



March 6, 2020

Sent via email: usoge@oge.gov

OGE FOIA Officer
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3917

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 OGE regulations at 5 C.F.R. part 2604.

Specifically, CREW requests copies of all communications and other records that were created or modified at any time from January 21, 2017, through the date this request is processed that mention, identify, or discuss (1) any potential or actual federal employment of Leonard Leo, and (2) any financial interests held or to be divested by Leonard Leo.

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.

If it is your position that 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 agency 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).

As outlined in a recent article in the *Washington Post*, Leonard Leo—an executive with the Federalist Society—has led the Trump administration’s process of identifying and selecting judicial nominees.¹ Yet despite his outsize role, Mr. Leo may have evaded any responsibility to make financial disclosures if he has not been designated officially as a government employee. *Id.* By evading disclosure Mr. Leo has been able to take advantage of more than \$250 million from anonymous donors in just a three-year period, which he has used to fund “a network and pipeline to promote conservative ideas and conservative lawyers[.]” *Id.* These actions currently are under review by Senator Sheldon Whitehouse and four other U.S. Senators, who have noted the “serious questions concerning potential conflicts of interest and the independence of the federal judiciary” that Mr. Leo’s personal financial interests raise.²

The requested records will shed further light on Mr. Leo’s role in the administration and whether there has been consideration of treating him as a federal employee, including as a special government employee. The records will also inform the public about the degree, if any, that the administration has evaluated his potential conflicts of interest and the extent to which those conflicts merit divestiture. The public has an overwhelming interest in learning these details of an individual who has had such a profound effect on the composition and viewpoints of judges and justices in our judicial system.

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”).

¹ Paul Waldman, [Our courts also have a big corruption problem](https://www.washingtonpost.com/opinions/2020/03/05/our-courts-also-have-big-corruption-problem/), *Washington Post*, Mar. 5, 2020, <https://www.washingtonpost.com/opinions/2020/03/05/our-courts-also-have-big-corruption-problem/>.

² *See, e.g.,* Letter from Sen. Whitehouse, et al. to White House Counsel Pat A. Cipollone, Mar. 4, 2020, <https://www.whitehouse.senate.gov/imo/media/doc/Cipollone%20Letter.pdf>.

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 its website, which has 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 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 me either at aweismann@citizensforethics.org or Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel