

To Whom It May Concern:

This is a request under the Freedom of Information Act.

Please be advised that, unless otherwise noted, the date range of this request is January 20, 2017 to the date of this request. We request the following records:

1. Documents sufficient to show how long the portion of the U.S. State Department's website on which individuals apply for the immigrant visa lottery, located at [dvlottery.state.gov](http://dvlottery.state.gov), has been unusable due to "maintenance" as of October 15. This portion of the site has been unusable for "maintenance" for some time including October 15, and we are seeking documents sufficient to show the start date of the continuous service interruption that includes October 15. The site in question calls the program "Electronic Diversity Visa Lottery." It may or may not be a program of the Bureau of Consular Affairs, but to the extent there are other immigrant visa lottery programs, this part of this FOIA request, and all other parts of this request, seek records pertaining to \*all\* immigrant visa lottery websites maintained by the Department of State. We also seek:
2. Documents sufficient to show all service interruptions, including the start and end dates and times of said interruptions, on that portion of the State Department's website and other visa application portions of [state.gov](http://state.gov) since January 20, 2017, and documents sufficient to show the reason for each interruption of service.
3. Documents sufficient to show the period or date window each year that the immigrant visa lottery is accepting applications. If the window(s) has/have changed since January 19, 2017, we request documents sufficient to show the previous window dates, the current window dates, and all communications that constitute or contain directives to change the window, or deliberations about changing the window. (Please see the bottom of this request for a summary of what is and is not permitted to be withheld by the "deliberative process" exemption to the FOIA.)
4. Documents sufficient to show the number of immigrant visas granted from any and all lottery processes during calendar years 2015, 2016, and 2017 through January 19.
5. Documents sufficient to show the number of immigrant visas granted from any and all lottery processes from January 20, 2017 to the date of this request.
6. All written communications (including electronic and otherwise) to and from Sec. Rex Tillerson that regard the inaccessibility or maintenance of the visa application web page(s), including the lottery application page. This includes, if extant, any discussion of what is wrong with the lottery site and what is/was required to fix it.
7. All written communications (including electronic and otherwise) to and from anyone who reports directly to the Secretary of State (Please refer to the Department of State's most current organizational chart), which regard the inaccessibility or maintenance of the visa application web page(s), including the lottery application page. This includes, if extant, any discussion of what is wrong with the lottery site and what is/was required to fix it.

8. All written communications (including electronic and otherwise) to and from any Under Secretary or Assistant Secretary who might have had occasion to know or deal with this issue, which regard the inaccessibility or maintenance of the visa application web page(s), including the lottery application page. (The FOIA responder will have to determine which Under Secretaries or Assistance Secretaries might have had occasion to know or deal with this issue.) This includes, if extant, any discussion of what is wrong with the lottery site and what is/was required to fix it.

9. All written communications (including electronic and otherwise) to and from any State Department staff member and any current or former presidential advisor--including but not limited to Stephen Miller, Steve Bannon, Julia Hahn, or Sebastian Gorka--which regard the visa application web page(s), including the lottery application page. We request that the FOIA responder also search for messages to and from any private email accounts controlled by any of these persons for messages that regard the aforementioned topic. This is clearly state business and to the extent any individuals used private accounts to conduct it, those messages are subject to FOIA.

10. All written communications (including electronic and otherwise) to and from any State Department staff member and any representative of the following agencies/governmental organizations, which regard the visa application web page(s), including the lottery application page: National Security Council; Department of Homeland Security; Homeland Security Council; Domestic Policy Council. We request that the FOIA responder also search for messages to and from any private email accounts controlled by any representative of these organizations, for messages that regard the aforementioned topic. This is clearly state business and to the extent any individuals used private accounts to conduct it, those messages are subject to FOIA.

The requesters of this information are journalists working for The Intercept under Washington, D.C. bureau chief Ryan Grim. The Intercept is an organization “primarily engaged in disseminating information.” *Am. Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004). The Intercept is, as explained in this standard, a “representative of the news media” because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into distinct work, and distributes that work to an audience.”

A FOIA request shall be granted expedited processing when the requester demonstrates a “compelling need” to inform the public about the matter at issue in the FOIA request. Stated in another way, the requester must show an “urgency to inform the public concerning actual or alleged Federal Government activity.” U.S.C. § 552(a)(6)(e)(v)(II); See also: *Al-Fayed* at 306.

