



**citizens for responsibility
and ethics in washington**

January 25, 2012

By facsimile: 202-514-6117

Rena Y. Kim
Chief, FOIA/PA Section
Criminal Division
U.S. Department of Justice
Suite 1127, Keeney Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Ms. Kim:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, *et seq.*, and U.S. Department of Justice (“DOJ”) regulations, 28 C.F.R. Part 16.

Specifically, CREW requests copies of all records provided the Criminal Division between 1996 and 1997 by the House Ethics Committee (then known as the House Committee on Standards of Official Conduct) relating to the committee’s investigation of the use by then-House Speaker Newt Gingrich of charitable tax-exempt organizations to underwrite political activities and his false statements to the committee. CREW also seeks records reflecting how the DOJ responded to the evidence provided it by the House Ethics Committee.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs. Our request includes any letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to these records.

If it is your position that any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for **each**

withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” *Id.* at 224 (citing *Mead Data Central v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

We also note any claim the requested records cannot be released without the express authorization of Mr. Gingrich cannot succeed. As U.S. District Court Judge Gladys Kessler found recently in a lawsuit seeking documents related to DOJ’s investigation of a member of Congress, the interest in releasing the requested documents “tips strongly in favor of the public interest.” *CREW v. U.S. Dep’t of Justice*, 2012 U.S. Dist. LEXIS 2550, *24 (D.D.C. Jan. 10, 2012). As in that case, here “the public needs to know how DoJ carried out its statutory duties to investigate allegations against. . . members of Congress. That is the purpose of FOIA.” *Id.* The public interest is at its apex here, where the subject, Newt Gingrich, is a candidate for President of the United States in the midst of a heated primary campaign.

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *Mead Data Central*, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Finally, CREW welcomes the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable DOJ to process it within the FOIA’s deadlines. Anne L. Weismann, the CREW attorney handling this matter, can be reached at (202) 408-5565 or aweismann@citizensforethics.org.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.11(k), CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government and expenditures, and the disclosures will likely contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Specifically, these records are likely to contribute to greater public awareness of how DOJ carried out its statutory duties to investigate Mr. Gingrich's use of tax-exempt organizations and the false statements he made to the House Ethics Committee, particularly given the reportedly massive amount of evidence developed in the course of the House inquiry. See Stewart M. Powell, White House Says It Won't Interfere With Investigation, *Charleston Gazette (West Virginia)*, Jan. 26, 1997 (attached as Exhibit A). The special counsel for the House Ethics Committee concluded a course taught by Mr. Gingrich was funded by tax-exempt groups and involved activities "substantially motivated by partisan political goals." IRS Clears Foundation That Aided Gingrich Course, *Associated Press*, Feb. 4, 1999 (quoting Special Counsel James M. Cole) (attached as Exhibit B). Given Mr. Gingrich's current candidacy for President of the United States, the public interest in the legality of his past actions and how the government responded to those actions is especially strong.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW's financial interest. CREW will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org, which also includes links to thousands of pages of documents CREW acquired through its multiple FOIA requests as well as documents related to CREW's litigation and agency complaints, and through www.scribd.com.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

News Media Fee Waiver Request

CREW also asks that it not be charged search or review fees for this request because CREW qualifies as a "representative of the news media" pursuant to the FOIA and SEC regulation 17 C.F.R. § 200.80(e)(10). In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.*

CREW routinely and systematically disseminates information to the public in several ways. First, CREW maintains a frequently visited website, www.citizensforethics.org, that received 29,480 visits in December 2011. In addition, CREW posts all of the documents it receives under the FOIA on www.scribd.com, and that site has received 1,573,096 visits to CREW's documents since April 14, 2010.

Second, since May 2007 CREW has published an online newsletter, *CREWCuts*, that currently has 16,510 subscribers. *CREWCuts* provides subscribers with regular updates regarding CREW's activities and information the organization has received from government entities. A complete archive of past *CREWCuts* is available at <http://www.citizensforethics.org/newsletter>.

Third, CREW publishes a blog, *Citizens blogging for responsibility and ethics in Washington*, that reports on and analyzes newsworthy developments regarding government ethics and corruption. The blog, located at <http://www.citizensforethics.org/blog>, also provides links that direct readers to other news articles and commentary on these issues. CREW's blog had 3,869 page views in December, 2011.

Finally, CREW has published numerous reports to educate the public about government ethics and corruption. See *The Revolving Door*, a comprehensive look into the post-government activities of 24 former members of President Bush's cabinet; *Record Chaos*, which examines agency compliance with electronic record keeping responsibilities; and *Funds for Favors*, which details the campaign contributions received by chairman and ranking members of congressional committees from those they regulate. These and all other CREW's reports are available at <http://www.citizensforethics.org/reports>.

Based on these extensive publication activities, CREW qualifies for a fee waiver as a "representative of the news media" under the FOIA and agency regulations.

Request for Expedition

Pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 28 C.F.R. § 16.5(d)(iv), CREW requests that DOJ expedite the processing of this request. As required by DOJ regulations, 28 C.F.R. § 16.5(d)(2), CREW is submitted its request for expedition to the director of Public Affairs. A copy of CREW's request is enclosed.

CREW also requests that DOJ expedite its request pursuant to 28 C.F.R. § 16.5(d)(ii). As explained above, CREW is engaged primarily in the dissemination of information it gathers from a variety of sources, including the FOIA, and seeks the information requested in this FOIA request for the express purpose of disseminating it to the public. In addition to the websites on which CREW posts all documents it acquires through the FOIA, CREW's website contains

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numerous examples of its efforts, including reports it has published based on information it receives through the FOIA. For example, CREW's report, *Record Chaos: The Deplorable State of Electronic Record Keeping in the Federal Government*, was based in significant part on documents CREW requested under the FOIA from a variety of agencies, including DOJ.

There is a particular urgency to inform the public about the extent to which DOJ followed up on the substantial body of evidence developed by the House Ethics Committee concerning Mr. Gingrich's use of charitable tax-exempt organizations to underwrite political activities and his false statements to Congress. This evidence and the allegations it concerns bear directly on Mr. Gingrich's suitability for president and has been the subject of numerous media reports as well as a matter of debate between Mr. Gingrich and other presidential contenders. In light of the critical importance of this information to voters in the upcoming presidential election, immediate action is required.

Pursuant to 28 C.F.R. § 16.5(d)(3), I hereby certify the basis for CREW's request for expedition, as outlined above, is true and correct to the best of my knowledge and belief.

If you have any questions about this request or foresee any problems in releasing fully the requested records please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination. Please send the requested records to Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005, or aweismann@citizensforethics.org.

Sincerely,



Anne L. Weismann
Chief Counsel

Enclosures

EXHIBIT A

Charleston Gazette (West Virginia)

January 26, 1997, Sunday

WHITE HOUSE SAYS IT WON'T INTERFERE WITH INVESTIGATION

BYLINE: Stewart M. Powell

SECTION: News; Pg. P8B

LENGTH: 927 words

HEARST NEWSPAPERS

WASHINGTON - White House officials say the Internal Revenue Service and Justice Department will reach any decisions on follow-up investigations into House Speaker Newt Gingrich, R-Ga., without interference from President Clinton or his aides.

Career IRS agents and Justice Department prosecutors are "competent, professional, law-abiding civil servants who will have to do their job under the law," says White House Press Secretary Mike McCurry. "We would expect them to be scrupulous in applying the legal standards that exist."

McCurry said the White House would "let them do the job the way they are supposed to do it under the law, because when the White House attempts to interfere in any way, pro or con, politically it can lead to the wrong result."

McCurry said, however, that the White House always urges "every American, and not just the speaker," to cooperate with the IRS whenever required.

The two powerful law enforcement agencies, both under the control of Clinton appointees, face politically sensitive decisions on whether to investigate Gingrich's use of charitable tax-exempt organizations to underwrite political activities or his failure to provide accurate

statements to Congress.

The House voted last week to punish Gingrich with a reprimand and a \$ 300,000 fine after he admitted the misdeeds.

Officials at the IRS and the Justice Department declined comment on whether their agencies would open investigations.

The House ethics committee examined the issue for 28 months and ultimately made 150,000 pages of records and interview transcripts with about 70 people available to the IRS. The Justice Department has existing authority to look into the allegations, as well.

Gingrich spokeswoman Lauren Maddox said Friday that the speaker would have no comment on any aspect of the ethics case, including whether the case would be taken up by the IRS or Justice Department.

Attorney General Janet Reno, the nation's top law enforcement officer, refused to discuss the Justice Department's handling of the case.

Present and past federal officials expressed skepticism that the White House would seek to influence the Justice Department or the IRS - or that the two independent agencies would be susceptible to outside influence in such a high profile case.

Reid H. Weingarten, a prosecutor in the Justice Department's public integrity section for 12 years during the Carter and Reagan administrations, said career civil servants alone would make any decision to go forward with an inquiry into Gingrich.

Weingarten said there are so many layers of insulation between career prosecutors and the White House "that the speaker would not be beholden to Clinton - nor could Clinton help him anyway."

Joseph diGenova, who served as a Republican-appointed U.S. attorney in Washington, D.C., said any pending decision by the IRS or Justice Department to pursue the Gingrich case would have no effect on the dealings between Gingrich and Clinton.

"It won't make any difference to the speaker what those agencies are

doing," said diGenova. "And it won't make any difference to the president - unless it appears through clumsiness or incompetence that those agencies are playing games with leaks and that sort of thing." Paul Rothstein, a professor at Georgetown University Law School in Washington, D.C., said Gingrich knows that the White House "cannot exert pressure on him" through the IRS or Justice Department. "For the White House, there must not only be impartiality - but the public's perception of impartiality," Rothstein said. "These investigations - if they take place - will proceed fairly independently of the White House."

Terry Eastland, a former Justice Department official during the Reagan administration, also expressed confidence that Gingrich could rely on career officials at the IRS and Justice Department to deflect any effort to influence the case.

"There should be arms length dealings between the White House and these agencies," said Eastland, now with the Ethics and Public Policy Center in Washington, D.C. "I would hope that the White House has learned some lessons from prior experience."

Eastland recalled that Clinton administration officials tried to exercise political influence over both the FBI and the IRS in the past.

In one instance, William Kennedy, then-associate counsel at the White House, threatened in a May 13, 1993, telephone conversation with an FBI supervisor to have the IRS investigate allegations of wrongdoing in the White House travel office if the FBI did not "immediately" begin a probe.

At the time, White House officials were looking for incriminating evidence to justify the sacking of seven career White House employees in the travel office.

Eight days after Kennedy's conversation, three IRS officers armed with

an administrative summons launched an unannounced civil audit at the Smyrna, Tenn., office of UltrAir, a charter airline that had been used by the fired White House travel office employees to provide charters for the self-paying press corps.

Rothstein said the flap over White House officials improperly acquiring more than 900 confidential FBI background files on present and past officials, including dozens of prominent Republicans, assured that White House officials "would not dare try to exert any influence" on the IRS or Justice Department in the Gingrich case.

INDUSTRY: NAICS515210 CABLE & OTHER SUBSCRIPTION PROGRAMMING (93%); NAICS511130 BOOK PUBLISHERS (93%); NAICS511110 NEWSPAPER PUBLISHERS (93%); SIC2711 NEWSPAPERS: PUBLISHING, OR PUBLISHING & PRINTING (93%); 93%);

PERSON: NEWT GINGRICH (94%); BILL CLINTON (85%); HILLARY RODHAM CLINTON (85%); HILLARY RODHAM CLINTON (85%); JIMMY CARTER (51%); RONALD REAGAN (51%); 51%);

ORGANIZATION: INTERNAL REVENUE SERVICE (92%); INTERNAL REVENUE SERVICE (92%); US DEPARTMENT OF JUSTICE (84%); US DEPARTMENT OF JUSTICE (84%); 84%);

COUNTRY: UNITED STATES (95%); 95%);

STATE: DISTRICT OF COLUMBIA, USA (93%); 93%);

CITY: WASHINGTON, DC, USA (78%); 78%);

COMPANY: HEARST CORP (93%); INTERNAL REVENUE SERVICE (92%); INTERNAL REVENUE SERVICE (92%); US DEPARTMENT OF JUSTICE (84%); US DEPARTMENT OF JUSTICE (84%); E (84%); 84%);

SUBJECT: national politic leader government ethic violation yax fraud congress investigation JUSTICE DEPARTMENTS (92%); LAW ENFORCEMENT (91%); INVESTIGATIONS (90%); US REPUBLICAN PARTY (90%); TAXES & TAXATION (90%); US PRESIDENTIAL CANDIDATES 2012 (90%); TAX AUTHORITIES (90%); ETHICS (90%); TAX LAW (90%); LAWYERS (78%); ATTORNEYS GENERAL (78%); INTERVIEWS (78%); TAX EXEMPTIONS (73%); FINES & PENALTIES (72%); CHARITIES (66%); TRANSCRIPTS (50%); 50%);

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IRS Clears Foundation That Aided Gingrich Course

Associated Press

Thursday, February 4, 1999; Page A05

The Internal Revenue Service has cleared an organization of charges that it violated its tax-exempt status when it helped fund a college course taught by former House speaker Newt Gingrich (R-Ga.), the organization said yesterday.

The IRS, concluding a three-year investigation, ruled that the Progress and Freedom Foundation's donations to Gingrich were "consistent with its stated exempt purposes," and Gingrich's course and course book "were educational in content."

The foundation, which posted the IRS decision on its Web page, welcomed what it said was a "clean bill of health." An IRS spokesman said the agency is barred by law from commenting on rulings.

"No one likes being audited by the IRS," said the foundation's president, Jeff Eisenach. "In this case, though, it was important for the IRS to resolve the questions raised by the House ethics investigation."

In that investigation, special counsel James M. Cole concluded that Gingrich, in a class titled "Renewing American Civilization," which he taught at two Georgia colleges, was funded by tax-exempt charities for activities that were "substantially motivated by partisan, political goals."

Gingrich denied violating tax laws and described his college course as nonpartisan. But he agreed to pay a \$300,000 penalty for his misleading statements to the ethics committee as it investigated the financing of the college course and other issues.

In its ruling, the IRS said the content of Gingrich's course "was educational and never favored or opposed a candidate for public office."

It said the foundation "did not intervene on behalf of candidates of the Republican Party merely by promoting" themes in the course.

The foundation, headquartered here, says it is dedicated to studying the digital revolution and its implications for public policy.

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