

April 27, 2020

BY FACSIMILE: 202-708-9824

Department of Health and Human Services (HHS)
Freedom of Information Officer
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 pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Health and Human Services (“HHS”) regulations.

First, CREW requests all communications within the HHS Office of Inspector General (“OIG”) from March 28, 2020 to April 17, 2020 attaching the final OIG report: “Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 23-27, 2020.”

Second, CREW requests all OIG records, including communications within OIG and memoranda created or retained by OIG, from April 6, 2020 to April 13, 2020 regarding President Trump’s April 6, 2020 coronavirus briefing and/or President Trump’s reaction to the report: “Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 23-27, 2020.”

Third, CREW requests all communications within OIG from April 6, 2020 to the date this request is processed regarding any delay, cancellation, modification, or amendment of further OIG reports or reviews related to COVID-19.

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 emails to which the subjects of this request were cc’ed or bcc’ed.

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).

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).

On April 3, 2020, the Health and Human Services Office of Inspector General (“OIG”) released a review: “Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 23–27, 2020.”¹ The review found that hospitals’ most significant challenges were severe shortages of testing supplies, extended waits for test results and widespread shortages of personal protective equipment.² At an April 6, 2020 briefing of the White House coronavirus task force, President Trump claimed the report was “just wrong,” and attacked Principal Deputy Inspector General Christi A. Grimm, saying, “It still could be her opinion. When was she appointed? Do me a favor and let me know. Let me know now. I have to know.”³ The attacks came the same week President Trump fired Michael Atkinson, who had served as the Inspector General of the Intelligence Community since 2018,⁴ and disqualified then-Acting Inspector General of the Department of Defense Glenn Fine from serving as chairman of the Pandemic Response Accountability Committee.⁵

The requested records could shed light on how the HHS OIG responded to the President’s attacks on its own office and the role of inspector generals more broadly with respect to the

¹ Grimm, Christi A, “Hospital Experiences Responding to the COVID-19 Pandemic: Results of a National Pulse Survey March 23–27, 2020,” *HHS OIG*, April 3, 2020. *available at*: <https://oig.hhs.gov/oei/reports/oei-06-20-00300.pdf>

² *id.*

³ Ehley, Brianna and Alice Miranda Ollstein, “Trump blasts HHS watchdog for report on hospital shortages,” *Politico*, April 6, 2020. *available at*: <https://www.politico.com/news/2020/04/06/with-worst-to-come-3-in-4-us-hospitals-now-facing-covid-19-167853>

⁴ Cheney, Kyle, “Atkinson: Trump fired me because I handled whistleblower complaint properly,” *Politico*, April 5, 2020. *available at*: <https://www.politico.com/news/2020/04/05/atkinson-trump-fired-whistleblower-complaint-167371>

⁵ Savage, Charlie and Peter Baker, “Trump Ousts Pandemic Spending Watchdog Known for Independence,” *The New York Times*, April 7, 2020. *available at*: <https://www.nytimes.com/2020/04/07/us/politics/trump-coronavirus-watchdog-glenn-fine.html>

administration's response to the COVID-19 pandemic. At this time of great national peril, the public deserves to know whether inspector generals are continuing to conduct independent reporting and oversight, and whether the independence of their work is influenced by fear of retaliation.

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 a blog that reports on and analyzes 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 all documents it receives under the FOIA 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 (202) 408-5565 or lwhite@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.

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Where possible, please produce records in electronic format. Please send the requested records to lwhite@citizensforethics.org or Lauren White, 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,

Lauren White
Press Associate