

HQ-2019-00888-F



WHISTLEBLOWER.ORG

GOVERNMENT ACCOUNTABILITY PROJECT

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By Facsimile

August 29, 2018

FOIA Requester Service Center
Department of Energy
1000 Independence Avenue, SW
Mail Stop MA-46
Washington, DC 20585
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OTHER - 2 HOURS SEARCH FREE, 100 FREE PAGES
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Re: FOIA Request of the Government Accountability Project.

To Whom it may Concern:

The Government Accountability Project ("GAP") is a non-partisan, non-profit public interest law firm specializing in legal advocacy for "whistleblowers" - government and corporate employees who use free speech rights to challenge abuses of power that betray the public interest. GAP has a 40-year history of working on behalf of government and corporate employees who expose illegality, gross waste, mismanagement, abuse of authority, substantial or specific dangers to public health and safety, and other institutional misconduct undermining the public interest. GAP's efforts are based on the belief that professional and dedicated employees are essential to an effective democracy.

GAP has substantial expertise on protecting employees' rights, having assisted more than 8,000 whistleblowers since 1979. GAP attorneys have testified before Congress on the effectiveness of statutory protections, filed numerous amicus curiae briefs on constitutional and statutory whistleblower issues, and led legislative campaigns for whistleblower protection laws.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and 10 C.F.R. Part 1004, GAP requests, on our behalf, the records described below that are in the possession, custody, or control of the Department of Energy ("Energy").

The records that GAP requests include every writing of every type and description, and every other instrument or device by which, through which, or on which information has been recorded, preserved, or transmitted, including but not limited to memoranda, notes, letters, interviews, audits, audit work papers, drawings, files, graphs, charts, photographs, agreements, contracts, telephone messages, e-mail messages, handwritten notes, diaries, logs, calendars, ledgers, studies, data sheets, computations, calculations, accounting(s), financial statements, tax forms, voice recordings, computer tapes or disks, and other data compilations.

Specifically, GAP is requesting all documents and communications regarding the following topics, for the time period of January 20, 2017 to the present:

1. Civil nuclear cooperation with Middle Eastern countries, most notably Saudi Arabia;

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2. The "Middle East Marshall Plan;"
3. Negotiation of a U.S.-Saudi "123" Civil Nuclear Cooperation Agreement;
4. Documents, briefings, correspondence, and/or telephone conversations regarding the "International Peace Power and Prosperity" (IP3 Corporation) and its proposal for nuclear and cyber cooperation with various Middle Eastern countries, to include Saudi Arabia; and
5. Documents and deliberations regarding Westinghouse, to include its March 2017 bankruptcy and the U.S. government's subsequent policy response. 1

To help further focus the search for responsive documents, I provide you with additional information on the persons and entities who were likely to be involved with Energy's consideration of these issues:

First, in addition to correspondence that is entirely within Energy, individuals at the following other agencies are likely to have corresponded with Energy regarding these issues: Department of State; Department of Commerce; Department of Defense; Central Intelligence Agency; Department of the Treasury; and the White House (National Security Council and other White House personnel).

Second, with respect to the correspondence between Energy and the White House (National Security Council and other White House personnel), the following individuals are most likely to have been referenced in the documents and communications:

Megan Badach, former NSC Executive Secretary;
Michael Bell, former NSC Senior Director;
Caroline Berson, former NSC Senior Advisor;
John Eisenberg, NSC Legal Counsel;
Mark Eshbaugh, former NSC Director;
Michael Flynn, former National Security Advisor;
Chris Ford, former NSC Senior Director;
Andrea Hall, former NSC Senior Director;
Derek Harvey, NSC Senior Director;
Keith Kellogg, former NSC Chief of Staff;
Jared Kushner, Senior Advisor to the President;
KT McFarland, former Deputy National Security Advisor;
H.R. McMaster, former National Security Advisor;
Sean Misko, former NSC Gulf Director;
Sean Oehlbert, former NSC Nonproliferation Director;
Dina Powell, former Deputy National Security Advisor;
Ricky Waddell, former Deputy National Security Advisor; and
Marguerite Walter, former NSC Ethics Counsel.

Third, Energy could have had correspondence with or about the following individuals at the IP3 Corporation:

Keith Alexander;
Michael ("Mike") Hewitt;
Jack Keane;
Robert ("Bud") McFarlane;
Stuart Solomon; and

Frances Frago Townsend.

Fourth, with respect to searching the files at Energy, the following individuals at Energy (or categories) are those who are most likely to have responsive information in their emails, archived documents, and other stored files:

- (1) Secretary Perry and his immediate staff, including Chief of Staff, Deputy Chief of Staff, and advisers;
- (2) any other Energy employees involved in negotiations or discussions with Saudi Arabia regarding a potential 123 Nuclear Agreement.

Finally, GAP, as a non-profit, non-partisan organization, respectfully requests a waiver from having to pay the search and copying fees to obtain these documents. Pursuant to 10 C.F.R. § 1004.9(a)(8), a waiver is warranted because disclosure is in the public interest, as GAP plans to prepare a public interest White Paper on the associated issues. Information about the IP3 / Middle East Marshall Plan is likely to contribute significantly to the public's understanding of the operations of the U.S. government, and because GAP has no commercial interest in the subject matter of this request. All of the remaining criteria of 10 C.F.R. § 1004.9(a)(8) are satisfied:

- (i) The subject matter of this request is very specifically tailored to an identifiable operation of the government – discussions relating to the IP3 / Middle East Marshall Plan, and the request covers a recent and narrowly tailored time period;
- (ii) Disclosing this information would contribute to the public discussion and understanding of the government's operations with respect to energy and foreign policy issues in the Middle East, and would not be duplicative of information already in the public domain;
- (iii) GAP has significant and extensive expertise in conveying information about the government's operations to the general public in a way that contributes to the public's understanding of a wide range of complex governmental issues; and
- (iv) Release of the requested documents about the IP3 / Middle East Marshall Plan will significantly enhance the public's understanding of these significant energy and foreign policy issues in the Middle East.

I look forward to hearing from you within 20 days. As this material is needed for a matter that is under review by the United States Congress and that is of significant public concern, I request an expedited response, if possible.

If you have any questions, please contact me at the above address or by email at:
TomD@whistleblower.org.

Thank you for your anticipated cooperation.

Sincerely,

Thomas Devine