



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

December 8, 2020

**BY EMAIL:** [garym.stern@nara.gov](mailto:garym.stern@nara.gov)

Gary M. Stern  
Chief FOIA Officer  
National Archives and Records Administration  
8601 Adelphi Road, Room 3110  
College Park, MD 20740-6001

Re: Freedom of Information Act Request

Dear Mr. Stern:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and National Archives and Records Administration (“NARA”) regulations.

First, CREW requests all email communications sent to, copied to, received by, or sent by Archivist of the United States David Ferriero, Deputy Archivist of the United States Debra Steidel Wall, Chief of Staff Maria Carosa Stanwich, Chief Records Officer Laurence Brewer, or General Counsel Gary Stern from January 1, 2020 to the present, relating to the collection, preservation, or management of federal records or presidential records created or stored using any social media platform, including but not limited to Facebook, Twitter, Google, Skype, Slack, Signal, Parler, or any of their subsidiaries (including but not limited to WhatsApp and Instagram).

Second, CREW requests all agendas, meeting notes, summaries, or attendance lists prepared for calls or meetings from January 1, 2020 to the present with representatives from any social media platform, including but not limited to Facebook, Twitter, Google, Skype, Slack, Signal, Parler, or any of their subsidiaries (including but not limited to WhatsApp and Instagram).

Third, CREW requests all email communications sent to, copied to, received by, or sent by Archivist of the United States David Ferriero, Deputy Archivist of the United States Debra Steidel Wall, Chief of Staff Maria Carosa Stanwich, Chief Records Officer Laurence Brewer, or General Counsel Gary Stern, from January 1, 2020 to the present to or from representatives from any social media platform, including but not limited to Facebook, Twitter, Google, Skype, Slack, Signal, Parler, or any of their subsidiaries (including but not limited to WhatsApp and Instagram).

Fourth, CREW requests any social media accounts identified by any NARA employee to representatives from any social media platform—including but not limited to Facebook, Twitter, Google, WhatsApp, Signal, Parler or any of their subsidiaries (including but not limited to

WhatsApp and Instagram)—as an account used for official government business that should be archived.

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 NARA 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).

Given the administration's pervasive use of social media platforms for official business, and President Trump's tendency to "govern by tweet," it is important to ensure that these records be properly preserved.<sup>1</sup> Many of President Trump's most significant policy and personnel decisions have been announced using social media including, for example, his announcement in 2019, that he fired Secretary of State Rex Tillerson and the appointments of Mike Pompeo and Gina Haspel as Secretary of State and CIA Director respectively.<sup>2</sup> Earlier this year, the President directed Congress to follow his Twitter account for notification of potential

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<sup>1</sup> Masha Gessen, [How Trump Governs by Tweet: Start with Outrage, Then Escalate](https://www.newyorker.com/news/news-desk/how-trump-governs-by-tweet-start-with-outrage-then-escalate), *The New Yorker*, Oct. 11, 2017, available at <https://www.newyorker.com/news/news-desk/how-trump-governs-by-tweet-start-with-outrage-then-escalate>.

<sup>2</sup> Donald J. Trump (@realDonaldTrump), Twitter (Mar. 13, 2018), <https://twitter.com/realDonaldTrump/status/973540316656623616>.

military action against Iran, adding that “Such legal notice is not required, but is given nevertheless!”<sup>3</sup> While it can and should be expected that government agencies use social media platforms to communicate with the American public, numerous Trump administration officials have created or used social media accounts in a quasi-governmental capacity, using them to conduct government business while often failing to abide by the basic requirements for government conduct.<sup>4</sup>

Given that social media seems to be the preferred method of communication for President Trump, it should come as no surprise that the Trump administration’s barrage of illegal and unethical conduct also extends to these platforms. In his “Report on the Investigation into Russian Interference in the 2016 Presidential Election,” Special Counsel Robert Mueller cited the President’s statements on Twitter as “evidence that the President’s actions had the potential to influence [convicted criminal Paul] Manafort’s decision whether to cooperate with the government.”<sup>5</sup> Numerous Trump administration appointees have been cited for violating federal law using social media. Since 2017, the Office of Special Counsel (OSC) has found that at least ten senior Trump administration aides, including Interior Secretary Ryan Zinke and U.S. Ambassador to the United Nations Nikki Haley, have violated the Hatch Act by impermissibly engaging in partisan political activity on the Twitter accounts that they use for government business.<sup>6</sup> In addition to federal ethics laws, President Trump and his staffs’ social media use has

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<sup>3</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan. 5, 2020), <https://twitter.com/realDonaldTrump/status/1213919480574812160>; *see also*, T.C. Sottek, [Trump Tells Congress to Follow Him on Twitter for Updates on War with Iran](#), *The Verge*, Jan. 5, 2020, *available at* <https://www.theverge.com/2020/1/5/21050757/trump-iran-qassem-soleimani-attack-congress-twitter-follow-updates>.

<sup>4</sup> *See generally*, Dan Scavino @Scavino45, Twitter, <https://twitter.com/scavino45> (“Official White House Twitter. Personal Twitter: DanScavino”); Marc Short @marshort45, Twitter, <https://twitter.com/marshort45> (“Chief of Staff for Vice President Mike Pence | Tweets may be archived: <http://WH.gov/privacy>”); Judd Deere @JuddPDeere, Twitter, <https://twitter.com/juddpdeere45> (“Deputy Assistant to @POTUS @realDonaldTrump and @WhiteHouse Deputy Press Secretary | Tweets may be archived: <http://WH.gov/privacy> | Personal: @JuddPDeere”).

<sup>5</sup> U.S. Department of Justice, Special Counsel Robert S. Mueller, III, Report on the Investigation into Russian Interference in the 2016 Presidential Election, Vol II at 131 (Mar. 2019), *available at* <https://www.justice.gov/storage/report.pdf>.

<sup>6</sup> *See*, Tal Axelrod, [Federal Investigators Concluded Ryan Zinke's MAGA Socks Violated Hatch Act](#), *The Hill*, June 6, 2019, *available at* <https://thehill.com/homenews/administration/447302-federal-investigators-concluded-ryan-zinkes-maga-socks-violated-law>; Citizens for Responsibility and Ethics in Washington, [Haley Reprimanded for Hatch Act Violation](#), Oct. 3, 2017, *available at* <https://www.citizensforethics.org/news/press-releases/haley-reprimanded-hatch-act-violation/>; Dartunorro Clark, [6 Trump officials engaged in political activity that violated Hatch Act](#), *NBC News*, Nov. 30, 2018, *available at* <https://www.nbcnews.com/politics/white-house/6-trump-officials-engaged-political-activity-violated-hatch-act-n942286>; Citizens for Responsibility and Ethics in Washington, [FLOTUS Spokeswoman Reprimanded for Hatch Act Violation Following CREW Complaint](#), Sep. 21, 2018, *available at* <https://www.citizensforethics.org/news/press-releases/flotus-spokeswoman-reprimanded-for-hatch-act-violation-following-crew-complaint/>; Citizens for Responsibility and Ethics in Washington, [Scavino](#)

raised transparency and other concerns as well.<sup>7</sup> Although NARA guidance clearly lists a “Twitter Direct Message” as a type of electronic communication that may need to be preserved under federal records laws, the White House archiving policy, which is often listed by administration officials on their accounts, only requires archiving of “tweets” and “mentions,” not direct messages and other non-public communications stored in the accounts.<sup>8</sup> This concern is even more pronounced given reports of widespread use by White House officials of applications like Signal and Confide that automatically destroy potential presidential records.<sup>9</sup>

The requested records will shed light on NARA’s role in the presidential transition process. In particular, the records are likely to contribute to greater public understanding of how NARA has been working with social media companies to prepare for the peaceful transition of power and ensure that relevant federal records of the Trump administration are appropriately preserved. More than any of his predecessors, President Trump and his administration have routinely used social media in order to communicate directly with the American people and conduct government business. Unfortunately, the president and his staff have also repeatedly abused these platforms in ways that support unethical, and sometimes illegal, behavior, including President Trump attempting to influence witnesses in federal criminal investigations and senior White House aides engaging in unlawful political activity. The public deserves to know whether NARA is working with private sector social media companies to ensure that the records of the Trump administration are preserved consistent with law.

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

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Reprimanded for Hatch Act Violation, June 9, 2017, available at <https://www.citizensforethics.org/news/press-releases/scavino-reprimanded-hatch-act-violation/>.

<sup>7</sup> See *CREW v. Trump*, 924 F.3d 602, 603 (D.C. Cir. 2019) (quoting H.R. Rep. No. 95-1487, 95th Cong. at 2 (1978)).

<sup>8</sup> Compare National Archives and Records Administration, Bulletin 2015-02, July 29, 2015, available at <https://www.archives.gov/records-mgmt/bulletins/2015/2015-02.html> with The White House, Privacy Policy, available at <https://www.whitehouse.gov/privacy-policy/>, accessed Oct. 21, 2020.

<sup>9</sup> Lily Hay Newman, Encryption Apps Help White House Staffers Leak—and Maybe Break the Law, *Wired*, Feb. 15, 2017, available at <https://www.wired.com/2017/02/white-house-encryption-confide-app/>.

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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.

### **Conclusion**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at [nsus@citizensforethics.org](mailto:nsus@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 [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