

September 27, 2011

By Email (ostpfoia@ostp.eop.gov) and Fax (202-456-6022)

Office of Science and Technology Policy
Attn: FOIA Officer
725 17th Street, N.W., Room 5228
Washington, D.C. 20502

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (CREW) makes this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, audiotapes, videotapes, and photographs pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §§ 552, *et seq.*, and Department of Justice regulations, 28 C.F.R. § Part 16.¹

Specifically, CREW seeks all records from January 1, 2009, to the present reflecting, discussing, or referring to LightSquared, a 4G wireless network backed by hedge fund investor Philip Falcone's private-equity firm Harbinger Capital Partners. This request includes, but is not limited to: (1) all records of communications between any individual employed by or acting on behalf of OSTP and any individual at the Federal Communications Commission (FCC) regarding or referring to LightSquared and its investor; (2) all records of communications between any individual employed by or acting on behalf of OSTP and any individual employed by or acting on behalf of LightSquared, including but not limited to Philip Falcone and Harbinger Capital Partners; and (3) all communications with any government officials within any agencies of the federal government regarding any aspect of LightSquared's proposed wireless broadband network.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs.

¹ According to its website, the Office of Science and Technology Policy (OSTP) does not have its own FOIA regulations but instead follows those of the Department of Justice.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for **each** withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” *Id.* at 224 (citing *Mead Data Central v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *Mead Data Central*, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically it is not reasonable to segregate portions of the record for release.

Finally, CREW welcomes the opportunity to discuss with you whether and the extent to which this request can be narrowed or modified to better enable OSTP to process it within the FOIA’s deadlines for expedited requests. Toward the end, please feel free to contact Anne Weismann at aweismann@citizensforethics.org or at 202-408-5565.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.11(k), CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government and expenditures, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request primarily and fundamentally is for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Specifically, these records are likely to contribute to greater public awareness of the extent to which OSTP has attempted to persuade the FCC and others to give LightSquared

favorable treatment in its quest for FCC approval to launch a new network. Certain members of Congress have requested records of contacts by Mr. Falcone, LightSquared, and the Obama administration amidst concerns the White House may have interceded to aid LightSquared's efforts for FCC approval because Mr. Falcone is a large contributor to Democratic campaign organizations. *See, e.g.,* Todd Shields, Republicans Want Records of Philip Falcone White House Contacts, *Bloomberg*, Sept. 21, 2011 (attached as Exhibit A). Other news reports suggest the White House asked two government officials to alter their testimony before Congress to downplay any problems LightSquared's network would cause civilian and military GPS devices. *See* Benjy Sarlin, White House: We Gave Lightsquared Plenty Of Grief Over GPS, *TPM Muckraker*, Sept. 22, 2011 (attached as Exhibit B). Disclosure of the requested records is likely to contribute to greater public awareness of the veracity of these claims.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the government decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW's financial interest. In addition, CREW will disseminate any documents it acquires from this request to the public through www.scribd.com and CREW's website, which also contains links to thousands of pages of documents CREW acquired from multiple FOIA requests. *See* www.citizensforethics.org. CREW's website includes documents relating to CREW's FOIA litigation, Internal Revenue complaints, and Federal Election Commission complaints.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

News Media Fee Waiver Request

CREW also asks that it not be charged search or review fees for this request because CREW qualifies as a "representative of the news media" pursuant to the FOIA. In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the D.C. Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history indicating the phrase "representative of the news media" is to be interpreted broadly; "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to 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) (emphasis added), cited in *id.*

CREW routinely and systematically disseminates information to the public in several ways. First, CREW maintains a frequently visited website, www.citizensforethics.org, that

FOIA Officer
September 27, 2011
Page Four

received 34,201 page views in September 2011. The website reports the latest developments and contains in-depth information about a variety of activities of government agencies and officials. In addition, CREW posts all of the documents it receives under the FOIA on www.scribd.com, and as of August 31, 2011, that site had received 1,221,800 visits to CREW's documents since April 14, 2010.

Second, since May 2007, CREW has published an online newsletter, *CREWCuts*, that currently has 15,818 subscribers. *CREWCuts* provides subscribers with regular updates regarding CREW's activities and information the organization has received from government entities. A complete archive of past *CREWCuts* is available at <http://www.citizensforethics.org/newsletter>.

Third, CREW publishes a blog, Citizens blogging for responsibility and ethics in Washington, that reports on and analyzes newsworthy developments regarding government ethics and corruption. The blog, located at <http://www.citizensforethics.org/blog>, also provides links that direct readers to other news articles and commentary on these issues. CREW's blog had 3,875 visits in August 2011.

Finally, CREW has published numerous reports to educate the public about government ethics and corruption, including agencies' failure to comply with their record keeping responsibilities. See *Record Chaos*, which examines agency compliance with electronic record keeping responsibilities; *The Revolving Door*, a comprehensive look into the post-government activities of 24 former members of President Bush's cabinet; and *Those Who Dared: 30 Officials Who Stood Up For Our Country*. These and all other CREW's reports are available at <http://www.citizensforethics.org/reports>.

