

March 18, 2020

SENT VIA EMAIL: FOIARequest@hhs.gov

FOIA Officer
Department of Health and Human Services (HHS)
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue SW
Washington, DC 20201

Re: Freedom of Information Act Request

Dear FOIA Officer:

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 Health and Human Services (“HHS”) regulations.

Specifically, CREW requests all records and communications to or from officials in the HHS Office of Civil Rights related to complaints or incidents of bias or attacks arising from the ongoing coronavirus pandemic.

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 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).

Since the start of the ongoing novel coronavirus (COVID-19) pandemic, reports have highlighted an increase in incidents of bias and racism directed towards people of East Asian descent throughout the United States. Due to the virus's Chinese origins, Asian Americans have been accused of spreading the disease; Asian-owned businesses have lost business at a disproportionate rate; and some individuals have even faced physical attacks in public. Over the last two weeks, New York City's Human Rights Commission has probed multiple complaints related to "coronavirus-fueled acts of racism."¹ The U.S. Centers for Disease Control and Prevention (CDC) has had to publicly state that "being Chinese or Asian-American does not increase the chance of getting or spreading COVID-19."²

Meanwhile, while addressing the pandemic in public remarks, President Trump and other federal government officials have used rhetoric that threatens to reinforce anti-Asian discrimination. On Twitter, the president has referred to the virus as "the Chinese Virus" rather than using its widely accepted scientific name.³ He has also defended a White House staffer's alleged use of the term "Kung-Flu" to refer to the virus.⁴ Many observers have criticized this rhetoric for potentially inflaming popular bias against Asian-Americans linked to the pandemic.⁵

The requested records would help reveal the extent of coronavirus-related anti-Asian bias nationwide. They could also shed light on the Trump administration's response to this aspect of the crisis.

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,

¹ Sara Dorn, *NYC Human Rights Commission probing reports of coronavirus-related racism*, *New York Post*, March 14, 2020, available at <https://nypost.com/2020/03/14/nyc-human-rights-commission-probing-reports-of-coronavirus-related-racism/>; Holly Yan, Natasha Chen, and Dushyant Naresh, *What's spreading faster than coronavirus in the US? Racist assaults and ignorant attacks against Asians*, *CNN*, February 21, 2020, available at <https://www.cnn.com/2020/02/20/us/coronavirus-racist-attacks-against-asian-americans/index.html>.

² Karina Hernandez, *From stores to Chinatown restaurants, here's how the coronavirus is affecting small business owners in the US*, *CNBC*, March 4, 2020, available at <https://www.cNBC.com/2020/03/04/heres-how-coronavirus-affects-small-businesses-in-the-united-states.html>.

³ Kurt Bardella, *Trump's 'Chinese Virus' coronavirus tweets echo his Mexico insults – with similar results*, *NBC News*, March 18, 2020, available at <https://www.nbcnews.com/think/opinion/trump-s-chinese-virus-coronavirus-tweets-echo-his-mexico-insults-ncna1162261>.

⁴ Addy Baird, *Trump Announced New Measures To Fight The Coronavirus And Also Said It Wasn't Racist To Keep Calling It The "Chinese Virus"*, *Buzzfeed News*, March 18, 2020, available at <https://www.buzzfeednews.com/article/addybaird/donald-trump-coronavirus-us-china-racist>.

⁵ Chantal Da Silva, *Trump condemned for racism after calling coronavirus 'Chinese Virus' shortly after telling Americans to 'band together'*, *Newsweek*, March 17, 2020, available at <https://www.newsweek.com/trump-condemned-racism-after-calling-coronavirus-chinese-virus-1492666>.

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 (914) 671-3052 or elee@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 elee@citizensforethics.org or at Eli Lee, 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 'Eli Lee', written in a cursive style.

Eli Lee
Research Associate