

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY)	
AND ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	
)	

Civil Action No. 1:20-cv-02044-CRC

ANSWER

Defendant United States Department of State (“Defendant”) hereby responds to Plaintiff’s Complaint [ECF No. 1].

In response to the numbered paragraphs of the Complaint, Defendant responds as follows, using the same paragraph numbering as is found in the Complaint:

1-2. These paragraphs consist of Plaintiff’s characterization of its Complaint, to which no response is required. To the extent that a response is deemed necessary, Defendant denies the allegations in these paragraphs.

3. This paragraph sets forth legal conclusions and allegations regarding subject matter jurisdiction, personal jurisdiction, and legal venue, to which no response is required.

4. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

5. Defendant admits the allegations set forth in the first sentence of this paragraph. The second sentence of this paragraph is a legal conclusion, to which no response is required.

6-9. These paragraphs set forth legal conclusions and characterizations of the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), to which no response is required.

10. This paragraph consists of Plaintiff’s characterization of two magazine articles. The Court is respectfully referred to the cited articles for a complete and accurate statement of their contents.

11. This paragraph consists of Plaintiff’s characterization of the contents of two media websites and a presidential briefing reported at www.whitehouse.gov, to which no response is required. The Court is respectfully referred to the cited websites and briefing for a complete and accurate statement of their contents.

12. The first sentence of this paragraph consists of Plaintiff’s characterization of a letter from a congressman to the Secretary of State, to which no response is required; Defendant respectfully refers the Court to that letter (hyperlinked in Plaintiff’s Complaint) for a complete and accurate statement of its contents. The second sentence of this paragraph consists of Plaintiff’s characterization of a magazine article, to which no response is required; Defendant respectfully refers the Court to the cited article for a complete and accurate statement of its contents.

13. The first sentence of this paragraph consists of Plaintiff’s characterization of a letter from a congressman to the Secretary of State, to which no response is required; Defendant respectfully refers the Court to that letter (hyperlinked in Plaintiff’s Complaint) for a complete and accurate statement of its contents. The second sentence of this paragraph consists of Plaintiff’s characterization of letters from Senators or Members of Congress to the Secretary of State, to which no response is required; Defendant respectfully refers the Court to those letters (hyperlinked in Plaintiff’s Complaint) for a complete and accurate statement of their contents.

14. This paragraph consists of Plaintiff's characterization of a letter to the Secretary of State, a magazine article, and a filing in another action, to which no response is required. Defendant respectfully refers the Court to these materials for a complete and accurate statement of their contents.

15. The first sentence of this paragraph consists of Plaintiff's characterization of a letter from a congressman to the Secretary of State, to which no response is required; Defendant respectfully refers the Court to that letter (hyperlinked in Plaintiff's Complaint) for a complete and accurate statement of its contents. Defendant denies the allegations in the second sentence of the paragraph and further avers that Defendant considers all incoming requests for information from Congressional committee chairs and responds according to standard State Department practice, political affiliation notwithstanding. The third sentence consists of Plaintiff's characterization of several letters from House Members to the Secretary of State, to which no response is required; Defendant respectfully refers the Court to those letters (hyperlinked in Plaintiff's Complaint) for a complete and accurate statement of their contents.

16. The first sentence of this paragraph consists of legal conclusions and Plaintiff's characterization of a Government Accountability Office publication, to which no response is required. The second sentence of this paragraph consists of a legal conclusion, to which no response is required. The third sentence consists of Plaintiff's characterization of a letter from a congressman to the Secretary of State, to which no response is required; Defendant respectfully refers the Court to that letter (hyperlinked in Plaintiff's Complaint) for a complete and accurate statement of its contents. The Department denies the allegations in the fourth sentence of the paragraph and further avers that Defendant considers all incoming requests for information from

Congressional committee chairs and responds according to standard State Department practice, political affiliation notwithstanding.

17. Defendant lacks knowledge sufficient to admit or deny the basis on which Plaintiff has allegedly filed a complaint with the Office of Inspector General (“OIG”). Further, Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph because OIG neither reports to nor is subject to supervision from any State Department official, *see* 5 U.S.C. § App. 3 § 3(a), and Defendant therefore lacks knowledge of the substance of pending OIG complaints or OIG’s response to such complaints.

18. Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph because OIG neither reports to nor is subject to supervision from any State Department official, *see* 5 U.S.C. § App. 3 § 3(a), and Defendant therefore lacks knowledge of the substance of pending OIG complaints or OIG’s response to such complaints.

