

May 11, 2020

BY E-Mail: foiarequests@dol.gov

Occupational Safety and Health Administration
U.S. Department of Labor
Washington, D.C.

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 Labor Department regulations:

1. All communications with any outside individuals or groups from February 1, 2020 to the present concerning OSHA proposals to regulate exposure to infectious disease in the workplace.
2. All communications with any outside individuals or groups from February 1, 2020 to the present concerning proposed OSHA guidance or regulations regarding protecting workers from exposure to the coronavirus and the disease it causes, COVID-19, in the workplace.

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-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 Department of Labor 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).

In the current COVID-19 epidemic, front-line health care, transportation, grocery store, and food processing workers, among others, face an increased risk of exposure to disease and resulting illness or death. It is imperative that the public understand what steps the government is taking to protect these essential workers. However, despite first taking steps to formulate regulations that would require health care employers to create infection control plans to keep health care workers from getting exposed to deadly diseases and issuing a draft rule in 2017, OSHA has yet to enact a final rule to meaningfully protect these workers. *See* Alexia Fernandez Campbell, *The Labor Department Won't Take Steps to Protect Health Care Workers from the Coronavirus*, The Center for Public Integrity, (Mar. 30, 2020), available at <https://bit.ly/35cBbbn>; Emily Schwing, *How OSHA Has Failed to Protect America's Workers From COVID-19*, Government Executive (Apr. 7, 2020), available at <https://bit.ly/2W3ONI2>.

Health care workers are not the only ones adversely affected by safety concerns in the workplace. Public attention has recently focused on meat plant workers, since a Smithfield pork factory in Sioux Falls, South Dakota was forced to close after becoming a coronavirus hot spot and other meat processing factories have reported high levels of infection and death among workers. *See* Caitlin Dickerson and Miriam Jordan, *South Dakota Meat Plant Is Now Country's Biggest Coronavirus Hot Spot*, New York Times (Apr. 15, 2020), available at <https://nyti.ms/2KPDUOF>; Miriam Jordan and Caitlin Dickerson, *Poultry Worker's Death Highlights Spread of Coronavirus in Meat Plants*, New York Times (Apr. 9, 2020), available at <https://nyti.ms/3aOFsTp>; Leah Douglas, *Mapping Covid-19 in meat and food processing plants*, Food & Environment Reporting Network (Apr. 22, 2020), available at <https://bit.ly/2So9C9R>. Furthermore, while the President issued an executive order on April 28th directing the Secretary of Agriculture to take steps to ensure that meat processing plants remain open, and despite calls from the congressional Hispanic Caucus to issue an emergency temporary standard regarding protection guidelines, OSHA has not yet taken steps to issue rules ensuring the safety of employees required to work or return to work at the plants. Rather, OSHA has limited itself to issuing an unenforceable recommendation only. *See* Laura Barrón-López, *Hispanic Caucus calls on Trump admin to investigate working conditions for meatpackers*, Politico (Apr. 29, 2020), available at <https://politi.co/2yTO4v0>; *Exec. Order on Delegating Authority Under the DPA with Respect to Food Supply Chain Resources During the Nat'l Emergency Caused by the Outbreak of COVID-19* (Apr. 28, 2020), available at <https://bit.ly/3aMNcW1>.

The requested records would help inform the public about OSHA's actions with regard to implementing rules concerning the spread of infectious disease in the workplace, particularly the

extent to which OSHA was subject to outside influence in placing rules regarding the spread of infectious disease in the workplace on its long-term agenda in 2017 and its failure to issue mandatory rules safeguarding workers from the spread of the Coronavirus.

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 reports on and analysis of newsworthy developments regarding government ethics, corruption, and money in politics that 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 (202) 408-5565 or lbeckerman@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.

FOIA Officer
May 11, 2020
Page 4

Where possible, please produce records in electronic format. Please send the requested records to me either at lbeckerman@citizensforethics.org or at Laura C. Beckerman, Citizens for Responsibility and Ethics in Washington, 1101 K St., Ste. 201, N.W., Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

/s/ Laura C. Beckerman

Laura C. Beckerman
Sr. Counsel for Operations and Litigation