



March 12, 2018

By Electronic Mail (usoge@oge.gov)

OGE FOIA Officer
Office of Government Ethics
Suite 500
1201 New York Avenue, NW.
Washington, DC 20005-3917

RE: Freedom of Information Act Request

Dear FOIA Officer:

The Campaign Legal Center (“CLC”) submits this request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, for the records described below.

I. Requested Records

CLC requests all records of communications between Acting Director of the Office of Government Ethics (“OGE”) David J. Apol, **and**:

1. Any individual who is employed in OGE’s Ethics Law and Policy Branch; **or**
2. Any Senior Level (“SL”) employee at OGE; **or**
3. Any individual whose email address has the domain @wileyrein.com.

This request encompasses records that include any of the above listed individuals or entities in the “to,” “from,” “cc,” or “bcc” fields, but excludes any record the subject of which solely regards an executive branch nominee. Please note that this request applies to all emails, sent and received, on governmental email addresses, as well as to all emails, sent and received, on all other email addresses and accounts used to conduct official business.

This time frame for this request is **January 19, 2018¹ to date.**

If some portions of the requested records are exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. 5 U.S.C. § 552(b). If any portion of the requested records is exempt from disclosure, please provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972).

II. Background

In recent months, the subject of legal defense funds² established to facilitate the payment of executive branch employees' legal fees has garnered significant media attention.³ OGE released records on February 1, 2018 surrounding the consultation process for a specific legal defense fund, the "Patriot Legal Expense Fund."⁴ The release of this information generated additional considerable interest from the media.⁵ Employees of Wiley Rein, LLP, a Washington, D.C.-based legal services firm,⁶ requested OGE's review of the fund, and the documents released by OGE indicate that the Ethics Law and Policy Branch helped coordinate the review.⁷

Even though interest in legal defense funds grows, it remains difficult for the public to assess the funds since no statutory or regulatory framework for their establishment exists.⁸ Moreover, information about legal defense funds in the executive branch is not generally available.

Through informal advisory opinions, OGE has said that legal defense funds must meet certain contribution and administration guidelines, and generally "be operated

¹ Depending on what records CLC obtains in response to this request, CLC may or may not request records excluded by this time limitation. For now, CLC is excluding other records in order to facilitate an expedited search.

² As used in this request, the term "legal defense fund" refers to any arrangement, promise, trust, corporation, or other entity to facilitate the payment of legal fees of a government employee other than by the employee himself or herself.

³ See, e.g., Cristina Alesci and Curt Devin, *Ethics office clarifies rules for WH aides' legal defense*, CNN (Sept. 15, 2017), <https://goo.gl/DpqTSG>; Editorial Board, *Who pays for the White House to lawyer up?*, WASH POST (Sept. 19, 2017), <https://goo.gl/apGDjT>; Darren Samuelsohn, *White House legal defense fund close to launching*, POLITICO (Oct. 2, 2017), <https://goo.gl/WTLU9E>; Tucker Higgins, *Trump to pay his own legal bills, contribute to legal fund for White House staff*, CNBC (Nov. 17, 2017), <https://goo.gl/2r4Uw1>.

⁴ Office of Government Ethics Resources, Patriot Legal Expense Fund Trust, LLC, <https://goo.gl/uHjKZA>.

⁵ See, e.g., Cristina Alesci, Jeremy Diamond & Katelyn Polantz, *Ethics office unofficially OKs legal defense fund for White House staffers*, CNN (Feb. 2, 2018), <https://goo.gl/K4JZ8e>; Darren Samuelsohn, *Legal defense fund set up for Trump aides in Russia investigations*, POLITICO (Feb. 2, 2018), <https://goo.gl/ryHjud>; Michelle Ye Hee Lee, *Legal defense fund for Trump aides launches amid questions about donor transparency*, WASH. POST (Feb. 28, 2018), <https://goo.gl/3bHv3b>; Jennifer Jacobs & Justin Sink, *Trump Allies Launch Legal Fund for Aides Hit by Russia Probes*, BLOOMBERG (Feb. 27, 2018), <https://goo.gl/6zXAog>.

⁶ Wiley Rein, <https://www.wileyrein.com/about.html>.

⁷ Email from Seth H. Jaffe, Chief, Ethics Law and Policy Branch, <https://goo.gl/uHjKZA>.

⁸ Office of Government Ethics Legal Advisory 17-10, "Clarification of Past Legal Defense Fund Guidance Provided in OGE Informal Advisory Opinion 93x21," Sept. 28, 2017, <https://goo.gl/oUfXuD>.

consistent with ethics rules.”⁹ However, the process by which OGE assesses legal defense funds brought to its attention remains a black box. Therefore, the release of the requested documents will contribute significantly to the public’s understanding of how legal defense funds are created in the government, the extent to which OGE was involved in the development of a particular legal defense fund, and the level of scrutiny given to the legal defense fund.¹⁰

III. Application for Fee Waiver or Limitation of Fees

A. The request is made for non-commercial purposes and will contribute significantly to public understanding of the operations or activities of government.

FOIA provides that the agency shall furnish requested records without or at reduced charge 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).

As described above in Part II, the requested materials involve matters of significant public interest. Records likely to be disclosed in response to this request will contribute significantly to the public’s understanding of how legal defense funds are established and administered with the advice of OGE. These details are not already publicly available and the records would provide a more thorough public understanding of the operations of the government. In addition, the information requested will help the public to understand what measures OGE takes to ensure compliance with applicable legal requirements, the ways in which OGE’s practices with regard to legal defense funds have evolved, whether the administration has been transparent about the acceptance of gifts of money by its appointees, and other issues.

CLC will use records responsive to this request in the creation of widely disseminated materials and analysis that will educate the public about these matters and the operations of the government. CLC anticipates analyzing the materials gathered through this FOIA request to develop reports,¹¹ write blogs,¹²

⁹ *Id.*; see also Office of Government Ethics Informal Advisory 93x21, “Employee Legal Defense Funds, 18 U.S.C. § 209, and Crandon v. U.S.,” Aug. 30, 1993, <https://goo.gl/w29Ney> (Payments from a legal fund on behalf of a Federal employee are allowed if persons unconnected to the employee’s official duties oversee the fund, the donors’ identities remain unknown, the money directly pays the legal fees, the donations are not from prohibited sources, and the employee does not solicit the funds).

¹⁰ “Because of these and other ethics considerations, individuals should consult with an agency ethics official or OGE before establishing a legal defense fund.” Office of Government Ethics Legal Advisory 17-10, <https://goo.gl/oUfXuD>.

¹¹ See, e.g., Lawrence M. Noble and Brendan M. Fischer, *Funding the Presidential Nominating Conventions: How a Trickle of Money Turned Into a Flood*, Campaign Legal Center (July 26, 2016), <https://goo.gl/yUaFdv>.

¹² See, e.g., Brendan M. Fischer, *How Trump’s Plan to Repeal the Johnson Amendment Could Unleash ‘Super Dark Money’ Into Our Elections*, Campaign Legal Center blog (Feb. 3, 2017),

and author op-eds.¹³ CLC’s research and reports are widely disseminated on its blog,¹⁴ through its own website,¹⁵ through social media platforms like Facebook¹⁶ and Twitter,¹⁷ and regular emails to its supporters, among other communications outlets.¹⁸

CLC staff have significant knowledge in ethics and government accountability, and news media regularly rely upon CLC’s analysis and expertise.¹⁹ In addition to its own blogs and reports, CLC anticipates analyzing the requested records and disseminating the materials among traditional news outlets.

Requester CLC is a non-profit public interest organization organized under Section 501(c)(3) of the Internal Revenue Code, and this request is made for non-commercial purposes.

For these reasons, we request that any applicable fees associated with this request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver in this instance would fulfill Congress’ intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

B. CLC qualifies for a fee waiver as a “representative of the news media.”

CLC additionally requests that it not be charged search or review fees for this request because the organization meets the definition of a “representative of the news media” for purposes of the FOIA, since CLC “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II)-(III).

As the D.C. Circuit has held, the “representative of the news media” test is focused on the requestor rather than the specific FOIA request. *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121 (D.C. Cir. 2015). CLC satisfies this test because (as noted in

<https://goo.gl/Bs1U94>; *Filling the Swamp: Inauguration and Transition Funding*, Campaign Legal Center blog (Jan. 19, 2017), <https://goo.gl/gA87YU>.

¹³ See, e.g., Trevor Potter, *Donald Trump Hasn’t Solved Any of His Conflicts of Interest*, WASH. POST (Jan. 11, 2017), <https://goo.gl/DPnEVn>.

¹⁴ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹⁵ See Campaign Legal Center “Reference Materials” library, <https://goo.gl/MPCafz>.

¹⁶ <https://www.facebook.com/CampaignLegalCenter/>

¹⁷ See <https://twitter.com/CampaignLegal>.

¹⁸ See Campaign Legal Center blog at MEDIUM, <https://medium.com/clc-blog>.

¹⁹ See, e.g., Elizabeth Williamson, *Highflying Mnuchins Take the Country for a Ride*, N.Y. TIMES (Sept. 14, 2017), <https://goo.gl/6kdWbL>; Philip Bump, *Why Ben Carson’s appearance in Phoenix was likely a violation of federal law*, WASHINGTON POST (Aug. 23, 2017), <https://goo.gl/j6ETWA>; Manu Raju, *Trump’s Cabinet Pick Invested in Company, Then Introduced a Bill to Help It*, CNN (Jan. 17, 2017), <https://goo.gl/zmfaYt>; Christina Wilkie and Paul Blumenthal, *Trump Just Completely Entangled His Business and the U.S. Government*, HUFFINGTON POST (Jan. 11, 2017), <https://goo.gl/UdjZS7>.

Part III(A)) CLC applies its expertise and editorial skills to turn raw materials into reports, articles, and op-eds that are widely disseminated on its blog,²⁰ through its own website,²¹ through social media platforms and regular emails to its supporters, and through other communications outlets.²² CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC's work. The D.C. Circuit has held that a requester may qualify as a news media entity if it "distribute[s] [its] work' by issuing press releases to media outlets in order to reach the public indirectly" 799 F.3d. at 1125-26.

Courts have found that other organizations with functionally similar missions and which have engaged in similar public education activities qualify as "representatives of the news media," even if engaged in litigation or other advocacy beyond educating the public about the operations of government. *See e.g. Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121-25 (D.C. Cir. 2015) (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA a news media requester); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding "public interest law firm" Judicial Watch a news media requester); *Elec. Privacy Info. Ctr. V. DOD*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that published a biweekly email newsletter a news media requester). Congress made clear that, "It is critical that the phrase 'representative of the news media' be interpreted broadly if the act is 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), cited in *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

In the event the fee waiver is not granted, I may not be charged for the first two hours of search time, or for the first hundred pages of duplication. I do not at this time authorize processing costs exceeding \$100. Please contact me and advise me of the cost of this request if processing costs exceed \$100.

IV. Application for Expedited Processing

I request that the processing of this request be expedited pursuant to 28 C.F.R. § 16.5(e)(1)(iv). As described in Part II, the subject of the request involves a matter of significant media interest.²³

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

V. Delivery of Requested Records

²⁰ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

²¹ See Campaign Legal Center "Reference Materials" library, <https://goo.gl/MPCafz>.

²² See Campaign Legal Center, MEDIUM, <https://medium.com/clc-blog>.

²³ See sources cited *supra* at notes 3 and 5.

In order to expedite delivery of these requested documents and in order to reduce possible fees incurred, I am requesting that these documents be delivered to me either digitally via email (in PDF format), or on a data disk via the U.S. Postal Service. Please email copies of responsive documents to me at:

(b) (6)

Or, please mail copies of responsive documents to:

Delaney Marsco
Campaign Legal Center
1411 K St NW, Suite 1400
Washington, D.C. 20005

Should you elect, for any reason, to withhold, redact, or deny the release of any record responsive to this request, I request that you provide me with an explanation for each withholding/redaction, along with pertinent legal citations.

Please confirm receipt of this request and provide me with an estimate of processing time.

Thank you.

Sincerely,

/s/ Delaney Marsco

Legal Counsel, Ethics
Campaign Legal Center

(b) (6)



April 18, 2018

By Electronic Mail (usoge@oge.gov)

OGE FOIA Officer
Office of Government Ethics
Suite 500
1201 New York Avenue, NW.
Washington, DC 20005-3917

RE: Freedom of Information Act Request

Dear FOIA Officer:

The Campaign Legal Center (CLC) submits this request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, for the U.S. Office of Government Ethics (OGE) records specified below.

I. Requested Records

CLC requests all records OGE provided via flash drive to members of the U.S. House of Representatives Committee on Oversight and Government Reform on **April 12, 2018**.¹

If some portions of the requested records are exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. 5 U.S.C. § 552(b). If any portion of the requested records is exempt from disclosure, please provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972).

¹ See "Letter to Members of the House Oversight and Government Reform Committee," signed by OGE Acting Director David J. Apol (Apr. 12, 2018), <https://bit.ly/2H6nvFX>.

