

August 7, 2018

**BY FACSIMILE: (301) 837-0293**

FOIA Officer  
National Archives and Records Administration  
8601 Adelphi Road, Room 3110  
College Park, MD 20740

Re: Freedom of Information Act Request

Dear FOIA Officer:

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, and National Archives and Records Administration (“NARA”) regulations.

First, CREW requests copies of all communications between any member of Congress or congressional committee or subcommittee or their staff and NARA pertaining to the Clinton presidential records of now-Justice Elena Kagan during her tenure as Associate Counsel and as Deputy Director of the Domestic Policy Council for President Bill Clinton.

Second, CREW requests copies of all communications between any member of Congress or congressional committee or subcommittee or their staff and NARA pertaining to the Bush presidential records of now-Court of Appeals Judge Brett Kavanaugh during his tenure in the White House Counsel’s Office and as Staff Secretary for President George W. Bush.

Third, CREW requests copies of all internal NARA guidance, whether formal or informal, regarding special requests for access to presidential records pursuant to the Presidential Records Act, 44 U.S.C. § 2205.

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 NARA 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).

Congressional and public access to presidential records related to Supreme Court nominees has been a controversial issue for several nominees. Currently, there is a dispute regarding access to records from Supreme Court nominee Brett Kavanaugh's tenure in the Bush White House.<sup>1</sup> Records managed by NARA are central to this debate, with Democrats appealing to the Archivist for access to all documents pertaining to Judge Kavanaugh,<sup>2</sup> and claims that the Senate is not being provided access to the same range of documents concerning Judge Kavanaugh that it was regarding Elena Kagan during her confirmation process.<sup>3</sup> As part of this controversy, some members of the Senate Judiciary Committee have raised questions about the role the Archivist is playing and whether it is consistent with his duties as spelled out in the Presidential Records Act.<sup>4</sup> The requested records will help answer these questions and assist the public in evaluating the merits of the controversy and NARA's role in it.

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,

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<sup>1</sup> Lisa Mascaro, *Democrats Ramp Up Fight for Kavanaugh Documents*, *Washington Post*, July 31, 2018, available at [https://www.washingtonpost.com/politics/whitehouse/democrats-ramp-up-fight-for-kavanaugh-documents/2018/07/31/3a008b00-9501-11e8-818b-e9b7348cd87d\\_story.html?utm\\_term=.f83891ec8d38](https://www.washingtonpost.com/politics/whitehouse/democrats-ramp-up-fight-for-kavanaugh-documents/2018/07/31/3a008b00-9501-11e8-818b-e9b7348cd87d_story.html?utm_term=.f83891ec8d38).

<sup>2</sup> *Id.*

<sup>3</sup> Norman Eisen and Caroline Fredrickson, *Opinion: Kavanaugh Could Decide Trump's Fate. Why Are Republicans Holding Back Records that Matter?*, *USA Today*, Aug. 1, 2018, available at <https://www.usatoday.com/story/opinion/2018/08/01/would-kavanaugh-check-trump-abuses-review-all-documents-column/870976002/>.

<sup>4</sup> *See, e.g.,* Letter from Dianne Feinstein, Ranking Member, Committee on the Judiciary to David S. Ferriero, Archivist of the United States, July 21, 2018, available at [https://www.feinstein.senate.gov/public/\\_cache/files/4/3/43ba2850-d565-439a-9338-daa967a0ee9b/C1C2236B309C897979CC7A6CDB197582.2018.07.21-df-to-nara-re-kavanaugh-records.pdf](https://www.feinstein.senate.gov/public/_cache/files/4/3/43ba2850-d565-439a-9338-daa967a0ee9b/C1C2236B309C897979CC7A6CDB197582.2018.07.21-df-to-nara-re-kavanaugh-records.pdf).



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or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://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").

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.

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

### **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](mailto: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](mailto:aweismann@citizensforethics.org) or at Anne L. Weismann, 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,



Anne L. Weismann  
Chief FOIA Counsel