



**citizens for responsibility
and ethics in washington**

August 2, 2019

BY FACSIMILE: 202-622-3895

U.S. Department of the Treasury
FOIA Requester Center
Washington, DC 20220

Re: Freedom of Information Act Request

Dear FOIA Officer:

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 Treasury ("Treasury") regulations.

First, CREW requests copies of all legal opinions provided to the Treasury Department from June 23, 2006 to the present from the Department of Justice's Office of Legal Counsel pertaining in any way to 31 U.S.C. § 329.

Second, CREW requests copies of all documents referring or pertaining to Secretary Mnuchin's investment in the Vanguard Treasury Money Market Fund including, but not limited to, any determination made by the Treasury Department as to whether this investment violates 31 U.S.C. § 329.

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 those who were cc'ed or bcc'ed on any emails.

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 Treasury Department 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 statute at the heart of this request, 31 U.S. § 329, prohibits the Secretary of the Treasury from being “involved in buying or disposing of obligations of a State or the United States Government.” Those who violate the statute “shall be fined \$3,000, removed from office, and thereafter may not hold an office of the Government.” *Id.* at § 329(a)(2). According to a 2001 opinion from the Office of Legal Counsel, this provision “was intended to prevent Treasury officials from ‘speculating in the public funds.’” *Divestiture of Stock and Purchase of Government Bonds by an Incoming Secretary of the Treasury*, 30 Op. O.L.C. 84, 90 (2006) (citation omitted).

Notwithstanding this statutory ban, Secretary Mnuchin in his 2018 annual public financial disclosure report reported a new \$500,000 - \$1 million investment in the Vanguard Treasury Money Market Fund. 2018 PFD, part 2, item 6.10. According to the Fund’s prospectus, the Fund “invests solely in high-quality, short-term money market securities whose interest and principal payments are backed by the full faith and credit of the U.S. government” and “under normal circumstances, at least 80% of the Fund’s assets will be invested in U.S. Treasury securities; the remainder of the assets may be invested in securities issued by U.S. government agencies.” Vanguard Money Market Funds Prospectus at 12, available at <https://personal.vanguard.com/us/faces/JSP/Funds/ProspRep/FundProspectusReportsWinJSP.jsp?fundId=0011&isReqFromProducts=true>. The requested records will shed light on whether Secretary Mnuchin sought and/or received ethics advice concerning this investment, whether that advice was received prior to or after the investment was first disclosed to the Treasury Department, and whether his actions are consistent with any ethics advice he received. There is great public interest in ensuring the Secretary follows a law aimed specifically at him and knowing whether his conduct conforms with any ethics advice he was given.

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 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, which 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) 408-5565 or aweismann@citizensforethics.org. Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or 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,

A handwritten signature in blue ink, appearing to read 'Anne L. Weismann', with a long horizontal flourish extending to the right.

Anne L. Weismann
Chief FOIA Counsel

encl.