

From: [FOIA Inbox](#)
To: [FOIA](#)
Subject: Freedom of Information Act request
Date: Saturday, October 07, 2017 5:25:42 PM
Attachments: [20171007 FTC FOIA - Final Filed.pdf](#)



FOIA@FTC.GOV

Attached please find a FOIA request from The Protect Democracy Project. If you have questions about this request, please contact Allison Murphy via email at allison.murphy@protectdemocracy.org or via phone at [\(202\) 417-2341](tel:(202)417-2341).

Thank you.

The Protect - Democracy Project

October 7, 2017

By Email (FOIA@FTC.GOV)

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Ave, N.W.
Washington, DC 20580

Re: Freedom of Information Act

To Whom It May Concern:

The Protect Democracy Project submits this FOIA request for records pertaining to contacts involving the White House and the U.S. Federal Trade Commission (FTC). For years, Administrations of both parties have had in place policies limiting contacts between the White House and independent agencies because of the distinctive statutory, jurisdictional, and/or authority requirements of such agencies.¹ To better understand whether there have been contacts from the White House with the FTC, The Protect Democracy Project is seeking the following types of records.

Requested Records

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, The Protect Democracy Project hereby requests that your office produce within 20 business days the following records (see below for clarity on the types of records sought):

¹ See, e.g., C. Boyden Gray, Counsel to President George H.W. Bush, Memorandum for White House Staff: Prohibited Contacts with Agencies (“White House staff members should avoid even the mere appearance of interest or influence – and the easiest way to do so is to avoid discussing matters pending before the independent regulatory agencies with interested parties and avoid making *ex parte* contacts with agency personnel. Should an occasion arise in the course of your duties where it appears necessary to discuss general policy matters with the staff of an independent regulatory agency, you should first consult with the Office of the Counsel to the President to determine whether such contact would be appropriate under the circumstances.”); Jack Quinn, Counsel to President Bill Clinton, Kathleen Wallman and Stephen Neuwirth, Memorandum for White House Staff: Contacts with Agencies, Jan. 16, 1996, pp. 3-6.

1. Any and all records created or transmitted by or between White House staff, including but not limited to their email addresses ending in “who.eop.gov,” including but not limited to Jared Kushner, Stephen (Steve) Bannon, Reince Priebus, John F. Kelly, Justin Clark, George Sifakis, Andrew Giuliani, Bill Stepien, Stephen Munisteri, Jennifer Korn, Sarah Makin, Ivanka Trump, Gary Cohn, Jeremy Katz, Ashley Hickey Marquis, and Dina Powell, and FTC employees.
2. In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

The timeframe for this request is November 9, 2016 through the date that searches are conducted for records responsive to this FOIA request.

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the 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 the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The core mission of The Protect Democracy Project, a 501(c)(3) organization, is to inform public understanding on operations and activities of the government. This request is submitted in consort with the organization’s mission to gather and disseminate information that is likely to contribute significantly to the public understanding of executive branch operations and activities. The Protect Democracy Project has no commercial interests.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, The Protect Democracy Project is entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as a representative of the news media. *Id.* The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as “news media organizations.” Like those organizations, the purpose of The Protect Democracy Project is to “gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience.” *Nat’s Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As the District Court for the District of Columbia “easily” determined in recent litigation in a separate FOIA request, The Protect Democracy Project is “primarily engaged in disseminating information.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, No. 17-CV-00842 (CRC), 2017 WL 2992076, at *5 (D.D.C. July 13, 2017). Indeed, The Protect Democracy Project has routinely demonstrated

the ability to disseminate information about its FOIA requests to a wide audience,² including on the topic of this request.³ The Protect Democracy Project will disseminate information and analysis about this request – and any information obtained in response – through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protctdemocracy>), which has more than 10,000 followers; its email list of approximately 20,000 people; and sharing information with other members of the press.

RESPONSIVE RECORDS

We ask that all types of records and all record systems be searched to discover records responsive to our request. We seek records in all media and formats. This includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; e-mails; e-mail attachments; talking points; faxes; training documents and guides; tables of contents and contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials. However, you need not produce press clippings and news articles that are unaccompanied by any commentary (e.g., an email forwarding a news article with no additional commentary in the email thread).

We ask that you search for records from all components of the Federal Trade Commission that may be reasonably likely to produce responsive results, including but not limited to the Office of the Chairman, Offices of the Commissioners, Office of the Executive Director, Office of the General Counsel, the Bureau of Competition, and the Bureau of Consumer Protection. We also ask that you search all systems of record, including electronic and paper, in use at your agency, as well as files or emails in the personal custody of your employees, such as personal email accounts, as required by FOIA and to the extent that they are reasonably likely to contain responsive records. The Protect Democracy Project would prefer records in electronic format, saved as PDF documents, and transmitted via email or CD-rom.

² See, e.g., Lisa Rein, *Watchdog group, citing “integrity of civil service,” sues Trump to find out if feds are being bullied*, Wash. Post (Apr. 27, 2017), <https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/>; Ben Berwick, *Going to Court for Civil Servants*, Take Care (April 28, 2017), <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times (May 8, 2017), <https://nyti.ms/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare (May 8, 2017), <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>.

³ See Allison Murphy, *Ten Questions for a New FBI Director*, Take Care (June 6, 2017), <https://takecareblog.com/blog/ten-questions-for-a-new-fbi-director> (analyzing and linking to the Department of Justice contacts policy, which was disclosed in response to a Protect Democracy FOIA request); Edward-Isaac Dove, *Liberal Groups: Delay FBI Director Vote Until Trump Promises to Keep Special Counsel*, Politico, (July 25, 2017), <http://www.politico.com/story/2017/07/25/delay-fbi-director-confirmation-christopher-wray-democrats-240938> (reporting on Protect Democracy’s letter urging adoption of a robust contacts policy to prevent interference with independence agencies, which attached Protect Democracy’s disclosure of FOIA-responsive documents from White House compliance staff on the status of that policy).

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. § 552(b).

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact me at allison.murphy@protectdemocracy.org or (202) 417-2341 if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

A handwritten signature in blue ink that reads "Allison Murphy". The signature is written in a cursive, flowing style.

Allison F. Murphy
Counsel
The Protect Democracy Project