



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

January 26, 2022

OSD/JS FOIA Requester Service Center  
Freedom of Information Division  
U.S. Department of Defense  
1155 Defense Pentagon  
Washington, DC 20301-1155

**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 communications between General Charles A. Flynn (who previously served as a Lieutenant General during part of the time period in question) and retired Lt. Gen. Michael Flynn from June 1, 2020 through the date this request is processed. Our request seeks all communications sent or received by Gen. Charles Flynn acting in his governmental capacity, including but not limited to those sent or received on non-governmental communications devices or through non-governmental accounts.

In responding to this request CREW requests that DOD’s search include, but not be limited to, the records of the following government custodians involved in DOD’s response to the January 6th attack on the U.S. Capitol<sup>1</sup>:

- Gen. Charles A. Flynn
- Lt. Gen. Walter Piatt
- Maj. Gen. Christopher LaNeve
- Former U.S. Army Secretary Ryan McCarthy
- Former Acting Secretary of Defense Chris Miller

This 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 or notations.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records,

---

<sup>1</sup> U.S. Dep’t of Def., Off. of Inspector Gen., DODIG-2022-039, *Review of the Department of Defense’s Role, Responsibilities, and Actions to Prepare for and Respond to the Protest and its Aftermath at the U.S. Capitol Campus on January 6, 2021* (Nov. 16, 2021) “IG Report”).

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 November 16, 2021, DOD's Inspector General released a report that purported to review "DoD's role, responsibilities, and actions to prepare for and respond to the protest and its aftermath at the U.S. Capitol Campus on January 6, 2021." IG Report at 3. On December 1, 2021, Col. Earl G. Matthews, who served as Staff Judge Advocate to the Commanding General of the District of Columbia National Guard on January 6, 2021, released a 36-page memo outlining the multiple errors and misstatements in the DOD Inspector General's report. Col. Matthews alleged that top military officials Gen. Charles A. Flynn and Lt. Gen. Walter Piatt lied to Congress and/or the DOD Inspector General about facts relating to DOD's response to repeated requests for the D.C. National Guard to be swiftly deployed to Capitol Hill.<sup>2</sup> Col. Matthews characterized the IG Report as "replete with factual inaccuracies," suggesting that outside factors may have contributed to the delay in deployment of the D.C. National

---

<sup>2</sup> Col. Earl G. Matthews, U.S. Army, *The Harder Right: An Analysis of a Recent DoD Inspector General Investigation and Other Matters*, (Dec. 1, 2021), available at <https://www.politico.com/f/?id=0000017d-8aca-dee4-a5ff-eeda79e90000>.

Guard, such as a request by Lt. Gen. Michael Flynn to his brother, Gen. Flynn, to hold off on such deployment.<sup>3</sup>

The records CREW seeks with this FOIA request will shed substantial light on a matter of significant public interest—the extent to which the delay in deploying the D.C. National Guard to protect the Capitol while it was being violently attacked by a band of insurrectionists was due, at least in part, to the interference of individuals like Gen. Michael Flynn who has expressed public and repeated support for former President Donald Trump’s efforts to overturn the results of the 2020 presidential election. The requested records will also help the public independently evaluate the veracity and thoroughness of the IG Report.

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](http://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 fully satisfies 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 [vcanter@citizensforethics.org](mailto:vcanter@citizensforethics.org). Also, if CREW’s request for a fee waiver is denied, please contact our office immediately upon making such a determination.

---

<sup>3</sup> *Id.*

January 26, 2022

Page 4

Where possible, please produce records in electronic format. Please send the requested records to me at either [vcanter@citizensforethics.org](mailto:vcanter@citizensforethics.org) or Virginia Canter, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005.

Sincerely,

Virginia Canter  
Chief Ethics Counsel