



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

September 30, 2025

National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

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 Environmental Protection Agency (“EPA”) regulations.

Specifically, CREW requests from August 1, 2023 to the date this request is processed:

1. All records that the Environmental Protection Agency submitted to OMB for review pursuant to the requirements of Office of Management and Budget Circular A-11 § 124.2,¹ including records containing tracked changes or annotated comments related to the lapse plan.
2. All records, including communications, sent to or received from the Office of Management and Budget (“OMB”) related to the agency’s lapse plan, including the requirement in Circular A-11 § 124.2 that the agency “specifically identify any changes made based on the most recent lapse plan on file with OMB.”²
3. All records, including communications, sent to or received from the Department of Justice Office of Legal Counsel related to the agency’s lapse plan.

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,

¹ OMB, Circular No. A-11: Preparation, Submission, and Execution of the Budget § 124.2 (Aug. 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/08/a11.pdf>.

² *Id.*

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 agencywide 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).

Many fixed-period appropriations expire today, September 30.³ When funds expire—that is, when an agency can no longer use the funds that have been appropriated to the agency to make legal commitments—an agency generally can continue operating affected programs only if Congress passes and the President signs a law providing funding for the next fiscal year.⁴ When appropriated funds expire and Congress does not extend their period of availability or pass a law appropriating additional amounts, the resulting lapse in appropriations causes what is commonly referred to as a government shutdown, during which unfunded government functions generally must cease.⁵ Government shutdowns negatively impact the American people, harming the economy and disrupting myriad programs and services on which the public rely, from mortgage processing, to food and drug inspections, to national park access.⁶ According to a 2024 report from the Brookings

³ Jacob Bogage, *Trump's shutdown plans: Mass layoffs, deregulation, military deployments*, Wash. Post (Sept. 27, 2025),

<https://www.washingtonpost.com/business/2025/09/27/trump-government-shutdown-plan/>.

⁴ *Shutdowns/Lapses in Appropriations*, GAO (last visited Sept. 28, 2025),

<https://www.gao.gov/legal/appropriations-law/lapses-in-appropriations>.

⁵ *Id.*

⁶ Therese Boudreau, *What happens if the government shuts down?*, Yahoo! News (Sept. 28, 2025),

<https://www.yahoo.com/news/articles/happens-government-shuts-down-153000918.html>.

Institute, a prolonged government shutdown may “reduce GDP growth by about 0.2 percentage point *each week* it lasts.”⁷

Shutdowns also impact federal employees and contractors. Wages generally are paused during a lapse in appropriations.⁸ And the damage from any government shutdown that occurs in the short term could be drastic and permanent, as OMB recently instructed agencies to use the government shutdown as an “opportunity” to consider reduction-in-force notices for employees of programs, projects, or activities that satisfy certain criteria, including consistency with the current administration’s priorities.⁹

Under OMB Circular A-11 § 124.2 (“Section 124.2”), agency heads “must develop and maintain” plans for an orderly shutdown during a lapse in appropriations.¹⁰ Section 124.2 mandates that agency lapse plans include, among other things, “actions to be taken during a short-term lapse,” “anticipated changes if the lapse extends beyond that period,” “personnel responsible for implementing and adjusting the plan to respond to the lapse in appropriations and changes in external circumstances,” and the number of employees affected and excepted by the lapse.¹¹ Section 124.2 also instructs agencies to send to OMB an updated lapse plan by August 1, 2025, to include in its submission to OMB a document containing tracked changes or annotated comments, and to post on the agency’s website the agency’s “final lapse plan.”¹²

However, agencies have not always followed OMB’s guidance regarding what should be included in their lapse plans. For example, after the 35-day partial government shutdown in fiscal year 2019, the Government Accountability Office (“GAO”) evaluated select agency contingency plans and operations during the lapse.¹³ GAO determined that the audited agencies’ lapse plans suffered from multiple shortcomings, and in response developed specific recommendations such as “align[ing] the agency’s contingency plan with OMB guidance,” documenting their shutdown processes, and developing internal controls for a shutdown.¹⁴ In light of these past deficiencies, it is particularly important that the public have access to the changes agencies have made to their lapse plans, if any, and the reasoning for those changes.

⁷ David Wessel, *What is a government shutdown*, Brookings (Sep. 26, 2025) <https://www.brookings.edu/articles/what-is-a-government-shutdown-and-why-are-we-likely-to-have-another-one>.

⁸ Gabriella Cantor, *Why a shutdown would be a problem for government ethics*, CREW (Sep. 26, 2025), <https://www.citizensforethics.org/news/analysis/why-a-shutdown-would-be-a-problem-for-government-ethics/>.

⁹ Sophia Cai, *White House to agencies: Prepare mass firing plans for a potential shutdown*, Politico (Sept. 24, 2025), <https://www.politico.com/news/2025/09/24/white-house-firings-shutdown-00579909> (linking to OMB memorandum to “BOAC/GCs/DepSecs” regarding RIFs).

¹⁰ Circular A-11 § 124.2.

¹¹ *Id.*

¹² *Id.*

¹³ GAO, *FY 2019 Government Shutdown: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls* (June 2020), <https://www.gao.gov/assets/gao-20-377.pdf>.

¹⁴ *Id.* at 34–35.

Given the significant negative public effects of funding lapses and government shutdowns, as well as certain failures to comply with Section 124.2, the public has a clear and significant need for information regarding the development, reliability, and current state of the agency's compliance with Section 124.2. The requested documents and communications contain that information and will provide the public with a better understanding of what government projects or activities could be temporarily suspended—and which ones would continue—during a government shutdown.

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 over 150,000 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 irogers@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 irogers@citizensforethics.org and foia@citizensforethics.org or by mail to Isabel Rogers, Citizens for Responsibility and Ethics in Washington, P.O. Box 14596, Washington, D.C. 20044.

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Sincerely,

A handwritten signature in black ink, appearing to be 'Isabel Rogers', with a long horizontal flourish extending to the right.

Isabel Rogers
Policy Associate