UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

IN RE TRANSCRIPTS OF THIS COURT RELATED TO THE SURVEILLANCE OF CARTER PAGE	))))	Docket No. Misc. 18-03

JUDICIAL WATCH, INC.'S MOTION
FOR PUBLICATION OF COURT TRANSCRIPTS

Plaintiff Judicial Watch, Inc., by counsel and pursuant to Rule 62 of the Rules of Procedure for the Foreign Intelligence Surveillance Court, respectfully requests this Court make public all transcripts of hearings regarding applications for or renewal of Foreign Intelligence Surveillance Act warrants related to Carter Page. As grounds therefor, Plaintiff states as follows:

I. Introduction.

Earlier this year, the House Permanent Select Committee on Intelligence requested this Court confirm whether transcripts of hearings related to Carter Page exist and, if so, to provide copies of such transcripts to the Committee. In response, the Court informed the Select Committee "that the Department of Justice possesses (or can easily obtain) the same responsive information the Court might possess." Judicial Watch subsequently sent a Freedom of Information Act request to the Justice Department specifically seeking transcripts of any hearings related to Page. The Justice Department responded to Judicial Watch's request by stating that it "did not identify any records responsive to your request." Since the Justice Department does not have possession of any transcripts of hearings related to Page and because such transcripts would provide the public with a complete and unbiased look at the role of this Court, Judicial Watch respectfully requests this Court make public all transcripts of hearings regarding applications for or renewal of FISA warrants related to Page.

II. Factual Background.

On January 29, 2018, the Select Committee voted to disclose publicly a memorandum containing classified information concerning the electronic surveillance of Page, formerly a foreign policy advisor to then-candidate Donald Trump. Exhibit A at 1. President Trump subsequently declassified the memorandum, and, on February 2, 2018, the memorandum was publicly disclosed. *Id.* at 2.

The memorandum released on February 2, 2018, was written by the Select Committee's Republican Staff and is known as the Nunes Memorandum. *Id.* at 3. The memorandum states, "The [Federal Bureau of Investigation] and [U.S. Department of Justice] obtained one initial FISA warrant targeting Carter Page and three FISA renewals from" this Court. *Id.* The memorandum asserts that the FBI and the Justice Department omitted "material and relevant information" from the four applications. *Id.* It then goes on to detail the ways in which the Republican members of the Select Committee believe the government misled the Court. *Id.* at 3-6.

On February 24, 2018, the Select Committee's Democratic members released their own memorandum about the electronic surveillance of Page. Exhibit B. This memorandum is known as the Democratic memorandum and directly responds to the Nunes Memorandum. It asserts, "FBI and DOJ officials did not abuse the FISA process, omit material information, or subvert this vital tool to spy on the Trump campaign." *Id.* at 1. It too then outlines why the Democratic members of the Select Committee believe the government did not mislead the Court. *Id.* at 1-10.

Also, in February 2018, the Select Committee requested that the Court confirm the existence of transcripts of hearings regarding applications for or renewal of FISA warrants related to Page. Exhibit C at 1. In addition, to the extent any transcripts exist, the Select

Committee requested the Court provide copies of them to the Select Committee. *Id.* In response, Presiding Judge Rosemary M. Collyer, on behalf of the Court, stated:

> The Court appreciates the interest of the House Intelligence Committee in its operations and public confidence therein. Before 2018, the Court had never received a request from Congress for documents related to any specific FISA application. Thus, your requests – and others I have recently received from Congress – present novel and significant questions. The considerations involve not only prerogatives of the Legislative Branch, but also interests of the Executive Branch, including its responsibility for national security and its need to maintain the integrity of any ongoing law enforcement investigations.
>
> While this analysis is underway, you may note that the Department of Justice possesses (or can easily obtain) the same responsive information the Court might possess, and because of separation of powers considerations, is better positioned than the Court to respond quickly. (We have previously made clear to the Department, both formally and informally, that we do not object to any decision by the Executive Branch to convey to Congress any such information.)

Id.

Judicial Watch is a not-for-profit, educational organization that seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. An integral part of Judicial Watch's mission is educating the public about the operations and activities of the government and government officials. To this end, Judicial Watch undertakes investigations of the federal government and federal officials by making extensive use of FOIA, among other investigative tools. Judicial Watch subsequently analyzes all records it receives and disseminates its findings to the public.

Of relevance here, Judicial Watch is investigating the government's surveillance of American citizens as it relates to the 2016 Presidential Election. As part of this investigation, Judicial Watch submitted a FOIA request to the FBI seeking copies of all FISA warrant applications, application renewals, and this Court's orders related to Page. Judicial Watch subsequently filed a lawsuit over this request, *Judicial Watch, Inc. v. U.S. Department of Justice*,

Case No. 18-cv-00245-CRC (D.D.C.), and received 412 pages of responsive records, albeit heavily redacted, on July 20, 2018. Exhibit D.[1]

In addition, Judicial Watch followed the Court's advice and sought the transcripts of hearings regarding applications for or renewal of FISA warrants related to Page by submitting a FOIA request to the Justice Department. In response, the Justice Department stated that it conducted a search but "did not identify any records responsive to [Judicial Watch's] request." Exhibit E at 1. To date, no transcripts of hearings regarding applications for or renewal of FISA warrants related to Page have been released to the public.

III. Standing.

To have standing under Article III of the Constitution, Judicial Watch must demonstrate three familiar requirements: (1) injury-in-fact; (2) causal connection between the asserted injury-in-fact and the challenged action of the defendant; and (3) that the injury will be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Prongs two and three are clearly satisfied. *See In re Orders of this Court Interpreting Sec. 215 of the Patriot Act*, No. MISC. 13-02, 2013 U.S. Dist. LEXIS 143060 at *7 (Foreign Intel. Surv. Ct. Sept. 13, 2013). The transcripts are not currently available to Judicial Watch or the public, and, if the Court were to release the transcripts, Judicial Watch would obtain the transcripts, analyze them, and make them available to the public. *Id.* Judicial Watch also satisfies prong one. Because the transcripts are not available to Judicial Watch, Judicial Watch's active participation in educating the public about the operations and activities of the government and government officials is harmed. *Id.* at 14.

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[1] Due to the size of the production, a copy of the production is located on the FBI's website at https://vault.fbi.gov/d1-release/d1-release/view.

IV. Jurisdiction.

This court possesses inherent powers, including "supervisory power over its own records and files." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); accord *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). FISA grants this Court power to "establish such rules and procedures, and take such actions, as are reasonably necessary to administer their responsibilities" under the statute. 50 U.S.C. § 1803(g)(1). Pursuant to that authority, this Court has issued Rules of Procedure permitting FISC judges to direct the publication of FISC orders, opinions, and "related record[s]" "*sua sponte* or on a motion by a party." FISC Rule of Procedure 62.

V. Argument.

Pursuant to FISC Rule of Procedure 62(a), "the Judge who authored an order, opinion, or other decision may *sua sponte* or on motion by a party request that it be published." FISC Rule of Procedure 62(a)-(b). Similarly, "[i]t would serve no discernible purpose for the Court . . . to be precluded from considering reasoned arguments in favor of publication of certain opinions." *In re Orders of this Court*, No. MISC. 13-02, 2013 U.S. Dist. LEXIS 143060 at *18. This is especially true when the government has previously declassified and released "significant information about the context and legal underpinnings" of an order and there is substantial "public and legislative interest in how the relevant statutory provision has been interpreted and applied." *Id.* at 19.

In *In re Orders of this Court Interpreting Sec. 215 of the Patriot Act*, the ACLU and several others moved to obtain the release of FISC opinions regarding Section 215 of the U.S. Patriot Act. No. MISC 13-02, 2013 U.S. Dist. LEXIS 143060 at *7-8. The Court ordered the government to conduct a declassification review of FISC opinions related to Section 215 with the

intent to release these opinions. *Id.* at 26-28. This decision came in the wake of a whistleblower's disclosure of mass government surveillance, a disclosure resulting in widespread public backlash and intensive public scrutiny of the merits of this Court. Releasing those records quelled some of the confusion regarding FISC's policies and helped to cultivate an informed debate.

Here, two differing summaries of the process are in the public sphere. In addition, the FBI has released 412 pages of heavily redacted information, which raises more questions than it answers. Therefore, the release of the hearing transcripts regarding applications for or renewal of FISA warrants related to Page would provide the public with a complete and unbiased look at the role of this Court. Such a publication would "contribute to an informed debate" and serve to "assure citizens of the integrity of this Court's proceedings." *Id.* at 26.

In addition, like in *In re Orders of this Court*, the public already has substantial knowledge about the existence of the FISA warrants of Page.[2] As in that case, the surrounding circumstances justify releasing the requested transcripts so that the public has the full picture of the role of the Court in the FISA warrant process. The publication of the transcripts will also correct any inaccuracies contained in the Nunes and Democratic memoranda as well as answer questions raised by the heavily redacted records produced by the FBI.

Importantly, the Court does not have to be concerned that the release of the transcripts will publicly reveal classified information. *In re Orders of this Court*, No. MISC 13-02, 2013 U.S. Dist. LEXIS 143060 at *26-27. The President has declassified the Congressional memoranda, and the FBI has released FISA warrant applications, application renewals, and this

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[2] The public's substantial knowledge comes not only from the release of the two Congressional memoranda but also from the 412 pages produced by the FBI to Judicial Watch in response to its FOIA litigation.

Court's orders related to Page. Therefore, most – if not all – of the information contained in the transcripts likely has been declassified.

VI. Conclusion.

For the foregoing reasons, Judicial Watch respectfully requests this Court make public all transcripts of hearings regarding applications for or renewal of FISA warrants related to Page.

Dated: July 24, 2018

Respectfully submitted,

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Counsel for Movant

Exhibit A

THE WHITE HOUSE

WASHINGTON

February 2, 2018

The Honorable Devin Nunes
Chairman, House Permanent Select Committee on Intelligence
United States Capitol
Washington, DC 20515

Dear Mr. Chairman:

On January 29, 2018, the House Permanent Select Committee on Intelligence (hereinafter "the Committee") voted to disclose publicly a memorandum containing classified information provided to the Committee in connection with its oversight activities (the "Memorandum," which is attached to this letter). As provided by clause 11(g) of Rule X of the House of Representatives, the Committee has forwarded this Memorandum to the President based on its determination that the release of the Memorandum would serve the public interest.

The Constitution vests the President with the authority to protect national security secrets from disclosure. As the Supreme Court has recognized, it is the President's responsibility to classify, declassify, and control access to information bearing on our intelligence sources and methods and national defense. *See, e.g., Dep't of Navy v. Egan*, 484 U.S. 518, 527 (1988). In order to facilitate appropriate congressional oversight, the Executive Branch may entrust classified information to the appropriate committees of Congress, as it has done in connection with the Committee's oversight activities here. The Executive Branch does so on the assumption that the Committee will responsibly protect such classified information, consistent with the laws of the United States.

The Committee has now determined that the release of the Memorandum would be appropriate. The Executive Branch, across Administrations of both parties, has worked to accommodate congressional requests to declassify specific materials in the public interest.[1] However, public release of classified information by unilateral action of the Legislative Branch is extremely rare and raises significant separation of powers concerns. Accordingly, the Committee's request to release the Memorandum is interpreted as a request for declassification pursuant to the President's authority.

The President understands that the protection of our national security represents his highest obligation. Accordingly, he has directed lawyers and national security staff to assess the

[1] *See, e.g.*, S. Rept. 114-8 at 12 (Administration of Barack Obama) ("On April 3, 2014 . . . the Committee agreed to send the revised Findings and Conclusions, and the updated Executive Summary of the Committee Study, to the President for declassification and public release."); H. Rept. 107-792 (Administration of George W. Bush) (similar); E.O. 12812 (Administration of George H.W. Bush) (noting Senate resolution requesting that President provide for declassification of certain information via Executive Order).

declassification request, consistent with established standards governing the handling of classified information, including those under Section 3.1(d) of Executive Order 13526. Those standards permit declassification when the public interest in disclosure outweighs any need to protect the information. The White House review process also included input from the Office of the Director of National Intelligence and the Department of Justice. Consistent with this review and these standards, the President has determined that declassification of the Memorandum is appropriate.

Based on this assessment and in light of the significant public interest in the memorandum, the President has authorized the declassification of the Memorandum. To be clear, the Memorandum reflects the judgments of its congressional authors. The President understands that oversight concerning matters related to the Memorandum may be continuing. Though the circumstances leading to the declassification through this process are extraordinary, the Executive Branch stands ready to work with Congress to accommodate oversight requests consistent with applicable standards and processes, including the need to protect intelligence sources and methods.

