

**EXHIBIT G**



**U.S. Department of Justice**

Civil Division  
Federal Programs Branch

**Mailing Address**  
P.O. Box 883  
Washington, D.C. 20044

**Overnight Delivery Address**  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

---

Joseph E. Borson  
Trial Attorney

Tel: (202) 514-1944  
Fax: (202) 616-8460  
Joseph.Borson@usdoj.gov

December 1, 2017

Harry Sandick  
Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036-6710  
hsandick@pbwt.com

**Re: *Dunlap v. Presidential Advisory Commission on Election Integrity, et al.*, No. 17-cv-2361 (CKK) (D.D.C.)**

Dear Mr. Sandick:

I write on behalf of the defendants in the above-captioned matter in response to your letter of November 21, 2017. We appreciate your attempt to define with some specificity the documents to which your client claims that he is entitled under FACA. Your letter, however, does not reasonably narrow your request for documents in a way contemplated by this Court's November 17, 2017, suggestion. For example, you seek documents, in whole or in part, from 17 categories of documents listed in Appendix A. You also seek approximately 143 documents that are separately listed on Appendix B, plus an additional 38 categories of documents that are individually identified on that Appendix. You also note that "Secretary Dunlap's entitlement to documents is broader than these requests," and that you seek documents created after the filing of the *Vaughn*-type index (again, without defining which specific documents or categories your client seeks). Letter from H. Sandick to J. Borson (Nov. 21, 2017), at 3. Given the scope of these requests, and the limited time you have provided for a reply, defendants cannot provide a meaningful document-by-document response for each of your requests.

We do not believe that the law requires these materials be provided to Secretary Dunlap, either pursuant to FACA's text or the D.C. Circuit's decision in *Cummock v. Gore*, 180 F.3d 282 (D.C. Cir. 1999). As you know, the D.C. Circuit held that because a member has "a right to fully participate in the deliberations of the Commission," a member must have "the opportunity to review documents that were prepared for or relied upon by the Commission in formulating its recommendations," and to make a concurrence or dissent that "reflect[s] this information." 180 F.3d at 284. In other words, the D.C. Circuit held that a member could not be excluded from reviewing information that was used by the Commission in making its final recommendation. For example, an advisory committee cannot deny a member access to relevant material used by the committee even if that information would not need to be disclosed pursuant to section 10(b)

because it would be exempt pursuant to a FOIA exemption. *Id.* (“Thus, provided that Cummock was granted the requisite security clearance, the Commission could not deny her access to information that it reviewed and relied upon in formulating its recommendations – even if, for instance, that information might have been withheld from the public pursuant to a FOIA exemption.”). Nor can the government “treat [an advisory committee member] on less-than-equal footing with other committee members,” at least without a clear reason. *Id.* at 293 (Rogers, J., concurring). In that sense only, we agree that a Commission member may have broader rights to records than a member of the public.

However, *Cummock* does not clearly apply – as it must, in a mandamus context – to this situation. As we understand Secretary Dunlap’s argument, he is not saying that he has been denied material that was used by the Commission in formulating its recommendations, nor that he has been treated differently than other Commission members. Instead, he seeks not equal treatment, but special treatment, *i.e.* access to documents, mostly prepared by staff members, that have not been shared with other Commission members or relied upon in the creation of a report. *Cummock* does not speak to this context.

Nonetheless, without waiving our objections, and in the interest of compromise and with the goal of assuring Secretary Dunlap that he is in fact being treated equally to other members of the Commission, we propose the following:

Defendants will make available to Secretary Dunlap (and his counsel) materials exchanged between Commission staff, panelists, and Commission members related to the September 12 meeting pursuant to the below conditions. This meeting has been the most substantive activity taken by the Commission to date, and was specifically identified by your client in his declaration and brief as an area of particular concern to him. Accordingly, we believe that reviewing these materials will provide an opportunity for him to satisfy himself that he is not being excluded from the substantive work of the Commission.

We propose to make these materials available to Secretary Dunlap (and counsel) for his review at a convenient time and location to him, such as the U.S. Attorney’s Office in Bangor, Maine. We cannot provide Secretary Dunlap copies of these materials or otherwise allow him to take notes. If we were to provide copies of these materials to the Secretary, then we would also have to give copies to the other Commission members, at which time these materials would arguably be subject to public disclosure pursuant to FACA section 10(b). Defendants continue to assert that these documents are not otherwise subject to section 10(b). We hope that a review of the documents will assuage Secretary Dunlap’s concerns and help further our shared interest in the work of the Commission.

Please let us know promptly if your client is interested in reviewing these materials, and we will make the necessary arrangements to bring them to Maine as soon as practicable at a time convenient for him.

Sincerely,

*/s/ Joseph E. Borson*

ELIZABETH J. SHAPIRO

CAROL FEDERIGHI

KRISTINA A. WOLFE

JOSEPH E. BORSON

United States Department of Justice

Civil Division, Federal Programs Branch

P.O. Box 883

Washington, DC 20044

Phone: (202) 514-1944

Email: joseph.borson@usdoj.gov

*Counsel for Defendants*