

October 22, 2019

BY EMAIL: OMBFOIA@omb.eop.gov

Dionne Hardy
FOIA Officer
Office of Management and Budget
725 17th Street, N.W., Suite 9204
Washington, D.C. 20503

Re: Freedom of Information Act Request

Dear Ms. Hardy:

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 Office of Management and Budget (“OMB”) regulations.

Specifically, CREW requests all records supporting Director Mick Mulvaney’s October 17, 2019 claim that security assistance to Ukraine was temporarily withheld in part due to whether or not the government of Ukraine was cooperating in an investigation by the U.S. Department of Justice.

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 OMB 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).

President Trump and his advisers reportedly began discussing the idea of putting a hold on security assistance funds for Ukraine in June 2019 and President Trump ordered Mr. Mulvaney, who also serves as acting White House chief of staff, to put a hold on the money at least a week before his July 25 phone call with Ukrainian President Zelensky.¹ Defense and State Department officials were informed by OMB of the decision during an interagency meeting on July 18, 2019.² OMB officials reportedly explained that President Trump had “concerns” about the aid funding and wanted to examine the need for the money.³ According to the *Washington Post*, “Administration officials were instructed to tell lawmakers that the delays were part of an ‘interagency process’ but to give them no additional information — a pattern that continued for nearly two months, until the White House released the funds on the night of Sept. 11.”⁴

During a press conference on October 17, 2019, Mr. Mulvaney acknowledged that the hold on releasing aid to Ukraine had been connected to the White House’s demands that Ukraine investigation issues related to the 2016 election.⁵ “Did he also mention to me in the past the corruption related to the DNC server? Absolutely, no question about that. But that’s it. And that’s why we held up the money,” Mr. Mulvaney said.⁶ “I was involved with the process by which the money was held up temporarily, okay? Three issues for that: the corruption of the country; whether or not other countries were participating in support of Ukraine; and whether or not they were cooperating in an ongoing investigation with our Department of Justice.”⁷

Department of Justice officials appeared to be confused by Mr. Mulvaney’s claims about aid to Ukraine being tied to cooperation with Justice Department investigation. “We have no idea what he’s talking about,” a Justice Department official told reporters.⁸ “If the White House was withholding aid in regards to the cooperation of any investigation at the Department of Justice, that is news to us,” said a senior Justice Department official in a statement provided to reporters.⁹

¹ Karoun Demirjian, Josh Dawsey, Ellen Nakashima and Carol D. Leonig, *Trump ordered hold on military aid days before calling Ukrainian president, officials say*, *Washington Post*, Sept. 23, 2019, available at https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html?arc404=true; Rebecca Ballhaus, Andrew Restuccia and Siobhan Hughes, *Trump Put Hold on Military Aid Ahead of Phone Call With Ukraine’s President*, *Wall Street Journal*, Sept. 24, 2019, available at <https://www.wsj.com/articles/president-trump-repeats-criticism-of-biden-in-impromptu-u-n-appearance-11569254230>.

² *Id.*

³ Demirjian, Dawsey, Nakashima, and Leonig, *Washington Post*, Sept. 23, 2019.

⁴ *Id.*

⁵ Demirjian, Dawsey, Nakashima, and Leonig, *Washington Post*, Sept. 23, 2019; John Hudson and Karoun Demirjian, *Mulvaney confirms Ukraine aid withheld in part to force probe of Democrats*, *Washington Post*, Oct. 17, 2019, available at https://www.washingtonpost.com/national-security/trumps-envoy-tells-congress-the-president-outsourced-ukraine-policy-to-giuliani/2019/10/17/484b30d0-f0ee-11e9-b648-76bcf86eb67e_story.html.

⁶ Press Briefing by Acting Chief of Staff Mick Mulvaney, White House, October 17, 2019, available at <https://www.whitehouse.gov/briefings-statements/press-briefing-acting-chief-staff-mick-mulvaney/>.

⁷ *Id.*

⁸ *See* https://twitter.com/alex_mallin/status/1184893825359187968.

⁹ *See* https://twitter.com/alex_mallin/status/1184906033183023106.

Mr. Mulvaney subsequently walked back his press conference comments, claiming “there was absolutely no quid pro quo between Ukrainian military aid and any investigation into the 2016 election. The president never told me to withhold any money until the Ukrainians did anything related to the server. The only reasons we were holding the money was because of concern about lack of support from other nations and concerns over corruption.”¹⁰

The requested records would help clarify Mr. Mulvaney’s assertion, which has been contradicted by Justice Department officials, subsequently walked back, and is likely to be a source of public confusion. The requested records would also shed light more generally on the reasoning behind the multi-month freeze on military aid to Ukraine. Given the varying explanations the Trump administration has given for the decision to withhold the funds over the summer, the records would also help inform the public about the rationale for the decision. The records would also provide insight on the sequence of events surrounding the hold on the aid to Ukraine and how it relates to President Trump’s July 25 phone call with the president of Ukraine. In these ways, they would reveal important information about the functioning and decisions of OMB.

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.

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

Conclusion

¹⁰ See <https://twitter.com/marshallcohen/status/1184953842045214720?s=12>.

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or mcorley@citizensforethics.org. 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 mcorley@citizensforethics.org or at Matthew Corley, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Matthew Corley', with a stylized flourish at the end.

Matthew Corley
Chief Investigator