

May 10, 2019

**BY EMAIL:** [FOIARequest@hhs.gov](mailto:FOIARequest@hhs.gov)

Michael Marquis  
Freedom of Information Officer  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
Room 729H  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

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 Health and Human Services (“HHS”) regulations.

Specifically, CREW requests all emails from January 2, 2019 to the present between former White House Chief of Staff John F. Kelly and any of the following HHS officials: (1) Alex M. Azar II, Secretary; (2) Eric D. Hargan, Deputy Secretary; (3) Peter Urbanowicz, Chief of Staff; (4) Brian Harrison, Deputy Chief of Staff; (5) Scott Rowell, Assistant Secretary for Administration; (6) Jennifer Moughalian, Acting Assistant Secretary for Financial Resources; (7) Lynn Johnson, Assistant Secretary, Administration for Children and Families; or (8) Robert P. Charrow, General Counsel.

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 HHS 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 May 3, 2019, news reports revealed that John F. Kelly had joined the board of Caliburn International, the parent company of Comprehensive Health Services.<sup>1</sup> Pursuant to a contract with HHS, Comprehensive runs the largest facility housing unaccompanied migrant children in the United States, the Homestead Job Corps facility in Homestead, Florida.<sup>2</sup> HHS paid Comprehensive at least \$222 million to operate Homestead between July 7, 2018 and April 20, 2019, and it could receive much more—up to \$341 million between now and November 2019—for continued operation of Homestead.<sup>3</sup>

Prior to joining Caliburn, Kelly served as Secretary of Homeland Security from January 2017 to July 2017, and White House Chief of Staff from July 2017 to January 2019. During this time, Kelly played a key role in implementing the Trump Administration’s “zero tolerance” immigration enforcement policy, which resulted in thousands of migrant children being forcibly separated from their parents and detained in HHS facilities, including the Homestead facility operated by Kelly’s current employer. Prior to joining the Trump Administration in January 2017, Kelly served on the board of advisors of D.C. Capital Partners, an investment firm that now owns Caliburn.

There is a strong public interest in the requested documents. While in government, Kelly was directly involved in implementing the family separation policy, and he now works for a for-profit operator of child detention centers, Caliburn, that has reaped substantial financial benefits from that very policy. In addition, Kelly, as a former government official, is subject to certain post-employment restrictions on communicating with current government officials. *See, e.g.*, 18 U.S.C. § 207. The public therefore has a compelling interest in learning whether Kelly was involved in any communications with the named senior HHS officials following his departure from the White House in January 2019.

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

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<sup>1</sup> Graham Kates, [John Kelly joins board of company operating largest shelter for unaccompanied migrant children](https://www.cbsnews.com/news/john-kelly-joins-board-of-caliburn-international-company-operating-largest-unaccompanied-migrant-children-shelter/), *CBS News*, May 3, 2019, available at <https://www.cbsnews.com/news/john-kelly-joins-board-of-caliburn-international-company-operating-largest-unaccompanied-migrant-children-shelter/>.

<sup>2</sup> HHS Fact Sheet, <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Sheltered-at-Homestead.pdf>.

<sup>3</sup> Kates, *supra* note 1.

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, and that site has been visited hundreds of thousands of times.

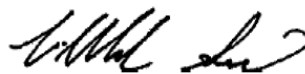
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

### **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, 1101 K St., N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance.

Sincerely,



Nikhel Sus  
Counsel