

BRENNAN  
CENTER  
FOR JUSTICE  
TWENTY  
YEARS

Brennan Center for Justice  
*at New York University School of Law*

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Via Certified Mail and Electronic Submission

Bryan Whitener  
Director of Clearinghouse  
1335 East West Highway, Suite 4300  
Silver Spring, Maryland 20910

Chief FOIA Officer  
U.S. Election Assistance Commission  
1201 New York Avenue, NW  
Suite 300  
Washington, D.C. 20005

Re: Freedom of Information Act Request, Request for Expedited Processing and Fee Waiver

Dear Sir/Madam:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the U.S. Election Assistance Commission (the “EAC”) implementing regulations, 11 C.F.R. Part 9405. It is also a request for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 11 C.F.R. §9405.7(h)(1), and for a fee waiver under 5 U.S.C. §§ 552(a)(4)(A)(ii) & (iii) and 11 C.F.R. §9405.12.

**I. Background**

President Trump issued an Executive Order creating a “Presidential Advisory Commission on Election Integrity” (the “Commission”), supposedly “to promote fair and honest Federal elections.” According to the Executive Order, the Commission shall “study the registration and voting processes used in Federal elections, and shall submit a report to the President that identifies the following:

(a) those laws, rules, policies, activities, strategies, and practices that enhance the American people’s confidence in the integrity of the voting processes used in Federal elections;

(b) those laws, rules, policies, activities, strategies, and practices that undermine the American people’s confidence in the integrity of the voting processes used in Federal elections; and

(c) those vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.”

## **II. Formal Request**

The Brennan Center for Justice requests:

1. All communications between an EAC Commissioner or any other officer, employee or agent of the EAC, and any other person, including but not limited to any officer, employee or agent of the White House or the U.S. Department of Justice, regarding the Presidential Advisory Commission on Election Integrity.
2. All communications between any EAC Commissioner or any other officer, employee or agent of the EAC with any member of the Presidential Advisory Commission on Election Integrity since November 8, 2016.
3. All documents relating to the Presidential Advisory Commission on Election Integrity.
4. All communications made since November 8, 2016, between any EAC Commissioner or other officer, employee or agent of the EAC and any officer, employee, or agent of the White House, the U.S. Department of Justice, any chief state election official (for example, a secretary of state, if applicable), or the presidential campaign of Donald Trump, relating to any of the following subjects:
  - a) Voter fraud, including improper voting and improper voter registration, and any allegations thereof;
  - b) Proposed voting-related statutes, regulations, guidelines, and procedures, both at the federal and state levels, including but not limited to voter ID requirements (and the intent or effect of voter ID laws), documentary proof of citizenship for voter registration requirements (including the intent or effect of such requirements), and any other proposed voting legislation;
  - c) Voter list maintenance, including rules and practices relating to accepting or denying submitted voter registration applications or updates, whether by individual applicants or third parties, and use of the Interstate Voter Registration Crosscheck Program;
  - d) Possible amendment, repeal, or other modification of the National Voter Registration Act of 1993, the Help America Vote Act of 2002, or the Voting Rights Act of 1965, the EAC’s regulations, policies, and letters concerning the national mail-in voter registration form, or any other law, policy, guidance, or regulation relating to voting; and

- e) Vote suppression or efforts to restrict access to voter registration or the ballot.
- 5. All documents created, sent, or received since November 8, 2016, relating to voter fraud, including improper voting and improper voter registration.
- 6. All documents created, sent, or received since November 8, 2016, relating to vote suppression or restrictions on voting access, including voter ID laws, documentary proof of citizenship for voter registration requirements, and any proposed voting legislation that may limit access to voter registration or voting.
- 7. All documents created, sent, or received since November 8, 2016, relating to the laws, rules, policies, guidelines, and practices relating to voter list maintenance and accepting or denying submitted voter registration applications or updates, whether by individual applicants or third parties.
- 8. All documents created, sent, or received since November 8, 2016, relating to the possible amendment, repeal, or other modification of the National Voter Registration Act of 1993, the Help America Vote Act of 2002, or the Voting Rights Act of 1965, or the consideration or adoption of any new federal law relating to voting.

### **Definitions**

As used in this request—

“*Collaborative Work Environment*” means a platform used to create, edit, review, approve, store, organize, share, and access documents and information by and among authorized users, potentially in diverse locations and with different devices. Collaborative Work Environments include Googledoc sites, Microsoft Sharepoint sites, eRooms, document management systems (e.g., iManage), intranets, web content management systems (CMS) (e.g., Drupal), wikis, and blogs.

“*Communications*” means disclosure, transfer, or exchange of information or opinion, however made, including any transmission of information by oral, graphic, written, pictorial, electronic, or other perceptible means.

“*Documents*” means all written, printed, or electronically stored information of any kind in the possession, custody, or control of the EAC, including information stored on social media accounts like Twitter or Facebook, chats, instant messages, and documents contained in Collaborative Work Environments and other document databases. The term includes agreements; letters; telegrams; inter-office communications; memoranda; reports; records; instructions; notes; notebooks; diaries; plans; diagrams; photographs; photocopies; charts; descriptions; drafts, whether or not they resulted in a final document; agendas and minutes of meetings, conferences, and telephone or other conversations or communications; recordings; published or unpublished speeches or

articles; publications; transcripts of telephone conversations; phone mail; electronic-mail; and computer print-outs.

“*Including*” means including, but not limited to.

“*Presidential Advisory Commission on Election Integrity*” means the commission created pursuant to the Executive Order on “Establishment of Presidential Advisory Commission on Election Integrity,” signed by President Donald Trump on May 11, 2017, or any effort to establish any task force or commission, whether through a government agency or not, to investigate voter fraud, vote suppression, or any other aspect of the voting system.

We request that responsive electronic records be provided electronically, in a text-searchable, static-image (PDF) format (in the best image quality available to the agency), pursuant to 5 U.S.C. § 552(a)(3)(A)(B) and (C).

### **III. Application for Expedited Processing**

The Brennan Center requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and implementing regulation 11 C.F.R. §9405.7(h)(1). There is a “compelling need” for these records because the information requested is urgently required by an organization “primarily engaged in disseminating information” to “inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v); 11 C.F.R. § 9405.7(h)(1).

The Brennan Center is a section 501(c)(3) non-profit organization that is “primarily engaged in disseminating information” within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II) and 11 C.F.R. § 9405(h)(1). The United States District Court for the District of Columbia has found that a non-profit, public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information” within the meaning of the statute and regulations. *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)). The Brennan Center regularly writes and publishes reports and newspaper articles and makes appearances on various media outlets regarding the fight to preserve and expand the right to vote for every eligible citizen. Through practical policy proposals, litigation, advocacy, and communications, the Brennan Center works to ensure that voting is free, fair, and accessible for all Americans.<sup>1</sup>

Furthermore, the Brennan Center urgently requires the information sought by this request in order to inform the public of federal government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 11 C.F.R. § 9405(h)(1). The information requested herein concerns federal government activity with regard to the conduct and integrity of federal elections, which is at the core of the missions for both the EAC and the newly established

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<sup>1</sup> A list of the Brennan Center’s recent publications is available at <http://www.brennancenter.org/content/resources/publications>.

Commission. This information is of interest to the many members of the general public. The Brennan Center intends to share any new information about the integrity of federal elections obtained from this request with the public.

#### **IV. Application for Waiver or Limitation of All Fees**

The Brennan Center requests a waiver of all search, review, and duplication fees associated with this request. The requester is eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 11 C.F.R. § 9405.12, and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 11 C.F.R. § 9405.12.

First, the Brennan Center plans to analyze, publish, and publicly disseminate information obtained from this request. The requested records are not sought for commercial use and will be disclosed to the public at no cost.

Second, the Brennan Center qualifies as a “representative of the news media” for the same reasons that it is “primarily engaged in dissemination of information,” i.e., because the Brennan Center “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). The Brennan Center has released dozens of publications regarding voting issues in the form of reports and papers on various issues of public importance. *Cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat’l Sec. Archive*, 880 F.2d at 1386 (deeming National Security Archive a representative of the news media after it published one book and indicated its intention to publish a set of documents on national and international politics and nuclear policy). The Brennan Center is therefore entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 11 C.F.R. § 9405.12.

As a noncommercial requester, the Brennan Center also qualifies for waivers as an “educational institution” pursuant to 11 C.F.R. § 9405.12. The Brennan Center qualifies as an educational institution because it is affiliated with the NYU School of Law, which is plainly an educational institution. *See also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989).

The Brennan Center is also entitled to a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 11 C.F.R. § 9405.12. First, the subject of the requested records clearly concerns “the operations or activities of the federal government.” This request seeks records and information concerning federal government activity because the materials requested concern allegations by the President of voter fraud in the conduct of federal elections and proposed changes to federal law. This connection to the federal government is “direct and clear, not remote or attenuated.”

Disclosure of the requested records is therefore in the public interest because it is likely to contribute significantly to public understanding of how the government is regulating elections which plainly of interest to the public. Disclosure will significantly enhance the public's understanding of this subject.

Moreover, disclosure is not primarily in the Brennan Center's commercial interests. As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress's legislative intent that FOIA be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Statement of Sen. Leahy)).

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

**V. Response Requested in 10 Days**

Your attention to this request is appreciated, and the Brennan Center will anticipate your determination regarding our request for expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 11 C.F.R. §9405.7(h)(1). I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).

We also request that you provide us with an estimated completion date, as required by 5 U.S.C. § 552(a)(7)(B)(ii). If the request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions to FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Please furnish all applicable records to:

Wendy R. Weiser  
Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
120 Broadway, Suite 1750  
New York, NY 10271  
(646) 292-8310  
[www.brennancenter.org](http://www.brennancenter.org)

Should you have any questions regarding this request, please contact me at your earliest convenience at the address above, by telephone at (646) 292-8310, or by e-mail at [weiserw@brennan.law.nyu.edu](mailto:weiserw@brennan.law.nyu.edu).

Sincerely,

A handwritten signature in cursive script, appearing to read "Wendy Weiser".

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Wendy Weiser, Director  
Adam Gitlin, Counsel  
Tomas Lopez, Counsel  
Democracy Program  
Brennan Center for Justice at  
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