

August 14, 2019

BY ELECTRONIC MAIL: os_foia@ios.doi.gov

Clarice Julka
Office of the Secretary
U.S. Department of the Interior
MS-7328, MIB 1849 C Street,
N.W. Washington, D.C. 20240

Re: Freedom of Information Act Request

Dear Ms. Julka:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of the Interior regulations.

First, CREW requests copies of all documents referring or pertaining to Secretary Bernhardt’s participation prior to August 1, 2019 in the proposed rule (83 Federal Register 35174) and final rule to revise regulations applicable to threatened wildlife and plants under the Endangered Species Act.¹

Second, CREW requests copies of all legal or ethics opinions provided to Secretary Bernhardt from the date of his appointment as Deputy Secretary on August 1, 2017 to the present from agency ethics officials pertaining in any way to the proposed rule and final rule to revise regulations applicable to threatened wildlife and plants under the Endangered Species Act

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.

¹ https://www.fws.gov/endangered/improving_ESA/regulation-revisions.html

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 Interior 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 12, 2019, Secretary Bernhardt issued a final rule to revise regulations applicable to threatened wildlife and plants under the Endangered Species Act. The revision will clear the way for new mining, and oil and gas drilling projects and has long been a priority for those industries, which have lobbied extensively for changes to the Act.^{2 3}

Industry lobbyists have enjoyed unprecedented access in the Trump administration, with both the Environmental Protection Agency and Interior currently being led by a former coal lobbyist and former oil lobbyist.⁴ Bernhardt was appointed Deputy Interior Secretary on August 1, 2017, and

² Lisa Friedman, [U.S. Significantly Weakens Endangered Species Act](https://www.nytimes.com/2019/08/12/climate/endangered-species-act-changes.html), *New York Times*, August 12, 2019, available at <https://www.nytimes.com/2019/08/12/climate/endangered-species-act-changes.html>

³ Timothy Cama, [Push to change wildlife act sparks lobbying blitz](https://thehill.com/policy/energy-environment/406404-push-to-change-wildlife-act-sparks-lobbying-blitz), *The Hill*, September 13, 2018, available at

<https://thehill.com/policy/energy-environment/406404-push-to-change-wildlife-act-sparks-lobbying-blitz>.

⁴ Ellie Kaufmann, [Senate confirms former coal lobbyist Andrew Wheeler to lead EPA](https://www.cnn.com/2019/02/28/politics/andrew-wheeler-confirmation/index.html), *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](https://thehill.com/policy/energy-environment/428395-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-bernhardt-for-interior-secretary>.

as a former registered lobbyist, he was required to recuse from participation in any particular matter on which he lobbied. That requirement extended for two years after the date of his appointment under Executive Order 13770, sec. 1, paragraph 7 (Jan. 28, 2017) ("Ethics Pledge"). The Senate Lobbying Disclosure database indicates that Secretary Bernhardt lobbied on the Endangered Species Act from March 30, [2011](#) to November 18, [2016](#).

The requested records will shed light on whether Secretary Bernhardt sought and/or received ethics advice concerning his participation in the proposed rule and final rule and whether his actions are consistent with any ethics advice he received. There is great public interest in knowing the extent to which Secretary Bernhardt was influenced in promulgating this rule by his former industry and whether he has adhered to the Ethics Pledge to which he committed upon his appointment.

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 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, 1101 K St NW, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

Linnaea Honl-Stuenkel