19. Defendant lacks knowledge sufficient to admit or deny the allegations in this paragraph because OIG neither reports to nor is subject to supervision from any State Department official, *see* 5 U.S.C. § App. 3 § 3(a), and Defendant therefore lacks knowledge of the substance of pending OIG complaints or OIG’s response to such complaints.

20. Defendant admits that Plaintiff submitted to Defendant two FOIA requests in a letter dated June 26, 2020, and respectfully refers the Court to those requests, attached as Exhibit 1 hereto, for a complete and accurate statement of their contents.

21-26. These paragraphs consist of Plaintiff’s characterization of Exhibit 1, to which no response is required; Defendant respectfully refers the Court to Exhibit 1 for a complete and accurate statement of its contents.

27. Defendant admits that, as of the date of the complaint, a final determination had not yet been made as to Plaintiff's FOIA requests to Defendant. The remainder of the paragraph consists of Plaintiff's characterization of this action to which no response is required.

28. This paragraph sets forth legal conclusions, to which no response is required; to the extent a response is deemed required, Defendant respectfully refers the Court to 5 U.S.C. § 552 and its subsections for a complete and accurate recitation of its contents, and otherwise denies the allegations in this paragraph.

29. Defendant incorporates its responses to Paragraphs 1 through 28.

30. This paragraph sets forth legal conclusions, to which no response is required; to the extent a response is deemed required, Defendant denies the allegations in this paragraph.

31. This paragraph sets forth legal conclusions, to which no response is required; to the extent a response is deemed required, Defendant denies the allegations in this paragraph.

32. This paragraph sets forth legal conclusions, to which no response is required; to the extent a response is deemed required, Defendant denies the allegations in this paragraph.

The remainder of the Complaint consists of Plaintiff's request for relief, to which no response is required; to the extent a response is deemed required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief at all.

Except to the extent expressly admitted or qualified above, Defendant denies each and every allegation of the Complaint.

DEFENSES

Plaintiff is not entitled to compel the production of responsive records protected from disclosure by one or more of the exemptions or exclusions to FOIA or to the Privacy Act, 5 U.S.C. § 552(a) *et seq.*

Dated: September 2, 2020

Respectfully submitted,

ETHAN P. DAVIS
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director
U.S. Department of Justice
Civil Division, Federal Programs Branch

/s/ Daniel Riess
DANIEL RIESS
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Telephone: (202) 353-3098

Attorneys for Defendant

EXHIBIT

1



June 26, 2020

BY EMAIL: foiarequest@state.gov

Freedom of Information Act Officer
Office of Information Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

Re: Freedom of Information Act Request

Dear Sir/Madam,

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 Department of State (“Department”) regulations, 22 C.F.R. Part 171.

For the following requests, please search for records, documents, and communications created since the start of the 116th Congress on January 3, 2019 and the date the Department conducts the search.

First, CREW requests all documents, as well as all communications and records of communications sent to, copied to, or received by:

1. Senior Advisor to the Secretary of State Mary Kissel; as well as any Department employee with the title “Chief of Staff” or “Deputy Chief of Staff” to the Secretary of State, or acting in any such capacity;
2. the Department’s Office of Information Programs and Services (“IPS”) Director Eric F. Stein; as well as anyone with the title “Chief of Staff” or “Deputy Chief of Staff” to the Director, or acting in any such capacity;
3. Stephen J. Akard, Director, Office of Foreign Missions; as well as,
4. Bureau of Legislative Affairs (“BLA”) Assistant Secretary Mary Elizabeth Taylor; BLA Deputy Assistant Secretary of House Affairs Jess Moore; BLA Executive Director Alicia A. Frechette; or Congressional Correspondence Unit Chief Cynthia Andrews;

regarding requests for documents or testimony from:

- a. Rep. Elijah E. Cummings, former Chairman of the House Committee on Oversight and Reform (“HCOR”) and HCOR staff;
- b. Rep. Carolyn Maloney, Chairwoman of the HCOR and HCOR staff; or

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- c. Rep. Maxine Waters, Chairwoman of the House Financial Services Committee (“HFSC”) and HFSC staff.

In responding to this first request CREW asks that the Department explicitly exclude those records, documents, and communications regarding requests made jointly by Rep. Eliot L. Engel, Chairman of the House Foreign Affairs Committee, and either former Chairman Cummings (a) or Chairwoman Maloney (b).

Second, CREW requests all documents, as well as all communications and records of communications sent to, copied to, or received by Secretary of State Michael R. Pompeo, Director Akard, Senior Advisor Kissel, as well as any Department employee with the title “Chief of Staff” or “Deputy Chief of Staff” to the Secretary, or acting in any such capacity related to CREW’s complaint to the Department’s Office of Inspector General to review Department practices related to congressional oversight responses.

