



citizens for responsibility  
and ethics in washington

June 16, 2020

**Sent via email:** [usoge@oge.gov](mailto:usoge@oge.gov)

OGE FOIA Officer  
Office of Government Ethics  
Suite 500  
1201 New York Avenue, NW  
Washington, DC 20005-3917

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records related to Marc Short, Chief of Staff to Vice President Pence, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Office of Government Ethics (“OGE”) regulations at 5 C.F.R. part 2604.

First, CREW requests copies of all records pertaining to any formal or informal communication regarding, or consideration of, the possibility of OGE granting a Certificate of Divestiture for Mr. Short at any time on or after March 11, 2019, including but not limited to any official request for a Certificate of Divestiture.

Second, CREW requests copies of all records that mention, discuss or contain information regarding Mr. Short. This request is limited to records created, expanded or modified during the period between April 23, 2020 and the date on which OGE completes its search for responsive records, inclusive of the beginning and ending dates.

Third, CREW requests copies of all records of communications between OGE and the Office of the Vice President. This request is limited to records created, expanded or modified during the period between April 23, 2020 and the date on which OGE completes its search for responsive records, inclusive of the beginning and ending dates. (OGE may exclude records pertaining to a financial disclosure report of any individual other than Mr. Short, provided that the record does not also pertain to Mr. Short as a subject of the communication.)

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.

If it is your position that 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 agency 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 requested records are likely to contribute to greater public understanding of Mr. Short's potential conflicts of interest and how OGE is addressing them. NPR recently reported that Mr. Short "owns between \$506,043 and \$1.64 million worth of individual stocks in companies doing work related to the Trump administration's pandemic response — holdings that could run afoul of conflict of interest laws."<sup>1</sup> NPR's reporting indicates that "Short sought what is called a certificate of divestiture from the Office of Government Ethics," which means OGE was aware the Office of the Vice President had determined that his assets posed conflicts of interest.<sup>2</sup> The report indicates the Office of the Vice President had claimed Mr. Short was managing his conflicts of interest by "implement[ing] appropriate recusals" from particular matters affecting his financial interests.<sup>3</sup> However, records and photographs demonstrate that Mr. Short had participated in meetings with companies whose stock he owned.<sup>4</sup> Some or all of these meetings met the definition of a "particular matter" because they were narrowly focused on the interests of a discrete and identifiable class of persons, specifically an industry.<sup>5</sup> Moreover, comments by Vice President Pence indicate that at least one of the meetings directly and predictably affecting the financial interests of some of the companies: "And I'm pleased to report, as you requested, Mr. President, that all the insurance companies here — either today or before today — have agreed to waive all copays on coronavirus testing and extend coverage for coronavirus treatment in all of their benefit plans."<sup>6</sup>

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<sup>1</sup> Tim Mak, [Pence Chief Of Staff Owns Stocks That Could Conflict With Coronavirus Response](https://n.pr/30JbVct), *NPR*, May 28, 2020, <https://n.pr/30JbVct>.

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

<sup>3</sup> *Id.*

<sup>4</sup> CREW Files Criminal Complaint Against Pence Chief of Staff, *Citizens for Responsibility and Ethics in Washington*, June 4, 2020, <https://bit.ly/3fwesep> ("CREW Complaint"); Stefani Reynolds, [Vice President Pence Participates In Coronavirus Briefing With Diagnostic Lab CEOs](https://bit.ly/3e5BqLZ), *Getty Images*, Mar. 4, 2020 (photograph), <https://bit.ly/3e5BqLZ>.

<sup>5</sup> CREW Complaint; 5 C.F.R. § 2634.1005(b)(2).

<sup>6</sup> White House, [Remarks by President Trump and Vice President Pence at a Coronavirus Briefing with Health](#)

The public has a strong interest in obtaining information about Mr. Short's potential conflicts of interest and possible violation of the conflict of interest law. The government's compliance with anticorruption mechanisms is of significant interest to the public. As the U.S. Department of Justice has explained, "One purpose that the FOIA was designed for is to 'check against corruption and to hold the governors accountable to the governed.' Indeed, information that would inform the public of violations of the public trust has a strong public interest and is accorded great weight in the balancing process."<sup>7</sup> The public also has a strong interest in knowing what steps OGE is taking to address Mr. Short's potentially ongoing conflicts of interest, which relates directly to OGE's effectiveness as the supervising ethics office for the executive branch.

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](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 documents it receives under the FOIA its website, which has 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) 897-1845 or [mlerner@citizensforethics.org](mailto:mlerner@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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*Insurers*, Mar. 10, 2020, <https://bit.ly/2TYXMnf>.

<sup>7</sup> U.S. Department of Justice, *Freedom of Information Act Guide*, May 2004 (internal citations omitted), <https://bit.ly/2JxXc8H>.

Where possible, please produce records in electronic format. Please send the requested records to me either at [mlerner@citizensforethics.org](mailto:mlerner@citizensforethics.org) or at Meredith Lerner, 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,

A handwritten signature in cursive script, appearing to read 'ML', positioned below the word 'Sincerely,'.

Meredith Lerner  
Research Associate