

January 29, 2017

Melissa Golden
Lead Paralegal and FOIA Specialist
Office of Legal Counsel
Department of Justice
Room 5515
950 Pennsylvania Ave. NW
Washington, DC 20530-0001
usdoj-officeoflegalcounsel@usdoj.gov

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
Suite 11050
1425 New York Avenue NW
Washington, DC 20530-0001
Fax: (202) 514-1009

Re: Freedom of Information Act Request (Expedited Processing Requested)

Dear Ms. Golden and Ms. Day,

This letter is a request under the Freedom of Information Act on behalf of Public Citizen, Inc.

Since assuming the presidency on January 20, 2017, Donald J. Trump has issued a series of executive orders, proclamations, and memoranda.¹ Under Executive Order 11,030 § 2, 27 Fed. Reg. 5,847 (June 19, 1962), executive orders and proclamations must be reviewed for form and legality by the Attorney General (or delegatee), and any executive order not approved by the Attorney General “shall not thereafter be presented to the President unless it is accompanied by a statement of the reasons for such disapproval.” The Office of Legal Counsel (OLC) is charged with reviewing “[a]ll executive orders and proclamations proposed to be issued by the President … for form and legality.”²

This request seeks four categories of records:

- (1) Any and all final memoranda, opinions, or letters indicating that the executive orders, memoranda, or proclamations issued (or proposed) by the Trump administration on or after January 20, 2017 have been reviewed for lawfulness, or deemed lawful, by the Department of Justice, as required by Executive Order 11,030;

¹ The White House, Presidential Actions, <http://bit.ly/2klsBiA> (last visited January 27, 2017).

² Office of Legal Counsel, About the Office, <https://www.justice.gov/olc> (last visited January 27, 2017).

- (2) Any and all final memoranda, opinions, or letters indicating that the executive orders, memoranda, or proclamations issued (or proposed) by the administration of President Barack Obama during the month of January 2017 were reviewed for lawfulness, or deemed lawful, by the Department of Justice, as required by Executive Order 11,030;³
- (3) Any and all letters transmitting an executive order for Department of Justice review on or after January 20, 2017;
- (4) Any and all letters transmitting an executive order for Department of Justice review during the period November 1, 2016 through January 19, 2017.

If it is your position that responsive records exist but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each record being withheld. In addition, please provide the nonexempt portions of the records. Public Citizen seeks each record *in its entirety*. Accordingly, please do not redact portions of any record as “non-responsive,” “out of scope,” or the like. Furthermore, Public Citizen requests the entire document containing the responsive information, including any and all information in the document that the agency may consider “non-responsive.”

I request that any records produced in response to this request be provided in electronic form wherever possible.

Request for Expedited Processing

Public Citizen seeks expedited processing under 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information to inform the public about actual or alleged government activity. 5 U.S.C. § 552(a)(6)(E)(v). In addition, the records sought relate to a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(iv).

Public Citizen is primarily engaged in disseminating information to inform the public about actual or alleged government activity.

Public Citizen is a nonprofit research, litigation, and advocacy organization with more than 400,000 members and supporters nationwide. Advocating for the public interest before Congress, the executive branch, and the courts, Public Citizen fights for openness and democratic accountability in government; for social and economic justice in globalization and trade policies; for clean, safe and sustainable energy; for strong health, safety and environmental protections; for safe, effective and affordable medicines and health care; and for the right of consumers to seek redress in the courts. Accordingly, it is “primarily engaged in disseminating information” within the meaning of the statute.

³ Federal Register, 2017 Barack Obama Executive Orders, <https://www.federalregister.gov/executive-orders/barack-obama/2017> (last visiting Jan. 27, 2017).

5 U.S.C. § 552(a)(6)(E)(v)(II). Public Citizen does not have a commercial interest in the requested records; it intends to share information received from this request with the public free of charge.

Public Citizen also has a demonstrated capacity to disseminate this information. Public Citizen regularly publishes reports based upon information acquired through FOIA. It disseminates its reports via publication,⁴ through its website,⁵ Twitter,⁶ Facebook,⁷ email listserv, press releases,⁸ and through various newsletters that are distributed to consumers, lawyers, academics, and other interested parties free of charge.⁹ Public Citizen maintains four blogs,¹⁰ publishes a bi-monthly newspaper,¹¹ and issues frequent press releases.¹² Nearly every day, print and broadcast media around the world mention Public Citizen or quote its experts.¹³ Public Citizen also makes its experts available to speak to the media, at conferences, and to testify before Congress.¹⁴

The records sought are urgently needed to inform the public about actual or alleged government activity.

These records are urgently needed to inform the public about “actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(e)(iv). Moreover, the records sought relate to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(iv).

First, “the request concerns federal government activity” and “concerns a matter of current exigency to the American public.” *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001) (addressing factors for determining the “urgency to inform.”). In his first ten days in office, President Trump has taken well over a dozen executive actions.¹⁵ Multiple media sources have commented on the legal analysis and advice underlying President Trump’s executive orders and proclamations, and whether these executive orders and proclamations were reviewed for legality by the Attorney General, his

⁴ For examples of publications distributed through the website, see the reports published on the “Government Reform Key Reports” webpage, <http://www.citizen.org/Page.aspx?pid=2917>, such as “Financial Services Conflict of Interest Act: Outlining the need for increased revolving-door and reverse revolving-door legislation” (July 15, 2015), <http://www.citizen.org/documents/financial-services-conflict-of-interest-act-report.pdf>.

