



August 14, 2017

Office of Information Programs and Services (IPS)  
A/GIS/IPS/RL  
U.S. Department of State, State Annex 2 (SA-2)  
515 22nd Street, NW  
Washington, DC 20522-8100  
Telephone: (202) 261-8484  
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**RE: FOIA Request to the U.S. State Department Regarding Former United Nations Ambassador Samantha Power's Queries or Requests to Access "Unmasked" Names or Other Personal Identifiers of Candidate/President-elect Donald Trump, His Family, and/or Advisers Incidentally Caught up in Surveillance**

Dear Sir or Ma'am:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")<sup>1</sup> on behalf of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records pertaining to any and all requests former To summarize, this Request seeks records pertaining to any and all requests former U.S. Permanent Representative to the United Nations, Ambassador Samantha Power ("Ambassador Samantha Power") made to National Security Agency ("NSA") officials or personnel regarding the "unmasking" of the names and/or any other personal identifying information of then candidate and/or President-elect Donald J. Trump, his family, staff, transition team members, and/or advisors who were incidentally caught up in U.S. electronic surveillance.

### **Background**

Pursuant to State Department FOIA regulation 22 C.F.R. § 171.4(b), this Background addresses "the subject, timeframe, names of any individuals involved, a contract number (if applicable),

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<sup>1</sup>The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.



and reasons why the requester believes the Department may have records on the subject of the request.” 22 C.F.R. § 171.4(b).

According to Free Beacon:

Former United Nations Ambassador Samantha Power is believed to have made ‘hundreds’ of unmasking requests to identify individuals named in classified intelligence community reports related to Trump and his presidential transition team, according to multiple sources who said the behavior is unprecedented for an official in her position.<sup>2</sup>

As reported by Free Beacon, “[e]fforts by the former Obama administration to obtain the names of Trump allies included in raw intelligence reports have fueled speculation that subsequent leaks to the press were orchestrated by the former administration and its allies in a bid to damage the current White House and smear Trump’s most senior confidantes.”<sup>3</sup>

According to the same report, unmasking requests made by “‘one official [whose] position has *no apparent intelligence-related function*’—[are] now believed to [have been made by] Power.”<sup>4</sup> Moreover, “Little justification was provided for the request of this sensitive classified information, which government insiders described as outside the purview of a U.N. ambassador.”<sup>5</sup>

Free Beacon’s news report followed an earlier Fox News report according to which:

Susan Rice, former national security adviser under then-President Barack Obama, requested to unmask the names of Trump transition officials caught up in surveillance. The unmasked names, of people associated with Donald Trump, were then sent to all those at the National Security Council, some at the Defense Department, then-Director of National Intelligence James Clapper and then-CIA Director John Brennan – essentially, the officials at the top, including former Rice deputy Ben Rhodes.<sup>6</sup>

As reported by Fox News, “[t]he names were part of incidental electronic surveillance of candidate and President-elect Trump and people close to him, including family members, for up to a year before he took office.”<sup>7</sup> Fox News also reports that “[a]n extensive and complex paper

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<sup>2</sup>Adam Kredi, *Former U.N. Amb. Power Unmasked ‘Hundreds’ in Final Year of Obama Admin*, FREEBEACON.COM (Aug. 2, 2017), <http://freebeacon.com/national-security/former-u-n-amb-power-unmasked-hundreds-last-year-obama-admin/>.

<sup>3</sup>*Id.*

<sup>4</sup>*Id.* (quoting Letter from Congressman Devin Nunes Chairman of the Permanent Select Committee on Intelligence to Director of National Intelligence Daniel Coats (July 27, 2017), *available at* [https://intelligence.house.gov/uploadedfiles/chairman\\_letter\\_to\\_dni\\_unmasking\\_drafting\\_assistance.pdf](https://intelligence.house.gov/uploadedfiles/chairman_letter_to_dni_unmasking_drafting_assistance.pdf)).

<sup>5</sup>*Id.*

<sup>6</sup>Adam Housley, *Susan Rice Requested to Unmask Names of Trump Transition Officials, Sources Say*, FOXNEWS.COM (Apr. 3, 2017), <http://www.foxnews.com/politics/2017/04/03/susan-rice-requested-to-unmask-names-trump-transition-officials-sources-say.html>.

