

EXHIBIT H

Jacobson, Daniel

From: Freedman, John A.
Sent: Friday, July 21, 2017 7:33 PM
To: 'Borson, Joseph (CIV)'; Jacobson, Daniel; Shapiro, Elizabeth (CIV); Jones, Stanton; Federighi, Carol (CIV)
Cc: Jon Greenbaum; Ezra Rosenberg; Weiner, Robert; Weiner, David J.; Hutchinson, Kathryn
Subject: RE: Lawyers' Committee v. Presidential Commission on Election Integrity, No. 1:17-cv-1354 (D.D.C.)

Joey --

I would suggest you communicate your views on the amount of reasonable time necessary to respond to a Rule 7(m) request to Chad and Federal Programs management. Your colleagues have filed motions on me three times since the change of administration providing less time than we have to formulate your position, twice on Fridays.

If you decide on Monday that you agree with some of the relief we are requesting, then we will file an amended Rule 7(m) notice with the Court. But we have been conferring with you in good faith about the issues raised in our motion for the better part of a week, and there is nothing in Rule 7 that requires us to provide more time than we have.

Best regards,

John

-----Original Message-----

From: Borson, Joseph (CIV) [mailto:Joseph.Borson@usdoj.gov]
Sent: Friday, July 21, 2017 6:59 PM
To: Jacobson, Daniel; Shapiro, Elizabeth (CIV); Jones, Stanton; Federighi, Carol (CIV)
Cc: Jon Greenbaum; Ezra Rosenberg; Freedman, John A.; Weiner, Robert; Weiner, David J.; Hutchinson, Kathryn
Subject: RE: Lawyers' Committee v. Presidential Commission on Election Integrity, No. 1:17-cv-1354 (D.D.C.)

Dear Counsel:

It is not reasonable to provide only one hour to respond to a Friday after-hours Rule 7(m) request. We will provide our position on Monday after we can consult with our clients.

All my best,

Joey

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Jacobson, Daniel" <Daniel.Jacobson@apks.com>
Date: 07/21/2017 5:48 PM (GMT-05:00)

To: "Shapiro, Elizabeth (CIV)" <EShapiro@CIV.USDOJ.GOV>, "Jones, Stanton" <Stanton.Jones@apks.com>, "Borson, Joseph (CIV)" <jborson@CIV.USDOJ.GOV>, "Federighi, Carol (CIV)" <CFederig@CIV.USDOJ.GOV>
Cc: Jon Greenbaum <jgreenbaum@lawyerscommittee.org>, Ezra Rosenberg <erosenberg@lawyerscommittee.org>, "Freedman, John A." <John.Freedman@apks.com>, "Weiner, Robert" <Robert.Weiner@apks.com>, "Weiner, David J." <David.Weiner@apks.com>, "Hutchinson, Kathryn" <Kathryn.Hutchinson@apks.com>
Subject: RE: Lawyers' Committee v. Presidential Commission on Election Integrity, No. 1:17-cv-1354 (D.D.C.)

Counsel,

Pursuant to Local Rule 7(m), I write to advise that the Lawyers' Committee plans to file this evening a motion for a status conference, limited expedited discovery, and appropriate relief based on Defendants' failure to honor commitments to the Court to produce relevant records prior to the July 19 Commission meeting. Please let us know whether Defendants consent to the motion. We plan to file at 6:50 p.m. tonight.

Best,
Daniel Jacobson

Daniel Jacobson
Associate

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From: Shapiro, Elizabeth (CIV) [mailto:Elizabeth.Shapiro@usdoj.gov]
Sent: Friday, July 21, 2017 10:00 AM
To: Jones, Stanton; Borson, Joseph (CIV); Federighi, Carol (CIV)
Cc: Jon Greenbaum; Ezra Rosenberg; Freedman, John A.; Weiner, Robert; Weiner, David J.; Jacobson, Daniel; Hutchinson, Kathryn
Subject: RE: Lawyers' Committee v. Presidential Commission on Election Integrity, No. 1:17-cv-1354 (D.D.C.)

Stanton,

The Commission believes it has posted all the meeting-related documents that were provided to the Commission members in advance of the July 19 meeting, and all the documents introduced at the July 19 meeting. Of course, those are not all records that the Commission intends to disclose under Section 10(b) with respect to that meeting. Minutes will be created and made public within 90 days, in accordance with GSA regulations. Public comments continue to come in, including comments about the meeting that will be subject to Section 10(b). The Commission staff will continue to review and post communications received through its email address, including some correspondence from states. Document production is not static; to the extent documents are received and provided to members they will be added to the webpage. With respect to your second question, the answer is the same. Your letter asked for a broad array of documents that are untethered to the Commission's FACA obligations, and that predate the Commission's charter. What does fall within 10(b) the Commission has produced or will produce in accordance with Section 10(b). Accordingly, the answer to your second question is the same as the first: We are in good faith complying with Section 10(b) and will continue to comply. If you believe there is something missing from the Commission's webpage, please let me know what it is. I will make inquiries and try to respond promptly.

