



December 16, 2020

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 Representative Eric Swalwell and Chinese Spy Fang Fang

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 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 Office of the Director of National Intelligence’s knowledge and efforts surrounding the breaking story that the Chinese spy known as Christine Fang, or Fang Fang, had a lengthy relationship with Representative Eric Swalwell.

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.

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In a blockbuster report last week, *Axios* announced:

A suspected Chinese intelligence operative developed extensive ties with local and national politicians, including a U.S. congressman, in what U.S. officials believe was a political intelligence operation run by China's main civilian spy agency between 2011 and 2015, *Axios* found in a yearlong investigation.²

Further, according to *Axios*:

Through campaign fundraising, extensive networking, personal charisma, and romantic or sexual relationships with at least two Midwestern mayors, Fang was able to gain proximity to political power, according to current and former U.S. intelligence officials and one former elected official.

Even though U.S. officials do not believe Fang received or passed on classified information, the case "was a big deal, because there were some really, really sensitive people that were caught up" in the intelligence network, a current senior U.S. intelligence official said.³

According to *Axios*:

Among the most significant targets of Fang's efforts was Rep. Eric Swalwell (D-Calif.).

Fang took part in fundraising activity for Swalwell's 2014 re-election campaign, according to a Bay Area political operative and a current U.S. intelligence official. Swalwell's office was directly aware of these activities on its behalf, the political operative said. That same political operative, who witnessed Fang fundraising on Swalwell's behalf, found no evidence of illegal contributions.

Federal Election Commission records don't indicate Fang herself made donations, which are prohibited from foreign nationals.

Fang helped place at least one intern in Swalwell's office, according to those same two people, and interacted with Swalwell at multiple events over the course of several years.

A statement from Swalwell's office provided to *Axios* said: "Rep. Swalwell, long ago, provided information about this person — whom he met more than eight

² <https://www.axios.com/china-spy-california-politicians-9d2dfb99-f839-4e00-8bd8-59dec0daf589.html>.

³ *Id.*

years ago, and whom he hasn't seen in nearly six years — to the FBI. To protect information that might be classified, he will not participate in your story.”⁴

As reported by *The New York Post*: ““As the story referenced, this goes back to the beginning of the last decade, and it’s something that congressional leadership knew about it,” Swalwell said, referencing his sensitive position on the House Intelligence Committee.”⁵

According to *Politico*:

House Speaker Nancy Pelosi gave a vote of confidence Thursday to Rep. Eric Swalwell after revelations of his interactions with a suspected Chinese spy set off a furor among Republicans in Congress.

“I don't have any concern about Mr. Swalwell,” Pelosi told reporters. . . .

Pelosi said she and other congressional leaders were informed in 2015 about the matter at the same time that Swalwell was by the FBI.⁶

The *Axios* report indicated that the Chinese infiltration by Fang is not unusual:

In the years since the Fang probe, the FBI has prioritized investigations into Chinese influence operations, creating a unit in May 2019 within the bureau solely dedicated to countering Beijing’s activities at the state and local levels. U.S. national security officials believe the threat posed by China has only grown with time.

“She was just one of lots of agents,” said a current senior U.S. intelligence official.

Beijing “is engaged in a highly sophisticated malign foreign influence campaign,” FBI director Chris Wray said in a July 2020 speech. These efforts involve “subversive, undeclared, criminal, or coercive attempts to sway our government’s policies, distort our country's public discourse, and undermine confidence in our democratic processes and values,” Wray said.⁷

Rep. Jim Sensenbrenner (R-WI) filed a complaint Friday, December 11, 2020, to the House Ethics Committee asking it to “immediately open an investigation” into allegations that suspected Chinese spy Christine Fang compromised Rep. Eric Swalwell (D-CA).⁸

⁴ *Id.*

⁵ <https://nypost.com/2020/12/09/rep-swalwell-wont-say-if-he-had-sex-with-chinese-spy/>.

⁶ <https://www.politico.com/news/2020/12/10/pelosi-swalwell-chinese-spy-444308>.

⁷ <https://www.axios.com/china-spy-california-politicians-9d2dfb99-f839-4e00-8bd8-59dec0daf589.html>.

⁸ <https://www.dailymail.co.uk/news/article-9045749/GOP-Rep-Jim-Sensenbrenner-complaint-House-Ethics-Committee-Eric-Swalwell-compromised-Chinese-spy.html>.

Action is being taken on the Senate side, as well: “A spokesman for the GOP senator said if Rubio, R-Fla., ‘is named Chairman of the Senate Select Committee on Intelligence as expected, he plans to hold a public hearing on Fang Fang and Chinese espionage as soon as possible in the new year.’”⁹

This blockbuster story continues to receive significant news coverage on major networks and outlets.

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)¹⁰ (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 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 1, 2011, to the date this request is processed.

⁹ <https://www.foxnews.com/politics/marco-rubio-senate-intel-hearing-fang-fang-chinese-espionage>.

¹⁰ *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016).

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 former Director of National Intelligence James R. Clapper or Stephanie O’Sullivan, or any former or current Deputy Director, including by utilizing any alias, referencing, connected to, or regarding in any way Christine Fang (or Fang Fang, or Fang) or Rep. Eric Swalwell, 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 any ODNI official or employee, referencing, connected to, or regarding in any way Christine Fang (or Fang Fang, or Fang) or Rep. Eric Swalwell, 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, 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
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,

A handwritten signature in black ink, appearing to read "Jordan Sekulow".

Jordan Sekulow
Executive Director

A handwritten signature in black ink, appearing to read "Benjamin P. Sisney".

Benjamin P. Sisney
Senior Litigation Counsel