Based on these extensive publication activities, CREW qualifies for a fee waiver as a "representative of the news media" under the FOIA.

Request for Expedition

Pursuant to 5 U.S.C. § 552(a)(6)(E)(i), CREW requests that your office expedite the processing of this request. As explained above, CREW is engaged primarily in the dissemination of information it gathers from a variety of sources, including the FOIA, and seeks the information sought in this FOIA request for the express purpose of disseminating it to the public.

There is a particular urgency to inform the public about the veracity of allegations the White House has interfered to aid LightSquared's bid for FCC approval of its proposed network, given the pendency of LightSquared's application and rising concerns about the network's interference with GPS devices, which LightSquared insists is not a problem. Reportedly, LightSquared and its investors have put approximately one billion dollars into the network and,

FOIA Officer
September 27, 2011
Page Five

per the company's spectrum license, it is committed to reaching 100 million customers by the end of 2012. *See* Eliza Krigman, LightSquared Hits Headwinds, *Politico*, June 15, 2011 (attached as Exhibit C). This lends additional urgency to the public's need for fuller information. Under these circumstances, expedition of this request is warranted.

If you have any questions about this request or foresee any problems in releasing fully the requested records on an expedited basis, please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact me immediately upon making such determination. Please send the requested records to Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Sincerely,



Anne L. Weismann
Chief Counsel

Enclosures

EXHIBIT A

Bloomberg

Republicans Want Records of Philip Falcone White House Contacts

By Todd Shields - Sep 21, 2011

House Republicans asked for records of contacts between the White House and Philip Falcone, citing concerns about possible political pressure on U.S. agencies over the billionaire's proposed LightSquared wireless venture.

LightSquared is seeking to allay fears its planned \$14 billion network may disrupt military and civilian uses of the global-positioning system. The company needs clearance from the Federal Communications Commission to proceed. The request yesterday from House Republicans adds political static to a debate that has centered on radio interference.

Some U.S. officials have been reluctant to testify on GPS interference and agencies haven't provided information, Representative Ralph Hall, of Texas, chairman of the House Committee on Science, Space and Technology, wrote in a letter yesterday. That "does nothing to promote the case for LightSquared, nor does it put our minds at ease about the possibility that this administration may be providing special favors to high-level financial donors," Hall wrote.

The Obama administration should turn over "all records" of contacts by Falcone, LightSquared and his Harbinger Capital Partners hedge fund, according to the letter. Six other Republicans on the panel signed the letter, which was distributed by e-mail.

Events surrounding solar-panel maker Solyndra LLC, which failed after receiving U.S. loan guarantees, "further emphasize our concern about a pattern by this administration to grant preferential treatment toward donors," Hall and his colleagues wrote. "As with Solyndra, the lack of scrutiny of the LightSquared project is disturbing."

Falcone Donations

Falcone, his wife Lisa Falcone, and LightSquared Chief Executive Officer Sanjiv Ahuja have each made a \$30,400 political contribution to Democratic campaign organizations, the lawmakers said.

E-mails between LightSquared representatives and White House officials refer to company attendance at fundraisers for President Barack Obama, and the donations roughly coincided with

LightSquared contacts with the White House, the letter said. "While some may call it a coincidence, we remain skeptical," the lawmakers said in yesterday's letter.

LightSquared plans to offer wireless Internet service to 260 million people. The FCC has ordered testing to ensure that the network won't cause harmful interference to GPS operations. The service has faced hearings before the House committees on science, armed services and transportation.

"Every administration witness testifying at every hearing on LightSquared has been explicit in identifying the problems for GPS, and the need to resolve interference problems before Lightsquared is allowed to move forward," Eric Schultz, a White House spokesman, said in an e-mail. "We fully respected the FCC's independent process."

'Red Flags'

The lawmakers asked for records of contacts with the Office of Management and Budget and with the Office of Science & Technology Policy, and requested replies by Oct. 7. Versions of their letter were sent to Jacob Lew, director of OMB, and to John Holdren, director of the science and technology office.

Four executive branch agencies haven't produced documents about LightSquared requested by the Science Committee, and the "non-compliance" was "the first of many red flags raised about the situation regarding LightSquared," the letter said.

LightSquared envisions offering wholesale service through a network of 40,000 base stations using airwaves previously reserved mainly for satellites. GPS devices rely on satellite signals, and makers of GPS gear say LightSquared's network would disrupt navigation by planes, boats, tractors and automobiles.

The Reston, Virginia-based wireless company is backed by Falcone's Harbinger Capital Partners hedge fund, which has invested about \$3 billion in the venture.

Solyndra Scrutiny

Representative Darrel Issa, chairman of the House Committee on Oversight and Government Reform, was asked yesterday in an interview on the C-Span network about Solyndra and LightSquared. Issa said he is "looking at it" not as "one company or two companies, we're looking at the system."

