



SOUTHEASTERN LEGAL FOUNDATION
Rebuilding the American Republic®

May 24, 2019

VIA E-MAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Tracking No. 7016 2760 0000 1861 4583

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001
MRUFOIA.Requests@usdoj.gov

RE: Freedom of Information Act Request

Dear Sir or Madam:

Southeastern Legal Foundation (SLF) is one of the country's leading nonprofit public interest law firms and policy centers. Now in its 43rd year, SLF undertakes research on policy issues of interest to the general public and is committed to protecting the rule of law. Appearing over 20 times a year before the U.S. Supreme Court through both direct representation and as *amicus curiae*, SLF has won critical cases on government accountability, unconstitutional government regulation, free speech, and property rights.¹

As all attorneys should, SLF takes its ethical obligations seriously, especially when the most public of attorneys engage in professional misdeeds which undermine and jeopardize the necessary public confidence on which the rule of law depends. This is why SLF filed a bar complaint against President Bill Clinton² and a subsequent mandamus action³ with the Arkansas Supreme Court to take action on the complaint and Judge Susan Weber-Wright's contempt order,⁴ which ultimately resulted in President Bill Clinton's loss of law license, payment of a \$25,000 fine, and disbarment by the U.S. Supreme Court.⁵ SLF has been at the forefront of exposing fraud

¹ *Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. Jacksonville*, 508 U.S. 656 (1993); *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999); *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427 (2014); *Nat'l. Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617 (2018).

² https://docs.wixstatic.com/ugd/3f4d64_79fce472b6a84ec19b258f6f34da65a3.pdf.

³ Petition for Writ of Mandamus, *Hogue v. Neal*, 340 Ark. 250 (2000) (No. 99-1451), https://docs.wixstatic.com/ugd/3f4d64_d9128da8623e470b9f7641ff9e834454.pdf.

⁴ *See Jones v. Clinton*, 36 F. Supp. 2d 1118, 1120 (D. Ark. 1999).

⁵ *Clinton resigns from bar, beats deadline for disbarment*, Washington Times (Nov. 10, 2001), <https://www.washingtontimes.com/news/2001/nov/10/20011110-031024-7822r/>.

on the court by the most high profile attorney in our country, and holding him accountable for that fraud. SLF continues its efforts to preserve the integrity of the profession and judiciary by seeking the records related to the alleged and suspected attorney misconduct with respect to the Carter Page FISA application and renewals. We strive to hold any level of government accountable when it violates the law. SLF is actively engaged in an inquiry into Foreign Intelligence Surveillance Act (FISA) application process.

Request

1. All records regarding, reflecting, or related to any orders, opinions, decisions, sanctions, or other records related to any investigation or finding by the Foreign Intelligence Surveillance Court (FISC), any other court, any state licensing bar, any disciplinary committee, or any other entity, that any attorney violated the FISC Rules of Procedure or applicable Rules of Professional Conduct in connection with the Carter Page FISA application and renewals or the Section 702 violations the government orally advised the FISC about on October 24, 2016.
2. All records regarding, reflecting or related to any orders, opinions, decisions, sanctions, or other records finding by the FISC, any other court, any state licensing bar, any disciplinary committee, or any other entity, that any attorney violated or did not violate FISC Rule of Procedure 13, specifically, in connection with the Carter Page FISA application and renewals or the Section 702 violations the government orally advised the FISC about on October 24, 2016.
3. All records regarding, reflecting or related to any referral or complaint made to any attorney disciplinary body for conduct related to the Carter Page FISA application and renewals or the Section 702 violations the government orally advised the FISC about on October 24, 2016.

Format of Production

Pursuant to 5 U.S.C. § 552(a)(3)(B), SLF requests that the production of any and all responsive records be made electronically. Please email any and all responsive records to kherrmann@southeasternlegal.org. SLF is willing to receive responsive records on a rolling basis, if needed, to expedite production and response. If this is not possible, please let us know with an explanation of the reason for any delay. If any or all of the production is refused based on some privilege or other legal ground, please set forth the legal basis for the denial so that SLF may properly address the denial.

Request for a Fee Waiver

SLF makes this request for records pursuant to Freedom of Information Act, 5 U.S.C. § 552, *et seq.* Accordingly, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), SLF requests that the agency furnish the records without charge. While a court is ultimately not required to defer to an agency's interpretation of the FOIA, in anticipation of a request for additional information, we have organized our fee waiver justification to coincide with the six factors listed in the 1987 fee waiver policy guide memorandum by then-Assistant Attorney General Stephen J. Markman to determine

whether disclosure 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.

Disclosure is in the public interest.

