

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001

Federal Bureau of Investigation
Records/Information Dissemination Section
Attn: FOIA Request
170 Marcel Drive
Winchester, VA 22602-4843

RE: FOIA REQUEST

Dear FOIA Officer:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a), filed by, and on behalf of, the Committee to Defend the President PAC (“CDP”). CDP hereby requests all records within the DOJ’s or FBI’s possession, custody, or control created between January 1, 2016 and October 1, 2017 that fall into one or more of the following categories:

1. All documents, records, and correspondence that were exchanged between the DOJ or FBI, and Congress or any of its committees, regarding any investigation of Hillary Clinton’s (“Clinton”) e-mails or e-mail server. This request includes, but is not limited to, all such documents and correspondence relating to:

a. the mishandling, destruction, wiping, or deletion of e-mails from a private server maintained by Platte River Networks or any other electronic device owned or used by Clinton;

b. Clinton’s failure to produce responsive e-mails, devices, or other documents or materials in response to any subpoena or other request for production from any governmental agent or entity; or

c. the mishandling, destruction, wiping, or deletion of e-mails to, or from, Clinton that neither Clinton, nor any of Clinton’s attorneys or other agents, reviewed to determine whether they contained or constituted official records required to be preserved by, or returned to, the U.S. Department of State, or produced in response to a subpoena or Freedom of Information Act request.

2. All documents and records relating to whether Clinton lied in any written or oral submissions to Congress, or in her interview with the FBI, in connection with the FBI’s investigation into her e-mails or e-mail server.

3. All documents, records, and correspondence resulting from the September 6, 2016 referral from Chairman Jason Chaffetz to U.S. Attorney Channing Phillips of the District of

Columbia (available at <https://oversight.house.gov/wp-content/uploads/2016/09/US-Attorney-forDistrict-of-Columbia-Letter.pdf>), including any evidence obtained by the FBI.

4. All records relating to the FBI's immunity agreements with Cheryl Mills and/or Heather Samuelson.

5. All documents and records provided to the DOJ Office of Inspector General in connection with any investigation it is conducting or has conducted into the FBI's investigation of Hillary Clinton's e-mails or e-mail server.

CDP does not seek this information for commercial use. Rather, it wishes to obtain the requested documents to subject them to careful analysis and consideration and make the results of its study publicly available, free of charge, to further public understanding of the FBI's operations. CDP therefore requests a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), because disclosure of the requested records is in the public interest, will contribute significantly to public understanding of the operations and activities of the Government, and is not sought for a commercial purpose.

In the event this fee waiver request is denied, without waiting any rights to appeal, CDP is willing pay up to \$1,000 in connection with this request. Please inform me first if the estimated fees will exceed this limit.

Please provide all responsive records, in either hard-copy form or scanned as PDFs on CD-ROM disks or USB "thumb" drives, to the following address:

Dan Backer
Committee to Defend the President PAC
203 S. Union Ave., Suite 300
Alexandria, VA 22314

You may discuss this request via mail at the above address, via e-mail at Dan@political.law, or by telephone at (202) 210-5431.

This request seeks documents relating to Hillary Clinton, who has not consented to their release. The documents nevertheless must be released as a public interest disclosure, since the requested information is likely to advance a substantial public interest that outweighs any privacy interest Clinton may be able to assert in the documents.

The Requested Documents May Not Be Withheld Under Exemption 7(C)

The requested documents are not subject to any valid FOIA exemptions, including Exemption 7(C). *See* 5 U.S.C. § 552(b)(7)(C). FOIA allows members of the public to access "official information long shielded from public view." *EPA v. Mink*, 410 U.S. 73, 79 (1973). The statute's "basic purpose" is "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). It "establish[es] a

general philosophy of full disclosure unless information is exempted under clearly delineated statutory language.” S. Rep. No. 89-813, at 3 (1965), *reprinted in Fed. Open Market Comm. v. Merrill*, 443 U.S. 340, 351 (1979). FOIA requires “broad disclosure of Government records,” *CIA v. Sims*, 471 U.S. 159, 166 (1985), and its exemptions must be “narrowly construed.” *U.S. DOJ v. Julian*, 486 U.S. 1, 8 (1988). When the Government seeks to withhold information under a FOIA exemption, it bears the burden of proving the asserted exemption applies. 5 U.S.C. § 552(a)(4)(B); *Merrill*, 443 U.S. at 351.

The FBI and DOJ are likely to contend they may refuse to produce documents in response to this request pursuant to Exemption 7(C).¹ Exemption 7(C) allows an agency to withhold documents compiled for law enforcement purposes that “could reasonably be expected to constitute an *unwarranted* invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C) (emphasis added). This provision’s reliance on the term “unwarranted” requires the Government to “balance the . . . privacy interest against the public interest in disclosure.” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004). This agency should grant this FOIA request as any minimal privacy interest Hillary Clinton may have in the requested documents is substantially outweighed by the substantial public interest in their release. Making these documents publicly available will further the public interest in overseeing the Government’s activities by allowing the public to:

- (i) review the adequacy and thoroughness of the FBI’s investigation into Clinton’s allegedly illegal activities;
- (ii) assess the genesis and legitimacy of DOJ’s decision to refrain from prosecuting Clinton;
- (iii) determine whether the Obama Administration FBI or DOJ improperly “went easy” on Clinton or gave her preferential treatment in any way;
- (iv) gain a better understanding of the FBI’s and DOJ’s substantive law enforcement policies and procedures;
- (v) detect negligence or intentional wrongdoing in the FBI’s decisions to limit the scope of its investigation, refuse to interview material witnesses, refrain from pursuing missing or destroyed evidence, and recklessly grant immunity to Clinton associates; and
- (vi) ascertain whether Attorney General Loretta Lynch’s ultimate refusal to prosecute Clinton, or any other aspects of the investigation, were influenced by Bill Clinton’s private meeting with Lynch on a private plane at the Phoenix airport in June 2016, pressure from President Barack Obama, or other extraneous political considerations.

Section A begins by demonstrating Hillary Clinton has an extremely limited, if any, privacy interest in the requested materials. Section B goes on to show the public has a substantial interest in these documents’ release.

¹ Since Exemption 7(C) allows the Government to withhold a wider range of documents than Exemption 6, if disclosure is deemed warranted under Exemption 7 then it would likewise be permissible under Exemption 6, *see* 5 U.S.C. § 552(b)(6). *See Citizens for Responsibility & Ethics in Washington v. U.S. DOJ*, 746 F.3d 1082, 1091 n.2 (D.C. Cir. 2014). Consequently, there is no need for separate consideration of Exemption 6’s applicability.

A. Hillary Clinton Has No Valid Privacy Interest in the Requested Materials

It is highly unlikely Hillary Clinton has a valid privacy interest in FBI or DOJ files relating to the investigation of her private server. To the extent this request implicates any *valid* privacy interests, they are minimal. In general, a person has a privacy interest in the protection of information the FBI collects about their illicit activities, as well as any of the FBI's investigative or DOJ's prosecutorial decisions concerning those activities. *See U.S. DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764, 769 (1989) (“[T]he ordinary citizen surely has [an] . . . interest in . . . aspects of his or her criminal history . . .”). Consequently, it is rarely “appropriate to order a Government agency to honor a FOIA request for information about a particular private citizen.” *Id.* at 774-75; *see also id.* at 780 (holding FOIA requests for law enforcement records “about a private citizen” are generally “unwarranted” (quotation marks omitted)).

These presumptions do not apply here for three reasons. **First**, Clinton is not a private citizen, but a public figure. As our nation's former top diplomat, a U.S. Senator, and 2016 Democratic Party presidential nominee, Clinton possesses dramatically reduced privacy interests, particularly in documents concerning an FBI investigation *during* her presidential campaign into her alleged misconduct as Secretary of State. Federal courts repeatedly have recognized federal officials possess reduced expectations of privacy under Exemption 7(c). *See Lesar v. U.S. Dep't of Justice*, 636 F.2d 472, 487 (D.C. Cir. 1980) (“In their capacity as public officials FBI agents may not have as great a claim to privacy as that afforded ordinarily to private citizens . . .”).

A person's privacy interests are further diminished when they are “candidates for public office,” because candidates enjoy “less privacy interest[s] than others in information relating to their candidacies.” *Common Cause v. Nat'l Archives & Rec. Serv.*, 628 F.2d 179, 184 (D.C. Cir. 1980); *see, e.g., Nation Mag. v. U.S. Customs Serv.*, 71 F.3d 885, 894 n.9 (D.C. Cir. 1995) (recognizing a “national[ly] prominen[t] . . . presidential candidate” has a “diminish[ed] . . . right to privacy”). After repeatedly thrusting herself into the national spotlight over many decades of public life, Hilary Clinton cannot credibly maintain a privacy interest in the FBI's investigation into official misconduct while occupying a Senate-confirmed post as our nation's chief diplomat.

Second, both the FBI and DOJ have publicly acknowledged the investigation into Clinton's misconduct and purported to provide official explanations for their actions, undermining any privacy interest Clinton otherwise might have in keeping the investigation a secret. *See, e.g.,* Karey Van Hall, *Lynch Says DOJ Will Not Pursue Charges Against Clinton*, POLITICO, July 6, 2016, at <http://www.politico.com/story/2016/07/attorney-general-loretta-lynch-says-doj-will-not-pursue-charges-against-clinton-225189>; Mark Lander & Eric Lichtblau, *F.B.I. Director James Comey Recommends No Charges for Hillary Clinton on Email*, N.Y. TIMES, July 5, 2016, at <https://www.nytimes.com/2016/07/06/us/politics/hillary-clinton-fbi-email-comey.html>; *cf. People for the Ethical Treatment of Animals v. NIH*, 745 F.3d 535, 542 (D.C. Cir. 2014) (finding the target of an investigation had a privacy interest against disclosure of documents relating to the investigation because “NIH's own official acknowledgement that it had investigated the named researchers would carry an added and material stigma”). The bureau has revealed even more information concerning its investigation in the course of congressional oversight hearings. *See, e.g.,* Eric Lichtbrau & Michael D. Shear, *F.B.I. Director Testifies on Clinton Emails to Withering*

Criticism from G.O.P., N.Y. TIMES, July 7, 2016, at <https://www.nytimes.com/2016/07/08/us/politics/james-comey-fbi-testimony-hillary-clinton-emails.html? r=0>.

Finally, Clinton herself has spoken and written repeatedly at great length about her actions² and the FBI's investigation,³ dispelling any minimal privacy interest she otherwise might have had. See *Kimberlin v. DOJ*, 139 F.3d 944, 949 (D.C. Cir. 1998) (recognizing government official's statements to the press about an FBI investigation of him "undoubtedly does diminish his interest in privacy: the public already knows who he is, [and] what he was accused of"); *Nation Mag.*, 71 F.3d at 896 & n.10 (holding a presidential candidate's public disclosures concerning his connection to federal activities reduces his privacy interest"). Clinton's autobiography, *What Happened*, purports to defend her illegal activities and attack the FBI's investigation of her. See <https://www.amazon.com/What-Happened-Hillary-Rodham-Clinton/dp/1501175564>. Clinton may not self-servingly present a biased, incomplete, and misleading version of events into the public record, while simultaneously asserting a privacy interest to prevent a more accurate and complete version be known. This case is comparable to *Citizens for Responsibility & Ethics in Wash. ("CREW") v. U.S. DOJ*, 746 F.3d 1082, 1091-92 (D.C. Cir. 2014), in which the D.C. Circuit held former House Majority Leader Tom DeLay had a greatly "diminished" expectation of privacy in files concerning an FBI investigation of him, because he "made public statements confirming the fact that he had been, but was no longer, under investigation. He explained the extent of his cooperation with the investigation and announced the DOJ had decided not to charge him."

Under the unique circumstances of this case, Clinton has no meaningful privacy interest to protect under Exemption 7(C). Clinton has occupied some of the most prominent and powerful positions in American government. Her bathroom server and the FBI's halfhearted investigation into her activities during the Obama Administration have been subject to unprecedented public scrutiny. Her own detailed disclosures, half-truths, and lies on the issue leave her with little, if any, remaining privacy interests in the FBI's and DOJ's files.

B. There is a Substantial Public Interest in Disclosure of the Requested Documents

Even if Clinton can realistically assert privacy interests in this case, they are far outweighed by the substantial public interest in release of the requested documents. This presents the rare case in which disclosure of investigative materials is warranted to facilitate public critique of the FBI

² Clinton's scores of public statements are a matter of public record. For a few examples, see, e.g., Byron Tau, *Hillary Clinton Defends Her Email Use After Critical Report*, WALL ST. J., May 26, 2016, at <https://www.wsj.com/articles/hillary-clinton-defends-her-email-use-after-critical-report-1464297239>; *Hillary Clinton Defends Email Server "Mistake"*, BBC, Sept. 8, 2016, at <http://www.bbc.com/news/av/world-us-canada-37304533/hillary-clinton-defends-email-server-mistake>; *Clinton Defends Claim Regarding Email Server*, MSNBC, Aug. 1, 2016, at <http://www.msnbc.com/msnbc-news/watch/clinton-defends-claim-regarding-email-server-736154691659>.

