



**Judicial
Watch**[®]
*Because no one
is above the law!*

April 4, 2017

VIA CERTIFIED MAIL

Director of Information Disclosure
Office of Information Disclosure
National Security Council
Old Executive Office Building, Room 392
Washington, D.C. 20506

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Judicial Watch, Inc. (“Judicial Watch”) hereby requests that the National Security Council produce the following records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Privacy Act of 1974, 5 U.S.C § 552a:

1. Any and all requests for information, analyses, summaries, assessments, transcripts, or similar records submitted to any Intelligence Community member agency or any officer, employee, or representative thereof by former National Security Advisor Susan Rice regarding, concerning, or related to the following:

- **Any actual or suspected effort by the Russian government or any individual acting on behalf of the Russian government to influence or otherwise interfere with the 2016 presidential election.**
- **The alleged hacking of computer systems utilized by the Democratic National Committee and/or the Clinton presidential campaign.**
- **Any actual or suspected communication between any member of the Trump presidential campaign or transition team and any official or employee of the Russian government or any individual acting on behalf of the Russian government.**
- **The identities of U.S. citizens associated with the Trump presidential campaign or transition team who were identified pursuant to intelligence collection activities.**

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2. Any and all records or responses received by former National Security Advisor Susan Rice and/or any member, employee, staff member, or representative of the National Security Council in response to any request described in part 1 of this request.

3. Any and all records of communication between any official, employee, or representative of any Intelligence Community member agency and former National Security Advisor Susan Rice and/or any member, employee, staff member, or representative of the National Security Council regarding, concerning, or related to any request described in part 1 of this request.

The time frame for this request is January 1, 2016 to the present.

Please note that we are cognizant of the finding by the Court of Appeals for the District of Columbia Circuit that the National Security Council is not an agency subject to the FOIA. *Armstrong v. Executive Office of the President*, 90 F.3d 553 (1996). We note, however, that the *Armstrong* decision is predicated on the court's determination that the NSC, "does not exercise sufficiently independent authority to be an 'agency' for purposes of the Freedom of Information Act." The records sought in this request pertain to actions by the former National Security Advisor that demonstrate a much higher degree of independent authority than was contemplated by the court; specifically, the issuance of directives to the Intelligence Community related to the handling of classified national security information. In addition, recent and credible media reports indicate that former National Security Advisor Rice personally accessed sensitive national security computer files.¹ These activities do not fall within the scope of the NSC's role of merely advising and assisting the President.

Additionally, to the extent that the records sought by this request are determined to be beyond the scope of the FOIA or otherwise subject to withholding or redaction, we ask you to consider their release as a matter of public interest. The recent revelations of the role of former National Security Advisor Rice in "unmasking" the names of U.S. citizens identified in the course of intelligence collection activities and the potential that her actions contributed to the unauthorized disclosure of classified national security information are matters of great public interest. As articulated by the Circuit Court for the District of Columbia, "the purpose of FOIA is to permit the public to decide for itself whether government action is proper." *Int'l B. Elec. Workers Local 41 v. HUD*, 763 F.2d 435 (D.C. Cir. 1985). In this instance, release of the requested records would contribute greatly to the public's ability to make this determination as it pertains to the activities of the National Security Council. Finally, as a matter of statutory authority, "the need to protect classified information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified." 28 CFR

¹ <http://circa.com/politics/accountability/white-house-logs-indicate-susan-rice-consumed-unmasked-intel-on-trump-associates>

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17.27(c).

Please determine whether to comply with this request within the time period required by FOIA and notify us immediately of your determination, the reasons therefor, and the right to appeal any adverse determination to the head of the agency or his or her designee. 5 U.S.C. § 552(a)(6)(i). Please also produce all responsive records in an electronic format (“pdf” is preferred), if convenient. We also are willing to accept a “rolling production” of responsive records if it will facilitate a more timely production.

Judicial Watch also hereby requests a waiver of both search and duplication fees. We are entitled to a waiver of search fees because we are a “representative of the news media.” See 5 U.S.C. § 552(a)(4)(A)(ii)(II); see also *Cause of Action v. Federal Trade Comm.*, 799 F.3d 1108 (D.C. Cir. 2015); *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381 (D.C. Cir. 1989). For more than twenty years, Judicial Watch has used FOIA and other investigative tools to gather information about the operations and activities of government, a subject of undisputed public interest. We submit over 400 FOIA requests annually. Our personnel, which includes experienced journalists and professional writers on staff and under contract, use their editorial skills to turn this raw information into distinct works that are disseminated to the public via our monthly newsletter, which has a circulation of over 300,000, weekly email update, which has over 600,000 subscribers, investigative bulletins, special reports, www.judicialwatch.org website, *Corruption Chronicles* blog, and social media, including Facebook and Twitter, among other distribution channels. We have authored several books, including *Corruption Chronicles* by Tom Fitton (Threshold Editions, July 24, 2012), and *Clean House* by Tom Fitton (Threshold Editions, Aug. 30, 2016). In 2012, we produced a documentary film, “District of Corruption,” directed by Stephen K. Bannon. Our “news media” status has been confirmed in court rulings. See, e.g., *Judicial Watch, Inc. v. U.S. Dep’t of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000). As a tax exempt, 501(c)(3) non-profit corporation, we have no commercial interests and do not seek the requested records for any commercial use. Rather, we intend to use the requested records as part of our ongoing investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

Judicial Watch also is entitled to a waiver of both search fees and duplication fees because “disclosure of the information is in the public interest.” 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records undoubtedly will shed light on “the operations or activities of the government.” *Cause of Action*, 799 F.3d at 1115 (quoting 5 U.S.C. § 552(a)(4)(A)(iii)). Disclosure also is “likely to contribute significantly to the public understanding” of those operations or activities because, among other reasons, Judicial Watch intends to disseminate both the records and its findings to “a reasonably broad audience of persons interested in the subject” via its newsletter, email updates, investigative bulletins, website, blog, and its other, regular distribution channels. *Cause of Action*, 799 F.3d at 1116 (quoting *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 815

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(2d Cir. 1994)). Again, Judicial Watch does not seek the requested records for any commercial benefit or for its own “primary” benefit, but instead seeks them as part of its ongoing investigative journalism and public education efforts to promote integrity, transparency, and accountability in government and fidelity to the rule of law.

In the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch agrees to pay up to \$300.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or sdunagan@judicialwatch.org.

Thank you for your cooperation.

Sincerely,


Sean Dunagan

Judicial Watch, Inc.