

November 10, 2020

**Submitted via FOIAonline**

General Services Administration  
FOIA Requester Service Center (H3A)  
1800 F Street, NW, 7308  
Washington, DC 20405

**Re: Expedited Freedom of Information Act Request**

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records and request for expedited processing pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and General Services Administration (“GSA”) regulations.

First, CREW requests all email communications sent to, copied to, received by, or sent by GSA Administrator Emily Murphy, Deputy Administrator Allison F. Brigati, Chief of Staff Robert Borden, General Counsel Jack St. John, Associate Administrator for the Office of Government-wide Policy Jessica Salmoiraghi, White House Liaison Carla Sansalone, Mary Gibert, Associate Administrator for the Office of Civil Rights and Federal Transition Coordinator or Trent Benishek from September 1, 2020 to the present regarding the process by which the GSA Administrator can or should “ascertain” the “apparent successful candidates” for President and Vice President in the 2020 presidential election.

Second, CREW requests all email communications sent to, copied to, received by, or sent by GSA Administrator Emily Murphy, Deputy Administrator Allison F. Brigati, Chief of Staff Robert Borden, General Counsel Jack St. John, Chief Human Capital Officer, Traci DiMartini, White House Liaison Carla Sansalone, or Mary Gibert, Associate Administrator for the Office of Civil Rights and Federal Transition Coordinator from September 1, 2020 to the present regarding Trent Benishek.

Third, CREW requests any guidance or legal opinion created by GSA employees from January 1, 2000 to the present regarding the process by which the Administrator can or should “ascertain” the “apparent successful candidates” for President and Vice President in a presidential election.

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.

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).

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A) and GSA 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, 2020, following the significant narrowing of uncounted votes in several swing states, media outlets projected that former Vice -President Joe Biden was the apparent winner of the 2020 presidential election.<sup>1</sup> The General Services Administration (GSA) plays a critical role in the presidential transition process both before and after Election Day. Pursuant to the Presidential Transition Act of 1963, as amended, GSA provides the President-elect's transition team with "a fully equipped headquarters" and a variety of services including "office space, telecommunications, IT services and equipment, and furnishings, supplies and other things they need to do their jobs."<sup>2</sup> The Act directs the GSA Administrator to "'ascertain'" the 'apparent successful candidates' for President and Vice President before the funds, services and facilities authorized by the Act become available to the Transition Team." As former GSA Administrator David Barram explained in testimony before Congress amidst the Florida election recount of 2000, "[w]hile the Act gives no explicit criteria or deadlines for making this ascertainment," he believed that some legislative history suggests that "if there is 'any question' of who the winner is 'in a close contest' this determination should not be made."<sup>3</sup> Barram did not explain the terms "any question" or "close contest."

Despite media outlets projecting former Vice President Biden as the winner of the 2020

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<sup>1</sup> See e.g., Jonathan Martin and Alexander Burns, *Biden Wins Presidency, Ending Four Tumultuous Years Under Trump*, *New York Times*, Nov. 7, 2020, <https://www.nytimes.com/2020/11/07/us/politics/biden-election.html>.

<sup>2</sup> U.S. General Services Administration, Statement of David J. Barram, Administrator, General Services Administration before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform and the United States house of Representatives, Dec. 4, 2000, available at <https://www.gsa.gov/about-us/newsroom/congressional-testimony/statement-of-david-j-barram> .

<sup>3</sup> *Id.*

presidential election and now President-elect, GSA Administrator Murphy, a Trump political appointee, has not ascertained any apparent winner.<sup>4</sup> GSA internal orders from June 2012 state that GSA's Presidential Transition Support Team ("PTST") prepares, and on the day after the election, the Administrator signs, a "letter ascertaining the apparent successful candidates. If the Administrator is unable to ascertain the apparent winners of the election, all subsequent activity is held in abeyance until that determination is made and the letter is signed."<sup>5</sup> According to a statement from GSA, "[a]n ascertainment has not yet been made," but Administrator Murphy "will continue to abide by, and fulfill, all requirements under the law."<sup>6</sup> GSA has provided no further explanation or evidence to support Administrator Murphy's position regarding the apparent winner of the 2020 presidential election, but on October 29, 2020, less than a week before Election Day, Murphy announced the appointment of former White House attorney Trent Benishek as GSA's new General Counsel.<sup>7</sup> During his tenure in the White House Counsel's office, Benishek was a member of President Trump's impeachment defense team.<sup>8</sup>

