

March 19, 2018

BY EMAIL: OMBFOIA@omb.eop.gov

Dionne Hardy
FOIA Officer
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Re: Expedited Freedom of Information Act Request

Dear Ms. Hardy:

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 Management and Budget ("OMB") regulations.

Specifically, CREW requests copies of all nondisclosure agreements signed by any OMB official from January 20, 2017 to the present, and any communications from January 20, 2017 to the present concerning these agreements with anyone whose email address includes the EOP.gov. domain.

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).

Fee Waiver Request

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

It was recently reported that early in the Trump administration, senior White House officials were pressed to sign nondisclosure agreements barring them from revealing non-public information and subjecting them to damages for any violation of the agreements.¹ Many have questioned the legality and enforceability of these agreements,² suggesting efforts to enforce them would violate the First Amendment. The requested records will shed light on whether any officials at OMB signed these agreements and the terms of the agreement – information that is critical for the public to evaluate their lawfulness. The public interest in the ethical behavior of all public servants is at an apex when the officials in question hold positions within the Executive Office of the President.

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"). 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*,

¹ Ruth Marcus, *Trump Had Senior Staff Sign Nondisclosure Agreements. They're Supposed to Last Beyond his Presidency*, *Washington Post*, Mar. 18, 2018, available at https://www.washingtonpost.com/opinions/trumps-nondisclosure-agreements-came-with-him-to-the-white-house/2018/03/18/226f4522-29ee-11e8-b79d-f3d931db7f68_story.html?utm_term=.b1a41d6b7cbf.

² Shane Croucher, *Trump Wanted White House Staff to Illegally Sign Agreements in his War on Leaks*, *Newsweek*, Mar. 19, 2018, available at <http://www.newsweek.com/trump-wanted-white-house-staff-sign-non-disclosure-agreements-his-war-leaks-850527>.

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 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. In addition, CREW posts the documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

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

Expedition Request

Pursuant to 5 C.F.R. § 1303.10(d)(1)(ii), CREW requests that this request be expedited because of the urgency to inform the American public about a matter of current exigency. The revelation that the Trump administration made the unprecedented demand that top White House officials sign nondisclosure agreements has generated considerable public outrage and concern that such efforts to silence public officials violate the Constitution. The public has an urgent need for information about the scope and terms of these agreements. Currently, President Trump and his campaign are under criminal investigation. Efforts to silence officials with knowledge relevant to that investigation through nondisclosure agreements would raise serious questions about whether the agreements are being used to obstruct the investigation.

As set forth above, CREW is primarily engaged in disseminating information and therefore meets the expedition requirements of 5 C.F.R. § 1303.10(d)(1).

I, the undersigned, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on March 19, 2018.

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

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Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C.
20001. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anne L. Weismann', with a long horizontal flourish extending to the right.

Anne L. Weismann
Chief FOIA Counsel