



April 28, 2021

Gregory Koch
Director, Information Management Office
ATTN: FOIA/PA
Office of the Director of National Intelligence
Washington, D.C. 20511
Facsimile: (703) 874-8910
Email: dni-foia@dni.gov

RE: FOIA Request to the Office of the Director of National Intelligence Regarding Immediate Release of All Former Acting Director Ric Grenell's Unclassified Emails and for All of Director Avril Haines Unclassified Emails

Dear Mr. Koch:

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

To summarize, this Request seeks records pertaining to the Office of the Director of National Intelligence's recent decision to release, through FOIA, all of former Acting Director Ric Grenell's unclassified emails; as well as all of Director Avril Haines unclassified emails.

Background

Pursuant to the Office of the Director of National Intelligence ("ODNI") FOIA regulation 32 CFR 1700.5(a), this Background addresses the "specific information about each record sought, such as the date, title or name, author, recipient, and the subject matter of the record," to the extent known.

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.

★

[REDACTED]

As evidenced on its website, the ODNI publicly released a number of former Acting Director Ric Grenell's unclassified emails pursuant to a FOIA request.² The released documents are marked, "Approved for release by ODNI on 03-05-2021, FOIA Case # DF-2020-00251."³ The released records include emails *and* text messages.⁴

Further, the link to the released records are entitled as follows on the ODNI's FOIA webpage: Emails sent and received by acting Director of National Intelligence Richard Grenell for Case DF-2020-00251 (04-02-21)."⁵

According to the ODNI's FOIA log, the request was submitted on May 28, 2020, by Jason Leopold, and the request is described as follows: "REQUEST ALL EMAILS SENT AND RECEIVED BY ACTING DIRECTOR OF NATIONAL INTELLIGENCE RICHARD GRENELL."⁶

Jason Leopold works for BuzzFeed News, and it appears likely this is the same Jason Leopold who made the FOIA request at issue.⁷

It appears these documents were released to the requestor, and publicly, without the requestor having to file a lawsuit, as no lawsuit case number is marked. Instead, only the ODNI's internal FOIA case number is marked. Further, the undersigned is unable to locate such a lawsuit on PACER.

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)⁸ (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.").

² <https://www.dni.gov/files/documents/FOIA/DF-2020-00251-docs.pdf>.

³ *Id.*

⁴ *Id.*

⁵ <https://www.dni.gov/index.php/read-released-records>.

⁶ https://www.dni.gov/files/documents/FOIA/2020/May_2020.pdf.

⁷ <https://www.buzzfeednews.com/author/jasonleopold>.

⁸ *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016).

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 “ODNI official” includes, but is not limited to, any person who is (1) employed by or on behalf of the Office of the Director of National Intelligence in any capacity; (2) contracted for services by or on behalf of the Office of the Director of National Intelligence in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the Office of the Director of National Intelligence, all without regard to the component or office in which that person serves.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 21, 2021, to the date this request is processed.

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

1. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by either Director of National Intelligence Avril Haines or any subordinate on her behalf (including by utilizing any alias or pseudonym), referencing, connected to, or regarding in any way Jason Leopold’s FOIA Request, FOIA Case # DF-2020-00251, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ODNI electronic mail or message accounts, non-ODNI electronic mail or message accounts, personal electronic mail or message accounts, ODNI servers, non-ODNI servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.**

2. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by either Director of National Intelligence Avril Haines or any subordinate on her behalf (including by utilizing any alias or pseudonym), referencing, connected to, or regarding in any way former Acting Director Richard Grenell – not encompassed by Request #1 above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ODNI electronic mail or message accounts, non-ODNI electronic mail or message accounts, personal electronic mail or message accounts, ODNI servers, non-ODNI servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.**

3. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any ODNI official (including by utilizing any alias or pseudonym), referencing, connected to, or regarding in any way Jason Leopold's FOIA Request, FOIA Case # DF-2020-00251 – not encompassed by Requests #1 or #2 above,** including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ODNI electronic mail or message accounts, non-ODNI electronic mail or message accounts, personal electronic mail or message accounts, ODNI servers, non-ODNI servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

4. **All internal ODNI emails and text messages sent or received by either Director of National Intelligence Avril Haines or any subordinate on her behalf (including by utilizing any alias or pseudonym), including emails or text messages in which Director Haines was copied, excluding any records encompassed by Requests ##1-3 above** including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ODNI electronic mail or message accounts, non-ODNI electronic mail or message accounts, personal electronic mail or message accounts, ODNI servers, non-ODNI servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

5. **All emails and text messages sent or received by either Director of National Intelligence Avril Haines or any subordinate on her behalf (including by utilizing any alias or pseudonym), including emails or text messages in which Director Haines was copied, where one communicant of the email or text message was not an ODNI official, excluding any records encompassed by Requests ##1-3 above** including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ODNI electronic mail or message accounts, non-ODNI electronic mail or message accounts, personal electronic mail or message accounts, ODNI servers, non-ODNI servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

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
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 Jordan Sekulow in cursive.

Jordan Sekulow
Executive Director

Handwritten signature of Benjamin P. Sisney in cursive.

Benjamin P. Sisney
Senior Litigation Counsel