From: Jones, Stanton [mailto:Stanton.Jones@apks.com]
Sent: Thursday, July 20, 2017 6:03 PM

To: Shapiro, Elizabeth (CIV) <EShapiro@CIV.USDOJ.GOV<mailto:EShapiro@CIV.USDOJ.GOV>>; Borson, Joseph (CIV) <jborson@CIV.USDOJ.GOV<mailto:jborson@CIV.USDOJ.GOV>>; Federighi, Carol (CIV) <CFederig@CIV.USDOJ.GOV<mailto:CFederig@CIV.USDOJ.GOV>>
Cc: Jon Greenbaum <jgreenbaum@lawyerscommittee.org<mailto:jgreenbaum@lawyerscommittee.org>>; Ezra Rosenberg <erosenberg@lawyerscommittee.org<mailto:erosenberg@lawyerscommittee.org>>; Freedman, John A. <John.Freedman@apks.com<mailto:John.Freedman@apks.com>>; Weiner, Robert <Robert.Weiner@apks.com<mailto:Robert.Weiner@apks.com>>; Weiner, David J. <David.Weiner@apks.com<mailto:David.Weiner@apks.com>>; Jacobson, Daniel <Daniel.Jacobson@apks.com<mailto:Daniel.Jacobson@apks.com>>; Hutchinson, Kathryn <Kathryn.Hutchinson@apks.com<mailto:Kathryn.Hutchinson@apks.com>>
Subject: RE: Lawyers' Committee v. Presidential Commission on Election Integrity, No. 1:17-cv-1354 (D.D.C.)

Elizabeth: Following up on the emails below, please confirm that, as of now, the Commission's website contains (1) all of the records that Defendants intend to disclose in connection with the Commission's July 19 meeting, and (2) all of the existing records that Defendants intend to disclose in response to the Lawyers' Committee's July 3 request.

Regards,
Stanton

From: Shapiro, Elizabeth (CIV) [mailto:Elizabeth.Shapiro@usdoj.gov]
Sent: Thursday, July 20, 2017 12:04 PM
To: Jones, Stanton; Borson, Joseph (CIV); Federighi, Carol (CIV)
Cc: Jon Greenbaum; Ezra Rosenberg; Weiner, Robert; Weiner, David J.; Jacobson, Daniel; Hutchinson, Kathryn
Subject: RE: Lawyers' Committee v. Presidential Commission on Election Integrity, No. 1:17-cv-1354 (D.D.C.)

Stanton,

The binders that were provided to the commission members contained only materials that were posted in advance of the meeting. It included five tabs: (1) Executive Order 13799, (2) the Commission's charter, (3) the Commission's draft by-laws, (4) the agenda, and (5) blank pages for the commissioners to take notes (the blank pages were of course not posted). The materials that the individual members introduced at the meeting, including their prepared remarks, were not provided to the other Commission members in advance. Individual members distributed them themselves during the meeting. The Commission intends to post all of these materials, but surely you cannot expect the Commission to post in advance information that members received only when they were introduced at the meeting. The Commission is committed to transparency, and intends to comply both with FACA and our assurances to the court. The Commission has done that to date, and will continue to do so. Some materials already appear on the webpage and the rest will be posted as quickly as the technical staff can accomplish it.

That is also the best answer I can give you in response to your July 3 inquiry. Contrary to what your demand seems to contemplate, Section 10(b) does not require production of every possible scrap of paper that relates to a committee. See, e.g., *Ass'n of Am. Physicians & Surgeons Inc. v. Clinton*, 879 F. Supp. 103, 105 (D.D.C. 1994). Administrative and other documents not provided to the full committee, for example, need not be produced. As you know, FACA section 10(b) requires that, subject to FOIA, "the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be made available for public inspection and copying . . ." 5 U.S.C. app. 2 § 10(b) (emphasis added). "[W]henver practicable, all 10(b) materials must be made available for public inspection before or on the date of the advisory committee meeting to which they apply." *Food Chemical News v. HHS*, 980 F.2d 1468, 1469 (D.C. Cir. 1992).

We agree that materials that are given to the Committee members in advance of a meeting to be considered or discussed at that meeting should be disclosed in advance of that meeting. See, e.g., *Food Chem. News.*, 970 F.2d at 1469 (draft reports to be discussed at meeting); *Cntr. for Arms Control & Non-Proliferation v. Lago*, No. 05-682 (RMC), 2006 WL 3328257, at *4 (D.D.C. Nov. 15, 2006) (background materials presented to committee in advance of meeting).

This is necessary to “provide [the public] a meaningful opportunity to comprehend fully the work undertaken by the advisory committee.” 41 C.F.R. § 102-3.170. In other words, the public should go into a meeting knowing as much as the Committee members themselves.

Section 10(b), however, does not require the advance disclosure of individual materials that individual members bring to the meeting (and which they may or may not decide to “make available” to the committee itself), until after they make that material available to the committee. Nor would it be “practicable,” see *Food Chem. News.*, 980 F.2d at 1469, to provide materials to the public in advance that were only given to members at the meeting. This would seem to be self-evident, as a contrary reading would effectively require the disclosure of all material that might hypothetically be made available to an advisory committee, regardless of whether it actually was provided (i.e., it could require the preemptive disclosure of remarks a committee member may never make, or a document she may never give to her colleagues). That requirement would be inconsistent with this circuit’s recognition that not all documents which may eventually feed into the committee process be made public immediately. See *Nat’l Anti-Hunger Coal. v. Exec. Comm. of President’s Private Sector Survey on Cost Control*, 557 F. Supp. 524, 529 (D.D.C. 1983) (concluding, with reference to materials that were not presented to the full committee, that “surely Congress did not contemplate that interested parties like the plaintiffs should have access to every paper through which recommendations are evolved”). It would also not serve the underlying principle of ensuring that the public and the advisory committee members are equally situated with respect to the materials they have before them at a meeting. See 41 C.F.R. § 102-3.170. The judge recognized this in her memorandum opinion when she wrote that the interest in timely disclosure “must be balanced against the interest of advisory committees to engage in their work without, prior to each meeting, having to disclose every document that could possibly be disclosed pursuant to section 10(b).” Slip Op. at 24.

Accordingly, while we agree that these materials must be released publicly once they are made available to or prepared for the committee – and they will be – materials that the committee members do not yet have cannot be provided “in advance,” and Mr. Kossack’s declaration did not intend to suggest otherwise. We reiterate again our commitment to a transparent process that fully accords with the requirements of FACA Section 10(b).

Best,
Elizabeth

From: Jones, Stanton [mailto:Stanton.Jones@apks.com]
Sent: Wednesday, July 19, 2017 8:46 PM
To: Shapiro, Elizabeth (CIV) <EShapiro@CIV.USDOJ.GOV<mailto:EShapiro@CIV.USDOJ.GOV>>; Borson, Joseph (CIV) <jborson@CIV.USDOJ.GOV<mailto:jborson@CIV.USDOJ.GOV>>; Federighi, Carol (CIV) <CFederig@CIV.USDOJ.GOV<mailto:CFederig@CIV.USDOJ.GOV>>
Cc: Jon Greenbaum <jgreenbaum@lawyerscommittee.org<mailto:jgreenbaum@lawyerscommittee.org>>; Ezra Rosenberg <erosenberg@lawyerscommittee.org<mailto:erosenberg@lawyerscommittee.org>>; Weiner, Robert <Robert.Weiner@apks.com<mailto:Robert.Weiner@apks.com>>; Weiner, David J. <David.Weiner@apks.com<mailto:David.Weiner@apks.com>>; Jacobson, Daniel <Daniel.Jacobson@apks.com<mailto:Daniel.Jacobson@apks.com>>; Hutchinson, Kathryn <Kathryn.Hutchinson@apks.com<mailto:Kathryn.Hutchinson@apks.com>>
Subject: RE: Lawyers' Committee v. Presidential Commission on Election Integrity, No. 1:17-cv-1354 (D.D.C.)

Elizabeth,

The “legal requirement” to timely disclose materials related to Commission meetings stems from Section 10(b) of FACA, D.C. Circuit precedent, and the Court’s decision in our case yesterday stating that the “relevant materials” should be

disclosed “before or at the meeting at which the materials are used or discussed.” This requirement exists to ensure that members of the American public can “follow the substance of the discussions.” Publicly disclosing the documents after the meeting does not satisfy this requirement.

Indeed, we are troubled that, as the Court explained, Mr. Kossack submitted a sworn representation that, “prior to the July 19 meeting, [Defendants] will make publicly available” not only the meeting agenda and public comments received to date, but also ““other documents that are prepared for or by the Commission”” in connection with the meeting. We are equally concerned about multiple statements in Defendants’ opposition brief last week representing that “the Commission will post materials related to the July 19 meeting on its webpage in advance of that meeting,” i.e., “prior to the meeting.” This did not happen. As shown by the video of today’s meeting, all or nearly all Commissioners had extensive undisclosed materials in front of them, including prepared written remarks and voluminous binders. These materials could and should have been disclosed before the meeting began. We hope and expect that an adequate document-hold notice has been issued to Commissioners and their staff.

Please confirm by 12 p.m. tomorrow (Thursday) that all materials prepared for or by Commissioners, or used or discussed by them, in connection with today’s meeting (including without limitation the prepared remarks from which many Commissioners read and all the binders they had in front of them, as shown on the video) will be posted to the Commission’s website by 5 p.m. tomorrow. Further, please advise when you intend to inform the Court that the relevant documents were not publicly disclosed prior to the July 19 meeting, as Mr. Kossack and Defendants represented they would be, but only afterwards.

In addition, while we disagree that seeking a TRO would violate Rule 11, we do not wish to burden the Court with unnecessary motions, including unnecessary Rule 11 motions. Our motion would therefore omit the request for a TRO.

Separately, we await your response to our request last night for an ETA on the Commission’s full and complete response to the Lawyers’ Committee’s July 3 request for documentary materials. I am re-attaching that email here for your convenience.

Regards,
Stanton

From: Shapiro, Elizabeth (CIV) [mailto:Elizabeth.Shapiro@usdoj.gov]
Sent: Wednesday, July 19, 2017 7:33 PM
To: Jones, Stanton; Borson, Joseph (CIV); Federighi, Carol (CIV)
Cc: Jon Greenbaum; Ezra Rosenberg; Weiner, Robert; Weiner, David J.; Jacobson, Daniel; Hutchinson, Kathryn
Subject: RE: Lawyers' Committee v. Presidential Commission on Election Integrity, No. 1:17-cv-1354 (D.D.C.)

Counsel:

We fail to understand the legal basis for moving for a TRO, and you have provided none. The Commission fully intends to post on its webpage all documents that the members of the Commission brought to the meeting today to share with the other members of the Commission, and is already in the process of preparing them for posting. This does not happen instantaneously. You have cited to no legal requirement – and there is none –that requires the posting of documents introduced at a meeting within hours of the meeting’s conclusion. In addition, given that you appealed the district court’s decision to the D.C. Circuit, you have failed to provide any basis as to why the court would have jurisdiction to entertain your motion. Accordingly, lacking any apparent legal basis for your motion, and having provided no explanation as to the legal basis for your motion, we would view such a filing to be in violation of your responsibilities under Federal Rule of Civil of Procedure 11 (b)(1), (2) and (3). If you nevertheless file your motion, we request that you reproduce this email as our response to your Rule 7(m) inquiry.

Thank you,
Elizabeth

From: Jones, Stanton [mailto:Stanton.Jones@apks.com]

Sent: Wednesday, July 19, 2017 6:35 PM

To: Borson, Joseph (CIV) <jborson@CIV.USDOJ.GOV<mailto:jborson@CIV.USDOJ.GOV>>; Federighi, Carol (CIV) <CFederig@CIV.USDOJ.GOV<mailto:CFederig@CIV.USDOJ.GOV>>; Shapiro, Elizabeth (CIV) <EShapiro@CIV.USDOJ.GOV<mailto:EShapiro@CIV.USDOJ.GOV>>

Cc: Jon Greenbaum <jgreenbaum@lawyerscommittee.org<mailto:jgreenbaum@lawyerscommittee.org>>; Ezra Rosenberg <erosenberg@lawyerscommittee.org<mailto:erosenberg@lawyerscommittee.org>>; Jones, Stanton <Stanton.Jones@apks.com<mailto:Stanton.Jones@apks.com>>; Weiner, Robert <Robert.Weiner@apks.com<mailto:Robert.Weiner@apks.com>>; Weiner, David J. <David.Weiner@apks.com<mailto:David.Weiner@apks.com>>; Jacobson, Daniel <Daniel.Jacobson@apks.com<mailto:Daniel.Jacobson@apks.com>>; Hutchinson, Kathryn <Kathryn.Hutchinson@apks.com<mailto:Kathryn.Hutchinson@apks.com>>

Subject: Lawyers' Committee v. Presidential Commission on Election Integrity, No. 1:17-cv-1354 (D.D.C.)

Importance: High

Counsel --

Pursuant to Local Rule 7(m), I write to advise that the Lawyers' Committee plans to file this evening a motion for temporary restraining order, preliminary injunction, mandamus relief, and/or reconsideration of the Court's July 18 memorandum opinion. The motion seeks immediate disclosure by Defendants of all documents prepared for or by Commissioners, or used or discussed by them, at the Commission's meeting today, including without limitation all documents that Commissioners had in front of them during the meeting (as reflected on the livestream). Please let us know whether Defendants consent to the motion. We plan to file at 7:30 p.m. tonight.

Regards,
Stanton

R. Stanton Jones

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