

VIA FACSIMILE

May 17, 2017

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843
Fax: (540) 868-4391

Dear FOIA Officer,

This letter constitutes an urgent request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a)(3), and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Federal Bureau of Investigation (“FBI”).

On May 16, 2017, the New York Times reported that former FBI Director James Comey documented “every phone call and meeting he had with the president.”¹ The day after former National Security Adviser Flynn’s resignation, Mr. Comey wrote a memo documenting his meeting with President Trump.² According to the memo, the President told Mr. Comey during that meeting: “I hope you can let this go.”³

EPIC seeks all of Director Comey’s memos concerning communications with President Trump.

Documents Requested

- (1) Director Comey’s memo concerning the February 14, 2017 meeting with President Trump;
- (2) Director Comey’s memos concerning communications with President Trump.

¹ Michael S. Schmidt, *Comey Memo Says Trump Asked Him to End Flynn Investigation*, N.Y. Times (May 16, 2017), <https://www.nytimes.com/2017/05/16/us/politics/james-comey-trump-flynn-russia-investigation.html>.

² *Id.*

³ *Id.*

Request for Expedited Processing

EPIC is entitled to expedited processing of this request. 5 U.S.C. § 552(a)(6)(E)(v)(II). There is an 1) “urgency to inform the public about an actual or alleged federal government activity,” and 2) this request is “made by a person who is primarily engaged in disseminating information.” § 16.5(e)(1)(ii).

First, there is an “urgency to inform the public about an actual or alleged federal government activity.” § 16.5(e)(1)(ii). The subject of this request is a reported paper trail “documenting what [Director Comey] perceived as the president’s improper efforts to influence a continuing investigation” by the FBI.⁴ The Justice Department recently granted expedited processing in similar case involving records related to the President’s claims that he was unlawfully wiretapped.⁵

Second, EPIC is an organization “primarily engaged in disseminating information.” § 16.5(e)(1)(ii). As the Court explained in *EPIC v. DOD*, “EPIC satisfies the definition of ‘representative of the news media.’” 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief. § 16.5(e)(3); § 552(a)(6)(E)(vi).

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes. *EPIC v. DOD*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed. 5 U.S.C. § 552(a)(4)(A)(ii)(II). *See also* 28 C.F.R. § 16.10(c).

Further, any duplication fees should also be waived because disclosure of the requested information “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest” of EPIC, the requested. 28 C.F.R. § 16.10(k)(1); § 552(a)(4)(A)(iii). EPIC’s request satisfies the FBI’s three factors for granting a fee waiver. § 16.10(k)(2).

First, disclosure of the Comey memos self-evidently “concerns identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.” § 16.10(k)(2)(i). These memos reportedly document “what [Director Comey] perceived as the president’s improper efforts to influence a continuing investigation” by the FBI.⁶

⁴ Schmidt, *supra* note 1.

⁵ Letter from Arnetta Mallory, Gov’t Info. Specialist, U.S. Dep’t of Justice, to Eleni Kyriakides, EPIC Fellow, Re: FOIA/PA \$17-096 (Mar. 15, 2017).

⁶ Schmidt, *supra* note 1.

Second, disclosure would be “would be likely to contribute significantly to public understanding of those operations or activities” according to the two sub-factors. § 16.10(k)(2)(ii)(A-B). As to the first sub-factor, disclosure would be “meaningfully informative about government operations or activities” because memos represent new, irreplicable documentation of the executive’s attempts to tamper with an active FBI investigation. Few public documents could be more “meaningfully informative” than memos detailing what FBI Director reportedly viewed as a President’s efforts to end an investigation into his associate. As to the second sub-factor, disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” because, as stated in the relevant FOIA regulations, components will “presume that a representative of the news media will satisfy this consideration.” § 16.10(k)(2)(ii)(B).

Third, disclosure of the requested information is not “primarily in the commercial interest” of EPIC according to the two sub-factors. § 16.10(k)(2)(iii)(A-B). As to the first sub-factor, EPIC has no “commercial interest...that would be furthered by the requested disclosure.” § 16.10(k)(2)(iii)(A). EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.⁷ As to the second sub-factor, “the component must determine whether that is the primary interest furthered by the request” because, as stated in the FOIA regulations, DOJ components “ordinarily will presume that where a news media requester has satisfied [the public interest standard], the request is not primarily in the commercial interest of the requester.” § 16.10(k)(2)(iii)(B). As already described above, EPIC is a news media requester and satisfies the public interest standard.

For these reasons, a fee waiver should be granted.

Conclusion

Thank you for your consideration of this request. I anticipate your determination on our request within twenty working days. 5 U.S.C. § 552(a)(6)(A)(i). For questions regarding this request I can be contacted at 202-483-1140 x111 or FOIA@epic.org.

Respectfully submitted,

/s/ Eleni Kyriakides
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/s/ Jeramie Scott
Jeramie Scott
EPIC National Security Counsel

/s/ Alan Butler
Alan Butler
EPIC Senior Counsel

⁷ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.