Please search for responsive records regardless of format, medium, or physical characteristics. CREW seeks records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. CREW’s 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. CREW’s 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 Department 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).

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The President first demanded partisan cooperation with congressional oversight requests in 2017.¹ Since Democrats assumed control of the House of Representatives in 2019, the President has continued to make clear that his administration will only submit to oversight from Senate Republicans, stating, “[t]he House is a bunch of Trump haters.”² The Department’s documented failure to respond to congressional oversight requests from Democratic congressional committee chairs, and subsequent allegations that the Department has politicized its approach to several high-profile congressional investigations, suggest that Department employees have executed President Trump’s directive to only cooperate with Republican oversight.³

The Department continually cooperates with oversight requests from Senate Republican committee chairs, and continually ignores requests from House Democratic chairs.⁴ In response to Sen. Johnson and Sen. Grassley’s November 2019 requests for information about Burisma Holdings and Ukraine, the Department voluntarily produced thousands of pages of documents between February and April 2020.⁵ These responses were made—voluntarily—amidst the Department’s response to the coronavirus pandemic, which the IPS Director Stein declared, reduced the Department’s FOIA processing capability by 96%.⁶ Strikingly, the Department has also continually failed to provide any information in response to requests from House Foreign Affairs Committee Chairman Eliot Engel as well as other Democratic committee chairs with direct legislative authority over the Department. This recalcitrance began even before the coronavirus pandemic. These unfulfilled requests include multiple inquiries from Chairman Engel and other Democratic chairs dating back to February 2019.⁷

¹ Gabrielle Levy, *White House Blocks Democrats' Oversight Efforts*, *U.S. News & World Report*, June 2, 2017, <https://bit.ly/2XP8rCe>; Burgess Everett and Josh Dawsey, *White House Orders Agencies to Ignore Democrats' Oversight Requests*, *Politico*, June 2, 2017, <https://politi.co/36RwKDA>.

² Kevin Breuninger and Christina Wilkie, *Trump: 'We're Fighting All the Subpoenas' from House Democrats*, *CNBC*, Apr. 24, 2019, <https://cnb.cx/3cIt8oM>; Kevin Liptak, *Trump Says He Only Will Submit to GOP Oversight for His Administration*, *CNN*, May 5, 2020, <https://cnn.it/30kbzZJ>; The White House, *Remarks by President Trump Before Marine One Departure*, WhiteHouse.gov (May 5, 2020; 10:21 A.M.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-89/>.

³ *E.g.* Letter from House Committee on Foreign Affairs Chairman Eliot L. Engel to Secretary of State Mike Pompeo, May 21, 2020 (“Engel Letter”), <https://bit.ly/2MCNKEf>; *see also* Emma Loop, *A Top Democrat Says The State Department Has Sent Republicans Thousands Of Pages For Their Biden Investigation While Ignoring Democratic Requests*, *Buzzfeed*, May 6, 2020, <https://bit.ly/2UhqJg3>.

⁴ Engel Letter.

⁵ Letter from Senate Finance Committee Chairman Charles E. Grassley and Senate Homeland Security and Governmental Affairs Committee Chairman Ron Johnson to Secretary of State Michael R. Pompeo, Nov. 7, 2019, <https://bit.ly/2APraWB>; Letter from Senate Finance Committee Ranking Member Ron Wyden to Secretary of State Michael Pompeo, 1-2, May 6, 2020 (“Wyden Letter”), <https://bit.ly/2MCNKEf>; Engel Letter at 2.

⁶ Wyden Letter at 2; Loop, *Buzzfeed*, May 6, 2020; Declaration of Eric F. Stein at 7-8, *John Solomon v. U.S. Dep’t of State*, Case No. 1:20-cv-00132-RDM, (March 25, 2020), (Civ. No. 20-132), <https://www.politico.com/f/?id=00000171-1bd0-d4a1-ad77-ffd06f650000>

⁷ Letter from House Committee on Foreign Affairs Chairman Eliot L. Engel, House Committee on Oversight and Reform Chairman Elijah E. Cummings, and House Permanent Select Committee on Intelligence Chairman Adam to Secretary of State Michael R. Pompeo, Sept. 27, 2019, <https://bit.ly/3d3b9d7>; Engel Letter at 1; Letter from House Committee on Foreign Affairs Chairman Eliot Engel and House Committee on Foreign Affairs Subcommittee on Oversight and Investigations Chairman Joaquin Castro to Secretary of State Michael R. Pompeo, May 18, 2020, <https://bit.ly/2MC293G>.

