

September 10, 2019

BY EMAIL: fema-foia@fema.dhs.gov

FEMA Information Management Division
FOIA Request
500 C Street, S.W., Mailstop 3172
Washington, D.C. 20472

Re: Freedom of Information Act Request

Dear FOIA Officer,

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

Specifically, CREW requests:

(1) Any and all documents or communications from August 30, 2019 to the present between or among: (a) Chief of Staff Eric Heighberger; (b) Deputy Chief of Staff Myung Kim; (c) Office of Response and Recovery Associate Administrator Jeffrey Byard; (d) Resilience Deputy Administrator Daniel Kaniewski; (e) Gracia Szczech, Regional Administrator, FEMA Region IV regarding President Trump’s September 2019 tweet and/or use of a map indicating that the State of Alabama would be hit by Hurricane Dorian; and

(2) Any and all documents or communications from August 30, 2019 to the present regarding President Trump’s September 2019 claims that the State of Alabama would be hit by Hurricane Dorian between any employee of the Office of Governor Ivey of Alabama or the Alabama Emergency Management Agency and the following FEMA employees: (a) Chief of Staff Eric Heighberger; (b) Deputy Chief of Staff Myung Kim; (c) Office of Response and Recovery Associate Administrator Jeffrey Byard; (d) Resilience Deputy Administrator Daniel Kaniewski; or (e) Gracia Szczech, Regional Administrator, FEMA Region IV; and

(3) Any and all documents or communications from August 30, 2019 to the present between FEMA employee Bob Nadeau, Office of External Affairs and any employee of the Office of Governor Ivey of Alabama or the Alabama Emergency Management Agency regarding President Trump’s September 2019 claims that the State of Alabama would be hit by Hurricane Dorian.

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). 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 DHS 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 September 1, 2019, while the nation was gripped with fear and concern over the path of Hurricane Dorian, President Trump issued a warning on Twitter that Alabama, among other states, could be hit by the hurricane “(much) harder than anticipated.”¹ The local Alabama National Weather Service, responding to the false information the President had disseminated, quickly tweeted that “Alabama will NOT see any impacts from #Dorian,” and further, “We repeat, no impacts from Hurricane #Dorian will be felt across Alabama.”² President Trump, however, refused to back off his inaccurate tweet, going so far as to alter an official NOAA map with a Sharpie to falsely show Alabama as in the hurricane’s path, which he displayed during a briefing in the Oval Office.³ The White House also issued a statement from Rear Adm. Peter Brown, a Homeland Security and counterterrorism adviser, who said he had briefed President Trump multiple times about Hurricane Dorian and models that showed “possible storm impacts well outside the official forecast cone.”⁴

¹ Peter Baker and Sarah Mervosh, *A Presidential Storm Leaves Forecasters Rebuked*, *New York Times*, Sept. 6, 2019, available at <https://www.nytimes.com/2019/09/06/us/politics/trump-alabama-dorian.html>.

² *Id.*

³ Toluse Olorunnipa and Josh Dawsey, “What I said was accurate!”: Trump stays fixated on his Alabama error as hurricane pounds the Carolinas, *Washington Post*, Sept. 5, 2019, available at https://www.washingtonpost.com/politics/what-i-said-was-accurate-trump-stays-fixated-on-his-alabama-error-as-hurricane-pounds-the-carolinas/2019/09/05/32597606-cfe7-11e9-8c1c-7c8ee785b855_story.html.

⁴ Brett Samuels and Morgan Chalfant, *White House adviser gives Trump cover on hurricane claim*, *The Hill*, Sept. 5, 2019, available at <https://thehill.com/homenews/administration/460174-white-house-adviser-gives-trump-cover-on-hurricane-forecast>.

On September 6, 2019, NOAA injected itself into the raging controversy over the President's refusal to back down from his inaccurate claim concerning Alabama as within the hurricane's path. Specifically, NOAA issued the following statement:

From Wednesday, August 28, through Monday, September 2, the information provided by NOAA and the National Hurricane Center to President Trump and the wider public demonstrated that tropical-storm-force winds from Hurricane Dorian could impact Alabama. This is clearly demonstrated by Hurricane Advisories #15 through #41 . . .

The Birmingham National Weather Service's Sunday morning tweet spoke in absolute terms that were inconsistent with probabilities from the best forecast products available at the time.⁵

These actions have provoked outrage and concern that the administration has forsaken science to provide political cover for President Trump, at a potential risk to the American public. The requested records will shed light on the extent to which FEMA was involved with or influenced by the President's inaccurate statements about the hurricane's path in planning for or addressing the impact of Hurricane Dorian, including but not limited to how FEMA allocated and deployed federal resources.

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 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 on its website, and those documents have been visited hundreds of thousands of times.

⁵ The statement is available at <https://www.noaa.gov/news/statement-from-noaa>.

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 Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance with this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel