

February 10, 2017

BY EMAIL: OMBFOIA@omb.eop.gov

Dionne Hardy
FOIA Officer
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Re: Freedom of Information Act Request

Dear Ms. Hardy:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and Office of Management and Budget ("OMB") regulations.

Specifically CREW requests copies of:

- (1) all policies, procedures, and communications issued since January 20, 2017, relating to ethics standards, restrictions, and/or obligations for any employee of the Executive Office of the President ("EOP");
- (2) all policies, procedures, and communications issued since January 20, 2017, relating to recordkeeping responsibilities for any employee of the EOP; and
- (3) all policies, procedures, and communications related to the use of personal and/or non-governmental email accounts to conduct official EOP business.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and OMB regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

The first few weeks of the Trump administration have been plagued by ethical and recordkeeping missteps. Following up on reports that top White House officials have active email accounts on the Republican National Committee email system, the current and former ranking members of the Senate Committee on Homeland Security and Governmental Affairs have requested information from White House Counsel Donald F. McGahn, including steps the White House has taken to determine whether those email accounts were used to conduct official business and all written policies and procedures provided to Trump White House staff on compliance with the Presidential Records Act.¹ Counselor to the President Kellyanne Conway already “has been counseled” after publicly endorsing in her official capacity the products of President Trump’s daughter, Ivanka Trump, in apparent violation of governing ethics rules, 5 C.F.R. § 2635.702.² These are just some of the reported questionable behavior of White House officials since the president took office on January 20, 2017.

The requested records will shed light on the extent to which White House employees, including those at OMB, have been provided guidance on their ethical and recordkeeping responsibilities. They also may reveal the extent to which at least some of these missteps may have been the result of ignorance, not conscious decisions to ignore or evade the recordkeeping and ethical rules governing EOP employees. The public interest in the ethical behavior of all public servants is at an apex when the officials in question hold positions in the White House.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request

¹ Letter from Ranking Member Claire McCaskill and Sen. Tom Carper to Donald F. McGahn, Jan. 30, 2017 (available at https://www.carper.senate.gov/public/_cache/files/a88eb66b-4ba0-4bb7-8fd5-a7613fe9598f/2017-01-30-letter-from-mccaskill-carper-to-wh-counsel-mcgahn-press-.pdf).

² *See, e.g.,* Nolan D. McCaskill, Louis Nelson and Isaac Arnsdorf, *Kellyanne Conway Under Fire for Promoting Ivanka’s Brand*, *Politico*, Feb. 9, 2017 (available at <http://www.politico.com/story/2017/02/kellyanne-conway-ivanka-nordstrom-234838>).

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to the public through its website, www.citizensforethics.org, and through www.scribd.com. The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public"). Courts have deemed other non-profit organizations with functions and missions comparable to CREW's "representatives of the news media." See, e.g., *Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.D.C. 2015); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (self-described "public interest law firm" qualified as a news media requester).

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts all of the documents it receives under the FOIA at www.scribd.com, and those documents have been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., 6th Floor, Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel