



**citizens for responsibility
and ethics in washington**

January 10, 2019

BY FACSIMILE: 571-372-0500

U.S. Department of Defense
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, D.C. 20301-1155

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

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. Department of Defense (“DOD”) regulations.

Specifically, CREW requests copies of all opinions written or received by DOD that discuss in any way the power of the president to invoke emergency powers to declare a national emergency including, but not limited to, the president’s power to invoke those powers to build a wall or other type of barrier along the U.S. border with Mexico.

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).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation reasonably is

foreseeable, GSA should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

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

President Donald Trump and his White House have suggested he may invoke emergency powers and declare a national emergency to bypass Congress' refusal to fund his wall along the Mexican border and to direct federal officials to go ahead and construct the wall.¹ Vice President Pence has stated publicly that the White House Counsel's Office is examining the president's ability to declare a national emergency to fund the border wall.² This has raised serious concerns that the president is considering actions of doubtful legality based on misstated facts and outright falsehoods to make an end-run around Congress' constitutional authority to make laws and appropriate funds. The requested records will shed light on the legality of the action the president is threatening and the extent to which he may be motivated to advance a political agenda rather than address a true need requiring the invocation of his emergency powers.

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)

¹ *See, e.g.,* Robert Costa and Philip Rucker, [Trump aides lay foundation for emergency order to build wall, saying border is in 'crisis.'](https://www.washingtonpost.com/politics/trump-lays-groundwork-for-national-emergency-as-officials-argue-border-is-in-crisis/2019/01/07/e0f9aa34-1299-11e9-b6ad-9cfd62dbb0a8_story.html?utm_term=.dceec7d07ada) *Washington Post*, Jan. 7, 2019, available at https://www.washingtonpost.com/politics/trump-lays-groundwork-for-national-emergency-as-officials-argue-border-is-in-crisis/2019/01/07/e0f9aa34-1299-11e9-b6ad-9cfd62dbb0a8_story.html?utm_term=.dceec7d07ada.

² Jim Acosta and Betsy Klein, [Pence says White House looking into Trump's ability to declare border emergency,](https://www.cnn.com/2019/01/07/politics/border-national-emergency-white-house-counsel/index.html) *CNN*, Jan. 7, 2019, available at <https://www.cnn.com/2019/01/07/politics/border-national-emergency-white-house-counsel/index.html>.

(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.

Request for Expedition

CREW seeks expedition because the subject matter of the request is of widespread and exceptional media interest and the requested information involves possible questions about the government’s integrity, which clearly affect public confidence. President Donald Trump and his White House have suggested he is considering invoking emergency powers to declare a national emergency so that he may bypass Congress’ refusal to fund his wall along the Mexican border and direct federal officials to go ahead and construct the wall.³ Vice President Pence has stated publicly that the White House Counsel’s Office is examining the president’s ability to declare a national emergency to fund the border wall.⁴ This has raised serious concerns that the president is considering actions of doubtful legality based on misstated facts and outright falsehoods to make an end-run around Congress’ constitutional authority to make laws and appropriate funds. The requested records will shed light on the legality of the action the president is threatening and the extent to which he may be motivated to advance a political agenda rather than address a true need requiring the invocation of his emergency powers. The public needs to have confidence that if the president takes the extraordinary step of invoking his emergency powers in this situation he is acting in the best interests of the nation and not for political gain.

CREW’s primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials. Toward that end, CREW uses statutes like the FOIA to gather information the public needs to hold public officials accountable. The request for which CREW seeks expedition will further those goals.

³ See, e.g., Robert Costa and Philip Rucker, Trump aides lay foundation for emergency order to build wall, saying border is in ‘crisis.’ *Washington Post*, Jan. 7, 2019, available at https://www.washingtonpost.com/politics/trump-lays-groundwork-for-national-emergency-as-officials-argue-border-is-in-crisis/2019/01/07/e0f9aa34-1299-11e9-b6ad-9cfd62dbb0a8_story.html?utm_term=.dccec7d07ada.

⁴ Jim Acosta and Betsy Klein, Pence says White House looking into Trump’s ability to declare border emergency, *CNN*, Jan. 7, 2019, available at <https://www.cnn.com/2019/01/07/politics/border-national-emergency-white-house-counsel/index.html>.

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) 408-5565 or aweismann@citizensforethics.org. 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 or Anne L. Weismann, 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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anne L. Weismann', with a stylized, cursive script.

Anne L. Weismann
Chief FOIA Counsel