



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

July 6, 2021

South Dakota National Guard
Attn: Freedom of Information Act Office
2823 West Main Street
Rapid City, SD 57702-8170

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 all records from May 1, 2021 to the date this request is processed relating to the deployment of the South Dakota National Guard to the southern U.S. border, as announced by Governor Kristi Noem on June 29, 2021 (the “Deployment”),¹ including without limitation the following records:

1. All records relating to the “private donation” to support the Deployment provided by Willis and Reba Johnson’s Foundation and billionaire Willis Johnson, including records sufficient to identify the amount of the private donation and any communications with Willis Johnson or any representative of his foundation.
2. All records reflecting any complaint, inquiry, analysis, consideration, or determination by the DOD, the National Guard, or any other federal or state entity regarding the propriety of using a private donation to fund the Deployment.
3. All records reflecting any complaint, inquiry, analysis, consideration, or determination by the DOD, the National Guard, or any other federal or state entity regarding any legal restrictions applicable to the Deployment.
4. All communications with Governor Noem’s office regarding the Deployment.
5. All records reflecting the parameters of the Deployment, including any instructions or other communications to South Dakota National Guard

¹ See Press Release, [Governor Noem Deploys South Dakota National Guard to Texas for Border Security](https://news.sd.gov/newsitem.aspx?id=28226), *South Dakota State News*, June 29, 2021, <https://news.sd.gov/newsitem.aspx?id=28226>.

members about the nature of the Deployment, whether participation is mandatory or voluntary, and the source of funding for the Deployment.

The above request excludes agency records consisting solely of news articles, press clippings, and other publicly-available material, so long as the records include no accompanying discussion by agency officials

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).

In a press release issued on June 29, 2021, Governor Kristi Noem announced that “up to fifty South Dakota National Guard troops are being deployed to Texas to help the secure the border between the United States and Mexico.”² The release added that the “deployment will be paid for by a private donation.”³ The donation was reportedly provided by Willis Johnson, a billionaire Republican donor.⁴ Noem’s “acceptance of the donation from Johnson, who doesn’t even live in Noem’s state but rather in Tennessee, has drawn intense scrutiny,” with experts saying “it sets a troubling precedent in which a wealthy patron is effectively commandeering U.S. military might to address private

² *See* Press Release, Governor Noem Deploys South Dakota National Guard to Texas for Border Security, *South Dakota State News*, June 29, 2021, <https://news.sd.gov/newsitem.aspx?id=28226>.

³ *Id.*

⁴ Brian Slodysko and Stephen Groves, GOP donor pays \$1M to deploy South Dakota national guard, *Associated Press*, June 30, 2021, <https://apnews.com/article/joe-biden-sd-state-wire-south-dakota-immigration-philanthropy-6962b757ef01dff90cfe7fbb445d56f5>

political motivations.”⁵ The requested records will shed light on this issue of substantial 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.

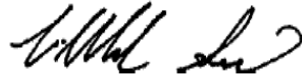
Conclusion

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 request for a fee waiver is denied, 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 at either nsus@citizensforethics.org or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 1331 F St. NW, Suite 900, Washington, D.C. 20004.

⁵ *Id.*

Sincerely,

A handwritten signature in black ink, appearing to read "Nikhel Sus". The signature is written in a cursive style with a large, sweeping flourish at the end.

Nikhel Sus
Senior Counsel