

August 28, 2020

SENT VIA EMAIL: FOIARequest@hhs.gov

FOIA Officer
Department of Health and Human Services (HHS)
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue SW
Washington, DC 20201

Re: Freedom of Information Act Request

Dear FOIA Officer:

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 Health and Human Services (“HHS”) regulations.

Specifically, CREW requests all emails sent or received by HHS Chief of Staff Brian Harrison mentioning, referencing, or relating to Wayne L. Pines between August 23, 2020 and the date this request is processed.

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). 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 OMB 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).

On August 23, 2020, the U.S. Food and Drug Administration (FDA) issued an Emergency Use Authorization (EUA) for the use of convalescent blood plasma as a treatment for COVID-19.¹ The granting of this EUA was announced to the public during a press conference featuring President Donald Trump and FDA Commissioner Dr. Stephen Hahn.²

This announcement was immediately criticized by scientists, who stated that the President and FDA Commissioner had misrepresented available data on the effectiveness of the treatment.³ Following these public criticisms, Dr. Hahn apologized on Twitter for overstating the known benefits of the treatment.⁴

On August 27, 2020, HHS canceled the contract of Wayne L. Pines, a public relations consultant working for the agency. This termination occurred after Pines reportedly recommended to Dr. Hahn that he “walk back his inaccurate claims” regarding the benefits of convalescent plasma for COVID-19. A source quoted by *Politico* stated that “Hahn’s late-night mea culpa angered officials at HHS, and after discovering Pines had aided that decision, they severed his contract.” The source also stated that the cancellation of Pines’s contract was “not routine.”⁵ These claims have been denied by HHS Chief of Staff Brian Harrison.⁶

The requested records would shed light on the circumstances surrounding the cancellation of Pines’s contract with HHS. During the ongoing pandemic and public health crisis, it is important for the public to know that decisions surrounding public health communications from HHS are not being influenced or driven by political considerations.

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

¹ FDA Chief Scientist RADM Denise M. Hinton, *Response to Emergency Use Authorization Request for*

² Sharon LaFraniere, Sheri Fink, Katie Thomas, and Maggie Haberman, *F.D.A. Allows Expanded Use of Plasma to Treat Coronavirus Patients*, *New York Times*, August 23, 2020, available at <https://www.nytimes.com/2020/08/23/us/politics/fda-plasma-coronavirus.html>.

³ Katie Thomas and Sheri Fink, *F.D.A. ‘Grossly Misrepresented’ Blood Plasma Data, Scientists Say*, *New York Times*, August 24, 2020, available at <https://www.nytimes.com/2020/08/24/health/fda-blood-plasma.html>.

⁴ *Id.*

⁵ Adam Cancryn and Dan Diamond, *FDA ousts top spokesperson after 2 weeks*, *Politico*, August 28, 2020, available at <https://www.politico.com/news/2020/08/28/fda-top-spokesperson-leaves-404422>.

⁶ *Id.*

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 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 (914) 671-3052 or elee@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 elee@citizensforethics.org or at Eli Lee, 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 black ink, appearing to read 'Eli Lee', written in a cursive style.

Eli Lee
Research Associate