

VIA FAX

March 29, 2017

IRS FOIA Request
Stop 93A
Post Office Box 621506
Atlanta GA 30362-3006
Fax: 877-891-6035

Re: Case Number F17048-0017

This letter constitutes an appeal and renewed request for disclosure of President Donald J. Trump's tax returns under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. The FOIA request at issue was submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Internal Revenue Service ("IRS") on February 16, 2017 ("EPIC FOIA Request").

The EPIC FOIA Request sought Donald J. Trump's tax returns for tax years 2010 forward and any other indications of financial relations with the Russian government or Russian businesses.

In a letter from Michael C. Young dated March 2, 2017, the IRS stated that the agency was closing the EPIC FOIA Request. Mr. Young claimed that 26 C.F.R. § 601.702(c) applied.

EPIC hereby renews the request and seeks to make clear EPIC's "right to access such records" under the relevant statute as required by IRS regulations.¹ Specifically, EPIC has the right to these records "to correct . . . misstatement[s] of fact" pursuant to 26 U.S.C. § 6103(k)(3).

The Commissioner should move promptly to obtain permission from the Joint Commission on Taxation to release the records EPIC has requested.

EPIC's Right to Access the President's Tax Returns Pursuant to § 6103(k)(3)

Section 6103(k)(3) gives the IRS discretion to release certain tax return information with the permission of the Joint Committee on Taxation ("JCT"). The provision permits the disclosure of tax records to correct a "misstatement of fact."² As the Senate Finance Committee explained at the time the provision was adopted, "*the committee decided either that return information*

¹ 26 C.F.R. § 601.702(c)(5)(iii)(A). The relevant statutory provision is 26 U.S.C. § 6103.

² Two courts have mentioned the provision in passing—both in the context of property lien disclosures—and referred to the broad discretion granted under the section. *See Maisano v. United States*, 908 F.2d 408, 410 (9th Cir. 1990) (per curiam); *Carlson v. United States*, No. 94-924, 1995 WL 687110, at *2 (D. Hawaii Sept. 22, 1995).

should be public as a matter of policy, or that the reasons for the limited disclosures involved outweighed any possible invasion of the taxpayer's privacy which might result from disclosure."³

Section 6103(k)(3) has been invoked in cases raising matters of substantial public interest. The Commissioner has previously requested permission from the JCT to disclose tax return information to address public outrage over perceived unfairness in tax administration. For example, in 1997 the IRS Commissioner "requested the opportunity to explore with [JCT] Chairman Archer and Chairman Roth the possibility of using Code section 6103(k)(3) to permit the IRS to correct misstatements of fact regarding examinations of tax-exempt organizations."⁴ Commissioner Richardson explained "unfounded reports erode public confidence in the integrity of the IRS, thereby undermining the self-assessment compliance system."⁵ The IRS put forward a similar proposal in 1981 to correct misstatements by tax protestors "either that we are letting them get away with not filing or that we are harassing them."⁶

The Release of the Trump Tax Records Satisfies the Requirements of § 6103(k)(3)

At no time in American history has a stronger claim been presented to the IRS for the public release of tax records to "correct . . . misstatement[s] of fact."⁷ If the Freedom of Information Act means anything, it means that the American public has the right to know whether records exist in a federal agency which reveal that the U.S. president has financial dealings with a foreign adversary.⁸

Allegations of the President's business relations with Russia and the Russian government are the focus of numerous Congressional investigations and widespread public interest.⁹ Today Sen. Ron Wyden (D-OR) urged the Senate Intelligence Committee to review the President's financial ties to Russia.¹⁰ "Efforts to understand these relationships and to separate fact from

³ S. Rep. 94-938 at 340 (S. REP. 94-938, 340, 1976 U.S.C.C.A.N. 3438, 3770) (emphasis added).

⁴ Joint Committee on Taxation, Report of Investigation of Allegations Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matters, No. JCS-3-00, at 1 (2000).

⁵ Letter from Margaret Milner Richardson, Commissioner, Internal Revenue Service, to Hon. William V. Roth, Jr., Chairman, Senate Committee on Finance (Feb. 25, 1997).

⁶ IRS News Release, *Commissioner Egger's Remarks on Abusive Tax Shelters*, No. IR-81-122, 1981 WL 176410 (Oct. 6, 1981).

⁷ 26 U.S.C. § 6103(k)(3).

⁸ *Cf. Stanley v. Georgia*, 394 U.S. 557, 565 (1969) ("If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch.").