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The requested records will shed light on whether the Department has and is executing a biased, partisan policy in its handling of and responses to congressional oversight requests from congressional committee chairs. In particular, the requested records will shed light on the circumstances surrounding the Department's voluntary and efficient cooperation with requests from Senate Republican chairs regarding Burisma Holdings and Ukraine, while refusing to comply with numerous requests for information and testimony from House Democratic chairs, which suggests (i) a more nefarious purpose that has substantial legal implications, (ii) deficiencies in Department policies related to congressional oversight, or even, (iii) misconduct of Department employees' handling of such requests.

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 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 (202) 408-5565 or dsherman@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

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records to dsherman@citizensforethics.org or Donald K. Sherman, 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,

A handwritten signature in blue ink, appearing to read 'D.K. Sherman', with a long horizontal flourish extending to the right.

Donald K. Sherman
Deputy Director



June 26, 2020

BY EMAIL: foiarequest@state.gov

Freedom of Information Act Officer
Office of Information Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

Re: Freedom of Information Act Request

Dear Sir/Madam,

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 Department of State (“Department”) regulations, 22 C.F.R. Part 171.

Specifically, CREW requests all documents created or received from June 1, 2017 to the date the Department conducts the search pertaining, concerning, or reflecting any guidance, instruction, directive, or recommendation on how to handle document or testimony requests from congressional committee chairs, and whether that handling differs depending on the political party of the Chairman or Chairwoman who makes the request. This request includes but is not limited to any instruction or guidance directing Department employees to give priority to requests made by Republican members of Congress.

Please search for responsive records regardless of format, medium, or physical characteristics. CREW seeks records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. CREW’s 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. CREW’s 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.

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Fee Waiver Request

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The President first demanded partisan cooperation with congressional oversight requests in 2017.¹ Since Democrats assumed control of the House of Representatives in 2019, the President has continued to make clear that his administration will only submit to oversight from Senate Republicans, stating, “[t]he House is a bunch of Trump haters.”² The Department’s documented failure to respond to congressional oversight requests from Democratic congressional committee chairs, and subsequent allegations that the Department has politicized its approach to several high-profile congressional investigations, suggest that Department employees have executed the President’s directive to only cooperate with Republican oversight.³

The Department continually cooperates with oversight requests from Senate Republican committee chairs, and continually ignores requests from House Democratic chairs.⁴ In response to Sen. Ron Johnson and Sen. Chuck Grassley’s November 2019 requests for information about Burisma Holdings and Ukraine, the Department voluntarily produced thousands of pages of documents between February and April 2020.⁵ These responses were made—voluntarily—amidst the Department’s response to the coronavirus pandemic, which IPS Director Stein declared, reduced the Department’s FOIA processing capability by 96%.⁶ Strikingly, the Department has also continually failed to provide any information in response to requests from House Foreign Affairs Committee Chairman Eliot Engel as well as other Democratic committee

¹ Gabrielle Levy, *White House Blocks Democrats' Oversight Efforts*, *U.S. News & World Report*, June 2, 2017, <https://bit.ly/2XP8rCe>; Burgess Everett and Josh Dawsey, *White House Orders Agencies to Ignore Democrats' Oversight Requests*, *Politico*, June 2, 2017, <https://politi.co/36RwKDA>.

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chairs with direct legislative authority over the Department. This recalcitrance began even before the coronavirus pandemic. These unfulfilled requests include multiple inquiries from Chairman Engel and other Democratic chairs dating back to February 2019.⁷

The requested records will shed light on whether the Department has directed its employees to execute, and whether the Department's employees are executing, a biased, partisan policy in handling and responding to oversight requests from congressional committee chairs and the extent to which that directive may have originated outside of the Department. In particular, the requested records will shed light on the circumstances surrounding the Department's voluntary and efficient cooperation with requests from Senate Republican chairs regarding Burisma Holdings and Ukraine, while refusing to comply with numerous requests for information and testimony from House Democratic chairs, which suggests (i) a more nefarious purpose that has substantial legal implications, (ii) deficiencies in Department policies related to congressional oversight, or even, (iii) misconduct of Department employees' handling of such requests.

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Where possible, please produce records in electronic format. Please send the requested records to dsherman@citizensforethics.org or Donald K. Sherman, 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,

A handwritten signature in blue ink, appearing to read 'D.K. Sherman', with a long horizontal flourish extending to the right.

Donald K. Sherman
Deputy Director