

June 26, 2020

BY EMAIL: foiarequest@state.gov

Freedom of Information Act Officer
Office of Information Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100

Re: Freedom of Information Act Request

Dear Sir/Madam,

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 Department of State (“Department”) regulations, 22 C.F.R. Part 171.

For the following requests, please search for records, documents, and communications created since the start of the 116th Congress on January 3, 2019 and the date the Department conducts the search.

First, CREW requests all documents, as well as all communications and records of communications sent to, copied to, or received by:

1. Senior Advisor to the Secretary of State Mary Kissel; as well as any Department employee with the title “Chief of Staff” or “Deputy Chief of Staff” to the Secretary of State, or acting in any such capacity;
2. the Department’s Office of Information Programs and Services (“IPS”) Director Eric F. Stein; as well as anyone with the title “Chief of Staff” or “Deputy Chief of Staff” to the Director, or acting in any such capacity;
3. Stephen J. Akard, Director, Office of Foreign Missions; as well as,
4. Bureau of Legislative Affairs (“BLA”) Assistant Secretary Mary Elizabeth Taylor; BLA Deputy Assistant Secretary of House Affairs Jess Moore; BLA Executive Director Alicia A. Frechette; or Congressional Correspondence Unit Chief Cynthia Andrews;

regarding requests for documents or testimony from:

- a. Rep. Elijah E. Cummings, former Chairman of the House Committee on Oversight and Reform (“HCOR”) and HCOR staff;
- b. Rep. Carolyn Maloney, Chairwoman of the HCOR and HCOR staff; or

- c. Rep. Maxine Waters, Chairwoman of the House Financial Services Committee (“HFSC”) and HFSC staff.

In responding to this first request CREW asks that the Department explicitly exclude those records, documents, and communications regarding requests made jointly by Rep. Eliot L. Engel, Chairman of the House Foreign Affairs Committee, and either former Chairman Cummings (a) or Chairwoman Maloney (b).

Second, CREW requests all documents, as well as all communications and records of communications sent to, copied to, or received by Secretary of State Michael R. Pompeo, Director Akard, Senior Advisor Kissel, as well as any Department employee with the title “Chief of Staff” or “Deputy Chief of Staff” to the Secretary, or acting in any such capacity related to CREW’s complaint to the Department’s Office of Inspector General to review Department practices related to congressional oversight responses.

Please search for responsive records regardless of format, medium, or physical characteristics. CREW seeks records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. CREW’s 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. CREW’s 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 Department 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).

The President first demanded partisan cooperation with congressional oversight requests in 2017.¹ Since Democrats assumed control of the House of Representatives in 2019, the President has continued to make clear that his administration will only submit to oversight from Senate Republicans, stating, “[t]he House is a bunch of Trump haters.”² The Department’s documented failure to respond to congressional oversight requests from Democratic congressional committee chairs, and subsequent allegations that the Department has politicized its approach to several high-profile congressional investigations, suggest that Department employees have executed President Trump’s directive to only cooperate with Republican oversight.³

The Department continually cooperates with oversight requests from Senate Republican committee chairs, and continually ignores requests from House Democratic chairs.⁴ In response to Sen. Johnson and Sen. Grassley’s November 2019 requests for information about Burisma Holdings and Ukraine, the Department voluntarily produced thousands of pages of documents between February and April 2020.⁵ These responses were made—voluntarily—amidst the Department’s response to the coronavirus pandemic, which the IPS Director Stein declared, reduced the Department’s FOIA processing capability by 96%.⁶ Strikingly, the Department has also continually failed to provide any information in response to requests from House Foreign Affairs Committee Chairman Eliot Engel as well as other Democratic committee chairs with direct legislative authority over the Department. This recalcitrance began even before the coronavirus pandemic. These unfulfilled requests include multiple inquiries from Chairman Engel and other Democratic chairs dating back to February 2019.⁷

¹ Gabrielle Levy, *White House Blocks Democrats' Oversight Efforts*, *U.S. News & World Report*, June 2, 2017, <https://bit.ly/2XP8rCe>; Burgess Everett and Josh Dawsey, *White House Orders Agencies to Ignore Democrats' Oversight Requests*, *Politico*, June 2, 2017, <https://politi.co/36RwKDA>.

² Kevin Breuninger and Christina Wilkie, *Trump: 'We're Fighting All the Subpoenas' from House Democrats*, *CNBC*, Apr. 24, 2019, <https://cnb.cx/3cIt8oM>; Kevin Liptak, *Trump Says He Only Will Submit to GOP Oversight for His Administration*, *CNN*, May 5, 2020, <https://cnn.it/30kbzZJ>; The White House, *Remarks by President Trump Before Marine One Departure*, WhiteHouse.gov (May 5, 2020; 10:21 A.M.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-89/>.

³ *E.g.* Letter from House Committee on Foreign Affairs Chairman Eliot L. Engel to Secretary of State Mike Pompeo, May 21, 2020 (“Engel Letter”), <https://bit.ly/2MCNKEf>; *see also* Emma Loop, *A Top Democrat Says The State Department Has Sent Republicans Thousands Of Pages For Their Biden Investigation While Ignoring Democratic Requests*, *Buzzfeed*, May 6, 2020, <https://bit.ly/2UhqJg3>.

⁴ Engel Letter.

⁵ Letter from Senate Finance Committee Chairman Charles E. Grassley and Senate Homeland Security and Governmental Affairs Committee Chairman Ron Johnson to Secretary of State Michael R. Pompeo, Nov. 7, 2019, <https://bit.ly/2APraWB>; Letter from Senate Finance Committee Ranking Member Ron Wyden to Secretary of State Michael Pompeo, 1-2, May 6, 2020 (“Wyden Letter”), <https://bit.ly/2MCNKEf>; Engel Letter at 2.

⁶ Wyden Letter at 2; Loop, *Buzzfeed*, May 6, 2020; Declaration of Eric F. Stein at 7-8, *John Solomon v. U.S. Dep’t of State*, Case No. 1:20-cv-00132-RDM, (March 25, 2020), (Civ. No. 20-132), <https://www.politico.com/f/?id=00000171-1bd0-d4a1-ad77-ffd06f650000>

⁷ Letter from House Committee on Foreign Affairs Chairman Eliot L. Engel, House Committee on Oversight and Reform Chairman Elijah E. Cummings, and House Permanent Select Committee on Intelligence Chairman Adam to Secretary of State Michael R. Pompeo, Sept. 27, 2019, <https://bit.ly/3d3b9d7>; Engel Letter at 1; Letter from House Committee on Foreign Affairs Chairman Eliot Engel and House Committee on Foreign Affairs Subcommittee on Oversight and Investigations Chairman Joaquin Castro to Secretary of State Michael R. Pompeo, May 18, 2020, <https://bit.ly/2MC293G>.

The requested records will shed light on whether the Department has and is executing a biased, partisan policy in its handling of and responses to congressional oversight requests from congressional committee chairs. In particular, the requested records will shed light on the circumstances surrounding the Department's voluntary and efficient cooperation with requests from Senate Republican chairs regarding Burisma Holdings and Ukraine, while refusing to comply with numerous requests for information and testimony from House Democratic chairs, which suggests (i) a more nefarious purpose that has substantial legal implications, (ii) deficiencies in Department policies related to congressional oversight, or even, (iii) misconduct of Department employees' handling of such requests.

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 dsherman@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

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records to dsherman@citizensforethics.org or Donald K. Sherman, 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,

A handwritten signature in blue ink, appearing to read "D.K. Sherman", with a long horizontal flourish extending to the right.

Donald K. Sherman
Deputy Director