

June 5, 2020

BY EMAIL: usoge@oge.gov

Diana J. Veilleux
Chief FOIA Officer
Office of Government Ethics
1201 New York Avenue, N.W. Suite 500
Washington, DC 20005

Re: Freedom of Information Act Request

Dear Ms. Veilleux:

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 Office of Government Ethics (“OGE”) regulations.

First, CREW requests all email communications sent to, copied to, or received by OGE Director Emory Rounds, Chief of Staff Shelley Finlayson, General Counsel David Apol, Chief of the Ethics Law and Policy Branch Seth Jaffe, and Chief of the Presidential Nominations Branch Deborah Bortot from May 5, 2020 to the present, referring or related to the Agency Transition Directors Council meeting hosted by the Office of Management and Budget and the General Services Administration on or around May 27, 2020.

Second, CREW requests any and all agendas, meeting notes, summaries, or attendance lists prepared for or distributed at the Agency Transition Directors Council meeting hosted by the Office of Management and Budget and the General Services Administration on or around May 27, 2020.

Third, CREW requests all email communications sent to, copied to, or received by OGE Director Emory Rounds, Chief of Staff Shelley Finlayson, General Counsel David Apol, Chief of the Ethics Law and Policy Branch Seth Jaffe, and Chief of the Presidential Nominations Branch Deborah Bortot from May 5, 2020 to the present referring or related to the impact of COVID-19 or the coronavirus on the presidential transition process.

Fourth, CREW requests all email communications sent to, copied to, or received by OGE Director Emory Rounds, Chief of Staff Shelley Finlayson, General Counsel David Apol, Chief of the Ethics Law and Policy Branch Seth Jaffe, and Chief of the Presidential Nominations Branch Deborah Bortot from May 5, 2020 to the present referring or related to the Agency Transition Directors Council meeting hosted by the Office of Management and Budget and the General Services Administration on or around May 27, 2020.

Fifth, CREW requests all email communications sent to, copied to, or received by OGE Director Emory Rounds, Chief of Staff Shelley Finlayson, General Counsel David Apol, Chief of

the Ethics Law and Policy Branch Seth Jaffe, and Chief of the Presidential Nominations Branch Deborah Bortot from May 5, 2020 to the present referring or related to future Agency Transition Directors Council meetings.

Sixth, CREW requests all email communications between and among OGE Director Emory Rounds, Chief of Staff Shelley Finlayson, General Counsel David Apol, Chief of the Ethics Law and Policy Branch Seth Jaffe, or Chief of the Presidential Nominations Branch Deborah Bortot and any representative of the presidential campaigns of Donald J. Trump or Joseph R. Biden from March 1, 2020 to the present.

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 OGE 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).

With Election Day on November 3, 2020, we are now less than six months from the presidential transition. The General Services Administration (GSA) maintains a public website with information related to the presidential process.¹ GSA highlights a number of federal agencies that are integral to the transition process including the National Archives and Records

¹ U.S. General Services Administration, Presidential Transition Directory, <https://www.gsa.gov/governmentwide-initiatives/presidential-transition-directory>, (last visited Apr. 22, 2020).

Administration, which oversees records management, and the Office of Government Ethics, which works “in partnership with a Presidential Transition Team to make sure that prospective nominees are free of conflicts of interest, so top leadership positions fill quickly.”² GSA’s website includes a “Major Activities Timeline” for the 2020/2021 presidential transition process.³ According to GSA’s transition timeline, the Trump administration faces multiple deadlines this month.⁴ The GSA timeline indicates that May 2020 is the deadline for the establishment of transition councils, the administration’s six month report to Congress, and the designation of agency leads for the transition process.⁵ Under the Presidential Transitions Improvements Act of 2015, presidential candidates are required to set up a team to work with agency leaders at least six months before Election Day.⁶ It is difficult to tell whether the Trump administration is on track to meet its benchmarks.

Last month, the Trump administration was late in submitting its six month progress report on 2020 presidential transition activities to Congress.⁷ Congressional staff confirmed that the nine page report was issued on May 13, 2020, more than a week after it was due.⁸ The report failed to address what the administration is doing to ensure logistical challenges caused by the coronavirus or if there are pandemic experts advising the process along the way.⁹ The report mentions requirements for NARA and agency record-keeping but does not describe what is being done to ensure that the administration complies with NARA guidance or whether records are being collected now.¹⁰ In addition, given the relatively short report and other documents, it seems unclear whether OMB and GSA are sufficiently communicating with and offering assistance to agencies outside of these public documents.

The requested records will shed light on OGE’s role in the presidential transition process. In particular, the records are likely to contribute to greater public understanding of whether OGE leadership has been engaged in discussions regarding the impact of the novel coronavirus on the upcoming transition and what if any guidance they have provided to other federal agencies, or

² U.S. General Services Administration, Presidential Transition Directory: Federal Records, *available at* <https://www.gsa.gov/governmentwide-initiatives/presidential-transition-directory/records-management-guidelines/federal-records>, (last visited Apr. 22, 2020); *see also* U.S. General Services Administration, Presidential Transition Directory: Ethics and Accountability, <https://www.gsa.gov/governmentwide-initiatives/presidential-transition-directory/ethics-and-accountability/office-of-government-ethics>, (last visited Apr. 22, 2020).

³ U.S. General Services Administration, Transition Overview, <https://www.gsa.gov/governmentwide-initiatives/presidential-transition-directory/transition-overview>, (last visited Apr. 28, 2020).

⁴ *Id.*

⁵ *Id.*

⁶ Jason Miller, [White House Initiates Transition Planning with Meetings, Data Transfers](https://federalnewsnetwork.com/management/2016/06/white-house-initiates-transition-planning-meetings-data-transfers/), *Federal News Network*, June 6, 2016, <https://federalnewsnetwork.com/management/2016/06/white-house-initiates-transition-planning-meetings-data-transfers/>.

⁷ U.S. General Services Administration, 2020 Presidential Transition Activities: Progress Report as of May 2020, https://www.gsa.gov/cdnstatic/2020_Presidential_Transition_Activities_6Month_ReporttoCongress.pdf, (last visited June 2, 2020).

⁸ *See* Email from Congressional Staff to Donald Sherman, Deputy Director, Citizens for Responsibility and Ethics in Washington, May 14, 2020.

⁹ U.S. General Services Administration, 2020 Presidential Transition Activities: Progress Report as of May 2020, https://www.gsa.gov/cdnstatic/2020_Presidential_Transition_Activities_6Month_ReporttoCongress.pdf, (last visited June 2, 2020).

¹⁰ *Id.*

received from OMB on the matter. The President and his political appointees have routinely bent, broken or ignored federal laws barring the coopting of federal resources for political purposes.¹¹ The transition process is integral to ensuring that government officials abide by federal ethics laws and are free of conflicts of interest and preserving presidential and federal records.¹² The public deserves to know whether the Trump administration is following the law and effectively and transparently managing the 2020/2021 presidential transition.

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.

¹¹ Citizens for Responsibility and Ethics in Washington, *The Hatch Act: Mixing Partisan Goals with Official Positions in the Trump Administration*, <https://www.citizensforethics.org/hatch-act-mixing-partisan-goals-official-positions-trump-administration/>, (last visited Apr. 22, 2020).

¹² U.S. General Services Administration, *Presidential Transition Directory: Federal Records*, available at <https://www.gsa.gov/governmentwide-initiatives/presidential-transition-directory/records-management-guidelines/federal-records>, (last visited Apr. 22, 2020); *see also* U.S. General Services Administration, *Presidential Transition Directory: Ethics and Accountability*, <https://www.gsa.gov/governmentwide-initiatives/presidential-transition-directory/ethics-and-accountability/office-of-government-ethics>, (last visited Apr. 22, 2020).

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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 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