There exists a clear urgency to inform the public about this issue. Members of a public that would be granted entry into the U.S. even under President Trump's more stringent vetting requirements are being denied the chance to apply for entry into this country while the site is offline. But it is not just the immigrant public that is harmed with delaying the release of the information at issue in this request. To the extent the lottery site is offline, the American public has a right to know why. American citizens managing American companies are trying to hire

skilled immigrants, and their prospective employees are finding a de facto denial of entry regardless of qualification. Every day the lottery site is down is a day that immigrants who intend to follow lawful U.S. practices to obtain entry are denied their right to try to enter. In other words, the law about entry needs to be changed--with all the public debate that comes with that process--or the State Department needs to follow the current law, which provides for a functioning lottery and thus application process. The public has an urgency to know whether the law is being followed regarding allowing immigrants to apply for entry. To the extent the site is already scheduled to re-open on October 18, allowing the public to know why the previous downtime occurred may serve to lengthen the upcoming window to allow more entries, or it may prompt the Trump administration to increase the total number of spots available in the lottery. It may help publicize issues that teams at the State Department may have had, so as to provide more resources to prevent such down time in the future. Or it may reveal a political motivation behind the site closure, which some law enforcement bodies have a clear urgency to learn.

There is further urgency due to the need to inform visa applicants who may believe their applications submitted between Oct. 3 and Oct. 10, 2017 may have had their application invalidated, according to the <https://www.dvlottery.state.gov> site. These individuals may not be aware of the issue and would need to resubmit their applications. Public awareness of this problem may help potential immigrants and visa applicants become aware of their need to resubmit their materials to the Department of State.

In *Wadelton v. Department of State*, 13-0412 ESH, 2013 WL 1760853 (D.C.C. Apr. 25, 2013), the District Court in the D.C. Circuit noted that “courts have found a ‘compelling need’ to exist when the subject matter of the request was central to a pressing issue of the day.”

The requesters are lifelong journalists and are working for editors who share their belief that there is no more pressing issue of the day than the immigration policies put forward by the Executive branch of the U.S. government under President Donald J. Trump. These policies are markedly different than those set forth by his predecessors in at least a generation and maybe two. The policies and discussion about them make up a large portion, maybe the largest single category, of the public statements issued by President Trump. And immigration policies are also a divisive issue among the American public. Shedding light on how the policies are enforced and how the policies came to be is an essential function of the news industry in this age.

We expect a response to my request for expedited processing within 10 calendar days, as the statute requires.

We would caution the responder to adhere to the limited definition of Exemption 5 to the FOIA, regarding "predecisional-deliberative" material. Below I have included a guide derived from the Department of Justice's guide to FOIA caselaw, compiled by the DOJ Office of Information Policy.

The predecisional-deliberative exemption:

- Can be used to withhold “advice, recommendations and opinions”
- CANNOT BE USED to withhold statements of fact. So if someone compiles a fact-based report, the only redact-able parts are those parts which are the opinion of the author.

- NO LONGER APPLIES if a decision-maker “clearly adopts the position set forth” in the deliberative document in question.
- “Final opinions” and “post-decisional” documents explaining an agency position are not exempt.
- Also DOES NOT APPLY if the original “source” of the information is not the government agency
- To withhold a piece of information, disclosure would have to “adversely affect the purposes of the exemption,” and to determine that, courts ask “whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency.”

Last but not least, we implore the FOIA responder to remember that information that is exempt must, according to well-established caselaw, be redacted as individual pieces of information, and not withholding whole sections or pages unless there exists justification to redact an entire section or page. For every redaction, the responder must cite the specific exemption he or she is citing in order to redact.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes. In the event that there are fees, we would be grateful if you would inform us of the total charges in advance of fulfilling our request. We would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not. Any e-mail questions may be directed to the email this message was sent from, or sent to [hey@brandonsmith.com](mailto:hey@brandonsmith.com). Any questions more suited to a phone call may be directed to Brandon Smith, at [740-505-0038](tel:740-505-0038), but please leave a message and Mr. Smith will return your call.

Thank you in advance for your anticipated cooperation in this matter. We look forward to receiving your response to this request within 10 calendar days if a request for expedited processing is granted, and 20 business days if not, according to statute. If a request for expedited processing is not granted, we intend to appeal that decision to prevent further delays.

Sincerely,

Brandon Smith and Lydia Beyoud