



centerforconstitutionalrights
on the front lines for social justice

BY CERTIFIED MAIL AND ELECTRONIC MAIL

January 27, 2017

Kody Kinsley
Assistant Secretary for Management and Chief FOIA Officer
FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, DC 20220
TreasFOIA@treasury.gov

Re: Freedom of Information Act Request

Dear Mr. Kinsley:

This request is made under the Freedom of Information Act (“FOIA”) pursuant to 5 U.S.C.A. § 552, by Centro de Periodismo Investigativo (“CPI”), LatinoJustice PRLDEF (“LJP”), and the Center for Constitutional Rights (“CCR”) (collectively “the Requesters”).

We are requesting documents related to the establishment, composition, appointment process and functioning of the federal fiscal control (or oversight) board that was authorized under the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”), 48 U.S.C.A. § 2121. The White House, along with the National Economic Council,¹ appointed the seven members to the federal fiscal control board and the Department of Treasury advised on the process.²

A. Request for Information

Please provide copies of *all* records relating to the federal fiscal oversight board (hereinafter referred to as “the Board”), as established by PROMESA, including, but not limited to, records related to the following individuals:

1. José B. Carrion, III
2. Andrew G. Biggs

¹ <https://www.whitehouse.gov/the-press-office/2016/08/31/president-obama-announces-appointment-seven-individuals-financial>

² Statement by Secretary Lew on the Puerto Rico Oversight Board (Aug. 31, 2016), <https://www.treasury.gov/press-center/press-releases/Pages/jl5045.aspx>; see also Letter from Secretary Lew to the Puerto Rico Financial Oversight and Management Board (Nov. 16, 2016), <https://www.treasury.gov/connect/blog/Pages/Letter-from-Secretary-Lew-to-the-Puerto-Rico-Financial-Oversight-and-Management-Board.aspx>.

3. Carlos M. Garcia
4. Arthur J. González
5. Jose R. González
6. Ana J. Matosantos
7. David A. Skeel, Jr.
8. Elías Sánchez

This request also seeks records including, but not limited to, the following:

1. Records indicating the criteria that were used to evaluate and select the candidates for the Board and how these criteria were determined to be the most useful for the skills needed in carrying out the functions of the Board;
2. Records indicating the weight given to each criterion in evaluating each candidate's nomination for the Board;
3. Records indicating which agencies, entities or personnel were involved in determining the criteria for evaluating candidates for the Board;
4. Records submitted by each candidate for consideration in their appointment, upon or after their appointment, including financial disclosures and documents, conflict of interest forms or information, personal and professional background, interest statement, who they were recommended by and their professional qualifications;
5. Records indicating how each candidate was evaluated with respect to the criteria and results of their evaluations;
6. Records indicating which agencies, entities or personnel were involved in the process of evaluating all nominations for candidates for the Board, and what their respective roles were;
7. Records indicating the process for establishing what the conflict of interest policy would consist of for potential Board members;
8. Records indicating the process for determining conflicts of interest of prospective Board members and which agencies, entities or personnel were involved in evaluating whether any conflicts of interest existed;
9. Records indicating whether any conflicts of interest for candidates for the Board were determined, and if so, what they consisted of and how they were addressed;
10. Records indicating what information was examined with respect to the professional and personal backgrounds of candidates for the Board, and by whom;
11. Records indicating the considerations, if any, of the relationship, knowledge of, or residency in Puerto Rico for candidates for the Board;
12. Records concerning and/or reflecting any communications, inquiries or requests for information, documents, reports, or data from any member of the Board and/or their staff to any agency of the federal government or official of such agency
13. Records concerning and/or reflecting any communications, inquiries or requests for information, documents, reports, or data from staff of any agency of the federal government or official of such agency to any member of the Board and/or their staff;

14. Communications, reports, updates or information provided by any member of the Board and/or their staff to the Treasury Department, an official in the Treasury Department, or any other agency or official of the federal government concerning the status of the Board's work;
15. Communications, reports, updates or information provided by any staff member of the Treasury Department, an official in the Treasury Department, or any other agency or official of the federal government to any member of the Board and/or their staff concerning the status of the Board's work.

“Records” Definition. Please note that in this request, the term “record(s)” includes, but is not limited to, all Records or communications preserved in electronic (including metadata) or written form, such as correspondences, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

B. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM or DVD;
- In PDF or TIF format;
- In electronically searchable format;
- Each record in a separately saved PDF file;
- “Parent-child” relationships maintained, meaning that the requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

C. The Requesters

Centro de Periodismo Investigativo (CPI) is a non-profit, public interest organization that recognizes that the fundamental requirement for a true democracy is that all citizens are well-informed and have access to necessary information to make informed decisions, by relying on independent entities that promote transparency in decision-making by the powers that operate in society, whether public or private. As an organization dedicated to the promotion of journalism as a means to informing a public about critical decisions being discussed and made related to their lives, CPI dedicates resources to reporting, writing, and editing original journalistic stories about our infinitely complex and dynamic society to counter increasingly narrow narratives, secretive government practices and data manipulation. Through access to information, each citizen has the ability to participate more fully in democracy and to hold those in power accountable.

