



June 24, 2020

Sent via email: [whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil](mailto:whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil)

FOIA Officer

OSD/JS FOIA Requester Service Center

Office of Freedom of Information

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, related to Under Secretary of Defense for Research and Engineering Michael D. Griffin.

**First, CREW requests copies of the notification and the recusal statement that Dr. Griffin was required to file, pursuant to 5 C.F.R. § 2635.607, with the ethics office regarding any negotiation for future employment or compensation.<sup>1</sup> This request is limited to any such notification and statement filed on or after January 1, 2019.**

**Second, CREW requests records of all communications to or from Dr. Griffin related to the “private-sector opportunity” he referenced in an email to his staff on or about June 23, 2020.<sup>2</sup> This request is limited to records of communications occurring on or after January 1, 2020.<sup>3</sup>**

**Third, CREW requests all calendars, schedules or other records tracking the scheduling of appointments for Dr. Griffin. This request is limited to records of appointments occurring on or after May 1, 2020.**

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.

If it is your position that 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*

---

<sup>1</sup> We request these records regardless of where they are maintained. For your convenience, however, we note that these records are likely maintained by the Defense Department’s Standards of Conduct Office (SOCO).

<sup>2</sup> The text of this email was reported by *Inside Defense*. Jason Sherman, Griffin to step down, *Inside Defense*, June 23, 2020, <https://bit.ly/2VcInAn>.

<sup>3</sup> We would accept the Defense Department limiting its search for this third item to (1) any records in the possession of SOCO; (2) any records in the possession of anyone in Dr. Griffin’s immediate office, including but not limited to Dr. Griffin, and (3) any records associated with Dr. Griffin’s official email account.

*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 June 23, 2020, news broke that Dr. Griffin was resigning his position effective July 10, 2020.<sup>4</sup> The initial news report included the text of an unusual email Dr. Griffin sent to his staff indicating that he and his deputy, Lisa Porter, were both resigning to pursue a “private sector opportunity” together.<sup>5</sup> The simultaneous resignation and future business plans of these two top managers raises questions about their compliance with conflict of interest and government ethics requirements. The primary conflict of interest statute required Dr. Griffin to recuse from particular matters affecting the financial interests of any prospective employer with whom he was negotiating for employment.<sup>6</sup> Even before any such negotiations began, a similar recusal obligation would have applied to both of these managers with respect to any particular matter involving specific parties if they were “seeking” employment with one of the parties.<sup>7</sup> If Ms. Porter was negotiating with the same prospective employer, she would likewise have been barred from participating in such matters, making it harder for Dr. Griffin to implement an effective recusal without impeding the effectiveness of his office.<sup>8</sup>

These are not the only ethics restrictions potentially at issue. Government ethics regulations also required Dr. Griffin to file a notification and recusal statement with the Standards of Conduct Office within three days of commencing negotiations for future employment or compensation.<sup>9</sup> Another ethics obligation arose from the ethics agreement Dr. Griffin signed on December 12, 2017.<sup>10</sup> He pledged in the agreement that, for the duration of his appointment, he would not provide any services to his company, Griffin Space Consulting, LLC, other than filing any paperwork necessary to maintain the company in an “inactive”

---

<sup>4</sup> Jason Sherman, [Griffin to step down](https://bit.ly/2VcInAn), *Inside Defense*, June 23, 2020, <https://bit.ly/2VcInAn>.

<sup>5</sup> *Id.*

<sup>6</sup> 18 U.S.C. § 208(a).

<sup>7</sup> 5 C.F.R. § 2635.604.

<sup>8</sup> *Id.*

<sup>9</sup> 5 C.F.R. § 2635.607.

<sup>10</sup> Office of Government Ethics, Ethics Agreement of Dr. Michael Griffin, Dec. 2017, <https://bit.ly/3dwVkJD>.

status.<sup>11</sup> He further pledged that the company would remain “dormant” and would not “advertise” for the duration of his appointment.<sup>12</sup> Dr. Griffin’s compliance with this requirement may be in question if the “private sector” opportunity he mentioned involved this company. In that case, the Ethics in Government Act may also have barred him from continuing to allow the company to use his name.<sup>13</sup>

The requested records are likely to contribute significantly to the public’s understanding of the operations and activities of the Department of Defense. CREW’s requests are targeted to uncover information regarding Dr. Griffin’s compliance with various conflict of interest and government ethics requirements, which are important anticorruption mechanisms of the federal government. The government’s compliance with anticorruption mechanisms is of significant interest to the public. As the U.S. Department of Justice has explained, “One purpose that the FOIA was designed for is to “check against corruption and to hold the governors accountable to the governed.” Indeed, information that would inform the public of violations of the public trust has a strong public interest and is accorded great weight in the balancing process.”<sup>14</sup>

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 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.

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. app. § 502(a)(1).

<sup>14</sup> U.S. Department of Justice, *Freedom of Information Act Guide*, May 2004 (internal citations omitted), <https://bit.ly/2JxXc8H>.

**Conclusion**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at [wshaub@citizensforethics.org](mailto:wshaub@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 at [wshaub@citizensforethics.org](mailto:wshaub@citizensforethics.org). Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Walter M. Shaub, Jr." The signature is written in a cursive style with a large initial 'W' and a long, sweeping tail.

Walter M. Shaub, Jr.  
Senior Advisor