

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:

1. Records sufficient to show the total amount of government funds and resources used to develop, produce, and disseminate the video entitled “President Trump’s Conservation Record” or “Trump Administration Conservation Record,” which Interior and Secretary of the Interior David Bernhardt posted on official agency social media platforms on October 27, 2020 (the “Video”).¹ This request includes without limitation all receipts, invoices, checks, and other records reflecting expenditures relating to the Video.
2. Records sufficient to identify the source(s) of funds Interior expended to develop, produce, and disseminate the Video.
3. Any final opinions, guidance, decisions, memoranda, or analyses issued by officials within the Office of the Secretary, the Departmental Ethics Office, the Office of the Solicitor, or the Office of Budget relating to the Video, including without limitation any such records addressing compliance with the Hatch Act, applicable appropriations laws, the Antideficiency Act, or the Purpose Statute.

¹ See <https://www.youtube.com/watch?v=VLEcGKY7PSA>;
<https://www.facebook.com/USInterior/videos/2400115553629426>; <https://www.instagram.com/p/CG3OX18Bq8K/>;
<https://twitter.com/SecBernhardt/status/1321174874426167297?s=20>

4. All external communications between Interior officials and any individual outside of the agency, including both governmental and private parties, relating to the development, production, or dissemination of the Video.
5. All records relating to the following tweet of the Interior Press Secretary on October 27, 2020: “Our tweets are approved by career ethics attorneys and thankfully no longer overseen by you. @Interior increased the number ethics staff by 250% to remove the rotten stench from the blatant failure of the prior administration to invest in the ethics program.”² This request includes without limitation any responsive records in the possession, custody, or control of Interior Press Secretary Ben Goldey. This request excludes external communications with any member of the media concerning the foregoing tweet that occurred after the tweet was posted.
6. Records sufficient to identify the agency official(s) who drafted and sent the Interior Press Secretary tweet described above in Part 5 of this request.

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 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

² <https://twitter.com/DOIPressSec/status/1321240438725136385?s=20>

fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On October 27, 2020—just seven days before the presidential election—Interior released a promotional video for President Trump, entitled “President Trump’s Conservation Record” on some platforms, and “Trump Administration Conservation Record” on others. The agency posted the video to Interior’s official YouTube, Facebook, and Instagram pages,³ as well as Secretary David Bernhardt’s official Twitter account.⁴ The video, which has reached nearly a half-million views on Twitter alone, touts the “Trump Administration’s conservation record.” It includes several shots of the President and a series of quotes—none of which are attributed to any source—heaping praise on the Trump Administration’s actions. It closes with footage of the President stating, “We’re here today to celebrate our incredible record of natural [sic] conservation and environmental protection over the last four years. We’ve been working very hard to . . . re-commit ourselves to preserving the awesome majesty of God’s great creation.” The closing shot shows Interior’s official seal.

In response to press inquiries, Interior confirmed “its ethics office signed off on the video and Bernhardt’s tweet promoting it,” but declined to “provide copies of the written ethics guidance for the video or those governing their tweets.”⁵ Interior previously released a similar promotional video for President Trump in August.⁶

Because the Video appears to be nothing more than a taxpayer funded campaign ad for President Trump, Interior’s production and dissemination of the Video may have violated the Hatch Act, a provision of appropriations law forbidding the use of federal funds “for publicity or propaganda purposes within the United States not heretofore authorized by Congress”;⁷ the Antideficiency Act, 31 U.S.C. § 1341; and the Purpose Statute, 31 U.S.C. § 1301.

The requested records would shed light on the total amount of taxpayer funds Interior expended on the Video, the source of those funds, whether agency ethics and legal officials in fact approved creation of the Video as well as the rationale for that approval, and other communications relating to the Video. Because these records could shed light on abuses of government funds and violations of federal law by agency officials, the public has a compelling interest in their 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

³ <https://www.youtube.com/watch?v=VLEcGKY7PSA;>
[https://www.facebook.com/USInterior/videos/2400115553629426;](https://www.facebook.com/USInterior/videos/2400115553629426) [https://www.instagram.com/p/CG3OX18Bq8K/.](https://www.instagram.com/p/CG3OX18Bq8K/)

⁴ [https://twitter.com/SecBernhardt/status/1321174874426167297?s=20.](https://twitter.com/SecBernhardt/status/1321174874426167297?s=20)

⁵ Rebecca Beitsch, Interior ‘propaganda’ video and tweets may violate ethics laws, experts say, *The Hill*, [https://thehill.com/policy/energy-environment/523184-interior-propoganda-video-and-tweets-defending-it-may-violate.](https://thehill.com/policy/energy-environment/523184-interior-propoganda-video-and-tweets-defending-it-may-violate)

⁶ See Walter Shaub, *Trump Propaganda Video Featuring the National Park Service Violates the Law*, *CREW*, Aug. 24, 2020, [https://www.citizensforethics.org/national-park-service-trump-propaganda-video/.](https://www.citizensforethics.org/national-park-service-trump-propaganda-video/)

⁷ Consolidated Appropriations Act, 2020, Pub. L. 116-93, div. C, title VII, § 718, 133 Stat. 2317, 2488 (Dec. 20, 2019).

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.

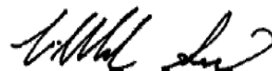
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

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.

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,



Nikhel Sus
Senior Counsel