



August 30, 2023

Christina Butler  
Chief, FOIA/PA Unit  
Criminal Division  
Department of Justice  
Room 803, Keeney Building  
Washington, DC 20530-0001  
Email: [crm.foia@usdoj.gov](mailto:crm.foia@usdoj.gov)

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

Arla Witte-Simpson  
FOIA Public Liaison  
Executive Office for United States Attorneys  
Department of Justice  
175 N Street, N.E.  
Suite 5.400  
Washington, DC 20530-0001

Melissa Golden  
Lead Paralegal and FOIA Specialist  
Department of Justice  
Room 5517, 950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001  
Phone: (202) 514-2053  
Email: [usdoj-officeoflegalcounsel@usdoj.gov](mailto:usdoj-officeoflegalcounsel@usdoj.gov)

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
Department of Justice  
6th Floor

441 G St NW  
Washington, DC 20530  
Phone: (202) 514-FOIA

**RE: FOIA Request for Department of Justice Records concerning Sections 9-27.260 and 9-85.500 of the Justice Manual and the Attorney General’s Election Year Sensitivities Memorandum**

Dear FOIA Officers:

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.

To summarize, this Request seeks Department of Justice records regarding policies and guidance memoranda governing or relating to prosecutions with political implications, such as prosecutions conducted within a certain window of time before an election or those addressed in Sections 9-27.260 and 9-85.500 of the Justice Manual and the Attorney General’s Election Year Sensitivities Memorandum.

**To the best of the Requestor’s knowledge and belief, custodians of responsive records include the Department of Justice (DOJ), and its components:**

- 1. The Criminal Division and its Public Integrity Section (PIN);**
- 2. The Office of the Attorney General,**
- 3. The Office of the Deputy Attorney General;**
- 4. The Office of the Associate Attorney General;**
- 5. The Office of Legal Counsel;**
- 6. The Office of Legal Policy; and**
- 7. The Executive Office for U.S. Attorneys.**

**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 current and official copy of the *Justice Manual* “sets forth the internal Department of Justice (DOJ) policies and procedures.”<sup>1</sup> Chapter 9-85.000 – **Protection of Government Integrity** “addresses crimes which affect government integrity, including bribery of public officials and accepting a gratuity, election crimes, and other related offenses. The Public Integrity Section of the Criminal Division has supervisory jurisdiction over these offenses.”<sup>2</sup>

Furthermore, *JM* Chapter **9-85.500 - Actions that May Have an Impact on an Election** states:

Federal prosecutors and agents may never select the timing of any action,

---

<sup>1</sup> U.S. Dep’t of Just., Just. Manual § 1-1000 (2018).

<sup>2</sup> *Id.* at §§ 9-85000, 9-85.100.

including investigative steps, criminal charges, or statements, for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. Such a purpose is inconsistent with the Department's mission and with the Principles of Federal Prosecution. *See* § 9-27.260. Any action likely to raise an issue or the perception of an issue under this provision requires consultation with the Public Integrity Section, and such action shall not be taken if the Public Integrity Section advises that further consultation is required with the Deputy Attorney General or Attorney General.

This is in addition to *JM* Chapter **9-27.260 – Initiating and Declining Charges – Impermissible Considerations** which says:

In determining whether to commence or recommend prosecution or take other action against a person, the attorney for the government may not be influenced by:

1. The person's race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs;
2. The attorney's own personal feelings concerning the person, the person's associates, or the victim; or
3. The possible effect of the decision on the attorney's own professional or personal circumstances.

Charges or statutory sentencing enhancements may not be filed, nor the option of filing charges or enhancements raised, simply to exert leverage to induce a plea or because the defendant elected to exercise the right to trial.

In addition, federal prosecutors and agents may never make a decision regarding an investigation or prosecution, or select the timing of investigative steps or criminal charges, for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. *See* § 9-85.500.<sup>3</sup>

The Attorney General has also addressed this in a Memorandum for All Department Personnel on July 21, 2021. He stated:

Over the course of more than four decades, Attorneys General have issued policies governing communications between the Justice Department and the White House. The procedural safeguards that have long guided the Department's approach to such communications are designed to protect our criminal and civil law enforcement decisions, and our legal judgments, from partisan or other inappropriate influences, whether real or perceived, direct or indirect.

---

<sup>3</sup> *Id.* at §§ 9-27000, 9-85.500 (2018).

The Attorney General further addressed these principles in a May 25, 2022, Memorandum for All Department Employees focusing on “Election Year Sensitivities.”<sup>4</sup> According to the Attorney General,

Department of Justice employees are entrusted with the authority to enforce the laws of the United States and with the responsibility to do so in a neutral and impartial manner. This is particularly important in an election year. Now that the 2022 election season is upon us, and as in prior election cycles, I am issuing this memorandum to remind you of the Department’s existing policies with respect to political activities.<sup>5</sup>

This Request focuses on the application of these rules to the present election.

### **Records Requested**

For purposes of this Request, the term “record” means “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 Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016)<sup>6</sup> (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 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 timeframe of records requested herein is specified individually below with respect to each request.**

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, the ACLJ hereby requests that the DOJ produce the following:

1. **All records in the possession of the following officials, or their personal staff, within the DOJ Public Integrity Section (PIN):**
  - a. **Corey Amundson, Chief,**
  - b. **John Keller, Principal Deputy Chief,**
  - c. **Jennifer Clarke, Deputy Chief,**
  - d. **Rosaleen O’Gara, Deputy Chief,**

---

<sup>4</sup> Memorandum from the U.S. Attorney General to All Department Employees (May 25, 2022).

