



March 31, 2020

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (2310A)
Washington, D.C. 20460

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. Environmental Protection Agency (“EPA”) regulations.

Specifically, CREW requests all communications from or between EPA and representatives of businesses regulated by legal requirements for reporting air and water pollution concerning recommendations that EPA relax or suspend those federal reporting rules or guidelines during the coronavirus outbreak.

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 EPA 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).

Last Thursday, the EPA announced that in response to the coronavirus pandemic it was allowing power plants, factories, and other facilities to self-determine whether they were meeting legal requirements for reporting air and water pollution.¹ EPA further announced it would not issue fines for violating these reporting requirements.² Reportedly EPA relaxed these rules after receiving “an influx of requests from businesses[.]”³ This “sweeping decision” to suspend enforcing “a range of health and environmental protections due to the spread of coronavirus has prompted heavy criticism,” with officials decrying EPA’s use of the coronavirus “as an excuse . . . to relax enforcement of federal environmental laws designed to protect public health and safety[.]”⁴ The requested records are likely to contribute to greater public understanding of the rationale behind EPA’s extraordinary enforcement suspension that is likely to result in increased threats to public health and safety. The records also will shed light on the role industry representatives and lobbyists played in EPA’s decision and the extent to which the decision was influenced by these outside interests.

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 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.

¹ Lisa Friedman, E.P.A., *Citing Coronavirus, Drastically Relaxes Rules for Polluters*, Mar. 26, 2020, *New York Times*, <https://www.nytimes.com/2020/03/26/climate/epa-coronavirus-pollution-rules.html>.

² *Id.*

³ *Id.*

⁴ Susanne Rust, Louis Sahagun, & Rosanna Xia, *Citing coronavirus, EPA suspends enforcement of environmental laws*, *Los Angeles Times*, Mar. 27, 2020, <https://www.latimes.com/environment/story/2020-03-27/epa-suspends-enforcement-amid-coronavirus>.

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. 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,

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

Anne L. Weismann Chief FOIA Counsel