



December 4, 2018

By Facsimile:

Ken Hendricks
Clerk and Chief FOIA Officer
U.S. Office of Special Counsel
1730 M St., N.W. (Suite 218)
Washington, DC 20036-4505

Re: Freedom of Information Act Request

Dear Mr. Hendricks:

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. Office of Special Counsel (“OSC”) regulations.

First, CREW requests all records of communications, and all records of advice or opinions, regarding Trump Administration officials’ use of the term “MAGAnomics” and the application of the Hatch Act.

Second, CREW requests all records of communications between Henry Kerner, Ana Galindo-Marrone, Erica Hamrick, Louis Lopez, or Ellen Chubin Epstein and either the White House or the United States Congress between March 5, 2018 and November 30, 2018 regarding the decision to issue guidance, or the content of guidance, concerning the question of whether commenting on administration policies, impeachment, “the resistance”, or “#resist” constitutes political activity under the Hatch Act.

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. Your search, collection, and production should not exclude any category of material. Further, your search should include files

or emails in the personal custody of any agency officials that reflect or include official agency business.

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).

CREW intends to pursue all legal remedies to enforce its right under the FOIA to the requested documents. Accordingly, because litigation reasonably is foreseeable, DOJ should institute an agency-wide preservation hold on information potentially responsive to this request.

Fee Waiver Request

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

CREW has filed several complaints with the Office of Special Counsel regarding administration officials' use of official resources for partisan purposes. To date, OSC has found at least ten Trump Administration officials in violation of the Hatch Act. On November 30, 2018, OSC found six White House officials in violation of the Act, but also noted that four of CREW's prior complaints did not warrant violations. In one of the cases, involving Office of Management and Budget Director Mick Mulvaney, OSC explained:

OSC previously opined, however, that because the Trump Administration branded its economic plan with the name "MAGAnomics," OMB's continued use of the name was not for the purpose of affecting the result of an election but rather to further the Administration's economic agenda. See Letter from Erica S. Hamrick, Deputy Chief, Hatch Act Unit, U.S. Office of Special Counsel to Noah

Bookbinder, Executive Director, Citizens for Responsibility & Ethics in Washington (Nov. 30, 2018).

OSC does not appear to have made public any prior opinion regarding whether executive branch officials' use of the term "MAGAnomics" constitutes prohibited political activity under the Hatch Act. The requested documents will shed light on OSC's rationale for its policy regarding the use of "MAGAnomics" constitutes political activity.

Further, on November 27, 2018, three days prior to OSC's response to CREW's Hatch Act complaints, OSC issued guidance to executive branch employees addressing whether criticism or praise of administration policies, advocating for or against impeachment, or activity related to "the resistance" or "#resist" constitutes "political activity" under the Hatch Act. This guidance was not initially published on OSC's public website. Following public criticism and requests for OSC to withdraw this guidance, OSC issued a "clarification" that was published on the OSC website. The requested documents will shed light on OSC's rationale for its November 27, 2018 policy regarding the definition of "political activity" and who OSC consulted in reaching this opinion.

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").

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 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) 594-8579 or 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 Eden Tadesse at etadesse@citizensforethics.org or Eden Tadesse, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', with a stylized flourish at the end.

Anne L. Weismann
Chief FOIA Counsel