

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JASON LEOPOLD,)
6824 Lexington Avenue)
Los Angeles, CA 90038)

BUZZFEED INC.,)
111 East 18th Street, 13th Floor)
New York, NY 10003)

Plaintiffs,)

v.)

U.S. DEPARTMENT OF JUSTICE,)
950 Pennsylvania Avenue, NW)
Washington, D.C. 20530)

DOJ OFFICE OF ATTORNEY GENERAL,)
950 Pennsylvania Avenue, NW)
Washington, D.C. 20530)

DOJ DEPUTY ATTORNEY GENERAL,)
950 Pennsylvania Avenue, NW)
Washington, D.C. 20530)

DOJ OFFICE OF SPECIAL COUNSEL,)
950 Pennsylvania Avenue, NW)
Washington, D.C. 20530)

FEDERAL BUREAU OF)
INVESTIGATION,)
935 Pennsylvania Avenue, NW)
Washington, D.C. 20535)

DOJ NATIONAL SECURITY DIVISION,)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530)

DOJ OFFICE OF LEGAL POLICY,)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530)

DOJ OFFICE OF THE)
ASSOCIATE ATTORNEY GENERAL,)
950 Pennsylvania Avenue, N.W.)
Washington, D.C. 20530)

Case No. 19-cv-1647

DOJ OFFICE OF PUBLIC AFFAIRS)
 950 Pennsylvania Avenue, N.W.)
 Washington, D.C. 20530)
)
DOJ CRIMINAL DIVISION)
 950 Pennsylvania Avenue, N.W.)
 Washington, D.C. 20530)
)
DOJ OFFICE OF LEGISLATIVE AFFAIRS,)
 950 Pennsylvania Avenue, N.W.)
 Washington, D.C. 20530)
)
NATIONAL SECURITY AGENCY)
 9800 Savage Road STE 6932)
 Fort George G. Meade, MD 20755-6000)
)
Defendants.)

COMPLAINT

1. Plaintiffs JASON LEOPOLD and BUZZFEED INC. file this Freedom of Information Act suit seeking the prompt release of certain records relating to the Special Counsel’s investigation into Russian interference with the 2016 Presidential election and related events and communications.

PARTIES

2. Plaintiffs JASON LEOPOLD and BUZZFEED INC. are members of the media and made the FOIA requests at issue in this case.

3. Defendants are federal agencies subject to the Freedom of Information Act, 5 U.S.C. § 552, and/or components of the U.S. Department of Justice.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

MARCH 18, 2019 FOIA TO DOJ (NEW YORK TIMES ARTICLE)

6. On March 18, 2019, Plaintiffs requested from the Department of Justice (“DOJ”): (1) certain records pertaining to discussions between former Federal Bureau of Investigation Acting Director McCabe and Deputy Attorney General Rosenstein, dating from February 1, 2017, through July 31, 2017, and (2) records pertaining to a specified *New York Times* article dated September 21, 2018, dating from September 14 - 30, 2018.

7. DOJ assigned the following number to the request: DOJ-2019-003019.

8. On April 16, 2019, DOJ acknowledged receipt of the request and asserted that due to “unusual circumstances,” “we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute.”

9. As of the date of this filing, DOJ has not issued a determination or produced any responsive records.

APRIL 19, 2019 FOIA TO DOJ (REPORT PRESS BRIEFING)

10. On April 19, 2019, Plaintiffs requested from DOJ, the Office of the Attorney General (“OAG”), the Office of the Deputy Attorney General (“ODAG”), the Office of the Associate Attorney General (“OAAG”), Office of Public Affairs (“OPA”), and the Office of Special Counsel Robert Mueller (“OSC”): “1. Any and all final and draft talking points prepared for Attorney General William Barr, Deputy Attorney General Rod Rosenstein, and/or any official in the Department of Justice relating or referring to the April 18, 2019 press briefing lead by William Barr concerning the public release of the Special Counsel Robert Mueller's report. 2. Any and all legal guidance prepared for Attorney General William Barr and any Justice Department official concerning the April 18, 2019 public release of Special Counsel Robert Mueller's report. 3. Any and all media guidance and/or media planning records prepared for and/or by the Office of Public Affairs relating or referring to engaging the media concerning the

