

EMPOWER OVERSIGHT

Whistleblowers & Research



August 8, 2022

VIA ELECTRONIC TRANSMISSION: LAUREN.WETZLER@USDOJ.GOV.

Director
Office of Information Policy
United States Department of Justice
Sixth Floor
441 G Street, NW,
Washington, DC 20530-0001
C/O Lauren Wetzler

RE: Freedom of Information Act Appeal: FOIA-2021-02003

Dear Office of General Counsel:

Introduction

With respect to Freedom of Information Act ("FOIA")¹ request FOIA-2021-02003, Empower Oversight Whistleblowers & Research ("Empower Oversight")² appeals the initial decision of the Department of Justice ("DOJ"). Specifically, Empower Oversight challenges the reasonableness of the DOJ's search for records and its claim that certain portions of the records requested by Empower Oversight are exempt from disclosure under FOIA Exemption b(7)(A). Empower Oversight respectfully requests that the DOJ review its search and exemption claims and correct any errors that are identified.

¹ The FOIA is codified at 5 U.S.C. § 552.

² Empower Oversight is a nonpartisan, nonprofit educational organization, which is dedicated to enhancing independent oversight of government and corporate wrongdoing. It works to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

Empower Oversight's FOIA Request

On August 19, 2021, Empower Oversight filed with the DOJ a FOIA request for records relating to:

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 2022.³

Empower Oversight also requested: 1) a waiver of search and duplication fees associated with the DOJ's processing of its FOIA request, and 2) expedited processing.

In support of its FOIA request, Empower Oversight explained that on October 19, 2020, then Attorney General William Barr appointed Mr. John Durham, then U.S. Attorney for the District of Connecticut, to serve as Special Counsel to investigate violations of law in connection with intelligence, counterintelligence, or law enforcement activities directed at the 2016 presidential campaigns. As Attorney General Barr stated in a letter to the House and Senate Judiciary Committees, the purpose of the appointment was "to provide [Special Counsel Durham] and his team with the assurance that they could complete their work, without regard to the outcome of the [2020 presidential] election."⁴

The Special Counsel regulations state that the Special Counsel shall have "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.⁵

Despite the independence envisioned by the DOJ's regulations, there is a means by which the Attorney General can prematurely end a 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."⁶

When asked during his confirmation hearing whether he would "commit to providing Special Counsel Durham with the staff, resources, funds, and time needed to thoroughly complete the investigation," Attorney General Merrick Garland failed to do so.⁷

³ A copy of Empower Oversight's August 19th FOIA request is attached as Exhibit 1.

⁴ Available at <https://www.judiciary.senate.gov/imo/media/doc/Letter%20re%20Durham%20to%20Hill.pdf>.

⁵ 28 C.F.R. § 600.6.

⁶ 28 C.F.R. § 600.8(a)(1).

⁷ Dunleavy, Jerry, *Merrick Garland Doesn't Promise to Protect Durham Investigation or Release Report* (February 22, 2021), available at <https://www.washingtonexaminer.com/news/grassley-garland-durham-investigation>.

As of August 19, 2021 (*i.e.*, the date Empower Oversight filed its FOIA request), the DOJ had not informed the public as to whether Attorney General Garland intended to end prematurely Special Counsel Durham's investigation.⁸

The DOJ's Response to Empower Oversight's FOIA Request

By letter dated August 27, 2021, the DOJ acknowledged receipt of Empower Oversight's August 19th FOIA request; designated its request as FOIA-2021-02003; denied Empower Oversight's request for expedited processing pursuant to the DOJ's regulation at 28 C.F.R. § 16.5(e)(1)(ii), and advised that consideration of the request under 28 C.F.R. § 16.5(e)(1)(iv) remained pending with the Director of Public Affairs; postponed a decision on its request for a fee waiver pending a determination "whether fees will be implicated" by the same; identified the analyst assigned to Empower Oversight's request; identified the FOIA liaison assigned to its request; and informed Empower Oversight of the availability of mediation services offered by the NARA. Additionally, the DOJ advised:

To the extent that your request requires a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2018). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options.

By letter dated September 2, 2021, the DOJ denied Empower Oversight's request for expedited processing pursuant to the DOJ's regulation at 28 C.F.R. § 16.5(e)(1)(iv).

By letter dated June 3, 2022, the DOJ responded to Empower Oversight's August 19th FOIA request, FOIA-2021-02003.⁹ In its response, the DOJ advised that it had confined its search for records to the Offices of the Attorney General, the Office of the Deputy Attorney General, and the Departmental Executive Secretariat; had located 247 pages of responsive records; was withholding 44 pages in their entirety pursuant to FOIA exemptions b(5) and b(7)(A); and was producing 203 pages,¹⁰ subject to redactions pursuant to FOIA Exemptions b(5), b(6), b(7)(A), and b(7)(C).

⁸ Later, on October 21, 2021, during "his first oversight hearing as attorney general, Mr. Garland told the House Judiciary Committee that the special counsel . . . had his budget approved for another year . . ." See, Benner, Katie, *Garland Parries Pressure from Both Sides in Congressional Testimony* (Updated October 27, 2021), available at <https://www.nytimes.com/2021/10/21/us/politics/garland-testimony-jan-6.html>.

⁹ A copy of the DOJ's June 3rd response to Empower Oversight's FOIA request is attached as Exhibit 2.

¹⁰ Of the 203 pages produced by the DOJ, 186 pages comprise a transcript of an October 21, 2021, oversight hearing before the House Judiciary Committee.

The DOJ's Search for Records Does Not Appear to Have Been Reasonably Calculated to Lead to the Discovery of All Responsive Records

Courts generally analyze the adequacy of a search by considering the reasonableness of the agency's effort in the context of the specific FOIA request.¹¹ The legal standard governing searches for records responsive to FOIA requests requires an agency to conduct a search that is "reasonably calculated to uncover all relevant documents."¹² Courts have found searches to be sufficient when, among other things, they are based on a reasonable interpretation of the scope of the subject matter of the request.¹³

Courts tend to afford agencies leeway in determining the locations to search for responsive records. An agency, for example, "is not required to speculate about potential leads."¹⁴ Nor is an agency "obliged to look beyond the four corners of the request for leads to the location of responsive documents."¹⁵ But that does not mean that an agency "may ignore what it cannot help but know."¹⁶ No agency may ignore a responsive document that "clearly indicates the existence of [other] relevant documents, none of which were disclosed."¹⁷

Here, the DOJ produced a June 30, 2021, memorandum for the Attorney General, through the Deputy Attorney General, from the Assistant Attorney General for Administration, which includes a "John Durham Special Counsel FY22 Budget Request" as an attachment, and was approved by the Attorney General on September 8, 2021. It also produced a June 30, 2021, memorandum for the Attorney General, through the Deputy Attorney General, from the Assistant Attorney General for Administration, which does not include the "John Durham Special Counsel FY22 Budget Request" as an attachment, and was not been approved by the Attorney General. Presumably, the "John Durham Special Counsel FY22 Budget Request" should have been attached to the original version of the Assistant Attorney General for Administration's memorandum (*i.e.*, the one that the Attorney General had yet to approve on September 8th) because the purpose of said memoranda was to convey the budget request to the Attorney General and obtain his approval thereof. Yet, the DOJ does not explain why the original version of the memoranda does not include an attachment.

Moreover, the records produced by the DOJ reveal a break in communications for a period of two and one-half months between:

- A March 29, 2021, email from Wyn Hornbuckle to the Assistant Attorney General for Administration and Bradley Weinsheimer, advising that Mr. Hornbuckle had been unable to reach Special Counsel Durham to discuss budget issues; and

¹¹ See, e.g., Larson v. Dep't of State, 565 F.3d 857, 869 (D.C. Cir. 2009) (affirming the adequacy of a search based on the agency's reasonable determination regarding records being requested).

¹² Weisberg v. DOJ, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

¹³ Larson, 565 F.3d at 869.

¹⁴ Kowalczyk v. DOJ, 73 F.3d 386, 389 (D.C. Cir. 1996).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Center for Nat'l Security Studies v. DOJ, 215 F. Supp. 2d 94, 110 (D.D.C. 2002), *aff'd in part, rev'd in part, and remanded on other grounds*, 331 F.3d 918 (D.C. Cir. 2003).

- A June 15, 2021, email from Bradley Weinsheimer to Special Counsel Durham, advising that he wanted “to follow-up on budg [redacted pursuant to FOIA Exemption b(7)(A)].”

Mr. Weinsheimer’s characterization of his communication as a “follow-up” suggests that there had to have been communications with Special Counsel Durham about his budget request during the interim between March 29th and June 15th. However, no such communications were produced, which suggests that that such communications either comprise the 44 pages of records that were withheld in full pursuant to FOIA Exemptions b(5) and b(7)(A), or that the DOJ failed to search the full breadth of records systems that would likely contain responsive records. In the latter regard, Empower Oversight notes that, in its June 3rd response to FOIA-2021-02003, the DOJ states that it confined its search to the records of the Offices of the Attorney General, the Office of the Deputy Attorney General, and the Departmental Executive Secretariat. It did not search the records of the Office of Special Counsel Durham.

Accordingly, please review the scope the DOJ FOIA staff’s records search to determine whether its search for responsive records can be accurately characterized as reasonably calculated to lead to the discovery of all responsive documents and, if not, remedy its failure and produce all non-exempt responsive records.

The DOJ’s Redactions Pursuant to FOIA Exemption b(7)(A) Extend Beyond What Is Allowable Under the FOIA

The DOJ has redacted portions of three records purportedly pursuant to FOIA Exemption b(7)(A).¹⁸ The cited exemption, which the DOJ paraphrases in its June 3rd response, provides:

This section does not apply to matter that are . . . 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. . . .¹⁹

The three records that the DOJ has redacted purportedly pursuant to FOIA Exemption b(7)(A):

- A June 30, 2021, memorandum for the Attorney General, through the Deputy Attorney General, from the Assistant Attorney General for Administration, which includes the “John Durham Special Counsel FY22 Budget Request” attachment, and was approved by the Attorney General on September 8, 2021;
- A June 30, 2021, memorandum for the Attorney General, through the Deputy Attorney General, from the Assistant Attorney General for Administration, which does not include the “John Durham Special Counsel FY22 Budget Request” attachment, and had not been approved by the Attorney General; and
- A June 15, 2022, email from Special Counsel Durham to Bradley Weinsheimer.

¹⁸ Copies of the records in issue are attached as Exhibit 3.

¹⁹ 5 U.S.C. § 552(b)(7)(A).

The memoranda, email, and “John Durham Special Counsel FY22 Budget Request” attachment include redacted content—seemingly no more than a word or a number in each instance—purportedly pursuant to FOIA Exemption b(7)(A). However, the DOJ does not advise how the disclosure of the redacted words or numbers could conceivably interfere with Special Counsel Durham’s investigation, unless its brief paraphrase of the exemption somehow qualifies as such an explanation.

As the Circuit of Appeals for the District of Columbia Circuit has plainly stated, when an agency seeks to withhold information pursuant to FOIA Exemption b(7)(A), “it is not sufficient for the agency to simply assert that disclosure will interfere with enforcement proceedings,”²⁰ which is the most generous characterization of what the DOJ has done here. Rather, the agency must demonstrate “‘how disclosure’ will” interfere with enforcement proceedings,²¹ which the DOJ has not done here.

Moreover, claims that disclosure will interfere with enforcement proceedings cannot stand when the claimant agency publicly releases the requested information.²² Here, the DOJ did not technically disclose Special Counsel Durham’s budget request, but it did publish his actual usage of funds during the first half of Fiscal Year 2022.²³ It’s hard to imagine how a budget request could interfere with enforcement proceedings, but the actual usage of allocated funds does not.

Accordingly, please review the DOJ FOIA staff’s assertions of FOIA Exemption b(7)(A)—including those made with respect to the 44 pages that were withheld in full—to confirm that the information that they redacted pursuant to the exemption will indeed interfere with a law enforcement proceeding and, if not, produce unredacted copies of the documents in issue.

Conclusion

For the reasons set forth herein, Empower Oversight respectfully requests that the DOJ review the reasonableness of its search for records responsive to Empower Oversight’s August 19th FOIA request, and its initial determinations of the applicability of FOIA Exemption b(7)(A), confirm that its determinations are appropriate, and—if they are not—produce the non-exempt records or portions thereof.

Thank you for your time and consideration. Please don’t hesitate to contact me with any questions.

Cordially,

[/Jason Foster/](#)

Jason Foster
Founder & President

²⁰ *Citizens for Resp. & Ethics in Wash. v. DOJ*, 746 F.3d 1082, 1098 (D.C. Cir. 2014).

