

March 20, 2020

BY EMAIL: FOIArequest@psc.hhs.gov

Michael S. Marquis
Public Health Service (PHS)
Freedom of Information Officer
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, D.C. 20201

Re: Freedom of Information Act Request

Dear Mr. Marquis,

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

Specifically, CREW seeks any and all records documenting a determination by Surgeon General Vice Admiral Jerome M. Adams to invoke 42 U.S. Code § 265 in response to the coronavirus (COVID-19) pandemic.

Please search for records created or sent between January 1, 2020 to the date HHS conducts the search.

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 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).

During a March 18, 2020 press briefing with members of the Coronavirus Task Force, President Donald Trump was asked if he was planning to shut the southern border between the United States and Mexico in response to the coronavirus (COVID-19) pandemic.¹ “Not close it. No, we’re not going to close it,” President Trump replied. “But we are invoking a certain provision that will allow us great latitude as to what we do.”² President Trump was also asked, “on asylum seekers and people who cross the southern border illegally, are you planning to invoke 42 U.S.C. § 265 which would allow you to prohibit entry of certain people across the border,” to which he answered, “yes,” saying it would happen “Very soon. Probably today.”³

The statute that President Trump said he was invoking allows for the Surgeon General to suspend entries and imports from designated places to prevent the spread of communicable disease when the Surgeon General determines that the danger of a communicable disease being introduced in the the United States is increased by the entry of persons or property from a particular country and suspension of such entry is in the interest of public health. *See* 42 U.S.C. § 265. The decision to invoke that provision has raised questions with some observers who note that President Trump sought tougher border controls well before the COVID-19 pandemic. *The New York Times*, for instance, included the action in an article on how the “White House, under the guise of its coronavirus response, is quietly advancing policies that President Trump has long advocated.”⁴

The requested records would help clarify the reasoning and process behind the invocation of 42 U.S.C. § 265 and whether it is being utilized in the best interest of public health. At a time of unprecedented disruptions to the economy and the everyday life of Americans, the public has a strong interest in information shedding light on whether the coronavirus crisis is being used as justification to pursue policies long-sought by the Trump administration.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal

¹ White House, Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing, March 18, 2020, *available at* <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-5/>.

² *Id.*

³ *Id.*

⁴ Zolan Kanno-Youngs and Annie Karni, Under the Virus’s Cloak, Trump Pursues Long-Sought Policies, *The New York Times*, March 20, 2020, *available at* <https://www.nytimes.com/2020/03/20/us/politics/trump-virus-conservative-policies.html>.

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 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. 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 or at Matt Corley, 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,



Matthew Corley

Chief Investigator