April 18, 2019 public release of Special Counsel Robert Mueller's report. 4. Any and all emails and text messages exchanged between any official in the Office of Attorney General, the Office of Deputy Attorney General, the Office of the Associate Attorney General, and any person in the Office of Public Affairs and the following Washington Post reporters: Matt Zapposky, Carol D. Leonnig, Rosalind S. Helderman and Devlin Barrett, that mentions or refers to the April 18, 2019 release of Special Counsel Robert Mueller's report. The timeframe for this request is April 17, 2019. 5. Any and all records, including emails, letters, memos, text messages, from the Office of Attorney General, Deputy Attorney General, Associate Attorney General, Office of Legislative Affairs, relating or referring to Special Counsel Robert Mueller's report and a decision by Attorney General William Barr to share a version of the report with President Donald Trump's lawyers prior to its public release. Please be sure the search for responsive records includes EOP.gov.”

11. DOJ assigned the following number to the request: DOJ-2019-004046.

12. On May 17, 2019, DOJ, through the DOJ Office of Information Policy (“OIP”), acknowledged receipt of the request and asserted that due to “unusual circumstances,” “we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute.”

13. As of the date of this filing, DOJ has not issued a determination or produced any responsive records.

APRIL 20, 2019 FOIA TO DOJ (MEETING & MEMORANDUM)

14. On April 20, 2019, Plaintiffs requested from DOJ, OAG, ODAG, OAAG, OSC, the Office of Legislative Affairs (“OLA”), the National Security Division (“NSD”), the Criminal Division (“CD”), and the Office of Legal Policy (“OLP”): “1. All letters, emails, memos, text messages, legal guidance, legal opinions, from senior officials in each of these offices

mentioning or referring to Special Counsel Robert Mueller's report, the decision by the Special Counsel to conclude whether President Donald Trump had committed . crime and the Office of Legal Counsel opinion that says a sitting president should not be indicted even if the charges remain sealed. 2. All emails, memos, letters, text messages from any official in the Office of Attorney General, the Deputy Attorney General and the Associate Attorney General, mentioning or referring to a March 5, 2019 meeting between Attorney General William Barr and Special Counsel Robert Mueller. 3. All letters, emails, memos, text messages, reports, from these offices mentioning or referring to a June 8, 2018 memo William Barr sent to Rod Rosenstein and Assistant Attorney General Steve Engel under the subject line: Mueller's 'Obstruction' Theory.”

15. DOJ assigned the following number to the request: DOJ-2019-004047.

16. On May 17, 2019, DOJ, through OIP, acknowledged receipt of the request and asserted that due to “unusual circumstances,” “we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute.”

17. As of the date of this filing, DOJ has not issued a determination or produced any responsive records.

APRIL 20, 2019 FOIA TO DOJ (ETHICAL GUIDANCE)

18. On April 20, 2019, Plaintiffs requested from DOJ, OAG, ODAG, OSC, OLA, OLP, and OPA: “1. Any and all ethical guidance prepared for officials in these offices, including the Attorney General William Barr and Deputy Attorney General Rod Rosenstein, that mentions or refers to the investigation conducted by Special Counsel Robert Mueller and Mr. Mueller's final report of the investigation conducted by his office. 2. Any and all records, including but not limited to memos, letters, emails, sent or received by the Office of Legislative Affairs to/from an individual member of Congress or a congressional committee, mentioning or referring to Special Counsel Robert Mueller's investigation and Mr. Mueller's final report of his investigation,

discussions relating to the sharing of this report with members of Congress and congressional committees, and the sharing of an unredacted version of this report with members of Congress and congressional committee.”

19. DOJ assigned the following number to the request: DOJ-2019-004048.

20. On May 20, 2019, DOJ, through OIP, acknowledged receipt of the request and asserted that due to “unusual circumstances,” “we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute.”

