

August 7, 2020

BY EMAIL: foia@dfc.gov

FOIA Director (Legal)
US International Development Finance Corporation
1100 New York Avenue, NW
Washington, DC 20527

Re: Freedom of Information Act Request

Dear FOIA Officer:

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 U.S. International Development Finance Corporation (“DFC”) regulations.

Specifically, CREW seeks all communications, meeting documents, or other records of discussions or deliberations from May 14, 2020 to July 31, 2020 between DFC employees and representatives of the White House, the Department of Defense (“DOD”), and any employees, agents, or any other representative of Eastman Kodak (“Kodak”), including, but not limited to, Kodak CEO James Continenza and Kodak’s registered lobbyists Nagraj Bokinkere, David Bullwinkle, Terry Taber, and Kristen Calabrese Williams, that mention the pharmaceutical drug hydroxychloroquine sulfate (“hydroxychloroquine”), any variations or abbreviations of hydroxychloroquine, including but not limited to “HCQ,” “HCL,” “Plaquenil,” “Chloroquine,” or any component ingredients of hydroxychloroquine mentioned in the same communication or series of communications as hydroxychloroquine or its variants, including, but not limited to 2-[[4-[(7-Chloro-4-quinolyl) amino] pentyl] ethylamino] ethanol sulfate (1:1), dibasic calcium phosphate, hydroxypropyl cellulose, hydroxypropyl methylcellulose, magnesium stearate, polyethylene glycol, povidone, sodium bicarbonate, and titanium dioxide.

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 right under the FOIA to access these documents. Accordingly, because litigation reasonably is foreseeable, SBA should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and DFC 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 May 14, 2020, President Trump signed an executive order delegating authority to the United States International Development Finance Corporation to make loans under the Defense Production Act in coordination with the Department of Defense in order to support “the domestic production of strategic resources needed to respond to the COVID-19 outbreak, or to strengthen any relevant domestic supply chains.”¹

On June 22, 2020, the DFC issued a request for proposals from private firms to support “projects that support the domestic production or distribution of pharmaceuticals, personal protective equipment (PPE), medical testing supplies, vaccines, ventilation equipment, or relevant ancillary materials and technologies.”²

On July 28, 2020, the DFC announced that it would make a \$765 million loan to Kodak to support the development of Kodak Pharmaceuticals.³ The stated intent of the loan is to support Kodak Pharmaceuticals as it executes a plan to begin producing chemicals essential to “numerous generic medications” in the United States. The DFC explains that “Kodak

¹ EO on Delegating Authority Under the DPA to the CEO of the U.S. International Development Finance Corporation to Respond to the COVID-19 Outbreak, May 14, 2020 *available at* <https://www.whitehouse.gov/presidential-actions/eo-delegating-authority-dpa-ceo-u-s-international-development-finance-corporation-respond-covid-19-outbreak/>

² DFC Request for Proposals, June 22, 2020 *available at* https://www.dfc.gov/sites/default/files/media/documents/DFC-DPA-RFP-06222020_0.pdf

³ DFC to Sign Letter of Interest for Investment in Kodak’s Expansion Into Pharmaceuticals, July 28, 2020 *available at* <https://www.dfc.gov/media/press-releases/dfc-sign-letter-interest-investment-kodaks-expansion-pharmaceuticals>

Pharmaceuticals will produce critical pharmaceutical components that have been identified as essential but have lapsed into chronic national shortage, as defined by the Food and Drug Administration (FDA).⁴

One of the chemicals Kodak plans to manufacture is a critical ingredient in the anti-malaria medication hydroxychloroquine, which President Trump has repeatedly and incorrectly touted as a cure for Covid-19.⁵ Hydroxychloroquine is currently indicated for the treatment of Malaria, Lupus Erythematosus, and Rheumatoid Arthritis, and has not proven effective in treating or preventing SARS-COV2, the disease caused by the novel coronavirus.⁶

In the second quarter of 2020, which covers the period following the President's May delegation of DPA loan authority to the DFC through Kodak's July 28 loan announcement, Kodak spent \$870,000 on federal lobbying.⁷ It does not appear that Kodak paid an outside lobbying firm; instead, it appears that four of its executives registered as lobbyists.⁸ Kodak disclosed that it lobbied the White House and the DFC (incorrectly labeled as the "Overseas Private Investment Corporation") among other agencies including the DOD on "COVID-19 Programs- Specialty Chemicals Manufacturing".⁹

Given Kodak's scant history in pharmaceutical production, its increase in lobbying, and the firm's exceptionally rocky recent financial history, the DFC's DPA loan appears highly unusual and financially suspect. Considering the President's numerous and repeated public comments about hydroxychloroquine, and Kodak's apparent plan to begin manufacturing the drug's component ingredients, the public is left to wonder whether Kodak convinced the DFC and the White House to extend the loan in part because of its intent to produce parts of the drug.

Therefore, it is critical that the public understand whether Kodak used its plan to produce the component ingredients of hydroxychloroquine to influence the DFC, and by extension the White House, in order to obtain this loan. The public has a right to know whether taxpayer funds are being spent in service of the President's scientifically inaccurate whims.

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

⁴ *Id.*

⁵ Rachael Levy, "Kodak Shifts Into Drug Production With Help of \$765 Million U.S. Loan," *The Wall St. Journal*, July 28, 2020 available at <https://www.wsj.com/articles/kodak-lands-765-million-u-s-loan-in-start-of-medical-supply-chain-fix-11595930400>

⁶ FDA Drug Administration Guidance, Hydroxychloroquine Sulfate, available at <https://dailymed.nlm.nih.gov/dailymed/fda/fdaDrugXsl.cfm?setid=9d22f0a8-170b-4c3e-8c2e-a5cf64b9958b&type=display>. See also, "Coronavirus: Hydroxychloroquine ineffective says Fauci," *BBC*, Jul. 29, 2020 available at <https://www.bbc.com/news/world-us-canada-53575964>.

⁷ Eastman Kodak Form LD-2, Second Quarter, 2020 available at <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=4B4FFB57-1135-4DCA-B324-B587A5CA-C03D&filingTypeID=60>

⁸ *Id.*

⁹ *Id.*

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 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 the documents it receives under the FOIA on its website.

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 (917) 675-2509 or at glezra@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 glezra@citizensforethics.org. If you cannot produce the records electronically please contact me by email to arrange an alternative method of delivery.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. W. Lezra', is displayed within a light gray rectangular box.

Gabriel W. Lezra
Counsel