



March 23, 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 Health and Human Services (“HHS”) regulations.

Specifically, CREW requests:

(1) all records from March 1, 2020 to the present concerning any recommendation that individuals with COVID-19 or those subject to a presidential proclamation suspending and limiting the entry of aliens into the United States be barred for applying for asylum, and

(2) all records concerning the rationale provided Congress for this recommendation.

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).

According to recent reporting, the Department of Justice has proposed that Congress change the current law to exclude from those eligible for asylum people with COVID-19 as well as those “subject to a presidential proclamation suspending and limiting the entry of aliens into the United States.”¹ The requested records are likely to contribute to greater public understanding of the rationale behind this legislative proposal, including whether it is based on recommendations rooted in science and medicine or instead a desire to advance the Trump administration’s anti-immigration agenda. The records also will shed light on the role HHS has played in this effort and the extent to which the Department of Justice has consulted with relevant agencies before making legislative proposals that impact or involve those agencies.

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.

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

¹ Betsy Woodruff Swan, DOJ seeks new emergency powers amid coronavirus pandemic, *Politico*, Mar. 21, 2020, <https://www.politico.com/news/2020/03/21/doj-coronavirus-emergency-powers-140023>.

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,



Anne L. Weismann Chief FOIA Counsel

³ 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/>.

⁴ 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>.