²¹ *Citizens for Resp. & Ethics in Wash.*, 746 F.3d at 1098 (*quoting Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1114 (D.C. Cir. 2007)).

²² *See, e.g., Utahamerica Energy, Inc. v. DOL*, 700 F. Supp. 2d 99, 108 (D.D.C. 2010); *Scheer v. DOJ*, 35 F. Supp. 2d 9, 14 (D.D.C. 1999).

²³ *See* Special Counsel’s Office, *Statement of Expenditures, October 1, 2021 through March 31, 2022*, available at www.justice.gov/file/1510251/download.

Exhibit 1

EMPOWER OVERSIGHT

Whistleblowers & Research



August 19, 2021

Via Electronic Transmission: Douglas.Hibbard@usdoj.gov
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.”¹ The eventual findings and outcome

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

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

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.³

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.”⁴

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[.]**⁵

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.”⁶ When asked during his confirmation hearing whether he would “commit to providing Special Counsel Durham with the staff,

² 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).

³ 28 C.F.R. § 600.6.

⁴ 28 C.F.R. § 600.8(a)(1).

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

⁶ 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); 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.⁷

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, ledgers,

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

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 interest⁸ 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/](#)

⁸ *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).

Exhibit 2



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

June 3, 2022

Jason Foster
Empower Oversight
2615 Columbia Pike
#445
Arlington, VA 22204
jf@empowr.us

Re: FOIA-2021-02003
22-cv-00190 (EDVA)
VRB:JMB:SJD

Dear Jason Foster:

This responds to your Freedom of Information Act (FOIA) request dated and received in this Office on August 19, 2021, in which you requested records concerning the budget of Special Counsel John Durham for Fiscal Year 2022 since January 21, 2021.

Please be advised that searches have been conducted in the Offices of the Attorney General and Deputy Attorney General, as well as of the electronic database of the Departmental Executive Secretariat, which is the official records repository for these offices, and records responsive to your request were located. At this time, I have determined that 203 pages containing records responsive to your request are appropriate for release with withholdings made pursuant to Exemptions 5, 6, 7(A), and 7(C) of the FOIA, 5 U.S.C. § 552(b)(5), (b)(6), (b)(7)(A), and (b)(7)(C). Additionally, forty-four pages are being withheld in full pursuant to Exemptions 5 and 7(A) of the FOIA. Exemption 5 pertains to certain inter- and intra-agency communications protected by civil discovery privileges. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy. Exemption 7(A) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. Exemption 7(C) pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

Finally, please be advised that certain emails within this release display a single question mark at the beginning of the email. This is the result of a formatting issue in the software used to obtain copies of emails for processing and was not placed by the author of the email or by OIP.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Lauren Wetzler of the United States Attorney's Office for the Eastern District of Virginia at 703-299-3700.

Sincerely,



Jonathan Breyan
Senior Supervisory Attorney
for
Vanessa R. Brinkmann
Senior Counsel

Enclosures

Exhibit 3



U.S. Department of Justice

Washington, D.C. 20530

MEMORANDUM FOR THE ATTORNEY GENERAL

Lee Lofthus for

THROUGH (CONCURRING): THE DEPUTY ATTORNEY GENERAL

FROM: Lee J. Lofthus
Assistant Attorney General **Lee Lofthus** Date: 2021.06.30
for Administration 17:27:24 -04'00'

SUBJECT: Fiscal Year 2022 Special Counsel's Office Budget Request

PURPOSE: To obtain the Attorney General's review and approval of the Special Counsel's budget request in accordance with 28 CFR Part 600.8(a)(1).

AG DECISION REQUESTED BY: As soon as possible.

EXECUTIVE SUMMARY: The John Durham Special Counsel Office Fiscal Year (FY) 2022 budget plan is attached for Attorney General approval.

DISCUSSION: Attached is the John Durham Special Counsel Office Fiscal Year (FY) 2022 budget plan. The Justice Management Division has completed its review under 28 C.F.R. 600.8(a)(1). The FY 2022 budget estimate is (b) (7)(A) which, after Office of Management and Budget technical adjustments for the mandatory sequester, totals (b) (7)(A) in available operational funds.

CONCURRENCE: Brad Weinsheimer, Associate Deputy Attorney General

NON-CONCURRENCE: None.

CONSULTATION: None.

