

April 9, 2020

BY EMAIL: foia@sba.gov

Chief, Freedom of Information/Privacy Acts Office
U.S. Small Business Administration
409 Third St. SW, Eighth floor
Washington, DC 20416

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) submits this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Small Business Administration (“SBA”) regulations.

Specifically, CREW seeks all records from March 1, 2020 to the date this request is processed relating to any request for an SBA loan, loan forgiveness, debt relief, grant, or other form of financial assistance by any person or entity affiliated with (1) the Trump Organization or related entities, including without limitation the Trump International Hotel (Washington, DC), the Albemarle Estate at Trump Winery (Charlottesville, VA), the Trump International Hotel & Tower (New York, NY), and the Trump International Hotel & Tower (Chicago, IL); or (2) Kushner Companies LLC or related entities, including without limitation Westminster Management LLC.

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, and anyone who was 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).

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, SBA 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 SBA 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).

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the largest economic stimulus bill in American history. The \$2 trillion aid package allots \$349 billion for the SBA to provide loans and other financial relief to small businesses affected by the COVID-19 pandemic. Although the Act disqualifies an entity from obtaining certain funds if the President or other government officials hold a controlling interest in the entity, that prohibition does not apply to SBA loans.

A hotel industry group, of which several Trump hotels are members, reportedly lobbied Congress to secure a provision in the CARES Act allowing individual hotels to qualify for SBA loans even if they are owned by a company that exceeds the 500-employee cap for such loans.¹ Under this provision, at least four hotels affiliated with the Trump Organization appear to qualify for SBA loans: Trump International Hotel (Washington, DC), the Albemarle Estate at Trump Winery (Charlottesville, VA), the Trump International Hotel & Tower (New York, NY), and the Trump International Hotel & Tower (Chicago, IL).² Kushner Companies and affiliated entities may also be eligible for SBA loans under the Act.³

Neither the Trump Organization nor Kushner Companies have answered questions on whether they plan to seek CARES Act funds, though the Trump Organization has previously sought emergency federal aid meant for small businesses.⁴

The requested records will shed light on whether the Trump Organization or Kushner Companies have requested taxpayer funds intended to help small businesses struggling amid the economic fallout from the COVID-19 pandemic. Any such request would raise serious concerns

¹ Meg Cramer, *Yes, Trump Hotels Do Appear to Qualify for Coronavirus Bailout Benefits*, *ProPublica*, Apr. 8, 2020, available at <https://bit.ly/3c0y6NM>; Eric Lipton and Kenneth P. Vogel, *Fine Print of Stimulus Bill Contains Special Deals for Industries*, *N.Y. Times*, Mar. 25, 2020, available at <https://nyti.ms/2Xi8Sq6>.

² Cramer, *supra* note 1.

³ Associated Press, *Coronavirus relief package could help Trump, Kushner businesses*, *Fortune*, Mar. 27, 2020, available at <https://bit.ly/2VcIYkQ>.

⁴ Cramer, *supra* note 1.

about potential conflicts of interest and preferential treatment regarding the distribution of critical federal aid—matters of considerable public interest.

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.

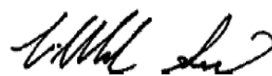
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

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 nsus@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 at either nsus@citizensforethics.org or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005.

Sincerely,



Nikhel Sus
Senior Counsel