

February 25, 2019

**BY FACSIMILE: (202) 586-0575**

U.S. Department of Energy  
FOIA Requester Service Center  
1000 Independence Avenue, SW  
Washington, DC 20585

Re: Freedom of Information Act Request

Dear FOIA Office:

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 Department of Energy regulations.

First, CREW requests all communications between the Office of the Secretary and anyone acting on behalf of Thomas J. Barrack Jr. or Colony Capital, Inc. from March 2, 2017 to the present concerning the sharing of U.S. nuclear technology with Saudi Arabia.

Second, CREW requests all communications between the Office of the Secretary and anyone acting on behalf of ACU Strategic Partners from March 2, 2017 to the present concerning the sharing of U.S. nuclear technology with Saudi Arabia.

Third, CREW requests all communications between the Office of the Secretary and anyone acting on behalf of International Peace, Power, & Prosperity (IP3 International) from March 2, 2017 to the present concerning the sharing of U.S. nuclear technology with Saudi Arabia.

Fourth, CREW requests all communications between the Office of the Secretary and anyone acting on behalf of Westinghouse Electric Co. LLC from March 2, 2017 to the present concerning the sharing of U.S. nuclear technology with Saudi Arabia.

Fifth, CREW requests all communications between the Office of the Secretary and anyone acting on behalf of the Nuclear Energy Institute from March 2, 2017 to the present concerning the sharing of U.S. nuclear technology with Saudi Arabia.

Sixth, CREW requests all communications between the Office of the Secretary and staff of the National Security Council from March 2, 2017 to the present concerning the sharing of U.S. nuclear technology with Saudi Arabia.

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, as well as emails to which the subjects of this request were cc'ed or bcc'ed.

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).

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A) and Energy Department 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).

During the first months of the current presidential administration, then-National Security Advisor Michael Flynn, then-Deputy National Security Advisor K.T. McFarland, and then-Senior Director for Middle East and North African affairs Derek Harvey promoted a plan to allow American nuclear energy companies to develop nuclear power plants in the Middle East. This plan included the sharing of U.S. nuclear technology with Saudi Arabia—an act that would require the negotiation of a nuclear cooperation agreement with Saudi Arabia under Section 123 of the Atomic Energy Act (a so-called “123 Agreement”). Flynn, McFarland, and Harvey developed and promoted this plan in collaboration with private actors such as the firm IP3 International and the investor Thomas J. Barrack Jr.<sup>1</sup> All three aforementioned officials left the administration in 2017.

In 2018, Secretary of Energy Rick Perry began to publicly promote a similar plan. In May of that year, Secretary Perry testified before the House Science, Space and Technology committee that the administration was considering the establishment of a 123 Agreement with

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<sup>1</sup> Interim Staff Report, Whistleblowers Raise Grave Concerns with Trump Administration's Efforts to Transfer Sensitive Nuclear Technology to Saudi Arabia, Feb. 2019, available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Trump%20Saudi%20Nuclear%20Report%20-%202019-2019.pdf> (“2019 Interim House Report”).

Saudi Arabia.<sup>2</sup> During his testimony, Secretary Perry referred to Westinghouse Electric Co. as the “best reactor builder in the world” and emphasized the benefits that such an agreement would have for the American nuclear energy sector. Secretary Perry continued to hold talks with Saudi leaders regarding a 123 Agreement and make public statements on the subject throughout the rest of the year, meeting with Saudi Minister of Energy Khalid al-Falih and the CEO of the Saudi national oil company Saudi Aramco in December.<sup>3</sup> More recently, major American nuclear energy developers met with President Trump in February of 2019 to ask for help securing contracts to build nuclear power plants “in the Middle East and elsewhere overseas.”<sup>4</sup>

Secretary Perry’s support for the establishment of a 123 Agreement with Saudi Arabia, along with his praise of U.S. nuclear energy companies such as Westinghouse, raise questions about how the Secretary came to support this plan and whether his support has been influenced by communications with private entities and actors such as IP3, Barrack, and U.S. nuclear energy companies. The requested records would shed light on the extent to which Secretary Perry’s decision-making on this issue has been informed by nuclear industry interests, as well as whether he has discussed this topic with NSC staff including but not limited to K.T. McFarland and Derek Harvey.

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”).

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<sup>2</sup> Josh Siegel, *Rick Perry: Saudi Arabia should sign nuclear energy deal with US*, *Washington Examiner*, May 9, 2018, available at <https://www.washingtonexaminer.com/policy/energy/rick-perry-saudi-arabia-should-sign-nuclear-energy-deal-with-us>.

<sup>3</sup> Timothy Gardner, *U.S. stresses safety in talks on nuclear power with Saudi Arabia: Perry*, *Reuters*, Sept. 26, 2018, available at <https://www.reuters.com/article/us-usa-saudi-nuclear/u-s-stresses-safety-in-talks-on-nuclear-power-with-saudi-arabia-perry-idUSKCN1M707W>; Terrence Dopp, *Perry Pursues Reactor Deal Amid Congressional Ire at Saudis*, *Bloomberg*, Dec. 10, 2018, available at <https://www.bloomberg.com/news/articles/2018-12-10/perry-pursues-reactor-deal-amid-congressional-ire-at-saudis>; 2019 Interim House Report.

<sup>4</sup> Jennifer A. Diouhy, Ari Natter, and Jennifer Jacobs, *CEOs Ask Trump to Help Them Sell Nuclear Power Plants Overseas*, *Bloomberg*, Feb. 12, 2018, available at <https://www.bloomberg.com/news/articles/2019-02-12/trump-said-to-meet-with-nuclear-developers-looking-globally>.

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 documents it receives under the FOIA 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) 408-0687 or [elee@citizensforethics.org](mailto:elee@citizensforethics.org). Also, if CREW's request for a fee waiver is not granted in full, 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 either at [elee@citizensforethics.org](mailto:elee@citizensforethics.org) or at Eli Lee, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eli Lee', with a stylized flourish at the end.

Eli Lee  
Research Associate