



*Jay Alan Sekulow, J.D., Ph.D.*  
*Chief Counsel*

May 12, 2016

**VIA FEDERAL EXPRESS**

Office of Information Programs and Services  
A/GIS/IPS/RL



**RE: FOIA Request to U.S. State Department Regarding the Editing, Deletion, Alteration, and/or Manipulation of the official U.S. Department of State Daily Press Briefing – Dec. 2, 2013, video.**

Dear Sirs or Madams:

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

The Request is made by the American Center for Law and Justice ("ACLJ")<sup>1</sup> on behalf of itself and over 21,000 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.

The Request seeks any and all records pertaining in any way to the editing, alteration and/or manipulation of the official U.S. Department of State Daily Press Briefing – Dec. 2, 2013, video record, as described in the numbered requests below.

**Background**

Pursuant to State Department FOIA regulation 22 C.F.R. § 171.4(b), this Background addresses "the subject, timeframe, names of any individuals involved, a contract number (if applicable), and reasons why the requester believes the Department may have records on the subject of the request."

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<sup>1</sup> The 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 with respect to international affairs, and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring the ongoing viability of freedom and liberty in the United States and around the world.



On Monday, May 9, 2016, Fox News chief Washington correspondent James Rosen ("Rosen"), reported that the U.S. Department of State edited, deleted, altered or otherwise manipulated the video of its Daily Press Briefing – Dec. 2, 2013.<sup>2</sup> The edit removed approximately 8 minutes of video beginning at 26:56. The deleted portion contained a series of questions submitted by Rosen and spokesperson Jen Psaki's (Psaki) answers thereto.

The deleted portion contained dialogue concerning Iran, and more specifically, in what year did the Obama Administration begin its direct secret bilateral talks with Iran culminating in the Joint Comprehensive Plan of Action ("JCPA"). At the Daily Press Briefing – Dec. 2, 2013, Rosen asked Psaki if the talks had begun in 2011, as Deputy National Security Adviser Ben Rhodes ("Rhodes") recently admitted to the New York Times.<sup>3</sup> Rhodes also indicated to the New York Times that the White House identified the election of moderate Iranians to the government to justify its decision to begin talks *in 2013*.<sup>4</sup>

Within the deleted, edited, altered or otherwise manipulated portion of the video, according to the Transcript of the Daily Press Briefing – Dec. 2, 2013, Rosen recited his dialogue with Psaki's predecessor, Victoria Nuland ("Nuland"), as follows:

QUESTION: On the 6th of February in this room, I had a very brief exchange with your predecessor, Victoria Nuland —

MS. PSAKI: Mm-hmm.

QUESTION: — about Iran. And with your indulgence, I will read it in its entirety for the purpose of the record and so you can respond to it.

*"Rosen: There have been reports that intermittently, and outside of the formal P5+1 mechanisms, the Obama Administration, or members of it, have conducted direct secret bilateral talks with Iran. Is that true or false?"*

*"Nuland: We have made clear, as the Vice President did at Munich, that in the context of the larger P5+1 framework, we would be prepared to talk to Iran bilaterally. But with regard to the kind of thing that you're talking about on a government-to-government level, no."*

That's the entirety of the exchange.<sup>5</sup>

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<sup>2</sup> Brett T., *Gone in a Flash: James Rosen Reports His Iran Deal Question was Excised from Archives*, TWITCHY.COM (May 9, 2016, 9:08 pm), <http://twitchy.com/brett-3136/2016/05/09/gone-in-a-flash-james-rosen-reports-his-iran-deal-question-was-excised-from-archives-video>. Copies of articles referred to in this FOIA request are attached as Appendix A.

<sup>3</sup> David Samuels, *The Aspiring Novelist Who Became Obama's Foreign-Policy Guru*, New York Times, NY TIMES (May 5, 2016), [http://www.nytimes.com/2016/05/08/magazine/the-aspiring-novelist-who-became-obamas-foreign-policy-guru.html?\\_r=1](http://www.nytimes.com/2016/05/08/magazine/the-aspiring-novelist-who-became-obamas-foreign-policy-guru.html?_r=1).

<sup>4</sup> *Id.*

<sup>5</sup> U.S. Dep't of State, Daily Press Briefing – Dec. 2, 2013, <http://www.state.gov/r/pa/prs/dpb/2013/12/218178.htm#IRAN>. The Transcript is attached as Appendix B.

Rosen continued:

As we now know, senior state department officials had, in fact, been conducting direct, secret bilateral talks with senior officials of the Iranian Government in Oman, perhaps dating back to 2011 by that point.

So the question today is a simple one: When the briefer was asked about those talks and flatly denied them from the podium, that was untrue, correct?

MS. PSAKI: I mean, James, I - that - you're talking about a February briefing, so 10 months ago. I don't think we've outlined or confirmed contacts or specifics beyond a March meeting. I'm not going to confirm others beyond that at this point. So I don't know that I have any more for you.

QUESTION: Do you stand by the accuracy of what Ms. Nuland told me, that there had been no government-to-government contacts, no secret direct bilateral talks with Iran as of the date of that briefing, February 6th? Do you stand by the accuracy of that?

MS. PSAKI: James, I have no new information for you today on the timing of when there were any discussions with any Iranian officials.

QUESTION: Let me try it one last way, Jen —

MS. PSAKI: Okay.

QUESTION: — and I appreciate your indulgence.

MS. PSAKI: Sure.

QUESTION: Is it the policy of the State Department, where the preservation or the secrecy of secret negotiations is concerned, to lie in order to achieve that goal?

MS. PSAKI: James, I think there are times where diplomacy needs privacy in order to progress. This is a good example of that. Obviously, we have made clear and laid out a number of details in recent weeks about discussions and about a bilateral channel that fed into the P5+1 negotiations, and we've answered questions on it, we've confirmed details. We're happy to continue to do that, but clearly, this was an important component leading up to the agreement that was reached a week ago.

QUESTION: Since you, standing at that podium last week, did confirm that there were such talks, at least as far back as March of this year, I don't see what would prohibit you from addressing directly this question: Were there secret direct bilateral talks between the United States and Iranian officials in 2011?

MS. PSAKI: I don't have anything more for you today. We've long had ways to speak with the Iranians through a range of channels, some of which you talked – you mentioned, but I don't have any other specifics for you today.

QUESTION: One more on Iran?

QUESTION: The Los Angeles Times and Politico have reported that those talks were held as far back as 2011. Were those reports inaccurate?

MS. PSAKI: I'm not sure which reports you're talking about. Are you talking about visits that the Secretary and others made to Oman, or are you talking about other reports?

QUESTION: I'm talking about U.S. officials meeting directly and secretly with Iranian officials in Oman as far back as 2011. The Los Angeles Times and Politico have reported those meetings. Were those reports inaccurate?

MS. PSAKI: I have nothing more for you on it, James, today.<sup>6</sup>

Additional deleted, edited, altered or otherwise manipulated video footage contained dialogue between Psaki and members of the press regarding the efficacy of sanctions on Iran and Iran's progress in developing nuclear weapon capabilities. A portion of that omitted dialogue is as follows:

QUESTION: — Secretary Kerry, when he did his round robin of interviews after the announcement of the deal in Geneva, more than once stated that when Iran had reached out to the Bush-Cheney Administration in 2003, Iran was only in possession of 164 centrifuges. Now, he would go on to say, they have 19,000, and this therefore represents the best possible deal that could be secured.

Isn't it a fact that since the Obama-Biden Administration took office, 70 percent of Iran's centrifuges have been installed?

MS. PSAKI: Well, I'd have to look at the statistics, James, but we have not questioned the fact that Iran has made progress on enrichment and on developing a nuclear weapon. We have not questioned that. That's one of the reasons why we stepped up sanctions over the past couple of years. The President and Secretary Kerry were big proponents of that. We worked with the international community to do just that to put that necessary pressure in place.<sup>7</sup>

According to news reports, Psaki's responses to Rosen's questions deleted from the video are statements where she "acknowledges misleading the press on the Iran negotiations."<sup>8</sup> The

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *State Dept. Faces Questions Over Missing Tape, Amid Scramble Over WH Aide's Iran Boast*, FOX NEWS (May 10, 2016), <http://www.foxnews.com/politics/2016/05/10/state-dept-faces-questions-over-missing-tape-amid-scramble-over-wh-aides-iran-boast.html>.

significance of the apparent deception, and more importantly for purposes of this Request, the deletion of State Department video footage where that apparent deception is acknowledged, is magnified in light of Rhodes' admissions to the New York Times.

According to Fox News: "That Psaki exchange, however, was missing from the department's official website and its YouTube channel. The department now says it cannot explain the deletion and is working to restore the material."<sup>9</sup> However, as of May 10, 2016, 4:21 pm, what appears to be the full, unedited video now appears on the State Departments website.<sup>10</sup> Yet, the edited version, as of May 10, 2016, 4:21 pm, still remains on the U.S. State Department's YouTube channel.<sup>11</sup>

### **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.

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

For purposes of this Request, the term "State Department official" includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. State Department in any capacity; (2) contracted for services by or on behalf of the U.S. State Department in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. State Department.

**For purposes of this Request, the timeframe of records requested herein is December 1, 2013, to the date this Request is received.**

Pursuant to FOIA, 5 U.S.C. § 552 et seq., ACLJ hereby requests that the U.S. State Department produce the following within twenty (20) business days:

1. All records reflecting the names or identity of any and all State Department officials, their staffs, any person conducting the meeting or briefing, or any other persons present at any meeting or briefing at which any State Department official or their staff discussed the content of

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<sup>9</sup> *Id.*

<sup>10</sup> U.S. Dep't of State, Daily Press Briefing: December 2, 2013, <http://video.state.gov/en/video/2886914568001> (last viewed May 10, 2016, 2:44pm).

<sup>11</sup> U.S. Dep't of State, Daily Press Briefing: December 2, 2013, YouTube, <https://www.youtube.com/watch?v=zMSVRmM7DM> (last viewed May 10, 2016, 2:44pm).

the video recording of the Daily Press Briefing – Dec. 2, 2013, that was deleted, edited, altered or otherwise manipulated.

2. All records reflecting the dates, times, and locations of any meeting or briefing at which any State Department official, their staff, or any other person, discussed the content of the portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, that was deleted, edited, altered or otherwise manipulated.

3. All records that were used, referenced or discussed during any meeting or briefing at which any State Department official, their staff, or any other person discussed the content of the portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, that was deleted, edited, altered or otherwise manipulated.

4. All records that were provided by any State Department official, their staff, or any other person, to any other State Department official, their staff, or any other person before, during, or after any meeting or briefing at which any person discussed the content of the portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, that was deleted, edited, altered or otherwise manipulated.

5. All records that were prepared by or for any person for any meeting or briefing, whether before, during or after such meeting or briefing, at which any State Department official, their staff, or any other person discussed the content of the portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, that was deleted, edited, altered or otherwise manipulated.

6. All records containing any discussion or information regarding the rationale or explanation of *why* any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, should be deleted, edited, altered or otherwise manipulated.

7. All records containing any discussion of whether any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, could be deleted, edited, altered or otherwise manipulated.

8. All records containing any discussion that any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, should be deleted, edited, altered or otherwise manipulated.

9. All records containing any discussion that any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, would be deleted, edited, altered or otherwise manipulated.

10. All records containing any discussion that any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, was deleted, edited, altered or otherwise manipulated.

11. All records containing any discussion of the decision that any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, should be deleted, edited, altered or otherwise manipulated.

12. All records containing any discussion, instruction, direction, order, command, or suggestion that any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, be deleted, edited, altered or otherwise manipulated.
13. All records indicating the methodologies used to delete, edit, alter or otherwise manipulate any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013.
14. All records containing any discussion of why any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, should not be deleted, edited, altered or otherwise manipulated.
15. All records that relate to any questions, objections, disagreement, feedback, or guidance offered by attendees of any meeting or participants in any briefing regarding the question of whether any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, should be deleted, edited, altered or otherwise manipulated.
16. All records that relate to the restoration to the State Department website of the full unedited, unaltered version of the video recording of the Daily Press Briefing – Dec. 2, 2013, as well as the placement of a text box stating “Full video and transcript can be found on [video.state.gov](http://video.state.gov)” at approximately the 26:57 mark of the official video record of the Daily Press Briefing – Dec. 2, 2013, posted on the State Department’s YouTube channel.
17. All records that were provided by any State Department official, their staff, agent or other representative to any other person who was not a State Department employee or appointee regarding whether any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, should be deleted, edited, altered or otherwise manipulated.
18. All records that were provided by any State Department official, their staff, agent or other representative to any other person who was not a State Department employee or appointee regarding whether any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, would be or was deleted, edited, altered or otherwise manipulated.
19. All records that were received by any State Department official, their staff, agent or other representative from any other person who was not a State Department employee or appointee regarding whether any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, should be deleted, edited, altered or otherwise manipulated.
20. All records that were received by any State Department official, their staff, agent or other representative from any other person who was not a State Department employee or appointee regarding whether any portion of the video recording of the Daily Press Briefing – Dec. 2, 2013, would be or was deleted, edited, altered or otherwise manipulated.
21. All records that were provided by any State Department official, their staff, agent or other representative to any other person who was not a State Department employee or appointee regarding the restoration to the State Department website of the full unedited, unaltered video recording of the Daily Press Briefing – Dec. 2, 2013, as well as the placement of a text box

stating "Full video and transcript can be found on video.state.gov" at approximately the 26:57 mark of the official video record of the Daily Press Briefing – Dec. 2, 2013, posted on the State Department's YouTube channel.

22. All records that were received by any State Department official, their staff, agent or other representative from any other person who was not a State Department employee or appointee regarding the restoration to the State Department website of the full unedited, unaltered video recording of the Daily Press Briefing – Dec. 2, 2013, as well as the placement of a text box stating "Full video and transcript can be found on video.state.gov" at approximately the 26:57 mark of the official video record of the Daily Press Briefing – Dec. 2, 2013, posted on the State Department's YouTube channel.

23. All records not otherwise responsive to any Request enunciated herein that contain any discussion of the deleted, edited, altered or otherwise manipulated portion of the Daily Press Briefing – Dec. 2, 2013 video record.

24. On September 9, 2013, the National Archives issued NARA Bulletin 2013-03 to the heads of all federal agencies regarding the duty to preserve federal records. In particular, paragraph 9 of that Bulletin states:

What does an agency do if there is an unauthorized removal of records? []If an agency knows of any actual or potential threat to records (e.g., removal, alteration, or destruction), it must contact NARA as required by 44 U.S.C. 2905 & 3106 and 36 CFR 1230.14. NARA will assist the agency in the recovery of any unlawfully removed records, including contacting the Attorney General, if necessary. It is also important to follow all agency internal reporting requirements, which may include reporting the threat to the agency's legal counsel and to its Inspector General.

As to that Bulletin, please provide:

(A) Any record that contains any discussion of that Bulletin on or after December 2, 2013, regarding the Daily Press Briefing – Dec. 2, 2013 video record.

(B) Any record that contains any reference to formulating a decision or agency action in response to that Bulletin which record also refers to the Daily Press Briefing – Dec. 2, 2013 video record.

25. Any record that, in whole or in part, makes any reference to any particular question Rosen asked Psaki during the Daily Press Briefing – Dec. 2, 2013, and in particular this question: "Is it the policy of the State Department, where the preservation or the secrecy of secret negotiations is concerned, to lie in order to achieve that goal?"

