

March 25, 2020

Chief Privacy Officer/Chief FOIA Officer
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, DC 20528-065

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 (“DOJ”) regulations.

Specifically, CREW seeks copies of all records of communications the National Archives and Records Administration (NARA) has sent to the Department of Homeland Security (DHS) regarding potential or actual failures to create, preserve, or maintain records since January 2017.

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).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation reasonably is foreseeable, DOJ 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 DOJ 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).

The Federal Records Act requires government agencies to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.”¹ In May 2019, CREW sent a letter to the Archivist of the United States requesting that guidance be issued requiring agencies to make their Federal Records Act (FRA) policies public in order to encourage FRA compliance.²

CREW took action to address alleged recordkeeping violations at multiple agencies including DHS. In December 2018, CREW and RAICES filed a lawsuit against the Department of Homeland Security and then-Secretary Nielsen challenging their failure to create records of families separated at the border.³ Last week, CREW along with the American Historical Association and the Society for Historians of American Foreign Relations filed a lawsuit

¹ *Records Management by Federal Agencies* (44 U.S.C. Chapter 31), *National Archives and Records Administration*, February 10, 2017, available at <https://www.archives.gov/about/laws/fed-agencies.html>.

² *CREW Sends Archivist Letter on Public Disclosure of Recordkeeping Policies*, *CREW*, May 6, 2019, available at <https://www.citizensforethics.org/legal-filing/archivist-letter-on-public-disclosure-of-recordkeeping-policies/>.

³ *CREW and RAICES sue DHS Over Continued Family Separation Failures*, *CREW*, December 14, 2018, available at <https://www.citizensforethics.org/press-release/raices-dhs-lawsuit-zero-tolerance-policy/>.

challenging NARA's approval of the destruction of U.S. Immigration and Customs Enforcement (ICE) records.⁴

It is imperative that the public have access to records that, if they exist, would shed further light on communications between the National Archives and Records Administration (NARA) and DHS regarding DHS's potential or actual failures to create, preserve, or maintain records since January 2017, and steps DHS has taken at the direction of NARA. This information is vital so the American public is aware of the extent to which government agencies are promoting transparency regarding agency recordkeeping policy.

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, which has been visited hundreds of thousands of times.

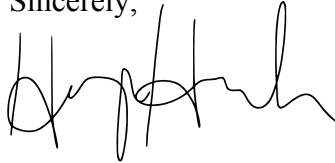
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

⁴ Case 1:20-cv-00739, March 16, 2020, available at <https://www.courthousenews.com/wp-content/uploads/2020/03/Coverup.pdf>.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 894-7058 or hhammado@citizensforethics.org. Where possible, please produce records in electronic format. Please send the requested records to me either at hhammado@citizensforethics.org or Hajar I. Hammado, 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 'Hajar Hammado', written in a cursive style.

Hajar Hammado
Policy Associate