<sup>5</sup> *Id.*

<sup>6</sup> *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016).

- e. **Marco Palmieri, Deputy Chief,**
- f. **Robert Heberle, Deputy Chief and Director, Election Crimes Branch,**
- g. **Jonathan Jacobson, Acting Deputy Director, Election Crimes Branch,**

that contain the words “JM,” “9-27.260,” “9-85.500,” or “election year” or “political,” “political prosecution,” “appearance of impropriety,” since July 1, 2024.

2. **All records of any official or employee who is either an appointee or GS-13 level or higher, or the personal staff of any such person, within the Office of Attorney General Merrick Garland that discuss amending JM Chapters 9-27.260 and 9-85.500, or any related memoranda or guidance, since January 1, 2022.**
3. **All records of any official or employee who is either an appointee or GS-13 level or higher, or the personal staff of any such person, within the Office of Deputy Attorney General that discuss amending JM Chapters 9-27.260 and 9-85.500 or any related memoranda or guidance, since January 1, 2022.**
4. **All records of any official or employee who is either an appointee or GS-13 level or higher, or the personal staff of any such person, within the Office of Associate Attorney General that discuss amending JM Chapters 9-27.260 and 9-85.500 or any related memoranda or guidance, since January 1, 2022.**
5. **All records of any official or employee who is either an appointee or GS-13 level or higher, or the personal staff of any such person, within the Office of Legal Counsel that discuss amending JM Chapters 9-27.260 and 9-85.500 or any related memoranda or guidance, since January 1, 2022.**
6. **All records of any official or employee who is either an appointee or GS-13 level or higher, or the personal staff of any such person, within the Office of Legal Policy that discuss amending JM Chapters 9-27.260 and 9-85.500 or any related memoranda or guidance, since January 1, 2022.**
7. **All records of any official or employee who is either an appointee or GS-13 level or higher, or the personal staff of any such person, within the Executive Office of U.S. Attorneys that discuss amending JM Chapters 9-27.260 and 9-85.500 or any related memoranda or guidance, since January 1, 2022.**
8. **All records in the possession of the following officials within the DOJ Criminal Division:**
  - a. **Nicole M. Argentieri, Principal Deputy Assistant Attorney General,**
  - b. **Brent Wible, Chief Counselor,**
  - c. **Kevin O. Driscoll, Deputy Assistant Attorney General,**
  - d. **Josh Goldfoot, Acting Deputy Assistant Attorney General,**
  - e. **Jennifer A.H. Hodge, Deputy Assistant Attorney General,**
  - f. **Lisa H. Miller, Deputy Assistant Attorney General,**

- g. David Rody, Acting Deputy Assistant Attorney General,**
- h. Bruce C. Swartz, Deputy Assistant Attorney General and Counselor for International Affairs,**
- i. Jeff Izant, Acting Chief of Staff and Counselor in the Office of the Assistant Attorney General,**

**that contain the words “JM,” “9-27.260,” “9-85.500,” “election year,” “political,” “political prosecution,” or “appearance of impropriety” since July 1, 2024.**

- 9. All records of Attorney General Merrick Garland, Deputy Attorney General Lisa Monaco, or Associate Attorney General Benjamin Mizer, or any personal staff of such individuals, that contain the words: “election,” “election year,” “political,” “political prosecution,” or “White House” since June 1, 2024.**
- 10. All records of Attorney General Merrick Garland, Deputy Attorney General Lisa Monaco, or Associate Attorney General Benjamin Mizer, or any personal staff of such individuals, to Xochitl Hinojosa, Director of the Office of Public Affairs that contain the words: “9-27.260,” “9-85.500,” “election,” “election year,” “political prosecution,” or “appearance of impropriety,” “Jack Smith,” or “Special Counsel,” since June 1, 2024.**
- 11. The phone logs and calendar meeting records of Attorney General Merrick Garland, Deputy Attorney General Lisa Monaco, or Associate Attorney General Benjamin Mizer, since June 1, 2024.**

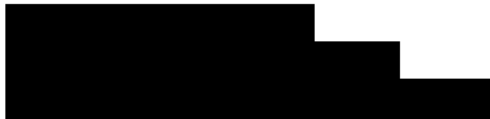
**CONCLUSION**

If this Request is denied in whole or in part, the 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, the ACLJ is entitled to expedited processing and a waiver of all fees associated with this Request as will be explained if needed in a separate memorandum. The ACLJ reserves the right to appeal a decision to withhold any information sought by this Request.

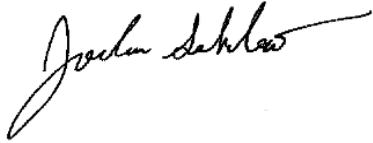
Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director  
Benjamin P. Sisney, Senior Litigation Counsel  
John A. Monaghan, 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,



Jordan Sekulow  
Executive Director



Benjamin P. Sisney  
Senior Litigation Counsel



John A Monaghan  
Senior Litigation Counsel