

October 12, 2018

**BY EMAIL:** [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

Jonathan Cantor  
Acting Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murry Lane SW  
STOP-0655  
Washington, D.C. 20528-0655

Re: Freedom of Information Act Request

Dear Mr. Cantor:

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 Homeland Security (“DHS”) regulations.

Specifically, CREW requests all documents reflecting currently operative policies, procedures, protocols, or directives concerning DHS’s records management program. This request includes without limitation (a) the “Policy & Procedures” publication referenced in Section 6 of DHS Records Management Directive 0550.1; and (b) all records management policies, procedures, protocols, or directives applicable to U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement.

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.

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 DHS 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).

In April 2018, the Trump Administration announced a new “Zero Tolerance” immigration enforcement policy, requiring that all improper entry offenses be referred for criminal prosecution to the extent possible. As the DHS Office of Inspector General (“OIG”) has noted, this policy “fundamentally changed DHS’ approach to immigration enforcement.”<sup>1</sup> Specifically, “[b]ecause minor children cannot be held in criminal custody with an adult, alien adults who entered the United States illegally would have to be separated from any accompanying minor children when the adults were referred for criminal prosecution.”<sup>2</sup> The children were then held in “DHS custody until they could be transferred to the [HHS] Office of Refugee Resettlement.”<sup>3</sup>

The fallout from the Zero Tolerance Policy was catastrophic, resulting in thousands of children being ripped from their parents. Following massive public outcry, President Trump halted the family separations by Executive Order issued June 20, 2018. On June 26, 2018, a federal court ordered the Government to reunify separated children and parents within 30 days—an order it has still not fulfilled.

On September 27, 2018, the DHS OIG issued a report titled Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy. The OIG found that “DHS was not fully prepared to implement the Administration’s Zero Tolerance Policy or to deal with some of its after-effects,” and that “DHS . . . struggled to identify, track, and reunify families separated under Zero Tolerance due to limitations with its information technology system.”<sup>4</sup> The OIG further noted that contrary to DHS’s public statements in June 2018 that it had a “central database” with location information for separated parents and

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<sup>1</sup> DHS OIG, Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, OIG-18-84, at 2 (Sept. 27, 2018), *available at* <https://bit.ly/2NhATFE>.

<sup>2</sup> *Id.* at 3.

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

<sup>4</sup> *Id.* at 1.

minors, “OIG found no evidence that such a database exists.”<sup>5</sup> The OIG also observed problems with DHS’s record management practices, noting that the agency took “many weeks” to provide OIG with data relating to alien family separations and unification, that the data DHS eventually supplied did not appear to be maintained “in a readily accessible format,” and that the data was “incomplete and inconsistent, raising questions about its reliability.”<sup>6</sup>

Concerns have also been raised about DHS’s possible destruction of records that could have been used to reunite hundreds of families.<sup>7</sup> Such conduct would plainly violate the Federal Records Act, if not other laws.

The requested records will shed light on serious deficiencies in DHS’s record management policies and practices—deficiencies which have had catastrophic consequences in connection with the agency’s implementation of the Zero Tolerance policy. As indicated by the widespread media coverage it has received, these are issues of intense public interest.

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

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<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *See* Letter from CREW to U.S. Archivist, July 6, 2017, available at <https://bit.ly/2IWqi2o>; Caitlin Dickerson, Trump Administration in Chaotic Scramble to Reunify Migrant Families, *New York Times*, July 6, 2018, available at <https://nyti.ms/2MU6hKG>; Michelle Mark, Customs agents reportedly deleted records that could have been used to reunite hundreds of immigrant families, *Insider*, July 6, 2018, available at <https://bit.ly/2A7QzYO>; Letter from Sen. Blumenthal et al. to DHS, July 30, 2018, available at <https://bit.ly/2LEb0DP>.

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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, and that site 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 [nsus@citizensforethics.org](mailto:nsus@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 at either [nsus@citizensforethics.org](mailto:nsus@citizensforethics.org) or Nikhel Sus, 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,



Nikhel Sus  
Staff Counsel