³ Again, Clinton's ceaseless comments on the FBI investigation and attacks on FBI Director James Comey are matter of public record, and a complete listing would be more tedious than illuminating. For a few examples, see, e.g., Mark Landler, *Hillary Clinton, in Book, Regrets Not Striking Back at James Comey*, N.Y. TIMES, Sept. 7, 2017, at <https://www.nytimes.com/2017/09/07/us/politics/hillary-clinton-book-preview-what-happened.html>; M.J. Lee, *Clinton Slams New York Times, DNC, Comey for Her Loss*, CNN, May 31, 2017, at <http://www.cnn.com/2017/05/31/politics/hillary-clinton-recode-loss/index.html>; Patrick Healy & Jonathan Martin, *Hillary Clinton Assails James Comey, Calling Email Decision "Deeply Troubling"*, N.Y. TIMES, Oct. 29, 2016, at <https://www.nytimes.com/2016/10/30/us/politics/hillary-clinton-emails-fbi-anthony-weiner.html>.

investigation into Clinton's e-mail server and the refusal of the Obama Administration's Justice Department to prosecute her. *Cf. Campbell v. United States*, 164 F.3d 20, 33 (D.C. Cir. 1998) (remanding for further consideration of a FOIA request for FBI files concerning civil rights activist James Baldwin because "[t]he record suggests that the FBI made an abstract attempt to identify possible public interests in disclosure and accorded these interests surprisingly little weight").

The public interest in disclosure under Exemption 7(C) depends upon "the nature of the requested document and its relationship to 'the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny,' rather than the particular purpose for which the document is being requested." *U.S. DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 772 (1989) (quoting *Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976) (internal quotation marks omitted)). In other words, the only relevant public interest in the disclosure of government documents under Exemption 7(C) is the extent to which they would "shed . . . light on the conduct of any Government agency or official" or "an agency's performance of its statutory duties." *Reporters Comm.*, 489 U.S. at 773.

The information sought in this request is "likely to advance" the public's "significant" interest in reviewing the FBI's investigation of Clinton and the DOJ's refusal to prosecute her, in ascertaining whether she was treated differently than other suspects, and more broadly understanding the FBI's and DOJ's policies concerning the enforcement of criminal laws. The requested documents also may show the FBI acted "negligently or otherwise improperly" in its investigation, by failing to interview material witnesses, recklessly granting immunity, and refusing to follow up on missing or destroyed evidence. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). A reasonable likelihood also exists that these documents may reveal negligence or impropriety in Attorney General Lynch's refusal to prosecute Clinton. *Id.* Each of these are independently sufficient reasons for releasing the documents that outweigh whatever minimal privacy interests Clinton may have in the documents.

1. The public has a substantial interest in learning more about the FBI's investigation of Clinton and the DOJ's refusal to prosecute her, regardless of whether those agencies acted improperly.

Most basically, the public has a tremendous interest in the release of the requested documents to learn more about the conduct of one of the most significant federal investigations in American history, as well as Attorney General Lynch's refusal to prosecute Clinton. More broadly, the requested documents will help the public understand the FBI's and DOJ's interpretations and enforcement of substantive law enforcement policy. These interests apply with full force even if one assumes that the FBI and DOJ acted entirely properly. *See CREW*, 746 F.3d at 1095; *ACLU v. U.S. DOJ*, 655 F.3d 1, 14 (D.C. Cir. 2011).

In assessing the magnitude of the public interest involved here, it is necessary to consider "the rank of the public official involved and the seriousness of the misconduct alleged." *Kimberlin v. DOJ*, 139 F.3d 944, 949 (D.C. Cir. 1998); *see also Stern*, 737 F.2d at 92 ("[T]he level of responsibility held by a federal employee" is an "appropriate consideration[] for determining the extent of the public's interest."). The public has an especially strong interest in reviewing government files concerning investigations into high-ranking government officials. *See, e.g.,*

CREW, 746 F.3d at 1094 (“That the investigation implicated a public official as prominent as the former Majority Leader of the House of Representatives further raises the stakes.”). Hillary Clinton is a former Secretary of State, U.S. Senator, First Lady, and presidential candidate; the requested documents concern an investigation into her conduct as Secretary of State. As Clinton served at the pinnacle of government, the public interest in these documents is at its peak.

