

July 10, 2018

Federal Election Commission
Attn: FOIA Requester Service Center
1050 First Street, NE
Washington, D.C. 20463

Via email (FOIA@fec.gov)

Re: Freedom of Information Act Request

Dear Sir or Madam:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records from the Federal Election Commission (“FEC”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, *et seq.*, and FEC regulations, 11 C.F.R. Part 4.

CREW requests:

1. All documents related to or regarding the enforcement of the conciliation agreement between the FEC and 60 Plus Association (“60 Plus”). The relevant conciliation agreement was entered into on July 6, 2016, in resolution of MUR 6816, and a copy of the agreement is available at <http://bit.ly/2A8HxvH> (hereinafter “Conciliation Agreement”).
2. All documents evidencing payments by 60 Plus to the FEC in satisfaction of the \$50,000.00 fine that 60 Plus agreed to pay the FEC pursuant to the Conciliation Agreement.

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 materials. 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 emails to which the subjects of this request were cc’ed or bcc’ed.

If it is your position that 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), *cert. denied*, 415 U.S. 977 (1974). 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. *Mead Data Central Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Please note that as records of a closed investigation, the requested documents are not subject to confidentiality under the Federal Election Campaign Act. *See* 52 U.S.C. § 30109(a)(12) (providing for confidentiality regarding ongoing investigations).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii), 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 is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii); *see also, e.g., McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

These records are likely to contribute to greater public awareness of the FEC's conciliation agreement enforcement process and the extent to which the FEC knowingly fails to pursue unpaid fines. Such information is relevant and timely, given that a recent news report indicates that more than 160 political committees and similar groups collectively owe the FEC more than \$1.3 million in unpaid fines. *See* Dave Levinthal, [Scofflaw Political Groups Are Ignoring FEC Fines](http://politi.co/2iJOXhX), *Politico Magazine*, Oct. 30, 2017, available at <http://politi.co/2iJOXhX>. 60 Plus is one such group.

On May 7, 2014, CREW filed a complaint with the FEC against 60 Plus, among others, alleging that 60 Plus violated the Federal Election Campaign Act ("FECA"). *See In the matter of American Future Fund, et al.*, Complaint, MUR 6816 (May 7, 2014) available at <http://bit.ly/2A9bXxS>. CREW's complaint asserted that 60 Plus, among other entities, knowingly and willfully failed to identify Center to Protect Patient Rights ("CPPR") or any other persons or entities that made contributions to further 60 Plus's independent expenditures and electioneering communications targeting House races in 2010. Following an investigation, the FEC found there was reason to believe that 60 Plus, among other entities, violated 52 U.S.C. § 30104(c)(2)(C) and (f)(2) and 11 C.F.R. §§ 109.10(e)(1)(vi) and 104.20(c)(9) by failing to disclose CPPR as a donor in its independent expenditures and electioneering communications. 60 Plus then chose to enter into a conciliation agreement with the FEC, which its president, Amy Frederick, signed on the organization's behalf. In this agreement, 60 Plus pledged to, among other things, pay a civil penalty to the FEC in the amount of \$50,000 within 90 days from the effective date of the conciliation agreement. The deadline for 60 Plus to fulfill the terms of the Conciliation Agreement, including payment of the \$50,000 fine to the FEC, has now passed.

60 Plus does not appear to have satisfied its obligation to pay the fine required by the Conciliation Agreement. A review of the FEC's Enforcement Query System for MUR 6816 reflects only a single payment from 60 Plus in the amount of \$5,000, dated October 7, 2016. *See* Civil Penalties, MUR 6816 (Oct. 7, 2016), available at <http://bit.ly/2yU6U02>. Furthermore, public statements by 60 Plus Chairman Jim Martin indicate that 60 Plus has no plans to come

into voluntary compliance with the Conciliation Agreement. In a news report, Mr. Martin publicly confirmed that 60 Plus paid only \$5,000 of the \$50,000 fine and has “decided to contest” payment of the remainder of the fine “on the advice of counsel.” *See* Levinthal, *Politico Magazine*, Oct. 30, 2017. Accordingly, 60 Plus is a prime example of a group that, having entered into a lawful conciliation agreement with the FEC, flagrantly and publicly failed to abide by the terms of that agreement. The requested records will further public understanding of the steps the FEC takes to enforce the terms of conciliations agreements such as this one.

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 and to ensuring the integrity of those officials. 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 at no charge 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.

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

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

Conclusion

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 FEC to process it within the FOIA’s deadlines. 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 determination. If possible, please send the requested records to me electronically at

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lbeckerman@citizensforethics.org. If that is not possible, please send the requested records to Laura Beckerman, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Avenue, N.W., Washington, D.C. 20001.

Sincerely,

Laura Beckerman
Counsel