21. As of the date of this filing, DOJ has not issued a determination or produced any responsive records.

APRIL 23, 2019 FOIA TO DOJ (NEWS REPORTS)

22. On April 23, 2019, Plaintiffs requested from DOJ records from the Department pertaining to two named news reports from BuzzFeed News published on June 6, 2018 and February 5, 2019.

23. DOJ assigned the following number to the request: DOJ-2019-004139.

24. On May 21, 2019, DOJ acknowledged receipt of the request and asserted that due to “unusual circumstances,” “we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute.”

25. As of the date of this filing, DOJ has not issued a determination or produced any responsive records.

APRIL 26, 2019 FOIA TO DOJ (ROSENSTEIN EMAILS)

26. On May 23, 2019, Plaintiffs requested from DOJ: Deputy Attorney General Rod Rosenstein emails since January 1, 2017.

27. DOJ assigned the following number to the request: DOJ-2019-004253.

28. On April 5, 2019, DOJ acknowledged receipt of the request and asserted that due to “unusual circumstances,” “we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute.”

29. As of the date of this filing, DOJ has not issued a determination or produced any responsive records.

APRIL 20, 2019 FOIA TO FBI (WRAY COMMUNICATIONS)

30. On April 20, 2019, Plaintiffs requested from the Federal Bureau of Investigation (“FBI”): “1. Any and all emails, letters, memos, text messages, reports, from FBI Director Christopher Wray that mentions or refers to Special Counsel Robert Mueller's report into any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and (ii) any matters that arose or may arise directly from the investigation; and (iii) any other matters within the scope of 28 C.F.R. § 600.4(a). 2. Any and all letters, messages, memos emails sent to the FBI workforce mentioning or referring to Special Counsel Robert Mueller's report. 3. Any and all letters, memos, emails, reports, FBI Director Christopher Wray exchanged with the Offices of Attorney General, Deputy Attorney General, Associate Attorney General, National Security Division, Criminal Division, mentioning or referring to Special Counsel Robert Mueller's report.”

31. As of the date of this filing, FBI has not issued a determination or produced any responsive records.

SEPTEMBER 6, 2018 REQUEST TO FBI (NEW YORK TIMES ANONYMOUS OP-ED)

32. On September 6, 2018, Plaintiffs requested from FBI records that mention or refer to an anonymously penned op-ed about President Trump that the New York Times published on September 5, 2018.

33. FBI assigned the following request number to the request: 1416115-000.

34. On October 9, 2018, FBI denied the request alleging that Plaintiffs did not reasonably describe the requested records.

35. Plaintiffs appealed FBI's denial to DOJ.

36. DOJ assigned the following appeal number to Plaintiff's appeal: DOJ-AP-2019-000495.

37. On May 29, 2019, DOJ, through OIP, upheld FBI's denial.

APRIL 22, 2019 REQUEST TO NSA (ROGERS PHONE CALL)

38. On April 22, 2019, Plaintiffs requested from the National Security Agency ("NSA") "All records, such as emails, memos, letters, memorializing a telephone call President Trump made to Admiral Mike Rogers on March 26, 2017 in which he told him that news stories alleging that Trump's 2016 White house campaign had ties to Russia were false and asked whether Rogers could do anything to counter them. 2. Any and all records, such as emails, memos, letters, from NSA Deputy Director Richard Ledgett documenting, memorializing and discussing this telephone call from President Trump to Admiral Rogers. Date Range: March 26, 2017 through April 30, 2017.

39. Plaintiffs sought expedited processing of their request.

40. NSA assigned the following case number to the request: 106718.

41. On May 2, 2019, NSA denied Plaintiffs' request for expedited processing.

42. As of the date of this filing, NSA has not issued a determination or produced any responsive records.

COUNT I – DOJ FOIA VIOLATIONS

43. The above paragraphs are incorporated herein.

44. DOJ and the Defendant DOJ components are agencies subject to FOIA.

45. Plaintiffs made FOIA requests to the DOJ Defendants for agency records.

46. The DOJ Defendants have failed to issue determinations and/or produce the requested records.

COUNT II – OAG FOIA VIOLATIONS

- 47. The above paragraphs are incorporated herein.
- 48. OAG is an agency subject to FOIA.
- 49. Plaintiffs made FOIA requests to the OAG for agency records.
- 50. OAG failed to issue determinations and/or produce the requested records.

COUNT III – ODAG FOIA VIOLATIONS

- 51. The above paragraphs are incorporated herein.
- 52. ODAG is an agency subject to FOIA.
- 53. Plaintiffs made FOIA requests to ODAG for agency records.
- 54. ODAG failed to issue determinations and/or produce the requested records.

COUNT IV – OAAG FOIA VIOLATIONS

- 55. The above paragraphs are incorporated herein.
- 56. OAAG is an agency subject to FOIA.
- 57. Plaintiffs made FOIA requests to OAAG for agency records.
- 58. OAAG failed to issue determinations and/or produce the requested records.

COUNT V – OPA FOIA VIOLATIONS

- 59. The above paragraphs are incorporated herein.
- 60. OPA is an agency subject to FOIA.
- 61. Plaintiffs made FOIA requests to OPA for agency records.
- 62. OPA failed to issue determinations and/or produce the requested records.

COUNT VI – OSC FOIA VIOLATIONS

- 63. The above paragraphs are incorporated herein.

- 64. OSC is an agency subject to FOIA.
- 65. Plaintiffs made FOIA requests to OSC for agency records.
- 66. OSC failed to issue determinations and/or produce the requested records.

COUNT VII – OLP FOIA VIOLATIONS

- 67. The above paragraphs are incorporated herein.
- 68. OLP is an agency subject to FOIA.
- 69. Plaintiffs made FOIA requests to OLP for agency records.
- 70. OLP failed to issue determinations and/or produce the requested records.

COUNT VIII – OLA FOIA VIOLATIONS

- 71. The above paragraphs are incorporated herein.
- 72. OLA is an agency subject to FOIA.
- 73. Plaintiffs made FOIA requests to OLA for agency records.
- 74. OLA failed to issue determinations and/or produce the requested records.

COUNT IX – NSD FOIA VIOLATIONS

- 75. The above paragraphs are incorporated herein.
- 76. NSD is an agency subject to FOIA.
- 77. Plaintiffs made FOIA requests to NSD for agency records.
- 78. NSD failed to issue determinations and/or produce the requested records.

COUNT X – CD FOIA VIOLATIONS

- 79. The above paragraphs are incorporated herein.
- 80. CD is an agency subject to FOIA.
- 81. Plaintiffs made FOIA requests to CD for agency records.
- 82. CD failed to issue determinations and/or produce the requested records.

COUNT XI – FBI FOIA VIOLATIONS

- 83. The above paragraphs are incorporated herein.
- 84. FBI is an agency subject to FOIA.
- 85. Plaintiffs made FOIA requests to FBI for agency records.
- 86. FBI failed to issue determinations and/or produce the requested records.

COUNT XII – NSA FOIA VIOLATIONS

- 87. The above paragraphs are incorporated herein.
- 88. NSA is an agency subject to FOIA.
- 89. Plaintiffs made FOIA requests to NSA for agency records.
- 90. NSA failed to issue determinations and/or produce the requested records.

WHEREFORE, Plaintiffs ask the Court to:

- i. Order Defendants to produce the requested records;
- ii. Award Plaintiffs attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

DATED: June 5, 2019

Respectfully Submitted,

/s/ Matthew Topic

Attorneys for Plaintiffs

Matthew Topic
Joshua Burday
Merrick Wayne
(E-Mail: foia@loevy.com)
LOEVY & LOEVY
311 N. Aberdeen, Third Floor
Chicago, Illinois 60607
Tel.: (312) 243-5900
Fax: (312) 243-5902
Bar Nos. IL0037; IL0042; and IL0058