

July 11, 2018

BY EMAIL: FOIA@ustr.eop.gov

FOIA Office
Office of the US Trade Representative
Anacostia Naval Annex, Building 410/Door 123
250 Murray Lane SW
Washington DC 20509

Re: Expedited Freedom of Information Act Request

Dear FOIA Office:

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 U.S. Trade Representative (“USTR”) regulations.

First, CREW requests from the Office of the Trade Representative all communications from January 1, 2018 to the present from or to anyone acting on behalf of The Russell Group, Inc. including, but not limited to: (1) Randy Russell; (2) Tyson Redpath; (3) Andrew Harker; and/or (4) Karla Thieman concerning a resolution proposed at the World Health Assembly this spring to encourage breast-feeding.

Second, CREW requests from the Office of the Trade Representative all communications from January 1, 2018 to the present from or to anyone acting on behalf of Nestlé USA, Inc. including, but not limited to: (1) Nicole Collier; (2) Kelsey Freeman; (3) Molly Fogarty; (4) Kent Wilson; (5) Randy Green; and/or (6) Louise Hilsen concerning a resolution proposed at the World Health Assembly this spring to encourage breast-feeding.

Third, CREW requests from the Office of the Trade Representative all communications from January 1, 2018 to the present from or to anyone acting on behalf of the National Milk Producers Foundation including, but not limited to: (1) Paul Bleiberg; (2) Shawna Morris; (3) Randy Green; and/or (4) P. Welles Orr concerning a resolution proposed at the World Health Assembly this spring to encourage breast-feeding.

Fourth, CREW requests from the Office of the Trade Representative all communications from January 1, 2018 to the present from or to anyone acting on behalf of the International Dairy Foods Association including, but not limited to: (1) Dave Carlin; (2) Anthony Eberhard; (3) Donald Grady; and/or (4) Beth Hughes concerning a resolution proposed at the World Health Assembly this spring to encourage breast-feeding.

Fifth, CREW requests from the Office of the Trade Representative all communications from January 1, 2018 to the present from or to anyone acting on behalf of Abbott Laboratories

including, but not limited to: (1) Thomas Evers; (2) Rosemary Haas; (3) Jason Groves; (4) Anne Devlin; (5) Seth Radus; and/or (6) Michael Barry concerning a resolution proposed at the World Health Assembly this spring to encourage breast-feeding.

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

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 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 USTR 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).

The *New York Times* recently reported that this past spring during a meeting of the World Health Assembly, the U.S. delegation attempted to water down a resolution encouraging breast-feeding.¹ Reportedly, in their efforts to advance the interests of infant formula manufacturers, American officials went so far as to threaten Ecuador with retaliatory trade measures and the withdrawal of military aid if the country did not drop its planned introduction of the resolution.² HHS was identified as “the lead agency in the effort to modify the resolution[.]”³ The U.S. position is a radical departure from our past support for a policy that encourages breast-feeding and reportedly “stunned public health officials and foreign delegates[.]”⁴ Recent reporting from

¹ Andrew Jacobs, *U.S. Opposition to Breast-Feeding Resolution Stuns World Health Officials*, *New York Times*, July 8, 2018, available at <https://www.nytimes.com/2018/07/08/health/world-health-breastfeeding-ecuador-trump.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news>.

² *Id.*

³ *Id.*

⁴ *Id.*

The Atlantic also notes that a representative from Nestlé spoke out against the resolution at an HHS listening session prior to the World Health Assembly, and that dairy interest groups at the listening session also issued prepared remarks opposing the World Health Assembly guidance on infant nutrition.⁵

The requested records would shed light on the extent to which the opposition of the U.S. to a resolution that aligns with extensive science-based evidence of the benefits of breast-feeding resulted from lobbying efforts of infant formula manufacturers. That public interest is heightened by a recent tweet from President Trump labelling the *New York Times* story “Fake News.”⁶ The requested records are likely to reveal whether the President is correct that this is nothing more than “fake news,” or conversely whether the multiple-sourced *New York Times* article accurately describes the actions and position of the U.S. delegation.

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”). The records could help alleviate widespread concerns that President Trump’s family separation and zero tolerance policies were hastily drafted without sufficient consideration of their practical ramifications.

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

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

Request for Expedition

⁵ Olga Khazan, [The Epic Battle Between Breast Milk and Infant-Formula Companies](https://www.theatlantic.com/health/archive/2018/07/the-epic-battle-between-breast-milk-and-infant-formula-companies/564782/), *The Atlantic*, July 10, 2018, available at <https://www.theatlantic.com/health/archive/2018/07/the-epic-battle-between-breast-milk-and-infant-formula-companies/564782/>.

⁶ <https://twitter.com/realDonaldTrump/status/1016367395294908421>.

CREW, as an organization engaged primarily in disseminating information to the public, also requests expedition of this request because of the urgent need to inform the public about an actual federal government activity. Moreover, the subject is of widespread and exceptional media interest and raises questions about the government's integrity that affect public confidence. The revelation that USTR may have opposed an international effort to promote breast-feeding despite the scientific evidence and strong policy reasons supporting that effort in order to advance the financial interests of baby formula manufacturers raises a serious question about whether this radical change in policy position was the result of lobbying efforts by manufacturers of infant formula.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records on an expedited basis, please contact me at (202) 408-0687 or elee@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 elee@citizensforethics.org or at Eli Lee, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Eli Lee
Research Associate