



October 5, 2017

By Electronic Mail (OSVAFOIA@va.gov)

Lisa Matuszczak
CIPP/G Privacy/FOIA Officer
Office of the Executive Secretary (OSVA)
U.S Department of Veterans Affairs
810 Vermont Avenue, NW
(002B) VACO
Washington, D.C. 20420
OSVAFOIA@va.gov

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 Veterans Affairs Secretary David Shulkin.

I. Background

On September 29, 2017, *The Washington Post* reported that Secretary Shulkin had spent about half of a government-funded July trip to Europe sightseeing.¹ *The Washington Post* also reported that the Secretary’s wife had accompanied him and that her travel and expenses appear to have been paid for by taxpayers.²

Preceding and following these revelations, various media outlets had 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

¹ Jack Gillum, Alex Horton, Drew Harwell, and Lisa Rein, *VA chief took in Wimbledon, river cruise on European work trip; wife’s expenses covered by taxpayers*, WASHINGTON POST (Sept. 29, 2017), https://www.washingtonpost.com/investigations/va-chief-took-in-wimbledon-river-cruise-on-european-work-trip/2017/09/29/c1f17046-a458-11e7-8c37-e1d99ad6aa22_story.html?utm_term=.02c78dd5d36e.

² *Id.*

travel expenses from more than 20 trips via chartered aircrafts.³ 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.⁴ *ABC News* estimated that this trip alone cost taxpayers at least \$25,000.⁵ 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.⁶ The same week, *Politico* reported that Interior Secretary Ryan Zinke had also traveled via military and charter planes.⁷ These revelations have prompted multiple departments' inspectors general as well as the House Oversight Committee to open investigations.⁸

This series of revelations regarding Cabinet members' travel practices has attracted significant attention among the broader press and the public.⁹ Records likely to be disclosed

³ 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>.

⁴ 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>.

⁵ *Id.*

⁶ 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/>.

⁷ 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>.

⁸ See, e.g., Miranda Green, Rene Marsh, and Gregory Wallace, *VA Secretary David Shulkin under review for work trip to Europe*, CNN (Oct. 3, 2017), <http://www.cnn.com/2017/10/03/politics/va-david-shulkin-review/index.html>; 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>.

⁹ 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-fbfdddf6804c2_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*

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 Veterans Affairs, among other matters of public interest.

II. Requested Records

This request encompasses:

- Requests for travel approval submitted by Secretary Shulkin, his wife Merle Bari, any other family member, 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 Veterans Affairs and any company used for chartered flights;
- Communications between the Department of Veterans Affairs and the U.S. Air Force or any other government agency regarding travel on military vessels;
- Communications between the Department of Veterans Affairs and the White House pertaining to the Secretary's or his family members' travel;
- Advice issued by or received by anyone in the Department of Veterans Affairs 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 pertaining to Secretary Shulkin and Ms. Bari's trip to and time in Europe in July 2017, including but not limited to itineraries, budgets, receipts, expense records, reimbursement records, authorizations, voucher claims, and communications;

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.

- 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 Veterans Affairs for the General Services Administration.

This request encompasses both digital and physical records. The timeframe for this request is from February 13, 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,¹⁰ write blogs,¹¹ and author op-eds.¹² CLC's research and reports

¹⁰ 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>.

¹¹ 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>;

¹² 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.

are widely disseminated on its blog,¹³ through its own website,¹⁴ through social media platforms like Facebook¹⁵ and Twitter,¹⁶ and regular emails to its supporters, among other communications outlets.¹⁷

CLC staff have significant knowledge in ethics and government accountability, and news media regularly rely upon CLC's analysis and expertise.¹⁸ 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

¹³ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

¹⁴ See Campaign Legal Center "Reference Materials" library, <http://www.campaignlegalcenter.org/research/reference-materials>.

¹⁵ <https://www.facebook.com/CampaignLegalCenter/>

¹⁶ <https://twitter.com/CampaignLegal>

¹⁷ See Campaign Legal Center blog at MEDIUM, <https://medium.com/clc-blog>.

¹⁸ 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

its expertise and editorial skills to turn raw materials into reports, articles, and op-eds that are widely disseminated on its blog,¹⁹ through its own website,²⁰ through social media platforms and regular emails to its supporters, and through other communications outlets.²¹ 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 a requester may qualify as a news media entity if it "distribute[s] [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.

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 Secretary Shulkin's travel practices raise questions about the government's integrity that 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.

* * *

¹⁹ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

²⁰ See Campaign Legal Center "Reference Materials" library, <http://www.campaignlegalcenter.org/research/reference-materials>.

²¹ See Campaign Legal Center, MEDIUM, <https://medium.com/clc-blog>.

²² See source cited *supra* at n.9.

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

Thank you.

Sincerely,

/s/ Maggie Christ

Maggie Christ
Researcher/Investigator
Campaign Legal Center
mchrist@campaignlegalcenter.org
(202) 736-2200, ext. 917