



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

January 10, 2021

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

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

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

1. All records from December 1, 2020 to January 6, 2021 relating to DOD, the National Guard, or the Army providing assistance or support to the D.C. Metropolitan Police Department in connection with the January 6, 2021 congressional session to count electoral votes.
2. All records reflecting the parameters for the National Guard’s deployment to D.C. on January 6, 2021, including any limitations imposed on the number of personnel deployed, their movement within the District, or their use of force.
3. All communications with the D.C. Mayor’s Office or the D.C. Metropolitan Police Department regarding the parameters for the National Guard’s deployment to D.C. on January 6, 2021.

This request includes without limitation any responsive communications sent or received by Acting Secretary of Defense Christopher Miller, Chief of Staff to the Acting Secretary of Defense Kashyap Patel, or Assistant Secretary of Defense for Homeland Defense and Global Security Kenneth Rapuano.

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, and anyone who was 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).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation reasonably is foreseeable, the agency 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 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).

On January 6, 2021, a violent mob of Trump supporters stormed the U.S. Capitol Building to prevent Congress from counting electoral votes for the 2020 election, leading to five deaths, numerous injuries, defacement of government property, and removal of sensitive government records. Although the event was openly planned weeks in advance, law enforcement was woefully unprepared and failed to contain the mob.¹ According to the U.S.

¹ See Aruna Viswanatha and Sadie Gurman, Capitol Police Weren't Prepared for Rioters, Authorities Say, *Wall Street Journal*, Jan. 7, 2021, <https://www.wsj.com/articles/capitol-police-werent-prepared-for-rioters-authorities-say-11609978798>; Logan Jaffe et al., Capitol Rioters Planned for Weeks in Plain Sight. The Police Weren't Ready, *ProPublica*, Jan. 7, 2021, <https://www.propublica.org/article/capitol-rioters-planned-for-weeks-in-plain-sight-the-police-werent-ready>; W.J. Hennigan and Vera Bergengruen, Insurrectionists Openly Planned for Weeks to Storm the Capitol. Why Were Police So Easily Overwhelmed?, *Time*, Jan. 7, 2021, <https://time.com/5927215/capitol-hill-police-riots-unprepared/>; Ben Collins and Brandy Zadrozny, Extremists made little secret of ambitions to 'occupy' Capitol in weeks before attack, *NBC News*, Jan. 8, 2021, <https://www.nbcnews.com/tech/internet/extremists-made-little-secret-ambitions-occupy-capital-weeks-attack-n1253499>; Shaila Dewan, et al., Police Failures Spur Resignations and Complaints of Double Standard, *New York Times*, Jan. 7, 2021,

Capitol Police Labor Committee, this “lack of planning” by various agencies “led to the greatest breach of the U.S. Capitol since the War of 1812,” and was a “failure of leadership at the very top.”² The requested records will shed light on this historically unprecedented failure to secure the U.S. Capitol against an insurrectionist riot—an issue of overwhelming 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) (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 the documents it receives under the FOIA on its website.

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

Expedited Processing Request

CREW requests expedited processing of this FOIA request because the requested “information is urgently needed by an individual primarily engaged in disseminating

<https://www.nytimes.com/2021/01/07/us/Capitol-cops-police.html>; David Ignatius, *Why weren’t officials at the Capitol more prepared for this insurrection?*, *Washington Post*, Jan. 6, 2021, https://www.washingtonpost.com/opinions/why-werent-officials-at-the-capitol-more-prepared-for-this-insurrection/2021/01/06/d1c45788-5079-11eb-bda4-615aaefd0555_story.html; Peter Hermann, et al., *How the U.S. Capitol Police were overrun in a ‘monumental’ security failure*, *Washington Post*, Jan. 8, 2021, https://www.washingtonpost.com/politics/capitol-police/2021/01/07/fa3114b8-5114-11eb-83e3-322644d82356_story.html.

² John Henry (@JohnHenryWUSA), Twitter, Jan. 7, 2021, <https://twitter.com/JohnHenryWUSA/status/1347307233487564808?s=20>.

information in order to inform the public concerning actual or alleged government activity.” 32 C.F.R. § 286.8(e)(1)(i)(B).

First, the historically unprecedented failure to secure the U.S. Capitol against an insurrectionist riot is a matter of widespread and exceptional interest about which there is an “urgency to inform the public.” The Capitol invasion been the focus of intense scrutiny and media interest, as evidenced by numerous news articles published on the subject.³ See 32 C.F.R. § 286.8(e)(3) (“The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ‘urgency to inform’ the public on the topic.”). And the urgency to inform the public about this matter is heightened by the fact that an event posing even greater security challenges—the presidential inauguration—will be hosted at the U.S. Capitol in less than two weeks.

Second, CREW is “primarily engaged in disseminating information” to the public. As explained above, CREW’s primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials. To that end, CREW uses statutes like FOIA to gather information the public needs to hold public officials accountable, and disseminates this information through social media and its website, www.citizensforethics.org, which receives tens of thousands of views every month.

The undersigned certifies that the above statement is true and correct.

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 or expedited processing are denied, please contact our office immediately upon making such a determination.

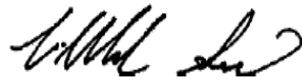
³ See Aruna Viswanatha and Sadie Gurman, Capitol Police Weren’t Prepared for Rioters, Authorities Say, *Wall Street Journal*, Jan. 7, 2021, <https://www.wsj.com/articles/capitol-police-werent-prepared-for-rioters-authorities-say-11609978798>; Logan Jaffe et al., Capitol Rioters Planned for Weeks in Plain Sight. The Police Weren’t Ready, *ProPublica*, Jan. 7, 2021, <https://www.propublica.org/article/capitol-rioters-planned-for-weeks-in-plain-sight-the-police-werent-ready>; W.J. Hennigan and Vera Bergengruen, Insurrectionists Openly Planned for Weeks to Storm the Capitol. Why Were Police So Easily Overwhelmed?, *Time*, Jan. 7, 2021, <https://time.com/5927215/capitol-hill-police-riots-unprepared/>; Ben Collins and Brandy Zadrozny, Extremists made little secret of ambitions to ‘occupy’ Capitol in weeks before attack, *NBC News*, Jan. 8, 2021, <https://www.nbcnews.com/tech/internet/extremists-made-little-secret-ambitions-occupy-capital-weeks-attack-n1253499>; Shaila Dewan, et al., Police Failures Spur Resignations and Complaints of Double Standard, *New York Times*, Jan. 7, 2021, <https://www.nytimes.com/2021/01/07/us/Capitol-cops-police.html>; David Ignatius, Why weren’t officials at the Capitol more prepared for this insurrection?, *Washington Post*, Jan. 6, 2021, https://www.washingtonpost.com/opinions/why-werent-officials-at-the-capitol-more-prepared-for-this-insurrection/2021/01/06/d1c45788-5079-11eb-bda4-615aaefd0555_story.html; Peter Hermann, et al., How the U.S. Capitol Police were overrun in a ‘monumental’ security failure, *Washington Post*, Jan. 8, 2021, https://www.washingtonpost.com/politics/capitol-police/2021/01/07/fa3114b8-5114-11eb-83e3-322644d82356_story.html.

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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". The signature is fluid and cursive, with a large initial "N" and a stylized "S" at the end.

Nikhel Sus
Senior Counsel