

July 9, 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 pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and OGE regulations at 5 C.F.R. part 2604.

CREW requests copies of all records concerning the withdrawal of the certificate of divestiture originally issued to Jared Kushner on February 26, 2020.<sup>1</sup> This request includes, but is not limited to, email communications related to the withdrawal of the certificate of divestiture. For all responsive emails, we also request any attachments or enclosures to the emails. Please search for records created from February 26, 2020 through the date OGE conducts the search.

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).

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<sup>1</sup> Office of Government Ethics, Certificate of Divestiture No. OGE-2020-023, Feb. 26, 2020, *available at* <https://bit.ly/2BSqiRG>. A note on both pages of the certificate of divestiture states that “On June 26, 2020, this CD was withdrawn at the request of the eligible person.” *Id.*

### **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).

OGE withdrew the certificate of divestiture (CD) it issued to Mr. Kushner related to his interest in Cadre on June 26, 2020, four months after the CD was issued to Mr. Kushner.<sup>2</sup> OGE's issuance of the CD to Mr. Kushner attracted significant attention from the media, so the decision to withdraw the CD will be of significant interest to the public.<sup>3</sup> The public also has a strong interest in receiving information about Mr. Kushner's interest in Cadre, which has been noted as one of the most significant holdings held by him and Ivanka Trump and has been a source of controversy over concerns for the potential for this asset to pose a conflict of interest.<sup>4</sup> In fact, CREW previously filed a complaint regarding a possible violation of the conflict of interest law by Ivanka Trump related to this asset.<sup>5</sup>

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

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

<sup>3</sup> Eric Lipton, [Jared Kushner Selling Stake in Firm That Pursued Federal Tax Break](https://nyti.ms/321vWvG), *New York Times*, March 5, 2020, available at <https://nyti.ms/321vWvG>; Caleb Melby, [Jared Kushner Rode Cadre to Bigger Valuation, Bigger Tax Break](https://bloom.bg/2OauhM6), *Bloomberg*, March 6, 2020, available at <https://bloom.bg/2OauhM6>.

<sup>4</sup> *See, e.g.,* Anne Applebaum, [Want to secretly, legally send money to Jared Kushner? Here's how to do it.](https://wapo.st/2vhHcWS), *Washington Post*, June 13, 2019, <https://wapo.st/2vhHcWS>; Jon Swaine, [Company part-owned by Jared Kushner got \\$90m from unknown offshore investors since 2017](https://bit.ly/2VrPW7o), *Guardian*, June 10, 2019, <https://bit.ly/2VrPW7o>; Stephen Braun, Jeff Horwitz and Bernard Condon, [Ivanka Trump, Jared Kushner could profit from Opportunity Zone tax break they pushed](https://bit.ly/3cjEMYc), *Baltimore Sun*, June 11, 2018, <https://bit.ly/3cjEMYc>.

<sup>5</sup> *Citizens for Responsibility and Ethics in Washington*, [CREW Files Conflict of Interest Complaint Against Ivanka Trump](https://bit.ly/2wRCPC1), Jan. 4, 2019, <https://bit.ly/2wRCPC1>.

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.

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', is positioned above the typed name.

Meredith Lerner  
Research Associate