

October 13, 2017

BY FACSIMILE: (877) 807-9215

IRS FOIA Request
HQ FOIA
Stop 211
P.O. Box 621506
Atlanta, GA 30362-3006

Re: Freedom of Information Act Request

Dear Sir or Madam:

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, *et seq.*, and Internal Revenue Service (“IRS”) regulations, 26 C.F.R. § 601.702.

Specifically, CREW requests any communications from January 1, 2010 to the present regarding Rule 179D between IRS officials and representatives, lobbyists or executives of the Houston, Texas-based tax consultancy firm, Alliantgroup. This request includes, but is not limited to, all copies of communications from January 1, 2010 to the present on Rule 179D between current IRS employees and former agency and government officials who are now employed with Alliantgroup, including: (1) former IRS Commissioners Mark Everson and Steve Miller; (2) former commissioner of the small business and self-employed division, Kathy Petroncak; (3) former senior counsel to the U.S. Senate Committee on Finance, Dean Zerbe; and (4) former congressmen Jim Ramstad, Kit Bond, Bob Riley, Mike Johanns, and Rick Lazio. This request also includes, but is not limited to, all communications about 179D from January 1, 2010 to the present between the IRS and Alliantgroup CEO Dhaval Javad, the firm’s director of tax controversy John Dies and its managing director of energy credits and incentives, Linda McCluskey. Finally, CREW requests any drafts of rules or guidance the IRS has considered or issued regarding the Rule 179D program. CREW asks for policy material that is non-privileged and unrelated to any returns, audits or examinations of any specific taxpayer.

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, as well as those who were 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). 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).

Finally, CREW welcomes the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the IRS to process it within the FOIA's deadlines. John Morgan is handling this matter and can be reached at (202) 408-5565 or jmorgan@citizensforethics.org.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 26 C.F.R. § 601.702(f)(2), 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 will likely contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request primarily and fundamentally is for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii). See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

IRS Rule 179D allows certain taxpayers to take a federal deduction on new or retro-fitted building projects that include specific energy-efficient features.¹ Government entities such as universities, school districts and municipal agencies that are tax-exempt are permitted to allocate their deduction to the contractor or engineering firm that built the energy-efficient features in exchange for a fee or something of fair value.² Alliantgroup specializes in helping small and medium-sized companies obtain federal and state tax deductions, credits, and incentives.³ The firm has been especially active in pursuing deductions under Rule 179D.

The requested records are likely to contribute to the public's understanding of how the IRS has dealt with issues pertaining to Rule 179D, and whether its relationship with Alliantgroup has affected how the IRS crafted policy on Rule 179D. According to recent lawsuits and media reports, Alliantgroup has cost taxpayers millions of dollars in lost revenue by aggressively pushing public employees to improperly allocate deductions to their clients. The firm has

¹ See the Department of Energy's webpage, [179D Commercial Buildings Energy Efficiency Tax Deduction available at https://energy.gov/eere/buildings/179d-commercial-buildings-energy-efficiency-tax-deduction](https://energy.gov/eere/buildings/179d-commercial-buildings-energy-efficiency-tax-deduction).

² Jason Clayworth and Jason Noble, [Tax deduction for nothing? Companies write off millions; taxpayers reap little benefit](http://www.desmoinesregister.com/story/news/investigations/2017/10/06/tax-deduction-nothing-private-companifederal-energy-efficiency-break-often-yields-no-taxpayer-benefi/456708001/), *Des Moines Register*, October 6, 2017 available at <http://www.desmoinesregister.com/story/news/investigations/2017/10/06/tax-deduction-nothing-private-companifederal-energy-efficiency-break-often-yields-no-taxpayer-benefi/456708001/>.

³ See Alliantgroup's website available at <https://www.alliantgroup.com/index.php/about-us/our-mission/>.

pressured unauthorized employees to sign off on the allocation and in some cases leaned on government entities to assign the deduction to businesses that do not qualify under the law.⁴ For example, an August lawsuit filed by the University of Houston and University of Texas systems alleges that Alliantgroup engaged in fraud by obtaining signatures from unauthorized employees and misleading school officials about deduction amounts.⁵ It is possible that the problem may not be confined to Texas and may be widespread throughout the country.

Alliantgroup touts the federal government expertise of its employees. On its website, the company boasts a “Government Relations Department” that is “fully devoted to securing the allocation letter for our clients.”⁶ The requested records will show if Alliantgroup has had undue influence over the IRS on matters relating to Rule 179D. It will also reveal the nature of the relationship between the agency and a firm it is tasked with regulating.

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 is dedicated to empowering citizens to have an influential voice in government decisions and in the government decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW’s financial interest. CREW will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org, which also includes links to thousands of pages of documents CREW acquired through its multiple FOIA requests as well as documents related to CREW’s litigation and agency complaints.

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

News Media Fee Waiver Request

CREW also asks that it not be charged search or review fees for this request because CREW qualifies as a “representative of the news media” pursuant to the FOIA. In *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for

⁴ See J. Clayworth and J. Noble, *Des Moines Register*, Oct. 6, 2017 and Craig Malislow, [Texas University Systems Sue Alliantgroup for Alleged Racketeering](http://www.houstonpress.com/news/alliantgroup-accused-of-fraud-in-new-lawsuits-9751424), *Houston Press*, September 5, 2017 available at <http://www.houstonpress.com/news/alliantgroup-accused-of-fraud-in-new-lawsuits-9751424> and Jason Clayworth and Jason Noble, [Ex-Grassley aide helps his firm makes millions on tax deduction he shepherded in Congress](http://www.desmoinesregister.com/story/news/investigations/2017/10/06/ex-grassley-aide-helps-houston-business-reap-massive-profits-tax-deduction-he-shepherded-through-con/708151001/), *Des Moines Register*, October 6, 2017 available at <http://www.desmoinesregister.com/story/news/investigations/2017/10/06/ex-grassley-aide-helps-houston-business-reap-massive-profits-tax-deduction-he-shepherded-through-con/708151001/>.

⁵ See C. Malislow, *Houston Press*, Sept. 5, 2017 and Michael Casady, [Texas Universities Say Alliantgroup Schemed for Tax Credits](https://www.law360.com/articles/957270/texas-universities-say-alliantgroup-schemed-for-tax-credits), *Law 360*, August 24, 2017 available at <https://www.law360.com/articles/957270/texas-universities-say-alliantgroup-schemed-for-tax-credits>.

⁶ See Alliantgroup’s website available at <https://www.alliantgroup.com/index.php/services/energy-efficient-commercial-building-deduction-179d/>.

the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.*

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 the documents it receives under the FOIA on its website, which has been visited hundreds of thousands of times.

Based on these extensive publication activities, CREW qualifies for a fee waiver as a "representative of the news media" under the FOIA and agency regulations.

Conclusion

If you have any questions about this request or foresee any problems in releasing fully the requested records please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination. Please send the requested records to John Morgan, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001.

Sincerely,

John Morgan