

CREW | citizens for responsibility and ethics in washington

May 24, 2019

BY FIRST CLASS MAIL AND FAX

IRS FOIA Request
HQ FOIA
Stop 211
P.O. Box 621506
Atlanta, GA 30362-3006
Fax: (877) 807-9215

Re: Freedom of Information Act Request

Dear Sir or Madam:

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, *et seq.*, and Internal Revenue Service ("IRS") regulations, 26 C.F.R. § 601.702.

CREW requests records as follows:

1. For the period January 1, 2001 to the present, records sufficient to establish all instances in which a disclosure of tax returns or return information was made to the congressional Committee on Ways and Means, the congressional Committee on Finance, and/or the Joint Committee on Taxation, pursuant to 26 U.S.C. § 6103(f)(1)-(2);
2. For the period January 1, 2001 to the present, records sufficient to establish all instances in which the IRS declined to comply with a request for tax returns or return information, made pursuant to 26 U.S.C. § 6103(f)(1)-(2), by the congressional Committee on Ways and Means, the congressional Committee on Finance, and/or the Joint Committee on Taxation;
3. For the period January 1, 2001 to the present, all documents, including electronic mail, evidencing communication between the IRS and the IRS Office of Chief Counsel and/or the IRS and other offices within the Treasury Department with respect to requests for advice regarding the meaning and/or application of 26 U.S.C. § 6103(f)(1)-(2); and
4. All Revenue Rulings, Private Letter Rulings, Technical Advice Memoranda, Notices, and/or Announcements regarding or referencing 26 U.S.C. § 6103(f)(1)-(2).

Please search for responsive records regardless of format, medium, or physical characteristics. We request that you provide the responsive records in an electronic and machine-readable format.

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

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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).

Finally, CREW welcomes the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the IRS to process it within the FOIA's deadlines. I can be reached at (202) 408-5565 or lbeckerman@citizensforethics.org.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 26 C.F.R. § 601.702(f)(2), 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 will likely contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request primarily and fundamentally is for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii). See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

The Treasury Department's apparent refusal to provide tax return information in response to a subpoena seeking such information by House Ways and Means Committee Chairman Richard Neal is currently a matter of significant public interest. See Alan Rappeport and Nicholas Fandos, *Steven Mnuchin Refuses to Comply With Subpoena for Trump's Tax Returns*, *New York Times*, (May 17, 2019), <https://nyti.ms/2Jri2dP>; Jeff Stein, *Mnuchin rejects Democrats' subpoena for President Trump's tax returns*, *Washington Post*, (May 17, 2019), <https://wapo.st/2HNBOou>; Donna Borak, "Mnuchin: 'I am not violating the law' by refusing to hand of Trump's tax returns", *CNN*, (May 22, 2019), <https://cnn.it/2QhjTCu>. News media have recently reported that Secretary Mnuchin's position refusing to produce the returns conflicts with a draft memorandum prepared by IRS personnel. See Jeff Stein and Josh Dawsey, *Confidential draft IRS memo says tax returns must be given to Congress unless president invokes executive privilege*, *Washington Post*, (May 21, 2019); Alan Rappeport, *I.R.S. Memo Undercuts Mnuchin on Withholding Trump's Tax Returns*, *New York Times*, (May 21, 2019), <https://nyti.ms/2HtxX8Z>. The requested records are likely to contribute to the public's understanding of the past practice and position of the IRS with respect to requests received from Congress, pursuant to 26 U.S.C. § 6103(f)(1)-(2). This information will promote public understanding regarding whether there exists a conflict between the current actions of Secretary Mnuchin and the past practice and position of the IRS with respect to the disclosure of tax returns or return information pursuant to 26 U.S.C. § 6103(f)(1)-(2).

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 is dedicated to empowering citizens to have an influential voice in government decisions and in the government decision-

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making process. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW's financial interest. CREW will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CREW will disseminate documents it acquires from this request to the public through its website, www.citizensforethics.org, which also includes links to thousands of pages of documents CREW acquired through its multiple FOIA requests as well as documents related to CREW's litigation and agency complaints.

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

News Media Fee Waiver Request

CREW also asks that it not be charged search or review fees for this request because CREW qualifies as a "representative of the news media" pursuant to the FOIA. In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.*

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 blog posts 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 the documents it receives under the FOIA on its website, which has been visited hundreds of thousands of times.

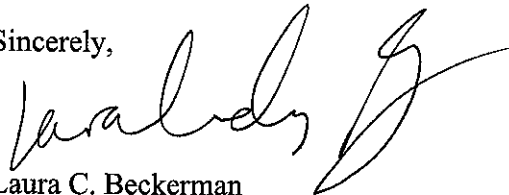
Based on these extensive publication activities, CREW qualifies for a fee waiver as a "representative of the news media" under the FOIA and agency regulations.

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Conclusion

If you have any questions about this request or foresee any problems in releasing fully the requested records please contact me at (202) 408-5565 or lbeckerman@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. Please send the requested records to Laura Beckerman Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005.

Sincerely,



Laura C. Beckerman
Sr. Counsel for Operations and Litigation