



November 20, 2018

By email: JMDFOIA@usdoj.gov

Karen McFadden
FOIA Contact
Justice Management Division
Department of Justice
Room 1111 RFK, 950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Ms. McFadden:

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 U.S. Department of the Justice (“DOJ”) regulations.

First, CREW requests copies of all versions of OGE Form 278e submitted to your office by Matthew Whitaker, including but not limited to all uncertified versions. In this regard CREW notes that the new entrant OGE Form 278e and annual OGE Form 278e signed by Mr. Whitaker on May 15, 2018 and certified by Cynthia K. Shaw of your office on November 20, 2018, indicate that they were revised on November 7, 2018; November 8, 2018; November 16, 2018; November 19, 2018; and November 20, 2018. CREW’s request includes but is not limited to all these revised versions.

Second, CREW requests copies of all documents reflecting, concerning, or indicating all individuals within DOJ that reviewed, commented on, or approved all versions of OGE Form 278e submitted by Matthew Whitaker and the substance of their comments, review, or approval.

Third, CREW requests copies of all communications within DOJ concerning any and all versions of Mr. Whitaker’s OGE Form 278e.

Fourth, CREW requests copies of all communications with the Office of Government Ethics concerning any and all versions of Mr. Whitaker’s OGE Form 278e.

Fifth, CREW requests copies of all correspondence within DOJ concerning fees received by Mr. Whitaker from World Patent Marketing.

Sixth, CREW requests copies of all correspondence within DOJ concerning the salary received by Mr. Whitaker from Foundation for Accountability & Civic Trust.

Seventh, CREW requests copies of all correspondence within DOJ concerning the delays in certifying Mr. Whitaker's new entrant OGE Form 278e and annual OGE Form 278e.

Eighth, CREW requests copies of all correspondence within DOJ requesting that Mr. Whitaker provide additional information necessary for the DOJ ethics official to certify his OGE Form 278e as complete.

Ninth, CREW requests copies of all audit trail records (1) that reflect amendments made to add, change, or delete entries made to Mr. Whitaker's OGE Form 278e's or to return the reports to the filer for the necessary revisions, and (2) that reflect which user made the amendment within an audit trail.

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. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as emails to which the subjects of this request were cc'ed or bcc'ed.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DOJ 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).

On November 7, 2017, Attorney General Jeff Sessions tendered his resignation in response to a request from President Donald Trump that he resign. President Trump named Mr. Whitaker, Attorney General Sessions' chief of staff, as acting Attorney General rather than Deputy Assistant Attorney General Rod J. Rosenstein, who is next in the line of succession. Mr. Whitaker did not occupy a Senate-confirmed position and therefore was not subject to the rigorous review for any potential conflict of interest to which a Senate-confirmed nominee is subject. This places even greater significance on this Public Financial Disclosure Report, OGE Form 278e. While DOJ has made the most recent certified version of that form publicly available, it has not yet disclosed all prior versions. The requested documents will shed light on the extent of any conflicts of interest Mr. Whitaker may have and the extent to which he has fully and accurately advised DOJ of those conflicts since his initial appointment as Chief of Staff to the Attorney General.

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 to the public through its website, www.citizensforethics.org. 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").

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 blogposts that reports on and analyze 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 documents it receives under the FOIA on its website, and that site has 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) 594-8579 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, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel