

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, and

ANDREW WHEELER, in his official
capacity as Administrator of the U.S.
Environmental Protection Agency,

Defendants.

Civil Action No. 19-cv-2181-TJK

DECLARATION OF ADAM J. RAPPAPORT

I, Adam J. Rappaport, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Assistant Director and Chief Counsel of Citizens for Responsibility and Ethics in Washington (“CREW”), Plaintiff in the above-captioned case. I have served in that position since June 2016.
2. CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions.
3. As CREW’s Assistant Director and Chief Counsel, I help to oversee and am familiar with CREW’s research, litigation, advocacy, and public education efforts.

4. To further its mission of promoting government transparency and accountability, CREW frequently files Freedom of Information Act (“FOIA”) requests with the Environmental Protection Agency (“EPA”) and other agencies; disseminates the documents it receives through FOIA requests on its website, www.citizensforethics.org, and social media; and uses the documents as the basis for reports, complaints, litigation, blog posts, and other publications widely disseminated to the public. CREW thus relies heavily on FOIA to fulfill its core mission.

5. I understand that this case involves a final rule amending EPA’s FOIA regulations, which went into effect on July 26, 2019 (the “FOIA Rule”). *See* FOIA Regulations Update, 84 Fed. Reg. 30,028 (June 26, 2019) (codified at 40 C.F.R. § 2 (2019)).

6. CREW is concerned with several aspects of the FOIA Rule, including the provisions (1) purporting to authorize agency officials to withhold “portions of a record on the basis of responsiveness”; (2) requiring that all FOIA requests be submitted to EPA’s National FOIA Office and prohibiting direct submission of requests to EPA’s regional offices; (3) expanding the number of political appointees authorized to issue final determinations on FOIA requests; and (4) removing restrictions on political appointees’ delegations of authority to issue FOIA determinations.

7. CREW’s interest in EPA’s FOIA regulations stems from its status as a frequent FOIA requester. Since 2017, CREW has submitted at least 22 FOIA requests to EPA, 18 of which are still pending. Several of those pending FOIA requests implicate politically-sensitive issues, the Office of the Administrator, and other high-level EPA officials, including the following requests:

- a. A May 2018 request for records relating to EPA’s “awareness review” or “senior management review” processes, under which “high-level

officials' at EPA are involved in reviewing FOIA responses before they are publicly released.” **Exhibit 1.**

- b. A July 2018 request for communications relating to the company Syngenta, following a decision by EPA leadership to reduce a fine against that company by approximately \$4.79 billion. **Exhibit 2.**
- c. A September 2018 request for records relating to political travel by presidentially-appointed Senate confirmed officials at EPA. **Exhibit 3.**
- d. A March 2019 request for records relating to efforts by the pesticide industry to convince EPA political appointees to block public release of a report on certain pesticides' adverse effects on endangered species.
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- e. A July 2019 request for communications between the Office of the Administrator and the White House concerning Executive Order 13,875, “Evaluating and Improving the Utility of Federal Advisory Committees.”
Exhibit 5.
- f. A July 2019 request for communications between the Office of the Administrator and several outside corporations and lobbying groups concerning the pesticide chlorpyrifos, following a decision by EPA leadership to not ban use of the pesticide. **Exhibit 6.**
- g. A July 2019 request for communications between the Office of the Administrator and the Energy 45 Fund, an organization founded by former EPA political appointee Mandy Gunasekara. **Exhibit 7.**

8. In addition to submitting FOIA requests to EPA headquarters, CREW has also submitted FOIA requests directly to EPA regional offices, both before and after the FOIA Rule went into effect on July 26, 2019. **Exhibits 8-12.**

9. Among the requests CREW submitted after the FOIA Rule's effective date were four requests, filed July 30, 2019, with EPA Regions 3, 4, 6, and 7, seeking documents relating to EPA's ongoing efforts "to centralize the submission and processing of FOIA requests at EPA headquarters." **Exhibits 9-12.** Each of these requests remain pending. Pursuant to the FOIA Rule, EPA reassigned the Region 3, 4, and 7 requests to EPA's National FOIA Office. On August 7, 2019, Region 3 sent CREW a letter stating that, per the FOIA Rule, FOIA requests may no longer be submitted to EPA regional officials, and must instead be submitted to EPA's National FOIA Office. The letter added that, as a courtesy, EPA will accept FOIA requests submitted to regional offices until August 23, 2019, but made clear that it "will not extend this courtesy after August 23." Subsequently, EPA's National FOIA Office corresponded with CREW about the three requests and then reassigned them to the respective regional offices for processing. To date, EPA Region 6 has not acknowledged receipt of CREW's request.

10. CREW plans to continue submitting FOIA requests to EPA on matters central to CREW's ongoing research, litigation, advocacy, and public education efforts, including requests implicating politically-sensitive issues, the Office of the Administrator, and other high-level EPA officials. CREW also plans to continue submitting FOIA requests seeking records from EPA's regional offices regarding, among other things, any ongoing efforts to minimize the role of regional offices in handling FOIA requests and to centralize FOIA administration at EPA's National FOIA Office, and the regional offices' reactions to such efforts.

11. I have reviewed the FOIA Rule and believe it affects CREW's interests as a frequent FOIA requester of EPA records in several respects.

12. First, the rule purports to authorize EPA officials to withhold information that CREW is entitled to receive under FOIA, including allegedly non-responsive "portion[s]" of records responsive to CREW's FOIA requests. *See* 40 C.F.R. § 2.103(b) (2019).

13. Second, the rule denies CREW the ability to submit FOIA requests directly to EPA regional offices and instead requires that *all* requests be submitted to EPA's National FOIA Office. *See* 40 C.F.R. §§ 2.101, 2.102, 2.103(a) (2019). Indeed, as outlined above in paragraph 9, EPA has already applied this aspect of the rule to CREW's pending FOIA requests and has stated it will do so in the future. Changing the way FOIA requests must be submitted to the agency, by itself, affects CREW's interests as a frequent FOIA requester.

14. Third, there is a substantial risk that the cumulative effect of two aspects of the FOIA Rule—i.e., centralizing submission of all FOIA requests at the National FOIA Office, *see* 40 C.F.R. §§ 2.101, 2.102, 2.103(a) (2019), and expanding the number of political appointees authorized to make FOIA determinations and removing restrictions on their delegation of that authority, *see id.* § 2.103(b)—will needlessly cause further delays in the agency's handling of CREW's pending and future FOIA requests. This, in turn, impedes CREW's statutory right under FOIA to "promptly" obtain non-exempt records from the agency. *See* 5 U.S.C. § 552(a)(3)(A).

15. In evaluating the risk of delay, it bears emphasizing that even before adopting the FOIA Rule, EPA routinely failed to timely respond to CREW's FOIA requests. To take just a few examples, EPA failed to issue determinations in response to each of the requests attached as

Exhibits 1-12 within FOIA's statutory deadlines. It is against this backdrop that the risk and magnitude of further delay must be assessed.

16. To begin, the FOIA Rule centralizes the *submission* of FOIA requests with EPA headquarters, while leaving the *processing* of requests decentralized with appropriate agency components. This change will necessarily introduce further delay in EPA's FOIA processing of requests seeking records from regional offices, as the agency will require additional time to analyze and route requests for processing.

17. The centralized-submission requirement will also significantly increase the National FOIA Office's overall workload and is, in turn, virtually certain to increase delays in FOIA processing. EPA's own data shows that, even before the FOIA Rule went into effect, EPA headquarters had a much larger FOIA workload and slower processing rates than the agency's regional offices. *See* EPA FOIA Annual Report for FY 2018 §§ V, XII, VII, *available at* <https://bit.ly/2Lz5h1J> ("EPA 2018 FOIA Report") (reporting that 2,772 of the agency's total 3,730 outstanding FOIA requests at the end of FY 2018 were pending with EPA headquarters; that EPA headquarters had 2,360 backlogged requests, whereas the highest backlog at any regional office was 128 requests; and that the average response times were significantly longer at EPA headquarters than at any regional office in most instances). EPA's FOIA data further shows that, for both FY 2017 and 2018, EPA headquarters received approximately 3,600 requests, compared to approximately 7,800 total requests received by each of the regional offices combined. *See* EPA FOIA Annual Report for FY 2017 § V, *available at* <https://bit.ly/376HePt> (headquarters received 3,619 requests, while regional offices received a combined total of 7,899); EPA 2018 FOIA Report § V (headquarters received 3,655 requests, while regional offices received a combined total of 7,779). Treating those numbers as a baseline for future

years, EPA's National FOIA Office can reasonably estimate facing, as a result of the FOIA Rule's centralized-submission requirement, 7,800 *additional* requests per year for which that office will now have "intake" responsibilities, which entails accepting the request, initially reviewing it, and assigning it to a component for processing. That is a 116% increase. Yet there is no indication, in the FOIA Rule or elsewhere, that EPA's National FOIA Office has expanded its staff to handle this increased workload. This despite the fact that EPA headquarters already faces a substantial backlog and slower processing rates than the regional offices, and that EPA career staff have long cited lack of adequate staffing and resources in opposing efforts to centralize FOIA administration at headquarters. *See* Evaluation of EPA's FOIA Program, Final Report, at 39, 41-42, 46, Feb. 12, 2016, *available at* <https://bit.ly/2ygSOHz>.

18. Thus, mandating that all FOIA requests be submitted to the National FOIA Office will add yet another layer of delay in FOIA administration at EPA, both for requests seeking records from EPA headquarters *and* the regional offices. And by prohibiting direct submission of FOIA requests to regional offices, the rule deprives CREW of a demonstrably faster avenue for obtaining records from regional offices that was available for years under EPA's prior regulations.


19. The FOIA Rule's expansion of the number of political appointees authorized to make FOIA determinations, and elimination of restrictions on delegating that authority, are also likely to add delay. In CREW's experience, EPA's response times to CREW's FOIA requests—particularly under current agency leadership—are slower when the request implicates politically-sensitive issues or the agency's political appointees. This delay is partly attributable to the involvement of political appointees in processing the request, which adds an additional layer of internal review before responsive records may be released. In other words, it is CREW's

experience that the more political appointees are involved in processing a FOIA request, the slower EPA's response time is. This view is borne out by publicly-available data showing that between January 20 and December 29, 2017, only 16.6% of FOIA requests routed to the Office of the Administrator were closed, in sharp contrast to the 78.76% closure rate for all other requests made to EPA during the same period. *See* Andrew Bergman, EPA Drags Its Feet with Records Requests Aimed at Scott Pruitt's Office, *Project on Gov't Oversight*, Feb. 25, 2018, available at <https://bit.ly/2GnYnbE>. It is also consistent with CREW's general experience—with agencies throughout the federal government—that the involvement of political appointees in making FOIA determinations frequently causes unreasonable delay.

20. Taken together, the provisions discussed above pose, in my view, a near-certain risk of unreasonably delaying EPA's response times to CREW's pending and future FOIA requests.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 15, 2019


Adam J. Rappaport

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19. The FOIA Rule's expansion of the number of political appointees authorized to make FOIA determinations, and elimination of restrictions on delegating that authority, are also likely to add delay. In CREW's experience, EPA's response times to CREW's FOIA requests—particularly under current agency leadership—are slower when the request implicates politically-sensitive issues or the agency's political appointees. This delay is partly attributable to the involvement of political appointees in processing the request, which adds an additional layer of internal review before responsive records may be released. In other words, it is CREW's

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20. Taken together, the provisions discussed above pose, in my view, a near-certain risk of unreasonably delaying EPA's response times to CREW's pending and future FOIA requests.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 15, 2019



Adam J. Rappaport

Exhibit 1 to Rappaport Declaration

CREW | citizens for responsibility and ethics in washington

May 4, 2018

By Email: hq.foia@epa.gov

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Freedom of Information Act Request

Dear Freedom of Information 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. Environmental Protection Agency ("EPA") regulations.

Specifically, CREW requests copies of all records pertaining or referring to an administrative hold or review, sometimes termed an "awareness review" or "senior management review," on any FOIA request submitted from February 17, 2017 to the present.

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 EPA regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request

National Freedom of Information Officer
 May 4, 2018
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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).

The EPA has been described as “ground zero” in the Trump administration’s efforts to control and delay agency responses to FOIA requests.¹ Reportedly “high-level officials” at EPA are involved in reviewing FOIA responses before they are publicly released.² This is happening while, under the direction of EPA Administrator Scott Pruitt, the agency has altered many of its transparency practices, making its actions far less accessible to the public.³ Just today it was reported that political appointees at EPA are more tightly vetting FOIA requests under the guise of an “awareness review” or “senior management review.”⁴ The requested documents would shed further light on this practice and help the public evaluate the extent to which the FOIA process at EPA has been coopted by political forces, resulting in unprecedented and unnecessary delay in the agency’s FOIA responses.

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. 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

¹ Dino Grandoni and Juliet Eilperin, *Trump Environmental Officials Are Keeping Tight Rein Over Stampede of FOIA Requests*, *Washington Post*, Dec. 15, 2017, available at https://www.washingtonpost.com/news/powerpost/wp/2017/12/15/trump-environmental-officials-are-keeping-tight-rein-over-stampede-of-foia-requests/?utm_term=.0cc67db77388.

² *Id.*

³ Coral Davenport and Eric Lipton, *Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say*, *New York Times*, Aug. 11, 2017, available at <https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html>.

⁴ Alex Guillen, *EPA Clamps Down on Records Requests Linked to Pruitt*, *PoliticoPro*, May 4, 2018.

National Freedom of Information Officer
May 4, 2018
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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 all documents it receives under the FOIA 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) 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, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

Exhibit 2 to Rappaport Declaration

CREW | citizens for responsibility and ethics in washington

July 2, 2018

By Email: hq.foia@epa.gov

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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. Environmental Protection Agency ("EPA") regulations.

Specifically, CREW requests copies of all of Jeffrey Sands' communications pertaining or relating to "Syngenta," including but not limited to communication between Sands and Laura Wood Peterson (laura.peterson@syngenta.com) and Aline DeLucia (aline.delucia@syngenta.com) and all records of meetings and appointments of any kind that included Sands and Syngenta representatives from October 30, 2017 to March 31, 2018.

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 EPA 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).

The EPA has been scrutinized for “dramatically scaling back” a fine levied against Syngenta, an agriculture company, in 2016 for violating EPA pesticide regulations and sickening Hawaii farmworkers.¹ The fine reduction from \$4.8 billion to \$150,000 was announced in February 2018 and occurred during the short tenure of Jeffrey Sands, a former Syngenta lobbyist, as Administrator Pruitt’s Senior Agricultural Advisor. Sands has said he “was in no way involved with the decision to reduce the fine.”² Though Sands denies involvement with the decision, the timing of the reduction raises serious questions, especially because Sands left EPA less than one month after the fine was reduced, making his total time at EPA five months.³ Further, denying involvement in making the decision does not rule out the possibility that Sands facilitated meetings between other EPA officials and Syngenta or otherwise performed tasks that led to the fine reduction. Release of the requested documents would reveal the extent of Sands’ involvement and help give the public a better understanding of the circumstances that led to Syngenta’s fine reduction.

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. 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”).

¹ Megan R. Wilson, *EPA pesticide settlement comes under scrutiny*, *THE HILL* (May 8, 2018), available at <http://thehill.com/business-a-lobbying/386610-epa-pesticide-settlement-comes-under-scrutiny>

² *Id.*

³ *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 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 documents it receives under the FOIA 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) 897-1846 or cgonzalez@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 cgonzalez@citizensforethics.org or at Camila Gonzalez, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,


Camila Gonzalez

Exhibit 3 to Rappaport Declaration

CREW | citizens for responsibility and ethics in washington

September 10, 2018

By Email: hq.foia@epa.gov

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

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. Environmental Protection Agency ("EPA") regulations.

First, CREW requests copies of records sufficient to show all travel taken or planned by all presidentially-appointed Senate confirmed ("PAS") officials in the EPA to any event attended by a sitting member of the United States House of Representatives in that member's district between May 1, 2018 through November 6, 2018.

Second, CREW requests copies of records sufficient to show all the political events to which PAS officials in the EPA traveled from January 20, 2017 to the present, identifying the event, agency participants, and the costs of each trip.

Third, CREW requests copies of records sufficient to show all the political events PAS officials in the EPA are scheduled to attend in 2018, including but not limited to those events expected to have mixed travel, *i.e.*, travel for official and political purposes, identifying the event, agency participants, and anticipated costs of each scheduled trip.

Fourth, CREW requests copies of records sufficient to show the formula the EPA uses to apportion costs incurred during travel that has both official and political components.

Fifth, CREW requests copies of all records concerning how the EPA ensures compliance with the Hatch Act's restrictions on political travel.

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.

FOIA Officer
 September 10, 2018
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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).

I note this request seeks many of the same documents sought in July 2016 by the House Oversight and Government Reform Committee from a number of executive branch agencies, including the Defense Department.¹

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and EPA 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 August 21, 2018, senior White House aides reportedly revealed in a call with reporters that various “official” government events attended by President Trump and senior administration officials have been part of a coordinated effort “to help Republicans in the coming midterm elections.”² According to an unnamed White House official, “the president’s Cabinet and senior staff have done 35 events with or affecting House districts in August already.”³ These events purported were official government events that presumably were paid for with government funds.

These trips implicate the Hatch Act, which prohibits nearly every executive branch official from using their “official authority or influence for the purpose of interfering with or affecting the result of an election.”⁴ In cases involving mixed travel – travel that includes attendance at both official and political events during the same trip – the law requires the costs

¹ That request is available at <https://oversight.house.gov/release/committee-requests-information-hatch-act-compliance/>.

² S.V. Date, *White House Admits Trump Is Using Official Events for Midterm Campaigning*, *Huffington Post*, Aug. 22, 2018, available at https://www.huffingtonpost.com/entry/trump-official-campaign_us_5b7c896ce4b07295150dc45d.

³ *Id.*

⁴ 5 U.S.C. § 7323(a)(1).

FOIA Officer
September 10, 2018
Page 3

be properly apportioned between the federal government and the relevant political organization or candidate to ensure that the federal government is appropriately reimbursed for taxpayer funds expended for political events.⁵ The requested records would shed light on whether PAS officials at the EPA, including Acting Administrator Wheeler, incurred expenses for mixed travel and how the agency handled those expenses, as well as the policies in place to ensure full compliance with the Hatch Act.

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. 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, 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) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for expedition and/or a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

⁵ See U.S. Office of Special Counsel, OSC Advisory Regarding Mixed Travel by Presidentially-Appointed/Senate Confirmed (PAS) Employees (Oct. 6, 2011); 5 U.S.C. § 7324(b); 5 C.F.R. § 734.503.

FOIA Officer
September 10, 2018
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Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W, Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

Exhibit 4 to Rappaport Declaration



March 28, 2019

By Email: hq.foia@epa.gov

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

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. Environmental Protection Agency regulations.

First, CREW requests all communications between Aaron Hobbs and Wendy Cleland-Hamnet, Nancy Beck, Rick Keigwin, Marietta Echeverria, Samantha Dravis, or Sara Greenwalt from January 1, 2017 to January 1, 2019 about any matter pertaining to Fish and Wildlife and endangered species.

Second, CREW requests records of any meetings Wendy Cleland-Hamnet, Nancy Beck, Rick Keigwin, Marietta Echeverria, Samantha Dravis, or Sara Greenwalt had with Aaron Hobbs from January 1, 2017 to January 1, 2019, and a list of who was present at those meetings.

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).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and U.S. Department of Agriculture 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 2017, there was a concerted effort by the pesticide industry to encourage Trump administration officials not to publicly release an analysis of the effect of three pesticides on hundreds of endangered species.¹ The report was ultimately blocked, in a victory for pesticide companies and their lobbyists. Aaron Hobbs, a former CropLife lobbyist, was reportedly among the pesticide industry advocates who reached out to administration officials about the endangered species analysis. Another former CropLife lobbyist, and Rebeckah Adcock was one of the USDA officials in the meetings that seem to have come out of Hobbs' contacts with officials.²

Industry lobbyists have enjoyed unprecedented access in the Trump administration, with both EPA and Interior currently being led by a former coal lobbyist and former oil lobbyist.³ In other agencies, like the USDA, officials similarly have deep ties to the industries they regulate. Some,

¹ Eric Lipton, Interior Nominee Intervened to Block Report on Endangered Species, *New York Times*, March 26, 2019, available at <https://www.nytimes.com/2019/03/26/us/politics/endangered-species-david-bernhardt.html?action=click&module=Top%20Stories&pgtype=Homepage>.

² *Id.*

³ Ellie Kaufmann, Senate confirms former coal lobbyist Andrew Wheeler to lead EPA, *CNN*, February 28, 2019, available at <https://www.cnn.com/2019/02/28/politics/andrew-wheeler-confirmation/index.html> and Timothy Cama and Miranda Green, Trump picks ex-oil lobbyist David Bernhardt for Interior secretary, *The Hill*, February 4, 2019, available at <https://thehill.com/policy/energy-environment/428395-trump-picks-ex-oil-lobbyist-david-bernhard-for-interior-secretary>.



like Adcock have come under scrutiny for potential violations of their ethics pledges, which would prohibit officials from participating “personally and substantially in any particular matter” that they have a financial interest in, or related to a former employer.⁴

The requested records would shed light on USDA officials’ compliance with their ethics pledges, and the ways in which one industry lobbyist attempted to influence the agency--to apparent success. The matter is of significant public interest, as President Trump promised to “drain the swamp,” yet reporting suggests that industry lobbyists may have more access and success promoting their clients interests than ever before.

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. 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, which has been visited hundreds of thousands of times.

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

⁴ Danielle Ivory and Robert Faturechi, *An Open Door for Pesticide Lobbyists at the U.S.D.A.*, *New York Times*, November 13, 2017, available at <https://www.nytimes.com/2017/11/13/business/trump-regulations-usda-lobbyists.html?module=inline>



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 lhonl-stuenkel@citizensforethics.org. Also, if CREW's request for expedition and/or 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 lhonl-stuenkel@citizensforethics.org or Linnaea Honl-Stuenkel, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W, Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,

Linnaea Honl-Stuenkel

Exhibit 5 to Rappaport Declaration



July 30, 2019

Submitted via FOIAonline.gov

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Re: Freedom of Information Act Request

Dear FOIA Office:

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. Environmental Protection Agency regulations.

First, CREW requests copies of all communications exchanged between the Office of the Administrator and the White House Office concerning Executive Order 13875, “Executive Order on Evaluating and Improving the Utility of Federal Advisory Committees,” from June 14, 2019 to the present.

Second, CREW requests copies of all communications exchanged between the Office of Mission Support and the White House Office concerning Executive Order 13875, “Executive Order on Evaluating and Improving the Utility of Federal Advisory Committees,” from June 14, 2019 to the present.

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 Environmental Protection Agency 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 14, 2019, President Donald Trump signed Executive Order 13875, “Executive Order on Evaluating and Improving the Utility of Federal Advisory Committees.” The executive order requires all executive departments and agencies to eliminate at least one third of their discretionary advisory committees established under the Federal Advisory Committee Act (FACA) by September 30, 2019.¹ The EPA, as an executive agency employing a number of advisory committees, is subject to this executive order: Out of the EPA’s 22 advisory committees, ten are classified as discretionary. As a result, the agency must eliminate at least three of its advisory committees by the order’s deadline.²

These cuts are of particular interest because of the possibility that they will target committees that give scientific input into the EPA’s work; many of the EPA’s advisory committees include academic experts on environmental issues. At the same time, President Trump and members of his administration have consistently made statements in opposition to the current scientific consensus on climate change, an issue that weighs heavily over much of the EPA’s work. The Trump administration has also sought to curtail climate science research.³ Given this, the White House may intend for E.O. 13875 to be implemented at the EPA in a way that targets climate scientists’ participation in the agency’s policy discussions.

The requested records would shed light on whether the EPA’s implementation of E.O. 13875 is being affected by the White House’s climate-science agenda. Given the crucial role of the EPA in crafting and enforcing environmental regulations, the public has a right to know more about how this highly impactful executive order is being implemented within the agency.⁴

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 Exec. Order No. 13875, 3 C.F.R. 28711-28713 (2019)

² Stephen Lee, Three EPA Advisory Panels Could Be Slashed Under Trump Order, *Bloomberg Environment*, July 24, 2019, available at <https://news.bloombergenvironment.com/environment-and-energy/three-epa-advisory-panels-could-be-slashed-under-trump-order>.

³ Coral Davenport and Mark Landler, Trump Administration Hardens Its Attack on Climate Science, *The New York Times*, May 27, 2019, available at <https://www.nytimes.com/2019/05/27/us/politics/trump-climate-science.html>.

⁴ Lee, *Bloomberg Environment*, Jul. 24, 2019.

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 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 documents it receives under the FOIA 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) 408-0682 or elee@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 elee@citizensforethics.org or at Eli Lee, Citizens for Responsibility and Ethics in Washington, 1101 K St., 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 'Eli Lee', with a stylized, cursive script.

Eli Lee
Research Associate

Exhibit 6 to Rappaport Declaration



July 30, 2019

Submitted via FOIAonline.gov

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Re: Freedom of Information Act Request

Dear FOIA Office:

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. Environmental Protection Agency regulations.

First, CREW requests copies of all communications exchanged between the Office of the Administrator and anyone acting on behalf of Dow AgroSciences, Corteva Agriscience, CropLife America, and/or the Agricultural Retailers Association from April 19, 2019 to July 20, 2019 concerning the pesticide chlorpyrifos.

Second, CREW requests copies of all communications exchanged between the Office of Chemical Safety and Pollution Prevention and anyone acting on behalf of Dow AgroSciences, Corteva Agriscience, CropLife America, and/or the Agricultural Retailers Association from April 19, 2019 to July 20, 2019 concerning the pesticide chlorpyrifos.

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 Environmental Protection Agency 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).

Chlorpyrifos is a widely used agricultural pesticide that studies have linked to serious health problems and brain development issues in children. In 2015, the Obama administration announced its intention to ban the use of the chemical in agriculture due to these concerns.¹ In March 2017, however, then-EPA Administrator Scott Pruitt reversed that decision, leading to a series of legal challenges that ultimately resulted in the U.S. Court of Appeals for the 9th Circuit ordering the EPA, on April 19, 2019, to act on demands to ban the use of chlorpyrifos within 90 days.² On July 19, 2019, the EPA announced that it would not ban the use of chlorpyrifos as a pesticide.³

Several companies and industry groups involved in the manufacture, sale, and application of chlorpyrifos have lobbied the EPA in favor of the chemical's continued use. Chlorpyrifos manufacturers Dow AgroSciences and Corteva Agriscience, pesticide-industry lobbying group CropLife America, and agriculture-industry lobbying group the Agricultural Retailers Association have all lobbied the agency in the last two quarters on the topic of the proposed ban.⁴

Given the potentially serious public health implications of chlorpyrifos's continued use as an agricultural pesticide, the public has a right to know whether the EPA's recent decision not to ban the chemical, following April's court ruling, was influenced by chemical- and agriculture-industry interests. The requested materials will shed light on the degree to which EPA leadership was in contact with representatives of those interests in the months prior to the agency's latest decision on chlorpyrifos.

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

¹ Lisa Friedman, *E.P.A. Won't Ban Chlorpyrifos, Pesticide Tied to Children's Health Problems*, *The New York Times*, July 18, 2019, available at <https://www.nytimes.com/2019/07/18/climate/epa-chlorpyrifos-pesticide-ban.html>.

² Jesse Chase-Lubitz, *Appeals court orders EPA to act on demands to ban chlorpyrifos*, *Politico*, April 19, 2019, available at <https://www.politico.com/story/2019/04/19/epa-chlorpyrifos-court-3115794>.

³ Friedman, *The New York Times*, Jul. 18, 2019.

⁴ <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=B250391E-4DFC-49DE-988A-852C90DFE290&filingTypeID=51>;
<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=2ECC20DC-4680-4CCF-9AB8-C21DF1466849&filingTypeID=60>;
<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=08FE2AD5-93A6-4D10-820F-2BC9CF483B09&filingTypeID=60>;
<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=144D0285-95CD-4907-83B3-51FA2B08BD8D&filingTypeID=60>.

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. 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 documents it receives under the FOIA 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) 408-0682 or elee@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 elee@citizensforethics.org or at Eli Lee, Citizens for Responsibility and Ethics in Washington, 1101 K St., 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 'Eli Lee', with a stylized, flowing script.

Eli Lee
Research Associate

Exhibit 7 to Rappaport Declaration



July 30, 2019

Submitted via FOIAonline.gov

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Re: Freedom of Information Act Request

Dear FOIA Office:

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. Environmental Protection Agency regulations.

First, CREW requests copies of all communications exchanged between the Office of the Administrator and anyone acting on behalf of the Energy 45 Fund, including Amanda "Mandy" Gunasekara and/or anyone using an email address ending in @energy45.org, from February 7, 2019 to the present.

Second, CREW requests copies of all communications exchanged between the Office of Air and Radiation and anyone acting on behalf of the Energy 45 Fund, including Amanda "Mandy" Gunasekara and/or anyone using an email address ending in @energy45.org, from February 7, 2019 to the present.

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 Environmental Protection Agency 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 February 7, 2019, Mandy Gunasekara, principal deputy assistant administrator at the EPA's Office of Air and Radiation, resigned from her position in order to form Energy 45 Fund, a 501(c)(4) nonprofit with a stated goal of promoting and defending the Trump administration's energy-policy agenda.¹ Since then, Gunasekara has made a number of appearances in the media, often responding to critiques of the administration.²

The requested materials would shed light on the extent to which Gunasekara, formerly a senior official at the EPA, has continued to influence the agency's leadership following her transition to an overtly political role at the helm of Energy 45 Fund. American citizens have a right to know how policy decisions affecting the United States' energy industry are being made, making the requested information a matter of public interest.

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. 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").

¹ E.A. Crunden, *Top EPA advisor leaves to head group lauding Paris exit, panning Green New Deal*, *ThinkProgress*, February 8, 2019, available at <https://thinkprogress.org/top-epa-advisor-leaves-to-start-pro-trump-energy-advocacy-group-19f4686fd493/>.

² Dino Grandoni, *The Energy 202: This former EPA appointee wants to make climate change a winning issue for Trump*, *The Washington Post*, June 19, 2019, available at <https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2019/06/19/the-energy-202-this-former-epa-appointee-wants-to-make-climate-change-a-winning-issue-for-trump/>.

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 documents it receives under the FOIA 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) 408-0682 or elee@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 elee@citizensforethics.org or at Eli Lee, Citizens for Responsibility and Ethics in Washington, 1101 K St., 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 'Eli Lee', with a stylized, cursive script.

Eli Lee
Research Associate

Exhibit 8 to Rappaport Declaration



May 7, 2008

FOIA Officer
U.S. EPA Region 5 (MI-9J)
77 W. Jackson Boulevard
Chicago, IL 60604-3590

By Fax: 312-886-1515

Re: Freedom of Information Act Request

Dear Sir or Madam:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes and photographs, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552, et seq.

Specifically, CREW seeks any and all records from the Environmental Protection Agency ("EPA"), dating from January 1, 2001 to the present and relating to the Dow Chemical Plant in Midland, Michigan. The scope of this request includes, but is not limited to:

1. Records assessing or evaluating Dow Chemical's responsibility for dioxin flowing into Saginaw Bay and Lake Huron;
2. CREW requests any and all records from the EPA that discuss or relate to the role of Mary Gade, former Regional Administrator for EPA Region 5 in evaluating Dow Chemical's efforts to clean up any environmental hazards resulting from the flow of dioxin into Saginaw Bay and Lake Huron;
3. Finally, CREW requests any and all records and communications between the White House and the EPA concerning Dow Chemical's Michigan plant's release of dioxin, Dow Chemical's efforts to clean up dioxin, and Ms. Gade's role in evaluating Dow Chemical's release and cleanup of dioxin.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs. Our request includes any telephone messages, voice mail messages, daily agenda and calendars, information about scheduled meetings and/or discussions, whether in-person or over the telephone, agendas for those meetings and/or discussions, participants included in those meetings and/or discussions, minutes of any such meetings and/or discussions,

FOIA Officer
May 7, 2008
Page Two

the topics discussed at those meetings and/or discussions, e-mail regarding meetings and/or discussions, e-mail or facsimiles sent as a result of those meetings and/or discussions, and transcripts or notes of any such meetings and/or discussions.

If it is your position that 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), cert. denied, 415 U.S. 977 (1972). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” Founding Church of Scientology v. Bell, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the Vaughn index must “describe each document or portion thereof withheld, and for **each** withholding it must discuss the consequences of supplying the sought-after information.” King v. U.S. Dep’t of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” Id. at 224 (citing Mead Data Central v. U.S. Dep’t of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event that 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. Mead Data Central, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107, 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 expenditures, 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 is primarily and fundamentally 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).

These records are likely to contribute to greater public awareness of the processes that the EPA employs in evaluating the nature of the threat posed by the release of dioxin into the

FOIA Officer
May 7, 2008
Page Three

environment and the EPA's efforts to hold accountable those responsible for the release of dioxin. Further, these records may illuminate the administration's relationship with Dow Chemical and whether Ms. Gades was forced to resign her position with the EPA because of her efforts to require Dow Chemical to clean up the hot spots

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 and to ensuring the integrity of those officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the government decision-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. In addition, CREW will disseminate any documents it acquires from this request to the public through www.governmentdocs.org, an interactive website CREW founded that includes thousands of pages of public documents from a number of organizations in addition to CREW. CREW's website also contains links to thousands of pages of documents CREW acquired from multiple FOIA requests. See www.citizensforethics.org. CREW's website includes documents relating to CREW's FOIA litigation, Internal Revenue complaints, and Federal Election Commission complaints.

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

Request for Expedition

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 40 C.F.R. § 2.104(e)(ii), CREW requests that the EPA expedite the processing of this request in light of the compelling need for the requested information. I certify to be true and correct that CREW is a non-profit corporation engaged primarily in disseminating information it gathers from a variety of sources, including the FOIA, and seeks the information requested in this FOIA request for the express purpose of disseminating it to the public. As discussed above, CREW's website contains numerous examples of its efforts in this regard. It is CREW's belief that by disseminating this type of information, the public will be better able to evaluate the actions of our public officials and will have a more effective voice.

As with the Electronic Privacy Information Center and the ACLU, two organizations that the courts have found satisfy the criteria necessary to qualify for expedition,¹ CREW "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience." ACLU, 321 F.Supp.2d at 30 n.5, *quoting* EPIC, 241 F.Supp.2d at 11.

¹ See ACLU v. U.S. Dep't of Justice, 321 F.Supp.2d 24, 30 (D.D.C. 2004); EPIC v. Dep't of Defense, 241 F.Supp.2d 5, 11 (D.D.C. 2003).

FOIA Officer
May 7, 2008
Page Four

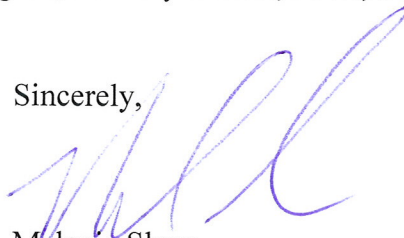
There is a compelling need for the requested records. The records are urgently needed to inform the public concerning the activities that are the subject of this request, and the value of the information will be lost if the information is not disseminated quickly. The government activities that are the subject of this request include the release of dioxin, a cancer causing chemical into public waters and the potential termination of a government employee for actively attempting to force Dow Chemical into cleaning up the hot spots contaminated by its release. The public, as well as members of Congress, need to know as much as possible concerning these activities as quickly as possible because the health of those who live near Saginaw Bay and Lake Huron may be at risk. The public also has an interest in knowing if a public official was forced to resign because of efforts to protect citizens from this serious health risk. In addition, this matter is of significant media interest. See Al Kamen, *In the Loop*, *Washington Post*, May 7, 2008. CREW expects the release of the requested documents would generate further media attention and public interest.

Accordingly, CREW requests that this request be expedited, and CREW submits that its request satisfies the criteria for expedition.

Conclusion

If you have any questions about this request or foresee any problems in releasing fully the requested records on an expedited basis, please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such determination. Please send the requested records to Melanie Sloan, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Sincerely,



Melanie Sloan
Executive Director

Exhibit 9 to Rappaport Declaration



July 30, 2019

Regional Freedom of Information Officer
U.S. EPA, Region 3
1650 Arch Street (3RC70)
Philadelphia, PA 19103
(215) 814-2050

Re: Freedom of Information Act Request

Dear FOIA Office:

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. Environmental Protection Agency regulations.

CREW requests copies of all communications exchanged between the Office of the Regional Administrator for Region 3 and the Office of the Administrator regarding any programs, initiatives, or efforts to centralize the submission and processing of FOIA requests at EPA headquarters, from July 1, 2017 to the present.

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 Environmental Protection Agency 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).

Over the last two years, agency leadership at EPA have taken steps to centralize the submission and processing of FOIA requests at EPA headquarters, minimize the role of EPA's regional offices in responding to FOIA requests, and increase the involvement of political appointees in FOIA administration. The agency has taken these steps even though, according to a 2016 internal audit, only 23% of EPA career staff favor centralizing FOIA processing at EPA headquarters, due to concerns about lack of resources and staffing.¹ Given this internal disagreement, as well as the implications that the agency's FOIA centralization efforts have on its ability to efficiently and effectively process FOIA requests, the public has a strong interest in the requested communications between leadership at EPA headquarters and EPA regional offices concerning the agency's FOIA centralization efforts.

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. 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").

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

Conclusion

¹ *See* Evaluation of EPA's FOIA Program, Final Report, at 39, 41-42, 46, Feb. 12, 2016, available at <https://bit.ly/2ygSOHz>.

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-0682 or elee@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 elee@citizensforethics.org or at Eli Lee, Citizens for Responsibility and Ethics in Washington, 1101 K St., 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 'Eli Lee', with a stylized, cursive script.

Eli Lee
Research Associate

Exhibit 10 to Rappaport Declaration



July 30, 2019

Submitted via email to r4foia@epa.gov

Regional Freedom of Information Officer

U.S. EPA, Region 4

AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)

Atlanta, GA 30303-8960

(404) 562-9891

Re: Freedom of Information Act Request

Dear FOIA Office:

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. Environmental Protection Agency regulations.

CREW requests copies of all communications exchanged between the Office of the Regional Administrator for Region 4 and the Office of the Administrator regarding any programs, initiatives, or efforts to centralize the submission and processing of FOIA requests at EPA headquarters, from July 1, 2017 to the present.

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 Environmental Protection Agency 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).

Over the last two years, agency leadership at EPA have taken steps to centralize the submission and processing of FOIA requests at EPA headquarters, minimize the role of EPA's regional offices in responding to FOIA requests, and increase the involvement of political appointees in FOIA administration. The agency has taken these steps even though, according to a 2016 internal audit, only 23% of EPA career staff favor centralizing FOIA processing at EPA headquarters, due to concerns about lack of resources and staffing.¹ Given this internal disagreement, as well as the implications that the agency's FOIA centralization efforts have on its ability to efficiently and effectively process FOIA requests, the public has a strong interest in the requested communications between leadership at EPA headquarters and EPA regional offices concerning the agency's FOIA centralization efforts.

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. 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").

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

Conclusion

¹ *See* Evaluation of EPA's FOIA Program, Final Report, at 39, 41-42, 46, Feb. 12, 2016, available at <https://bit.ly/2ygSOHz>.

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-0682 or elee@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 elee@citizensforethics.org or at Eli Lee, Citizens for Responsibility and Ethics in Washington, 1101 K St., 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 'Eli Lee', with a stylized, cursive script.

Eli Lee
Research Associate

Exhibit 11 to Rappaport Declaration



July 30, 2019

Regional Freedom of Information Officer
U.S. EPA, Region 6
1445 Ross Avenue (ORC-DF)
Dallas, TX 75202-2733
(214) 665-3179

Re: Freedom of Information Act Request

Dear FOIA Office:

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. Environmental Protection Agency regulations.

CREW requests copies of all communications exchanged between the Office of the Regional Administrator for Region 6 and the Office of the Administrator regarding any programs, initiatives, or efforts to centralize the submission and processing of FOIA requests at EPA headquarters, from July 1, 2017 to the present.

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 Environmental Protection Agency 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).

Over the last two years, agency leadership at EPA have taken steps to centralize the submission and processing of FOIA requests at EPA headquarters, minimize the role of EPA's regional offices in responding to FOIA requests, and increase the involvement of political appointees in FOIA administration. The agency has taken these steps even though, according to a 2016 internal audit, only 23% of EPA career staff favor centralizing FOIA processing at EPA headquarters, due to concerns about lack of resources and staffing.¹ Given this internal disagreement, as well as the implications that the agency's FOIA centralization efforts have on its ability to efficiently and effectively process FOIA requests, the public has a strong interest in the requested communications between leadership at EPA headquarters and EPA regional offices concerning the agency's FOIA centralization efforts.

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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").

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Sincerely,

A handwritten signature in black ink, appearing to read 'Eli Lee', with a stylized, cursive script.

Eli Lee
Research Associate

Exhibit 12 to Rappaport Declaration



July 30, 2019

Submitted via email to r7foia@epa.gov
Regional Freedom of Information Officer
U.S. EPA, Region 7
11201 Renner Boulevard
Lenexa, KS 66219
(913) 551-7803

Re: Freedom of Information Act Request

Dear FOIA Office:

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. Environmental Protection Agency regulations.

CREW requests copies of all communications exchanged between the Office of the Regional Administrator for Region 7 and the Office of the Administrator regarding any programs, initiatives, or efforts to centralize the submission and processing of FOIA requests at EPA headquarters, from July 1, 2017 to the present.

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.

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Eli Lee
Research Associate

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, and

ANDREW WHEELER, in his official
capacity as Administrator of the U.S.
Environmental Protection Agency,

Defendants.

Civil Action No. 19-cv-2181-TJK

[PROPOSED] ORDER

The Court having considered Defendants' Motion to Dismiss the First Amended Complaint, and Plaintiff's Cross-Motion for Partial Summary Judgment, it is hereby

ORDERED that Defendants' motion is DENIED.

ORDERED that Plaintiff's motion is GRANTED.

SO ORDERED.

Timothy J. Kelly
U.S. District Judge

DATED: