CREW

CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

September 20, 2024

Crystle Poge
FOIA Officer
U.S. Army Freedom of Information Act Office
Records Management and Declassification Agency
9301 Chapek Rd. Bldg 1458
Fort Belvoir, VA 22060-5605

Re: Freedom of Information Act Request

Dear Crystle:

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 the regulations of the Department of the Army and the Department of Defense.

Specifically, CREW requests the following records from May 1, 2024 to the date this request is processed:

1. All records, including but not limited to photographs, videos, factual accounts, or reports, created and/or received by the Department of the Army and/or the Department of Defense ("the Departments") related to the incident at the wreath laying ceremony and subsequent Section 60 visit, as acknowledged in official statements by the Department of the Army[1] and later by the Department of Defense,[2] in or around Arlington National Cemetery on August 26, 2024 ("August 26, 2024 incident").
2. All records related to the August 26, 2024 incident received by the Departments, including but not limited to police reports filed at Joint Base Myer-Henderson Hall,[3] that pertain to proven, alleged, or suspected violations

[1] Jordy Meiselas, *U.S. Army Releases Statement Regarding Trump Campaign Incident*, Meidas Touch, Aug. 29, 2024, https://meidasnews.com/news/u-s-army-releases-statement-regarding-trump-campaign-incident.
[2] Associated Press, *WATCH: Pentagon holds briefing after Army makes statement on Arlington cemetery incident*, PBS, Aug. 29, 2024, https://www.pbs.org/newshour/politics/watch-live-pentagon-holds-news-briefing-as-israel-claims-it-killed-militant-in-new-west-bank-attack.
[3] Chris Cameron, Maggie Haberman, & Eric Schmitt, *Trump Aide 'Abruptly Pushed Aside' an Arlington Cemetery Official*, the Army Says, N.Y. Times, Aug. 29, 2024, https://www.nytimes.com/2024/08/29/us/politics/trump-arlington-cemetery-army.html.

of any standard imposed by law (including but not limited to Hatch Act, 32 CFR 553, and AR 360-1) or the Departments' rules, regulations, and/or policies.

3. All communications, including but not limited to any communication regarding Arlington National Cemetery's policies about media and/or rules prohibiting political activity (including but not limited to 32 C.F.R. § 553.32(c) and the April 2022 Department of Defense public memorandum[4]), sent or received by any employees of the Departments, relating to the wreath laying ceremony on August 26, 2024 or to the Donald Trump campaign's participation or plans for participation in said wreath laying ceremony.[5]
4. All records of any of the Departments' investigations,[6] as well as any of the Departments' actions or decisions not to take action, in regard to the August 26, 2024 incident.[7]

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 rights under FOIA. Accordingly, because litigation is reasonably foreseeable, the agency should

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[4] Memorandum from Department of the Army to Memorandum for Record, subject: Media Policy for Army National Military Cemeteries (Apr. 18, 2022). https://www.arlingtoncemetery.mil/Portals/0/ANC-media-policy.pdf.

[5] Donald Trump's campaign spokesperson has acknowledged the campaign's participation in the ceremony: "[A]n unnamed individual, clearly suffering from a mental health episode, decided to physically block members of President Trump's team during a very solemn ceremony," *Trump staff had physical altercation with Arlington cemetery official*, Reuters, Aug. 28, 2024; https://www.reuters.com/world/us/trump-staff-had-physical-altercation-with-arlington-cemetery-official-npr-2024-08-28; Quil Lawrence & Tom Bowman, *Trump campaign staff had altercation with official at Arlington National Cemetery*, NPR, Aug. 28, 2024, https://www.npr.org/2024/08/27/nx-s1-5091154/trump-arlington-cemetery.

[6] Leo Shane III, *Lawmakers demand Army sanction Trump over Arlington Cemetery visit*, Military Times, Sep. 10, 2024, https://www.militarytimes.com/news/pentagon-congress/2024/09/10/lawmakers-demand-army-sanction-trump-over-arlington-cemetery-visit/.

[7] Katherine Faulders, Luis Martinez, and Anne Flaherty, *Trump Arlington cemetery incident still under investigation: Sources*, ABC News, Sep. 17, 2024, https://abcnews.go.com/US/trump-arlington-cemetery-incident-investigation-sources/story?id=113740204.

institute an agency-wide preservation hold on all 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 id.* § 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).

Political activity is strictly prohibited at Arlington National Cemetery, as it is arguably the most hallowed and sacred site in our national consciousness.[8] The Donald Trump presidential campaign team reportedly flouted that rule by, among other things, appearing in photos and releasing a video to TikTok, that included gravestones of soldiers buried in Section 60.[9] The Department of the Army acknowledged that an Arlington employee who attempted to ensure adherence to the cemetery rules was abruptly pushed aside and the Defense Department stated that it stood by the Army's statement and its decision to consider "the matter closed."[10] While the Trump team has also made reference to the fact that some kind of physical altercation had taken place between the campaign officials and cemetery staff, information about the details of the misconduct and the actions taken to prevent and remedy it have not been released.[11] Preventing and responding to unauthorized activities at a site meant to honor the dead and provide a place to mourn for the rest of the nation, infringes on the interests of all Americans.

As the final resting place for those who have served our nation with dignity and honor, the sanctity of Arlington National Cemetery must be preserved to ensure that individuals buried and visiting the Cemetery experience the sobering honor of the site.[12] Out of respect for their service, multidimensional legacies, and mourners, the graves of the soldiers buried at Arlington should never be exploited for political gain, and the Army takes special care to ensure that meticulously crafted rules to ensure such decorum are followed.[13]

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[8] 32 C.F.R. § 553.32; Tanya D. Marsh, *Trump campaign violated rules in Arlington National Cemetery visit, cemetery legal expert explains*, The Conversation, Sep. 6, 2022, https://theconversation.com/trump-campaign-violated-rules-in-arlington-national-cemetery-visit-cemetery-legal-expert-explains-238269.

[9] Chris Cameron, Maggie Haberman, and Eric Schmitt, *Trump Videos at Arlington Stir More Fallout After Gravesite Visit*, N.Y. Times, Aug. 28, 2024, https://www.nytimes.com/2024/08/28/us/politics/trump-arlington-cemetery.html.

[10] Chris Cameron, Maggie Haberman, and Eric Schmitt, *Trump Aide 'Abruptly Pushed Aside' an Arlington Cemetery Official, the Army Says*, N.Y. Times, Aug. 29, 2024, https://www.nytimes.com/2024/08/29/us/politics/trump-arlington-cemetery-army.html.

[11] Quil Lawrence, Tom Bowman, *Trump campaign staff had altercation with official at Arlington National Cemetery*, NPR, Aug. 28, 2024, https://www.npr.org/2024/08/27/nx-s1-5091154/trump-arlington-cemetery.

[12] Mike Mullen, *Politics has no place at Arlington's Section 60*, Wash. Post, Sep. 4, 2024, https://www.washingtonpost.com/opinions/2024/09/04/mullen-arlington-politics-trump-afghanistan/.

[13] 32 C.F.R. §§ 553.32, 553.5; Memorandum from Department of the Army to Memorandum for Record, subject: Media Policy for Army National Military Cemeteries (Apr. 18, 2022), https://www.arlingtoncemetery.mil/Portals/0/ANC-media-policy.pdf.

This is especially true in Section 60 of the cemetery, which is an area with increased restrictions due to the sensitive nature of those who are buried there—soldiers who served recently, in Afghanistan and Iraq.[14] Many of these soldiers have living immediate family members and are visited by those who they served alongside.

The public has a strong interest in knowing that these rules are enforced, and specifically if they are enforced against all people equally. The American people are invested stakeholders in this sacred site, and they have a right to information concerning attempts to break rules and subvert accountability for such actions. Particularly when misconduct of national importance occurs, information concerning the full scope and response to such misconduct is crucial for ensuring that any disciplinary measures imposed are adequate, and that those who are responsible are held accountable.

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 disseminates information obtained through FOIA to the public in several ways. For example, CREW's website receives hundreds 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. These reports frequently rely on government records obtained through FOIA. CREW also posts the documents it obtains through FOIA on its website.

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

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[14] Simon Worrall, *Section 60 of Arlington National Cemetery Offers Tragic Testimony to America's Most Recent Wars*, National Geographic, Oct. 21, 2014, https://www.nationalgeographic.com/adventure/article/141021-arlington-national-cemetery-iraq-afghanistan-war-ngbooktalk.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please email me at [redacted] and foia@citizensforethics.org or call me at (202) 408-5565. 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 [redacted] and foia@citizensforethics.org or by mail to Kalyn Mizelle McDaniel, Citizens for Responsibility and Ethics in Washington, [redacted].

Sincerely,

Kalyn Mizelle McDaniel
Legal Fellow