

February 12, 2020

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.

First, CREW requests records sufficient to show every delegation of authority by an OMB Director to any other officer or employee that was in effect at any time from December 1, 2018 to present.

Second, CREW requests all email communications sent to or received by OMB Acting Director Russell Vought, OMB Deputy Director for Management Margaret Weichert, or OMB General Counsel Mark Paoletta from December 1, 2018 to the present regarding any delegation of authority to an OMB officer or employee by OMB Director John Michael “Mick” Mulvaney. This request includes, but is not limited to, records tied to any email address Mr. Vought, Ms. Weichert, or Mr. Paoletta has used to conduct OMB business, not just email addresses with the domain @omb.eop.gov.

Third, CREW requests all records of reimbursement(s) made to OMB by the White House Office or any other component of the Executive Office of the President from December 1, 2018 to the present in connection with Mr. Mulvaney’s detail to serve as Acting White House Chief of Staff, including the reimbursement of salary or any other item or expense associated with the detail.

Fourth, CREW requests all records from December 1, 2018 to the present establishing or modifying the terms of Mr. Mulvaney’s detail to serve as Acting White House Chief of Staff, including without limitation any interagency agreement, memorandum of understanding, or other agreement regarding Mr. Mulvaney’s detail.

Fifth, CREW requests all communications between OMB and the White House Office or the Office of Administration from December 1, 2018 to the present regarding the reimbursement of Mr. Mulvaney’s salary or any other item or expense in connection with his detail to serve as Acting White House Chief of Staff.

Sixth, CREW requests all internal OMB communications from December 1, 2018 to the present regarding the reimbursement of Mr. Mulvaney's salary or any other item or expense in connection with his detail to serve as Acting White House Chief of Staff.

Seventh, CREW requests each OMB agency record that Mr. Mulvaney has signed, whether by hand or electronically, from December 1, 2018 to the present.

Eighth, CREW requests all records from December 1, 2018 to the present discussing or authorizing the deactivation of Mr. Mulvaney's OMB email address.

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 emails to which the subjects of this request were cc'ed or bcc'ed.

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).

On December 14, 2018, President Donald Trump announced on Twitter that he had selected OMB Director Mick Mulvaney to serve as Acting White House Chief of Staff.¹ Sarah Huckabee Sanders, the White House press secretary, clarified that, although Mr. Mulvaney

¹ Donald J. Trump (@realDonaldTrump), Twitter (Dec. 14, 2018), <https://twitter.com/realdonaldtrump/status/1073703744766922754?lang=en>.

would not resign from OMB, he would “spend all of his time devoted to his role as the acting Chief of Staff.”² Ms. Sanders also indicated that OMB Deputy Director Russell Vought would “handle day to day operations and run OMB.”³

The White House has since described Mr. Mulvaney as a “ detailee on non-reimbursable assignment to the White House,”⁴ and it reported Mr. Mulvaney as a detailee in its 2019 Annual Report to Congress on White House Office Personnel.⁵ Mr. Vought has been identified in White House briefings and congressional testimony, as well as on his own Twitter account, as the Acting Director of OMB.⁶ CREW has also learned in litigation with OMB that Mr. Mulvaney’s OMB email account was deactivated shortly after his appointment as Acting Chief of Staff. Mr. Mulvaney, however, continues to hold the title of OMB Director—his biography on the White House website lists him as the “Director of the Office of Management and Budget,” with no reference to his role as Acting White House Chief of Staff or any delegation of authority to Mr. Vought⁷—and to receive his OMB salary.⁸

At the time of Mr. Mulvaney’s appointment, the White House indicated that there was “no time limit” on his service as Acting Chief of Staff.⁹ In February 2020, President Trump indicated that Mr. Mulvaney will continue in his Acting Chief of Staff role indefinitely.¹⁰

The requested records will shed light on the operations and management of OMB following Mr. Mulvaney’s detail to the White House as Acting Chief of Staff. In particular, the records are likely to contribute to greater public understanding of who is running the agency, including how Mr. Mulvaney delegated his OMB authority to Mr. Vought or others; the scope of the delegation; and how Mr. Mulvaney’s ongoing role as the titular OMB Director is understood by OMB employees. Moreover, the requested records will reveal whether OMB is complying with the legal rules governing details to the White House, including 3 U.S.C. § 112, which requires the White House to reimburse agencies who loan it their employees for certain periods of time. OMB has a heightened responsibility to comply with these requirements given its role overseeing budget development, agency management, and regulatory policy¹¹—and the public

² Jessica Taylor, President Trump Names Mick Mulvaney As Acting White House Chief of Staff, *NPR*, Dec. 14, 2018, <https://n.pr/377pkur>.

³ *Id.*

⁴ Maegan Vazquez, Acting chief of staff Mulvaney and his adviser out-earn White House staff, *CNN*, July 2, 2019, <https://www.cnn.com/2019/07/02/politics/mick-mulvaney-john-czartacki-out-earning-white-house-staff/index.html>.

⁵ Executive Office of the President’s Annual Report to Congress on White House Office Personnel, June 28, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/06/July-1-2019-Report-FINAL.pdf>.

⁶ *See, e.g.*, The White House, Press Briefing by Press Secretary Sarah Sanders and OMB Acting Director Russell Vought, Mar. 11, 2019, <https://bit.ly/2S75w6b>; The President’s 2021 Budget before the H. Comm. on the Budget, 116th Cong. (2020), <https://budget.house.gov/legislation/hearings/presidents-2021-budget>; Russ Vought (@RussVought45), <https://twitter.com/russvought45?lang=en> (last visited Feb. 11, 2020).

⁷ Mick Mulvaney, Office of Management and Budget, <https://www.whitehouse.gov/people/mick-mulvaney/> (last visited Feb. 11, 2020).

⁸ Vazquez, *CNN*, July 2, 2019.

⁹ Taylor, *NPR*, Dec. 14, 2018.

¹⁰ Quint Forgey, Trump says Mulvaney will stay on as chief of staff, *Politico*, Feb. 7, 2020, <https://www.politico.com/news/2020/02/07/mick-mulvaney-trump-111979>.

¹¹ *See* Office of Management and Budget, <https://www.whitehouse.gov/omb/> (last visited Feb. 11, 2020).

has a compelling interest in ensuring that OMB is conducting its obligations in a legally compliant manner. Given President Trump's statement that Mr. Mulvaney is likely to remain Acting Chief of Staff indefinitely, the public deserves to know the terms of his detail and how OMB is operating in his apparent absence.

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 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 all documents it receives under the FOIA 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 jlutkenhaus@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 jlutkenhaus@citizensforethics.org or Jessica Lutkenhaus, Citizens for Responsibility and Ethics in Washington, 1101 K St, N.W., Suite 201, Washington, D.C. 20005. Thank you for

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your assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Jessica Lutkenhaus". The signature is written in a cursive style with a large, looping initial "J".

Jessica Lutkenhaus
Legal Fellow