



**citizens for responsibility
and ethics in washington**

October 8, 2019

BY EMAIL: FOIArequest@state.gov

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D.C. 20522-8100

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. Department of State regulations.

First, CREW requests copies of all records of, about, or concerning efforts by the President or other top White House officials to return, "claw back," "lock down," or recall records reflecting the President's or other top White House officials' meetings, phone calls, and other communications with foreign leaders.

Second, CREW requests copies of all records reflecting the President's or other top White House officials' meetings, phone calls, and other communications with foreign leaders.

Third, CREW requests copies of all communications to or from U.S. Ambassador to the European Union Gordon Sondland between November 1, 2018 and the date of this request that mention, refer, or relate to Ukraine.

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. It also includes agency records created or stored on a personal device.

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).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation reasonably is foreseeable, the State Department should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and State Department 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.”¹ 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.”² The complaint further notes that although “approximately a dozen White House officials” and “a State Department official, Mr. T. Ulrich Brechbuhl” listened to the call and multiple State Department and Intelligence Community officials were “briefed on the contents of the call,” in the days following the call “senior White House officials . . . intervened to ‘lock down’ all records of the phone call, especially the official word-for-word transcript of the call that was produced – as is customary – by the White House Situation Room.”³

In addition to the President’s call with Zelensky, Mr. Giuliani on behalf of the President has been leading an effort to encourage the government of Ukraine to investigate allegations related to a potential political rival of President Trump, former Vice President Joe Biden, and his

¹ 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.

² *Id.*

³ *Id.*

son, despite reports that prosecutors in Ukraine “have no evidence of wrongdoing” related to the Bidens.⁴ According to *The Daily Beast*, U.S. diplomats “were aware of the details of Giuliani’s work in Ukraine on Biden as early as this spring” and Mr. Giuliani has briefed both Ambassador Volker and Ambassador Sondland “on multiple conference calls earlier this year about his progress in pursuing a Ukraine investigation.”⁵ According to Representative Adam Schiff, Chair of the House Intelligence Committee, Ambassador Sondland has texts or emails related to the Ukraine affair on a personal device that is in the custody or control of the State Department.⁶ 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.⁷

Public reporting suggests that the White House has taken additional, unusual action with respect to other records of President Trump’s phone calls with foreign leaders. For instance, the *Washington Post* reported that “[a]t one point in 2018, Defense Department officials were asked to send back transcripts of calls to the White House after Trump aides grew worried they could be disclosed, according to former senior administration officials.”⁸

The requested records would shed light on the role the State Department has played in actions by the President and others acting on his behalf to pressure Ukraine to take actions that could benefit President Trump’s political interests. They also would shed light on efforts by the President and other White House officials to prevent public access to records that would document those and other actions the President has taken to further his political interests. In these ways, they would reveal important information about the functioning and decisions of the State 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 documents it acquires from this request to

⁴ Kenneth R. Vogel, Behind the Whistle-Blower Case, a Long-Held Trump Grudge Toward Ukraine, *New York Times*, Sept. 20, 2019, available at <https://nyti.ms/2m7wjC2>; Stephanie Baker and Daryna Krasnolutska, Trump, Giuliani Press for Dirt on Biden Despite Ukraine Rebuff, *Bloomberg*, Sept. 20, 2019, available at <https://bloom.bg/2mxb0tz>.

⁵ Erin Banco, Asawin Suebsaeng, and Adam Rawnsley, U.S. Ambassador Roped Into Rudy’s Quest to Smear Biden, *The Daily Beast*, Sept. 25, 2019, available at <https://bit.ly/2mr2xlt>.

⁶ Rashaan Ayes, Schiff: State Department withholding “relevant” messages from Sondland, *Axios*, Oct. 8, 2019, at <https://bit.ly/2OBIFP3>.

⁷ 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>.

⁸ Josh Dawsey and Carol D. Leonnig, Effort to shield Trump’s call with Ukrainian leader was part of broader secrecy effort, *Washington Post* (Sept. 26, 2019), <https://wapo.st/2mjte1V>.

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, which has been visited hundreds of thousands of times.

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

Request for Expedition

CREW also requests that this request be expedited pursuant to 22 C.F.R. § 171.11(f), as it seeks urgently needed information as defined at 22 C.F.R. § 171.11, whose informational value will be lost if not disseminated quickly. As explained above, the transcript of the call between President Trump and President Zelensky that the White House released on September 25 raises serious and disturbing questions not only about President Trump's own conduct, but the active and ongoing role of others acting on his behalf and the extent to which State Department officials were involved in or aware of those efforts. These actions have severely undermined the foundations of our democracy and raise matters that are of extreme public interest. Any delay in disseminating this information to the public will cause further harm by allowing the President and White House officials to falsely shape the public narrative of their actions, while depriving the public of information necessary to independently evaluate those actions. Moreover, as demonstrated above, CREW is engaged primarily in disseminating information to the public in general. For all these reasons, CREW satisfies the criteria for expedition.

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.

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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, 1101 K Street, N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel