

June 18, 2019

**BY EMAIL: [usdoj-officeoflegalcounsel@usdoj.gov](mailto:usdoj-officeoflegalcounsel@usdoj.gov)**

Melissa Golden  
Lead Paralegal and FOIA Specialist  
Office of Legal Counsel  
Department of Justice  
950 Pennsylvania Avenue, N.W., Room 5511  
Washington, D.C. 20530-0001

**Re: Freedom of Information Act Request**

Dear Ms. Golden:

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 Justice (“DOJ”) regulations.

Specifically, CREW seeks copies of all opinions written by the Office of Legal Counsel (“OLC”) concerning the legality or constitutionality of investigating or indicting a sitting President’s family members, political campaign committee, business, inaugural committee, trust, or other entities and assets.

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, DOJ

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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 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).

In his *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, Special Counsel Robert Mueller declined to reach a determination of whether the President had committed obstruction of justice because of an OLC opinion stating that it is unconstitutional to indict a sitting President.<sup>1</sup> As the Report explains, the OLC opinion states that “‘the indictment or criminal prosecution of a sitting President would impermissibly undermine the capacity of the executive branch to perform its constitutionally assigned functions’ in violation of ‘the constitutional separation of powers.’”<sup>2</sup>

There are reportedly several ongoing criminal investigations into the sitting President’s family members, political campaign committee, business, inaugural committee, trust, and other entities and assets. In February 2019, CREW released the report *A Campaign to Defraud: President Trump’s Apparent Campaign Finance Crimes, Cover-up, and Conspiracy* in which potential offenses by the sitting President are outlined, including “violations of laws regulating campaign contributions and their disclosure, making false records and statements, and a conspiracy to defraud (or violate the laws of) the United States.”<sup>3</sup> In May 2019, The New York Times created the interactive webpage “Tracking 29 Investigations Related to Trump,” which lists information on known active federal criminal investigations, state and local investigations, and congressional investigations.<sup>4</sup> Additionally, Michael Cohen, the president’s former attorney and a Trump Organization official, has implicated the president and the Trump Organization in campaign finance crimes.

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<sup>1</sup> Mueller: Department of Justice, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, Vol. II, at 1 (Mar. 2019), available at <https://www.justice.gov/storage/report.pdf>.

<sup>2</sup> *Id.* (quoting [A Sitting President’s Amenability to Indictment and Criminal Prosecution, 24 Op. O.L.C. 222, 222, 260 (2000) (OLC Op.)]).

<sup>3</sup> Noah Bookbinder, Conor Shaw and Gabe Lezra, *A Campaign to Defraud: President Trump’s Apparent Campaign Finance Crimes, Cover-up and Conspiracy*, *Citizens for Responsibility and Ethics in Washington*, February 2019, available at <https://www.citizensforethics.org/a-campaign-to-defraud-2/>.

<sup>4</sup> Newspaper: Larry Buchanan and Karen Yourish, *Tracking 29 Investigations Related to Trump*, *New York Times*, May 23, 2019, available at <https://www.nytimes.com/interactive/2019/05/13/us/politics/trump-investigations.html>.

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In light of these ongoing investigations, there is a strong public interest in disclosure of any OLC opinions about the constitutionality of indicting a president's business or close associates. The American people have a right to whether OLC believes that DOJ can seek indictments or entities and individuals associated with a sitting President or Congress is the only body that can actually hold those entities and individuals accountable.

In response to these legal conclusions and active investigations, CREW is requesting all information concerning the legality or constitutionality of investigating or indicting a sitting President's family members, political campaign committee, business, inaugural committee, trust, or other entities and assets.

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](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 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 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.

## Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 894-7058 or [hhammado@citizensforethics.org](mailto:hhammado@citizensforethics.org). Where possible, please produce records in electronic format. Please send the requested records to me either at [hhammado@citizensforethics.org](mailto:hhammado@citizensforethics.org) or Hajar I. Hammado, 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.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Hajar I. Hammado', with a long horizontal flourish extending to the right.

Hajar I. Hammado  
Policy Assistant