

# EMPOWER OVERSIGHT

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*Whistleblowers & Research*



August 19, 2021

Via Electronic Transmission  
Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
Department of Justice  
6th Floor  
441 G St NW  
Washington, DC 20530

RE: Freedom of Information Act Request

Dear Mr. Hibbard:

## **Introduction**

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization that enhances independent oversight of government and corporate wrongdoing. We help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and we hold those authorities accountable to act on such reports.

## **Background**

We write today seeking information about whether Attorney General Merrick Garland has sought to prematurely terminate Special Counsel John Durham’s investigation. On October 19, 2020, then Attorney General William Barr appointed Mr. Durham to serve as Special Counsel to investigate violations of law in connection with the intelligence, counterintelligence, or law enforcement activities directed at the 2016 presidential campaigns. As then Attorney General Barr stated in a letter to the House and Senate Judiciary Committees, the purpose of this appointment was “to provide [Durham] and his team with the assurance that they could complete their work, without regard to the outcome of the election.”<sup>1</sup> The eventual findings and

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<sup>1</sup> <https://www.judiciary.senate.gov/imo/media/doc/Letter%20re%20Durham%20to%20Hill.pdf>

outcome of the Durham investigation are of extreme importance to the public, and one former FBI attorney has already been convicted for his misconduct.<sup>2</sup>

The Special Counsel regulations state that the Special Counsel shall exercise “the full power and independent authority to exercise all investigative and prosecutorial functions of any United States attorney” and, subject to a few exceptions, “shall determine whether and to what extent to inform or consult with the Attorney General” about the conduct of his investigation.<sup>3</sup>

Despite this independence, there is still a mechanism by which the current Attorney General can prematurely end the Special Counsel’s investigation. The Special Counsel regulations state that “90 days before the beginning of each fiscal year, the Special Counsel shall report to the Attorney General the status of the investigation, and provide a budget request for the following year. The Attorney General shall determine whether the investigation should continue and, if so, establish the budget for the next year.”<sup>4</sup>

Unfortunately, the Department has failed to inform the public as to whether Attorney General Garland intends to prematurely end the Special Counsel’s investigation. As reported by *The Wall Street Journal*:

The special counsel regulations required Mr. Durham to have reported on the status of the investigation and submitted a proposed budget by July 1 for the next fiscal year that begins in October. Attorney General Merrick Garland could then determine whether the investigation would continue and establish the budget. **A Justice Department spokeswoman declined to say whether Mr. Garland has decided to allow Mr. Durham’s probe to continue beyond September or approved a budget for the next fiscal year[.]**<sup>5</sup>

As reported by *The Washington Post*, some of the witnesses in the Special Counsel’s investigation have stated “that Attorney General Merrick Garland should push the special counsel to conclude his work.”<sup>6</sup> When asked during his confirmation hearing whether he would “commit to providing Special Counsel Durham with the staff,

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<sup>2</sup> Kristine Phillips and Kevin Johnson, *Ex-FBI Lawyer Clinesmith Pleads Guilty to Falsifying Email in Russia Probe in Durham’s First Case*, USA TODAY (Aug. 19, 2020).

<sup>3</sup> 28 C.F.R. § 600.6.

<sup>4</sup> 28 C.F.R. § 600.8(a)(1).

<sup>5</sup> Aruna Viswanatha and Sadie Gurman, *Durham Probe of What Sparked Russia Investigation Examines FBI Tipsters*, WALL STREET JOURNAL (Aug. 13, 2021).

<sup>6</sup> Matt Zapposky and Tom Hamburger, *Durham Grand Jury Explores Theory Someone Presented FBI with Fabricated Evidence in 2016 Russia Probe*, WASHINGTON POST (Aug. 17, 2021); see Daniel Chaitin, *Witnesses Grouse About Garland’s Handling of Durham Inquiry: Report*, WASHINGTON EXAMINER (Aug. 18, 2021).

resources, funds, and time needed to thoroughly complete the investigation,” Attorney General Garland failed to do so.<sup>7</sup>

With the fiscal year ending next month, it is vitally important that the public get answers as soon as possible about the government’s conduct. Transparency from the Department is the only way to ensure public trust that political appointees in the current administration have not improperly interfered with the Special Counsel’s investigation. In light of this, we are filing this FOIA request to seek key facts.

### **Records Request**

1. All records of communications from January 21, 2021 to the present between any personnel in the Special Counsel’s Office and personnel in the Office of the Attorney General regarding the Special Counsel’s budget for fiscal year 2022.
2. All records of communications from January 21, 2021 to the present between any personnel in the Special Counsel’s Office and personnel in the Office of the Deputy Attorney General regarding the Special Counsel’s budget for fiscal year 2022.
3. All records of communications from January 21, 2021 to the present among personnel within the Office of the Attorney General and the Office of the Deputy Attorney General regarding the Special Counsel’s budget for fiscal year 2022.

### **Definitions**

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records,

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<sup>7</sup> Jerry Dunleavy, *Merrick Garland Doesn’t Promise to Protect Durham Investigation or Release Report*, WASHINGTON EXAMINER (Feb. 22, 2021).

ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“REFERS,” “REFERRING TO,” “REGARDS,” REGARDING,” “RELATES,” “RELATING TO,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

### **Instructions**

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive. The singular form shall include the plural form and vice versa. The present tense shall include the past tense and vice versa.

### **Fee Waiver Request**

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, and has no commercial interest in making this request. Accordingly, pursuant to 5 U.S.C. § 552 (a)(4)(A)(ii)(II), it is subject only to “reasonable standard charges for document duplication.”

Moreover, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government.

The public has a significant interest in understanding the Justice Department’s conduct regarding Special Counsel Durham’s investigation. Empower Oversight is committed to government accountability and public integrity and is committed to public disclosure of documents via its website, and by providing these documents to the media for public dissemination. Hence, information it receives that either confirms or dispels the public integrity concerns described above will be published to empower Americans to accurately assess the proper level of public confidence they should have in the integrity of the Department of Justice—making this request undeniably eligible for a waiver or reduction of fees under 5 U.S.C. § 552 (a)(4)(A)(iii)

### **Request for Expedited Processing**

Empower Oversight also requests expedited processing of this request. Special Counsel Durham’s ongoing investigation is of massive public interest, and there is extensive interest in ensuring the integrity of his investigation. The information requested is urgently needed to inform the public concerning actual or alleged federal government activity, namely whether Attorney General Garland has taken steps to prematurely end the Special Counsel’s investigation

by cutting off his budget next month. As noted above, Empower Oversight is primarily engaged in disseminating information to the public. The request is of widespread and exceptional media interest<sup>8</sup> and the information sought involves possible questions about the government's integrity which affect public confidence. It is important that this request be processed and the results publicly disseminated prior to the conclusion of Mr. Durham's work, so that the public can have confidence in its integrity.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. In the event our request for a fee waiver is denied or if you have any questions about this request, please contact us immediately.

Thank you for your prompt attention to this matter.

Cordially,

[/Bryan Saddler/](#)

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<sup>8</sup> *E.g.*, Michael Lee, *Senate Republicans Demand Durham Report Be Made Public*, FOX NEWS, (Aug. 19, 2021); Aruna Viswanatha and Sadie Gurman, *Durham Probe of What Sparked Russia Investigation Examines FBI Tipsters*, WALL STREET JOURNAL (Aug. 13, 2021); Matt Zapotosky and Tom Hamburger, *Durham Grand Jury Explores Theory Someone Presented FBI with Fabricated Evidence in 2016 Russia Probe*, WASHINGTON POST (Aug. 17, 2021).