

CREW | citizens for responsibility and ethics in washington

February 6, 2017

BY EMAIL: dni-foia@dni.gov

Jennifer Hudson
Director, Information Management Office
Office of the Director of National Intelligence
Washington, D.C. 20511

Re: Expedited Freedom of Information Act Request

Dear Ms. Hudson:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this expedited request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Office of the Director of National Intelligence (“ODNI”) regulations.

Specifically CREW requests copies of all communications from January 1, 2017 to the present sent to or from anyone within the Executive Office of the President and/or anyone acting on behalf of the Executive Office of the President including, but not limited to, anyone on the Trump transition team, to or from the State Department concerning the president’s executive order, issued on January 27, 2017, “Protecting the Nation From Foreign Terrorist Entry Into the United States.” This request includes both written and electronic communications, including but not limited to email communications using the domain EOP.gov.

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.

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). In the event 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).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and ODNI 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).

As has been widely reported, on January 27, 2017, President Trump issued an executive order barring baring entrants from seven countries with majority Muslim populations for 90 days and suspending for 120 days all refugee admissions. Implementation of the order provoked widespread international and domestic opposition, including a number of lawsuits challenging the order as unlawful and unconstitutional. International travelers at airports throughout the country faced mass confusion, and senior administration officials presented incomplete and often contradictory interpretations of the order's meaning and scope.¹ Reportedly the order was developed by the White House policy team, and at least career staff at DHS did not see the order's final details until Friday.² On January 31, 2017, President Donald Trump fired Acting Attorney General Sally Q. Yates after she announced publicly the Department of Justice would not defend the executive order unless and until she became convinced it was lawful.³ That same evening, President Trump replaced the acting director of U.S. Immigration and Customs Enforcement ("ICE").⁴

The requested records would shed light on the role, if any, ODNI played in the White House's development of the immigration travel ban and the extent to which State was provided an opportunity to review and weigh in on the executive order before President Trump issued it. Given the extensive news reporting suggesting the relevant agencies were largely left in the dark any information about how the order was vetted could help alleviate widespread concerns that the order was hastily drafted without sufficient consideration of its legal and practical ramifications.

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

¹ *See, e.g.,* Jenna Johnson, Unnamed White House Official on Implementing Travel Ban: 'It Really is a Massive Success Story.' *Washington Post*, Jan. 29, 2017 (available at https://www.washingtonpost.com/news/post-politics/wp/2017/01/29/unnamed-white-house-official-on-implementing-travel-ban-it-really-is-a-massive-success-story/?hpid=hp_rhp-top-table-main_pp-whbrief-1135pm%3Ahomepage%2Fstory&utm_term=.894c8cb3f632).

² Evan Perez, Pamela Brown and Kevin Liptak, Inside the Confusion of the Trump Executive Order and Travel Ban, *CNN*, Jan. 30, 2017 (available at cnn.com/2017/01/28/politics/donald-trump-ban/).

³ Read the Full White House Statement on Sally Yates, *Boston Globe* (Jan. 31, 2017) (available at <https://www.bostonglobe.com/news/politics/2017/01/30/read-full-white-house-statement-sally-yates/HkFReIYJidU9deDelPK6SM/story.html>).

⁴ Press Release, Department of Homeland Security, "Statement From Secretary Kelly on the President's Appointment of Thomas D. Homan as Acting ICE Director," Jan. 30, 2017 (available at <https://www.dhs.gov/news/2017/01/30/statement-secretary-kelly-presidents-appointment-thomas-d-homan-acting-ice-director>).

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, and through www.scribd.com. 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"). Courts have deemed other non-profit organizations with functions and missions comparable to CREW's "representatives of the news media." *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.D.C. 2015); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (self-described "public interest law firm" qualified as a news media requester).

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes 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. In addition, CREW posts all of the documents it receives under the FOIA at www.scribd.com, and those documents have been visited hundreds of thousands of times.

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

Request for Expedition

CREW also requests expedition of this request pursuant to 32 C.F.R. § 1700.12 given the urgency to inform the public about actual or alleged activity. As outlined above, CREW is an entity engaged primarily in publicizing information in order to inform the public. As also discussed above, the requested records seek to inform the public about the extent to which ODNI has been consulted on the meaning, scope, and implementation of the executive order, a matter of grave concern given the serious and persistent questions that have been raised publicly about the order's legality and effectiveness. The requested information is urgently needed because it has a particular value that will be lost if not distributed quickly given that it concerns a breaking news story related to the intense national and international turmoil caused by President Trump's immigration executive order.

I certify that the foregoing is true and correct to the best of my knowledge and belief.

Based on the foregoing, CREW satisfies the requirements for expedited processing of this request.

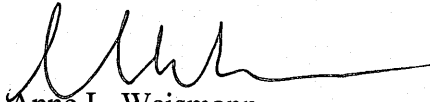
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Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. 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 either at aweismann@citizensforethics.org or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., 6th Floor, Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,


Anne L. Weismann
Chief FOIA Counsel