

BY FACSIMILE: 571-372-0500

FOIA Officer
OSD/JS FOIA Requester Service Center
Freedom of Information Division
U.S. Department of the 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”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Defense regulations.

CREW requests copies of any authorization issued pursuant to 5 C.F.R. § 2635.502(d), and any waiver issued pursuant to section 3 of Executive Order 13770 (Feb. 28, 2017) at any time to Patrick M. Shanahan.

Please search for responsive records regardless of format, medium, or physical characteristics.

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). In the event 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 nonexempt, 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).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and 32 C.F.R. § 286.12(l), 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).

The ethics agreement that acting Secretary Shanahan signed in connection with his nomination for the position of Deputy Secretary of Defense included a promise to recuse from certain matters involving his former employer, Boeing, but that promise held open the possibility that he could be authorized to participate in such matters: “I will not participate personally and substantially in any particular matter involving specific parties in which I know the Boeing Company is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d), in a writing that describes the circumstances necessitating the authorization.”¹ A recent article in *Politico* reports on allegations that acting Secretary Shanahan has been exhibiting bias in favor of Boeing in official matters.² The article notes that a defense expert questions how acting Secretary Shanahan could perform essential functions of his position while recused from Boeing,³ which reportedly is the second biggest defense contractor.⁴ With potentially hundreds of millions or even billions of dollars at stake in defense contracting, the public has a direct and clear interest in understand the role acting Secretary Shanahan is playing in official matters involving Boeing. Disclosure of any authorization issued in accordance with his ethics agreement under 5 C.F.R. § 2635.502(d) and allowing him to participate in such matters would contribute significantly to public understanding of government operations and activities in this regard. For the same reason, the public has a compelling interest in knowing whether acting Secretary Shanahan received a waiver under Executive Order 13770,⁵ which also contains a recusal obligation as to Boeing but similarly holds open the possibility of a waiver.⁶

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. US. 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

¹ Ethics Agreement of Patrick M. Shanahan, at 1, June 7, 2017, available at <https://bit.ly/2B03QTa>.

² Eliana Johnson and David Brown, *New Pentagon chief under scrutiny over perceived Boeing bias*, *Politico*, January 9, 2019, available at <https://politi.co/2Clm1mj>.

³ *Id.*

⁴ Website, *Ranking of the top 20 U.S. Department of Defense contractors in fiscal year 2017, by contract value (in billion U.S. dollars)*, *Statistica*, March 2018, available at <https://bit.ly/2Ren2le> (site last viewed Jan. 24, 2019).

⁵ Ethics Agreement of Patrick M. Shanahan, at 3.

⁶ *Ethics Commitments by Executive Branch Appointees*, Exec. Order 13770, sec. 1(6) and sec. 3 (Jan. 28, 2017), available at <https://bit.ly/2T7wQ2c>.

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 documents it receives under the FOIA on its website, which has been visited hundreds of thousands of times. 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 aweismann@citizensforethics.org. Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W, Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel