

October 21, 2020

OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Defense Information Systems Agency
Headquarters FOIA Requester Service Center
P.O. Box 549
Ft Meade, MD 20755-0549

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) submits this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Defense (“DOD”) regulations.

Specifically, CREW requests:

1. All records from July 1, 2020 to the date this request is processed relating to Rivada Networks and DOD’s current spectrum allocation, the potential sharing of DOD’s spectrum allocation with private industry, and/or 5G deployment.
2. Any information submitted by Rivada Networks in response to DOD’s “Defense Spectrum Sharing Request for Information,” originally published on September 18, 2020, and viewable at <https://beta.sam.gov/opp/4851a65e2b2d4d73865a0e9865b0c28a/view>, and any related communications.
3. All records from July 1, 2020 to the date this request is processed relating to any Request for Proposal (“RFP”) concerning DOD’s current spectrum allocation, the potential sharing of DOD’s spectrum allocation with private industry, and/or 5G deployment.
4. All records from July 1, 2020 to the date this request is processed relating to any instructions, guidance, directives, or requests from the White House to proceed to an RFP concerning DOD’s current spectrum allocation, the potential sharing of DOD’s spectrum allocation with private industry, and/or 5G deployment.
5. All records from July 1, 2020 to the date this request is processed relating to any contracting without providing for full and open competition concerning DOD’s

current spectrum allocation, the potential sharing of DOD's spectrum allocation with private industry, and/or 5G deployment.

This request seeks all responsive internal communications within DOD, as well as external communications between DOD officials and the following: (1) any person acting on behalf of Rivada Networks, including anyone with an email domain ending in "rivada.com"; (2) White House Chief of Staff Mark Meadows or any other White House official, including anyone with an email domain ending in "eop.gov"; (3) any Federal Communications Commission official, including anyone with an email domain ending in "fcc.gov"; and (4) any National Telecommunications and Information Administration official, including anyone with an email domain ending in "ntia.gov."

This request includes without limitation responsive correspondence, memoranda, 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 responsive attachments to emails and other records, anyone who was cc'ed or bcc'ed on any emails, and any embedded metadata.

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).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under FOIA to access these documents. Thus, because litigation is reasonably foreseeable, DOD should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DOD 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 October 20, 2020, CNN reported that "[s]enior officials throughout various departments and agencies of the Trump administration . . . are alarmed at White House pressure to grant what would essentially be a no-bid contract to lease the Department of Defense's mid-

band spectrum—premium real estate for the booming and lucrative 5G market—to Rivada Networks, a company in which prominent Republicans and supporters of President Donald Trump have investments.”¹ “[I]nformed sources tell CNN that the White House is unquestionably pressuring the Pentagon to approve what would likely be, in the words of one senior administration official, ‘the biggest handoff of economic power to a single entity in history,’ and to do so without full examination of the impact on national security and without a competitive bidding process.”² The requested records would shed light on these issues of potential cronyism and abuse of public office, which are of considerable public interest.

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 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) (deeming 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 the documents it receives under the FOIA on its website.

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

Conclusion

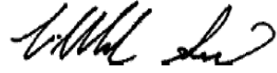
If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or nsus@citizensforethics.org. Also, if CREW’s requests for a fee waiver is denied, please contact our office immediately upon making such a determination.

¹ Jake Tapper, *Administration officials alarmed by White House push to fast track lucrative 5G spectrum contract, sources say*, *CNN*, Oct. 20, 2020, <https://www.cnn.com/2020/10/20/politics/white-house-5g-spectrum-no-bid-contract-rivada/index.html>.

² *Id.*

Where possible, please produce records in electronic format. Please send the requested records to me at either nsus@citizensforethics.org or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikhel Sus".

Nikhel Sus
Senior Counsel