

# CREW | citizens for responsibility and ethics in washington

June 13, 2019

**BY E-MAIL: FOIARequest@osc.gov**

FOIA Officer  
U.S. Office of Special Counsel  
1730 M St., N.W. (Suite 218)  
Washington, D.C. 20036-4505

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 Office of Special Counsel (“OSC”) regulations.

Specifically, CREW requests:

- (1) A copy of the letter OSC sent to Counselor to the President Kellyanne Conway in December 2018 about her impermissible Twitter use;
- (2) A copy of the letter OSC sent to the Office of White House Counsel in April 2019 concerning Ms. Conway’s Twitter account; and
- (3) Copies of any records, including but not limited to communications, related to two meetings with the Office of White House Counsel in March 2019 in which OSC warned the Counsel’s office about Ms. Conway’s political activity during official media appearances.

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 OSC 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 June 13, 2019, Special Counsel Henry J. Kerner sent a letter to President Donald J. Trump, which was also released to the public, requesting that President Trump remove Ms. Conway from federal service due to her repeated violations of the Hatch Act.<sup>1</sup> Attached to the letter was a copy of OSC's investigative report, dated May 30, 2019, detailing how OSC had "determined that Ms. Conway violated the Hatch Act during media appearances and by engaging in both official and political activity on her Twitter account" and how Ms. Conway had "reportedly scoffed at her responsibilities under the Hatch Act and ridiculed its enforcement."<sup>2</sup>

According to the report, OSC "repeatedly requested that Ms. Conway comply with the law," citing a letter OSC sent to Ms. Conway in December 2018 about her impermissible use of Twitter, two meetings in March 2019 in which OSC warned the Office of White House Counsel about Ms. Conway's political activity during official media appearances, and a letter to the Office of White House Counsel sent in April 2019 relating to Ms. Conway's Twitter account.<sup>3</sup> According to OSC, Ms. Conway "failed to comply with OSC's requests."<sup>4</sup> The White House, however, claims that OSC's assessment of Ms. Conway's activity was "deeply flawed and violate her constitutional rights to free speech and due process."<sup>5</sup> In addition, Counsel to the President Pat A. Cipollone sent a letter to Special Counsel Kerner on June 11, 2019, which was released to the press following OSC's release of its investigative report on Ms. Conway. The letter accused OSC of failing to "provide Ms. Conway a reasonable opportunity to respond, violat[ing] Ms. Conway's due process rights, and abus[ing] its discretion by issuing a Report tainted by inappropriate external influences."<sup>6</sup> White House Counsel Cipollone requested that OSC "withdraw and retract the Report and continue the dialogue with this office that should

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<sup>1</sup> Letter from Special Counsel Henry J. Kerner to President Donald Trump, June 13, 2019, available at <https://osc.gov/Resources/Report%20to%20the%20President%20re%20Kellyanne%20Conway%20Hatch%20Act.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Anita Kumar, [Federal agency recommends that Kellyanne Conway be removed from service](https://www.politico.com/story/2019/06/13/federal-agency-recommends-that-kellyanne-conway-be-removed-from-service-over-hatch-act-1364221), *Politico*, June 13, 2019, available at <https://www.politico.com/story/2019/06/13/federal-agency-recommends-that-kellyanne-conway-be-removed-from-service-over-hatch-act-1364221>.

<sup>6</sup> Letter from Counsel to the President Pat A. Cipollone to Special Counsel Henry J. Kerner, June 11, 2019, available at <https://int.nyt.com/data/documenthelper/1168-pac-osc-06-11-2019-letter/11f2a2d73d1e14d197f3/optimized/full.pdf>.

have taken place.”<sup>7</sup> A spokesman for OSC told *The Washington Post* that OSC would not withdraw the report.<sup>8</sup>

The requested records will shed light on OSC’s efforts to inform Ms. Conway about how her actions violated the Hatch Act as well as OSC’s efforts to persuade her to comply with the law. The documents will also provide insight into the White House’s claims that OSC did not follow a fair process in adjudicating allegations that Ms. Conway repeatedly violated the Hatch Act. Special Counsel Kerner described both Ms. Conway’s behavior and the recommendation from OSC that she be removed from federal service as “unprecedented.”<sup>9</sup> The public deserves to know as much as possible about both as well.

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.

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

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<sup>7</sup> *Id.*

<sup>8</sup> Michelle Ye Hee Lee, Lisa Rein, and Josh Dawsey, Federal watchdog agency recommends removal of Kellyanne Conway from federal office for violating the Hatch Act, *The Washington Post*, June 13, 2019, available at [https://www.washingtonpost.com/politics/office-of-special-counsel-recommends-removal-of-kellyanne-conway-from-federal-office-for-violating-the-hatch-act/2019/06/13/0786ae2e-8df4-11e9-8f69-a2795fca3343\\_story.html](https://www.washingtonpost.com/politics/office-of-special-counsel-recommends-removal-of-kellyanne-conway-from-federal-office-for-violating-the-hatch-act/2019/06/13/0786ae2e-8df4-11e9-8f69-a2795fca3343_story.html).

<sup>9</sup> *Id.*

### 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 [mcorley@citizensforethics.org](mailto:mcorley@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 [mcorley@citizensforethics.org](mailto:mcorley@citizensforethics.org) or Matthew Corley, 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 black ink, appearing to read 'Matthew Corley', with a stylized flourish at the end.

Matthew Corley  
Chief Investigator