



October 5, 2017

By Electronic Mail (USDAFOIA@ocio.usda.gov)

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Departmental FOIA Officer
U.S. Department of Agriculture
1400 Independence Avenue, SW
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Room 4104
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RE: Freedom of Information Act Request

Dear FOIA Officer:

The Campaign Legal Center (“CLC”) submits this request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, for records pertaining to travel by Department of Agriculture Secretary Sonny Perdue.

I. Background

Media outlets recently have reported that, since taking office, at least four U.S. Cabinet members and one agency administrator have traveled via military or chartered aircraft at the public’s expense. On September 21, 2017, for example, *Politico* reported that Secretary Tom Price accumulated at least \$300,000 in travel expenses from more than 20 trips via chartered aircrafts.¹ The following day, *ABC News* reported that Secretaries Elaine Chao and Steven Mnuchin had traveled on a U.S. Air Force C-37 jet between New York City and Washington, D.C. in August.² *ABC News* estimated that this trip alone cost taxpayers at

¹ Rachana Pradhan and Dan Diamond, *Price traveled by private plane at least 24 times*, POLITICO (Sept. 21, 2017), <http://www.politico.com/story/2017/09/21/tom-price-private-charter-plane-flights-242989>.

² Justin Fishel and Elizabeth McLaughlin, *Mnuchin’s travel: Investigators now probing another costly government flight*, ABC NEWS (Sept. 22, 2017), <http://abcnews.go.com/Politics/mnuchins-travel-investigators-now-probing-costly-government-flight/story?id=50006219>.

least \$25,000.³ Then, the next week, multiple news outlets reported that Environmental Protection Agency Administrator Scott Pruitt traveled on non-commercial aircraft at least four times between February and September.⁴ The same week, *Politico* reported that Interior Secretary Ryan Zinke had also traveled via military and charter planes,⁵ and Secretary Zinke indicated in a subsequent speech at the Heritage Foundation that Secretary Perdue had previously invited Secretary Zinke to travel via military plane.⁶ These revelations have prompted multiple departments' inspectors general as well as the House Oversight Committee to open investigations.⁷

This series of revelations regarding Cabinet members' travel practices has attracted significant attention among the broader press and the public.⁸ Records likely to be disclosed

³ *Id.*

⁴ Brady Dennis and Juliet Eilperin, *EPA's Pruitt took charter, military flights that cost taxpayers more than \$58,000*, WASHINGTON POST (Sept. 27, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/09/27/epas-pruitt-took-charter-military-flights-that-cost-taxpayers-more-than-58000/?utm_term=.37eedef1e46d; Julianna Goldman and Laura Strickler, *EPA's Scott Pruitt took non-commercial flights totaling more than \$58,000*, CBS NEWS (Sept. 27, 2017), <https://www.cbsnews.com/news/epas-scott-pruitt-took-non-commercial-flights-totaling-more-than-58000/>.

⁵ Ben Lefebvre, *Interior Secretary Zinke traveled on charter, military planes*, POLITICO (Sept. 28, 2017), <http://www.politico.com/story/2017/09/28/ryan-zinke-charter-military-planes-interior-243280>.

⁶ Drew Harwell and Lisa Rein, *Zinke took \$12,000 charter flight home in oil executive's plane, documents show*, WASHINGTON POST (Sept. 28, 2017), https://www.washingtonpost.com/investigations/2017/09/28/59533ed8-a4b8-11e7-ade1-76d061d56efa_story.html?utm_term=.a951c5187ffb.

⁷ See, e.g., Lisa Rein, *Federal watchdog opens probe into travel by Interior Secretary Ryan Zinke*, WASHINGTON POST (Oct. 2, 2017), https://www.washingtonpost.com/politics/federal-watchdog-opens-probe-into-travel-by-interior-secretary-ryan-zinke/2017/10/02/3f24fbf8-a7ad-11e7-92d1-58c702d2d975_story.html?utm_term=.cb90da651a2b; Benjamin Siegel, *House Oversight Committee opens investigation into Trump administration travel*, ABC NEWS (Sept. 27, 2017), <http://abcnews.go.com/Politics/house-oversight-committee-opens-investigation-trump-administration-travel/story?id=50127619>.

