

October 12, 2017

VIA EMAIL

Sam Kaplan
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Re: Freedom of Information Act Request for Communications Related to Whether President Trump is Fit to Hold Office

Dear Mr. Kaplan:

I am writing to request information pursuant to 5 U.S.C. 552(a)(3), the Freedom of Information Act. I am requesting expedited processing of this request under 5 U.S.C. 552(a)(6)(E)(i)(I) because it is vital to national security and there is an urgent need to inform the public as to whether Cabinet Members such as the Secretary of Homeland Security believe that the President is unfit for service.

According to multiple news reports, Secretary of State Tillerson openly referred to President Trump as a “f---ing moron” on or about July 20, 2017 after a meeting with the President’s national security team at the Pentagon.¹ It has also been reported that one of the triggers for the use of this term was related to President Trump’s plans to increase the United States’ nuclear capabilities.²

I. Grounds for expedited review

The 25th Amendment to the United States Constitution provides for removal of a President from office if he is unable to discharge the duties of his office. The amendment provides in relevant part:

¹ Carol E. Lee et al., “Tillerson’s Fury at Trump Required an Intervention from Pence,” NBC News (Oct. 4, 2017) <https://goo.gl/jgHtkv>; MSNBC, “Ruhle: My sources say Tillerson called Trump a ‘F-ing moron,’” (Oct. 4, 2017) <https://goo.gl/3ZEyNr>; Graham Lanktree, “Did Rex Tillerson Call Trump a Moron,” Newsweek (Oct. 4, 2017) <https://goo.gl/xq6VT2>; Paul Waldman, “Tillerson won’t say whether he thinks Trump is a ‘moron.’ But he’s not quitting,” Washington Post (Oct. 4, 2017) <https://goo.gl/ffHZqb>.

² Eliza Rehlman, “Trump rages at NBC for report that said Tillerson called him a ‘moron’ after he wanted a dramatic increase in nuclear arsenal.” BusinessInsider (Oct. 11, 2017) <https://goo.gl/95uD1r>.

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.³

If the Secretary of Homeland Security and other cabinet level appointees have reason to believe that the President is unfit to discharge the duties of his office, there is an urgent and compelling need for the public to know that the national security of our nation is at risk.

Therefore, we are requesting that the Department of Homeland Security process this request via the expedited review process outlined at 5 U.S.C. 552(a)(6)(E)(i)(I) and in the Department's own regulations at 44 C.F.R. § 5.5(e) on two grounds. First, that failure to obtain the information on an expedited basis could reasonably be expected to result in an imminent threat to the lives and physical safety of United States residents, to the lives of U.S. military servicemembers who are deployed on the orders of the President, and to the lives of individuals in any country where the President has threatened to take military action. Second, the information is urgently needed to inform the public about how members of the cabinet are dealing with the apparent instability and mental incapacity of the President and whether the 25th Amendment should be invoked.

The President's recent tweets and comments regarding North Korea clearly indicate an intent to escalate the current conflict between the United States and North Korea regarding nuclear weapons. The President's tweets have also undermined diplomatic efforts aimed at defusing the situation in North Korea as well as the current state of affairs in Iran. Numerous reports have indicated that other cabinet level officers and senior ranking Republicans have questioned the President's mental fitness,⁴ and a recent report by twenty-seven psychiatric and mental health professionals has concluded that President Trump is too mentally unstable to hold office.⁵

II. Requested materials

To facilitate expedited processing, we have narrowly tailored this request. We request any communications or documents, whether in the possession of the

³ United States Constitution, Amendment XXV <https://goo.gl/SXjNt6>.

⁴ Gabriel Sherman, "I Hate Everyone in the White House: Trump Seethes as Advisers Fear the President is 'Unraveling,'" Vanity Fair (Oct. 11, 2017) <https://goo.gl/qWZVdX>; Mehdi Hasan, "Worried about Trump's Mental Stability: The Worst is Yet to Come," The Intercept (Oct. 7, 2017) <https://goo.gl/Pc348s>.

⁵ Bandy X. Lee, M.D. et al., "The Dangerous Case of Donald Trump: 27 Psychiatrists and Mental Health Professionals Assess a President," (Oct. 2017) <https://goo.gl/FByYs5>.

government, on government servers or devices or in the possession of individuals or on private or personal servers or devices from July 1, 2017 to the present including:

1. Any communications, notes, or documents created, sent, or received by Secretary Kelly or Acting Secretary Duke, including communications sent entirely within the federal government, in which Secretary Kelly or Acting Secretary Duke referred to Donald J. Trump in any manner indicating diminished mental capacity and/or related to any discussion or assessment of Mr. Trump's mental capacity, mental faculties, or mental stability;
2. Any communications, notes or documents created, sent or received by Secretary Kelly or Acting Secretary Duke, including communications sent entirely within the federal government, regarding Secretary of State Tillerson referring to Donald J. Trump as a moron.
3. Any communications, notes, or documents created, sent, or received by Secretary Kelly or Acting Secretary Duke, including communications sent entirely within the federal government, regarding the mental health, physical or mental capacity, and/or fitness of Donald J. Trump to make decisions regarding military or foreign policy, to serve as President of the United States, or to take any other actions or make any deliberations regarding the responsibilities of his office, including his authority with respect to the use of nuclear weapons;
4. Any communications, notes, or documents created, sent, or received by Secretary Kelly or Acting Secretary Duke, including communications sent entirely within the federal government, regarding the mental health, physical or mental capacity, and/or fitness of Donald J. Trump to assess, manage, review, understand or make decisions regarding the United States' response to North Korea and its development of nuclear weapons, its missile testing programs, and any threat from North Korea's military capabilities;
5. Any communications, notes, or documents created, sent, or received by Secretary Kelly or Acting Secretary Duke, including communications sent entirely within the federal government, regarding whether Mr. Trump should be examined by medical personnel to determine his fitness for office and whether or how the 25th Amendment should be considered.

We ask that, in addition to reviewing all the materials that the Department would normally search in response to a FOIA request that the Department conduct a thorough search of government, private, and personal devices to ensure that any text messages or any other types of communication that may be retrieved from a computer, laptop, phone, or other electronic device used by the Department or its staff in conducting government or government-related communications is reviewed and included in the response to our request. We further ask that, if any materials responsive to the request include terms of profanity, that the Department *not* redact such terms.

Free Speech For People is a non-partisan, non-profit organization and seeks a fee waiver or reduction pursuant to 44 C.F.R. § 5.11(k) because Free Speech For People will broadly disseminate this information to the public: (1) to significantly contribute to public understanding of the operations and activities of the Secretary of Homeland Security as a cabinet member with a responsibility to act in the best interest of the United States and invoke the 25th Amendment if or when the President is unable to carry out his duties; (2) to contribute to increased public understanding about how Cabinet members are addressing whether the President is fit to carry out his duties and whether he presents an imminent danger to national security; (3) to reach Free Speech For People's broad audience and the public, including members of the press, with a legal analysis and assessment of the communications and documents and their implications for the invocation of the 25th Amendment; (4) to enhance the public's understanding of the implications of the Secretary of State's statement about the President and whether it indicates a broader concern among other Cabinet members about the President's fitness to carry out his responsibilities.

Please do not hesitate to contact me with any questions regarding this request. Thank you for your consideration and prompt response we will expect a response regarding expedited processing as soon as possible and no later than 10 calendar days from today.

Sincerely,

Shanna Cleveland

Shanna Cleveland

Senior Counsel

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