

C A M P A I G N F O R ACCOUNTABILITY

November 21, 2016

By facsimile: 202-252-6047

Susan B. Gerson
Assistant Director, FOIA/Privacy Staff
Executive Office for United States Attorneys
Department of Justice
600 E Street, N.W., Room 7300
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Ms. Gerson:

Campaign for Accountability (“CfA”) makes this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §§ 552, *et seq.*, and U.S. Department of Justice (DOJ) regulations, 28 C.F.R. Part 16.

Specifically, CfA requests copies of all witness statements, investigation reports prosecution memoranda, and Federal Bureau of Investigation (FBI) 302 reports related to any investigation by the U.S. Attorneys Office for the District of New Jersey of Jared Kushner.

Please search for records regardless of format, medium, or physical characteristics. We seek records of any kind, including electronic records, audiotapes, videotapes, calendars, and photographs. Where possible, please produce records electronically, in PDF or TIF format, on a CD-ROM.

By way of background, an investigation by the Federal Election Commission commenced in 2001 revealed Jared Kushner, along with his father Charles Kushner, other family members, and associates and entities connected to his father’s business interests had violated the Federal Election Campaign Act of 1971.¹ Specifically as to Jared Kushner, the FEC found he had made campaign contributions in excess of the \$25,000 annual contribution limitation imposed by 2 U.S.C. § 441a(1)(3) and 11 C.F.R. § 110.5(b). *Id.* In June 2004, Jared Kushner, along with the other respondents to the FEC enforcement action, agreed to pay a civil penalty of \$508,900.² One year later, following a criminal investigation by the U.S. Attorney’s Office for the District of New Jersey, Charles Kushner was sentenced to “two

¹ See MUR 5279, Bill Bradley for President, Inc., available at <http://eqs.fec.gov/eqs/searcheqs.jsessionid=45AFC7A312350BEA2C187ABD52975F79?SUBMIT=continue>.

² FEC Press Release, Real Estate Developer to Pay \$508,900 Civil Penalty to Federal Election Commission, June 30, 2004, available at <http://www.fec.gov/press/press2n0040630murshtml#search=kushner%20MUR>.

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years in prison after pleading guilty to 18 counts of tax evasion, witness tampering and making illegal campaign donations.”³

Given the extent to which Jared Kushner already has been in the public spotlight as the son-in-law of and close advisor to President-elect Donald Trump, the anticipated role he will play in a Trump administration, and the already publicly available information concerning his violations of campaign finance laws, any privacy interest he may enjoy must be balanced against the public’s right to know whether and the extent to which Mr. Kushner may have engaged in illegal activities.

If it is your position that any portion of the requested records is exempt from disclosure, CfA requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for **each** withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” *Id.* at 224 (citing *Mead Data Central v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *Mead Data Central*, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Finally, CfA welcomes the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the FBI to process it within the FOIA’s deadlines.

³ Ronald Smothers, *Democratic Donor Receives Two-Year Prison Sentence*, *New York Times*, March 5, 2005, available at http://www.nytimes.com/2005/03/05/nyregion/democratic-donor-receives-twoyear-prison-sentence.html?_r=0.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.11(k), CfA requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CfA and the general public in a significant way. Moreover, the request primarily and fundamentally is for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Currently Jared Kushner is married to President-elect Donald Trump's daughter Ivanka, and is widely reported to serve as one of his closest advisors, a role expected to continue once Mr. Trump assumes the office of president. It also has been reported that the Trump transition team will seek to have Mr. Kushner cleared to attend the daily presidential briefings, during which some of our nation's most closely held secrets are discussed. The requested records are likely to contribute to public understanding of the appropriateness of Mr. Jared serving in this role, and the extent to which DOJ has information bearing directly on whether Mr. Jared should receive a top-level security clearance.

CfA is a project of a non-profit organized under section 501(c)(3) of the Internal Revenue Code. CfA is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CfA uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CfA's financial interest. CfA will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CfA will disseminate any documents it acquires from this request to the public through its website, www.campaignforaccountability.org. Under these circumstances, CfA satisfies fully the criteria for a fee waiver.

News Media Fee Waiver Request

CfA also asks that it not be charged search or review fees for this request because CfA qualifies as a "representative of the news media" pursuant to the FOIA and DOJ regulation 28 C.F.R. § 16.10. In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.* CfA meets this test.

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CfA routinely and systematically disseminates information to the public in several ways. First, CfA maintains a website, www.campaignforaccountability.org. In addition, CfA posts documents it receives under the FOIA, and publishes reports based on documents it receives through open records laws, including the FOIA. Based on its publication activities, CfA qualifies as a "representative of the news media" under the FOIA and agency regulations.

Request for Expedition

Finally, please be advised that CfA also has requested expedition of this request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity which affect public confidence. Pursuant to 28 C.F.R. § 16.5(e)(2), CfA submitted that request to the Director of Public Affairs; a copy of this request is enclosed.

Conclusion

If you have any questions about this request or foresee any problems in releasing fully the requested records, please contact me at (301) 717-6610. Also, if CfA's request for a fee waiver is not granted in full, please contact me immediately upon making such determination. Please send the requested records to Anne Weismann, Campaign for Accountability, 660 Pennsylvania Ave., S.E., Suite 303, Washington, D.C. 20003.

Sincerely,



Anne L. Weismann
Executive Director

Encl.