

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

March 21, 2017

Ryan Law  
Director, Disclosure Services  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

**By Fax: (202) 622-3895 &**  
**By Email: [TreasFOIA@treasury.gov](mailto:TreasFOIA@treasury.gov)**

Re: Freedom of Information Act Request

Dear Mr. Law:

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 Treasury (“Treasury”) regulations, 31 C.F.R. Part 1.

First, CfA seeks records that reflect any communications to, from, or between any employee of Treasury and any of the following individuals regarding Renaissance Technologies or Robert Mercer:

- 1) Any White House employee, including but not limited to Steve Bannon, Kellyanne Conway, Rick Dearborn, Jared Kushner, and John Mashburn;
- 2) Any employee or representative of the Government Accountability Institute, including but not limited to Peter Schweizer;
- 3) Any employee or representative of Breitbart News;
- 4) Any employee or representative of Make American Number 1;
- 5) David Bossie, or any other employee or representative of Citizens United;
- 6) Jeff Sessions, or any employee or representative of Senator Sessions’ Senate office, or Senate campaign committee; and
- 7) Sen. Ted Cruz or any employee or representative of Senator Cruz’s Senate office, his presidential campaign committee, or his Senate campaign committee.

Second, CfA seeks records that reflect any communications to, from, or between Secretary of the Treasury Steven Mnuchin, anyone in the office of the Secretary, any member of the Trump administration “beachhead” transition team, or Special Assistant Jon Perdue, regarding Renaissance Technologies.

Third, CfA seeks any Treasury records that include the terms “Steve Bannon” or “Kellyanne Conway”.

This request is for records from January 1, 2014 to the present.

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By way of background, in July 2015, the IRS issued guidance requiring hedge funds, like Renaissance Technologies, to pay additional taxes on short-term trades.<sup>1</sup> The guidance followed a 2014 Senate report that concluded Renaissance Technologies had avoided paying more than \$6 billion in taxes on short-term trades by employing complex financial structures known as basket options.<sup>2</sup> According to *The New Yorker*, Renaissance Technologies is continuing to contest the IRS directive.<sup>3</sup>

Robert Mercer is the co-CEO of Renaissance Technologies.<sup>4</sup> Mr. Mercer has utilized his extensive personal wealth to promote the political careers of Steve Bannon, Kellyanne Conway, and David Bossie. Mr. Bannon is currently President Donald Trump's chief strategist and previously served as political adviser and business partner of Mr. Mercer.<sup>5</sup> Ms. Conway is a counselor to President Trump and previously ran a super-PAC funded by Mr. Mercer and his family.<sup>6</sup> Mr. Bossie served as the deputy campaign manager for President Trump and is the president of Citizens United, which has received funding from the Mercer family.<sup>7</sup> Mr. Mercer also supported the appointment of former Sen. Jeff Sessions to become Attorney General.<sup>8</sup> The requested records will help determine whether the political allies of Renaissance Technologies have contacted Treasury on the company's behalf.

In addition to the records requested above, please provide records reflecting the processing of this request, including any tracking sheets; records sufficient to identify search terms used and locations and custodians searched; and any FOIA questionnaires, certifications, or other records indicating the presence or absence of responsive materials by individual custodians or components, or describing any search conducted for responsive records.

CfA seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records,

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<sup>1</sup> Alexandra Stevenson, I.R.S. Cracks Down on Hedge Fund Tax Strategy, *The New York Times*, July 8, 2015, available at <https://www.nytimes.com/2015/07/09/business/dealbook/irs-cracks-down-on-hedge-fund-tax-strategy.html>.

<sup>2</sup> Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Abuse of Structure Financial Products: Miscuing Basket Options to Avoid Taxes and Leverage Limits, July 22, 2014, available at <https://www.documentcloud.org/documents/1225393-senate-inquiry-hedge-funds-tax-strategy.html>.

<sup>3</sup> Jane Mayer, The Reclusive Hedge-Fund Tycoon Behind the Trump Presidency, *The New Yorker*, March 27, 2017, available at <http://www.newyorker.com/magazine/2017/03/27/the-reclusive-hedge-fund-tycoon-behind-the-trump-presidency>.

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

<sup>5</sup> Matea Gold, The Mercers and Stephen Bannon: How a populist power base was funded and built, *The Washington Post*, March 17, 2017, available at <https://www.washingtonpost.com/graphics/politics/mercers-bannon/>.

<sup>6</sup> *Id.*

<sup>7</sup> Asawin Suebsaeng, David Bossie: The Man the Trump Train Left Behind, *The Daily Beast*, March 6, 2017, available at <http://www.thedailybeast.com/articles/2017/03/06/david-bossie-the-man-the-trump-train-left-behind.html>; Mayer, *The New Yorker*, Mar. 27, 2017.

<sup>8</sup> *Id.*

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audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

Please search all records regarding Treasury business. Please do not exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts. Official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>9</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; CfA has a right to access those files even if they have not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>10</sup>

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered Treasury’s prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>11</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but Treasury’s archiving tools would capture that email under Capstone. Accordingly, CfA insists that Treasury use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. CfA is available to work with Treasury to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

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<sup>9</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, 827 F.3d 145, 149—150 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955—956 (D.C. Cir. 2016).

<sup>10</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, \_\_\_, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>11</sup> Presidential Memorandum – Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), available at <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), available at <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

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Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>12</sup> 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 (1974). 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.”<sup>13</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>14</sup> 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.’”<sup>15</sup>

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. 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.<sup>16</sup> 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.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, CfA welcomes an opportunity to discuss its request with Treasury before you undertake your search or incur search or duplication costs. By working together at the outset, CfA and Treasury can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format via email at [dstevens@campaignforaccountability.org](mailto:dstevens@campaignforaccountability.org). Alternatively, our mailing address is Campaign for Accountability, 660 Pennsylvania Ave S.E., Suite 303, Washington D.C. 20003. If it will accelerate the release, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 31 C.F.R. § 1.7(b), 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 will likely contribute to a

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<sup>12</sup> *FOIA Improvement Act of 2016* § 2 (Pub. L. No. 114–185).

<sup>13</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>14</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>15</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>16</sup> *Mead Data Central*, 566 F.2d at 261.

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better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>17</sup>

CfA requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government operations and is not “primarily in the commercial interest of the requester.”<sup>18</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how and whether Trump administration officials may be attempting to use their government positions to protect one of President Trump’s most generous campaign donors from a significant tax obligation.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit organization, CfA does not have a commercial purpose and the release of the information requested is not in CfA’s financial interest. CfA’s mission is to use research, litigation and aggressive communications to expose misconduct and malfeasance in public life. Millions of Americans’ lives are negatively impacted by decisions made behind the doors of corporate boardrooms, government offices, and shadowy nonprofit groups. CfA will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. CfA will also make materials it gathers available on our public website. Accordingly, CfA qualifies 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 Treasury regulation 31 C.F.R. § 1.7(a)(3). 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.

CfA routinely and systematically disseminates information to the public in several ways. First, CfA maintains a website, [www.campaignforaccountability.org](http://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. CfA also analyzes the material it received through FOIA requests and discusses its findings with other members of the media. Based on its

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<sup>17</sup> See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

<sup>18</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 31 C.F.R. § 1.7(d)(1).

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publication activities, CfA qualifies as a “representative of the news media” under the FOIA and agency regulations.

**Conclusion**

CfA looks forward to working with Treasury to process this request. If you have any questions about this request or foresee any problems in releasing fully the requested records, please contact me at 202-780-5750. Also, if CfA’s request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel E. Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director