⁹ Press Release, Sen. Richard Burr, Chairman of the Senate Select Comm. on Intelligence, and Sen. Mark Warner, Vice Chairman, Joint Statement on Committee Inquiry into Russian Intelligence Activities (Jan. 13, 2017), <https://www.burr.senate.gov/press/releases/joint-statement-on-committee-inquiry-into-russian-intelligence-activities>.

¹⁰ Dustin Volz, *Russia probe should focus on Trump financial ties: senator*, Reuters (Mar. 29 2017), <http://www.reuters.com/article/us-usa-trump-russia-finances-idUSKBN1701XO>.

speculation have been hampered by the opacity of the finances of President Trump and his associates,” Senator Wyden wrote.

Financial ties to Russia have already led to the resignation of the President’s National Security Advisor.¹¹ Mr. Flynn, a key advisor for President Trump during the campaign, was paid more than \$33,750 by Russia’s state-run broadcaster RT for a speech he gave in Moscow in December 2015.¹² After the election, White House senior adviser and Trump’s son-in-law Jared Kushner met with Sergey Gorkov, a Russian banker appointed by Russian President Vladimir Putin.¹³ Mr. Kushner had previously stated, “Russians make up a pretty disproportionate cross-section of a lot of our assets. . . . We see a lot of money pouring in from Russia.”¹⁴

Donald Trump’s failure to release his tax returns is unprecedented and directly against the long-standing tradition of candidates for the U.S. presidency.¹⁵ He was the first major party presidential candidate in 40 years not to make his returns available for public review.¹⁶ Though he initially promised to release his tax information, Trump withdrew this commitment after his election.¹⁷

The contents of the President’s tax returns are of enormous interest to Americans. The American public favors release of the President’s tax records. More than 1 million people have signed a petition urging the federal government to “[i]mmediately release Donald Trump’s full tax returns, with all information needed to verify emoluments clause compliance.”¹⁸ According to a ABCNews poll, three-quarters of Americans said he should release his returns.¹⁹ ABC also found that “[i]n one key support group for Trump, noncollege-educated white men, 58 percent say he should release the tax returns” and that “69 percent in the red states—those Trump won—

¹¹ Letter of Resignation of Michael Flynn, Frmr. Nat’l Sec. Advisor (Feb. 13, 2017), <https://assets.documentcloud.org/documents/3461323/Michael-Flynn-Resignation-Letter.pdf>.

¹² Jim Sciutto & Ryan Browne, *Former top Trump aide Flynn paid over \$30,000 by Russian TV, top House Dem says*, CNN (Mar. 16, 2017), <http://www.cnn.com/2017/03/16/politics/michael-flynn-payments-rt-russia-tv/>.

¹³ Jo Becker et al., *Senate Committee to Question Jared Kushner Over Meetings With Russians*, N.Y. Times (Mar. 27, 2017), <https://www.nytimes.com/2017/03/27/us/politics/senate-jared-kushner-russia.html>.

¹⁴ *Id.*

¹⁵ Julie Hirschfeld Davis, *Trump Won’t Release His Tax Returns, a Top Aide Says*, N.Y. Times (Jan. 22, 2017), <https://www.nytimes.com/2017/01/22/us/politics/donald-trump-tax-returns.html>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ A.D., *Immediately release Donald Trump’s full tax returns, with all information needed to verify emoluments clause compliance.*, We the People (Jan. 20, 2017), <https://petitions.whitehouse.gov/petition/immediately-release-donald-trumps-full-tax-returns-all-information-needed-verify-emoluments-clause-compliance>.

¹⁹ Gary Langer, *Public Splits on Trump’s Ethics Compliance; Three-Quarters Want Tax Returns Released (POLL)*, ABC News (Jan. 16, 2017), <http://abcnews.go.com/Politics/public-splits-trumps-ethics-compliance-quarters-tax-returns/story?id=44811545>.

say he should release these records.”²⁰ However, the White House has refused to make these records available.

Fortunately, the IRS has the legal authority to make the tax records available in response to a Freedom of Information Act request.²¹

Release of the Records is Necessary to Correct Public Misstatements

During the 2016 presidential campaign, candidate Donald J. Trump, his opponents, and members of the media made numerous and conflicting material statements regarding the candidate’s business ties to Russia. In July 2016, Donald J. Trump stated on Twitter: “For the record, I have ZERO investments in Russia.”²²



Trump later expanded on this claim in an interview, stating that he had “no relationship to Russia whatsoever” and “no debts” in the country.²³

Yet these sweeping statements were directly contradicted by the investigative reporting of major news outlets. “Since the 1980s, Trump and his family members have made numerous trips to Moscow in search of business opportunities, and they have relied on Russian investors to buy their properties around the world,” the *Washington Post* reported, detailing Trump’s “30-year history of business with Russia.”²⁴ *CBS News* noted that “[w]hile the Republican presidential nominee has denied any ties to Russia, his connections to the country and its

²⁰ *Id.*

²¹ 5 U.S.C. § 552; 26 U.S.C. § 6103(k)(3).