LatinoJustice PRLDEF (“LJP”), formerly the Puerto Rican Legal Defense and Education Fund, is a nonprofit civil rights legal and advocacy organization which champions an equitable society by using the power of the law together with advocacy and education. Since being founded in 1972, LatinoJustice PRLDEF has advocated for and defended the constitutional rights and the equal protection of all Latinos under the law, including litigating numerous landmark cases. LJP engages in advocacy via numerous local, regional and national coalitions, networks and alliances concerning a myriad of issues related to the

broad scope of our work. We produce newsletters, blogs, reports, opinion editorials, video interviews and applications and software related to the analysis and understanding of civil rights issues, as well as providing resources for assistance with violations of rights. All of our services and materials are free and available to the public.

The Center for Constitutional Rights (“CCR”) is a non-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR’s diverse dockets include litigation and advocacy around policing, and racial and ethnic profiling. CCR is a member of several networks nationally and provides legal support to civil rights movements. One of CCR’s primary activities is the publication of newsletters, know-you-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR’s Development, Communications, and Education & Outreach Departments. CCR operates a website, www.ccrjustice.org, which addresses the issues on which the Center works. The website includes material on topical civil and racial justice rights issues and material concerning CCR’s work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and a regularly updated blog, as well as “action alerts” sent to over 50,000 members that notify supporters and the general public about developments and operations pertaining to CCR’s work. CCR staff members often serve as sources for journalist and media outlets, including on issues related to racial justice, police brutality, racial discrimination, and the right to dissent.

D. Fee Waiver

The Requesters are entitled to a fee waiver pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii), 6 C.F.R. § 5.11(k), and 28 C.F.R. § 16.10(k) on the grounds that “disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s].” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished by DHS without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution); 28 C.F.R. § 16.10 (k) (records furnished by DOJ without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). Requesters meet the requirements for a fee waiver because the subject of the request concerns the operations or activities of the government; the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities due to the requesters’ expertise in the subject area and ability to convey the information; the Requesters’ primary interest is in disclosure; and they have no commercial interest in the information. In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II), 6 C.F.R. § 5.11(k)(2)(iii), (k)(3)(ii), and 28 C.F.R. § 16.10(k)(2)(iii), (k)(3)(ii), the Requesters qualify as a “representatives of the news media,” defined as “any person or entity that 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); *see also* 6 C.F.R. § 5.11(b)(6); 28 C.F.R. § 16.10(b)(6).

As described in Part D above, the Requesters are non-profit organizations dedicated to civil rights and human rights, and have a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government’s record and position on surveillance, protests, policing and racial justice. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public’s understanding of government actions and policies in regards to the surveillance of peaceful protestors. Access to this information is crucial for the

Requesters and the communities they serve to evaluate governmental surveillance actions and their potential detrimental efforts.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II). ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media."). *See also* 6 C.F.R. § 5.11(d)(1); 28 C.F.R. § 16.10(d)(1). If no fee waiver is granted and the fees exceed \$250.00, please contact the Requesters' undersigned counsel to obtain consent to incur additional fees.

E. Expedited Processing

The Requesters are entitled to expedited processing of this request because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public about an actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(ii); 28 C.F.R. § 16.5(e)(ii).

There is an urgent need to inform the public of the policies and decision-making regarding the establishment, composition and appointment process of the federal fiscal control (or oversight) board.

As described in part C above, Centro de Periodismo Investigativo, as a journalistic organization, is primarily engaged in disseminating information. Centro de Periodismo Investigativo has a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the federal fiscal control board. Centro de Periodismo Investigativo will use its press and media connections as well as its considerable web infrastructure to publicly disseminate information received from this request on a national scale.

In addition, the DOJ grants expedited processing where the subject of the request is a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." 28 C.F.R. § 16.5(e) (iv). There is widespread and exceptional media interest in the federal fiscal control board. The lack of transparency of the establishment, composition and appointment process of the federal fiscal control board calls into question government integrity and affects public confidence. In addition, decisions related to the economic well-being of Puerto Rico and its citizens are being made on an accelerated timeline and with great haste, therefore the urgency of this request justifies an expedited processing.

F. Certification & Conclusion

The Requester certifies that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(d)(3); 28 C.F.R. § 16.5(e)(3). If this Request is denied in whole or in part, the Requesters ask that the Department of Treasury justify all deletions by reference to specific exemptions of FOIA. The Requesters expects the Department of Treasury to release all segregable

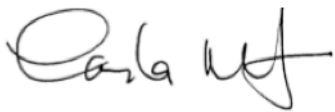
portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for expedited processing and waiver of fees.

Please furnish all applicable Records and correspondence in electronic format as specified above to:

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Thank you for your consideration, and if you have any questions, please feel free to contact me.

Sincerely,



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