

**Freedom Through Justice Foundation**

2111 Wilson Blvd #700  
Arlington, VA 22201  
703.875.8625

September 23, 2011

**VIA E-MAIL & FIRST-CLASS MAIL**

Chief of Naval Operations  
(DNS-36)  
2000 Navy Pentagon  
Washington, DC 20350-2000  
Phone: (202) 685-0412

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

We write on behalf of the Freedom Through Justice Foundation is a 501(c)(3) nonprofit, nonpartisan public interest firm that uses public policy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote social and economic freedoms. We write out of the public concern that taxpayer-funded agencies are not subject to political or financial abuse. Accordingly, we write to request certain documents pursuant to the Freedom of Information Act (“FOIA”).<sup>1</sup>

**Hatch Act Concerns**

Recent news reports have suggested that federal funds and property may have been used for political purposes, which raise Hatch Act<sup>2</sup> concerns. Accordingly, we write to request certain documents, pursuant to the Freedom of Information Act (“FOIA”), which may shed light on this controversy.

The *New York Times* reported that the Democratic National Committee (“DNC”) used the White House Blue Room to hold a campaign fundraiser<sup>3</sup> and that, while President Obama attended the fundraiser,<sup>4</sup> the meeting did not appear on his public schedule.<sup>5</sup> According to a

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<sup>1</sup> 5 U.S.C. § 552.

<sup>2</sup> 5 U.S.C. §§ 7321 *et seq.*

<sup>3</sup> Nicholas Confessore, *Obama Seeks to Win Back Wall St. Cash*, N.Y. TIMES, June 12, 2011, available at [http://www.nytimes.com/2011/06/13/us/politics/13donor.html?\\_r=2](http://www.nytimes.com/2011/06/13/us/politics/13donor.html?_r=2) (“The event, organized by the Democratic National Committee, kicked off an aggressive push by Mr. Obama to win back the allegiance of one of his most vital sources of campaign cash”).

<sup>4</sup> *Id.*

<sup>5</sup> Josh Gerstein, *Carney defends Obama meeting Wall Street donors at White House*, POLITICO, June 14, 2011, available at [http://www.politico.com/blogs/joshgerstein/0611/Carney\\_defends\\_Obama\\_meeting\\_financeworld\\_donors\\_at\\_White\\_House.html?showal](http://www.politico.com/blogs/joshgerstein/0611/Carney_defends_Obama_meeting_financeworld_donors_at_White_House.html?showal).

*Politico* report, all thirty guests were donors to President Obama's 2008 campaign.<sup>6</sup> Further, according to a *New York Times* article, the DNC organized and sponsored the event.<sup>7</sup> The reports of the DNC meeting at the White House spurred congressional investigations, led by the Committee on Oversight and Government Reform at the U.S. House of Representatives.<sup>8</sup> Committee Chairman Darrell Issa noted that the meeting's non-appearance on the President's calendar "call[ed] into question its official nature."<sup>9</sup> According to one anonymous attendee, "It was policy-focused, but everyone knew why they were there."<sup>10</sup>

So we can better understand these underlying issues, please produce records responsive to the following, limited to the time period of January 1, 2009, to present:

1. All documents referring or relating to food preparation for the March 7, "Blue Room Event" including any records related to the cost, number of attendees, and authorization of the catering budget.
2. All documents referring or relating to communications between the West Wing cafeteria staff and any person from the Democratic National Committee including, but not limited to, communications about the March 7<sup>th</sup> event and any other event sponsored, officially or unofficially by the Democratic National Committee.
  - a. This includes specifically any communications between cafeteria or management staff and users with "@democrats.org", "@dccc.org" or "@dscc.org" e-mail addresses.

### **Freedom Through Justice Qualifies Under the Non-Commercial Fee Category**

The Freedom Through Justice Foundation requests a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 U.S.C. § 552(a)(4)(A)(iii). The Freedom Through Justice Foundation is a 501(c)(3), not-for-profit, representative of the news media and has no commercial purpose in requesting information. Freedom Through Justice has no commercial, trade or profit interests and is organized and operated to publish or broadcast news to the general public. Freedom Through Justice will use its editorial skills to turn raw materials into a distinct work.

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<sup>6</sup> Josh Gerstein, *All at DNC Blue Room meeting with Obama were donors*, POLITICO, June 26, 2011, available at [http://www.politico.com/blogs/joshgerstein/0611/All\\_at\\_DNC\\_Blue\\_Room\\_meeting\\_with\\_Obama\\_were\\_donors.html](http://www.politico.com/blogs/joshgerstein/0611/All_at_DNC_Blue_Room_meeting_with_Obama_were_donors.html)

<sup>7</sup> Nicolas Confessore, *Obama Seeks to Win Back Wall St. Crash*, N.Y. Times, June 12, 2011 available at <http://www.nytimes.com/2011/06/13/us/politics/13donor.html>.

<sup>8</sup> See, e.g., Josh Gerstein and Jake Sherman, *Issa seeks DNC records of White House meeting*, POLITICO, July 13, 2011, available at <http://www.politico.com/news/stories/0711/58908.html>.

<sup>9</sup> Letter from Chairman Darrell Issa to Kathryn Ruemmler, July 11, 2011, available at [http://www.politico.com/static/PPM153\\_camp.html](http://www.politico.com/static/PPM153_camp.html)

<sup>10</sup> Josh Gerstein, *Donor meeting at White House draws fire*, POLITICO, June 20, 2011, available at [http://www.politico.com/news/stories/0611/57389\\_Page2.html#ixzz1XyAgzFrm](http://www.politico.com/news/stories/0611/57389_Page2.html#ixzz1XyAgzFrm)

### **Freedom Through Justice Is Entitled to a Complete Waiver of Fees**

Freedom Through Justice requests a waiver of fees as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II). The disclosure of the requested information is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). See, e.g., *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 814 n.3 (2d Cir. 1994); *Prison Legal News v. Lappin*, 436 F. Supp. 2d 17, 27 n.5 (D.D.C. 2006).

The subject matter of the requested records specifically concerns identifiable “operations or activities of the government.” The disclosable portions of the requested information will be meaningfully informative in relation to this request. This disclosure will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. Freedom Through Justice has a dynamic and diverse staff whose range of expertise includes a combined 15 years of government oversight, investigative reporting, and federal public interest litigation experience.

### **Production of Documents and Contact Information**

We call your attention to President Obama’s January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . . The presumption of disclosure should be applied to all decisions involving FOIA.<sup>11</sup>

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

In an effort to facilitate record production within the statutory time limit, the Freedom Through Justice Foundation prefers to accept documents in electronic format (e.g. e-mail, .pdfs). When necessary, the Freedom Through Justice Foundation will accept the “rolling production” of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately via J. Keith Gates (Keith.Gates@ftjfoundation.org) or Tyler Martinez (Tyler.Martinez@ftjfoundation.org) or

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<sup>11</sup> PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, Jan. 21, 2009, available at <http://www.whitehouse.gov/the-press-office/freedom-information-act> .

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at 703-875-8625. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,

Daniel Epstein  
Executive Director  
Freedom Through Justice Foundation

Encl. "Responding to Records Requests" and "Definitions" for the purposes of this request.

## **Responding to Document Requests**

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Freedom Through Justice Foundation.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Freedom Through Justice Foundation's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce documents, you should identify the paragraph in the Freedom Through Justice Foundation's request to which the documents respond.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Freedom Through Justice Foundation staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and

recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

10. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
11. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or

otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.