

PUBLIC CITIZEN LITIGATION GROUP

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WASHINGTON, D.C. 20009-1001

—
(202) 588-1000

BY EMAIL TO

christopher_watts@nps.gov
and charis_wilson@nps.gov

March 8, 2018

Mr. Christopher Watts
National Capitol Region FOIA Officer
National Park Service
1100 Ohio Drive, SW
Washington, D.C. 20042

Charis Wilson, Ph.D
NPS FOIA Officer
12795 W. Alameda Parkway
P.O. Box 25287
Denver, Colorado 80225

RE: Freedom of Information Act Request

Dear Mr. Watts and Dr. Wilson:

On behalf of Public Citizen, Inc., and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I request from the National Park Service:

- (1) The complete, unredacted permit application for the “talent show” that is to take place on the National Mall on March 25, with March 24 as a rain date, application F-18-052;
- (2) All documents that show the date when Application F-18-052 was received;
- (3) All documents showing whether and when additional markings were added to Application FR-18-052 after it was originally submitted;
- (4) All documents pertaining to the handling of Application F-18-052, including communications to and from the applicant, such as about the “conflicting” application to use the National Mall for “March for Our Lives”;
- (5) All documents pertaining to the handling of the application from Deena Katz for the use of the National Mall on March 24, 2018, for “March for Our Lives”; and

(6) Applications F18-050, F18-051, F18-053, and F18-054.

If it is your position that responsive records exist but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each record being withheld. In addition, please provide the nonexempt portions of the records. Public Citizen seeks each record in its entirety. Accordingly, please do not redact portions of any record as “non-responsive,” “out of scope,” or the like. Moreover, Public Citizen will object to any effort to redact the name of the companies or schools involved, or the name of the project, as the Park Service did in providing Permit Application F18-52 to the Washington Post because the courts have repeatedly ruled the Exemption 6 only protects the privacy of individuals. *Federal Communications Commission v. AT&T Inc.*, 562 U.S. 397 (2011). In addition, considering that the users of the permit will be out in public on the dates in question, we question **any** claim of Exemption 6 (although we do not seek disclosure of the redacted social security number, cell phone number, or non-institutional email address).

I request that any records produced in response to this request be provided in electronic form wherever possible.

Request for Fee Waiver

Public Citizen requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because Public Citizen does not seek the records for a commercial purpose and disclosure “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” The request relates to the Park Service’s denial of a request for a major national demonstration on the Mall as reported in a March 1 story in the Washington Post, *March For Our Lives’ gun-control rally bumped from Mall by ‘talent show’*. Many other media entities carried stories about this denial. The circumstances of the denial are suspicious, in that the denial is based on the existence of a different application that appears to have requested use of a part of the mall on **March 25**, listing March 24 only as a “rain date” for a use scheduled for the following date, and in that the name of the entity requesting the use was redacted on grounds that are contrary to law. The March 24 rain date was handwritten in the margin next to the actual date requested for access to the Mall. Public Citizen wishes to follow up on the Post and other media stories and to report to the public about its findings

Public Citizen is a nonprofit research, litigation, and advocacy organization that represents the public interest before Congress, the executive branch, and the courts. It fights for openness and democratic accountability in government; for social and economic justice in globalization and trade policies; for clean, safe and sustainable energy; for strong health, safety and environmental protections; for safe, effective and affordable medicines and health care; and for the right of consumers to seek redress in the courts. Public Citizen has produced reports and engaged in advocacy campaigns regarding free speech issues and the Trump Administration’s attacks on

political opposition.¹

Public Citizen does not have a commercial interest in the requested records; it intends to share information received from this request with the public free of charge. It regularly publishes reports based upon information acquired through FOIA.² Public Citizen also has a demonstrated capacity to disseminate this information. Public Citizen has several full-time staff dedicated to distributing its publications through its website, which includes a Government Reform webpage,³ its newsletters,⁴ Twitter,⁵ Facebook,⁶ email listserv, and press releases.⁷ Many of Public Citizen's reports, petitions, or other research products are further discussed in major newspapers, broadcast media, social media, and academic journals.⁸ Public Citizen maintains four blogs, publishes a

¹ E.g., Levy, *Use of Search Warrants to Create Trump Enemies List Continues*, <http://pubcit.typepad.com/clpblog/2017/09/use-of-search-warrants-to-create-trump-enemies-list-continues.html> (Sept. 22, 2017)

² For examples of publications distributed through Public Citizen's website, see *Reports and Memos on the Trans-Pacific Partnership*, <http://www.citizen.org/TPP#reports>; and a 2015 report entitled *Nursing: A Profession in Peril*, <http://www.citizen.org/health-care-worker-safety-report-series>, a five-part series on health care workers injured on the job.

³ Public Citizen, Government Reform, <https://www.citizen.org/government-reform>.

⁴ See, e.g., Public Citizen, Health Letter, <http://www.citizen.org/healthletter>.

⁵ https://twitter.com/Public_Citizen (Public Citizen's Twitter page).

⁶ <https://www.facebook.com/publiccitizen> (Public Citizen's Facebook page).

⁷ See, e.g., Public Citizen, *Conflicted Golfer-in-Chief Takes Swing at Clean Water Rule*, (June 27, 2017), <http://www.citizen.org/media/press-releases/conflicted-golfer-chief-takes-swing-clean-water-rule>.

⁸ See, e.g., 2010 report: *Lies, Damn Lies and Export Statistics How Corporate Lobbyists Distort Record of Flawed Trade Deals*, discussed in: Sewell Chan, *In the Form of a Study, a Salvo From the Left Questions Obama's Trade Goals*, N.Y. Times, Sept. 14, 2010, <https://nyti.ms/2koGjEC>; 2014 Report: *Mission Creep-y: Google Is Quietly Becoming One of the Nation's Most Powerful Political Forces While Expanding Its Information-Collection Empire*, discussed in: Alistair Barr, *Consumer Group Questions Google's Breadth, Influence*, Wall St. J. Blog, Nov. 13, 2014, <http://on.wsj.com/1BgWmGZ>; 2015 Report: *Sleighted: Accounting Tricks Create False Impression That Small Businesses Are Getting Their Share of Federal Procurement Money, and the Political Factors That Might Be at Play*, discussed in: Charles Tiefer, *Trump Administration Fails at Creating Jobs by Missing Small Business Contract Targets*, Forbes (June

bi-monthly newspaper, and issues frequent press releases. Nearly every day, print and broadcast media around the world mention Public Citizen or quote its experts. I myself frequently blog about free speech issues and my blog posts are often picked up on other blogs. Public Citizen also makes its experts available to speak to the media, at conferences, and to testify before Congress.

Accordingly, I request that you waive all fees for locating and duplicating the requested records because Public Citizen is entitled to a public interest fee waiver. If, however, a waiver is not granted, please advise me of the amount of any proposed search, review, and reproduction charges before you conduct those activities.

Request for Expedited Processing

Public Citizen requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). I certify that the following statements are true, to the best of my knowledge and belief.

Public Citizen is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Public Citizen’s work and are among its primary activities; courts have repeatedly ruled that organizations similar to Public Citizen, which engage in information-dissemination activities similar to the way that Public Citizen does, are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004); *EPIC v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003). As noted above, Public Citizen regularly publishes Public Citizen News, which is mailed to 90,000 people, regularly sends email alerts to approximately 400,000 people, and maintains Twitter and Facebook pages that are, respectively, followed and liked by roughly 67,000 people.

Similarly, Public Citizen publishes reports about government conduct based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost. Public Citizen publishes widely-read blogs where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* pubcit.typepad.com; <https://www.citizenvox.org/>. It creates and disseminates original editorial and educational content through multi-media projects, including videos, podcasts, and interactive

5, 2017), <https://www.forbes.com/sites/charlestiefer/2017/06/05/trump-administration-fails-at-creating-jobs-by-missing-small-business-contract-targets/>

features. Public Citizen also publishes, analyzes, and disseminates information through its heavily visited website, www.citizen.org.

Public Citizen plans to analyze, publish, and disseminate to the public the information gathered through this request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this request to the public at no cost.

Finally, these records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, as discussed above, the requested records are sought to seek to inform the public about just how and why a major national protest march has been denied access to the National Mall. The March is scheduled to occur barely two weeks from now, and the public interest in whether unfair processing or some other form of government misconduct is responsible for keeping the march off the Mall is greatest now. As noted previously, there are several media stories discussing this issue currently, further emphasizing that the current public interest in this topic is great.⁹ Certainly, if the Park Service may have improperly elevated the talent show over the demonstration, the public should be enabled to direct its protests to the Park Service **before** the march, and not just afterward.

Thus, Public Citizen has satisfied the requirements for expedited processing of this request.

Conclusion

Thank you very much for your attention to this matter. If you have any questions regarding this request, please contact me by phone at (202) 588-7725 or by email at plevy@citizen.org.

Sincerely yours,



Paul Alan Levy

⁹ *E.g.*, Moyer, *March For Our Lives' gun-control rally bumped from Mall by 'talent show*, https://www.washingtonpost.com/local/march-for-our-lives-gun-control-rally-bumped-from-mall-by-talent-show/2018/03/01/ad8c7268-1cc6-11e8-9496-c89dc446c2d3_story.html (March 1, 2018); Domonoske, *Talent Show Filming Keeps Teens, Gun Control Rally Off National Mall*, <https://www.npr.org/sections/thetwo-way/2018/03/01/589892565/talent-show-filming-keeps-teen-s-gun-control-rally-off-national-mall> (March 1, 2018); Parkland Shooting Survivors Denied Permit to Hold Gun Control Rally on DC Mall, <https://www.sfgate.com/entertainment/the-wrap/article/Parkland-Shooting-Survivors-Denied-Permit-to-Hold-12721505.php> (March 1, 2018); DC gun control march bumped from site for talent show, <http://www.startribune.com/dc-gun-control-march-bumped-from-site-for-talent-show/475651133/> (March 2, 2018).