

October 2, 2019

**BY EMAIL: [whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil](mailto:whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil)**

U.S. Department of Defense  
OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, D.C. 20301-1155

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 Department of Defense (“DOD”) regulations.

Specifically, CREW requests the following:

First, CREW requests all communications between the Defense Department and the Office of Management and Budget (“OMB”) on July 18, 2019, July 23, 2019, and July 26, 2019 related to security assistance or military aid for Ukraine.

Second, CREW requests all records related to interagency meetings that involved OMB on July 18, 2019, July 23, 2019, and July 26, 2013 in which security assistance or military aid for Ukraine was discussed.

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 DOD 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, a whistleblower who works within the intelligence community filed a complaint with the Office of the Inspector General of the Intelligence Community, reporting an “urgent concern” that “the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election.”<sup>1</sup> According to a declassified version of the complaint released by the House Permanent Select Committee on Intelligence, the whistleblower described President Trump’s July 25, 2019 telephone call with Ukrainian President Volodymyr Zelensky, in which “after an initial exchange of pleasantries, the President used the remainder of the call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President’s 2020 reelection bid.”<sup>2</sup>

In a section on circumstances leading up to the July 25 phone call, the whistleblower noted that he or she learned in mid-July “of a sudden change of policy with respect to U.S. assistance,” which was described in more detail in an appendix.<sup>3</sup> Specifically, the whistleblower wrote, “On 18 July, an Office of Management and Budget (OMB) official informed Departments and Agencies that the President ‘earlier that month’ had issued instructions to suspend all U.S. security assistance to Ukraine. Neither OMB nor the NSC staff knew why this instruction had been issued. During interagency meetings on 23 July and 26 July, OMB officials again stated explicitly that the instruction to suspend this assistance had come directly from the President, but they still were unaware of a policy rationale. As of early August, I heard from U.S. officials that some Ukrainian officials were aware that U.S. aid might be in jeopardy, but I do not know how or when they learned of it.”<sup>4</sup>

The whistleblower’s observations about a change in policy during that time period regarding assistance to Ukraine have been confirmed by public documents and press reporting. President Trump and his advisers reportedly began discussing the idea of putting a hold on the funds for Ukraine in June 2019 and President Trump ordered his acting chief of staff, Mick Mulvaney, to put a hold on the money at least a week before his July 25 phone call with Ukrainian President Zelensky.<sup>5</sup> Defense and State Department officials were informed by OMB

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<sup>1</sup> Press Release, House Intelligence Committee Releases Whistleblower Complaint, House Permanent Select Committee on Intelligence, Sept. 26, 2019, *available at* <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=708>; *See* [https://intelligence.house.gov/uploadedfiles/20190812\\_-whistleblower\\_complaint\\_unclass.pdf](https://intelligence.house.gov/uploadedfiles/20190812_-whistleblower_complaint_unclass.pdf)

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

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

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

<sup>5</sup> Karoun Demirjian, Josh Dawsey, Ellen Nakashima and Carol D. Leonig, [Trump ordered hold on military aid days](#)

of the decision during an interagency meeting on July 18, 2019.<sup>6</sup> OMB officials reportedly explained that President Trump had “concerns” about the aid funding and wanted to examine the need for the money.<sup>7</sup> 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.”<sup>8</sup>

On September 25, 2019, following news reports that President Trump repeatedly pressured President Zelensky during the July 25 phone call to investigate former Vice President Biden’s son, the White House released a rough transcript of the call.<sup>9</sup> The transcript revealed that President Trump framed the conversation by saying, “we do a lot for Ukraine” and “I wouldn’t say that it’s reciprocal necessarily.”<sup>10</sup> Then, when President Zelensky stated that Ukraine was ready for “next steps” and specifically raised his desire to buy weapons from the United States, President Trump immediately replied by saying, “I would like you to do us a favor though” before asking for Ukraine to pursue investigations into several subjects, including one related to former Vice President Biden and his son.<sup>11</sup> President Trump told President Zelensky that he would tell both Giuliani and Attorney General William Barr to contact him about the investigations.<sup>12</sup>

President Trump’s request to President Zelensky for a politically beneficial investigation into a political rival is now at the center of a formal impeachment inquiry being conducted by the House of Representatives.<sup>13</sup> According to Speaker of the House Nancy Pelosi, the “sequencing of events,” including President Trump’s decision to withhold aid days before his phone call with President Zelensky, is a part of the investigation.<sup>14</sup>

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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](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>.

<sup>6</sup> *Id.*

<sup>7</sup> Demirjian, Dawsey, Nakashima, and Leonig, *Washington Post*, Sept. 23, 2019.

<sup>8</sup> *Id.*

<sup>9</sup> Alan Cullison, Rebecca Ballhaus and Dustin Volz, *Trump Repeatedly Pressed Ukraine President to Investigate Biden’s Son*, *Wall Street Journal*, Sept 21, 2019, available at <https://www.wsj.com/articles/trump-defends-conversation-with-ukraine-leader-11568993176>; Rebecca Ballhaus, Sadie Gurman, and Dustin Volz, *Rough Transcript Shows Trump Asked Ukrainian Counterpart to Look Into Joe Biden*, *Wall Street Journal*, Sept. 25, 2019, available at <https://www.wsj.com/articles/white-house-to-release-transcript-of-trumps-ukraine-call-as-impeachment-efforts-begin-11569403803>.

<sup>10</sup> See <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Nicholas Fandos, *Nancy Pelosi Announces Formal Impeachment Inquiry of Trump*, *New York Times*, Sept. 24, 2019, available at <https://www.nytimes.com/2019/09/24/us/politics/democrats-impeachment-trump.html>.

<sup>14</sup> Scott Pelley, *The Impeachment Inquiry: “We Could Not Ignore What the President Did”*, *CBS News*, Sept. 30, 2019, available at <https://www.cbsnews.com/news/nancy-pelosi-on-trump-impeachment-inquiry-ukraine-president-phone-call-and-the-whistleblower-in-60-minutes-interview/>.

The requested records would shed light on the reasoning behind the multi-month freeze on military aid to Ukraine and how that policy decision was communicated by OMB to the Defense Department. Given the varying explanations the Trump administration has given for the decision to withhold the funds over the summer, the records would also help clarify 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 the Defense Department.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts 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**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at 202-408-5565 or [mcorley@citizensforethics.org](mailto:mcorley@citizensforethics.org). Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at [mcorley@citizensforethics.org](mailto:mcorley@citizensforethics.org) or at Matthew Corley, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201, Washington, D.C.

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20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Corley", with a long horizontal flourish extending to the right.

Matthew Corley  
Chief Investigator