



January 4, 2017

Office of Information Programs and Services (IPS)

U.S. Department of State, [REDACTED]
[REDACTED]

RE: FOIA Request to U.S. State Department and Relevant Components for Records Regarding UN Security Council Resolution 2334 (2016) adopted December 23, 2016

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)¹ on behalf of itself and over 290,000 of our members who have signed our petition to defend Israel and protect its borders. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, the numbered requests contained herein seek any and all records of discussions and decisions leading up to and surrounding the UN Security Council vote and adoption of Resolution 2334 on December 23, 2016, and the United States' abstention therefrom and decision to not veto same.

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." 22 C.F.R. § 171.4(b).

¹ 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.

As reported by NPR, on December 23, 2016, “[t]he U.S. broke from previous practice and allowed the United Nations Security Council to pass a resolution condemning Israeli settlements.”² CNN reported that “a senior Israeli official had accused the United States of abandoning the Jewish state with its refusal to block the resolution with a veto.”³ And, according to CNN, “[t]he Palestinians were delighted by their rare diplomatic coup.”⁴

According to reports:

“President Obama and Secretary Kerry are behind this shameful move against Israel at the UN,” a senior Israeli official told CNN.

“The US administration secretly cooked up with the Palestinians an extreme anti-Israeli resolution behind Israel’s back which would be a tailwind for terror and boycotts and effectively make the Western Wall occupied Palestinian territory,” a senior Israeli official said.⁵

Yet, “[c]ontrary to some claims, the administration was not involved in formulating the resolution nor have we promoted it,” CNN quoted a senior Obama administration official as saying.⁶ And:

A senior Palestinian official told CNN they were not informed how the US would handle the Security Council vote *when a delegation was in town earlier this month to urge the administration to support it*. The Palestinian official said they did not know how the US would vote and called the Israeli allegation “totally untrue.”⁷

Concerning the Palestinian delegation that “was in town earlier this month [December 2016] to urge the administration to support” the resolution, FoxNews.com reported:

The State Department’s own website reflects that Kerry was scheduled for a meeting with Erekat at the State Department on Dec. 12, around the time of the reported discussions. The official website, however, offers no details on what was discussed.⁸

²Michele Kelemen, *U.S. Abstains On U.N. Security Council Vote Condemning Israeli Settlements*, NPR.ORG (Dec. 23, 2016, 4:49 PM), <http://www.npr.org/2016/12/23/506759066/u-s-abstains-on-u-n-security-council-vote-condemning-israeli-settlements>.

³Stephen Collinson, David Wright & Elise Labott, *US Abstains as UN Demands End to Israeli Settlements*, CNN.COM (Dec. 24, 2016), <http://www.cnn.com/2016/12/23/politics/israel-official-rips-obama-un-settlements/>.

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷*Id.* (emphasis added).

⁸FOXNEWS.COM, *White House denies report Kerry discussed UN Israel measure with Palestinian official* (Dec. 28, 2016), <http://www.foxnews.com/politics/2016/12/28/white-house-denies-report-kerry-discussed-un-israel-measure-with-palestinian-official.html>.

Indeed, the State Department's website states:

December 12, 2016

DEPARTMENT OF STATE
PUBLIC SCHEDULE
DECEMBER 12, 2016

SECRETARY JOHN KERRY

10:00 a.m. Secretary Kerry meets with Saeb Erekat, at the Department of State.⁹

To recount, Secretary John Kerry, Ambassador Samantha Power, individuals within the United States Mission to the United Nations, and/or individuals within the State Department's Bureau of Near Eastern Affairs are likely to be custodians of the records sought herein.

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, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 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(s).

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

⁹U.S. Dept. of State, Public Schedule: December 16, 2016, <https://www.state.gov/r/pa/prs/appt/2016/265050.htm>.

¹⁰*Competitive Enter. Instit. v. Office of Sci. & Tech. Policy*, No. 15-5128 (D.C. Cir. July 5, 2016), [https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf).

any Mission of the United States, or any Delegation of the United States; or (4) any such person's staff, agent or employee; all without regard to the component, bureau, or office in which that person serves.

For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

For purposes of this Request, the timeframe of records requested herein is October 1, 2016, to the date this Request is processed, unless otherwise indicated.

Pursuant to FOIA, 5 U.S.C. § 552, ACLJ hereby requests that the DOS respond to the following numbered requests and produce all responsive records within twenty (20) business days:

1. Records of Secretary John Kerry Regarding Resolution 2334 (2016)

All records, communication or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Secretary John Kerry referencing or regarding in any way UN Security Council Resolution 2334 (2016) and the decisions made leading up to the United States' abstention and refusal to veto said Resolution 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, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS 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. Records of Secretary John Kerry Referencing or Regarding in Any Way Saeb Erekat

All records, communication or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Secretary John Kerry referencing or regarding in any way Saeb Erekat or any agent or affiliate of Saeb Erekat, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS 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. Records of Ambassador Samantha Power Regarding Resolution 2334 (2016)

All records, communication or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Ambassador Samantha Power referencing or regarding in any

way UN Security Council Resolution 2334 (2016) and the decisions made leading up to the United States' abstention and refusal to veto said Resolution 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, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS 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. Records of Ambassador Samantha Power Referencing or Regarding in Any Way Saeb Erekat

All records, communication or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Ambassador Samantha Power referencing or regarding in any way Saeb Erekat or any agent or affiliate of Saeb Erekat, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS 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. Records of Secretary John Kerry or Ambassador Samantha Power Advancing Any UN Security Council Action Concerning Israel

All records, communication or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Secretary John Kerry and/or Ambassador Samantha Power referencing or regarding in any way United States government activity or involvement in promoting, encouraging, advancing, drafting any language or text for, or otherwise advancing in whole or in part, any UN Security Council resolution concerning Israel, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS 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.

6. Records of Secretary John Kerry or Ambassador Samantha Power Discouraging Any UN Security Council Action Concerning Israel

All records, communication or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Secretary John Kerry and/or Ambassador Samantha Power

referencing or regarding in any way United States government activity or involvement in discouraging, disapproving, or threatening to veto any principle, position, language or text for, in whole or in part, any UN Security Council resolution concerning Israel, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS 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.

7. Records of Secretary John Kerry or Ambassador Samantha Power Concerning Representatives of Members of UN Security Council and Israel

All records, communication or briefings created, generated, forwarded, transmitted, sent to, shared, saved, received from, or reviewed by Secretary John Kerry and/or Ambassador Samantha Power referencing or regarding in any way representatives of the other Member States comprising the UN Security Council in 2016, to wit:

China;
France;
Russian Federation;
The United Kingdom;
Bolivia;
Egypt;
Ethiopia;
Italy;
Japan;
Kazakhstan;
Senegal;
Sweden;
Ukraine;
Uruguay;
New Zealand;
Spain;
Venezuela; and/or,
Malaysia;

concerning UN Security Council Resolution 2334 (2016) and/or any other UN Security Council resolution concerning Israel, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS 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.

8. Records of DOS Officials Within the Bureau of Near Eastern Affairs Concerning Israel and Any Activity of the UN Security Council

All records, communication or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by:

Assistant Secretary Anne W. Patterson;
Principal Deputy Assistant Secretary Stuart E. Jones;
Deputy Assistant Secretary for Egypt and Maghreb Affairs John Desrocher;
Deputy Assistant Secretary for Assistance Coordination Richard Albright;
Deputy Assistant Secretary for Press and Public Diplomacy Larry Schwartz; and/or,
Acting Deputy Assistant Secretary for Syria/Levant Affairs Timothy J. Pounds;

all within the Bureau of Near Eastern Affairs, or any of their agents or staff, referencing or regarding in any way Israel and any activity of the UN Security Council, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS 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

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.¹¹

As such, 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
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 black ink.

Jay Alan Sekulow
Chief Counsel

Handwritten signature of Colby M. May in black ink.

Colby M. May
Senior Counsel

Handwritten signature of Benjamin P. Sisney in black ink.

Benjamin P. Sisney
Senior Litigation Counsel

¹¹ 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.