



Federal Bureau of Investigation
Washington, D.C. 20535

September 20, 2019

MR. WILLIAM F MARSHALL
JUDICIAL WATCH
SUITE 800
425 THRID STREET SW
WASHINGTON, DC 20024

Judicial Watch, Inc. v. Department of Justice
Civil Action No.: 19-CV-388
FOIPA Request No.: 1417872-000
Subject: All Communications from Andrew McCabe
Discussing the 25th Amendment and/or the Fitness of
the President of the United States
(April 1, 2017-May 31, 2017)

Dear Mr. Marshall:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Below you will find checked boxes under applicable statutes for the exemptions asserted to protect information exempt from disclosure. The appropriate exemptions are noted on the processed pages next to redacted information. In addition, a deleted page information sheet was inserted to indicate where pages were withheld entirely pursuant to applicable exemptions. An Explanation of Exemptions is enclosed to further explain justification for withheld information.

Section 552

Section 552a

(b)(1)

(b)(7)(A)

(d)(5)

(b)(2)

(b)(7)(B)

(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

(b)(7)(D)

(k)(2)

(b)(7)(E)

(k)(3)

(b)(7)(F)

(k)(4)

(b)(4)

(b)(8)

(k)(5)

(b)(5)

(b)(9)

(k)(6)

(b)(6)

(k)(7)

4 pages were reviewed and 2 pages are being released.

Please see the paragraphs below for relevant information specific to your request and the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

- Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].
- This information has been referred to the OGA(s) for review and direct response to you.
- We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. “Part 1” of the Addendum includes standard responses that apply to all requests. “Part 2” includes additional standard responses that apply to all requests for records on individuals. “Part 3” includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

Although your request is in litigation, we are required by law to provide you the following information:

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, D.C. 20001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following website: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.” Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state “Dispute Resolution Services.” Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Please direct any further inquiries about this case to the Attorney representing the Government in this matter. Please use the FOIPA Request Number and/or Civil Action Number in all correspondence or inquiries concerning your request.



See additional information which follows.

Sincerely,

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

The enclosed documents represent the final release of information responsive to your Freedom of Information/Privacy Acts (FOIPA) request.

To minimize costs to both you and the FBI, duplicate copies of the same document were not processed.

The final release contains pages FBI(19-cv-388)-1 – FBI(19-cv-388)-4.

This material is being provided to you at no charge.

FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum includes information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes additional standard responses that apply to all requests for records on individuals. Part 3 includes general information about FBI records. For questions regarding Parts 1, 2, or 3, visit the www.fbi.gov/foia website under "Contact Us." Previously mentioned appeal and dispute resolution services are also available at the web address.

Part 1: The standard responses below apply to all requests:

- (i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIA [5 U.S.C. § 552(c) (2006 & Supp. IV (2010))]. FBI responses are limited to those records subject to the requirements of the FOIA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.
- (ii) **National Security/Intelligence Records.** The FBI can neither confirm nor deny the existence of national security and foreign intelligence records pursuant to FOIA exemptions (b)(1), (b)(3), and PA exemption (j)(2) as applicable to requests for records about individuals [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2); 50 U.S.C § 3024(i)(1)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that national security or foreign intelligence records do or do not exist.

Part 2: The standard responses below apply to all requests for records on individuals:

- (i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.
- (ii) **Requests for Records for Incarcerated Individuals.** The FBI can neither confirm nor deny the existence of records which could reasonably be expected to endanger the life or physical safety of any incarcerated individual pursuant to FOIA exemptions (b)(7)(E), (b)(7)(F), and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (b)(7)(F), and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

- (i) **Record Searches.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching those systems or locations where responsive records would reasonably be found. A reasonable search normally consists of a search for main files in the Central Records System (CRS), an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled and maintained by the FBI in the course of fulfilling law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization and encompasses the records of FBI Headquarters (FBIHQ), FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide and includes Electronic Surveillance (ELSUR) records. For additional information about our record searches visit www.fbi.gov/services/information-management/foipa/requesting-fbi-records.
- (ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.
- (iii) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheets. These criminal history records are not the same as material in an investigative "FBI file." An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.
- (iv) **The National Name Check Program (NNCP).** The mission of NNCP is to analyze and report information in response to name check requests received from federal agencies, for the purpose of protecting the United States from foreign and domestic threats to national security. Please be advised that this is a service provided to other federal agencies. Private citizens cannot request a name check.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

**FEDERAL BUREAU OF INVESTIGATION
FOI/PA DELETED PAGE INFORMATION SHEET
Civil Action No.: 19-CV-00388
Release Date: September 20, 2019**

Total Withheld Page(s) = 2

Bates Page FBI(19-cv-388) Reference	Reason for Withholding (i.e., exemptions with coded rationale, duplicate, sealed by order of court, etc.)
FBI(19-cv-388) -3-4	Duplicate copies of 1-2

Deleted Page
No Duplication Fee
For this Page

Tuesday, May 16, 2017

At 12:30 pm on 05/16/2017, I met with Deputy Attorney General (DAG) Rod Rosenstein in his office at the Department of Justice. Also present were Tashina Gauhar and Jim Crowell. The following is a contemporaneous recollection of the main topics we discussed.

I began by telling him that today I approved the opening of an investigation of President Donald Trump. I explained that the purpose of the investigation was to investigate allegations of possible collusion between the president and the Russian Government, possible obstruction of justice related to the firing of FBI Director James Comey, and possible conspiracy to obstruct justice. The DAG questioned what I meant by collusion and I explained that I was referring to the investigation of any potential links between the Trump campaign and the Russian government. I explained that counterintelligence investigations of this sort were meant to uncover any the existence of any threat to national security as well as whether or not criminal conduct had occurred. Regarding the obstruction issues, I made clear that our predication was based not only on the president's comments last week to reporter Lester Holt (that he connected the firing of the director to the FBI's Russia investigation), but also on the several concerning comments the president made to Director Comey over the last few months. These comments included the President's requests for assurances of loyalty, statements about the Russia investigation and the investigation of General Michael Flynn. I also informed the DAG that Director Comey preserved his recollection of these interactions in a series of contemporaneously drafted memos. Finally, I informed the DAG that as a result of his role in the matter, I thought he would be a witness in the case.

The DAG then related his experiences at the White House on Monday, 05/08/2017. He began by stating that he had the feeling that the decision to fire the Director had been made before he arrived. At the White House, he first met with White House Counsel Donald McGahn, who told him that the President had drafted a letter to Director Comey that McGahn did not want the President to send. Shortly thereafter they met with the President and Attorney General Jeff Sessions, and possibly others, in the Oval Office. President Trump told the DAG he had written a letter to Director Comey, asked the DAG if he had seen the letter, and instructed McGahn to provide the DAG with a copy. The DAG described the letter to me as being a long list, possibly several pages, of the President's complaints with Director Comey. Among those complaints was a discussion about the FBI's Russia investigation, as well as a paragraph about the FBI Deputy Director. The DAG indicated to me that he retained a copy of the President's letter. The DAG said he told the President [redacted]

[redacted] The President then directed the DAG to write a memo explaining the reasoning for Director Comey's termination and that the DAG should include Russia. The DAG said to the President he did not think this was a good idea and that his memo did not need to include Russia. The President replied that he understood, but that he was asking the DAG to include Russia anyway. As our conversation continued the DAG proposed that he could potentially wear a recording device into the Oval Office to collect additional evidence on the President's true intentions. He said he thought this

b5 per DOJ/OIP

~~Classified By: [redacted]
Derived From: FBI NSIC CG
Declassify On: 50X1-HUM~~

might be possible because he was not searched when he entered the White House. I told him that I would discuss the opportunity with my investigative team and get back to him.

We discussed the issue of appointing a Special Counsel to oversee the FBI's Russia investigation. The DAG said he has two candidates ready, one of whom could start immediately. [REDACTED]

[REDACTED] The DAG said that he left a copy of the delegation with Acting Assistant Attorney General for National Security Dana Boente to execute in the DAG's absence if the DAG were suddenly removed from his position. [REDACTED]

b5 per DOJ/OIP

[REDACTED] He anticipated that he may be terminated when he puts the Special Counsel in place, in light of the president's anger with AG Sessions when the AG recused himself from the Russia investigation. The DAG further stated that he was told that others heard the President tell the AG "you were supposed to protect me."

[REDACTED] The DAG related to me that on Sunday, 05/14/2017, the AG asked him to participate in the interview of [REDACTED] for the position of FBI Director. [REDACTED]

b5 per DOJ/OIP

The DAG told me that he informed the AG that I should remain in my role as Acting Director until the permanent Director was chosen. The DAG opined that my only "problem" was that some people believe that I was involved in my wife's 2015 campaign for State Senate in Virginia. The DAG said it was a "credibility problem" because after having told him during my May 13 interview that I played no role in her campaign and attended no campaign events, the DAG said a staffer had provided him with a photograph found on the internet of me and my wife wearing Dr. Jill McCabe campaign t-shirts. The DAG suggested that this photograph contradicted my statement that I had not campaigned for my wife. I pointed out to the DAG that the photograph he saw was taken not at a campaign event, but rather at [REDACTED]

b6 -2
b7C -2

[REDACTED] I further informed the DAG that I confirmed with my ethics counsel at FBI that the Hatch Act does not prohibit wearing a campaign button or shirt away from the office, and that attending [REDACTED] wearing such a shirt does not constitute proscribed political activity.