



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

June 5, 2024

BY EMAIL: FOIA-Central@hq.doe.gov

FOIA Officer
FOIA Requester Service Center
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

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 Department of Energy (“DOE”) regulations.

Specifically, CREW requests all responses to Assistant General Counsel Anita Capoferri’s December 1, 2020 email to DOE officials with the subject line “Data Call: Preliminary Identification of DEO Schedule F Positions”, asking each “Head of Departmental Element” to list “all the encumbered and vacant positions within their program office, including field offices, and indicate whether and on what basis a position may be included in Schedule F” in order to meet the requirements of then-President Donald Trump’s Executive Order 13957.

The above request excludes agency records consisting solely of news articles, press clippings, and other publicly-available material, so long as the records include no accompanying discussion by agency officials.

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, 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 rights under FOIA. Accordingly, because litigation is reasonably foreseeable, the agency should institute an agency wide preservation hold on all documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and agency 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 *id.* § 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 April 18, 2024 Citizens for Responsibility and Ethics in Washington (CREW) received records in response to a February 1, 2024 Freedom of Information Act. The records show that on December 1, 2020 Assistant General Counsel Anita Capoferri requested that all department heads “complete a data call listing all the encumbered and vacant positions within their program office, including field offices, and indicate whether and on what basis a position may be included in Schedule F.” Capoferri instructed that lists should be sent to the Office of the General Counsel by close of business on Monday, December 7.

In the original request, CREW asked for communications between Environmental Management Consolidated Business Center Chief Counsel Brandon Middleton and any individual from the Heritage Foundation, as well as internal communications sent by or to Middleton mentioning the terms “Heritage Foundation,” “Project 2025,” “Schedule F,” “2025 Presidential Transition Project,” or “Mandate for Leadership,” in order to locate instances of extra-governmental influence on public servants.

Capoferri’s request was likely made in response to then-President Donald Trump’s October 2020 Executive Order to create a new employment category for Executive Branch employees, dubbed Schedule F, that “would exempt them from civil service protections and make them easier to remove.”¹ If imposed Schedule F could upend the civil service by removing thousands of federal workers, which would render many government agencies

¹ Carten Cordell, [OPM issues its final rule for Schedule F protections](https://www.govexec.com/workforce/2024/04/opm-issues-final-rule-schedule-f-protections/395463/), *Government Executive*, April 4, 2024, available at <https://www.govexec.com/workforce/2024/04/opm-issues-final-rule-schedule-f-protections/395463/>

unable to perform their duties.² The requested records will show what positions are in danger of being removed, a matter of public interest.

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 disseminates information obtained through FOIA to the public in several ways. For example, CREW's website receives hundreds 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. These reports frequently rely on government records obtained through FOIA. CREW also posts the documents it obtains through FOIA on its website.

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

Conclusion

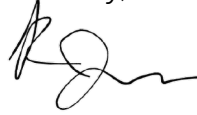
If you have any questions about this request or foresee any problems in fully releasing the requested records, please email me at rjacobs@citizensforethics.org and foia@citizensforethics.org or call me at (202) 408-5565. Also, if CREW's request for a fee waiver is denied, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to rjacobs@citizensforethics.org and foia@citizensforethics.org or by mail to Rebecca Jacobs, Citizens for Responsibility and Ethics in Washington, 1331 F St. NW, Suite 900, Washington, D.C. 20004.

² [How Trump could reimpose "Schedule F" in 2025](https://www.axios.com/2022/07/22/trump-presidency-schedule-f-federal-employees), *Axios*, July 23, 2022, available at <https://www.axios.com/2022/07/22/trump-presidency-schedule-f-federal-employees>

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Sincerely,

A handwritten signature in black ink, appearing to be 'RJ' followed by a flourish.

Rebecca Jacobs
Research Manager