



April 12, 2017

Department of Defense



**RE: FOIA Request to the Department of Defense Regarding Information Shared with Former Deputy Assistant Secretary of Defense for Russia, Ukraine and Eurasia Concerning Intelligence Gathered on President Trump and His Advisors**

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")<sup>1</sup> 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 information exchanged between Department of Defense ("DoD") officials, former DoD employee Dr. Evelyn Farkas, who served as deputy assistant secretary of defense for Russia, Ukraine and Eurasia, and/or any other Government official(s) concerning intelligence gathered on now President Trump, his advisors, and his transition team, and the purpose for spreading information throughout the intelligence community.

#### Background

This Background provides certain relevant contextual information, to the extent known, that contributes to the reasonableness of the records sought, as contemplated by DoD FOIA regulation 32 C.F.R. 286.5(a).

On March 2, 2017, Dr. Evelyn Farkas, former deputy assistant secretary of defense for Russia, Ukraine, and Eurasia, and a former Clinton campaign adviser gave an interview with MSNBC's

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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 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.



“Morning Joe,” during which she was asked: “You actually knew about this attempt to get and preserve information and full transparency and were doing some work yourself. Tell us about that.” Dr. Farkas responded: “I was urging my former colleagues, and frankly speaking the people on the Hill, it was more actually aimed at telling the Hill people, get as much information as you can, get as much intelligence as you can, before President Obama leaves the administration.”<sup>2</sup>

According to the Daily Caller, while Farkas “says that she had no hand in circulating actual intelligence,” she *was* aware that the intelligence existed.<sup>3</sup> Moreover, Dr. Farkas stated that she strongly urged her colleagues and “people on the Hill” to share the intelligence because she

had a fear that somehow that information would disappear with the senior people who left . . . that the Trump folks, if they found out how we knew what we knew about the Trump staff’s dealing with Russians, that they would try to compromise those sources and methods, meaning that *we* would no longer have access to that intelligence. So I became very worried because not enough was coming out into the open, and I knew that there was more. . . . So then I had talked to some of my former colleagues and I knew that they were also trying to help get information to the Hill. That’s why you have the leaking.<sup>4</sup>

Dr. Farkas’s statements indicate that she, although no longer an employee of the Department of Defense, had access to classified intelligence concerning then-Presidential Candidate Trump, his advisors, and his staff.

### 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>5</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

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<sup>2</sup>Chuck Ross, *Exclusive: Ex-Obama Official Responds to Allegations She Spread Trump Intel [Video]*, DAILY CALLER (Mar. 30, 2017, 12:47 PM), <http://dailycaller.com/2017/03/30/exclusive-ex-obama-official-responds-to-allegations-she-spread-trump-intel-video/> (emphasis added).

<sup>3</sup>*Id.*

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

<sup>5</sup>*Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016).

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 or remote meeting, teleconference, video conference, 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 “DoD official” includes, but is not limited to, any person who is (1) employed by or on behalf of the DoD in any capacity; (2) contracted for services by or on behalf of the DOD in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the DoD, 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 October 2015, to March 31, 2017.**

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

1. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DoD official regarding gathering and sharing intelligence information, names and/or other personal identifiers of:
  - a) Donald Trump;
  - b) Melania Trump;
  - c) Michael Pence;
  - d) Eric Trump;
  - e) Jared Kushner;
  - f) Ivanka Trump;
  - g) Reince Preibus;
  - h) Steve Bannon;
  - i) Sebastian Gorka;
  - j) Rudy Giuliani;
  - k) Chris Christie;
  - l) Newt Gingrich;
  - m) Jeff Sessions;
  - n) Michael Flynn;
  - o) KT McFarland;
  - p) Michael Rogers;
  - q) Ron Nicol;
  - r) Keith Kellogg;
  - s) Michael Meese;
  - t) Cindy Hayden;
  - u) Jim Carafano;
  - v) Ronald Burgess;

- w) David Malpass;
- x) Bill Walton;
- y) Ken Blackwell;
- z) Myron Ebell;
- aa) Mike McKenna;
- bb) Steve Hart;
- cc) Edwin Meese;
- dd) Kay Coles James;
- ee) Beth Kaufman;
- ff) Ado Machida;
- gg) Andrew Bremberg;
- hh) Carlos Diaz Rosillo;
- ii) Danielle Cutrona;
- jj) Rick Dearborn;
- kk) Paula Stannard;
- ll) Bert Mizusawa;
- mm) Jim Carter;
- nn) Bill Chatfield;
- oo) Rob Gordon;
- pp) Michael Catanzaro;
- qq) Brian Johnson;
- rr) Gerard Robinson;
- ss) Martin Whitmer; and/or
- tt) Ken Klukoski;

including any such records sent to and/or received from Dr. Evelyn Farkas and/or any government official outside of DoD, as referenced in the Background section above, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DoD electronic mail or message accounts, non-DoD electronic mail or message accounts, personal electronic mail or message accounts, DoD servers, non-DoD 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, 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:

Jay Alan Sekulow, Chief Counsel  
Carly F. Gammill, Senior Litigation 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  
Chief Counsel

Handwritten signature of Carly F. Gammill in cursive script.

Carly F. Gammill  
Senior Litigation Counsel

Handwritten signature of Benjamin P. Sisney in cursive script.

Benjamin P. Sisney  
Senior Litigation Counsel