26. Any record that, in whole or in part, makes any reference to Psaki's response to the particular question asked by Rosen, identified in the request #25 above, during the Daily Press Briefing – Dec. 2, 2013, where Psaki replied, in part: "James, I think there are times where diplomacy needs privacy in order to progress. This is a good example of that . . . ."



27. As multiple news sources have reported, on May 10, 2016, U.S. State Department spokesperson Elizabeth Trudeau, Director, Press Office (“Trudeau”), claimed the deletion of a portion of the Daily Press Briefing – Dec. 2, 2013, video “was a glitch” and again that “[g]enuinely we think it was a glitch.”<sup>12</sup> This Request seeks all records that support or contradict Trudeau’s assertion that the deletion was a glitch, or that were created, reviewed, sent, received or shared with any person by any State Department official in connection with Trudeau’s assertion that said deletion was a glitch.

28. On May 10, 2016, the following dialogue occurred between Trudeau and a member of the press:

QUESTION: I know, but can you – is anyone looking into why?

MS TRUDEAU: So we are. We’re looking into it. . . .<sup>13</sup>

This Request seeks all records created, reviewed, sent, received, or shared by any State Department official, their staffs, or any other person in regards to any efforts made or steps taken to “look[] into it” as Trudeau asserted.

29. All records containing any discussion or information regarding or otherwise reflecting State Department policy, procedures, guidelines, directives or instructions concerning the filming, creation, production, editing, altering, posting, or maintenance of Daily Press Briefing video records on [www.state.gov](http://www.state.gov) and on the State Department YouTube channel.

30. At the Daily Press Briefing – May 10, 2016, speaking of the altered video, Trudeau said: “There was a missing portion of it. We pulled it from another online source.”

This request seeks all records containing any discussion or information supporting and contradicting Trudeau’s assertion that the video record was replaced with video “pulled [] from another online source,” *as well as why it was necessary* to “pull[] it from another online source.”

31. At the Daily Press Briefing – May 10, 2016, Trudeau said: “When Fox flagged it for us, we actually replaced it with a video from DVIDS, which is the military repository where a lot of news media gets its video.”

This request seeks all records created, reviewed, sent, or received by any State Department official or their staff to any other agency or person requesting, acquiring, accessing or otherwise obtaining or attempting to obtain the full, unedited, unaltered video record of Daily Press Briefing – Dec. 2, 2013.

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<sup>12</sup> U.S. State Dep’t, Daily Press Briefing – May 10, 2016, <http://www.state.gov/r/pa/prs/dpb/2016/05/257074.htm#IRAN> (last visited May 11, 2016). The Transcript is attached as Appendix C.

<sup>13</sup> *Id.*

## CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .

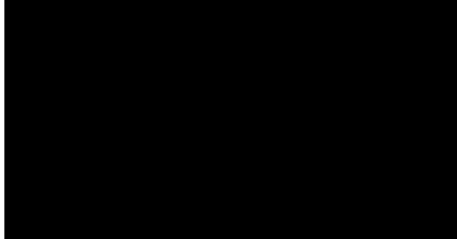
President Barack Obama, Memorandum For the Heads of Executive Departments and Agencies Re: Freedom of Information Act (Jan. 21, 2009), *available at* [https://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](https://www.whitehouse.gov/the_press_office/FreedomofInformationAct).

As such, if this Request is denied in whole or in part, ACLJ asks that you support all denials by reference to specific FOIA exemptions. In addition, ACLJ asks you to release all severable portions of otherwise exempt material.

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. 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:

Jay Alan Sekulow, Chief Counsel  
Colby M. May, Senior Counsel  
Craig L. Parshall, Special Counsel  
Benjamin P. Sisney, Senior Litigation Counsel  
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jay Alan Sekulow in cursive script.

Jay Alan Sekulow, Esq.  
Chief Counsel

Handwritten signature of Colby M. May in cursive script.

Colby M. May, Esq.  
Senior Counsel