Sincerely,

Donald F. McGahn II
Counsel to the President

cc: The Honorable Paul Ryan
Speaker of the House of Representatives

The Honorable Adam Schiff
Ranking Member, House Permanent Select Committee on Intelligence

January 18, 2018

Declassified by order of the President
February 2, 2018

To: HPSCI Majority Members

From: HPSCI Majority Staff

Subject: Foreign Intelligence Surveillance Act Abuses at the Department of Justice and the Federal Bureau of Investigation

Purpose

This memorandum provides Members an update on significant facts relating to the Committee's ongoing investigation into the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) and their use of the Foreign Intelligence Surveillance Act (FISA) during the 2016 presidential election cycle. Our findings, which are detailed below, 1) raise concerns with the legitimacy and legality of certain DOJ and FBI interactions with the Foreign Intelligence Surveillance Court (FISC), and 2) represent a troubling breakdown of legal processes established to protect the American people from abuses related to the FISA process.

Investigation Update

On October 21, 2016, DOJ and FBI sought and received a FISA probable cause order (not under Title VII) authorizing electronic surveillance on Carter Page from the FISC. Page is a U.S. citizen who served as a volunteer advisor to the Trump presidential campaign. Consistent with requirements under FISA, the application had to be first certified by the Director or Deputy Director of the FBI. It then required the approval of the Attorney General, Deputy Attorney General (DAG), or the Senate-confirmed Assistant Attorney General for the National Security Division.

The FBI and DOJ obtained one initial FISA warrant targeting Carter Page and three FISA renewals from the FISC. As required by statute (50 U.S.C. §1805(d)(1)), a FISA order on an American citizen must be renewed by the FISC every 90 days and each renewal requires a separate finding of probable cause. Then-Director James Comey signed three FISA applications in question on behalf of the FBI, and Deputy Director Andrew McCabe signed one. Then-DAG Sally Yates, then-Acting DAG Dana Boente, and DAG Rod Rosenstein each signed one or more FISA applications on behalf of DOJ.

Due to the sensitive nature of foreign intelligence activity, FISA submissions (including renewals) before the FISC are classified. As such, the public's confidence in the integrity of the FISA process depends on the court's ability to hold the government to the highest standard—particularly as it relates to surveillance of American citizens. However, the FISC's rigor in protecting the rights of Americans, which is reinforced by 90-day renewals of surveillance orders, is necessarily dependent on the government's production to the court of all material and relevant facts. This should include information potentially favorable to the target of the FISA

application that is known by the government. In the case of Carter Page, the government had at least four independent opportunities before the FISC to accurately provide an accounting of the relevant facts. However, our findings indicate that, as described below, material and relevant information was omitted.

1) The "dossier" compiled by Christopher Steele (Steele dossier) on behalf of the Democratic National Committee (DNC) and the Hillary Clinton campaign formed an essential part of the Carter Page FISA application. Steele was a longtime FBI source who was paid over $160,000 by the DNC and Clinton campaign, via the law firm Perkins Coie and research firm Fusion GPS, to obtain derogatory information on Donald Trump's ties to Russia.

   a) Neither the initial application in October 2016, nor any of the renewals, disclose or reference the role of the DNC, Clinton campaign, or any party/campaign in funding Steele's efforts, even though the political origins of the Steele dossier were then known to senior DOJ and FBI officials.

   b) The initial FISA application notes Steele was working for a named U.S. person, but does not name Fusion GPS and principal Glenn Simpson, who was paid by a U.S. law firm (Perkins Coie) representing the DNC (even though it was known by DOJ at the time that political actors were involved with the Steele dossier). The application does not mention Steele was ultimately working on behalf of—and paid by—the DNC and Clinton campaign, or that the FBI had separately authorized payment to Steele for the same information.

2) The Carter Page FISA application also cited extensively a September 23, 2016, *Yahoo News* article by Michael Isikoff, which focuses on Page's July 2016 trip to Moscow. This article does not corroborate the Steele dossier because it is derived from information leaked by Steele himself to *Yahoo News*. The Page FISA application incorrectly assesses that Steele did not directly provide information to *Yahoo News*. Steele has admitted in British court filings that he met with *Yahoo News*—and several other outlets—in September 2016 at the direction of Fusion GPS. Perkins Coie was aware of Steele's initial media contacts because they hosted at least one meeting in Washington D.C. in 2016 with Steele and Fusion GPS where this matter was discussed.

   a) Steele was suspended and then terminated as an FBI source for what the FBI defines as the most serious of violations—an unauthorized disclosure to the media of his relationship with the FBI in an October 30, 2016, *Mother Jones* article by David Corn. Steele should have been terminated for his previous undisclosed contacts with Yahoo and other outlets **in September**—before the Page application was submitted to

the FISC in October—but Steele improperly concealed from and lied to the FBI about those contacts.

b) Steele's numerous encounters with the media violated the cardinal rule of source handling—maintaining confidentiality—and demonstrated that Steele had become a less than reliable source for the FBI.

3) Before and after Steele was terminated as a source, he maintained contact with DOJ via then-Associate Deputy Attorney General Bruce Ohr, a senior DOJ official who worked closely with Deputy Attorneys General Yates and later Rosenstein. Shortly after the election, the FBI began interviewing Ohr, documenting his communications with Steele. For example, in September 2016, Steele admitted to Ohr his feelings against then-candidate Trump when Steele said he "**was desperate that Donald Trump not get elected and was passionate about him not being president.**" This clear evidence of Steele's bias was recorded by Ohr at the time and subsequently in official FBI files—but not reflected in any of the Page FISA applications.

a) During this same time period, Ohr's wife was employed by Fusion GPS to assist in the cultivation of opposition research on Trump. Ohr later provided the FBI with all of his wife's opposition research, paid for by the DNC and Clinton campaign via Fusion GPS. The Ohrs' relationship with Steele and Fusion GPS was inexplicably concealed from the FISC.

4) According to the head of the FBI's counterintelligence division, Assistant Director Bill Priestap, corroboration of the Steele dossier was in its "infancy" at the time of the initial Page FISA application. After Steele was terminated, a source validation report conducted by an independent unit within FBI assessed Steele's reporting as only minimally corroborated. Yet, in early January 2017, Director Comey briefed President-elect Trump on a summary of the Steele dossier, even though it was—according to his June 2017 testimony—"salacious and unverified." While the FISA application relied on Steele's past record of credible reporting on other unrelated matters, it ignored or concealed his anti-Trump financial and ideological motivations. Furthermore, Deputy Director McCabe testified before the Committee in December 2017 that no surveillance warrant would have been sought from the FISC without the Steele dossier information.

5) The Page FISA application also mentions information regarding fellow Trump campaign advisor George Papadopoulos, but there is no evidence of any cooperation or conspiracy between Page and Papadopoulos. The Papadopoulos information triggered the opening of an FBI counterintelligence investigation in late July 2016 by FBI agent Pete Strzok. Strzok was reassigned by the Special Counsel's Office to FBI Human Resources for improper text messages with his mistress, FBI Attorney Lisa Page (no known relation to Carter Page), where they both demonstrated a clear bias against Trump and in favor of Clinton, whom Strzok had also investigated. The Strzok/Lisa Page texts also reflect extensive discussions about the investigation, orchestrating leaks to the media, and include a meeting with Deputy Director McCabe to discuss an "insurance" policy against President Trump's election.