<sup>7</sup>*Id.*

trail for requests to the National Security Agency about the identities of people in President Trump's transition team in sensitive intelligence surveillance probably exists . . . according to information sharing procedures signed into law by the outgoing Obama Administration.”<sup>8</sup>

### **Records Requested**

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016)<sup>9</sup> (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person(s).

For purposes of this Request, the term “DOS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the DOS, any Mission of the United States, or any Delegation of the United States, in any capacity; (2) contracted for services by or on behalf of the DOS, any Mission of the United States, or any Delegation of the United States, in any capacity; (3) appointed by the President of the United States to serve in any capacity at or within the DOS, any Mission of the United States, or any Delegation of the United States; or (4) any such person's staff, agent or employee; all without regard to the component, bureau, or office in which that person serves.

For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

**For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 20, 2016, to January 20, 2017.**

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<sup>8</sup>George Russell, *Detailed Paper Trail for Rice Unmasking Requests Likely Exists, According to Controversial Intel Sharing Document*, FOXNEWS.COM (Apr. 7, 2017), <http://www.foxnews.com/politics/2017/04/07/detailed-paper-trail-for-rice-unmasking-requests-likely-exists-according-to-controversial-intel-sharing-document.html>.

<sup>9</sup>*Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016).

Pursuant to FOIA, 5 U.S.C. § 552, ACLJ hereby requests that the DOS respond to the following numbered requests and produce all responsive records:

1. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official or employee, where one communicant was Ambassador Samantha Power, including any communications, queries or requests made under an alias or pseudonym, and where another communicant was the Director of the National Security Agency, the Chief of the Central Security Service, SIGINT production organization personnel, the Signals Intelligence Director, Deputy Signals Intelligence Director, or the Chief/Deputy/Senior Operations Officers of the National Security Operations Center, or any other NSA official or employee, which references, is connected to, or which regards in any way, any communication, request, query, submission, direction, instruction, or order, whereby Samantha Power sought access to or attempted to access SIGINT reports or other intelligence products or reports containing the name(s) or any personal identifying information related to

- a) Donald Trump;
- b) Melania Trump;
- c) Michael Pence;
- d) Eric Trump;
- e) Jared Kushner;
- f) Ivanka Trump;
- g) Reince Preibus;
- h) Steve Bannon;
- i) Sebastian Gorka;
- j) Rudy Giuliani;
- k) Chris Christie;
- l) Newt Gingrich;
- m) Jeff Sessions;
- n) Sean Hannity;
- o) Michael Flynn;
- p) KT McFarland;
- q) Michael Rogers;
- r) Ron Nicol;
- s) Keith Kellogg;
- t) Michael Meese;
- u) Cindy Hayden;
- v) Jim Carafano;
- w) Ronald Burgess;
- x) David Malpass;
- y) Bill Walton;
- z) Ken Blackwell;
- aa) Myron Ebell;
- bb) Mike McKenna;
- cc) Steve Hart;
- dd) Edwin Meese;
- ee) Kay Coles James;

- ff) Beth Kaufman;
- gg) Ado Machida;
- hh) Andrew Bremberg;
- ii) Carlos Diaz Rosillo;
- jj) Danielle Cutrona;
- kk) Rick Dearborn;
- ll) Paula Stannard;
- mm) Bert Mizusawa;
- nn) Jim Carter;
- oo) Bill Chatfield;
- pp) Rob Gordon;
- qq) Michael Catanzaro;
- rr) Brian Johnson;
- ss) Gerard Robinson;
- tt) Martin Whitmer; and/or
- uu) Ken Klukoski;

whether incidentally collected or otherwise, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

2. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official or employee referencing, connected to, or regarding in any way communications, queries or requests from Ambassador Samantha Power in her capacity as a Department of State Official, including any communications, queries or requests made under an alias or pseudonym, made to the Director of the National Security Agency, the Chief of the Central Security Service, SIGINT production organization personnel, the Signals Intelligence Director, Deputy Signals Intelligence Director, or the Chief/Deputy/Senior Operations Officers of the National Security Operations Center, or any other NSA official or employee, requesting the “unmasking” of or access to the “unmasked” names or other personal identifying information of American citizens contained in SIGINT reports or other intelligence products or reports, including:

