



citizens for responsibility  
and ethics in washington

April 1, 2019

**SENT VIA EMAIL: [FOIARequest@hhs.gov](mailto: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 Department of Health and Human Services (HHS) regulations at 5 C.F.R. part 2604.

Specifically, CREW requests all records of communications from January 1, 2020 to the present between officials from HHS and Oscar Health. Please search for records created from January 1, 2020 to the date HHS conducts the search.

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 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).

According to a report in *The Atlantic*, a senior HHS official contacted Oscar Health seeking assistance on March 13, 2020 after President Donald Trump announced that Americans would be able to visit a website directing them to coronavirus testing sites across the country.<sup>1</sup> In response, “A team of Oscar engineers, project managers, and executives spent about five days building a stand-alone website at the government’s request” and the company sent two employees to meet with federal officials in Washington, D.C.<sup>2</sup> Soon after, however, the project was scrapped.<sup>3</sup> Oscar Health was co-founded by Joshua Kushner, Senior Advisor to the President Jared Kushner’s brother.<sup>4</sup> Joshua Kushner remains a major investor in the company while Jared Kushner is running a shadow coronavirus task force within the government.<sup>5</sup> The primary objective of the shadow task force reportedly is to enlist the private sector to set up drive-through sites where people can be tested for coronavirus.<sup>6</sup> Oscar Health’s work on this issue and contacts with HHS raise questions as to whether the activity complies with federal ethics laws.

The requested records are of significant interest to the public as they will shed light on the process by which Oscar Health, a company with ties to Jared Kushner via his brother, became involved in developing a website for the federal government to direct Americans to

---

<sup>1</sup> Robinson Meyer, *Exclusive: Kushner Firm Built the Coronavirus Website Trump Promised*, *The Atlantic*, March 30, 2020, available at [https://www.theatlantic.com/politics/archive/2020/03/kushner-coronavirus-testing-oscar-company/609139/?utm\\_source=twitter&utm\\_medium=social&utm\\_campaign=share](https://www.theatlantic.com/politics/archive/2020/03/kushner-coronavirus-testing-oscar-company/609139/?utm_source=twitter&utm_medium=social&utm_campaign=share).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; Yasmeen Abutaleb, Ashley Parker and Josh Dawsey, *Kushner coronavirus team sparks confusion, plaudits inside White House response efforts*, *Washington Post*, March 18, 2020, available at [https://www.washingtonpost.com/politics/kushner-coronavirus-team-sparks-confusion-plaudits-inside-white-house-response-efforts/2020/03/18/02038a16-6874-11ea-9923-57073adce27c\\_story.html](https://www.washingtonpost.com/politics/kushner-coronavirus-team-sparks-confusion-plaudits-inside-white-house-response-efforts/2020/03/18/02038a16-6874-11ea-9923-57073adce27c_story.html).

<sup>6</sup> *Id.*

coronavirus testing sites and the extent to which the company has been involved in HHS's response to coronavirus generally.

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](http://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 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) 897-1845 or [mlerner@citizensforethics.org](mailto:mlerner@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 [mlerner@citizensforethics.org](mailto:mlerner@citizensforethics.org) or at Meredith Lerner, 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 cursive script, appearing to read 'ML', positioned below the word 'Sincerely,'.

Meredith Lerner  
Research Associate