

September 10, 2018

**BY EMAIL: [ost.foia@dot.gov](mailto:ost.foia@dot.gov)**

Kathy Ray  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
W94-122  
Washington, D.C. 20590

**Re: Freedom of Information Act Request**

Dear Ms. Ray:

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 U.S. Department of Transportation regulations.

First, CREW requests copies of records sufficient to show all travel taken or planned by all presidentially-appointed Senate confirmed (“PAS”) officials in the Transportation Department to any event attended by a sitting member of the United States House of Representatives in that member’s district between May 1, 2018 through November 6, 2018.

Second, CREW requests copies of records sufficient to show all the political events to which PAS officials in the Transportation Department traveled from January 20, 2017 to the present, identifying the event, agency participants, and the costs of each trip.

Third, CREW requests copies of records sufficient to show all the political events PAS officials in the Transportation Department are scheduled to attend in 2018, including but not limited to those events expected to have mixed travel, *i.e.*, travel for official and political purposes, identifying the event, agency participants, and anticipated costs of each scheduled trip.

Fourth, CREW requests copies of records sufficient to show the formula the Transportation Department uses to apportion costs incurred during travel that has both official and political components.

Fifth, CREW requests copies of all records concerning how the Transportation Department ensures compliance with the Hatch Act’s restrictions on political travel.

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).

I note this request seeks many of the same documents sought in July 2016 by the House Oversight and Government Reform Committee from a number of executive branch agencies, including the Defense Department.<sup>1</sup>

### **Fee Waiver Request**

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

On August 21, 2018, senior White House aides reportedly revealed in a call with reporters that various “official” government events attended by President Trump and senior administration officials have been part of a coordinated effort “to help Republicans in the coming midterm elections.”<sup>2</sup> According to an unnamed White House official, “the president’s Cabinet and senior staff have done 35 events with or affecting House districts in August already.”<sup>3</sup> These events purported were official government events that presumably were paid for with government funds.

These trips implicate the Hatch Act, which prohibits nearly every executive branch official from using their “official authority or influence for the purpose of interfering with or

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<sup>1</sup> That request is available at <https://oversight.house.gov/release/committee-requests-information-hatch-act-compliance/>.

<sup>2</sup> S.V. Date, *White House Admits Trump Is Using Official Events for Midterm Campaigning*, *Huffington Post*, Aug. 22, 2018, available at [https://www.huffingtonpost.com/entry/trump-official-campaign\\_us\\_5b7c896ce4b07295150dc45d](https://www.huffingtonpost.com/entry/trump-official-campaign_us_5b7c896ce4b07295150dc45d).

<sup>3</sup> *Id.*



affecting the result of an election.”<sup>4</sup> In cases involving mixed travel – travel that includes attendance at both official and political events during the same trip – the law requires the costs be properly apportioned between the federal government and the relevant political organization or candidate to ensure that the federal government is appropriately reimbursed for taxpayer funds expended for political events.<sup>5</sup> The requested records would shed light on whether PAS officials at the Transportation Department, including Secretary Chao, incurred expenses for mixed travel and how the agency handled those expenses, as well as the policies in place to ensure full compliance with the Hatch Act.

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

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).

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<sup>4</sup> 5 U.S.C. § 7323(a)(1).

<sup>5</sup> *See* U.S. Office of Special Counsel, OSC Advisory Regarding Mixed Travel by Presidentially-Appointed/Senate Confirmed (PAS) Employees (Oct. 6, 2011); 5 U.S.C. § 7324(b); 5 C.F.R. § 734.503.

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Also, if CREW's request for expedition and/or 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 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