

# **Exhibit C**

December 10, 2018

**VIA ELECTRONIC TRANSMISSION**

Melanie Ann Pustay  
Director  
Office of Information Policy  
U.S. Department of Justice  
Suite 11050  
1425 New York Avenue, NW  
Washington, D.C. 20530-0001

**Freedom of Information Act Appeal**

**Re: Expedited Processing of Request No. DOJ-2018-008546**

Dear Ms. Pustay:

This is an appeal of a denial of expedited processing under the Freedom of Information Act, 5 U.S.C. §552(a)(6)(E)(I) (“FOIA”), and 28 C.F.R. §16.5(e)(1)(ii).

On September 24, 2018, I made a FOIA request to the Department of Justice (DOJ) for expedited processing of my request for the following material:

- Letters sent by Sen. Roger Wicker to Attorney General Jeff session and any letters sent in reply during the years 2017 and 2018.
- Electronic communications concerning Dmytro Firtash between the Senator and Attorney General Jeff Sessions during the years 2017 and 2018.

On October 23, 2018, the DOJ denied my request for expedited processing, stating that they “could not identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public’s right to know about government activities generally.” I enclose copies of my request and the agency’s response.

As explained below, there is a “compelling need” for the records under 28 C.F.R. §16.5(e)(1)(ii). Therefore, expedited treatment of my request is justified.

All information herein is true and correct to the best of my knowledge and belief.

**I. I am a journalist primarily engaged in disseminating information**

I have been covering law enforcement and criminal investigations as a professional journalist for more than 10 years. I have been a reporter with the NBC News Investigative Unit since August of 2013. NBC News is a leader in news reporting across broadcast and digital platforms, providing up-to-the-minute news coverage to the general public in the United States and abroad.

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As such, I am primarily engaged in disseminating information for the purposes of expedited processing under FOIA<sup>1</sup> and DOJ regulations.<sup>2</sup>

**II. This request involves an urgency to inform the American public.**

This request involves an “urgency to inform” the American public about the actions taken by the DOJ to secure the extradition of Ukrainian business executive Dmytro Firtash to the United States, and the DOJ’s response, if any, to intense lobbying efforts financed by Firtash.

Mr. Firtash was arrested in Austria in 2014 at the request of U.S. authorities based on his alleged “role as the mastermind of an international titanium racket.”<sup>3</sup> An Austrian appellate court authorized his extradition in February 2017. His extradition was on hold in the Austrian Supreme Court while the European Court of Justice ruled on a jurisdictional question. The ECJ issued its ruling last month, and the Austrian Supreme Court is now expected to rule on Firtash’s appeal. Firtash’s case is a matter of public interest in the United States and internationally because Firtash has ties to Vladimir Putin and Ukraine’s former President Viktor Yanukovich, as well as Paul Manafort. Firtash has also spent at least a million dollars lobbying in the United States to prevent his extradition, including hiring the services of Lanny Davis, former special counsel to President Clinton. In one transaction, Davis was wired \$80,000 for his services in the two weeks before the 2016 presidential election.

These political connections and lobbying efforts have led to concerns about the U.S. Government’s actions, or inaction, with respect to Firtash’s extradition and the criminal charges against him. United States Senator Roger Wicker reportedly wrote to then-Attorney General Sessions urging him to “expedite” Firtash’s extradition process.<sup>4</sup> Meanwhile, Firtash’s attorneys have repeatedly urged the District Court judge to throw out the charges against Firtash, expecting “that the Austrian Supreme Court will move quickly and Mr. Firtash could face extradition in a short time frame following the decision by the Court of Justice.”<sup>5</sup>

Media scrutiny of Firtash and his lobbyists in the United States substantiates the fact that extradition of the Dmytro Firtash to the United States is a *matter of exigency to the American people*.<sup>6</sup> Over the last six months, national, local, and specialized publications have written about Firtash’s extradition and his ties to numerous political and public figures in the U.S., including Paul Manafort and Lanny Davis. According to these articles:

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<sup>1</sup> 5 U.S.C. §552(a)(6)(E)(I); 5 U.S.C. §552(a)(6)(E)(v)(II); See Al-Fayed v. C.I.A., 254 F.3d 300, 309 (D.C. Cir. 2001).

<sup>2</sup> 28 C.F.R. §16.5(e)(1)(ii).

<sup>3</sup> Kim Janssen, *On-again, off-again extradition of Ukrainian Oligarch on Again – Maybe*, Chicago Tribune, March 16, 2018, <https://www.chicagotribune.com/news/chicagoinc/ct-met-dmitry-firtash-chicago-inc-20180316-story.html>.

<sup>4</sup> Diane Francis, *Time to Cut Out the Middlemen in Ukraine Gas Trade*, Atlantic Council, May 29, 2018, <http://www.atlanticcouncil.org/blogs/ukrainealert/time-to-cut-out-the-middlemen-in-ukraine-gas-trade>.

<sup>5</sup> Mike Eckel, *Top EU Court Rejects Extradition Appeal By Ukrainian Oligarch Firtash*, Radio Free Europe, October 24, 2018, <https://www.rferl.org/a/top-eu-court-rejects-extradition-appeal-by-ukrainian-oligarch-firtash/29562112.html>.

<sup>6</sup> See Gerstein v. CIA, 2006 WL 3462658 (N.D.Cal. Nov. 29, 2006); Am. Civil Liberties Union of N. California v. U.S. Dep't of Def., 2006 WL 1469418 at \*6 (N.D.Cal. May 25, 2006). See also Al-Fayed v. C.I.A., 254 F.3d 300, 309 (D.C. Cir. 2001).

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- Firtash is being represented by Lanny Davis, who is helping the Ukrainian oligarch avoid extradition to Chicago for charges of international racketeering and money laundering.<sup>7</sup>
- Firtash is paying Lanny Davis around one million dollars per year to lobby against his extradition. Davis re-registered as Firtash's lobbyist in 2016; that registration is still active.<sup>8</sup>
- Firtash's attorneys have repeatedly urged a U.S. District Court in Chicago to throw out the charges against him before he could be extradited from Austria.<sup>9</sup> In October, Firtash's attorneys notified the judge that the Court of Justice of the European Union was set to move his extradition forward.<sup>10</sup>
- Firtash has "boasted" that he was involved in the campaign to re-elect Kiev Mayor Vitali Klitschko, which also received the help of various Washington, D.C. consulting firms.<sup>11</sup>
- Firtash is a former business associate of Paul Manafort, investing in a now defunct business project,<sup>12</sup> and has been described as the "upper-echelon" of Russian organized crime.

A delay in processing this request would compromise at least two interests recognized as significant under FOIA: first, the interest in informing the record on a Congressional activity; and, second, the interest in gathering breaking news.

The District Court of the District of Columbia has held that there is a significant recognized interest in creating a public record about impending Congressional and federal agency actions.<sup>13</sup> Senator Roger Wicker has reportedly engaged on Firtash's extradition and questions what actions the DOJ is or is not taking. This information is urgent because the Austrian Supreme Court is likely to make their decision on Firtash's extradition soon. With that decision imminent, the record needs to be established regarding what the DOJ is doing to secure the extradition, and what oversight Senator Wicker and Congress have been exerting over the DOJ.

Delay of this request would also compromise the public and media's significant recognized interest in "quickly disseminating" breaking news. Various courts, including the District Court for the District of Columbia, have recognized this interest to be above and beyond the public's

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<sup>7</sup> Seth Hettena, *Michael Cohen, Lanny Davis and the Russian Mafia*, Rolling Stone, August 28, 2018, <https://www.rollingstone.com/politics/politics-features/michael-cohen-lanny-davis-russia-716413/>.

<sup>8</sup> Jordan Schachtel, *Michael Cohen attorney Lanny Davis is on the Payroll of Putin Ally*, Conservative Review, August 23, 2018, <https://www.conservativereview.com/news/michael-cohen-attorney-lanny-davis-is-on-the-payroll-of-a-putin-ally/>.

<sup>9</sup> Kim Janssen, *On-again, off-again extradition of Ukrainian Oligarch on Again – Maybe*, Chicago Tribune, March 16, 2018, <https://www.chicagotribune.com/news/chicago-inc/ct-met-dmitry-firtash-chicago-inc-20180316-story.html>.

<sup>10</sup> Chuck Goode, et al., *Ukrainian Gas Mogul may be Close to Extradition to Chicago*, ABC 7 Eyewitness News, October 16, 2018, <https://abc7chicago.com/politics/ukrainian-gas-mogul-may-be-close-to-extradition-to-chicago/4491598/>.

<sup>11</sup> Natasha Bertrand, *A Suspected Russian Spy, With Curious Ties to Washington*, The Atlantic, April 6, 2018, <https://www.theatlantic.com/politics/archive/2018/04/a-dc-operatives-long-relationship-with-a-suspected-russian-spy/557438/>.

<sup>12</sup> Seth Hettena, *Why A Powerful Russian Oligarch was Furious with Paul Manafort*, Talking Points Memo, May 7, 2018, <https://talkingpointsmemo.com/news/why-a-powerful-russian-oligarch-was-furious-with-paul-manafort>.

<sup>13</sup> See *American Civil Liberties Union v. United States Department of Justice*, 321 F.Supp.2d 24, 30 (D.D.C.2004). See also, *Leadership Conference on Civil Rights v. Gonzalez*, 404 F.Supp.2d 246, 260 (D. D.C. 2005).

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general right to know.<sup>14</sup> As evidenced by the number of media stories about the status of Firtash's extradition and inquiring into the lobbying efforts financed by Firtash, this request is intended to gather information that will contribute to breaking news. Any delay in the processing of this request will interfere with this significant recognized interest and prevent this news story from being timely published to the American people. As European Courts continue to address Firtash's case and a U.S. Senator and Congressional Commission express concern over the U.S. Government's handling of the extradition, the information that is the subject of this request is crucial to ensuring that the media can report the story quickly and accurately.

If there are further questions regarding this request I would appreciate communication via email rather than regular mail. I look forward to receiving your decision within 20 business days, as required by statute.

I reserve the right to further appeal any future determinations made with respect to this request.

Thank you for your assistance,

Tom Winter

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<sup>14</sup> Am. Civil Liberties Union of N. California v. U.S. Dep't of Def., 2006 WL 1469418 at \*8 (N.D.Cal. May 25, 2006). ("[E]ven if these interests would not be harmed, another recognized interest would be harmed by delay: the media's interest in quickly disseminating breaking, general-interest news.") See also Wadelton v. Department of State, 941 F.Supp.2d 120, 123 (D.D.C. 2013).