



December 3, 2018

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice  
Suite 11050  
1425 New York Avenue, N.W.  
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Mr. Hibbard:

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 Justice (“DOJ”) regulations.

First, CREW requests all communications between now-Acting Attorney General Matthew Whitaker and each of the following four individuals from September 1, 2017 to the present: (1) Gary Kirke, CEO, Kirke Financial Services; (2) Cameron Craig Sutton; (3) Leon Shearer; and (4) Michael J. Richards, President, Richards Consulting Group.

Second, CREW requests all communications between now-Acting Attorney General Whitaker and anyone acting on behalf of: (1) Gary Kirke; (2) Kirke Financial Services; (3) Cameron Craig Sutton; (4) Michael J. Richards; and (5) Richards Consulting Group from September 1, 2017 to the present.

Third, CREW requests all communications sent to or from now-Acting Attorney General Whitaker concerning: (1) Gary Kirke; (2) Kirke Financial Services; (3) Cameron Craig Sutton; (4) Michael J. Richards; and (5) Richards Consulting Group from September 1, 2017 to the present.

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. Your search, collection, and production should not exclude any category of material. Further, your search should include files or emails in the personal custody of any agency officials that reflect or include official agency business.

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). If 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).

CREW intends to pursue all legal remedies to enforce its right under the FOIA to the requested documents. Accordingly, because litigation reasonably is foreseeable, DOJ should institute an agency-wide preservation hold on information potentially responsive to this request.

### **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).

Currently the Office of Special Counsel is investigating whether Acting Attorney General Whitaker violated the Hatch Act by receiving four contributions to his previously dormant 2004 Senate campaign a few months after he joined the Justice Department. The four donors are Gray Kirke, a casino owner who donated \$2,600; Mr. Kirke's business partner, Michael J. Richards, who donated the same amount; Cameron Sutton, who had served on the board of the Heritage Foundation; and Leon Shearer. See Kenneth P. Vogel and Maggie Haberman, Matthew Whitaker Earned \$1.2 Million From Group Backed by Undisclosed Donors, *New York Times*, Nov. 20, 2018, available at <https://www.nytimes.com/2018/11/20/us/politics/matthew-whitaker-finances.html>. Mr. Whitaker's acceptance of these funds appears to violate prohibitions on political activities by federal employees that the Hatch Act imposes. The requested documents will shed further light on Mr. Whitaker's relationship with these four donors and the extent to which he solicited or knowingly received these contributions notwithstanding his status as a federal employee.

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](http://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 report 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](mailto: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 Eden Tadesse at [etadesse@citizensforethics.org](mailto:etadesse@citizensforethics.org) or Eden Tadesse, 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.

Very truly yours,



Anne L. Weismann  
Chief FOIA Counsel

