



September 21, 2017

By Electronic Mail (FOIARequest@hhs.gov)

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RE: Freedom of Information Act Request

To whom it may concern:

The Campaign Legal Center submits this request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, for records pertaining to travel and travel requests by Department of Health and Human Services (HHS) Secretary Tom Price.

I. Background

On September 19, 2017, *Politico* published a story revealing that Secretary Price took five chartered flights between September 13 and September 15, 2017.¹ This use of chartered aircraft for travel to locations easily accessible by less expensive means broke with precedent set by former HHS Secretaries, and experts estimated that these flights likely cost taxpayers at least \$60,000.²

¹ Dan Diamond and Rachana Pradhan, *Price's private-jet travel breaks precedent*, POLITICO (Sept. 19, 2017), <http://www.politico.com/story/2017/09/19/tom-price-chartered-planes-flights-242908>

² *Id.*

The revelation that Secretary Price traveled via expensive chartered flights attracted significant subsequent attention among the broader press and the public.³

According to the most recent HHS Travel Policy Manual available on HHS's website, "Because the taxpayers should pay no more than necessary for a Federal employee's transportation, generally he/she may travel on government aircraft only when a government aircraft is the most cost-effective mode of travel."⁴ Earlier, the manual explains that chartered aircraft hired by a federal agency is considered government aircraft: "Travel on government aircraft includes aircraft that an agency owns, borrows, operates as a bailed aircraft, or hires as a CAS, to carry Federal and non-Federal travelers."⁵

Records likely to be disclosed in response to this request will thus contribute significantly to the public's understanding of how decisions regarding taxpayer funded-travel are being used at HHS, among other matters of public interest.

II. Requested Records

This request encompasses:

- Requests for travel approval submitted by Secretary Price or anyone acting on his behalf;
- Responses to said travel requests;
- Travel authorizations for Secretary Price's trips;
- Documents signed or issued by any Authorizing Official/Approving Official and/or Funds Certifier/Certifier/Certifying Official related to travel requests by Secretary Price;⁶
- Documents signed or issued by the Agency Senior Travel Official, the Assistant Secretary for Administration, and/or the Office of General Council related to requests for Government or Chartered Aircraft by Secretary Price;⁷
- Communications between HHS and any company used for chartered flights for Secretary Price;
- Advice issued by anyone in HHS pertaining to travel by Secretary Price;

³ See, e.g., Jessica Estepa, *Report: HHS Secretary Tom Price took chartered flights, unlike predecessors*, USA TODAY (Sept. 20, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/09/20/report-hhs-secretary-tom-price-took-chartered-flights-unlike-predecessors/684680001/>; AP, *Dems want answers on HHS Sec. Price's expensive jet travel*, CBS NEWS (Sept. 21, 2017), <https://www.cbsnews.com/news/dems-want-answers-on-hhs-sec-prices-expensive-jet-travel/>; Glenn Thrush, *Spokeswoman Cites 'Demanding Schedule' for Health Secretary's Use of Private Jets*, N.Y. TIMES (Sept. 20, 2017), <https://www.nytimes.com/2017/09/20/us/tom-price-private-jets.html>

⁴ *HHS Travel Policy Manual*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES 87 (revised 2014), https://www.psc.gov/docs/default-source/travel/2012_policy_manual.pdf?sfvrsn=4

⁵ *Id.* at 9.

⁶ See *id.* at 15-16.

⁷ "The ASA shall review and approve all requests for Government Aircraft (Charter Aircraft) that require approval in conjunction with the Office of General Council (OGC). Approval to travel on government aircraft requires pre-authorization and approval by the ASA, OGC, and the ASTO." *Id.* at 9.

- Voucher claims submitted by Secretary Price or anyone on behalf of Secretary Price after travel made by Secretary Price;⁸ and
- Any other documents pertaining to Secretary Price's trips by any method of transportation and to any location, foreign or domestic.

This request encompasses both digital and physical records.

The timeframe for this request is from February 10, 2017 to date.

If some portions of the requested records are exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. 5 U.S.C. § 552(b). If any portion of the requested records is exempt from disclosure, please provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972).

III. Application for Fee Waiver or Limitation of Fees

A. The request is made for non-commercial purposes and will contribute significantly to public understanding of the operations or activities of government.

FOIA provides that the agency shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

As described above in Part I, the requested materials involve matters of significant public interest. Records likely to be disclosed in response to this request will contribute significantly to the public's understanding of HHS's use of its resources. These details are not already publicly available and the records would provide a more thorough public understanding of the operations of the Department.

CLC will use records responsive to this request in the creation of widely disseminated materials and analysis that will educate the public about these matters and the operations of the government. CLC anticipates analyzing the materials gathered

⁸ See *id.* at 18.

through this FOIA request to develop reports,⁹ write blogs,¹⁰ and author op-eds.¹¹ CLC's research and reports are widely disseminated on its blog,¹² through its own website,¹³ through social media platforms like Facebook¹⁴ and Twitter,¹⁵ and regular emails to its supporters, among other communications outlets.¹⁶

CLC staff have significant knowledge in ethics and government accountability, and news media regularly rely upon CLC's analysis and expertise.¹⁷ In addition to its own blogs and reports, CLC anticipates analyzing the requested records and disseminating the materials among traditional news outlets.

Requester CLC is a non-profit public interest organization organized under Section 501(c)(3) of the Internal Revenue Code and this request is made for non-commercial purposes.

As such, we request that any applicable fees associated with this request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver in this instance would fulfill Congress' intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally

⁹ See, e.g., Lawrence M. Noble and Brendan M. Fischer, *Funding the Presidential Nominating Conventions: How a Trickle of Money Turned Into a Flood*, Campaign Legal Center (July 26, 2016), <http://www.campaignlegalcenter.org/sites/default/files/Funding%20the%20Presidential%20Nominating%20Conventions%20Report.pdf>.

¹⁰ See, e.g., Brendan M. Fischer, *How Trump's Plan to Repeal the Johnson Amendment Could Unleash 'Super Dark Money' Into Our Elections*, Campaign Legal Center blog (Feb. 3, 2017), <http://www.campaignlegalcenter.org/news/blog/how-trump-s-plan-repeal-johnson-amendment-could-unleash-super-dark-money-our-elections>; *Filling the Swamp: Inauguration and Transition Funding*, Campaign Legal Center blog (Jan. 19, 2017), <http://www.campaignlegalcenter.org/news/blog/filling-swamp-inauguration-and-transition-funding>;

¹¹ See, e.g., Trevor Potter, *Donald Trump Hasn't Solved Any of His Conflicts of Interest*, WASH. POST (Jan. 11, 2017), https://www.washingtonpost.com/posteverything/wp/2017/01/11/donald-trump-hasnt-solved-any-of-his-conflicts-of-interest/?utm_term=.0e80b538fb8f.

¹² See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹³ See Campaign Legal Center "Reference Materials" library, <http://www.campaignlegalcenter.org/research/reference-materials>.

¹⁴ <https://www.facebook.com/CampaignLegalCenter/>

¹⁵ <https://twitter.com/CampaignLegal>

¹⁶ See Campaign Legal Center blog at MEDIUM, <https://medium.com/clc-blog>.

¹⁷ See, e.g., Elizabeth Williamson, *Highflying Mnuchins Take the Country for a Ride*, N.Y. TIMES (Sept. 14, 2017), <https://www.nytimes.com/2017/09/14/opinion/mnuchin-funds-honeymoon.html>; Walter M. Shaub, Jr., *Walter Shaub: How to Restore Government Ethics in the Trump Era*, N.Y. TIMES (July 18, 2017), <https://www.nytimes.com/2017/07/18/opinion/walter-shaub-how-to-restore-government-ethics-in-the-trump-era.html>; Philip Bump, *Why Ben Carson's appearance in Phoenix was likely a violation of federal law*, WASHINGTON POST (Aug. 23, 2017), https://www.washingtonpost.com/news/politics/wp/2017/08/23/why-ben-carsons-appearance-in-phoenix-was-likely-a-violation-of-federal-law/?utm_term=.175a1f707481; Manu Raju, *Trump's Cabinet Pick Invested in Company, Then Introduced a Bill to Help It*, CNN (Jan. 17, 2017), <http://www.cnn.com/2017/01/16/politics/tom-price-bill-aiding-company/>; Christina Wilkie and Paul Blumenthal, *Trump Just Completely Entangled His Business and the U.S. Government* HUFFINGTON POST (Jan. 11, 2017), http://www.huffingtonpost.com/entry/trump-business-conflicts-of-interests-treasury_us_5876928de4b092a6cae4ec7b

construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

B. CLC qualifies for a fee waiver as a “representative of the news media.”

CLC additionally requests that it not be charged search or review fees for this request because the organization meets the definition of a “representative of the news media” for purposes of the FOIA, since CLC “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II)–(III).

As the D.C. Circuit has held, the “representative of the news media” test is focused on the requestor rather than the specific FOIA request. *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121 (D.C. Cir. 2015). CLC satisfies this test because (as noted in Part III(A)) CLC applies its expertise and editorial skills to turn raw materials into reports, articles, and op-eds that are widely disseminated on its blog,¹⁸ through its own website,¹⁹ through social media platforms and regular emails to its supporters, and through other communications outlets.²⁰ CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC’s work. The D.C. Circuit has held that an requester may qualify as a news media entity if it “‘distribut[] [its] work’ by issuing press releases to media outlets in order to reach the public indirectly” 799 F.3d. at 1125–26.

Courts have found that other organizations with functionally similar missions and engaged in similar public education activities qualify as “representatives of the news media,” even if engaged in litigation or other advocacy beyond educating the public about the operations of government. *See e.g. Cause of Action v. F.T.C.*, 799 F.3d 1108, 1121–25 (D.C. Cir. 2015) (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA a news media requester); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding “public interest law firm” Judicial Watch a news media requester); *Elec. Privacy Info. Ctr. V. DOD*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding nonprofit public interest group that published a biweekly email newsletter a news media requester).

“It is critical that the phrase ‘representative of the news media’ be interpreted broadly if the act is work as expected, . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’*” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986), cited in *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

In the event the fee waiver is not granted, I may not be charged for the first two hours of search time, or for the first hundred pages of duplication. Please contact me and advise me of the cost of this request if processing costs exceed \$100.

¹⁸ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹⁹ See Campaign Legal Center “Reference Materials” library, <http://www.campaignlegalcenter.org/research/reference-materials>.

²⁰ See Campaign Legal Center, MEDIUM, <https://medium.com/clc-blog>.

IV. Application for Expedited Processing

I request that the processing of this request be expedited pursuant to 28 C.F.R. § 16.5(e)(1)(iv).

As described in Part I, the subject of the request involves a matter of exceptional media interest,²¹ and the initial revelations about Secretary Price's travel practices raise questions about the government's integrity which can affect public confidence.²²

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

* * *

In order to expedite delivery of these requested documents and in order to reduce possible fees incurred, I am requesting that these documents be delivered to me either digitally via email (in PDF format), or on a data disk via the U.S. Postal Service.

Please email copies of responsive documents to:

mchrist@campaignlegalcenter.org

Or, please mail copies of responsive documents to:

Maggie Christ
Campaign Legal Center
1411 K St NW, Suite 1400
Washington, D.C. 20005

Should you elect, for any reason, to withhold, redact, or deny the release of any record responsive to this request, I request that you provide me with an explanation for each withholding/redaction, along with pertinent legal citations.

Please confirm the receipt of this request and provide me with an estimate of processing time.

Thank you,

/s/

Maggie Christ
Researcher/Investigator
Campaign Legal Center
mchrist@campaignlegalcenter.org

²¹ See sources cited *supra* at n.3.

²² See sources cited *supra* at n.4.