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UNITED STATES OFFICE OF
GOVERNMENT ETHICS



February 15, 2017

VIA ELECTRONIC MAIL ONLY

Mr. John Greenewald, Jr.
The Black Vault
john@greenewald.com

Tracking No: OGE FOIA FY 17/158

Dear Mr. Greenewald:

The U.S. Office of Government Ethics (OGE) is granting in part and denying in part your Freedom of Information Act (FOIA) request, which the OGE FOIA Office received on January 31, 2017. In your request, you asked for “each ethics advice memo [OGE] produced during the month of January 2017 and the month of December 2016.” In addition, we searched for any such memos produced through February 7, 2017.

In response, we are enclosing two pages of responsive documents, subject to deletions made in accordance with FOIA Exemption 6, 5 U.S.C. § 552(b)(6), as information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The deletions are each marked with a reference “(b)(6)” in the enclosed copies.

If you have any questions or wish to discuss any aspect of your request, you may contact me by telephone at 202-482-9267. As OGE’s FOIA Public Liaison, I am available for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

The OGE official responsible for this FOIA determination is the undersigned. In accordance with the FOIA, as codified at 5 U.S.C. § 552(a)(6)(A), and OGE’s updated FOIA regulations, at 5 C.F.R. § 2604.304, you may administratively appeal this determination to the Program Counsel, U.S. Office of Government Ethics, 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005-3917. Any such appeal must be in



writing and must be sent within 90 days of the date you receive this response letter. If you do appeal, you should include copies of your request and this response, together with a statement of why you believe this initial determination is in error. Also, if you appeal, you should clearly indicate on the envelope and in the letter that it is a “Freedom of Information Act Appeal.”

Sincerely,

Rachel K. Dowell
OGE FOIA Officer

Enclosures

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



January 6, 2017

Mr. Edward N. Siskel
Wilmer, Cutler, Pickering, Hale & Dorr, LLP

(b) (6)

Dear Mr. Siskel:

I am writing on behalf of the U.S. Office of Government Ethics (OGE) in response to your letter dated December 28, 2016, regarding Mr. Kushner's plan to divest potentially conflicting assets if the President-elect appoints him to a position in the White House. Your letter captures most of the salient points from our conversations, and I have only a few additional points to reiterate.

Consistent with our conversations, your letter indicates that (b) (6)

[Redacted]

[Redacted]

[Redacted]

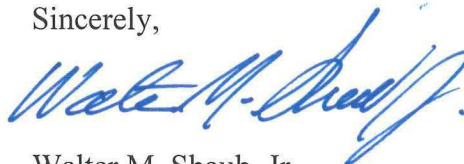
Mr. Edward N. Siskel
Wilmer, Cutler, Pickering, Hale & Dorr, LLP
Page 2

As we discussed, the conflict of interest prohibition under 18 U.S.C. § 208(a) will continue to apply to the assets until they have been divested. Accordingly, with regard to each entity in which he holds an interest, Mr. Kushner must not participate personally and substantially in any particular matter that to his knowledge has a direct and predictable effect on the financial interests of the entity until he has divested it, unless he first obtains a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). If Mr. Kushner intends to seek a Certificate of Divestiture under 26 U.S.C. § 1043, please remember that he will need to obtain the Certificate of Divestiture before selling the assets.

Finally, please note that OGE is limited in the guidance it can provide as to conflicts of interest because OGE's staff is not in a position to know the precise nature of the duties that Mr. Kushner, or any future White House appointee, would perform. For that reason and because the applicable ethics requirements are more complex than could be addressed in a letter, Mr. Kushner would be well advised to obtain ethics counseling from the office of the White House Counsel prior to entering government and, after assuming the duties of his new position, to complete the new employee ethics training required under 5 C.F.R. § 2638.304. Ideally, the training for all incoming White House appointees should address, among other topics: conflicts of interest under 18 U.S.C. § 208; the gift bans under 5 C.F.R. part 2635, subparts B and C; impartiality under the government-wide appearance regulation, 5 C.F.R. part 2635, subpart E; "misuse of position," as that term is understood for purposes of 5 C.F.R. part 2635, subpart G (including use of public office for private gain, endorsements, coercion, and use of nonpublic information); the earned income ban under 5 C.F.R. § 2635.804(a); restrictions on fundraising under 5 C.F.R. § 2635.808; and certain restrictions relating to professions involving fiduciary relationships under 5 C.F.R. § 2636.305. As a preliminary introduction to the executive branch ethics program, I have enclosed a copy of OGE's Nominee Ethics Guide. Although Mr. Kushner will not be a "nominee," much of the information in this guide is pertinent to his anticipated appointment.

Please do not hesitate to contact me at (202) 482-9292 or Heather Jones, Senior Counsel, if we can be of further assistance.

Sincerely,



Walter M. Shaub, Jr.
Director

Enclosure