

CREW | citizens for responsibility and ethics in washington

May 15, 2019

BY FACSIMILE: (540) 868-4391/4997

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

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 U.S. Department of the Justice (“DOJ”) regulations.

First, CREW requests copies of the non-disclosure agreement the FBI required Florida Governor Ron DeSantis to sign when he met with officials from the FBI and the U.S. Department of Homeland Security on May 10, 2019, to discuss a breach of election information in 2016 in at least one Florida county that was revealed in the report by Special Counsel Robert Mueller.

Second, CREW requests documents sufficient to identify the county or counties in Florida that had their election information breached in 2016.

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 DOJ 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).

It was just reported that last Friday, Governor DeSantis met with the FBI and the U.S. Department of Homeland Security following the revelation in the Mueller Report “that ‘at least one’ Florida county had its election information accessed by Russian hackers in 2016.”¹ At a subsequent press conference, Governor DeSantis revealed that while he had been briefed on the election breach by Russian hackers, he was not permitted to name the counties that had been breached because the FBI had required him to sign a non-disclosure agreement (“NDA”).² He indicated that but for that agreement, he would have been willing to identify the affected counties.³

The use by the federal government of non-disclosure agreements is highly unusual, of questionable legality, and contrary to public policy. Indeed, experts have suggested that Florida’s public records law makes NDAs non-enforceable.⁴ The FBI’s use of an NDA here is even more questionable given that it prevented the public and, in particular, citizens of Florida, from better understanding how efforts to breach their election systems could be thwarted in future elections. At a minimum, providing them with the identities of the affected counties will advance their interests and the interests of the public at large in understanding our election vulnerabilities and how they can be addressed for the 2020 election. The requested records also will shed light on the nature of the NDA Governor DeSantis was required to sign and may explain why its use was necessary.

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

¹ Emily L. Mahoney, [Ron DeSantis ‘not allowed’ to disclose which two Florida counties were hacked by Russians](https://www.tampabay.com/florida-politics/buzz/2019/05/14/which-florida-counties-had-election-hacks-russians-fbi-and-now-gov-ron-desantis-all-know-but-we-dont/), *Tampa Bay Times*, May 14, 2019, available at <https://www.tampabay.com/florida-politics/buzz/2019/05/14/which-florida-counties-had-election-hacks-russians-fbi-and-now-gov-ron-desantis-all-know-but-we-dont/>.

² *Id.*

³ *Id.*

⁴ *Id.*

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 reports 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 on an expedited basis, please contact me at (202) 408-5565 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 me either at aweismann@citizensforethics.org or at 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,



Anne L. Weismann
Chief FOIA Counsel