



## FREEDOM OF INFORMATION ACT REQUEST

August 8, 2017

Laurie Day  
Chief, Initial Request Staff  
Office of Information Policy  
United States Department of Justice  
Suite 11050  
1425 New York Ave., NW  
Washington, DC 20530-0001

**Via Fax:** (202) 514-1009

**Re:** Certain JMD, **Office of the Attorney General, and/or Office of Information Policy** records — “Elizabeth Carlisle” correspondence

Dear Public Records Officer:

On behalf of the Competitive Enterprise Institute (CEI), please consider this request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* CEI is a non-profit public policy institute organized under section 501(c)3 of the tax code and with research, investigative journalism and publication functions, as well as a transparency initiative seeking public records relating to environmental and energy policy and how policymakers use public resources, all of which include broad dissemination of public information obtained under open records and freedom of information laws.

Please provide us, within twenty working days,<sup>1</sup> copies of **all emails to or from or copying (including also as bcc:) Carlisle, Elizabeth (or Elizabeth Carlisle), which emails are also a) to or from or copying (including also as bcc:), Sheldon Whitehouse, whether at an official “senate.gov” email account or sheldonwhitehouse@cox.net, and/or those which b) otherwise use “Sen. Whitehouse” and/or “Senator Whitehouse” or c) “RICO” anywhere in the thread, be it in the Subject field or body of the email.**

**Records responsive to this request will be dated over the ten-and-a-half month period March 1, 2016 through January 20, 2017, the last date on which Ms. Lynch served as Attorney General.**

**It appears that this was a DoJ account, ecarlisle@jmd.usdoj.gov. This is a Justice Management Division email account. As DoJ’s website states, “The Justice Management Division (JMD), under the direction of the Assistant Attorney General for Administration”.**

**As such, the likely custodian of these records is JMD/the Office of the Assistant Attorney General for Administration; however, given that the party assigned the account was the Attorney General, that jmd.usdoj.gov is a common domain for DoJ officials across the agency, and that this falls under the purview of the Office of Public Information — which likely has taken some steps related to these records since its existence was revealed, or known internally to be soon revealed — we do not limit our request to JMD files in the event DoJ has taken steps to locate those records or copies of those records elsewhere.**

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<sup>1</sup> See *Citizens for Responsible Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 186 (D.C. Cir. 2013), and discussion, *infra*.

*What we seek are the records as very specifically described herein, and we suggest that DoJ first search JMD/Office of the Assistant Attorney General for Administration files.*

*We request entire email/text threads of which any record responsive to this request is part.*

Relevant to one of our requests in the alternative for fee waiver (see below), we note recent revelations that correspondence to “AG Lynch” was sent to an email account [ecarlisle@jmd.usdoj.gov](mailto:ecarlisle@jmd.usdoj.gov) showing the name “Carlisle, Elizabeth” to, from or copying OAG officials Carolyn Pokorny, Shirlethia Franklin, Uma Amuluru, and Paige Herwig, as well as OPA’s Kevin S. Lewis and Melanie Newman, ODAG’s Matthew Axelrod and OLA’s Peter Kadzik.

We also note a colloquy between former Attorney General Lynch and Sen. Sheldon Whitehouse at a March 2016 hearing of the Senate Committee on the Judiciary addressing Justice Department Operations, in which Ms. Lynch, responding to Sen. Whitehouse’s question about using the Racketeer Influenced and Corrupt Organizations Act, or RICO, against political opponents of the ‘climate’ agenda, stated:

“This matter has been discussed. We have received information about it and have referred it to the FBI to consider whether or not it meets the criteria for which we could take action on”.

This exchange rightly generated numerous headlines questioning this use of DoJ resources.

**We request a rolling production**, if/as you see necessary and appropriate within what FOIA permits, with responsive records being processed and produced independent of any others, as no such production is dependent upon other records being released, that, e.g., JMD documents are not delayed until a search of OAG records is complete, records responsive to “a” above are not withheld until records responsive to “b” are processed, etc.

We do not seek the information for a commercial purpose. CEI is organized and recognized by the Internal Revenue Service as a 501(c)3 educational organization (not a “Religious...Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organization[.]”). As such, we also have no commercial interest possible in these records.

This request is made to inform the public about an interest of great public interest. **CEI seeks waiver of any fees** under FOIA on that basis. Disclosure of records responsive to this request will contribute “significantly” to public understanding of government operations or activities. As the latest in a series of senior Obama administration officials using alias or private email accounts, this is an issue that will continue to be one of interest and public education about the practices of government, and its compliance with federal recordkeeping and transparency laws, for some time. Request for these records plainly warrants fee waiver.

In the alternative, CEI requests waiver of its fees on the basis it is a media outlet. DoJ must address both of these requests in the event it denies one; failure to do so is *prima facie* arbitrary and capricious.

The provisions for determining whether a requesting party is a representative of the news media, and the “significant public interest” provision, are not mutually exclusive. Again, as CEI is a non-commercial requester, it is entitled to liberal construction of the fee waiver standards. 5 U.S.C.S. § 552(a)(4)(A)(iii), *Perkins v. U.S. Department of Veterans Affairs*. Alternately and only in the event DoJ refuses to waive our fees under the “significant public interest” test, which we would then appeal while requesting DoJ proceed with processing on the grounds that we are a media organization, we request a waiver or limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) (“fees shall be limited to reasonable standard charges for document duplication

when records are not sought for commercial use and the request is made by.... a representative of the news media...”).

However, we note that as the records (emails) are requested and available electronically, there are no copying costs.

Also, the federal government has already acknowledged that CEI qualifies as a media organization under FOIA.<sup>2</sup>

If you have any questions please do not hesitate to contact me. We look forward to your timely reply, and reserve and intend to exercise all appellate rights in the event DoJ fails to comply with FOIA and applicable judicial precedent requiring proper, substantive and timely response.

Respectfully submitted,



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<sup>2</sup> See e.g., Department of the Treasury FOIA Nos. 2012-08-053, 2012-08-054.