Congress*; or
 3. the Memorandum issued by Attorney General Mukasey dated December 19, 2007, titled *Communications with the White House*.
2. Any and all records of DOJ employees regarding policies, procedures, memoranda, guidance, best practices, directives, trainings, compliance efforts, firewalls, reminders, or other information related to communications between the White House and DOJ, including but not limited to the Memorandum issued by Attorney General Eric Holder dated May 11, 2009, titled *Communications with the White House*.
3. Any and all records of Department of Justice employees regarding possible or actual violations, breaches, abuses, findings, or reports, related to communications between the White House and DOJ, including but not limited to the Memorandum issued by Attorney General Eric Holder dated May 11, 2009, titled *Communications with the White House*.
4. 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.

The timeframe for this request is January 20, 2017 through the date that searches are conducted for records responsive to this FOIA request.

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 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 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 for records from all components of the Department of Justice Division that may be reasonably likely to produce responsive results, including but not limited to the Office of the Attorney General, the Office of the Deputy Attorney General, the Executive Office for United States Attorneys, U.S. Attorneys, the Civil Division, the Criminal Division, the Federal Bureau of Investigation, the Civil Rights Division, and the Environment and Natural Resources. We also 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 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,

A handwritten signature in blue ink that reads "Allison F. Murphy". The signature is written in a cursive, flowing style.

Allison F. Murphy
Counsel
The Protect Democracy Project



Federal Bureau of Investigation
Washington, D.C. 20535

October 11, 2017

MS. ALLISON F MURPHY
THE PROTECT DEMOCRACY PROJECT
NUMBER 163
2020 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20006

FOIPA Request No.: 1375028-000
Subject: Communication between White
House and DOJ
(January 20, 2017 – May 31, 2017)

Dear Ms. Murphy:

This is in response to your Freedom of Information Act (FOIA) request.

Based on the information you have provided, we determined that the information requested would be under the purview of another agency. Please refer to the Department of Justice's public website for more information, <https://www.justice.gov/oip/make-foia-request-doj>

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI Fact Sheet and Explanation of Exemptions.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", is written over the word "Sincerely,".

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)



FBI FACT SHEET

- **The primary function of the FBI is national security.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identification record or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI, Criminal Justice Information Services (CJIS) Division, Record Request, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual's records are not disseminated to an unauthorized person. The fingerprint submission must include the subject's name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/background-checks/background_checks.
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject's name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT

www.fbi.gov

EXPLANATION OF EXEMPTIONS**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.