⁵ Public Citizen’s homepage, <http://www.citizen.org>.

⁶ Public Citizen’s Twitter page, https://twitter.com/Public_Citizen.

⁷ Public Citizen’s Facebook page, <https://www.facebook.com/publiccitizen>.

⁸ Press releases, <http://www.citizen.org/Page.aspx?pid=2181>.

⁹ See, e.g., Public Citizen Health Letter, <http://www.citizen.org/healthletter>.

¹⁰ Citizen Vox, <http://www.citizenvox.org>; Consumer Law & Policy Blog, <http://pubcit.typepad.com/>; Eyes on Trade, <http://citizen.typepad.com/eyesontrade/>; and Texas Vox, <http://www.texasvox.org/>.

¹¹ Public Citizen’s News, http://www.citizen.org/pc_news_issues/2016/.

¹² Press releases, <http://www.citizen.org/Page.aspx?pid=2181>.

¹³ Maggie Severns and Isaac Arnsdorf, *The Trump lobbying purge that wasn’t*, Politico, Jan. 18, 2017, <http://politico.co/2j7kcOL>; Coral Davenport, *Climate Change Conversations Are Targeted in Questionnaire to Energy Department*, N.Y. Times, Dec. 9, 2016, <http://nyti.ms/2h7N2Rc>. An archive of many of these news stories is available on Public Citizen’s website: Public Citizen Media Hits, <http://www.citizen.org/Page.aspx?pid=4987>.

¹⁴ Public Citizen’s Experts, <http://www.citizen.org/Page.aspx?pid=2499>.

¹⁵ Presidential Actions, https://www.whitehouse.gov/briefing-room/presidential-actions?term_node_tid_depth=46 (last visited Jan. 29, 2017).

delegatee, or OLC.¹⁶ For instance, one recent article states that the President has “been able to dash off executive orders at such a frenetic pace” because “he has neglected to have them reviewed by relevant cabinet agencies, congressional committees, or legal counsel.”¹⁷ Nearly every day, the President is issuing new executive orders or proclamations. The public has an urgent need to know the extent to which these actions are being reviewed by the Attorney General, his delegatee, or OLC, as compared to the extent to which President Obama’s actions were reviewed by such counsel in those offices. Furthermore, the requested information relates to the OLC’s “core function” to “help[] the President fulfill his . . . constitutional duties to preserve, protect, and defend the Constitution, and to ‘take Care that the Laws be faithfully executed.’”¹⁸

Second, “the consequences of delaying a response would compromise a significant recognized interest.” *Al-Fayed v. CIA*, 254 F.3d at 310. The public has a significant interest in knowing whether and the extent to which executive orders have been reviewed for legality because the public has a recognized interest in knowing how the laws that bind them are made. The executive orders are currently the law of the land, and delay in responding to this FOIA request undermines the public’s trust in the President’s executive orders and the process by which such laws are made. Moreover, the public has a significant interest in knowing whether the Office charged with helping the President preserve, protect, and defend the Constitution is performing that function.

Application for Waiver or Limitation of Fees

Public Citizen requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because Public Citizen does not seek the records for a commercial purpose and disclosure “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” The records requested will contribute to the public’s understanding of the Attorney General’s and OLC’s roles in reviewing executive orders under President Trump as compared to under President Obama. These records are not in the public domain. As detailed above, Public Citizen has a demonstrated capacity to disseminate the information received in response to this request through its publications, website, newsletters, social media, email listserv, and press releases.¹⁹

* * *

Under applicable statutes and regulations, we expect a determination regarding expedited processing within ten days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I). If this request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. We expect the

¹⁶ See, e.g., Eric Levitz, *Trump’s Executive Orders Were Brought to you by Breitbart*, New York (Jan. 26, 2017, 10:57 AM), <http://nymag.com/daily/intelligencer/2017/01/trumps-executive-orders-were-brought-to-you-by-breitbart.html>; Carrie Johnson, *Key Justice Dept. Office Won’t Say if it Approved White House Executive Orders*, NPR (Jan. 27, 2017 12:03 PM), <http://www.npr.org/2017/01/27/511998206/key-justice-dept-office-won-t-say-if-it-approved-white-house-executive-orders>; Isaac Arnsdorf, Josh Dawsey & Seung Min Kim, *Trump’s Flashy Executive Actions Could Run Aground*, Politico (Jan. 25, 2017, 7:47 PM), <http://www.politico.com/story/2017/01/trumps-flashy-executive-actions-could-run-aground-234200>.

¹⁷ See Levitz, *Trump’s Executive Orders Were Brought to you by Breitbart*, New York (Jan. 26, 2017).

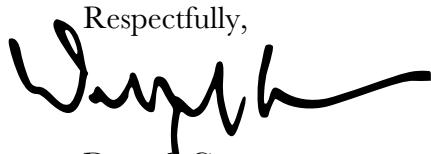
¹⁸ David Barron, Acting Ass. Atty. Gen., Memorandum for Attorneys of the Office, Re: Best Practices for OLC Legal Advice and Written Opinions 1 (July 16, 2010).

¹⁹ See above, pp. 2-3 & nn. 5-15.

release of all segregable portions of otherwise exempt material and reserve the right to appeal a decision to withhold any information or deny a fee waiver. Please furnish the responsive records to:

Rachel Clattenburg
Public Citizen
1600 20th St. NW
Washington, DC 20009
rclattenburg@citizen.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Respectfully,

Deepak Gupta