



March 31, 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 January 1, 2020 to the present concerning the criteria HHS has used to make distributions to states from the Strategic National Stockpile to address the coronavirus pandemic;

(2) all records of communications between HHS and the White House concerning any aspect of how HHS has made distributions to states from the Strategic National Stockpile to address the coronavirus pandemic; and

(3) all communications between HHS Secretary Alex Azar and OMB about the need for a supplemental budget request for stockpile supplies.

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, HHS 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, during the time that HHS had responsibility for distributing materials from the Strategic National Stockpile in response to the coronavirus pandemic, it faced overwhelming numbers of requests from states for masks, respirators, gowns, gloves and goggles.<sup>1</sup> State officials were uncertain about the standards HHS was using to determine how much states would receive, with wide disparities in the amount of stockpiled equipment that individual states were able to obtain.<sup>2</sup> Anecdotally it appears that the political makeup of impacted communities may have factored into the degree to which their states' requests from the stockpile were satisfied.<sup>3</sup> For example, Michigan—whose governor has been outspoken in her criticism of the federal response—has received far less from the stockpile than the state needs to combat the coronavirus, while Florida—whose governor has been praised by the president—received everything it requested.<sup>4</sup> Reportedly Secretary Azar anticipated the need before the coronavirus had spread the U.S. and sought \$2 billion to buy emergency medical equipment—a request OMB cut to \$500 million in a supplemental budget request it sent to Congress.<sup>5</sup>

The requested records are likely to contribute to greater public understanding of the criteria HHS used to distribute medical supplies from the stockpile and the extent to which those criteria were influenced by the White House and political considerations. The records also will shed light on the extent to which the White House failed to take the coronavirus seriously by refusing to adequately fund the Strategic National Stockpile at a time when the coronavirus had not yet taken root in the U.S.

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

---

<sup>1</sup> Amy Goldstein, Lena H. Sun & Beth Reinhard, *Desperate for medical equipment, states encounter a beleaguered national stockpile*, *Washington Post*, Mar. 28, 2020, [https://www.washingtonpost.com/national/health-science/desperate-for-medical-equipment-states-encounter-a-beleaguered-national-stockpile/2020/03/28/1f4f9a0a-6f82-11ea-aa80-c2470c6b2034\\_story.html](https://www.washingtonpost.com/national/health-science/desperate-for-medical-equipment-states-encounter-a-beleaguered-national-stockpile/2020/03/28/1f4f9a0a-6f82-11ea-aa80-c2470c6b2034_story.html).

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

<sup>3</sup> Anya van Wagtenonk, *The government is distributing emergency Covid-19 supplies. But some states are losing out.*, *Vox*, Mar. 29, 2020, <https://www.vox.com/policy-and-politics/2020/3/29/21198704/emergency-covid-19-supplies-fema-states-federal-government>.

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

<sup>5</sup> Goldstein, Sun & Reinhard, *Washington Post*, Mar. 27, 2020.

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 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 on an expedited basis, please contact me at (202) 408-5565 or [aweismann@citizensforethics.org](mailto: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