



September 6, 2017

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001
Phone: (202) 616-3837
E-mail: MRUFOIA.Requests@usdoj.gov

RE: FOIA Request to U.S. Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) Regarding Records Relating to FBI's Investigation and Decision Not to Pursue Criminal Charges Against Hillary Rodham Clinton, As Announced by Former FBI Director, James Comey on July 5, 2016.

Dear Sir or Ma'am:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")¹ on behalf of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records pertaining to the FBI's investigation and decision not to pursue criminal charges against Hillary Rodham Clinton, as announced by former FBI Director, James Comey on July 5, 2016.

Background

Pursuant to DOJ FOIA regulation 28 C.F.R. §16.3(b), this Background addresses "the date, title or name, author, recipient, subject matter of the record[s]" requested, to the extent known. The Senate Judiciary Committee has been investigating the circumstances surrounding the removal of

¹The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



Comey as the Director of the FBI, including his conduct in handling the Clinton and Russia investigations.

On June 30, 2017, the Senate Judiciary Committee wrote to the OSC requesting transcripts of OSC's interviews with then-Director Comey's Chief of Staff, Jim Rybicki, and the Principal Deputy General Counsel of National Security and Cyberlaw, Trisha Anderson – both of whom were interviewed by OSC as part of the investigation into whether then-Director Comey's actions in the Clinton investigation violated the Hatch Act.²

On August 8, 2017, the OSC provided transcripts of those interviews to the Committee.³ According to Senators Grassley and Graham's letter to FBI Director Christopher Way on August 30, 2017, the unredacted portions of the transcripts indicate that "Mr. Comey [in April or early May 2016] had already decided he would issue a statement exonerating Secretary Clinton."⁴ This decision was apparently reached despite the existence of what Comey identified as "evidence of potential violations of the statutes regarding the handling of classified information,"⁵ and although the interviews and/or follow-up interviews of seventeen key witnesses, including Secretary Clinton herself, had not yet occurred.

The portions of the transcripts available to the Judiciary Committee include statements from former Comey aides that the then-Director circulated drafts of his statement exonerating former Secretary Clinton in the spring of 2016 and that "[t]here were many iterations . . . of the draft that circulated"⁶

Records Requested

For purposes of this Request, the term "record" is "any information" that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term "record" also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, "If a department head can deprive the citizens of their right to know what his

² Letter from Senate Judiciary Committee to FBI Director Christopher Wray (August 30, 2017) available at [https://www.judiciary.senate.gov/imo/media/doc/2017-08-30%20CEG%20+%20LG%20to%20FBI%20\(Comey%20Statement\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2017-08-30%20CEG%20+%20LG%20to%20FBI%20(Comey%20Statement).pdf)

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “DOJ official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Justice or Federal Bureau of Investigation in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Justice or Federal Bureau of Investigation in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Justice, all without regard to the component or office in which that person serves.

For purposes of this Request, the term “briefing” includes, but is not limited to, any meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person(s).

For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 1, 2016 to the date on which the DOJ receives this request.

Pursuant to FOIA, 5 U.S.C. § 552, ACLJ hereby requests that the DOJ respond to the following numbered requests and produce all responsive records:

1. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by or to any DOJ official or employee regarding Comey’s decision to close the Hillary Rodham Clinton investigation and not to pursue criminal charges.
2. All records concerning the immunity agreements entered into between the Department of Justice (DOJ) and witnesses and/or subjects of the FBI’s Clinton investigation, including but not limited to Cheryl Mills and Heather Samuelson and all other such agreements whereby the DOJ agreed to destroy any records retrieved.

CONCLUSION

If this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. The ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Carly F. Gammill, Senior Litigation Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jordan Sekulow".

Jordan Sekulow
Executive Director

A handwritten signature in cursive script, appearing to read "Carly F. Gammill".

Carly F. Gammill
Senior Litigation Counsel

A handwritten signature in cursive script, appearing to read "Benjamin P. Sisney".

Benjamin P. Sisney
Senior Litigation Counsel