

By Secure Release Portal

U.S. Customs and Border Protection
FOIA Office
90 K ST NE MS 1181
Washington, DC 20229

Re: CBP FOIA Request #1 – Request for Records Concerning the CBP Directorate for Operations Support (OS) and the Office of Chief Medical Officer (OCMO) — Expedited Treatment and Fee Waiver Requested

Dear Freedom of Information Officer:

My name is Andrea Meza and I am requesting the below records pursuant to the Freedom of Information Act (FOIA) on behalf of the Government Accountability Project (GAP), a non-profit organization dedicated to good governance and whistleblower protection.

GAP has worked with multiple whistleblowers from U.S. Customs and Border Protection (CBP). This request is the first in a series dedicated to investigating—and later disseminating—information regarding the improper and illegal actions taken by CBP leaders. Specifically, this request seeks records concerning events in the context of two whistleblowing disclosures made on November 30, 2023 and February 16, 2024. The disclosures are attached.

This matter is the subject of widespread and continuing public interest, and GAP regularly disseminates urgent information to the public. We therefore request expedited treatment because the matter is “with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

This request is made in the public interest as part of news gathering activity and is not for commercial use. Accordingly, we request a waiver of all fees. 5 U.S.C. §552 (a)(4)(A)(iii). We provide expanded justifications for our expedited processing and fee waiver requests below.

Thank you for your devotion to government transparency. If it would assist in processing, we are willing to discuss potentially narrowing the below-described requests.

Sincerely,

/s/

Andrea Meza, Immigration Counsel

FOIA Request #1

Requested Records:

We request the following records:

- (1) All correspondence, including emails, memoranda, complaints, and text messages, related to Dr. Alexander Eastman's issuance and possession of a CBP firearm, including:
 - a. The role of CBP senior leadership, including Acting CBP Commissioner Miller, in directing the provision of this firearm.
 - b. Any complaints from CBP personnel regarding the issuance of the firearm.
 - c. Rationale and justification for the provision of the firearm to Dr. Eastman, including any official federal law enforcement training, certification, or credentials possessed by Dr. Eastman.
 - d. Documentation on whether the justification for providing the CBP firearm was based on Dr. Eastman's issuance of a firearm by DHS Homeland Security Investigations.
 - e. Documentation on whether the justification for providing the CBP or HSI firearm was based on Dr. Eastman's unpaid, volunteer, reserve role with the Dallas Police Department.
 - f. Records related to Dr. Eastman's fulfillment of ongoing certification, qualification, or professional practice requirements regarding his CBP-issued firearm.

- (2) All records, including emails, documents, and memoranda, related to Dr. Eastman's classification as a Customs Officer or other federal law enforcement classification or credentialing associated with the provision of his CBP firearm, including:
 - a. Documentation on Dr. Eastman's arrest authority or use of lethal force permissions.
 - b. Records of training, certification, and credentials possessed by Dr. Eastman justifying any such appointment.
 - c. Memoranda granting Dr. Eastman's firearm carry authority, qualification records, and other training records (e.g., less lethal-defensive tactics).

- (3) All emails, documents, and records related to the justification for issuing CBP-specific law enforcement credentials, badge, and service weapon to Dr. Eastman, and how these relate to the mission of the Office of the Chief Medical Officer (OCMO), including:
 - a. Any recommendations from CBP leadership and any law enforcement officials who may have recommended issuing the CBP-specific law enforcement credentials, badge, and service weapon to Dr. Eastman.
 - b. Proof and records of Dr. Eastman's prior and past official law enforcement and firearms training from accredited and recognized institutions or entities.
 - c. Proof and records of Dr. Eastman's prior and past full-time law enforcement experience.

