

April 17, 2007

**By fax (202-456-7921) and first-class mail**

Office of Administration  
FOIA Officer  
725 17th Street, N.W.  
Washington, D.C. 20503

**Re: Freedom of Information Act Request**

Dear Sir/Madam:

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, audiotapes, videotapes and photographs, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, et seq.

Specifically, CREW seeks the following:

(1) any and all copies of the analyses prepared between the fall of October 2005 and the fall of October 2006, that include, among other things, estimates as to how many emails were missing from the Executive Office of the President’s (“EOP”) system for preserving email;

(2) any and all copies of any and all spreadsheets or similar documents and any accompanying documents prepared between 2005 and September 2006, outlining the dates of all missing email from the EOP email records system;

(3) any and all copies of any documents prepared in 2002 or 2003 discussing the risks associated with the EOP’s email records management system, including an assessment of the risk to public perception from disclosure of problems with the email system; and

(4) any and all requests for proposals prepared by the Office of Administration between 2002 and 2004, to address any aspect of the EOP’s email records management.

CREW has been advised that all of these documents were in existence at least as of July 2006, and that email versions of at least some of these documents also exist. CREW has also been advised that these documents were either created by individuals within the Office of Administration and/or are in the possession of the Office of Administration.

Please search for responsive records regardless of format, medium, or physical

characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs. Our request includes any telephone messages, voice mail messages, daily agenda and calendars, information about scheduled meetings and/or discussions, whether in-person or over the telephone, agendas for those meetings and/or discussions, participants included in those meetings and/or discussions, minutes of any such meetings and/or discussions, the topics discussed at those meetings and/or discussions, e-mail regarding meetings and/or discussions, e-mail or facsimiles sent as a result of those meetings and/or discussions, and transcripts or notes of any such meetings and/or discussions.

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), 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, 949 (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) (emphasis added). Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” Id. at 224 (citing Mead Data Central v. U.S. Dep’t of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event that 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. Mead Data Central, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of 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.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii), 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 (9<sup>th</sup> Cir. 1987). Specifically, these records are likely to contribute to the public’s

understanding of the extent to which the White House's practices deviate from the requirements of the Presidential Records Act, 44 U.S.C. §§ 2201 *et seq.*, as well as any White House record-keeping guidance and policies, and the extent to which the White House had prior knowledge that its practices violate federal law.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue code. CREW is committed to the protection of the citizen'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. CREW will analyze the information responsive to this request, and will likely share its analysis with the public, either through memorandums, reports or press releases. In addition, CREW will disseminate any documents it acquires from this request to the public. CREW has established an interactive website where members of the public can analyze and comment on public documents, including documents CREW acquires through the FOIA. See <http://foia.citizensforethics.org/home>. Currently, CREW's website contains links to thousands of pages of documents CREW acquired from multiple FOIA requests. CREW's website, [www.citizensforethics.org](http://www.citizensforethics.org), also includes documents relating to CREW's FOIA litigation, Internal Revenue complaints, and Federal Election Commission complaints. As CREW's website demonstrates, CREW has an established history of acquiring documents through the FOIA and publishing them on its website for public use.

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

### **Request for Expedition**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1), CREW requests that the Office of Administration expedite the processing of this request in light of the compelling need for the requested information. CREW is a non-profit corporation engaged primarily in disseminating information it gathers from a variety of sources, including the FOIA, and seeks the information requested in this FOIA request for the express purpose of disseminating it to the public. As discussed above, CREW's website contains numerous examples of its efforts in this regard, including a report CREW issued last week concerning missing White House email and its implications under the Presidential Records Act. It is CREW's hope that by disseminating this type of information, the public will be better able to evaluate the actions of our public officials and will have a more effective voice, including in the voting booth.

As with the Electronic Privacy Information Center and the ACLU, two organizations that the courts have found satisfy the criteria necessary to qualify for expedition,<sup>1</sup> CREW “gathers

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<sup>1</sup> See ACLU v. U.S. Dep't of Justice, 321 F.Supp.2d 24, 30 (D.D.C. 2004); EPIC v. Dep't of Defense, 241 F.Supp.2d 5, 11 (D.D.C. 2003).

information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.” ACLU, 321 F.Supp.2d at 30 n.5, *quoting EPIC*, 241 F.Supp.2d at 11.

There is a particular urgency in informing the public about the record-keeping practices of the White House and the degree to which it knowingly ignored, if not outright violated, federal laws. Recent revelations about the use by high-ranking EOP officials of outside email accounts and the fact that the White House has known since the fall of 2005 that at least five million email are missing from the EOP’s records management system but has failed to address the problem have raised serious concerns about the White House’s compliance with the federal record-keeping laws. There are also serious concerns about whether the use by top White House Officials of outside email accounts is a purposeful effort to avoid creating records subject to those laws. The public, as well as the congressional committees considering this matter, need to know the true facts underlying these practices. Accordingly, CREW requests that this request be expedited.

### Conclusion

If you have any questions about this request or foresee any problems in releasing fully the requested records on an expedited basis, 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 documents 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