



Federal Bureau of Investigation
Washington, D.C. 20535

September 16, 2019

VIA FEDERAL EXPRESS

WILLAM MARSHALL
JUDICIAL WATCH
SUITE 800
425 THIRD STREET, SW
WASHINGTON, DC 20024

Judicial Watch, Inc. v. U.S. Department of Justice
Civil Action No.: 19-cv-800

FOIPA Request No.: 1424914-000
Subject: All Final and Draft Copies of Talking Points
Related to the "Mid-Year Exam" Investigation

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	
<input type="checkbox"/> (b)(1)		<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)		<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)
<input type="checkbox"/> (b)(3)		<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
_____		<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
_____		<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
_____		<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)		<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input checked="" type="checkbox"/> (b)(5)		<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)			<input type="checkbox"/> (k)(7)

71 pages were reviewed and 1 is 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:

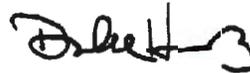
You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following website: <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 the above referenced Freedom of Information/Privacy Acts (FOIPA) request. These pages have been appropriately Bates-stamped FBI (19-cv-800)-1 through FBI (19-cv-800)-71. Please be advised that in addition to the 71 pages identified as responsive, the FBI determined that 45 pages pertaining to parts 2 and 3 of your request have been handled previously. See below for further details.

For Part 2 of your request, the final copy of "talking points prepared by the FBI for its Executive Assistant Directors ('EADs') relating to the 'Mid-Year Exam' investigation" was previously released in full or in part to you by letter dated August 17, 2018 in *James Comey et al. v. Judicial Watch*, Civil Action No. 18-cv-1448 (Bates-stamped pages 18-cv-01448 FBI-772 through 18-cv-01448 FBI-780).

Furthermore, Part 3 of your request which asks for "[a]ll final and draft copies of charts of 'statutory violations considered during the investigation [of Hillary Clinton's server], and the reasons for the recommendation not to prosecute..." was addressed by the FBI's letter dated November 30, 2018 in FOIPA Request No. 1405408-0 which sought the document referenced by Chief of Staff Rybicki (January 18, 2018 Interview with House Committee on the Judiciary). The FBI advised that it referred 36 pages of responsive material to the Department of Justice National Security Division (NSD). On or about June 2019, the FBI consulted with NSD who stated it had withheld all 36 pages in full pursuant to FOIA Exemptions 5, 6, and 7(C) by letter to you dated December 13, 2018.

It is unnecessary to adjudicate your request for a public fee waiver as no fees are being assessed.

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)(F), (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
DELETED PAGE INFORMATION SHEET

Judicial Watch, Inc. v. DOJ
Civil Action#: 19-cv-800
FOIPA Request No.: 1424914-0

Total Withheld Pages: 70

Bates Page "FBI (19-cv-800)" Reference	Reason for Withholding (i.e., exemptions with coded rationale, duplicate, sealed by order of court, etc.)
1-2; 4-6; 8; 14-15; 20-45; 47; 49; 52; 54; 57; 59; 61- 62; 64-65; 67-68; 70	b5-1, -2
3; 7	b5-1, -2; b7E-1
9-10; 12-13; 16; 18-19; 51; 56	b5-1, -2; b6-1/b7C-1
11; 17	b5-1, -2; b6-1/b7C-1; b7E-1
46; 48; 50; 55; 60; 66; 69	b5-1, -2; b6-2/b7C-2
53; 58; 63	b5-1, -2; b6-1, -2/b7C-1, -2

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Deleted Pages
No Duplication Fee
For these Pages
XXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Executive Summary:

Director Comey's Public Statements about the Investigation of Secretary Clinton's Use of a Personal Email Server during Her Time as Secretary of State

~~NOTE TO FBI EXECUTIVES: The purpose of these talking points is to provide FBI executive management with a factual basis to answer questions as they arise internally from the workforce. The talking points are not to be used for any external engagements. Any external engagements on this matter must be coordinated with the FBI Office of Public Affairs (OPA) and the Deputy Director. These talking points are not for distribution, either internally or externally.~~

If you have questions about what the Director has said publicly about the investigation, I urge you to read the Director's statement and review his congressional testimony. Answers to most of your questions can be found there.

Two public statements by Director Comey:

- July 5, 2016, statement to the press at FBIHQ; the full text can be found [here](#) (link to www.FBI.gov)
- July 7, 2016, sworn testimony before the House Committee on Oversight and Government Reform; [here](#) (link to www.c-span.org)

A few highlights from the Director's public statements:

- Investigators read every email of the approximately 30,000 emails provided by Secretary Clinton to the State Department in December 2014, and discovered 110 emails in 52 email chains that contained classified information at the time they were sent or received:
 - 8 email chains contained Top Secret information
 - 36 email chains contained Secret information
 - 8 email chains contained Confidential information
- The FBI recommended that no criminal charges were appropriate in this case for Secretary Clinton or her aides, due to a lack of evidence of criminal intent in this case
 - This recommendation was based solely upon the facts and applicable law
 - This investigation and the resulting recommendation were not influenced by any outside entity
- Previous mishandling cases prosecuted involved some combination of the below types of evidence, which did not exist in Secretary Clinton's case
 - Clearly intentional and willful mishandling of classified information;
 - Vast quantities of materials exposed in such a way as to support an inference of intentional misconduct;
 - Indications of disloyalty to the United States; and/or
 - Efforts to obstruct justice
- There is no double standard. The same recommendation (based on this set of facts) would have been put forth regardless of the individual. For example, if an FBI employee had engaged in this exact same conduct, he or she would not be recommended for prosecution (although administrative action might be taken)