A range of other factors underscore the magnitude of the public interest in these documents. The FBI investigation into Clinton’s apparently illegal use of a private server in her bathroom to transmit classified and other national security information “is a topic of considerable public interest: it has received widespread media attention and has been the focus of inquiry in several congressional hearings” *ACLU v. U.S. DOJ*, 655 F.3d 1, 12 (D.C. Cir. 2011). The disclosure sought would “inform this ongoing public policy discussion by shedding light on the scope and effectiveness” of the FBI investigation and the DOJ’s prosecutorial decision. *Id.* Moreover, there is “no doubt that the information interested parties can derive” from the requested documents “will yield further information about the government’s policy” and investigation in the Clinton case “that is not now readily available.” *ACLU*, 655 F.3d at 14. The public has a strong interest in “knowing that [the] government investigation” into her was “comprehensive,” and the information “released publicly” about the investigation “is accurate.” *Stern v. FBI*, 737 F.2d 84, 92 (D.C. Cir. 1984).

This request parallels that in *CREW*, 746 F.3d at 1092-93, which sought documents about the FBI investigation into former U.S. House Majority Leader Tom DeLay’s alleged connections to disgraced lobbyist Jack Abramoff. The D.C. Circuit held there existed a “*weighty* public interest in shining a light on the FBI’s investigation of major political corruption and the DOJ’s ultimate decision not to prosecute a prominent member of the Congress for any involvement he may have had.” The Court explained the “relevant public interest” was to discover “how the FBI and the DOJ carried out their respective statutory duties to investigate and prosecute criminal conduct.” *Id.* at 1093; *see also People for the Ethical Treatment of Animals v. NIH*, 745 F.3d 535, 542 (D.C. Cir. 2014) (“[T]here is a cognizable public interest in learning how NIH handles complaints concerning animal abuse and misappropriation of federal research funds. Responsive documents might illuminate . . . how the agency decides whether to investigate complaints and how it conducts investigations.”); *Multi AG Media LLC v. Dep’t of Agriculture*, 515 F.3d 1224, 1232 (D.C. Cir. 2008) (ordering the USDA to provide documents from its Geographic Information System database as the information would allow the public to “more easily determine whether USDA is catching cheaters” and “more easily monitor whether the agency is carrying out its statutory duty”).

The tremendous public interest in the nature, adequacy, and extent of the FBI investigation into the nation’s top diplomat concerning official acts taken in the performance of her duties, as well as the Attorney General’s refusal to prosecute her, warrant release of the requested documents.

2. The public has a substantial interest in identifying potential negligence or impropriety in the FBI’s investigation of Clinton and the DOJ’s refusal to prosecute her.

The public also has an independent interest in identifying potential improprieties in the FBI’s investigation of Clinton or Lynch’s refusal to prosecute her, or determining whether they

treated her more leniently for political reasons than other people charged with comparable offenses. The Supreme Court has recognized “the justification most likely to satisfy Exemption 7(c)’s public interest requirement is that the information is necessary to show the investigative agency or other responsible officials acted negligently or otherwise improperly in the performance of their duties.” *Favish*, 541 U.S. at 173. To satisfy this requirement, the requestor “must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety *might* have occurred.” *Favish*, 541 U.S. at 173 (emphasis added). This is far lower than the standard the D.C. Circuit previously employed, from *SafeCard Services, Inc. v. SEC*, 926 F.2d 1197, 1205-06 (D.C. Cir. 1991), under which a requestor was required to provide “compelling evidence that the agency denying the FOIA request is engaged in illegal activity.”

The DOJ’s Office of Inspector General itself has identified numerous concerns about the conduct of the investigation it believes warrants further scrutiny. See U.S. Office of the Inspector General, Dep’t of Justice, Press Release *DOJ OIG Announces Initiation of Review* (Jan. 12, 2017), at [https://www.scribd.com/document/336396206/DOJ-OIG#from embed](https://www.scribd.com/document/336396206/DOJ-OIG#from_embed). The Chairman of the U.S. House Oversight Committee, Rep. Jason Chaffetz, publicly announced he has “lost confidence in this investigation” and he “question[s] the genuine effort in which it was carried out.” Documents provided to his committee “raised more questions about why FBI Director James Comey concluded there was no evidence of intentional lawbreaking in the actions taken by Clinton and her staff.” Sarah Westwood, *Five Clinton Aides Received Immunity Deals in FBI Probe*, WASH. EXAMINER, Sep. 23, 2016, at <http://www.washingtonexaminer.com/five-clinton-aides-received-immunity-deals-in-fbi-probe/article/2602684>. Echoing these sentiments, retired FBI Assistant Director James Kallstrom assailed Comey’s conclusions, which he characterized as “nonsensical.” *The Problems with the FBI’s Email Investigation Went Far Beyond Comey*, PROPUBLICA, May 11, 2017, at <https://www.propublica.org/article/problems-with-fbi-clinton-email-investigation-went-well-beyond-comey>.

Several aspects of the investigation the FBI has already made public raise troubling questions. Perhaps most concerningly, documents released to Congress strongly suggest Comey decided to absolve Clinton “before key interviews in the investigation were over,” including the FBI’s interview with Clinton herself. Gregory Korte, *Trump Again Blasts Former FBI Director James Comey for “Rigged” Hillary Clinton Investigation*, USA TODAY, Sept. 1, 2017, at <https://www.usatoday.com/story/news/politics/2017/09/01/trump-again-blasts-former-fbi-director-james-comey-rigged-hillary-clinton-investigation/624758001/>. Senators Chuck Grassley and Lindsey Graham declared this to be “no way to run an investigation.” *Id.*

The FBI neither recorded its interview with Hillary Clinton nor placed her under oath. Julian Hatem, *FBI Didn’t Record Clinton Interview, Did Not Administer Sworn Oath*, THE HILL, July 7, 2016, at <http://thehill.com/policy/national-security/286849-fbi-didnt-record-clinton-interview-no-sworn-oath>. Clinton herself strained credulity and likely lied by claiming she did not know she was required to preserve work-related e-mails upon termination of her term as Secretary of State, and claimed to be ignorant of the meaning of classification markings on documents on her server. Tessa Berenson, *Hillary Clinton Told FBI She Did Not Know She Had to Turn Over Work Emails*, Sept. 2, 2016, at <http://time.com/4478107/hillary-clinton-emails-fbi-investigation-documents/>. Moreover, the FBI and DOJ permitted “Hillary Clinton’s aide Cheryl Mills—the subject of a criminal investigation, who had been given immunity from prosecution despite strong

evidence that she had lied to investigators—to participate as a lawyer for Clinton, the principle subject of the same investigation. This unheard-of accommodation was made in violation not only of rudimentary investigative protocols and attorney-ethics rules but also of the federal criminal law.” Andrew C. McCarthy, *The FBI’s Defense of How the Clinton Interview was Conducted is Full of Holes*, NAT’L REV., Oct. 1, 2016, at <http://www.nationalreview.com/article/440624/james-comey-testimony-fbi-defense-clinton-interview-doesnt-add>. Throughout her three-hour interview, Clinton claimed to be unable to recall answers to the FBI’s questions over three dozen times. Aaron Blake, *Hillary Clinton Told the FBI She Couldn’t Recall Something More than Three Dozen Times*, WASH. POST, Sept. 2, 2016, at https://www.washingtonpost.com/news/the-fix/wp/2016/09/02/the-many-things-hillary-clinton-couldnt-recall-in-her-fbi-interview/?utm_term=.615a110942bd.

An employee of a company responsible for Clinton’s servers blatantly lied to the FBI and ignored a congressional document preservation order by completely wiping her hard drive using BleachBit, yet the FBI granted him immunity. Adam Goldman & Michael S. Schmidt, *Justice Dept. Granted Immunity to Specialist Who Deleted Hillary Clinton’s E-mails*, N.Y. TIMES, Sept. 8, 2016, at https://www.nytimes.com/2016/09/09/us/politics/hillary-clinton-emails-investigation.html?_r=0; cf. Aarti Shahani, *Did Clinton Camp Delete Emails or Wipe Server? The Difference Matters*, NPR, Sept. 14, 2015, at <http://www.npr.org/sections/alltechconsidered/2015/09/14/438814692/did-clinton-camp-delete-emails-or-wipe-server-the-difference-matters>.

As in *CREW*, 746 F.3d at 1093, “[d]isclosure of the [requested] records would likely reveal much about the diligence of the FBI’s investigation and the DOJ’s exercise of its prosecutorial discretion: whether the government had the evidence but nevertheless pulled its punches.” Numerous people intimately familiar with the Clinton investigation have called its adequacy and fairness into question. Publicly available information concerning the investigation and Lynch’s ultimate refusal to prosecute Clinton are more than sufficient to “warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.” *Favish*, 541 U.S. at 173.

CONCLUSION

For these reasons, the requested documents should be released, and any fees waived.

Respectfully submitted,

Dan Backer
Counsel to the Committee to Defend the President
203 South Union Street, Suite 300
Alexandria VA 22314
dan@political.law
[202-210-5431](tel:202-210-5431) direct
[202-478-0750](tel:202-478-0750) fax