- d. Any emails, documentation, and records to or from Commissioner Troy Miller and John R. Morris regarding this issue.
- (4) CBP's Table of Offenses and Penalties, specifically:
 - a. Any sections related to the consequences for law enforcement officers or agents accused of consuming alcoholic drinks while wearing their issued service weapon.
 - b. Any sections related to the consequences for individuals found to be in violation of CBP's Standards of Conduct.
 - (5) CBP's policies for addressing law enforcement officers or agents who are accused of consuming alcoholic drinks while wearing their issued service weapon, including:
 - a. The process for reporting and investigating such accusations.
 - b. Disciplinary actions for individuals found to have violated this policy.
 - c. Training protocols or sessions aimed at preventing such behavior.
 - (6) All records related to concluded investigations by CBP's Office of Professional Responsibility (OPR) or other DHS or CBP entities regarding allegations that Dr. Eastman was witnessed consuming alcoholic drinks while wearing his CBP-issued service weapon or his previously issued service weapon while employed by DHS or a DHS component.
 - (7) All studies, reviews, reports, and analyses conducted by the CBP or its subcomponents regarding incidents in which CBP personnel were reported to be consuming alcoholic beverages while in possession of a CBP-issued firearm. This request includes but is not limited to:
 - a. Incident reports detailing such occurrences.
 - b. Communications, including emails and memos, related to the handling, reporting, and resolution of these incidents within any CBP offices or by any CBP personnel.
 - c. Aggregate data or statistical analyses regarding incidents of alcohol consumption by CBP personnel while in possession of service weapons.
 - (8) All records containing justification for the Commissioner of CBP designating specific Authorized Officers/Agents to carry firearms, pursuant to the CBP Use of Force Administrative Guidelines and Procedures Handbook Chapter 1(A)(1)(e), including any such records regarding Dr. Eastman's authorization to carry a CBP firearm.
 - (9) Any correspondence or directives from CBP senior leadership concerning the management or oversight of incidents involving the consumption of alcohol by armed CBP personnel. This includes:
 - a. Emails, memos, and other communications from the Office of the Commissioner of CBP.
 - b. Records from the Operations Support Assistant Commissioners' Offices and Enterprise Services Assistant Commissioners' Offices related to such incidents.

Unless expressly stated otherwise above, the time period for this request is January 1, 2020 to the date each records search is conducted. Please search for responsive records from CBP offices and personnel, including but not limited to:

- Office of the Commissioner of CBP
- Executive Assistant Commissioners' Office
- Enterprise Services Assistant Commissioners' Offices
- Operations Support Assistant Commissioners' Offices
- Operations Support/Enterprise Services Directorate
- Office of the Chief Medical Officer
- Office of Human Resources Management

Additionally, if any of the material covered by this request has been destroyed or removed, please provide all surrounding documentation including, but not limited to, a description of the action taken regarding the materials and justification for those actions taken.

For any documents or portions you deny due to a specific FOIA exemption, please provide a detailed justification of your grounds for claiming such exemption, explaining why the exemption is relevant to the document or portion of the document withheld.

We anticipate that any responsive documents will be unclassified. If any of the responsive documents contain classified information, please segregate all unclassified material within the classified documents and provide all unclassified information.

We are more than happy to work with your office to prioritize responsive data for this request, further refine the request if you find any terms too imprecise, conduct searches for unclassified responsive records, or engage in any other reasonable activities that would lessen the agency's burden and costs.

Fee Waiver:

We request that all fees incurred in connection with the attached request be waived, because "disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester." 5 U.S.C. §552 (a)(4)(A)(iii).

Our organization is a member of the news media and requests classification as such. Our work has been published in outlets including *The Washington Post*, *The New York Times*, and *The Wall Street Journal*. Our editorial and writing skills are well established.

This request is made as part of the news gathering process. If there is any newsworthy material discovered from this FOIA request, there is a reasonable expectation of its publication.

It is unnecessary for us to demonstrate the public interest relevance of this subject in advance. Additionally, despite our publishing record, case law states that "proof of the ability to disseminate the released information to a broad cross-section of the public is not required."

Judicial Watch, Inc. v. Dep't of Justice, 365 F.3d 1108, 1126 (D.C. Cir. 2004); see Carney v. U.S. Dep't of Justice, 19 F.3d 807, 814-15 (2d Cir. 1994).

Further, courts have held that certain entities "qualified because [they] also had 'firm' plans to 'publish a number of ... 'document sets' concerning United States foreign and national security policy." We also qualify as a member of the news media under this criterion. Additionally, courts have held that the news media status "focuses on the nature of the requester, not its request. The provision requires that the request be 'made by' a representative of the news media. *Id.* § 552(a)(4)(A)(ii)(II). A newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information. As such, the details of the request are moot to determine the appropriate fee category.

We would ask that you extend the fee waiver insofar as we are engaged in the process of disseminating information through GAP to the public. In addition to our arrangements with media outlets, GAP runs a news blog where newsworthy information can be published. Information from FOIA requests has been published there previously.

Some additional information about GAP may be useful for contextualizing the ways in which the requested information may be used: GAP is a non-profit, non-partisan, public interest organization chartered under IRS Code §501 (C)(3) as a non-profit, educational and charitable organization. We seek to serve the public through achieving governmental accountability by protecting and encouraging federal and corporate employees who observe or are victimized by wrongdoing, gross waste of public funds, threats to public health and safety, environmental contamination, corruption, abuse of the public trust and other abuses of power.

GAP accomplishes these goals primarily by conducting advocacy campaigns before Congress, through the media, and for the public and by providing legal representation to whistleblowers to combat the retaliation they have suffered in exercising their right of occupational free speech. Our twin aims are to promote corporate and government accountability and to expose, investigate, and correct substantive problems that formed the basis of protected whistleblowing disclosures. GAP's role is well-recognized by the courts and, as an organization, has informational standing under the First Amendment protecting its receipt of disclosed information. *Taylor v. RTC*. 56 F.3d 1437 (D.C. 1995); *United States v. Garde*, 573 F. Supp. 604 (D.D.C. 1987); *Virginia Pharmacy Bd. v. Virginia Consumer Council*, 425 U.S. 748, 756-57 (1976).

GAP has a 40-year history of working in the public interest. GAP does not take individual cases based on the client's ability to pay, how much money GAP believes it can recover in legal fees through litigation or any other commercial interest.

GAP takes cases of legitimately harassed whistleblowers, often pro-bono (without charge), that further public policy or legislative changes that make the law stronger for workers who witness and choose to tell the truth about corporate and taxpayer-financed wrongdoing and to pursue exposure and resolution of the wrongdoing.

GAP has, among other things, pushed for enactment of several whistleblower protection statutes, exposed unhealthy food at supermarket chains, pushed for independent reviews of the safety of the Alaska pipeline, exposed the threat of explosion in waste tanks at the Hanford nuclear site, and pushed for policy reform within numerous executive agencies. All this activity is done with public interest in mind.

Moreover, beyond deserving a fee waiver for people involved in disseminating information, our request is in the public interest and is not made for any commercial reasons. The disclosure is "likely to contribute" to an understanding of government operations or activities. While we do not need to explain the specifics of why we make each individual request, these documents will help us better inform the public about potential waste, fraud or abuse, gross negligence or abuse of authority, or threats to public health and safety or the environment. The records obtained pursuant to this request will further the public's understanding of DHS and its important role in providing medical care. More specifically, because CBP's acting medical leader has caused so much havoc affecting the component's medical mission, these records are necessary to rebuild the factual record concerning his misconduct for course correction.

According to DOJ FOIA guidance, "a requester should be granted a fee waiver if the requested information (1) sheds light on the activities and operations of the government; (2) is likely to contribute significantly to public understanding of those operations and activities; and (3) is not primarily in the commercial interest of the requester." This FOIA meets all of those requirements and a fee waiver is warranted.

If you disallow our fee-waiver request, we pledge to pay the price of the FOIA request up to \$25. Please alert us if it exceeds this price.

Expedited Processing:

As described above, we are mainly engaged in disseminating information to inform the public about Federal government activity. We demonstrated above that our primary activity involves publishing and disseminating information to the public.

We are requesting expedited processing for these records because there is an urgency to inform the public about the official activities of CBP and DHS. The recent whistleblower disclosure dated February 16, 2024 contains serious allegations of misconduct, mismanagement, and abuse of authority by high-level officials within CBP and DHS, including the Acting Chief Medical Officer, Dr. Eastman. The disclosure raises grave concerns about the provision of medical care to individuals in CBP custody, the oversight of the agency's medical services contract, and the conduct of senior leadership.

Moreover, recent reports to GAP raised serious questions about the agency's commitment to accountability, transparency, and the appropriate use of force by its personnel. The records requested pertain to the highly unusual and concerning decision to arm Dr. Eastman with a CBP-

issued firearm. This action appears to be unprecedented for medical leaders within the agency and has far-reaching implications for public safety and the agency's mission.

Given the gravity of these allegations and their potential impact on the health and safety of vulnerable populations, there is a compelling need for immediate transparency. The public has a right to know how the agency is responding to these allegations, what steps are being taken to investigate and address the issues raised, and whether appropriate accountability measures are being pursued. Delays in processing this request would deny the public timely access to critical information about their government's actions and hinder the ability of the press, Congress, and the public to hold the agency accountable.

As an organization primarily engaged in disseminating information to the public, we urgently require these records to fulfill our mission of advancing government accountability and keeping the public informed. Upon receipt, we will swiftly review and analyze the records and disseminate our findings through our website, newsletter, press releases, and other public channels. We will also share the records with journalists, oversight bodies, and partner organizations to maximize public awareness and engagement on this critical issue. Expedited processing is therefore necessary to prevent irreparable harm to the public's right to know about the conduct of their government.

Reducing Request Workload:

Please begin working on the request while processing the requests for a fee waiver and expedited processing. Please send us documents electronically.

Please be reminded that under the Freedom of Information Act, we are entitled to receive a response to this request within twenty working days. Should this request be denied for any reason, we ask that a detailed explanation be provided along with the name of the person to whom administrative appeals should be addressed. If our request is taking a large amount of time, please process it in tranches so we may begin processing the documents while waiting for the request to be filled.