²² @realDonaldTrump, Twitter (July 26, 2016 6:50 PM), <https://twitter.com/realdonaldtrump/status/758071952498159616?lang=en>.

²³ *This Week' Transcript: Donald Trump, Vice President Joe Biden, and Ret. Gen. John Allen*, ABC News (July 31, 2016), <http://abcnews.go.com/Politics/week-transcript-donald-trump-vice-president-joe-biden/story?id=41020870>.

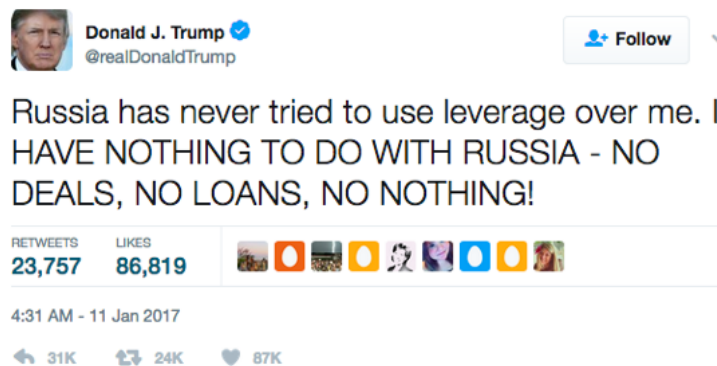
²⁴ Tom Hamburger et al., *Inside Trump's financial ties to Russia and his unusual flattery of Vladimir Putin*, Wash. Post (June 17, 2016) (emphasis added), https://www.washingtonpost.com/politics/inside-trumps-financial-ties-to-russia-and-his-unusual-flattery-of-vladimir-putin/2016/06/17/dbdcaac8-31a6-11e6-8ff7-7b6c1998b7a0_story.html.

president go back years.”²⁵ And *Time*, explicitly refuting Trump’s denial of Russian financial ties, reported:

But the real truth is that, as major banks in America stopped lending him money following his many bankruptcies, *the Trump organization was forced to seek financing from non-traditional institutions. Several had direct ties to Russian financial interests in ways that have raised eyebrows.* What’s more, several of Trump’s senior advisors have business ties to Russia or its satellite politicians.²⁶

Democratic nominee Hillary Clinton made similar assertions about Trump’s financial ties to Russia. Speaking at the September 26 presidential debate, Clinton observed that “we don’t know all of his business dealings, but we have been told through investigative reporting that he owes about \$650 million to Wall Street and foreign banks.”²⁷ A Clinton campaign ad was more explicit still: “American policy on Russia is in direct conflict with Trump’s bottom line. No more excuses, Donald. Release your hidden tax returns.”²⁸

Following the election, the President, current members of Congress, and members of the media have continued to make conflicting material statements regarding the President’s financial interests and ties to the Russian government. “Russia has never tried to use leverage over me. I HAVE NOTHING TO DO WITH RUSSIA - NO DEALS, NO LOANS, NO NOTHING!” Trump tweeted on January 11.²⁹



²⁵ *Despite denial, Trump's connections to Russia go back years*, CBS News (July 29, 2016), <http://www.cbsnews.com/news/election-2016-donald-trump-ties-to-russia-go-back-years-dnc-email-hack/>.

²⁶ Jeff Nesbit, *Donald Trump's Many, Many, Many, Many Ties to Russia*, *Time* (Aug. 15, 2016) (emphasis added), <http://time.com/4433880/donald-trump-ties-to-russia/>.

²⁷ Aaron Blake, *The first Trump-Clinton presidential debate transcript, annotated*, *Wash. Post* (Sept. 26, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/09/26/the-first-trump-clinton-presidential-debate-transcript-annotated/>.

²⁸ Hillary Clinton, *Investigation*, YouTube (Sept. 24, 2016), <https://www.youtube.com/watch?v=DV3AKxUg560>.

²⁹ @realDonaldTrump, Twitter (Jan. 11, 2017 7:31 AM), <https://twitter.com/realdonaldtrump/status/819159806489591809?lang=en>.

On February 16, the President reiterated in a nationally televised press conference: “I can tell you, speaking for myself, I own nothing in Russia. I have no loans in Russia. I don't have any deals in Russia.”³⁰

Yet three separate investigations—one by the Federal Bureau of Investigation,³¹ one by the House Intelligence Committee,³² and one by the Senate Intelligence Committee³³—are poised to examine those very claims, possibly to include subpoenas of Trump’s tax returns.³⁴ Sen. Chris Murphy (D-CT) asserted last month that Trump’s tax returns “could shed light on Trump’s ‘bizarre positioning’ towards Russia” and alleged “either that the Russians have something on Trump, or that there are financial ties that are requiring Trump to behave this way or perhaps the Russians helped him in the election and this is sort of a quid pro quo.”³⁵ And news organizations continue to contradict the President’s claims about his financial dealings.³⁶ “I believe Trump's tax returns are key evidence in the investigations into the extent of Russian

³⁰ Zeeshan Aleem, *Fact-checking Trump's claim that he has no business ties to Russia*, Vox (Feb. 17, 2017), <http://www.vox.com/world/2017/2/17/14622504/trump-russia-business-ties-fact-check>.

³¹ *Comey Confirms Russian Investigation, FBI Seeks Delay in EPIC FOIA Case*, EPIC (Mar. 21, 2017), <https://epic.org/2017/03/comey-confirms-russian-investi.html>.

³² *EPIC Urges House Intelligence Committee to Investigate Russian Interference With US Election*, EPIC (Mar. 20, 2017), <https://epic.org/2017/03/epic-urges-house-intelligence-.html>.

³³ *Senate Intelligence Committee Presses FBI to Reveal Russia Investigation*, EPIC (Jan. 16, 2017), <https://epic.org/2017/01/senate-intelligence-committee.html>.

³⁴ *'This Week' Transcript 3-12-17*, ABC News (Mar. 12, 2017), <http://abcnews.go.com/Politics/week-transcript-17-mick-mulvaney-sen-tom-cotton/story?id=46066756> (“If the evidence leads in that direction, then his tax returns will be pertinent to our investigation.”); Steve Mistler, *Collins Open to Requesting Trump's Tax Returns for Russia Probe*, Maine Public (Feb. 22, 2017), <http://mainepublic.org/post/collins-open-requesting-trumps-tax-returns-russia-probe#stream/0> (“Collins was asked during the Maine Public call in program Maine Calling if she would support subpoenaing the president's tax returns. . . . ‘If it's necessary to get the answers then I suspect we would.’”).

³⁵ Mallory Shelbourne, *Dem senator: Trump tax returns could explain his Russia position*, The Hill (Feb. 15, 2017), <http://thehill.com/homenews/senate/319615-murphy-trump-tax-returns-may-shed-light-on-his-russia-position>.

³⁶ *E.g.*, Jonathan Chait, *What We Already Know About Trump's Ties to Russia Amounts to Treachery to the Republic*, N.Y. Mag. (Mar. 3, 2017), <http://nymag.com/daily/intelligencer/2017/03/trumps-ties-to-russia-amount-to-treachery-to-the-republic.html> (“While Donald Trump has kept hidden his own financial ties to Russia, enough public evidence has emerged to suggest they are extensive.”); Philip Bump, *The web of relationships between Team Trump and Russia*, Wash. Post (Mar. 3, 2017) (“Trump’s connections to Russian business interests are murky, thanks to his decision not to release his tax returns during the campaign.”).

interference in the election and should be made public or at least provided to Congress,” wrote one commentator.³⁷

Most significantly, Donald Trump’s statements that he “has ZERO investments in Russia” and that he has “NOTHING TO DO WITH RUSSIA – NO DEALS, NO LOANS, NO NOTHING” are specifically contested by the statement of his son-in law and White House senior advisor, who stated that “Russians make up a pretty disproportionate cross-section of a lot of our assets. . . . We see a lot of money pouring in from Russia.”³⁸

Public release of Donald J. Trump’s tax returns is necessary to resolve these contradictory claims—at least some of which must constitute “misstatement[s] of fact.”³⁹

Release of the Records Serves Vital Tax Administration Purposes

Disclosure of Donald Trump’s tax returns would also serve tax administration purposes by dispelling or confirming alarming allegations made about the IRS’s fair application of the tax code. The President has claimed that he “unfairly get[s] audited by the I.R.S. almost every single year”⁴⁰ and has accused the agency of targeting him for both religious and political reasons:

"I'm always audited by the IRS, which I think is very unfair—I don't know, maybe because of religion, maybe because of something else, maybe because I'm doing this,⁴¹ although this is just recently," Trump said in an interview with CNN's Chris Cuomo immediately following the 10th GOP debate on Thursday night.

Cuomo cut in: "What do you mean religion?"

"Well, maybe because of the fact that I'm a strong Christian, and I feel strongly about it and maybe there's a bias," Trump said.

Cuomo cut in again: "You think you can get audited for being a strong Christian?"

³⁷ Ted Slowik, *Are Trump's tax returns key to investigations into Russian involvement?*, Daily Southtown (Mar. 27, 2017), <http://www.chicagotribune.com/suburbs/daily-southtown/opinion/ct-sta-slowik-trump-taxes-st-0217-20170216-story.html>.

³⁸ Becker et al., *supra* note 13.

³⁹ 26 U.S.C. § 6103(k)(3).

⁴⁰ @realDonaldTrump, Twitter (Feb. 27, 2016), <https://twitter.com/realDonaldTrump/status/703598661419167744> (“I unfairly get audited by the I.R.S. almost every single year. I have rich friends who never get audited. I wonder why?”).

⁴¹ “This” as in Mr. Trump’s presidential campaign.

"Well, you see what's happened," Trump said. "You have many religious groups that are complaining about that. They've been complaining about it for a long time."⁴²

Others have questioned whether the IRS is unfairly deferential toward President Trump and other wealthy taxpayers. In a *Forbes* article titled "Do Wealthy People Like Trump Have Easier IRS Audits?," tax attorney Robert W. Wood reported that Trump and other big earners appear to elude IRS auditors at higher rates than regular earners. "[S]tatistics might be read to suggest that wealthy individuals often outdo even this elite wing of the IRS [the IRS Wealth Squad]," Wood wrote. "[I]n a significant percentage of the audits it handles, the IRS Wealth Squad walks away without a single dollar."

In order to maintain public confidence in the agency's equitable administration of the tax code, the IRS must exercise its power under § 6103(k)(3) to release Donald Trump's returns.

Request for "News Media" Fee Status and Fee Waiver

EPIC is a "representative of the news media" for fee classification purposes.⁴³ Based on EPIC's status as a "news media" requester, EPIC is entitled to receive the requested record with only duplication fees assessed.⁴⁴

Further, any duplication fees should also be waived as "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government" and disclosure "is not primarily in the commercial interest of the requester."⁴⁵

First, "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."⁴⁶ The President's tax records directly concern the operations or activities of the government. They establish President's potential conflicts of interest and dealings with foreign governments. Indeed, the records are of constitutional significance; they are necessary to review the President's compliance with the Emoluments Clause of the U.S. Constitution.⁴⁷ Disclosure of the records will contribute significantly to the public understanding of the President's conflicts of interest because, despite allegations of his close associates' foreign ties, the details of the President's financial dealings with foreign entities are unknown. Thus far, the President has refused to release the records, and Congressional efforts to access the records have stymied due

⁴² Jenna Johnson, *Donald Trump says IRS audits could be tied to being a 'strong Christian'*, Wash. Post (Feb. 26, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/02/26/donald-trump-says-irs-audits-could-be-tied-to-being-a-strong-christian/>.

⁴³ *EPIC v. Dep't of Def.*, 241 F. Supp. 2d 5 (D.D.C. 2003).

⁴⁴ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

⁴⁵ § 552(a)(4)(A)(iii).

⁴⁶ § 552(a)(4)(A)(iii).

⁴⁷ U.S. Const. art. 1, § 9, cl. 8.

to partisan division.⁴⁸ Nonetheless, three quarters of Americans believe the President should release his tax returns.⁴⁹ Therefore, independent disclosure of these records by the IRS is a critical contribution to the public understanding of the President's operations.

Second, as to the "existence and magnitude of the requester's commercial interest . . . being furthered by the releasable records," EPIC has no commercial interest in the requested records.⁵⁰ EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.⁵¹

For these reasons, a fee waiver should be granted.

Conclusion

There has never been a stronger claim to release tax records under the FOIA, in accordance with §6103(k)(3), than EPIC's request for the release of Donald J. Trump's tax records. The public interest in release of this information could not be greater.

As provided in 5 U.S.C. § 552(a)(6)(A)(i), I will anticipate your determination on our request within twenty working days.

For questions regarding this request I can be contacted at 202-483-1140x111 or FOIA@epic.org.

Respectfully submitted,

John Davisson
EPIC Fellow

⁴⁸ Naomi Jagoda, *House panel voted against requesting Trump's Tax returns*, The Hill (Feb. 14, 2017), <http://thehill.com/policy/finance/319438-house-panel-votes-against-requesting-trumps-tax-returns>.

⁴⁹ Langer, *supra* note 19.

⁵⁰ § 552(a)(4)(A)(iii).

⁵¹ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.