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13-075

CREW | citizens for responsibility and ethics in washington

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Washington, D.C. 20005
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FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Elizabeth Farris	Anne Weismann
COMPANY:	DATE:
Office of Legal Counsel, Department of Justice	AUGUST 21, 2013
RECIPIENT'S FAX NUMBER:	PAGE 1 OF 5
202-514-0563	
RECIPIENT'S PHONE NUMBER:	RE:
	Please see enclosed FOIA request

NOTES/COMMENTS:

Pages transmitted are privileged and confidential.

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August 21, 2013

By Fax (202) 514-0563

Elizabeth Farris
Supervisory Paralegal
Office of Legal Counsel
Department of Justice
Room 5515
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Ms. Farris:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552, *et seq.*, and U.S. Department of Justice ("DOJ") regulations, 28 C.F.R. Part 16.

Specifically, CREW seeks a copy of all opinions written by the Office of Legal Counsel (OLC) that discuss, in any way, the authority of the president or any executive branch agency or agency component to conduct domestic and/or foreign surveillance. As used in this request, the word "surveillance" includes, but is not limited to, programs that collect in bulk metadata and other information pertaining to individuals.

If it is your position that any portion of the requested record 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), *cert. denied*, 415 U.S. 977 (1972). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event some portions of the requested record are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested record. *See* 5 U.S.C. §552(b); *Schiller v. Nat'l Labor Relations Bd.*, 969 F.2d 1205, 1209 (D.C. Cir. 1992). If

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it is your position that a document contains non-exempt segments and 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 through the document. *Mead Data Central v. U.S. Dep't of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Finally, CREW welcomes the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable OLC to process the request within the FOIA's deadlines. I am the CREW attorney handling this request and can be reached at (202) 408-5565 or aweismann@citizensforethics.org.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.11(k), 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 expenditures, and the disclosures will likely contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Specifically, the requested records are likely to contribute to the public's understanding of the legal rationale for the various surveillance programs conducted by the executive branch. Since the revelations about their existence, significant questions have been raised about the government's authority to conduct such surveillance, especially that involving American citizens in the United States. On August 9, 2013, the administration released a White Paper, *Bulk Collection of Telephone Metadata Under Section 215 of the USA Patriot Act*, that explains the government's basis for that intelligence collection program, but the OLC opinion on this same topic has yet to be released. With the growing controversy over the lawfulness of these activities, the public is entitled to information that will shed on their legality and enable the public to participate in meaningful public debate on these issues.

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 and to ensuring the integrity of those officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the government decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW's financial interest. In addition, CREW will disseminate any documents it acquires from this

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request to the public through its website, www.citizensforethics.org, which also links to thousands of pages of documents CREW has acquired from multiple FOIA requests, and documents relating to CREW's FOIA litigation and agency complaints. CREW also posts these documents on www.scribd.com.

Under these circumstances, CREW fully satisfies the criteria for a fee waiver.

News Media Fee Waiver Request

CREW also asks that it not be charged search or review fees for this request because CREW qualifies as a "representative of the news media" pursuant to the FOIA and DOJ regulations. In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly: "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.*

CREW routinely and systematically disseminates information to the public in several ways. First, CREW maintains a frequently visited website, www.citizensforethics.org, that received 126,169 page views in July 2013. In addition, CREW posts all documents it receives under the FOIA on www.scribd.com, and that website has received over 2.6 million visits to CREW's documents since April 14, 2010.

Second, since May 2007, CREW has published an online newsletter, *CREWCuts*, that currently has 16,223 subscribers. *CREWCuts* provides subscribers with regular updates regarding CREW's activities and information the organization has received from government entities. A complete archive of past *CREWCuts* is available at <http://www.citizensforethics.org/newsletter>.

Third, CREW publishes a blog, *Citizens blogging for responsibility and ethics in Washington*, that reports on and analyzes newsworthy developments regarding government ethics and corruption. The blog, located at <http://www.citizensforethics.org/blog>, also provides links that direct readers to other news articles and commentary on these issues. CREW's blog had 2,655 hits in July.

Finally, CREW has published numerous reports to educate the public about government ethics and corruption and government actions that raise questions about their legality. All

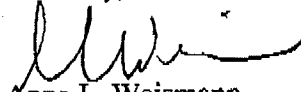
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CREW reports are available at <http://www.citizensforethics.org/reports>.

Based on these extensive publication activities, CREW qualifies for a fee waiver as a "representative of the news media" under the FOIA and agency regulations.

If you have any questions about this request or foresee any problems in releasing fully the requested records, please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such determination. Please send the requested records to Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Sincerely,



Anne L. Weismann
Chief Counsel