



**DEPARTMENT OF THE ARMY**  
OFFICE OF THE ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY  
9301 CHAPEK ROAD  
FORT BELVOIR VA 22060-5527

July 11, 2023

Nikhel Sus  
Citizens for Responsibility and Ethics in Washington  
1101 K St., N.W., Suite 201  
Washington, D.C. 20005

Dear Nikhel Sus:

This letter responds to your Freedom of Information Act (FOIA) request dated January 10, 2021. Your request is now in litigation, cited as *CREW v. DOJ, et al.*, 1:21-cv-572 (D.D.C.).

Your request is for:

1. All records from December 1, 2020, to January 6, 2021, relating to DOD, the National Guard, or the Army providing assistance or support to the D.C. Metropolitan Police Department in connection with the January 6, 2021 congressional session to count electoral votes.
2. All records reflecting the parameters for the National Guard's deployment to D.C. on January 6, 2021, including any limitations imposed on the number of personnel deployed, their movement within the District, or their use of force.
3. All communications with the D.C. Mayor's Office or the D.C. Metropolitan Police Department regarding the parameters for the National Guard's deployment to D.C. on January 6, 2021."

Our search yielded the attached responsive records. These records are part of a continuous rolling release over the course of the litigation. This release consists of 6 pages.

We have redacted material under Exemptions (b)5 and (b)6,

**Exemption 5 of the FOIA 5 U.S.C. § 552(b)(5)**

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Courts have interpreted Exemption 5 to encompass the privileges recognized by statute or case law in the civil discovery context. See *U.S. v. Weber Aircraft Corp.*, 465 U.S. 792, 800 (1984); *FTC v. Grolier Inc.*, 462 U.S. 19, 26 (1983) at 26, *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). In this case,

the applicable privileges that serve as bases for citing Exemption 5 are the Deliberative Process Privilege and Attorney-Client Privilege.

### Deliberative Process Privilege

Exemption 5 of the FOIA which protects from disclosure “interagency or intra-agency memorandums or letters which would not be available by law to a party. . . in litigation with the agency”: 5 U.S.C. Section 552(b)(5)(1994). Exemption 5 includes the “Deliberative Process Privilege,” which protects from release agency records that disclose the agency’s decision-making process. *NLRB V. Sears, Roebuck & Co.*, 421 U.S. 132, 95 S.Ct. 1504, 44 LEd.2d. 29 (1975) and *Jordan v. Department of Justice*, 591 F.2d 75.3 (D.C. Cir. 1978) (en banc). In this case, the document you requested contains specific recommendations and frank opinions. As such, it forms part of the “give-and-take” between agency officials involved in the decision-making process. These recommendations and opinions do not necessarily represent the views of the Department of the Army. Release of such pre-decisional and deliberative exchanges would chill the open communication between Federal employees as they would fear that their developing thoughts and opinions would be shared with the public. Accordingly, this information is exempt from release under the deliberative process privilege of exemption (b)(5) of the FOIA.

### Attorney-Client Privilege

The attorney-client privilege protects “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead Data Central, Inc. v. Dept. of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977). Additionally, the privilege protects communications containing purely factual information divulged by a client to the attorney and any opinions given by an attorney to his client based upon those facts.” *Electronic Privacy Info. Ctr., v. Dept. of Homeland Security*, 384 F. Supp. 2d 100, 114 (D.D.C. 2005).

### ***Exemption 6 of the FOIA 5 U.S.C. § 552(b)(6)***

Exemption (b)(6) of the FOIA protects from mandatory disclosure “personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” 5 U.S.C. § 552(b)(6) (2011). To qualify for protection under Exemption (b)(6), records must meet two criteria: (1) they must be “personnel and medical files and similar files,” (2) the disclosure of which “would constitute a clearly unwarranted invasion of personal privacy.” *Id.*; *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982). The first prong is met if the information “appl[ies] to a particular individual” and is “personal” in nature. *New York Times Co. v. NASA*, 852 F.2d 602, 606 (D.C. Cir. 1988). The second prong requires courts to strike a “balance between the protection of an individual’s right to privacy and the preservation of the public’s right to government information.” *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982). The “public interest” in the analysis is limited to the

“core purpose” for which Congress enacted the FOIA: to “shed . . . light on an agency’s performance of its statutory duties.” *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

We are withholding telephone numbers and other contact information for all Army personnel (e.g., e-mail addresses, telephone-line numbers) and third-party information under Exemption 6. 5 U.S.C. § 552(b)(6). See *Judicial Watch, Inc. v. United States*, No. 03-1160, 2004 WL 26736, at \*4 (4th Cir. Jan. 6, 2004). Under the Exemption (b)(6) balancing test, the Supreme Court held in a similar case that disclosure of employee addresses “would not appreciably further the citizens’ right to be informed about what their Government is up to and, indeed, would reveal little or nothing about the employing agencies or their activities.” *United States Dep’t of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487 (1994). The same is true here regarding telephone numbers. Disclosure of the names, contact, and personal information of government employees would contribute little to the public’s understanding of government activities. By contrast, such disclosure would constitute a “non-trivial” and “not insubstantial” invasion of government employees’ privacy interests. *Id.* at 500, 501.

If you have any questions regarding this letter or the information furnished, please contact Lee Reeves at (202) 616-0773 or [Lee.Reeves2@usdoj.gov](mailto:Lee.Reeves2@usdoj.gov).

Sincerely,

*Paul V. DeAgostino*

Paul V. DeAgostino  
Senior Counsel

**From:** USARMY Pentagon HQDA SECARMY Mailbox SECARMY Calendar[/O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (B6)]/CN=RECIPIENTS/CN=B6

**Attendees:** McCarthy (B6)

**Importance:** Normal

**Subject:** 1330-1400 Secure Phonecon w/ A/SD & CJCS

**Start Time:** Sat 1/2/2021 6:30:00 PM (UTC)

**End Time:** Sat 1/2/2021 7:00:00 PM (UTC)

**Required Attendees:** McCarthy, Ryan D HON USARMY HQDA SECARMY (USA)

[SVTC.msg](#)

[Re SVTC.msg](#)

[RE SVTC.msg](#)

[Re SVTC.msg](#)

[Fwd SVTC.msg](#)

[Re SVTC.msg](#)

Topic: Request for DCNG Support on 5-6 January.



JOINT FORCE HEADQUARTERS  
DISTRICT OF COLUMBIA NATIONAL GUARD  
2001 EAST CAPITOL STREET, SE  
WASHINGTON, DC 20003-1719

NGDC-J3

1 January 2021

MEMORANDUM FOR MG William J. Walker, Commanding General, District of Columbia National Guard (DCNG), 2001 East Capitol Street, SE, Washington, DC 20003-1719

SUBJECT: Mission analysis for District of Columbia National Guard support on 5-7 January 2021

1. The Director, District of Columbia Homeland Security and Emergency Management Agency (HSEMA), with the concurrence of the Mayor, requests District of Columbia National Guard (DCNG) support to provide crowd management, Traffic Control Points (TCPs) and the 33<sup>rd</sup> Civil Support Team (CST) from 5-7 January 2021. HSEMA requests that the DCNG provide direct support to the Metropolitan Police Department (MPD) and the Fire and Emergency Medical Services Department (FEMS) as follows:

- a. MPD – Daily support from 0730-2400 on 5-6 January 2021
  - (1) Provide six crowd management teams at specified Metro stations and prevent overcrowding on Metro platforms;
  - (2) A team to assist at 30 designated traffic posts.
- b. FEMS – Support from 0700 on 5 January to 0730 on 7 January 2021 or when released by FEMS
  - (1) Chemical, Biological, Radiological, Nuclear monitoring and hazardous material on-site support;
  - (2) Liaisons at all required locations;
  - (3) Technical decontamination support;
  - (4) Analytical Laboratory System support;
  - (5) CST operations and communications capability support.

3. The Joint Staff has analyzed these requests and determined that the DCNG requires approximately [B5] Guardsmen to execute this mission. This number includes our command, staff, liaisons, maintenance teams, food services,

administrative support, communication support and medical support requirements.

4. In order to conduct the specified tasks above, to include all implied tasks, recommend an initial **troop cap** of [ B5 ] Army and Air Guardsmen. Additional support, if required, is postured with [ B5 ] Guardsmen on 3-hour response and [ B5 ] Guardsmen on 6-hour response.

