

November 3, 2020

Submitted via FOIAOnline

William Holzerland
FOIA Officer
Office of the Secretary
U.S. Department of the Interior
MS-7328, MIB
1849 C Street, NW
Washington, DC 20240

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) submits this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of the Interior (“Interior”) regulations.

Specifically, CREW requests all records from Interior’s Office of the Secretary, the Office of Communications, or Press Secretary Ben Goldey from January 1, 2020 to the date this request is processed reflecting any directive, instruction, guidance, request, or proposal to agency personnel to tag President Trump’s “@realDonaldTrump” Twitter handle in any tweet. This request includes without limitation any such records relating to the following October 16, 2020 tweet by the U.S. Geological Survey: “The @realDonaldTrump administration has made significant investments in science and technology to help state and local partners more effectively manage invasive species and diseases.”¹

This request includes without limitation responsive correspondence, memoranda, 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 responsive attachments to emails and other records, and anyone who was 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). 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

¹ USGS (@USGS), Twitter, Oct. 16, 2020, <https://twitter.com/USGS/status/1317148492410871813?s=20>

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).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under FOIA to access these documents. Thus, because litigation is reasonably foreseeable, Interior should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and Interior 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 October 21, 2020, a reporter disclosed a purportedly internal email from an official at the U.S. Geological Survey (“USGS”) describing a directive from Interior’s Office of Communications to “tweet about an op-ed” that cast the Trump Administration in a positive light, and to tag the President’s “@realDonaldTrump twitter handle.”² The USGS official noted that this “was the second time we were told to use this handle,” and that he or she had “queried the legality of doing so under the Hatch Act and was given a clear and unambiguous ruling by the Office of the Solicitor” that it was legal. The official added that “Bureau leads have subsequently been told in clear terms by [the Office of Communications] that we should use [the President’s @realDonaldTrump Twitter] handle when requested.” The full email reads:

Subject: USGS Tweet of @realDonaldTrump handle

As you all know, late last week, we were asked by the Department’s Office of Communications (OCO) to tweet about an op-ed that was authored by Director Reilly and published in a third-party media outlet. We were specifically told to use the @realDonaldTrump twitter handle (the link being mention of the Trump Administration in the headline and body of the op-ed). This was the second time we were told to use this handle. The first time, I queried the legality of doing so under the Hatch Act and was given a clear and unambiguous ruling by the Office of the Solicitor. Bureau leads have subsequently been told in clear terms by OCO that we should use this handle when requested.

Not surprisingly, the tweet last week resulted in a significant backlash from both public and staff. At issue here is not whether the use of the handle violates the Hatch Act (and while we have been told it does not, I personally disagree with that ruling: the President started using this handle in 2009, long before he was elected, and has clearly used it for partisan purposes ever since. We are now in the midst of an election campaign). It is whether the public *perceives* it is a violation. The appearance of wrongdoing is as damaging as actual wrongdoing, even if we are technically within the law. We are supposed to be neutral in our science and the optics created by use of this handle casts doubt on that neutrality. I am hopeful that the backlash in regards to this tweet is sufficient to spark a new dialog that may result in alternative direction from the legal and communications officials in the Department. I have requested a joint call with both groups so we may discuss this openly and arrive at a sound decision.

In the meantime, thank you for the information you have provided on the Twitter response, response from staff, and your own personal thoughts on this matter. Regards,

² Adam Federman (@adamfederman), Twitter, Oct. 21, 2020, <https://twitter.com/adamfederman/status/1318907396358656000?s=20>.

A review of USGS's Twitter account shows that it did, in fact, tweet the favorable op-ed and tag the @realDonaldTrump account on October 16.³

The requested records would shed light on whether Interior officials did in fact instruct agency personnel to tweet pro-Trump content and tag the President's @realDonaldTrump Twitter account—a non-official account that the President has long used for partisan political purposes, including to promote his reelection campaign. Because such a directive may violate the Hatch Act and other federal laws, the public has a compelling interest in the requested records' disclosure.

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 the documents it receives under the FOIA on its website.

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

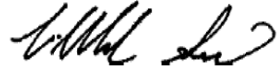
Conclusion

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 nsus@citizensforethics.org. Also, if CREW's request for a fee waiver is denied, please contact our office immediately upon making such a determination.

³ USGS (@USGS), Twitter, Oct. 16, 2020, <https://twitter.com/USGS/status/1317148492410871813?s=20>

Where possible, please produce records in electronic format. Please send the requested records to me at either nsus@citizensforethics.org or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikhel Sus".

Nikhel Sus
Senior Counsel