⁸ See, e.g., Drew Harwell, *Mnuchin flew on government jet to Washington following appearance at Trump Tower*, WASHINGTON POST (Sept. 22, 2017), https://www.washingtonpost.com/business/economy/mnuchin-flew-on-government-jet-to-washington-following-appearance-at-trump-tower/2017/09/22/2960e3d6-9fe2-11e7-9083-fbfff6804c2_story.html?utm_term=.1ad92eef28ff; Aaron Blake, *The Trump administration's private plane problem*, WASHINGTON POST (Sept. 20, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/09/20/the-trump-administrations-private-plane-problem/?utm_term=.147f69f3794b; Henry C. Jackson and Josh Dawsey, *Treasury Secretary Mnuchin asked for government jet for honeymoon*, POLITICO (Sept. 13, 2017), <http://www.politico.com/story/2017/09/13/mnuchin-government-jet-honeymoon-242696>; Doha Madani, *Steven Mnuchin Reportedly Under Investigation for Costly Travel*, HUFFINGTON POST (Sept. 22, 2017), http://www.huffingtonpost.com/entry/steven-mnuchin-investigation-travel-expenses_us_59c59988e4b01cc57ff24ee0; 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/>; Brady Dennis and Juliet Eilperin, *EPA's Pruitt took charter, military flights that cost taxpayers more than \$58,000*, WASHINGTON POST (Sept. 27, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/09/27/epas-pruitt-took-charter-military-flights-that-cost-taxpayers-more-than-58000/?utm_term=.37eedef1e46d.

in response to this request thus will contribute significantly to the public's understanding of how decisions regarding taxpayer funded-travel are being made at the Department of Agriculture, among other matters of public interest.

II. Requested Records

This request encompasses:

- Requests for travel approval submitted by Secretary Perdue, any member of his family, or anyone acting on their behalf;
- Responses to and all communications regarding said travel requests;
- Travel authorizations for Secretary Perdue or any member of his family;
- Travel authorizations issued by the U.S. Air Force pertaining to the use of military aircraft;
- Travel authorizations issued by the White House pertaining to the use of any non-commercial aircraft;
- Communications between the Department of Agriculture and any company used for chartered flights;
- Communications between the Department of Agriculture and the U.S. Air Force or any other government agency regarding travel on military vessels;
- Communications between the Department of Agriculture and the White House pertaining to the Secretary's or his family members' travel;
- Communications between the Department of Agriculture and the Department of Interior regarding travel by Secretaries Perdue and/or Zinke;
- Advice issued by or received by anyone in the Department of Agriculture pertaining to travel by the Secretary or any member of his family;
- Invoices and receipts pertaining to payment to the U.S. Air Force or charter companies for the Secretary's air travel;
- Voucher claims related to travel taken by the Secretary or any member of his family;
- Reimbursement records pertaining to trips by the Secretary and/or any member of his family;
- Records relating to per-diem reimbursement for meals and other expenses on trips taken by the Secretary and/or any member of his family;
- All records relating to payments for lodging and other expenditures incurred by the Secretary's security detail during the Secretary's trips;
- Drafts and final versions of budgets and itineraries for the Secretary's—or any family members'—trips;
- Documents submitted to or being prepared for submission to the House Oversight Committee related to the Secretary's travel or his family members' travel; and
- Drafts and final versions of any Senior Federal Travel Reports prepared by the Department of Agriculture for the General Services Administration.

This request encompasses both digital and physical records. The timeframe for this request is from April 24, 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 the Department’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 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

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>.

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 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 "distribute[s] [its] work"

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

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>.

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.

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, and the initial revelations about travel practices of Secretary Perdue’s counterparts in other agencies raise questions about the government’s integrity that can affect public confidence.²¹

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:

²¹ See source cited *supra* at n.8.

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

Thank you.

Sincerely,

/s/ Maggie Christ

Maggie Christ
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