



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

July 31, 2024

U.S. Department of Education
Office of the Executive Secretariat
FOIA Service Center
400 Maryland Avenue, SW, LBJ 7W106A
Washington, DC 20202-4536

ATTN: FOIA Public Liaison

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 U.S. Department of Education (“DOEd”) regulations. Specifically, CREW requests the following records:

We request copies of all delegations of authority to authorize, approve, or initiate a reduction in force; to implement a reduction in force; to define, establish, or identify one or more competitive areas; or to define, establish, or identify one or more competitive levels.

These records may take the form of agency policies, individual delegations of authority, or other formats.¹ The term “competitive area” has the same meaning applicable to the term “competitive area” in 5 C.F.R. § 351.402. The term “competitive level” has the same meaning applicable to the term “competitive level” in 5 C.F.R. § 351.403.

¹ Four examples of such records are: Memorandum from Dep. Sec. of Defense to specified agency managers, *Policy and Procedures for Reductions in Force in the Civilian Workforce* (Jan. 19, 2017), <https://dod.defense.gov/Portals/1/Documents/pubs/OSD000467-17-RES-Final.pdf>; Memorandum for Consulting Servs. Div. from Kimberlyn Bauhs, Director, Workforce Management Office, Nat’l Oceanic and Atmospheric Admin., *Delegation of Authority for Approval of Personnel Management Decisions and Actions* (Jan. 30, 2017), <https://www.noaa.gov/sites/default/files/legacy/document/2020/Mar/tr91.pdf>; U.S. Merit Sys. Prot. Bd., *Organization Functions & Delegations of Authority* (April 2011), [https://www.mspb.gov/foia/files/Organization Functions and Delegations of Authority 1279407.pdf](https://www.mspb.gov/foia/files/Organization%20Functions%20and%20Delegations%20of%20Authority%201279407.pdf); Memorandum from Acting Assoc. Dir., Off. of Hum. Res., Indian Health Serv., *Personnel Delegation No. 44, Delegation of Authority for Approval of Reduction in Force, Furlough, and Changes to Competitive Areas* (Feb. 13, 1996), <https://www.ihs.gov/ihtm/doa/pers/pers-44d/>.

[REDACTED]

[REDACTED]

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).

In October 2020, Donald Trump issued an Executive Order (EO)² that would have upended the federal government ranks through a new job classification, Schedule F. While President Biden rescinded this EO when he entered office, had it remained, it would have stripped tens of thousands of federal workers of most merit-based civil service protections, including the protection against being fired based on political alignment.³ In his current campaign for office, Trump is pushing for the return of schedule F to “demolish the deep

² Exec. Order No. 13957, C.F.R. 298, (2020), <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-creating-schedule-f-excepted-service/>.

³ Gabe Lezra & Diamond Brown, *FAQ: The conservative attack on the merit-based civil service*, Citizens for Responsibility and Ethics in Washington (CREW), Jan. 25, 2024, <https://www.citizensforethics.org/news/analysis/faq-the-conservative-attack-on-the-merit-based-civil-service/> [hereinafter FAQ].

state” by getting rid of thousands of career federal government workers.⁴ In place of expert career civil servants, federal agencies could be filled with unqualified party loyalists who could harm the lives of Americans by giving individuals without any technical expertise the power to craft policy that could have life or death implications.⁵ Critics of Schedule F also fear that it could lead to mass firings within agencies.⁶ It is crucial for the public to have information about the delegated authority to initiate or implement a reduction in force (i.e., firings), especially in the scenario that Schedule F becomes 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. 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 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. 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 lelsharif@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.

⁴ Erich Wagner, *Employee groups laud Biden’s anti-Schedule F regulations*, Government Executive, Apr. 5, 2024, <https://www.govexec.com/workforce/2024/04/employee-groups-laud-bidens-anti-schedule-f-regulations/395530/>.

⁵ FAQ, *supra* note 2.

⁶ National Treasury Employees Union (NTEU), *OPM Establishes Safeguards Against Schedule*, NTEU, Apr. 4, 2024, <https://www.nteu.org/media-center/news-releases/2024/04/04/opmregsskedf>.

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Where possible, please produce records in electronic format. Please send the requested records to lelsharif@citizensforethics.org and foia@citizensforethics.org or by mail to Lama Elsharif, Citizens for Responsibility and Ethics in Washington [REDACTED]
[REDACTED]

Sincerely,

Lama Elsharif

Lama Elsharif
Research Associate