II. Background

In recent months, the subject of legal defense funds² established to facilitate the payment of executive branch employees' legal fees has garnered significant media attention.³ OGE released records on February 1, 2018 surrounding the consultation process for a specific legal defense fund, the "Patriot Legal Expense Fund."⁴ Employees of Wiley Rein, LLP, a Washington, D.C.-based legal services firm,⁵ requested OGE's review of the fund, and the documents released by OGE indicate that the Ethics Law and Policy Branch helped coordinate the review.⁶ The release of this information generated additional considerable interest from the media.⁷

Even though interest in legal defense funds grows, it remains difficult for the public to assess the funds since no statutory or regulatory framework for their establishment exists.⁸ Moreover, information about legal defense funds in the executive branch is not generally available. Through informal advisory opinions, OGE has said that legal defense funds must meet certain contribution and administration guidelines, and generally "be operated consistent with ethics rules."⁹ However, the process by which OGE assesses legal defense funds brought to its attention remains a black box.

This opacity is especially problematic in the case of the Patriot Legal Expense Fund because the draft agreement released by OGE raises compliance issues with regard to election, tax, and ethics laws. As a result, the U.S. House of Representatives Committee on Oversight and Government Reform has requested documents and an in-person briefing on the process surrounding the review and establishment of the fund.¹⁰ Congress has

² As used in this request, the term "legal defense fund" refers to any arrangement, promise, trust, corporation, or other entity to facilitate the payment of legal fees of a government employee other than by the employee himself or herself.

³ See, e.g., Cristina Alesci and Curt Devin, *Ethics office clarifies rules for WH aides' legal defense*, CNN (Sept. 15, 2017), <https://goo.gl/DpqTSg>; Editorial Board, *Who pays for the White House to lawyer up?*, WASH POST (Sept. 19, 2017), <https://goo.gl/apGDjT>; Darren Samuelsohn, *White House legal defense fund close to launching*, POLITICO (Oct. 2, 2017), <https://goo.gl/WTLU9E>; Tucker Higgins, *Trump to pay his own legal bills, contribute to legal fund for White House staff*, CNBC (Nov. 17, 2017), <https://goo.gl/2r4Uw1>.

⁴ Office of Government Ethics Resources, Patriot Legal Expense Fund Trust, LLC, <https://goo.gl/uHjKZA>.

⁵ Wiley Rein, <https://www.wileyrein.com/about.html>.

⁶ Email from Seth H. Jaffe, Chief, Ethics Law and Policy Branch, <https://goo.gl/uHjKZA>.

⁷ See, e.g., Cristina Alesci, Jeremy Diamond & Katelyn Polantz, *Ethics office unofficially OKs legal defense fund for White House staffers*, CNN (Feb. 2, 2018), <https://goo.gl/K4JZ8e>; Darren Samuelsohn, *Legal defense fund set up for Trump aides in Russia investigations*, POLITICO (Feb. 2, 2018), <https://goo.gl/ryHjud>; Michelle Ye Hee Lee, *Legal defense fund for Trump aides launches amid questions about donor transparency*, WASH. POST (Feb. 28, 2018), <https://goo.gl/3bHv3b>; Jennifer Jacobs & Justin Sink, *Trump Allies Launch Legal Fund for Aides Hit by Russia Probes*, BLOOMBERG (Feb. 27, 2018), <https://goo.gl/6zXAog>.

⁸ Office of Government Ethics Legal Advisory 17-10, "Clarification of Past Legal Defense Fund Guidance Provided in OGE Informal Advisory Opinion 93x21," Sept. 28, 2017, <https://goo.gl/oUfXuD>.

⁹ *Id.*; see also Office of Government Ethics Informal Advisory 93x21, "Employee Legal Defense Funds, 18 U.S.C. § 209, and Crandon v. U.S.," Aug. 30, 1993, <https://goo.gl/w29Ney> (Payments from a legal fund on behalf of a Federal employee are allowed if persons unconnected to the employee's official duties oversee the fund, the donors' identities remain unknown, the money directly pays the legal fees, the donations are not from prohibited sources, and the employee does not solicit the funds).

¹⁰ *Letter to U.S. Office of Government Ethics Acting Director David J. Apol*, 115th Congress, H. Comm. on Oversight and Gov't Reform (Apr. 2, 2018), available at <https://bit.ly/2H6nvFX>.

expressed concern, among other things, that the fund deviates from OGE's past guidance and lacks adequate transparency and accountability.¹¹

Therefore, the release of the requested documents will contribute significantly to the public's understanding of how legal defense funds generally are created in the government, the extent to which OGE was involved in the development of this particular legal defense fund, and the level of scrutiny given to the legal defense fund.¹²

III. Application for Fee Waiver or Limitation of Fees

A. The request is made for non-commercial purposes and will contribute significantly to public understanding of the operations or activities of government.

FOIA provides that the agency shall furnish requested records without or at reduced charge 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).

As described above in Part II, the requested materials involve matters of significant public interest. Records likely to be disclosed in response to this request will contribute significantly to the public's understanding of how legal expense funds generally, and one legal expense fund in particular, are assessed from an ethics perspective. These details are not already publicly available and the records would provide a more thorough public understanding of the operations of the government.

CLC will use records responsive to this request in the creation of widely disseminated materials and analysis that will educate the public about these matters and the operations of the government. CLC anticipates analyzing the materials gathered through this FOIA request to develop reports,¹³ write blogs,¹⁴ and author op-eds.¹⁵ CLC's research and reports are widely disseminated on its blog,¹⁶ through its own website,¹⁷ through social media

¹¹ *Id.*

¹² "Because of these and other ethics considerations, individuals should consult with an agency ethics official or OGE before establishing a legal defense fund." Office of Government Ethics Legal Advisory 17-10, <https://goo.gl/oUfXuD>.

¹³ See, e.g., Lawrence M. Noble and Brendan M. Fischer, *Funding the Presidential Nominating Conventions: How a Trickle of Money Turned Into a Flood*, Campaign Legal Center (July 26, 2016), <https://goo.gl/yUaFdV>.

¹⁴ See, e.g., Brendan M. Fischer, *How Trump's Plan to Repeal the Johnson Amendment Could Unleash 'Super Dark Money' Into Our Elections*, Campaign Legal Center blog (Feb. 3, 2017), <https://goo.gl/Bs1U94>; *Filling the Swamp: Inauguration and Transition Funding*, Campaign Legal Center blog (Jan. 19, 2017), <https://goo.gl/gA87YU>.

¹⁵ See, e.g., Trevor Potter, *Donald Trump Hasn't Solved Any of His Conflicts of Interest*, WASH. POST (Jan. 11, 2017), <https://goo.gl/DPnEVn>.

¹⁶ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹⁷ See Campaign Legal Center "Reference Materials" library, <https://goo.gl/MPCafz>.

platforms like Facebook¹⁸ and Twitter,¹⁹ and regular emails to its supporters, among other communications outlets.²⁰

CLC staff have significant knowledge in ethics and government accountability, and news media regularly rely upon CLC's analysis and expertise.²¹ In addition to its own blogs and reports, CLC anticipates analyzing the requested records and disseminating the materials among traditional news outlets.

Requester CLC is a non-profit public interest organization organized under Section 501(c)(3) of the Internal Revenue Code, and this request is made for non-commercial purposes.

For these reasons, we request that any applicable fees associated with this request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver in this instance would fulfill Congress' intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

B. CLC qualifies for a fee waiver as a "representative of the news media."

CLC additionally requests that it not be charged search or review fees for this request because the organization meets the definition of a "representative of the news media" for purposes of the FOIA, since CLC "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(II)-(III).

As the D.C. Circuit has held, the "representative of the news media" test is focused on the requestor rather than the specific FOIA request. *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121 (D.C. Cir. 2015). CLC satisfies this test because (as noted in Part III(A)) CLC applies its expertise and editorial skills to turn raw materials into reports, articles, and op-eds that are widely disseminated on its blog,²² through its own website,²³ through social media platforms and regular emails to its supporters, and through other communications outlets.²⁴ CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC's work. The D.C. Circuit has held that a requester may qualify as a news media entity if it "distribute[s] [its] work'

¹⁸ <https://www.facebook.com/CampaignLegalCenter/>.

¹⁹ See <https://twitter.com/CampaignLegal>.

²⁰ See Campaign Legal Center blog at MEDIUM, <https://medium.com/clc-blog>.

²¹ See, e.g., Elizabeth Williamson, *Highflying Mnuchins Take the Country for a Ride*, N.Y. TIMES (Sept. 14, 2017), <https://goo.gl/6kdWbL>; Philip Bump, *Why Ben Carson's appearance in Phoenix was likely a violation of federal law*, WASHINGTON POST (Aug. 23, 2017), <https://goo.gl/j6ETWA>; Manu Raju, *Trump's Cabinet Pick Invested in Company, Then Introduced a Bill to Help It*, CNN (Jan. 17, 2017), <https://goo.gl/zmfayt>; Christina Wilkie and Paul Blumenthal, *Trump Just Completely Entangled His Business and the U.S. Government*, HUFFINGTON POST (Jan. 11, 2017), <https://goo.gl/UdjZS7>.

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by issuing press releases to media outlets in order to reach the public indirectly” 799 F.3d. at 1125-26.

Courts have found that other organizations with functionally similar missions and which have engaged in similar public education activities qualify as “representatives of the news media,” even if engaged in litigation or other advocacy beyond educating the public about the operations of government. *See e.g. Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121-25 (D.C. Cir. 2015) (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA a news media requester); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding “public interest law firm” Judicial Watch a news media requester); *Elec. Privacy Info. Ctr. V. DOD*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that published a biweekly email newsletter a news media requester). Congress made clear that, “It is critical that the phrase ‘representative of the news media’ be interpreted broadly if the act is 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), cited in *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

In the event the fee waiver is not granted, I may not be charged for the first two hours of search time, or for the first hundred pages of duplication. I do not at this time authorize processing costs exceeding \$100. Please contact me and advise me of the cost of this request if processing costs exceed \$100.

IV. Application for Expedited Processing

I request that the processing of this request be expedited pursuant to 5 C.F.R. § 2604.301(e)(2)(ii), which allows for expedited processing when a requester demonstrates a compelling need or urgency for the information (i.e., when there is an urgency to inform the public about an actual or alleged Federal Government activity). As described in Part II, the subject of the request involves a matter of significant media interest.²⁵ The media attention surrounding the Patriot Legal Expense Fund highlights the public’s urgent need to be informed about the process surrounding its establishment.

Additionally, the letter addressed to Acting Director Apol from Congress, which requests an in-person briefing and the documents sought here, nicely outlines the compelling reasons for this information’s release.²⁶ The thrust of the Oversight Committee’s various concerns is that the Patriot Legal Expense Fund, as it is known to Congress, lacks transparency and accountability in its management and administration, potentially in violation of law.²⁷ Therefore, Congress has requested documents that will provide context surrounding how the legal expense fund was assessed.²⁸ Indeed, the very fact that OGE is being subject to these types of inquiries by the public’s elected officials demonstrates the compelling need for these documents to be released pursuant to this request.

²⁵ See sources cited *supra* at notes 3 and 7.

²⁶ Letter to U.S. Office of Government Ethics Acting Director David J. Apol, *supra* note 10.

²⁷ *Id.*

²⁸ *Id.*

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

V. Delivery of Requested Records

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Or, please mail copies of responsive documents to:

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1411 K St NW, Suite 1400
Washington, D.C. 20005

Should you elect, for any reason, to withhold, redact, or deny the release of any record responsive to this request, I request that you provide me with an explanation for each withholding/redaction, along with pertinent legal citations.

Please confirm receipt of this request and provide me with an estimate of processing time.

Thank you.

Sincerely,

/s/ Delaney Marsco

Legal Counsel, Ethics
Campaign Legal Center

(b) (6)

Rachel K. McRae

From: Alexander, Dan (b) (6)
Sent: Friday, June 29, 2018 6:53 PM
To: USOGE
Subject: FOIA Request 4

Hello,

My name is Dan Alexander, and I'm a reporter at Forbes Magazine. I would like to file a Freedom of Information Act request for all emails Christopher Dale sent, received, or was copied on from June 14, 2018 to June 19, 2018.

Thanks,
Dan

Dan Alexander
Associate Editor, Forbes
(b) (6)

Rachel K. McRae

From: Alexander, Dan (b) (6)
Sent: Friday, June 29, 2018 6:53 PM
To: USOGE
Subject: FOIA Request 5

Hello,

My name is Dan Alexander, and I'm a reporter at Forbes Magazine. I would like to file a Freedom of Information Act request for all emails David Apol sent, received, or was copied on from June 14, 2018 to June 19, 2018.

Thanks,
Dan

Dan Alexander
Associate Editor, Forbes
(b) (6)

Rachel K. McRae

From: (b) (6) on behalf of research info (b) (6)
Sent: Friday, November 2, 2018 2:16 PM
To: USOGE
Subject: Freedom of Information Request

Democratic National Committee

430 S Capitol Street SE

Washington, DC 20003

November 2, 2018

OGE FOIA Officer

Office of Government Ethics

Suite 500

1201 New York Avenue, NW.

Washington, DC 20005-3917

Dear Freedom of Information Act Officer:

Pursuant to the Federal Freedom of Information Act, 5 U.S.C. § 552, I am writing on behalf of the Democratic National Committee to request the following records in the possession of the Office of Government Ethics:

- All e-mails (including attachments) sent or received by any of the following Office of Government Ethics staff that mention the following keywords in the subject, body, or attachment of the e-mail:

Office of Government Ethics staff:

- Emory A. Rounds, Director
- David J. Apol, General Counsel
- Seth Jaffee, Chief of the Ethics Law and Policy Branch
- Deborah Bortot, Chief of the Presidential Nominations Branch
- Shelley K. Finlayson, Chief of Staff and Program Counsel
- Dale “Chip” Christopher, Deputy Director for Compliance

- Daniel L. Skalla, Chief of the Financial Disclosure Branch
- Doug Chapman, Chief of the Program Review Branch
- Diana J. Veilleux, Chief of the External Affairs and Performance Branch
- Nicole Stein, Chief of the Agency Assistance Branch

Keywords:

- “Diane Auer”
- “Diane Jones”
- “Auer Jones”
- “Auer-Jones”
- “Auer – Jones”
- “Excellence in Higher Education”
- “CEHE”
- “C.E.H.E.”
- “Career Education”
- “AJsquared”
- “Urban Institute”
- “Washington Campus”

This request covers February 1, 2018 to present.

The Democratic National Committee is **not** a commercial requester. We understand that there might be costs associated with this request. We would request a waiver of fees and ask for you to contact us by e-mail at (b) (6) before incurring charges if this request will be in excess of \$50.

Our preferred reproduction format is an electronic file e-mailed to (b) (6). If this is not possible, we request that you provide access to these records electronically via an FTP site, or mail electronic copies of the records to us on removable media, such as a CD or flash drive. If none of these delivery methods are feasible, we request that you mail paper copies of the records to us at the following address:

Democratic National Committee

Attn: Research Department

430 S Capitol Street SE

Washington, DC 20003

We would appreciate your communicating with us by e-mail at (b) (6) rather than by mail or telephone, if you have questions regarding this request.

If only portions of a record are exempt from the Freedom of Information Act, we ask that you release the entire document with any necessary redactions. If all or any part of this request is denied or redacted, please cite the specific exemption which you believe justifies your redactions or refusal to release the information and inform us of your agency's administrative appeal procedures available to us under the law.

Thank you for your assistance in this matter.

Sincerely,

Nick Bauer, Research Director

On behalf of:

The Democratic National Committee

430 S Capitol Street SE

Washington, DC 20003

Rachel K. McRae

From: (b) (6) on behalf of research info (b) (6)
Sent: Friday, November 2, 2018 2:13 PM
To: USOGE
Subject: Freedom of Information Request

Democratic National Committee

430 S Capitol Street SE

Washington, DC 20003

November 2, 2018

OGE FOIA Officer

Office of Government Ethics

Suite 500

1201 New York Avenue, NW.

Washington, DC 20005-3917

Dear Freedom of Information Act Officer:

Pursuant to the Federal Freedom of Information Act, 5 U.S.C. § 552, I am writing on behalf of the Democratic National Committee to request the following records in the possession of the Office of Government Ethics:

- All e-mails (including attachments) exchanged between the following Office of Government Ethics staff with Department Of Education Principle Deputy Under Secretary Diane Auer Jones. We ask that you search for all e-mails exchanged with Diane Auer Jones' official Department of Labor and Department of Education e-mail addresses and any non-government e-mail addresses associated with Ms. Auer Jones, including – but not limited to – (b) (6), and (b) (6)

- All e-mails (including attachments) exchanged between the following Office of Government Ethics staff with [any email address with the @careered.com domain](#).

Office of Government Ethics staff:

- Emory A. Rounds, Director
- David J. Apol, General Counsel

- Seth Jaffee, Chief of the Ethics Law and Policy Branch
- Deborah Bortot, Chief of the Presidential Nominations Branch
- Shelley K. Finlayson, Chief of Staff and Program Counsel
- Dale “Chip” Christopher, Deputy Director for Compliance
- Daniel L. Skalla, Chief of the Financial Disclosure Branch
- Doug Chapman, Chief of the Program Review Branch
- Diana J. Veilleux, Chief of the External Affairs and Performance Branch
- Nicole Stein, Chief of the Agency Assistance Branch

This request covers February 1, 2018 to present.

The Democratic National Committee is **not** a commercial requester. We understand that there might be costs associated with this request. We would request a waiver of fees and ask for you to contact us by e-mail at (b) (6) before incurring charges if this request will be in excess of \$50.

Our preferred reproduction format is an electronic file e-mailed to (b) (6). If this is not possible, we request that you provide access to these records electronically via an FTP site, or mail electronic copies of the records to us on removable media, such as a CD or flash drive. If none of these delivery methods are feasible, we request that you mail paper copies of the records to us at the following address:

Democratic National Committee

Attn: Research Department

430 S Capitol Street SE

Washington, DC 20003

We would appreciate your communicating with us by e-mail at (b) (6) rather than by mail or telephone, if you have questions regarding this request.

If only portions of a record are exempt from the Freedom of Information Act, we ask that you release the entire document with any necessary redactions. If all or any part of this request is denied or redacted, please cite the specific exemption which you believe justifies your redactions or refusal to release the information and inform us of your agency’s administrative appeal procedures available to us under the law.

Thank you for your assistance in this matter.

Sincerely,

Nick Bauer, Research Director

On behalf of:

The Democratic National Committee

430 S Capitol Street SE

Washington, DC 20003

Rachel K. McRae

From: Michael Scarcella (b) (6)
Sent: Monday, November 26, 2018 4:41 PM
To: USOGE
Subject: FOIA request (media)

To the US Office of Government Ethics:

I am seeking, pursuant to the Freedom of Information Act, any and all emails and/or other correspondence regarding the new entrant 278e filing from Arthur Culvahouse Jr. The time period for any such communication should be between, and include, June 1, 2018 to Nov. 19, 2018.

Mr. Culvahouse electronically signed his Public Financial Disclosure Report on August 24, 2018. David Apol certified the filing on Nov. 19, 2018, and it was released to the public shortly thereafter.

Mr. Culvahouse, whose nomination was publicly announced Nov. 5, 2018, is a prominent longtime lawyer in Washington who was picked to be US ambassador to Australia, a position that has remained vacant since 2016. The nomination is pending at the US Senate Committee on Foreign Relations. The nomination of Mr. Culvahouse has generated widespread media attention.

My records request, should any files be located and be made public, might show any communication to and from OGE to counsel to Mr. Culvahouse regarding: legal services in private practice; compensation arrangements; divestiture and other ethics issues; and/ or confidentiality matters. (Mr. Culvahouse, for instance, did not disclose the names of three clients: one was subject to a non-public investigation; the other two are purportedly subject to DC and NY bar confidentiality rules.)

I can be reached at the contact information below. Thank you and regards,

Mike Scarcella

--
Mike Scarcella
Senior Editor | [National Law Journal](#) & [law.com](#)
1100 G Street NW, Suite 900 | Washington, DC 20005
(b) (6)

November 30, 2018

BY ELECTRONIC MAIL

OGE FOIA Officer
Office of Government Ethics
Suite 500
1201 New York Avenue, NW.
Washington, DC 20005-3917
VIA EMAIL: usoge@oge.gov

FOIA REQUEST
Fee waiver requested

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552.

I request all correspondence between the U.S. Office of Government Ethics and U.S. Department of Education concerning the 2018 public financial disclosure report of Elisabeth P. “Betsy” DeVos.

I ask that you please provide these records in an electronic format and produce them on a rolling basis as they become available.

If you choose to deny this request in whole or in part, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Please also release all segregable portions of otherwise exempt material.

Because this is a request by the news media for information of significant public interest, I ask that you waive any applicable fees. This information is being sought on behalf of POLITICO for dissemination to the general public. Release of this information will contribute significantly to public understanding of government operations and activities.

I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

If you have questions regarding this request or need me to clarify this request, please contact me by phone at (b) (6) or (b) (6)

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Michael Stratford
POLITICO
1000 Wilson Blvd.
8th Floor
Arlington, VA 22209

November 30, 2018

BY ELECTRONIC MAIL

OGE FOIA Officer
Office of Government Ethics
Suite 500
1201 New York Avenue, NW.
Washington, DC 20005-3917
VIA EMAIL: usoge@oge.gov

FOIA REQUEST
Fee waiver requested

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552.

I request all correspondence between the U.S. Office of Government Ethics and Elisabeth P. “Betsy” DeVos (or her attorneys or other representatives) between January 1, 2018 and the date that this request is processed.

I ask that you please provide these records in an electronic format and produce them on a rolling basis as they become available.

If you choose to deny this request in whole or in part, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Please also release all segregable portions of otherwise exempt material.

Because this is a request by the news media for information of significant public interest, I ask that you waive any applicable fees. This information is being sought on behalf of POLITICO for dissemination to the general public. Release of this information will contribute significantly to public understanding of government operations and activities.

I reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

If you have questions regarding this request or need me to clarify this request, please contact me by phone at (b) (6) or (b) (6).

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Michael Stratford
POLITICO
1000 Wilson Blvd.
8th Floor
Arlington, VA 22209