CREW
CITIZENS FOR RESPONSIBILITY & ETHICS IN WASHINGTON

January 19, 2022

Sent via FOIAonline.gov portal

National FOIA Office
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") makes this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and Environmental Protection Agency ("EPA") regulations at 5 C.F.R. part 2604.

Specifically, CREW requests all communications to and from former EPA Administrator Andrew Wheeler from January 5, 2021 to January 20, 2021 regarding the January 6, 2021 attack on the U.S. Capitol. This request includes, but is not limited to, then-Administrator Wheeler's email to EPA staff on January 7, 2021 regarding the attack.

The above request excludes agency records consisting solely of news articles, press clippings, and other publicly-available material, if 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 email or other records and anyone who was cc'd or bcc'd 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 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).

1[redacted]
info@citizensforethics.org 202.408.5565

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation is reasonably foreseeable, the agency should institute an agency wide-preservation hold on 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* 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).

On January 6, 2021, a violent mob of supporters of President Donald Trump supporters stormed the U.S. Capitol Building to prevent Congress from counting electoral votes for the 2020 election, leading to five deaths, numerous injuries, defacement of government property, and removal of sensitive government records. Many members of the mob first attended a rally at the Ellipse, then marched past EPA headquarters on their way to the Capitol. The next day, Wheeler addressed the attack in an email sent to EPA staffers.[1] In the email Wheeler reportedly expressed that he was "completely disgusted" with the prior day's events and further stated "[t]here is no place for violence in settling political disputes," though he did not name President Trump directly.[2] In contrast to many other senior Trump Administration officials who publicly condemned President Trump's incitement of the riot and resigned in protest, Wheeler made no public statement about President Trump's incitement and told EPA staff that he intended to remain in his post until "January 20th in order to provide as smooth a transition for the Agency as possible."[3]

Wheeler's communications before and during January 6 will shed light on his conduct and EPA's operations as the events unfolded, including any preparation for the rally and steps Wheeler took to protect EPA headquarters. The requested records also will provide the public information about Wheeler's conduct in the aftermath of January 6, including his decisions not to make any public statement about the events and President Trump, and to stay on as Administrator through the end of the Trump Administration.

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

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[1] Abby Smith, EPA chief 'disgusted' by Capitol riots but doesn't criticize Trump, *Washington Examiner*, Jan. 7, 2021, https://www.washingtonexaminer.com/policy/energy/epa-chief-disgusted-riots-doesnt-criticize-trump; *see also* Chris D'Angelo and Alexander C. Kaufman, Days After the Riot, It's Business As Usual At Trump's Environment Agencies, *HuffPost*, Jan. 11, 2021, https://www.huffpost.com/entry/trump-riot-cabinet-interior-epa_n_5ffcb6d2c5b691806c4b7f75.

[2] *Id.*

[3] *Id.*

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 fully satisfies 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 [redacted] 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 records to me at [redacted] or Adam Rappaport, Citizens for Responsibility and Ethics in Washington, [redacted] Thank you for your assistance in this matter.

Sincerely,

Adam Rappaport