5. Guardsmen will partner with MPD or FEMS throughout the course of this mission and the support activities listed will benefit individual and unit training readiness. The DCNG will maintain command and control of Guardsmen and serve solely in a support role. Any DCNG engagement in law enforcement activities will require Guardsmen to be sworn in as special police by the Metropolitan Police Department or Federal Law Enforcement agency prior to conducting such activities. All Guardsmen will serve in a reserve status pursuant to Title 32 U.S.C. § 502(f). The Federal Tort Claims Act, 28 U.S.C. 2671-2680, is applicable to National Guard serving under Title 32 orders. Therefore, all Guardsmen acting within the course and scope of their duties for purposes of this mission possess civil liability protection. Guardsmen will be unarmed during the mission and at no time will the Guardsmen or assets engage in domestic surveillance, searches or seizures of U.S. persons.

6. The POC for this memorandum is the undersigned at [ B6 ] or [ B6 ]@mail.mil.

**B6**

**B6**



**JOINT FORCE HEADQUARTERS  
DISTRICT OF COLUMBIA NATIONAL GUARD  
OFFICE OF THE COMMANDING GENERAL  
2001 EAST CAPITOL STREET, SE  
WASHINGTON, DC 20003-1719**

January 1, 2021

The Honorable Ryan D. McCarthy  
Secretary of the Army  
101 Army Pentagon, Room 3E560  
Washington, D.C. 20310-0101

Dear Secretary McCarthy:

Enclosed are letters from Mayor Muriel Bowser, and Dr. Christopher Rodriguez, Director, District of Columbia Homeland Security and Emergency Management Agency (HSEMA), on behalf of the District of Columbia Metropolitan Police Department (MPD) and District of Columbia Fire and Emergency Service (DCFEMS), (see enclosures 1 and 2). The Mayor requests the District of Columbia National Guard (DCNG) provide support from 0700 until 2400, 5-6 January 2021 to respond to planned First Amendment demonstrations. The details of the HSEMA request includes crowd management at Metropolitan Transit Stations, to stage vehicles at designated traffic control points for MPD; and for DCFEMS that the 33rd Civil Support Team (CST) conduct their core tasks for detection, technical decontamination, analytical laboratory suite support, and CST operations and communications capability from 0700 until release 5-7 January 2021 (see enclosure 2).

The DCNG analyzed the request for support (see enclosure 3) and determined the support constitutes valid training and operational practices; is within our current capabilities and funding; is an appropriate use of DCNG forces, and will not detract from our readiness. The DCNG will not conduct domestic surveillance or law enforcement activities. The DCNG will not be armed for this event however, MPD requests that DCNG members be equipped with safety vests and lighted traffic wands to assist with this mission (see enclosures 1 thru 3). Further, MPD requests DCNG personnel supporting the mission be appointed as "Special Police" pursuant to D.C. Code § 5-129.03. MPD officers will accompany and be in the vicinity of DCNG personnel. DCNG members will provide support in a Title 32 U.S.C § 502(f) status.

I have concluded that providing this support benefits our training, readiness and retention. Dr. Rodriguez indicates that the aforementioned agencies have exhausted their organic capabilities and require DCNG assistance. Therefore, I would like to honor Mayor Bower's request for support. Accordingly, I respectfully seek your approval for the DCNG to support this mission in accordance with all applicable laws, Department of Defense policies and regulations.

**B6**

WILLIAM J. WALKER  
Major General, USA  
Commanding General

Encls (4)

1. Mayor Muriel Bower Request
2. Dr. Christopher Rodriguez Request
3. DCNG Mission Analysis
4. RUF/ROC (Special Police, visible vests and lighted traffic wands)

**B5**



Message

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**From:** [REDACTED] MG USARMY NG DCARNG (USA) [/O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=[REDACTED]]  
**Sent:** 1/6/2021 6:07:19 PM  
**To:** McCarthy, Ryan D HON USARMY HQDA SECARMY (USA) [REDACTED]; Piatt, Walter E LTG USARMY HQDA DAS (USA) [REDACTED]; LaNeve, Christopher Charles MG USARMY FORSCOM (USA) [REDACTED] COL USARMY 101 ABN DIV (USA) [REDACTED]  
**Subject:** DCNG FLASH UPDATE (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Mr. Secretary,

At 1258 DCNG learned that MPD and White House EOC report that a possible explosive device has been identified at 300 First Street SE (vic of the Republican Club); Sir, the Capitol South Metro is being closed at this time. (NO DCNG Presence). Sir, Capitol Police are creating a perimeter to further investigate the possible explosive device. The MPD and Capitol Police have responded. Sir, as a reminder, we have no DCNG posted in the vicinity of the area. I will provide any additional details as they may become available.

Respectfully,

MG Walker

[REDACTED]

CLASSIFICATION: UNCLASSIFIED