The first factor is satisfied because the subject of the request concerns identifiable operations or activities of the DOJ. “[T]he phrase ‘operations and activities’ should be broadly construed.” 132 Cong. Rec. S16496 (Oct. 15, 1986) (Sen. Leahy). On October 21, 2016, the FBI and DOJ sought and received a FISA probable cause order from this Court authorizing the government to conduct electronic surveillance of an American citizen and volunteer advisor to the Trump presidential campaign, Carter Page. In total, the FBI and the DOJ obtained one initial FISA warrant targeting Carter Page and three renewals from this Court. The FBI and DOJ presented to this Court that initial application and all subsequent renewals had been verified, and each was certified by the Director or Deputy Director of the FBI and approved by the Attorney General, Deputy Attorney General, or the Senate-confirmed Assistant Attorney General for the National Security Division. The contents of the application and renewals remained secret until early 2018 when Congressman Devin Nunes, Chairman of the House Permanent Select Committee on Intelligence, publicly released a memorandum detailing alleged misconduct before this Court by the FBI and DOJ. Release of the memorandum followed President Trump’s decision to declassify a redacted version of the Carter Page FISA application. A few weeks later, the Select Committee’s Democratic members released their own memorandum responding to Congressman Nunes’ memo and unequivocally stating that neither the FBI nor the DOJ abused the FISA process or committed misconduct before this Court. This request directly implicates the DOJ’s activity and role in the Carter Page application and renewals and Section 702 certifications and violations.

The second factor is satisfied because the requested records have significant informative value into the operations and activities of the DOJ. Records related to possible attorney misconduct go the very heart of the DOJ’s operations and activities.

The third factor is satisfied because the requested records will contribute to “public understanding” because SLF will disseminate the requested information to the largest audience possible by disseminating it through the following various mediums: 1) its publicly available website (www.slfliberty.org) which combined receive nearly one million hits per year; 2) its regular mailings (averaging one mailing per week for a total of approximately three million per year) to interested parties providing educational information on the operations and activities of the DOJ; 3) its bi-annual or quarterly newsletters to interested parties, totaling approximately ten to twenty thousand per year, also providing educational information on the operations and activities of the DOJ; 4) regular spots on a wide-variety of radio programs; 5) spots on television programs; 6) frequent op-eds that run in national newspapers; 7) legislative testimony; 8) participation in legal and policy panels; and 9) SLF’s various social media accounts. SLF’s methods of dissemination, combined with its 43-year reputation as one of the nation’s leading constitutional public interest law firms and policy centers, supports granting SLF’s fee waiver request.

The fourth factor is satisfied because the requested records with “significantly” contribute to the public understanding. While certain facets may be publicly available, the communications between Comey and Brennan are not. See *Forest Guardians v. DOI*, 416 F.3d 1173 (10th Cir. 2005) (noting that piecemeal records available through court filings throughout the country, various websites, and a wide-variety of newspapers throughout the country does not make information “publicly available”). The records have the potential to reveal information that is not publicly available in any meaningful way regarding the operations of the federal agencies.

No commercial interest.

Disclosure of the requested records is not in the commercial interest of SLF because the Foundation has absolutely no commercial or financial interest in the requested information, and would receive no pecuniary benefit from the information sought. SLF is a nonprofit public interest law firm and policy center specializing in the practice of constitutional law. Rather, the requested records are of great public interest. Attorneys play an integral role in the execution of our system of laws. As officers of the court, licensed lawyers voluntarily submit to regulatory governance under strict codes of conduct administered by quasi-governmental bodies charged with enforcement of those codes. On top of that, courts maintain and enforce their own rules to protect the integrity of the judicial system. While no rule is more important than another, an attorney’s duty to be open and honest with the court at all times must always remain at the forefront and should guide every action an attorney takes. This is true not only for private attorneys, but especially so for our country’s government attorneys. President Bill Clinton’s surrender of his law license on his last day in office, followed by disbarment by the U.S. Supreme Court, for his violations of the Rules of Professional Conduct remind us that no one is above the law.

Two decades later, we again face a possible judicial crisis. Our nation’s highest law enforcement officers, national security advisors, and government attorneys are suspected of lying, misleading, and withholding information from this Court in order to obtain permission to conduct surveillance of American citizen Carter Page. If true, these misrepresentations may amount to professional misconduct including violations of the Rules of Professional Conduct in the various states where the attorneys are licensed and violations of the FISC Rules of Procedure.

If you deny all or any part of this request, please cite each specific exemption and legal ground you believe justifies your withholding of information, including notification of appeal procedures available under the law.

Sincerely,



Kimberly S. Hermann
General Counsel
Southeastern Legal Foundation