PUBLIC AFFAIRS: None. The Special Counsel budgets are not made public. A six-month expenditure report is made public for the periods ending March 31 and September 30 each fiscal year, but not the budget request itself.

LEGISLATIVE AFFAIRS: None.

OTHER STAKEHOLDERS: None.

RECOMMENDATION: That the Attorney General review the submitted budget request and render a decision on an approved budget request for Fiscal Year 2022 for the Special Counsel's Office.

Memorandum for the Attorney General
Subject: Fiscal Year 2022 Special Counsel's Office Budget Request

Page 2

APPROVE: MG 9-8-21

Concurring Component:

ADAG [Signature]

DAG [Signature]

DISAPPROVE: _____

Non-concurring Component:

None

OTHER: _____

Attachment

John Durham Special Counsel FY22 Budget Request

	FY2022

INCOME

0

Full Time Permanent
Other Than Full Time Permanent
Other Personnel Compensation
Special Personnel Services Benefits
Civilian Personnel Benefits
Other Personnel Benefits
Personnel Adjustment for Detailees

Personnel

(b) (7)(A)

Travel
Mail
Rent
Communications
Printing
Other Contractual Services
Supplies
Equipment

TOTAL NON-PERSONNEL COSTS

TOTAL COSTS

Mandatory Sequester 5.7%

TOTAL REQUEST

Direct Positions
[Attorneys]

Reimbursable Detailees
[Attorneys]

Non-Reimbursable Investigative Staff
[Agents]

Total SCO Staff

(b) (7)(A)



U.S. Department of Justice

Washington, D.C. 20530

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH (CONCURRING): THE DEPUTY ATTORNEY GENERAL

FROM: Lee J. Lofthus
Assistant Attorney General Lee Lofthus Date: 2021.06.30
for Administration 17:27:24 -04'00'

SUBJECT: Fiscal Year 2022 Special Counsel's Office Budget Request

PURPOSE: To obtain the Attorney General's review and approval of the Special Counsel's budget request in accordance with 28 CFR Part 600.8(a)(1).

AG DECISION REQUESTED BY: As soon as possible.

EXECUTIVE SUMMARY: The John Durham Special Counsel Office Fiscal Year (FY) 2022 budget plan is attached for Attorney General approval.

DISCUSSION: Attached is the John Durham Special Counsel Office Fiscal Year (FY) 2022 budget plan. The Justice Management Division has completed its review under 28 C.F.R. 600.8(a)(1). The FY 2022 budget estimate (b) (7)(A), which, after Office of Management and Budget technical adjustments for the mandatory sequester, total (b) (7)(A) in available operational funds.

CONCURRENCE: Brad Weinsheimer, Associate Deputy Attorney General

NON-CONCURRENCE: None.

CONSULTATION: None.

PUBLIC AFFAIRS: None. The Special Counsel budgets are not made public. A six-month expenditure report is made public for the periods ending March 31 and September 30 each fiscal year, but not the budget request itself.

LEGISLATIVE AFFAIRS: None.

OTHER STAKEHOLDERS: None.

RECOMMENDATION: That the Attorney General review the submitted budget request and render a decision on an approved budget request for Fiscal Year 2022 for the Special Counsel's Office.

APPROVE:

Concurring Component:

ADAG

DAG

DISAPPROVE:

Non-concurring Component:

None

OTHER:

Attachment

Durham, John H. (JMD)

From: Durham, John H. (JMD)
Sent: Tuesday, June 15, 2021 7:32 PM
To: Weinsheimer, Bradley (ODAG)
Subject: Re: Meeting

Done. See you then.

Sent from my iPhone

On Jun 15, 2021, at 7:07 PM, Weinsheimer, Bradley (ODAG)
(b) (6) wrote:

?

Yes, how about noon?

From: Durham, John H. (JMD) (b) (6), (b) (7)(C)
Sent: Tuesday, June 15, 2021 7:07 PM
To: Weinsheimer, Bradley (ODA) (b) (6)
Subject: Re: Meeting

Brad-

Would sometime between 10:00 and 1:00 work for your schedule?
JHD

Sent from my iPhone

On Jun 15, 2021, at 2:23 PM, Weinsheimer, Bradley (ODAG)
(b) (6) wrote:

?

John: are you available to meet with me on Thursday for 30-45 minutes or so? I want to follow-up on budg (b) (7)(A) Let me know when would work. Thanks, Brad.