



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

August 16, 2021

SENT BY: [FOIAonline](#)

FOIA Officer
National Archives and Records Administration
8601 Adelphi Road, Room 3110
College Park, MD 20740

Re: Freedom of Information Act Request

Dear Mr. Stern:

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 the National Archives and Records Administration (“NARA”) regulations.

Specifically, CREW requests the following:

1. All communications from January 1, 2017 to the date this request is processed between NARA and any federal agency regarding any potential or actual disposal of records posing a “continuing menace to human health or life or to property” under 44 U.S.C. § 3310 and 36 C.F.R. § 1229.10, and
2. The complete unauthorized disposition case files for each of the following cases:
 - a. UD-2020-0031 (Department of Commerce)
 - b. UD-2019-0030 (Department of Defense)
 - c. UD-2021-0019 (Department of Defense)
 - d. UD-2021-0020 (Department of Defense)
 - e. UD-2021-0033 (Department of Defense)
 - f. UD-2021-0005 (Department of Defense)
 - g. UD-2020-0042 (Department of Homeland Security)
 - h. UD-2021-0011 (Department of Interior)
 - i. UD-2020-0004 (Department of Justice)
 - j. UD-2020-0021 (Department of Justice)
 - k. UD-2021-0040 (Environmental Protection Agency)
 - l. UD-2021-0021 (U.S. Agency for Global Media)

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,



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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. Dept. 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 the FOIA to access these documents. Accordingly, because litigation reasonably is foreseeable, NARA 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 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).

The Federal Records Act (FRA) requires government agencies to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.” Yet, in practice, there are sufficient examples of federal agencies and officials failing to abide by the Federal Records Act. In May 2019, CREW sent a letter to the Archivist of the United States requesting that guidance be issued requiring agencies to make their Federal Records Act policies public in order to encourage FRA compliance.

During Scott Pruitt’s stint as the Environmental Protection Agency (EPA) Administrator, he created a culture of secrecy and set up systems to ensure that records and paper trails were never created. Pruitt instructed political staff to seal out career staff, not to bring cellular devices into meetings, and prohibited staff from taking notes or written records on substantive matters, including a water quality rule. Pruitt himself, in an attempt to circumvent accountability, kept a secret calendar to hide meetings, used non-EPA phones to take EPA-related calls, and avoided the use of official email. In August 2020, CREW discovered that the EPA illegally destroyed contaminated water quality records without receiving prior approval from NARA.



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It is imperative that the public have access to records that shed light on communications between the NARA and other government agencies regarding the frequency with which federal agencies request and engage in the destruction of records. This information is vital so the American public is aware of the extent to which government agencies are preserving valuable records and following recordkeeping laws. While there are established procedures for destruction of records, they are not always followed and there is the very real potential to exploit these provisions in efforts to conceal government wrongdoing, including serious cases of abuse, neglect, and misconduct.

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. Sec. Archive v. U.S. Dept. 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 blog posts 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, 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 mduffy@citizensforethics.org and please copy hhammado@citizensforethics.org on all communications. Where possible, please produce records in electronic format. Please send the requested records to me at mduffy@citizensforethics.org and hhammado@citizensforethics.org. Thank you for your assistance in this matter.

CREW

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Sincerely,

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Graduate Policy Intern

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Policy Associate