



March 20, 2020

**SENT VIA EMAIL: FOIARequest@hhs.gov**

FOIA Officer  
Department of Health and Human Services  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue SW  
Washington, D.C. 20201

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 Justice Health and Human Services (“HHS”) regulations.

Specifically, CREW requests all records of communications from January 1, 2020 to the present concerning the need for security clearances for CDC personnel to attend meetings to discuss the coronavirus (COVID-19).

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.

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).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access the requested documents. Accordingly, because litigation reasonably is foreseeable, the CDC 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 HHS 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 March 12, 2020, the head of the CDC testified before Congress that the White House had ordered HHS health officials to treat top-level meetings about the coronavirus as classified, meaning that staff of HHS and the CDC without security clearances could not attend.<sup>1</sup> Reportedly the security clearance order came from the White House National Security Council.<sup>2</sup> As a result, some very critical people” could not attend the coronavirus meetings.<sup>3</sup> According to four Trump administration officials, classifying the meetings “delayed the government’s response.”<sup>4</sup>

The requested records are likely to contribute to greater public understanding of the extent to which the president and his staff have attempted to control the flow of information about the coronavirus, thereby limiting the extent to which the public has access to information about the true risks the coronavirus presents, especially at-risk groups like the elderly and immuno-compromised. The records also will shed light on the extent to which the administration kept key health officials out of critical meetings about how the nation should handle the pandemic, thereby delaying the U.S. response. Such are completely at odds with the responsibility the president and HHS bear to protect the safety and health of the American public.

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”).

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<sup>1</sup> Reuters, *Coronavirus information not classified although discussions are in ‘classified rooms’, says US CDC*, *The Straits Times*, Mar. 14, 2020, <https://www.straitstimes.com/world/united-states/cdc-says-coronavirus-information-not-classified-although-discussions-are-in>.

<sup>2</sup> Lowell Williams, *In Unusual Move, Trump Admin Sought To Classify Coronavirus Meeting*, *International Business Times*, Mar. 12, 2020, <https://ibtimes.com/unusul-move-trump-admin-ksought-classify-coronavirus-meegtings-2938951>.

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

<sup>4</sup> Justine Coleman, *White House ordered coronavirus meetings classified, hampering response: report*, *The Hill*, Mar. 11, 2020, <https://thehill.com/policy/healthcare/public-global-health/487040-white-house-ordered-coronavirus-meetings-classified>.

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 the documents it receives under the FOIA on its website.

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 on an expedited basis, please contact me at (202) 408-5565 or [aweismann@citizensforethics.org](mailto:aweismann@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 either the email listed above 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

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<sup>3</sup> Jeff Stein & Josh Dawsey, *White House struggles to contain public alarm over coronavirus*, *Washington Post*, Feb. 26, 2020, <https://www.washingtonpost.com/business/2020/02/25/white-house-struggles-contain-public-alarm-over-coronavirus-despite-panic/>.

<sup>4</sup> Kimberly Leonard, *Alex Azar bats down reports that Trump will appoint a 'coronavirus czar' to replace him*, *Washington Examiner*, Feb. 26, 2020, <https://www.washingtonexaminer.com/policy/healthcare/alex-azar-bats-down-reports-that-trump-will-appoint-a-coronavirus-czar-to-replace-him>.