- a) Donald Trump;
- b) Melania Trump;
- c) Michael Pence;
- d) Eric Trump;
- e) Jared Kushner;
- f) Ivanka Trump;
- g) Reince Preibus;

- h) Steve Bannon;
- i) Sebastian Gorka;
- j) Rudy Giuliani;
- k) Chris Christie;
- l) Newt Gingrich;
- m) Jeff Sessions;
- n) Sean Hannity;
- o) Michael Flynn;
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whether incidentally collected or otherwise, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or

message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

3. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official where one communicant was Ambassador Samantha Power, including any communications, queries or requests made under an alias or pseudonym, and another communicant was any NSA official or employee, containing any reference to the term "Trump" or names or other personal identifying information of the following individuals:

- a) Donald Trump;
- b) Melania Trump;
- c) Michael Pence;
- d) Eric Trump;
- e) Jared Kushner;
- f) Ivanka Trump;
- g) Reince Preibus;
- h) Steve Bannon;
- i) Sebastian Gorka;
- j) Rudy Giuliani;
- k) Chris Christie;
- l) Newt Gingrich;
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- jj) Danielle Cutrona;
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whether incidentally collected or otherwise, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

4. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official or employee referencing, connected to, or regarding in any way communications, queries or requests from Ambassador Samantha Power in her capacity as a Department of State Official, including any communications, queries or requests made under an alias or pseudonym, made to the Director of the National Security Agency, the Chief of the Central Security Service, SIGINT production organization personnel, the Signals Intelligence Director, Deputy Signals Intelligence Director, or the Chief/Deputy/Senior Operations Officers of the National Security Operations Center, or any other NSA official or employee, regarding “minimization procedures” in connection with communications, queries or requests made by Samantha Power, including any alias or pseudonym used to identify Samantha Power, regarding the “unmasking” of or access to the “unmasked” names or other personal identifying information of American citizens contained in SIGINT reports or other intelligence products or reports, including:

- a) Donald Trump;
- b) Melania Trump;
- c) Michael Pence;
- d) Eric Trump;
- e) Jared Kushner;
- f) Ivanka Trump;
- g) Reince Preibus;
- h) Steve Bannon;
- i) Sebastian Gorka;
- j) Rudy Giuliani;



- k) Chris Christie;
- l) Newt Gingrich;
- m) Jeff Sessions;
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5. All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official or employee referencing, connected to, or regarding in any way communications, queries or requests from Ambassador Samantha Power made outside her official DOS capacity, including any communications, queries or requests made under an alias or pseudonym, made to the Director of the National Security Agency, the Chief of the Central Security Service, SIGINT production organization personnel, the Signals Intelligence Director, Deputy Signals Intelligence Director, or the Chief/Deputy/Senior Operations Officers of the National Security Operations Center, or any other NSA official or employee, regarding “minimization procedures” in connection with communications, queries or requests made by Samantha Power, including any alias or pseudonym used to identify Samantha Power, regarding the “unmasking” of or access to the “unmasked” names or other personal identifying information of American citizens contained in SIGINT reports or other intelligence products or reports, including:

- a) Donald Trump;
- b) Melania Trump;
- c) Michael Pence;
- d) Eric Trump;
- e) Jared Kushner;
- f) Ivanka Trump;
- g) Reince Preibus;
- h) Steve Bannon;
- i) Sebastian Gorka;
- j) Rudy Giuliani;
- k) Chris Christie;
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- m) Jeff Sessions;
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whether incidentally collected or otherwise, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

6. All records or communications, generated, forwarded, transmitted, shared, saved, sent, or received by Ambassador Samantha Power, including any records or communications made under an alias or pseudonym, whether incidentally collected or otherwise, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

### CONCLUSION

If this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. The ACLJ reserves

the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director  
Carly F. Gammill, Senior Litigation Counsel  
Benjamin P. Sisney, Senior Litigation Counsel  
American Center for Law and Justice



Respectfully submitted,

Handwritten signature of Jordan Sekulow in cursive script.

Jordan Sekulow  
Executive Director

Handwritten signature of Carly F. Gammill in cursive script.

Carly F. Gammill  
Senior Litigation Counsel

Handwritten signature of Benjamin P. Sisney in cursive script.

Benjamin P. Sisney  
Senior Litigation Counsel