CREW
CITIZENS FOR RESPONSIBILITY & ETHICS IN WASHINGTON

November 19, 2024

Tim Nusraty
FOIA Officer
Office of Management and Budget
725 17th St. NW
Suite 9272
Washington, D.C. 20503

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 Office of Management and Budget ("OMB") regulations.

Specifically, CREW requests:

1. All OMB decision memoranda, directives, guidance, or communications **from September 30, 2014 through the date this request is processed** concerning:

   a. OMB's authority to apportion funds or establish a reserve under 31 U.S.C. § 1512;

   b. OMB's authority to exempt funds from apportionment under 31 U.S.C. §§ 1516(1) (exemption for certain trust or working funds) or 1516(4)(c) (exemption for items the President determines are of a confidential nature);

   c. The exemption from apportionment of any funds under 31 U.S.C. §§ 1516(1) or 1516(4)(c).

2. All OMB lists of funds exempt from apportionment under 31 U.S.C. § 1516(1) and (4)(C), and any statement, citation, or rationale for any exemption, **from September 30, 2014 through the date this request is processed**.

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 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).

On multiple occasions during President-elect Donald Trump's first term, OMB used the apportionment process to make unavailable for obligation funds appropriated by Congress.[1] An independent, non-partisan agency determined that at least one such use of the apportionment process violated the Impoundment Control Act of 1974.[2] But during his 2024 campaign, President-elect Trump promised to "take action to challenge the constitutionality" of the ICA and to "squeeze the bloated federal bureaucracy for massive savings," raising questions as to whether he will again use the apportionment process to withhold funding.[3]

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[1] House Committee on the Budget, House Budget Committee Investigation Exposes Trump Administration's Systemic Abuse of Executive Spending Authority, Nov. 20, 2020, https://democrats-budget.house.gov/OMB-Abuse.
[2] 2 U.S.C. §§ 681–88; U.S. Government Accountability Office, Office of Management and Budget—Withholding of Ukraine Security Assistance, B-331564, Jan. 16, 2020, https://www.gao.gov/assets/b-331564.pdf.
[3] Trump Vance 2024, Agenda47: Using Impoundment to Cut Waste, Stop Inflation, and Crush the Deep State, June 20, 2023, https://www.donaldjtrump.com/agenda47/agenda47-using-impoundment-to-cut-waste-stop-inflation-and-crush-the-deep-state.

As the office within the executive branch whose mission is to implement executive branch-wide policy on budget execution, OMB's guidance on the subject of the President's apportionment authority carries great weight within the executive branch and publicly. The records CREW seeks would provide those views and therefore are of importance to the public, which would benefit from knowing how OMB has interpreted the authority to control funding appropriated by Congress, including which budget authority is not subject to the apportionment process.[4]

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.

Expedited Processing Request

CREW requests expedited processing of this FOIA request both because (1) there is an "urgency to inform the public about an actual or alleged Federal Government activity," 5 C.F.R. § 1303.50(e)(1)(ii); and (2) "[t]here are possible questions, in a matter of widespread and exceptional public interest, about the government's integrity which [a]ffect public confidence," *id.* § 1303.50(e)(1)(iv).

[4] Although Congress has since enacted a provision requiring that OMB publish any document apportioning an appropriation, during President-elect Donald Trump's first administration OMB was not required to make these documents publicly available. Pub. L. No. 117-103, div. E, title II, § 204, 136 Stat. 49, 257 (Mar. 15, 2022), classified at 31 U.S.C. § 1513 note.

The President-elect's campaign pledge to impound funds raises questions, in a "matter of widespread and exceptional public interest, about the government's integrity which [a]ffect public confidence," and about which there is an "urgency to inform the public." *Id.* §§ 1303.50(e)(1)(ii), (iv). Numerous articles have been published on the President-elect's and his close advisors' plans to withhold, and the President's prior actions of withholding through the apportionment process, funds appropriated by Congress, with commentators explaining that money appropriated on a bipartisan basis in areas such as infrastructure, public schools, and foreign aid could be targeted by the next Administration.[5] The urgency to inform the public about this matter is heightened by the fact that the incoming administration could implement these plans as soon as the President-elect is inaugurated on January 20, 2025.

The undersigned certifies that the above statement is true and correct.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please email me at [redacted] 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 [redacted] and foia@citizensforethics.org or by mail to Christina Wentworth, Citizens for Responsibility and Ethics in [redacted]

Sincerely,

Christina Wentworth
Senior Policy Counsel

[5] 28 C.F.R. § 16.6(e)(3); Oliver Milman, 'Vengeful' Trump withheld disaster aid and will do so again, ex-officials warn, *The Guardian*, Oct. 13, 2024, https://www.theguardian.com/us-news/2024/oct/13/trump-disaster-funding-warning; Scott Waldman and Thomas Frank, Trump refused to give California wildfire aid until told how many people there voted for him, ex-aide says, *Politico*, Oct. 3, 2024, https://www.politico.com/news/2024/10/03/helene-trump-politics-natural-disaster-00182419; George F. Will, History is on Trump's side for this one thing. It's still a bad idea, *Washington Post*, Aug. 24, 2024, https://www.washingtonpost.com/opinions/2024/08/28/trump-impoundment-congressional-spending/; Daniel Schuman, The Trump Administration's Plan to Seize Control of Spending, *The American Prospect*, July 19, 2024, https://prospect.org/politics/2024-07-19-trump-administrations-plan-control-spending/; Catherine Rampell, Trump telegraphs plans to neuter Congress, this time by seizing spending, *Washington Post*, June 11, 2024, https://www.washingtonpost.com/opinions/2024/06/11/trump-impoundment-congress-spending/; Beth Reinhard, Trump loyalist pushes 'post-Constitutional' vision for second term, *Washington Post*, June 8, 2024, https://www.washingtonpost.com/politics/2024/06/08/russ-vought-trump-second-term-radical-constitutional/; Paul M. Krawzak, Trump says he'll restore presidential impoundment authority, *Roll Call*, June 20, 2023, https://rollcall.com/2023/06/20/trump-says-hell-restore-presidential-impoundment-authority/.