

April 21, 2020

VIA EMAIL: foia@hq.dhs.gov

Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

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 Homeland Security (“DHS”) regulations.

Specifically, CREW seeks copies of all communications, including official reports and complaints, from March 17, 2020 to the present between state governments and DHS regarding the seizure or re-routing of personal protective equipment (PPE) supply shipments by the Federal Emergency Management Agency (FEMA).

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). In the event 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-*/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 DHS 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 March, one of the most significant challenges facing the response to the ongoing coronavirus pandemic has been the difficulty of procuring adequate amounts of personal protective equipment, or PPE, for medical professionals and hospital employees combating the crisis. State and local governments have been deeply involved in efforts to obtain PPE for hospitals within their jurisdictions.

On March 17, President Donald Trump appointed FEMA, an agency of DHS, to manage federal procurement and distribution of medical equipment for the pandemic response. Since then, multiple reports have emerged of federal authorities seizing shipments of protective equipment before their receipt by local or state authorities. In late March, Massachusetts Governor Charlie Baker stated that an order of 3 million protective masks destined for his state had been seized in the port of New York by federal authorities. In the beginning of April, an order of 35,000 masks for frontline workers in Somerset County, New Jersey was seized by the federal government. More recently, Virginia Senator Mark Warner stated in an interview that he had heard from two Virginia hospital systems that the federal government had “delayed or restricted their expected shipments” of protective equipment.

In multiple statements, FEMA has denied any involvement in the redirection or seizure of PPE. Regardless, FEMA has called for governors who believe that FEMA seized supplies destined for hospitals in their states to report said instances of seizure to their FEMA regional offices.

Given how crucial this protective equipment is to the ongoing pandemic response effort, the public has an urgent interest in understanding the federal government’s role in obtaining and distributing it. And if FEMA is, indeed, seizing shipments of PPE destined for local hospitals, the public has a right to know. The requested materials would reveal any yet-unreported instances of PPE seizures, and could also shed light on the true extent of FEMA’s involvement in the previously reported instances.

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 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 blue ink, appearing to read 'Eli Lee', enclosed in a light blue rounded rectangular border.

Eli Lee
Research Associate