

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

# ACCOUNTABILITY

July 19, 2018

## **Submitted Electronically**

Federal Bureau of Investigation  
Attn: FOI/PA Request  
Record/Information Dissemination Section  
170 Marcel Drive  
Winchester, VA 22602-4843  
Fax: (540) 868-4391/4997

## **Re: Public Records Request**

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, Campaign for Accountability (“CfA”) makes the following request for records from the Federal Bureau of Investigation (“FBI”).

Specifically, CfA requests copies of all witness statements, memoranda, summary documents, or other records regarding the FBI’s investigation into a failed loan made by U.S. Senator Mike Crapo’s campaign committee, Mike Crapo for U.S. Senate. In 2008, the committee loaned \$250,000 to Blueberry Guru LLC, a Boise, Idaho investment company, which then loaned the money to Pyramid Global Resources, a Nevada real estate company.<sup>1</sup>

By way of background, on April 29, 2013, an attorney for Mike Crapo for U.S. Senate sent a letter to the FEC detailing a problematic loan made by the committee’s previous campaign manager.<sup>2</sup> In September 2008, the manager agreed to loan \$250,000 of the committee’s money to Blueberry Guru LLC, which intended to invest the money in Pyramid Global Resources. The manager believed the loan would generate an eight percent return, which would then generate receipts for the committee.<sup>3</sup> The manager did not disclose the loan’s existence to the FEC, which resulted in a total loss for the committee.<sup>4</sup> The April 2013 letter indicates that in addition to the manager’s failure to disclose the loan to the FEC, neither the committee nor Sen. Crapo were informed of the loan or the failed investment until the manager left the committee in December of

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<sup>1</sup> Cynthia Sewell, [§192,000 for his wife. 81 uses of a lobbyist's home. Crapo election funds draw scrutiny](https://www.idahostatesman.com/news/politics-government/state-politics/article212695139.html), Idaho Statesman, June 20, 2018, available at <https://www.idahostatesman.com/news/politics-government/state-politics/article212695139.html>.

<sup>2</sup> Letter from Stephen M. Ryan, Counsel for Mike Crapo for U.S. Senate, to Jeffrey S. Jordan, Office of Complaints Examination and Legal Administration, April 29, 2013, available at <http://eqs.fec.gov/eqsdocsADR/14190294820.pdf>.

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

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

2010.<sup>5</sup> On September 25, 2014, the FEC sent a letter to the committee regarding the matter and informed the committee that it would “exercise its prosecutorial discretion...and close the file.”<sup>6</sup> The *Idaho Statesman* later reported that “Crapo hired an attorney to investigate the matter and ‘at Senator Crapo's instruction ... disclose the transaction’ to the Federal Bureau of Investigation. The FBI turned over its report to federal prosecutors, who in November 2012, declined to pursue charges.”<sup>7</sup>

While the FBI must evaluate the privacy concerns of the parties involved, there are several reasons why these particular records should be made public. The loan in question was made by a campaign committee that is funded by donations from the public. The people who made those donations, often in small increments, deserve to know what happened to their money. Moreover, Sen. Crapo is the chairman of the Senate Banking Committee and an elected official. Given his position and his obligations to his constituents, the public deserves to know what the FBI found during its investigation into the campaign loan.

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, audiotapes, videotapes, and photographs, as well as letters, emails, text messages, 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.

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>8</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>9</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>10</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>11</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> Letter from Krista J. Roche, Assistant Director of Alternative Dispute Resolution Office, to Stephen M. Ryan and Matthew M. Leland, McDermott Will & Emery LLP, September 24, 2014, *available at* <http://eqs.fec.gov/eqsdocsADR/14190294833.pdf>.

<sup>7</sup> Sewell, *Idaho Statesman*, Jun. 20, 2018.

<sup>8</sup> *FOIA Improvement Act of 2016* § 2 (Pub. L. No. 114–185).

<sup>9</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>10</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>11</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)).

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>12</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.

While this request seeks law enforcement records, exemption 7(A), which permits an agency to withhold records from disclosure if the records were “compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings,”<sup>13</sup> does not apply as the FBI closed this matter without action in 2012. To withhold law enforcement records, the government must identify a “concrete prospective law enforcement proceeding.”<sup>14</sup>

Moreover, there is a “weighty public interest in shining a light on the FBI’s investigation . . . and DOJ’s ultimate decision not to prosecute a prominent member of the Congress for any involvement he may have had.”<sup>15</sup> The public has an interest in learning “how the FBI and the DOJ carried out their respective duties to investigate and prosecute criminal conduct.”<sup>16</sup> The requested information would “reveal much about the diligence of the FBI’s investigation and the DOJ’s exercise of its prosecutorial discretion: whether the government had the evidence but nevertheless pulled its punches.”<sup>17</sup>

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 the FBI before you undertake your search or incur search or duplication costs. By working together at the outset, CfA and the FBI can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format to me at [dstevens@campaignforaccountability.org](mailto:dstevens@campaignforaccountability.org). If the records are mailed, please send them to my attention, at the following address: Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington, DC 20003. If it will accelerate the release, please also provide material on a rolling basis.

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<sup>12</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>13</sup> 5 U.S.C. § 552(b)(7)(A).

<sup>14</sup> *CREW v. DOJ*, 658 F. Supp.2d 217, 229 (D.D.C. 2009), quoting *Juarez v. Dep’t of Justice*, 518 F.3d 54, 58-59 (D.C. Cir. 2009).

<sup>15</sup> *CREW v. DOJ*, 746 F.3d 1082, 1092-93 (D.C. Cir. 2014).

<sup>16</sup> *Id.* at 1093.

<sup>17</sup> *Id.*

### Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, 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 significantly to a better understanding of relevant government procedures by the general public. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>18</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 the operations or activities of the government.”<sup>19</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public’s business, and what occurs when a government official is investigated by the FBI.

The activities of Sen. Crapo’s campaign committee are of particular interest to the general public. Sen. Crapo’s campaign treasurer recently told the FEC that the committee held 81 meetings at a lobbyist’s Capitol Hill condo while failing to disclose the existence of the meetings or pay for the use of the space.<sup>20</sup> The owner of the condo is married to another lobbyist, whose clients had interests before Sen. Crapo’s committee.<sup>21</sup> The requested records will inform the public about the actions of Sen. Crapo’s campaign committee and allow the public to determine whether the committee’s business activities have impacted his official duties.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) organization, CfA does not have a commercial purpose and the release of the information requested is not in CfA’s financial interest. 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. 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](http://www.campaignforaccountability.org).

Accordingly, CfA qualifies for a fee waiver.

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<sup>18</sup> See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

<sup>19</sup> 45 C.F.R. § 5.54(a).

<sup>20</sup> Letter from Paul Kilgore, Treasurer for Mike Crapo for U.S. Senate, to the Federal Election Commission, April 26, 2018, available at <https://campaignforaccountability.org/wp-content/uploads/2018/05/CfA-FEC-Complaint-Supplement-Crapo-5-7-18.pdf> (Exhibit B).

<sup>21</sup> Eric Garcia, *Complaint Against Crapo Over Controversial Condo*, *Roll Call*, April 20, 2018, available at <https://www.rollcall.com/news/politics/report-crapo-under-fire-for-fundraisers-at-condo-pruitt-rented>.

### 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 HHS regulation 45 C.F.R. § 5.53. 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; “[i]t 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 “gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.”<sup>22</sup> It does so by regularly posting documents it receives through open records laws, including the FOIA, to its website,<sup>23</sup> analyzing those documents, and publishing reports, letters, and further requests based those documents.<sup>24</sup> Based on its publication activities, CfA qualifies as a “representative of the news media” under the FOIA and agency regulations.

### Conclusion

If you foresee any problems in releasing the requested records in whole or in part, or have any questions about this request, please contact me at 202-780-5750. Finally, I welcome 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. Thank you for your attention to this matter.

Sincerely,



Daniel Stevens  
Executive Director

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<sup>22</sup> 45 C.F.R. § 5.3; 5 U.S.C. § 552(a)(4)(A)(ii)(III).

<sup>23</sup> See, e.g., Letter from Daniel Stevens, Executive Director, Campaign for Accountability, to Thomas B. Pahl, Acting Director, Bureau of Consumer Protection, Federal Trade Commission (July 19, 2017), available at <https://campaignforaccountability.org/work/ftc-solar-complaint/>.

<sup>24</sup> See, e.g., Campaign for Accountability, Utah Commission for the Stewardship of Public Lands, Sept. 7, 2017, available at <https://campaignforaccountability.org/work/utah-commission-stewardship-public-lands/>; Campaign for Accountability, Documenting Discrimination, July 2016, available at <https://campaignforaccountability.org/work/documenting-discrimination/>; CfA Complaints Against the Heidi Group, Sept. 26, 2017, available at <https://campaignforaccountability.org/work/cfa-complaints-against-the-heidi-group/>.