

CREW

citizens for responsibility
and ethics in washington

December 3, 2019

Sent via email: EDFOIAManager@ed.gov

U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Ave., S.W.
LBJ 2W218-32
Washington, D.C. 20202-4536

Attn: FOIA Public Liaison

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 Education (“ED”) regulations.

First, CREW seeks any and all letters in the possession of the Office of the White House Liaison, Office of the Secretary, Office of the Deputy Secretary, or the Office of Legislation and Congressional Affairs from any Member of Congress or Senator related to an individual’s application for a Schedule C “political” position with the federal government at any time between January 20, 2017, and the date on which the agency conducts its search for records responsive to this FOIA request.

Second, CREW seeks any and all letters in the possession of the Office of the White House Liaison, Office of the Secretary, Office of the Deputy Secretary, or the Office of Legislation and Congressional Affairs to any Member of Congress or Senator related to an individual’s application for a Schedule C “political” position with the federal government at any time between January 20, 2017, and the date on which the agency conducts its search for records responsive to this FOIA request.

Third, CREW seeks any and all communications to, from, or among individuals within the Office of the White House Liaison, Office of the Secretary, Office of the Deputy Secretary, or the Office of Legislation and Congressional Affairs regarding any Member of Congress or Senator’s letter related to an individual’s application for a Schedule C “political” position with the federal government at any time between January 20, 2017, and the date on which the agency conducts its search for records responsive to this FOIA request.

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). 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 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 November 18, 2019, senior State Department official Mina Chang resigned from a political appointment in the Trump Administration following allegations that she inflated her resume including her educational achievements and the accomplishments of the non-profit she worked at prior to applying for her government job.¹ Ms. Chang who served as the Department's Deputy Assistant Secretary for the Bureau of Conflict and Stabilization Operations, was also accused of touting a fake *TIME* magazine cover to "bolster her standing" with the agency.² Former colleagues noted that Ms. Chang was able to secure her position as a political appointee in the administration by "crafting a public image as a humanitarian 'thought leader' with help from paid media and public relations consultants" and "ingratiate[ing] herself with prominent

¹ Kylie Atwood and Nicole Gaouette, Senior State Department Official Accused of Padding Resume Resigns, CNN, Nov. 18, 2019, available at <https://www.cnn.com/2019/11/18/politics/mina-chang-state-department-resigns/index.html>.

² *Id.*

Republicans in Dallas and former military officers.”³ Further reporting revealed that one of the prominent politicians that supported her candidacy was Rep. Michael McCaul, who wrote to the State Department’s White House Liaison on congressional letterhead indicating his positions as Chairman of the House Committee on Homeland Security and membership on the House Committee on Foreign Affairs.⁴ Rep. McCaul gave Ms. Chang his “strongest recommendation” for a position at the State Department, citing, in part, “her powerful speech delivered at the Republican National Convention.”⁵ Public reporting later indicated that Ms. Chang did not actually address the RNC.⁶

According to guidance provided by the House Ethics Committee, Members of Congress are allowed to endorse an individual’s candidacy for a “political” position in a federal agency, such as Schedule C or non-career Senior Executive Service positions, “even if the recommendation is not based on the Member’s personal knowledge or records.”⁷ Members are only allowed to use their official letter head for such letters if they are on behalf of a person “who has worked with the Member in an official capacity.”⁸ That term is interpreted “broadly” to include not only current and former staff, but also, “persons working in the private sector (such as attorneys, university professors, or persons affiliated with “think tanks”) who have assisted the Member’s office on legislative matters.”⁹ There is no requirement that these letters be made available for public inspection by the Member or Senator that signs them. The public has a vested interest in understanding how often federal agencies receive letters of recommendations for political appointees from Members of Congress and how agency leaders consider those letters. In addition, as a government ethics organization, it is critical for CREW to understand and explain to the public the impact of Members of Congress using the imprimatur of their office to recommend individuals for political appointments at the highest levels of government.

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

³ Dan De Luce, Laura Strickler and Ari Sen, *How did Mina Chang get a State Department Job in the First Place?*, *NBC News*, Nov. 27, 2019, available at <https://www.nbcnews.com/politics/donald-trump/how-did-mina-chang-get-state-department-job-first-place-n1091516>.

⁴ *See id*; see also Letter from Representative Michael T. McCaul to Carrie Cabelka, White House Liaison, US. Department of State, Feb. 18, 2018, available at <https://www.documentcloud.org/documents/6561221-McCaul-Letter-of-Recommendation-for-Mina-Chang.html>.

⁵ *See* Letter from Representative Michael T. McCaul to Carrie Cabelka, White House Liaison, US. Department of State, Feb. 18, 2018, available at <https://www.documentcloud.org/documents/6561221-McCaul-Letter-of-Recommendation-for-Mina-Chang.html>.

⁶ *See also* Dan De Luce, Laura Strickler and Ari Sen, *Senior Trump Official Embellished Résumé, had Face on Fake Time Cover*, *NBC News*, Nov. 12, 2019, available at <https://www.nbcnews.com/politics/donald-trump/senior-trump-official-embellished-resume-had-face-fake-time-cover-n1080356>.

⁷ House Committee on Ethics, *Recommendations for Government Employment*, available at <https://ethics.house.gov/casework/recommendations-government-employment>; accessed Dec. 2, 2019.

⁸ *Id.*

⁹ *Id.*

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 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.

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,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', written in a cursive style.

Anne L. Weismann
Chief FOIA Counsel