

February 8, 2019

Douglas Hibbard
Chief, Initial Request Staff
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001
Tel: (202) 514-3642

Re: Freedom of Information Act Request

Dear Mr. Hibbard:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we hereby request that your office produce the following records within 20 business days:

1. Any e-mail correspondence, including attachments, sent or received by personnel in the Office of the Attorney General or the Office of the Deputy Attorney General discussing or making mention of any the following statements by Acting Attorney General Matthew Whitaker, which he made at a Justice Department press conference on January 28, 2019:
 - That Whitaker is “fully briefed” on the investigation being headed by special counsel Robert S. Mueller III (hereinafter the “Mueller investigation”);
 - That “decisions that were made” regarding the Mueller investigation “are going to be reviewed”;
 - That the Mueller investigation is “close to being completed”; and
 - That Mueller will be providing a “final report”.

This request covers the period from January 28, 2019, to the present.

We also request any 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.

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(a)(8)(A)(ii) & 552(b).

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).

We are the editor-in-chief and senior editor for Lawfare, an online publication dedicated to informing public understanding on operations and activities of the government. Lawfare is published by The Lawfare Institute, a 501(c)(3) not-for-profit educational organization, and in cooperation with The Brookings Institution, a 501(c)(3) nonprofit public policy organization. This request is submitted in connection with Lawfare’s mission to publish information that is likely to contribute significantly to the public understanding of federal agency activities related to law and national security. Lawfare does not have commercial interests. This request is submitted in connection with Lawfare’s mission to publish information that is likely to contribute significantly to the public understanding of executive branch activities relating to law and national security. Whittaker’s recent remarks are of significant public interest given the Mueller investigation’s bearing on possible foreign interference in the U.S. electoral process. Reactions to Whitaker’s statements by senior officials will provide the public with a clear sense of how those public officials who are most informed on these matters view their significance and whether they should be treated credibly. This could in turn have a direct impact on the public’s confidence in the government’s oversight of the Investigation.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, we are 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.* Lawfare is a “news media organization[.]” 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.” *Nat’l 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, <https://www.lawfareblog.com>, and to provide information about and analysis of those documents as appropriate.

EXPEDITED PROCESSING

FOIA requires provides for expedited processing where a requestor “demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i). It defines “compelling need” to include situations where a “request [is] made by a person primarily engaged in disseminating information” and there exists an “urgency to inform the public concerning actual or alleged Federal Government activity.” Id. § 552(a)(6)(E)(v). Relevant Justice Department regulations further define “compelling need” to include requests relating to “[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)(iv).

Lawfare is an organization primarily engaged in the dissemination of information. This request addresses recent statements by Whittaker regarding his oversight and the possible conclusion of the Mueller investigation. Given the extraordinary nature of the Mueller investigation and the importance of its subject matter, both the investigation itself and the manner in which it is being supervised have been the subject of widespread and exceptional media coverage and garnered significant public interest. Any substantial developments in the Mueller investigation raise possible questions bearing on the public’s confidence in the integrity of the country’s democratic process and represent issues of urgent public concern. Similarly, internal reactions to these developments may help inform the public’s reaction.

* * *

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact us by phone or email if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

/s/ Benjamin Wittes

Benjamin Wittes
Editor in Chief, Lawfare
Senior Fellow in Governance Studies, The Brookings Institution
P.O. Box 33226
Washington D.C. 20033-3226
(202) 797- 4368
benjamin.wittes@gmail.com

s/ Scott R. Anderson

Scott R. Anderson

Senior Editor, Lawfare

Fellow in Governance Studies, The Brookings Institution

P.O. Box 33226

Washington D.C. 20033-3226

(202) 797- 6090

scott.anderson@lawfareblog.com