GSA does not appear to have any public guidance on its website explaining how the GSA Administrator should fulfill her mandate to "ascertain" the "apparent successful candidates" for President and Vice President in the 2020 election. The requested records will shed light on whether GSA has any non-public guidance on this critically important question to the presidential transition process. In particular, the records are likely to contribute to greater public understanding about whether GSA leadership has and is following appropriate guidance related to this question and whether former Vice President Biden should already have access to federal funds designated for the President-elect of the United States. The records will also shed light on whether GSA has received any communications from the White House or other federal agency regarding how to "ascertain" the "apparent successful candidates" before or after President Trump decided to contest the election results, and why GSA hired a White House impeachment lawyer as General Counsel mere days before Election Day. Throughout the Trump presidency, Donald Trump and his political appointees have routinely bent, broken or ignored federal laws barring the coopting of federal resources for political purposes.<sup>9</sup> Delaying the transition process would not only undermine America's democracy, but could also have far reaching impacts on critical government functions like national security. The public deserves to know whether the

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<sup>4</sup> Lisa Rein, Jonathan O'Connell and Josh Dawsey, [A Little-Known Trump Appointee is in Charge of Handing Transition Resources to Biden — and She Isn't Budging](https://www.washingtonpost.com/politics/trump-gsa-letter-biden-transition/2020/11/08/07093acc-21e9-11eb-8672-c281c7a2c96e_story.html), *Washington Post*, Nov. 8, 2020, [https://www.washingtonpost.com/politics/trump-gsa-letter-biden-transition/2020/11/08/07093acc-21e9-11eb-8672-c281c7a2c96e\\_story.html](https://www.washingtonpost.com/politics/trump-gsa-letter-biden-transition/2020/11/08/07093acc-21e9-11eb-8672-c281c7a2c96e_story.html).

<sup>5</sup> U.S. General Services Administration, 1080.1D ADM GSA Support for Eligible Presidential Candidates, Presidential Transition and Inaugural, June 1, 2012, <https://www.gsa.gov/directives-library/gsa-support-for-eligible-presidential-candidates-presidential-transition-and-inaugural-10801d-adm>.

<sup>6</sup> *Id.*

<sup>7</sup> See U.S. General Services Administration, [Trent J. Benishek Appointed GSA General Counsel](https://www.gsa.gov/about-us/newsroom/news-releases/trent-j-benishek-appointed-gsa-general-counsel-10292020), Presidential Transition and Inaugural, Oct. 29, 2020, <https://www.gsa.gov/about-us/newsroom/news-releases/trent-j-benishek-appointed-gsa-general-counsel-10292020>.

<sup>8</sup> See The White House, In Proceedings Before The United States Senate Trial Memorandum of President Donald J. Trump, Jan. 20, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/01/Trial-Memorandum-of-President-Donald-J.-Trump.pdf>.

<sup>9</sup> Citizens for Responsibility and Ethics in Washington, [The Hatch Act: Mixing Partisan Goals with Official Positions in the Trump Administration](https://www.citizensforethics.org/reports-investigations/crew-reports/the-hatch-act/), <https://www.citizensforethics.org/reports-investigations/crew-reports/the-hatch-act/>, (last visited Nov. 9, 2020).

Trump administration is following the law and effectively and transparently managing the 2020/2021 presidential transition.

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 a blog that reports on and analyzes 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 all documents it receives under the FOIA its website, and those documents have been visited hundreds of thousands of times.

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

### **Expedited Processing Request**

CREW requests expedited processing of this FOIA request. Under GSA's FOIA regulations, the agency will grant expedited processing where there is an "urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information," or where the request implicates a "matter of widespread and exceptional media interest in which there exist possible questions about the Government's integrity that affect public confidence." 41 C.F.R. § 105.60.306(c)(2), (c)(4). These conditions are readily met here.

First, there is an "urgent[] need" warranting expedited processing because the requested information relates to a current public debate on a matter of pressing national concern. *See Ctr. for Pub. Integrity v. DOD*, 411 F. Supp. 3d 5, 10 (D.D.C. 2019) (citing cases granting preliminary injunctions to compel expedited processing because "the records [were] sought to inform an imminent public debate"). As explained above in CREW's request for a fee waiver, the requested records would shed light on whether GSA is following appropriate procedures for

“ascertaining” the apparent winner of the recent presidential election, and whether the agency’s decisionmaking is being improperly influenced by White House officials or other political appointees—both issues that have generated “widespread and exceptional media interest,” and that raise “possible questions about the Government’s integrity that affect public confidence.” And because the presidential transition period is just 78 days, there is an “urgency” to inform the public about these matters before the current presidential administration ends and the new one begins.

Second, CREW is “primarily engaged in disseminating information” to the public. As explained above, CREW routinely disseminates information—including documents and information received through its FOIA requests—through its website, [www.citizensforethics.org](http://www.citizensforethics.org), which receives tens of thousands of views every month. That 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.

I certify that the above explanation is true and correct to the best of my knowledge and belief.

### **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](mailto:nsus@citizensforethics.org). Also, if CREW’s requests for a fee waiver and expedited processing are 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 [nsus@citizensforethics.org](mailto:nsus@citizensforethics.org) or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 1101 K St, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Nikhel Sus  
Senior Counsel