

EMPOWER OVERSIGHT

Whistleblowers & Research



EMPOWR.us

October 24, 2023

Via Electronic Transmission: MRUFOIA.Requests@USDOJ.Gov

Office of the Attorney General
Office of the Deputy Attorney General
Office of the Associate Attorney General
Office of Public Affairs
U.S. Attorney's Office for the District of Columbia
Executive Office of U.S. Attorneys
c/o FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001
Phone: (202) 616-3837

RE: FOIA Request for Records Regarding Subpoena of U.S. Senate Staffer's Personal Communication Records

Dear FOIA Officer:

INTRODUCTION

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

BACKGROUND

On October 19, 2023, Jason Foster, Founder of Empower Oversight, received a notification that the U.S. Department of Justice (“DOJ”) had served legal process on Google in 2017 for records of a Google Voice telephone number that connected to his family's telephones. In 2017, Mr. Foster was Chief Investigative Counsel to U.S. Senate Judiciary Committee Chairman Chuck Grassley, directing congressional oversight investigations into waste, fraud, abuse, and misconduct at the Justice Department pursuant to the Senate's authorities under the U.S. Constitution.

Google provided a redacted copy of the subpoena issued by the U.S. District Court for the District of Columbia on September 12, 2017, which compelled the release of records related to other Google accounts that are redacted, presumably related to other customers. Empower Oversight has information indicating that the other accounts listed in the subpoena belonged to other staffers, both Republicans and Democrats, for U.S. House and Senate committees also engaged in oversight investigations of the Justice Department at the time pursuant to their authorities under the U.S. Constitution.

For each of the listed telephone and email accounts, the subpoena compelled Google to release customer or subscriber information, as well as subscribers' names, addresses, local and long distance telephone connection records, text message logs, records of session times and durations, length of service and types of service utilized for the period from December 1, 2016 to May 1, 2017. So, not only did the subpoena compel the release of identifying information of the subscriber to each account, but it also compelled the release of records indicating with whom the user was communicating.

The subpoena number was GJ2017091241939, with USAO #2017R01896. *See* Exhibit A.¹

Other former staffers have publicly referenced receiving similar notices, including former U.S. House of Representatives Permanent Select Committee on Intelligence (“HPSCI”) staffer Kashyap Patel.² DAG Rosenstein had threatened to subpoena HPSCI staffer’s personal records during a confrontation over the Justice Department’s failure to comply with that committee’s compulsory process.³ But the targets were not limited to Republican staff. Democrats in Congress have called for investigations into the targeting of their communications as well, which reportedly included subpoenas to Apple for information about HPSCI aides and their families, including one account belonging to a child.⁴ According to its website, the Justice Department’s Inspector General’s Office is “reviewing the DOJ’s use of subpoenas and other legal authorities to obtain communication records of Members of Congress and affiliated persons, and the news media in connection with recent investigations of alleged unauthorized disclosures of information to the media[.]”⁵

There appears to have been an extensive and far-reaching effort to use grand jury subpoenas and perhaps other means to gather the personal communications records of innocent congressional staffers and their families with little or no legitimate predicate. For example, the number listed in the subpoena that Google disclosed to Mr. Foster was actually used by his wife, who never communicated with the media on that phone number or any other.

This raises serious public interest questions about the basis for such intrusion into the personal communications of attorneys advising congressional committees conducting oversight of the Department. Constitutional separation of powers and privilege issues raised by the Speech

¹ For privacy purposes, Empower Oversight has redacted the specific phone number from the attached subpoena. Should any DOJ component need that number in order to process this FOIA request, Empower Oversight is willing to provide it upon request.

² Patel filed suit in the U.S. District Court for the District of Columbia against current and former federal officials, after receiving a similar notice from Google. *See Patel v. Liu*, No. 23-02699-APM (D.D.C. Sept. 14, 2023) (Complaint) [ECF Doc. 1]. The subpoena for Mr. Patel’s records was issued by the U.S. District Court for the District of Columbia on November 20, 2017, about two months after the subpoena for Mr. Foster’s records. The Patel subpoena number was GJ2017112043546, with USAO#2017R01887.

³ Catherine Herridge, *Rosenstein threatened to ‘subpoena’ GOP-led committee in ‘chilling’ clash over records, emails show*, FOX NEWS (Jun. 12, 2018), available at <https://www.foxnews.com/politics/rosenstein-threatened-to-subpoena-gop-led-committee-in-chilling-clash-over-records-emails-show> (last visited Oct. 23, 2023).

⁴ Myah Ward, *Adam Schiff calls for investigation after report of his phone records being seized by Trump DOJ*, POLITICO (June 10, 2021) available at <https://www.politico.com/news/2021/06/10/adam-schiff-investigation-trump-doj-493343> (last visited Oct. 23, 2023).

⁵ *Ongoing Work*, Justice Department Inspector General, available at <https://oig.justice.gov/ongoing-work> (last visited Oct. 23, 2023).

or Debate Clause (U.S. CONST. art. I, § 6) and attorney-client communications of those targeted with these subpoenas should have triggered requirements for enhanced procedural protections and approvals.

If the only reason the Justice Department targeted the communications of these congressional attorneys was their access to classified information that was later published by the media, it raises the question of whether the Department also subpoenaed the personal phone and email records of every Executive Branch official who had access to the same information. If not, then the entire exercise looks more like a pretext to gather intelligence on those conducting oversight of the Department rather than a legitimate classified leak inquiry.

The subpoena for Mr. Foster's records raises the same concerns as that of his other Democrat and Republican colleagues working for Congress at the time. It begs the question of whether DOJ was equally zealous in seeking the communication records of its own employees with access to any leaked information.

RECORDS REQUEST

In order to shed light on possible DOJ wrongdoing as well as law enforcement policy, specifically DOJ's use of grand jury subpoenas to obtain personal communications records of congressional staffers investigating DOJ, Empower Oversight requests the following records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552:

- (1) All documents or communications referencing U.S. District Court for the District of Columbia grand jury subpoena number GJ2017091241939.
- (2) All grand jury subpoenas issued in relation to the same investigation as U.S. District Court for the District of Columbia grand jury subpoena number GJ2017091241939.
- (3) All documents in U.S. Attorney's Office for the District of Columbia file number 2017R01896.
- (4) All communications discussing or referencing U.S. Attorney's Office for the District of Columbia file number 2017R01896.
- (5) All communications exchanged between members of the press and DAG Rosenstein, Robert Hur, Edward O'Callaghan, Sarah Isgur, aka Sarah Isgur Flores, and/or Jessie Liu for the period from December 1, 2016 to September 26, 2017, regarding (a) communications between Michael Flynn and Sergey Kislyak, (b) Carter Page, (c) Joe Pientka, (d) Bill Priestap, (e) congressional oversight requests, (f) Senator Charles Grassley, (g) Jason Foster, and/or (h) the Crossfire Hurricane investigation.
- (6) All grand jury subpoenas issued for personal communications of DAG Rosenstein, Robert Hur, Edward O'Callaghan, and/or Jessie Liu between May 1, 2017 and May 1, 2018.
- (7) All communications exchanged between the U.S. Attorney's Office for the District of Columbia, the National Security Division, the Deputy Attorney General's Office and/or the FBI and Verizon between March 15, 2016, and the present regarding obtaining communications data associated with devices that Verizon serviced for U.S. House Representatives or U.S. Senate.

For this request, Empower Oversight requests records from at least the following DOJ components, as well as any other locations that DOJ determines are reasonably likely to have

responsive records: Office of the Attorney General; Office of the Deputy Attorney General; Office of the Associate Attorney General; Office of Public Affairs; and the U.S. Attorney's Office for the District of Columbia.

Mr. Foster has executed a Form DOJ-361 authorizing the release of information to Empower Oversight, which is attached as Exhibit B

DEFINITIONS

"COMMUNICATION(S)" means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, Slack messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

"DOCUMENT(S)" or "RECORD(S)" mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms "DOCUMENT(S)" or "RECORD(S)" include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

"PERSON" means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

"REFERS," "REFERRING TO," "REGARDS," "REGARDING," "RELATES," "RELATING TO," "CONCERNS," "BEARS UPON," or "PERTAINS TO" mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

"INCLUDING" means comprising part of, but not being limited to, the whole.

INSTRUCTIONS

The words "and" and "or" shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Mike Zummer by e-mail at mzummer@empowr.us.

FEE WAIVER REQUEST

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “representative of the news media” and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public’s understanding of the Department’s handling of allegations that it or its employees was negligent or engaged in wrongdoing.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. Thank you for your time and consideration. Please do not hesitate to contact me with any questions.

Cordially,

[/Tristan Leavitt/](#)
Tristan Leavitt
President

UNITED STATES DISTRICT COURT
for the
District of Columbia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Custodian Of Records
Google
1600 Amphitheatre Parkway
Mountain View, CA 94043

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA U.S. Courthouse, 3 rd Floor Grand Jury # 16-3 333 Constitution Avenue, N.W. Washington, D.C. 20001	Date and Time: Tuesday, September 26, 2017 at 9:00 AM
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You must also bring with you the following documents, electronically stored information, or objects:

PLEASE SEE ATTACHMENT

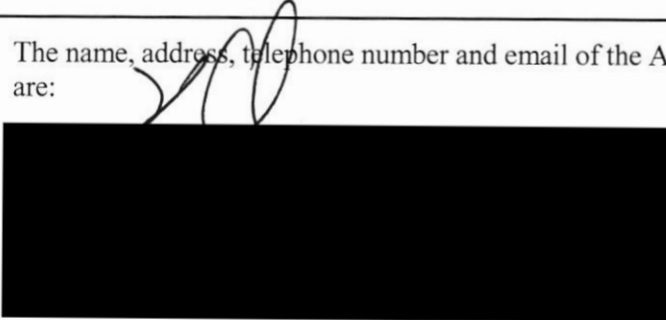
Date: September 12, 2017

CLERK OF COURT


Signature of Clerk or Deputy Clerk



The name, address, telephone number and email of the Assistant United States Attorney, who requests this subpoena, are:



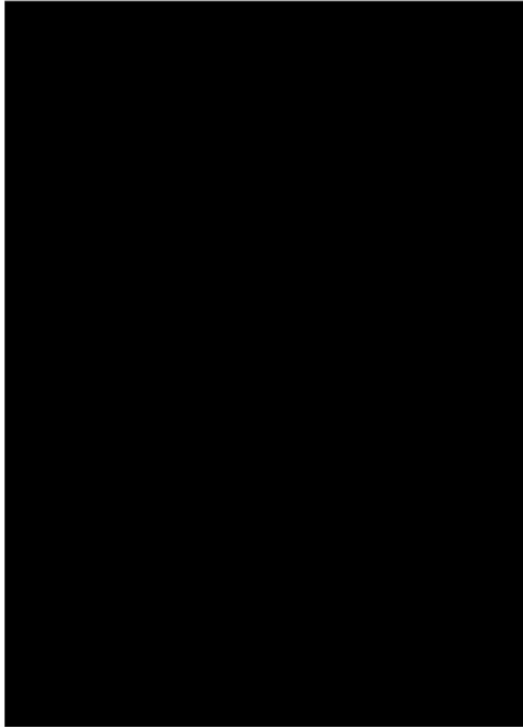
Subpoena #GJ2017091241939
USAO #2017R01896



ATTACHMENT
Google/ Google Voice

All customer or subscriber account information for any and all accounts associated with the following identifiers listed below from: **December 1, 2016 to May 1, 2017**:

-  This phone number redacted by Empower Oversight, all other redactions by Google.



In addition, for each such account, the information shall include the subscriber's:

1. Names (including subscriber names, user names, and screen names);
2. Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses);
3. Local and long distance telephone connection records;
4. Text message logs;
5. Records of session times and durations;
6. Length of service (including start date) and types of service utilized;