

CREW | citizens for responsibility and ethics in washington

August 9, 2019

BY FAX: 703-428-7633

U.S. Army Corps of Engineers
Humphreys Eng Center
CEHEC-OC
7701 Telegraph Road
Alexandria, VA 2231503860

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 US. Department of Defense and U.S. Department of the Army regulations.

Specifically, CREW requests copies of all communications between the office of the Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers (“Army Corps”) and the office of Sen. Kevin Cramer concerning contracts for a border wall on the U.S.-Mexico border.

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 those who were 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).

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 August 2, 2019, the *Washington Post* reported that Senator Cramer had held up the confirmation of a White House budget official in an effort to obtain sensitive information about contracts for building a border wall that the Army Corps had refused to provide him.¹ According to the article, Sen. Cramer represented that the White House had promised him the information if he released his hold on the nominee. *Id.* A top Army Corps official, Lt. Gen. Todd Semonite, then met with Sen. Cramer for a “private briefing,” after which the Senator’s office released a statement “vowing to hold the military engineers ‘accountable.’” *Id.* Emails the *Washington Post* obtained show that Sen. Cramer has been trying to steer border wall contracts to major donors, Tommy Fisher and his wife of Fisher Industries. *Id.*

The requested records will shed light on the pressures to which the Army Corps has been subject in contracting for a border wall and how it has handled those pressures, particularly from members of Congress and the White House. The public is entitled to know whether decisions by the Army Corps in awarding contracts for a very controversial project have been impacted by outside forces and special interests.

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, and through www.scribd.com. 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)

¹ Nick Miroff and Damian Paletta, [GOP senator help up Trump nominee, demanding to see border wall contracts after Army Corps panned construction firm he prefers](https://www.washingtonpost.com/immigration/gop-senator-held-up-trump-nominee-demanding-to-see-border-wall-contracts-after-army-corps-panned-construction-firm-he-prefers/2019/08/02/b185a76a-b566-11e9-8f6c-7828e68cb15f_story.html), *Washington Post*, Aug. 2, 2019, available at https://www.washingtonpost.com/immigration/gop-senator-held-up-trump-nominee-demanding-to-see-border-wall-contracts-after-army-corps-panned-construction-firm-he-prefers/2019/08/02/b185a76a-b566-11e9-8f6c-7828e68cb15f_story.html.

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(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 documents it receives under the FOIA on its website, and those documents have 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. 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 aweismann@citizensforethics.org or at 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,

A handwritten signature in blue ink, appearing to read 'Anne L. Weismann', with a long horizontal flourish extending to the right.

Anne L. Weismann
Chief FOIA Counsel