Exhibit B

TO: All Members of the House of Representatives
FROM: HPSCI Minority
DATE: January 29, 2018
RE: Correcting the Record – The Russia Investigations

The HPSCI Majority's move to release to the House of Representatives its allegations against the Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ) is a transparent effort to undermine those agencies, the Special Counsel, and Congress' investigations. It also risks public exposure of sensitive sources and methods for no legitimate purpose.

FBI and DOJ officials did not "abuse" the Foreign Intelligence Surveillance Act (FISA) process, omit material information, or subvert this vital tool to spy on the Trump campaign.

In fact, DOJ and the FBI would have been remiss in their duty to protect the country had they not sought a FISA warrant and repeated renewals to conduct temporary surveillance of Carter Page, someone the FBI assessed to be an agent of the Russian government. DOJ met the rigor, transparency, and evidentiary basis needed to meet FISA's probable cause requirement, by demonstrating:

- contemporaneous evidence of Russia's election interference;
- concerning Russian links and outreach to Trump campaign officials;
- Page's history with Russian intelligence; and
- [redacted] Page's suspicious activities in 2016, including in Moscow.

The Committee's Minority has therefore prepared this memorandum to correct the record:

- **Christopher Steele's raw intelligence reporting did not inform the FBI's decision to initiate its counterintelligence investigation in late July 2016.** In fact, the FBI's closely-held investigative team only received Steele's reporting in mid-September – more than seven weeks later. The FBI – and, subsequently, the Special Counsel's – investigation into links between the Russian government and Trump campaign associates has been based on troubling law enforcement and intelligence information unrelated to the "dossier."

- **DOJ's October 21, 2016 FISA application and three subsequent renewals carefully outlined for the Court a multi-pronged rationale for surveilling Page**, who, at the time of the first application, was no longer with the Trump campaign. DOJ detailed Page's past relationships with Russian spies and interaction with Russian officials during the 2016 campaign, [redacted]. DOJ cited multiple sources to support the case for surveilling Page — but made only narrow use of information from Steele's sources about Page's specific activities in 2016, chiefly his suspected July 2016 meetings in Moscow with Russian officials. [redacted]. In fact, the FBI interviewed Page in March 2016 about his contact with Russian intelligence, the very month candidate Donald Trump named him a foreign policy advisor.

  As DOJ informed the Court in subsequent renewals, [redacted] **Steele's reporting about Page's Moscow meetings** [redacted]. DOJ's applications did not otherwise rely on Steele's reporting, including any "salacious" allegations

about Trump, and the FBI never paid Steele for this reporting. While explaining why the FBI viewed Steele's reporting and sources as reliable and credible, DOJ also disclosed:

- Steele's prior relationship with the FBI;
- the fact of and reason for his termination as a source; and
- the assessed political motivation of those who hired him.

- **The Committee Majority's memorandum, which draws selectively on highly sensitive classified information, includes other distortions and misrepresentations** that are contradicted by the underlying classified documents, which the vast majority of Members of the Committee and the House have not had the opportunity to review – and which Chairman Nunes chose not to read himself.[1]

Background

On January 18, 2018, the Committee Majority, during an unrelated business meeting, forced a surprise vote to release to the full House a profoundly misleading memorandum alleging serious abuses by the FBI and DOJ. Majority staff drafted the document in secret on behalf of Chairman Devin Nunes (and reportedly with guidance and input from Rep. Trey Gowdy), and then rushed a party-line vote without prior notice.

This was by design. The overwhelming majority of Committee Members never received DOJ authorization to access the underlying classified information, and therefore could not judge the veracity of Chairman Nunes' claims. Due to sensitive sources and methods, DOJ provided access only to the Committee's Chair and Ranking Member (or respective designees), and limited staff, to facilitate the Committee's investigation into Russia's covert campaign to influence the 2016 U.S. elections.[2] As DOJ has confirmed publicly, it did not authorize the broader release of this information within Congress or to the public, and Chairman Nunes refused to allow DOJ and the FBI to review his document until he permitted the FBI Director to see it for the first time in HPSCI's secure spaces late on Sunday, January 28 – 10 days after disclosure to the House.[3]

FBI's Counterintelligence Investigation

In its October 2016 FISA application and subsequent renewals, DOJ accurately informed the Court that the FBI initiated its counterintelligence investigation on July 31, 2016, after receiving information [redacted]. George Papadopoulos revealed [redacted] that individuals linked to Russia, who took interest in Papadopoulos as a Trump campaign foreign policy adviser, informed him in late April 2016 that Russia [redacted].[4] Papadopoulos's disclosure, moreover, occurred against **the backdrop of Russia's aggressive covert campaign to influence our elections, which the FBI was already monitoring.** We would later learn in Papadopoulos's plea that that the information the Russians could assist by anonymously releasing were thousands of Hillary Clinton's emails.[5]

DOJ told the Court the truth. Its representation was consistent with the FBI's underlying investigative record, which current and former senior officials later corroborated in extensive

Committee testimony. Christopher Steele's reporting, which he began to share with an FBI agent [redacted] through the end of October 2016, **played no role** in launching the FBI's counterintelligence investigation into Russian interference and links to the Trump campaign. In fact, Steele's reporting did not reach the counterintelligence team investigating Russia at FBI headquarters until mid-September 2016, more than seven weeks after the FBI opened its investigation, because the probe's existence was so closely held within the FBI.[6] By then, the FBI had already opened sub-inquiries into [redacted] individuals linked to the Trump campaign: [redacted] and former campaign foreign policy advisor **Carter Page.**

As Committee testimony bears out, the FBI would have continued its investigation, including against [redacted] individuals, even if it had never received information from Steele, never applied for a FISA warrant against Page, or if the FISC had rejected the application.[7]

DOJ's FISA Application and Renewals

The initial warrant application and subsequent renewals received independent scrutiny and approval by four different federal judges, ~~three~~ 2 of whom were appointed by President George W. Bush and one by President Ronald Reagan. DOJ first applied to the FISC on October 21, 2016 for a warrant to permit the FBI to initiate electronic surveillance and physical search of Page for 90 days, consistent with FISA requirements. The Court approved three renewals – in early January 2017, early April 2017, and late June 2017 – which authorized the FBI to maintain surveillance on Page until late September 2017. Senior DOJ and FBI officials appointed by the Obama and Trump Administrations, including acting Attorney General Dana Boente and Deputy Attorney General Rod Rosenstein, certified the applications with the Court.

One by George H.W. Bush

FISA was not used to spy on Trump or his campaign. As the Trump campaign and Page have acknowledged, Page ended his formal affiliation with the campaign months before DOJ applied for a warrant. DOJ, moreover, submitted the initial application less than three weeks before the election, even though the FBI's investigation had been ongoing since the end of July 2016.

DOJ's warrant request was based on compelling evidence and probable cause to believe Page was knowingly assisting clandestine Russian intelligence activities in the U.S.:

- **Page's Connections to Russian Government and Intelligence Officials:** The FBI had an independent basis for investigating Page's motivations and actions during the campaign, transition, and following the inauguration. As DOJ described in detail to the Court, Page had an extensive record as [redacted][8] prior to joining the Trump campaign. He resided in Moscow from 2004-2007 and pursued business deals with Russia's state-owned energy company Gazprom—[redacted][9] As early as [redacted], a Russian intelligence officer [redacted] targeted Page for recruitment. Page showed [redacted].

Page remained on the radar of Russian intelligence and the FBI. In 2013, prosecutors indicted three other Russian spies, two of whom targeted Page for recruitment. The FBI also interviewed Page multiple times about his Russian intelligence contacts, including in March 2016.[10] The FBI's concern about and knowledge of Page's activities therefore long predate the FBI's receipt of Steele's information.

- **Page's Suspicious Activity During the 2016 Campaign:** The FISA applications also detail Page's suspicious activity after joining the Trump campaign in March 2016. [redacted] Page traveled to Moscow in July 2016, during which he gave a university commencement address – an honor usually reserved for well-known luminaries.

  - **It is in this specific sub-section of the applications that DOJ refers to Steele's reporting on Page and his alleged coordination with Russian officials.** Steele's information about Page was consistent with the FBI's assessment of Russian intelligence efforts to recruit him and his connections to Russian persons of interest.

  - In particular, Steele's sources reported that Page met separately while in Russia with Igor Sechin, a close associate of Vladimir Putin and executive chairman of Rosneft, Russia's state-owned oil company, and Igor Divyekin, a senior Kremlin official. Sechin allegedly discussed the prospect of future U.S.-Russia energy cooperation and "an associated move to lift Ukraine-related western sanctions against Russia." Divyekin allegedly disclosed to Page that the Kremlin possessed compromising information on Clinton ("kompromat") and noted "the possibility of its being released to Candidate #1's campaign."[11] [*Note*: "Candidate #1" refers to candidate Trump.] This closely tracks what other Russian contacts were informing another Trump foreign policy advisor, George Papadopoulos.

- In subsequent FISA renewals, **DOJ provided additional information obtained through multiple independent sources that corroborated Steele's reporting.**

  - [redacted][12]

  - [redacted]

  - Page's [redacted] in Moscow with [redacted] senior Russian officials [redacted] as well as meetings with Russian officials [redacted][13]

This information contradicts Page's November 2, 2017 testimony to the Committee, in which he initially denied any such meetings and then was forced to admit speaking with

Dvorkovich and meeting with Rosneft's Sechin-tied investor relations chief, Andrey Baranov.

- **The Court-approved surveillance of Page allowed FBI to collect valuable intelligence.** The FISA renewals demonstrate that the FBI collected important investigative information and leads by conducting Court-approved surveillance. For instance, [redacted]

DOJ also documented evidence that Page [redacted], anticipated [redacted] and repeatedly contacted [redacted] in an effort to present himself as [redacted][15][16]

Page's efforts to [redacted] also contradict his sworn testimony to our Committee.

DOJ's Transparency about Christopher Steele

Far from "omitting" material facts about Steele, as the Majority claims,[17] DOJ repeatedly informed the Court about Steele's background, credibility, and potential bias. DOJ explained in detail Steele's prior relationship with and compensation from the FBI; his credibility, reporting history, and source network; the fact of and reason for his termination as a source in late October 2016; and the likely political motivations of those who hired Steele.

- **DOJ was transparent with Court about Steele's sourcing:** The Committee Majority, which had earlier accused Obama Administration officials of improper "unmasking," faults DOJ for not revealing the names of specific U.S. persons and entities in the FISA application and subsequent renewals. In fact, DOJ appropriately upheld its longstanding practice of protecting U.S. citizen information by purposefully not "unmasking" U.S. person and entity names, unless they were themselves the subject of a counterintelligence investigation. DOJ instead used generic identifiers that provided the Court with more than sufficient information to understand the political context of Steele's research. In an extensive explanation to the Court, DOJ discloses that Steele

> *"was approached by an identified U.S. Person,[18] who indicated to Source #1[Steele][19] that a U.S.-based law firm[20] had hired the identified U.S. Person to conduct research regarding Candidate #1's[21] ties to Russia. (The identified U.S. Person and Source #1 have a long-standing business relationship.) The identified U.S. person hired Source #1 to conduct this research. The identified U.S. Person never advised Source #1 as to the motivation behind the research into Candidate #1's ties to Russia. The FBI speculates that the identified U.S. Person was likely looking for information that could be used to discredit Candidate #1's campaign."*[22]

Contrary to the Majority's assertion that DOJ fails to mention that Steele's research was commissioned by "political actors" to "obtain derogatory information on Donald Trump's ties to Russia,"[23] **DOJ in fact informed the Court accurately that Steele was hired by**

politically-motivated U.S. persons and entities and that his research appeared intended for use "to discredit" Trump's campaign.

- **DOJ explained the FBI's reasonable basis for finding Steele credible:** The applications correctly described Steele as [redacted]. The applications also reviewed Steele's multi-year history of credible reporting on Russia and other matters, including information DOJ used in criminal proceedings.[24] Senior FBI and DOJ officials have repeatedly affirmed to the Committee the reliability and credibility of Steele's reporting, an assessment also reflected in the FBI's underlying source documents.[25] The FBI has undertaken a rigorous process to vet allegations from Steele's reporting, including with regard to Page.[26]

- **The FBI properly notified the FISC after it terminated Steele as a source for making unauthorized disclosures to the media.** The Majority cites no evidence that the FBI, prior to filing its initial October 21, 2016 application, actually knew or should have known of any allegedly inappropriate media contacts by Steele. Nor do they cite evidence that Steele disclosed to *Yahoo!* details included in the FISA warrant, since the British Court filings to which they refer do not address what Steele may have said to *Yahoo!*.

  DOJ informed the Court in its renewals that the FBI acted promptly to terminate Steele after learning from him (after DOJ filed the first warrant application) that he had discussed his work with a media outlet in late October. The January 2018 renewal further explained to the Court that Steele told the FBI that he made his unauthorized media disclosure because of his frustration at Director Comey's public announcement shortly before the election that the FBI reopened its investigation into candidate Clinton's email use.

- **DOJ never paid Steele for the "dossier":** The Majority asserts that the FBI had "separately authorized payment" to Steele for his research on Trump but neglects to mention that payment was cancelled and never made. As the FBI's records and Committee testimony confirms, although the FBI initially considered compensation [redacted], **Steele ultimately never received payment from the FBI for any "dossier"-related information.**[27] DOJ accurately informed the Court that Steele had been an FBI confidential human source since [redacted], for which he was "compensated [redacted] by the FBI" – payment for previously-shared information of value unrelated to the FBI's Russia investigation.[28]

Additional Omissions, Errors, and Distortions in the Majority's Memorandum

- **DOJ appropriately provided the Court with a comprehensive explanation of Russia's election interference, including evidence that Russia courted another Trump campaign advisor, Papadopoulos, and that Russian agents previewed their hack and dissemination of stolen emails.** In claiming that there is "no evidence of any cooperation or conspiracy between Page and Papadopoulos,"[29] the Majority misstates the reason why DOJ specifically explained Russia's courting of Papadopoulos. Papadopoulos's interaction with Russian agents, coupled with real-time evidence of Russian election interference, provided the Court with a broader context in which to evaluate Russia's clandestine activities and Page's history and alleged contact with Russian officials. Moreover, since only Page [redacted]

[redacted], no evidence of a separate conspiracy between him and Papadopoulos was required. **DOJ would have been negligent in omitting vital information about Papadopoulos and Russia's concerted efforts.**

- **In its Court filings, DOJ made proper use of news coverage.** The Majority falsely claims that the FISA materials "relied heavily" on a September 23, 2016 *Yahoo!* News article by Michael Isikoff and that this article "does not corroborate the Steele Dossier because it is derived from information leaked by Steele himself."[30] In fact, DOJ referenced Isikoff's article, alongside another article the Majority fails to mention, not to provide separate corroboration for Steele's reporting, but instead to inform the Court of Page's public denial of his suspected meetings in Moscow, which Page also echoed in a September 25, 2016 letter to FBI Director Comey. [redacted][31]

- **The Majority's reference to Bruce Ohr is misleading.** The Majority mischaracterizes Bruce Ohr's role, overstates the significance of his interactions with Steele, and misleads about the timeframe of Ohr's communication with the FBI. In late November 2016, Ohr informed the FBI of his prior professional relationship with Steele and information that Steele shared with him (including Steele's concern about Trump being compromised by Russia). He also described his wife's contract work with Fusion GPS, the firm that hired Steele separately. This occurred weeks after the election and more than a month after the Court approved the initial FISA application. The Majority describes Bruce Ohr as a senior DOJ official who "worked closely with the Deputy Attorney General, Yates and later Rosenstein," in order to imply that Ohr was somehow involved in the FISA process, but there is no indication this is the case.

  Bruce Ohr is a well-respected career professional whose portfolio is drugs and organized crime, not counterintelligence. There is no evidence that he would have known about the Page FISA applications and their contents. The Majority's assertions, moreover, are irrelevant in determining the veracity of Steele's reporting. By the time Ohr debriefs with the FBI, it had already terminated Steele as a source and was independently corroborating Steele's reporting about Page's activities. Bruce Ohr took the initiative to inform the FBI of what he knew, and the Majority does him a grave disservice by suggesting he is part of some malign conspiracy.

- **Finally, Peter Strzok and Lisa Page's text messages are irrelevant to the FISA application.** The Majority gratuitously includes reference to Strzok and Page at the end of their memorandum, in an effort to imply that political bias infected the FBI's investigation and DOJ's FISA applications. In fact, neither Strzok nor Page served as affiants on the applications, which were the product of extensive and senior DOJ and FBI review.[32] In demonizing both career professionals, the Majority accuses them of "orchestrating leaks to the media" – a serious charge; omits inconvenient text messages, in which they critiqued a wide range of other officials and candidates from both parties; does not disclose that FBI Deputy Director McCabe testified to the Committee that he had no idea what Page and Strzok were referring to in their "insurance policy" texts;[33] and ignores Strzok's acknowledged role in preparing a public declaration, by then Director Comey, about former Secretary Clinton's "extreme carelessness" in handling classified information—which greatly damaged Clinton's public reputation in the days just prior to the presidential election.

[1] Letter to HPSCI Chairman Devin Nunes, Assistant Attorney General Stephen Boyd, Department of Justice, January 24, 2018.

[2] Letter to HPSCI Chairman Devin Nunes, Assistant Attorney General Stephen Boyd, Department of Justice, January 24, 2018. DOJ also confirmed in writing to Minority Staff DOJ and FBI's terms of review:

> the Department has accommodated HPSCI's oversight request by allowing repeated in camera reviews of the material in an appropriate secure facility under the general stipulations that (1) **the Chair (or his delegate) and the Ranking Member (or his delegate) and two staff each, with appropriate security clearances, be allowed to review on behalf of the Committee,** (2) that the review take place in a reading room set up at the Department, and (3) that the documents not leave the physical control of the Department, and (5) that the review opportunities be bipartisan in nature. Though we originally requested that no notes be taken, in acknowledgment of a request by the Committee and recognizing that the volume of documents had increased with time, the Department eventually allowed notes to be taken to facilitate HPSCI's review. Also, initial reviews of the material include [sic] short briefings by Department officials to put the material in context and to provide some additional information.

Email from Stephen Boyd to HPSCI Minority Staff, January 18, 2018 (emphasis supplied).

[3] Letter to HPSCI Chairman Devin Nunes, Assistant Attorney General Stephen Boyd, Department of Justice, January 24, 2018.

[4] [redacted]

[5] Papadopoulos's October 5, 2017 guilty plea adds further texture to this initial tip, by clarifying that a Russian agent told Papadopoulos that "They [the Russians] have dirt on her"; "the Russians had emails of Clinton"; "they have thousands of emails." *U.S. v. George Papadopoulos* (1:17-cr-182, District of Columbia), p. 7.

[6] [redacted]

[7] Under the Special Counsel's direction, Flynn and Papadopoulos have both pleaded guilty to lying to federal investigators and are cooperating with the Special Counsel's investigation, while Manafort and his long-time aide, former Trump deputy campaign manager Rick Gates, have been indicted on multiple counts and are awaiting trial. See *U.S. v. Michael T. Flynn* (1:17-cr-232, District of Columbia); *U.S. v. Paul J. Manafort, Jr., and Richard W. Gates III* (1:17-cr-201, District of Columbia); *U.S. v. George Papadopoulos* (1:17-cr-182, District of Columbia).

[8] [redacted]

[9] [redacted]

[10] [redacted] See also, *U.S. v. Evgeny Buryakov, a/k/a "Zhenya," Igor Sporyshev, and Victor Podobnyy*, U.S. Southern District of New York, January 23, 2015.

[11] Department of Justice, Foreign Intelligence Surveillance Court Application, October 21, 2016, p.18. Repeated in subsequent renewal applications

[12] Department of Justice, Foreign Intelligence Surveillance Court Application, June 29, 2017, pp. 20-21.

[13] [redacted]

[14] [redacted] the FBI and broader Intelligence Community's high confidence assessment that the Russian government was engaged in a covert interference campaign to influence the 2016 election, including that Russian intelligence actors "compromised the DNC" and WikiLeaks subsequently leaked in July 2016 "a trove" of DNC emails. Department of Justice, Foreign Intelligence Surveillance Court Application, October 21, 2016, pp. 6-7. Repeated and updated with new information in subsequent renewal applications. Department of Justice, Foreign Intelligence Surveillance Court Application, June 29, 2017, pp. 20-21.

[15] Department of Justice, Foreign Intelligence Surveillance Court Application, June 29, 2017, pp. 36, 46, 48.

[16] Department of Justice, Foreign Intelligence Surveillance Court Application, June 29, 2017, p. 56.

[17] HPSCI Majority Memorandum, *Foreign Intelligence Surveillance Act Abuses at the Department of Justice and the Federal Bureau of Investigation,* January 18, 2018, pp. 2-3 (enumerating "omissions" of fact, regarding Steele and his activities, from the Page FISA applications).

[18] Glenn Simpson.

[19] Christopher Steele.

[20] Perkins Coie LLP.

[21] Donald Trump.

[22] Department of Justice, Foreign Intelligence Surveillance Court Application, October 21, 2016, pp. 15-16, n. 8. Repeated in subsequent renewal applications.

[23] HPSCI Majority Memorandum, *Foreign Intelligence Surveillance Act Abuses at the Department of Justice and the Federal Bureau of Investigation,* January 18, 2018, p. 2.

[24] Department of Justice, Foreign Intelligence Surveillance Court Application, October 21, 2016, p. 15, footnote 8. Repeated in subsequent renewal applications.

[25] Interview of Andrew McCabe (FBI Deputy Director), House Permanent Select Committee on Intelligence, December 19, 2017, p. 46, 100; Interview of Sally Yates (former Deputy Attorney General), House Permanent Select Committee on Intelligence, November 3, 2017, p. 16; Interview with John Carlin (former Assistant Attorney General for National Security), House Permanent Select Committee on Intelligence, July, 2017, p. 35.

[26] Interview of Andrew McCabe (FBI Deputy Director), House Permanent Select Committee on Intelligence, December 19, 2017, p. 100-101, 115.

[27] Interview of FBI Agent, House Permanent Select Committee on Intelligence, December 20, 2017, p. 112.

[28] Department of Justice, Foreign Intelligence Surveillance Court Application, October 21, 2016, pp. 15-16, n. 8. Repeated in subsequent renewal applications.

[29] HPSCI Majority Memorandum, *Foreign Intelligence Surveillance Act Abuses at the Department of Justice and the Federal Bureau of Investigation.* January 18, 2018, p. 4 ("The Page FISA application also mentions information regarding fellow Trump campaign advisor George Papadopoulos, but there is no evidence of any cooperation or conspiracy between Page and Papadopoulos.")

[30] HPSCI Majority Memorandum, *Foreign Intelligence Surveillance Act Abuses at the Department of Justice and the Federal Bureau of Investigation,* January 18, 2018, p. 2. Neither Isikoff nor *Yahoo!* are specifically identified in the FISA Materials, in keeping with the FBI's general practice of not identifying U.S. persons.

[31] Department of Justice, Foreign Intelligence Surveillance Court Application, October 21, 2016, p. 25; Department of Justice, Foreign Intelligence Surveillance Court Application, January 12. 2017, p. 31; Carter Page, Letter to FBI Director James Comey, September 25, 2016.

[redacted]

[redacted].

[33] Interview of Andrew McCabe (FBI Deputy Director), House Permanent Select Committee on Intelligence, December 19, 2017, p. 157.

Exhibit C

UNITED STATES FOREIGN
INTELLIGENCE SURVEILLANCE COURT
Washington, D.C.

Honorable Rosemary M. Collyer
Presiding Judge

February 15, 2018

Honorable Devin Nunes
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Nunes:

I write in response to your letter of February 7, 2018, in which you request that the Foreign Intelligence Surveillance Court confirm whether "transcripts of relevant FISC hearings associated with" matters described in the letter exist and, if so, provide copies to the Committee. As you know, any such transcripts would be classified. It may also be helpful for me to observe that, in a typical process of considering an application, we make no systematic record of questions we ask or responses the government gives.

The Court appreciates the interest of the House Intelligence Committee in its operations and public confidence therein. Before 2018, the Court had never received a request from Congress for documents related to any specific FISA application. Thus, your requests – and others I have recently received from Congress – present novel and significant questions. The considerations involve not only prerogatives of the Legislative Branch, but also interests of the Executive Branch, including its responsibility for national security and its need to maintain the integrity of any ongoing law enforcement investigations.

While this analysis is underway, you may note that the Department of Justice possesses (or can easily obtain) the same responsive information the Court might possess, and because of separation of powers considerations, is better positioned than the Court to respond quickly. (We have previously made clear to the Department, both formally and informally, that we do not object to any decision by the Executive Branch to convey to Congress any such information.)

We have asked the Executive Branch to keep us informed regarding any information concerning the FISC that it provides to Congress. If you choose to present your request to the Executive Branch, we likewise request that you kindly let us know.

Sincerely,

Rosemary M. Collyer
Presiding Judge

cc: Honorable Adam Schiff
Honorable Jeff Sessions
Honorable Christopher Wray

Exhibit D

U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

July 20, 2018

MS. KATE BAILEY
JUDICIAL WATCH, INC.
SUITE 800
425 THIRD STREET, SW
WASHINGTON, DC 20024

Civil Litigation No.: 18-cv-00245
Subject: FISA Applications Relating to Trump Associates and Russia

Dear Ms. Bailey:

The enclosed documents were reviewed under the Freedom of Information Act (FOIA), Title 5, United States Code, Section 552. As a result of President Trump's declassification of the House Permanent Select Committee (HPSCI) Majority Staff's January 18, 2018 memorandum entitled "Foreign Intelligence Surveillance Act Abuses at the Department of Justice and the Federal Bureau of Investigation," which revealed DOJ and the FBI had sought and obtained authority under the Foreign Intelligence Surveillance Act (FISA) to conduct surveillance of Carter Page, and the subsequent release of the HPSCI Minority's January 29, 2018, memorandum entitled "Correcting the Record – The Russia Investigation," which provided additional information about the Page FISAs, the government was required to review these records for potential release of segregable information in response to FOIA requests for these materials.

Below you will find check boxes under the appropriate statute headings which indicate the types of exemptions asserted to protect information which is exempt from disclosure. The appropriate exemptions are noted on the enclosed pages next to redacted information. The checked exemption boxes used to withhold information are further explained in the enclosed Explanation of Exemptions.

Section 552		Section 552a
☑ (b)(1)	☑ (b)(7)(A)	☐ (d)(5)
☐ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
(b)(3)	☑ (b)(7)(C)	☐ (k)(1)
50 USC Section 3024(i)(1)	☑ (b)(7)(D)	☐ (k)(2)
	☑ (b)(7)(E)	☐ (k)(3)
	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☑ (b)(6)		☐ (k)(7)

589 pages were reviewed and 412 pages are being released.

Below you will also find additional informational paragraphs about your request. Where applicable, check boxes are used to provide you with more information about the processing of your request. Please read each item carefully.

☐ Documents were located which originated with, or contained information concerning, another Government Agency [OGA].

☐ This information has been referred to the OGA 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.

☐ In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010). This response is limited to those records 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. Enclosed for your information is a copy of the Explanation of Exemptions.

Although your request is in litigation, we are required by 5 USC § 552 (a)(6)(A) to provide you the following information concerning your right to appeal. 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 web site: https://foiaonline.regulations.gov/foia/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.

☐ The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown such additional references, if identified to the same subject of the main investigative file, usually contain information similar to the information processed in the main file(s). As such, we have given priority to processing only the main investigative file(s) given our significant backlog. If you would like to receive any references to the subject(s) of your request, please submit a separate request for the reference material in writing. The references will be reviewed at a later date, as time and resources permit.

☑ See additional information which follows.

Sincerely,

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosures

The enclosed documents represent the final release of information responsive to your FOIA request. The attached documents are Bates stamped 17-cv-597(FBI)-1-412.[1] An additional 177 responsive pages were categorically withheld pursuant to FOIA Exemptions (b)(1), (b)(3), (b)(7)(A), and (b)(7)(E).

Beyond what is released herein, the FBI neither confirms nor denies the existence of additional records responsive to this request because merely acknowledging whether or not responsive records exist would itself cause

[1] 17-cv-597(FBI) was used as the Bates stamp prefix because the records responsive to your request were processed in response to the FOIA request at issue in *James Madison Project, et al. v. Department of Justice*, 17-cv-00597 (District of D.C.).

harms protected against by FOIA Exemptions (b)(1), (b)(3), (b)(7)(A), and (b)(7)(E).

This material is being provided to you at no charge.

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.

Exhibit E

U.S. Department of Justice

National Security Division

Washington, D.C. 20530

William Marshall
425 Third St., SW, Suite 800
Washington, DC 20024
bmarshall@judicialwatch.org

Re: FOIA/PA # 18-221

18 June 2018

Dear Mr. Marshall:

This is our final response to your FOIA (FOIA)/Privacy Act (PA) request dated February 16, 2018 requesting, *"[a]ny and all transcripts of hearings before the Foreign Intelligence Surveillance Court regarding applications for or renewals of Foreign Intelligence Surveillance Act ("FISA") warrants relating to Carter Page and/or Michael Flynn."* Our FOIA office received your Freedom of Information request on June 1, 2018.

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) (2006 & Supp. IV (2010). 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.

The National Security Division (NSD) maintains operational files which document requests to and approvals from the Foreign Intelligence Surveillance Court of authority for the U.S. Intelligence Community to conduct certain foreign intelligence activities.

We do not search these records in response to requests regarding the use or non-use of such techniques in cases where the confirmation or denial of the existence of responsive records would, in and of itself, reveal information properly classified under Executive Order 13526. To confirm or deny the existence of such materials in each case would tend to reveal properly classified information regarding whether particular surveillance techniques have or have not been used by the U.S. Intelligence Community. Accordingly, with respect to your request relating to Michael Flynn, we can neither confirm nor deny the existence of records in these files responsive to your request pursuant to 5 U.S.C. 552(b)(1).

Based on declassification decisions by the President and the Intelligence Community, however, we are able to respond to your request relating to Carter Page. A search of NSD's records did not identify any records responsive to your request.

As this request is in litigation, we are omitting our standard administrative appeal paragraph.

Sincerely,

Kevin G. Tiernan
Records and FOIA Unit

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

IN RE TRANSCRIPTS OF THIS COURT RELATED TO THE SURVEILLANCE OF CARTER PAGE	))))	Docket No. Misc. 18-03

CERTIFICATION OF BAR MEMBERSHIP AND SECURITY CLEARANCE STATUS

Pursuant to Rule 7 of the U.S. Foreign Intelligence Surveillance Court, Movant, by counsel, respectfully submits the following information:

I. Bar Membership Information.

Michael Bekesha is a member, in good standing, of the following federal courts: the U.S. Supreme Court, the U.S. Courts of Appeals for the Ninth, Eleventh, and District of Columbia Circuits, and the U.S. District Court for the District of Columbia. He is licensed to practice law by the bars of the District of Columbia and the Commonwealth of Massachusetts.

II. Security Clearance Information.

Michael Bekesha does not hold, and has never held, a security clearance. Because Movant's motion and the related briefing does not contain classified information, Movant respectfully submits that Michael Bekesha may participate in proceedings on the motion without access to classified information or security clearances.

Dated: July 24, 2018

Respectfully submitted,

Michael Bekesha (D.C. Bar No. 995749)
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, DC 20024
Phone: (202) 646-5172

Counsel for Movant

CERTIFICATE OF SERVICE

I, Michael Bekesha, hereby certify that I served a copy of the foregoing **JUDICIAL WATCH, INC.'S MOTION FOR PUBLICATION OF COURT TRANSCRIPTS** on the following person by U.S. Postal Service, Certified Mail:

Daniel Hartenstine
Security and Emergency Planning Staff
United States Department of Justice
145 N Street, N.E.
Washington, DC 20530

Dated: July 24, 2018

Michael Bekesha