Issa, a California Republican, pointed to broad concerns about the dangers of government attempting to pick winners and losers, Frederick Hill, a spokesman for the oversight committee, said in an e-mail.

“We look forward to working with the House Committee on Oversight and Government Reform to clear up any concerns,” Jeffrey Carlisle, a LightSquared executive vice president, said in an interview. “Unlike Solyndra, LightSquared has not asked for a dime of government money.”

To contact the reporter on this story: Todd Shields in Washington at tshields3@bloomberg.net

To contact the editor responsible for this story: Allan Holmes at aholmes25@bloomberg.net

©2011 BLOOMBERG L.P. ALL RIGHTS RESERVED.

EXHIBIT B



TPMMuckraker TPMDC TPMidea Lab TPMLiveWire TPHPollTracker TPMCafé

Send Comments & News Tips

bp
Gulf of Mexico
Oil Spill Response
We will make this right

Latest from @BP_America on Twitter

The 22 Sep 2011 10:11 AM
BP's new oil spill response plan is a...
BP's new oil spill response plan is a...
BP's new oil spill response plan is a...

Login

About | Subscribe | RSS

Go

TPMDC

White House: We Gave Lightsquared Plenty Of Grief Over GPS

Benjy Sarlin | September 22, 2011, 8:25AM Recommend 2

Share 7 0



The White House

Read More

112th Congress, Lightsquared, White House

Share

EMAIL TO A FRIEND!

The White House is pushing back against charges of favoritism towards a telecom firm Lightsquared, citing numerous instances in which administration officials have raised concerns about its plan to create a new wireless broadband network.

Lightsquared is trying to secure permission from the FCC to launch its new network, but there are concerns that its proposal would interfere with civilian and military GPS devices. The Daily Beast's Eli Lake reported recently that two government officials, including an Air Force General, William Shelton, were asked by the White House to alter their testimony to include a suggestion that the Pentagon could address these concerns with 90 days of testing. OMB routinely reviews officials' statements, so there's nothing inherently wrong in providing suggestions as a general matter, but both ended up rejecting the language and Shelton reportedly felt pressured. Now House Republicans are demanding an investigation into whether donations to Democrats from Lightsquared CEO Philip Falcone and his wife influenced the administration's behavior.

The White House argues that the favoritism charges don't add up because they've raised complaints about the GPS issue from the start. Lawrence Strickling, administrator of the National Telecommunications and Information Administration, repeatedly cited the GPS issue in a Jan. 2011 letter to FCC chair Julius Genachowski, saying that it "raises significant interference concerns that warrant full evaluation." The FCC ended up granting a conditional waiver to Lightsquared to move ahead – but only if they could demonstrate through testing that their plan would not impact GPS.

A number of officials who have testified to Congress on the matter, including the two cited by Lake. Shelton have reported that testing thus far has found significant problems, assessments that the White House believes should insulate them from claims their testimony was inappropriately tweaked. Anthony Russo, director of the National Coordination Office for Space-Based Positioning, Navigation, and Timing, testified in his prepared remarks last week that "LightSquared's proposed system would create harmful interference throughout all three phases of its planned deployment" based on testing across multiple federal agencies. Another witness, Deputy Under Secretary at National Oceanic and Atmospheric Administration Mary Glackin, wrote in her prepared remarks that Lightsquared's initial plan "would cause serious performance degradation or a total loss of mission for a wide range of our operational systems, resulting in the loss of critical services and potential loss of life and property," and that the company's follow up proposal "still raises issues for high-precision GPS receivers" that warrant further testing.

"Before the FCC granted a conditional waiver to Lightsquared, the NTIA sent a letter to the FCC stating the Administration's official position that Lightsquared should not be allowed to move forward unless interference issues were resolved," White House spokesman Eric Schultz told TPM. "Indeed, every Administration witness testifying at every hearing on LightSquared has been explicit in identifying the problems for GPS, and the need to resolve interference problems before Lightsquared is allowed to move forward."

Schultz added that the FCC, which is an independent agency, has denied that the White House has tried to influence its work on the issue.

But while the White House clearly has raised concerns about the GPS issue, the statements still don't address the original concern from the Beast's reporting: that they suggested these concerns could be addressed with 90 days of testing, a timetable that seemed overly optimistic to at least two officials. The White House argues that since OMB routinely offers guidance and the two officials were free to reject the suggestions and give their own testimony, there's nothing to see there. Republicans on the House Committee on Science, Space, and

ADVERTISEMENT



Gulf Coast Restoration

Roll over to Read the Latest

Recent Activity

GOP Leaders To Bernanke: Don't Try And Improve The Economy Again
703 people recommend this

Clinton Says GOP Climate Deniers Making The U.S. 'Look Like A Joke'
1,008 people recommend this

Obama: This Is Not Class Warfare: It's Math
1,457 people recommend this

Tea Party Rep. Apparently Spends \$200K To 'Feed His Family' (VIDEO)
580 people recommend this

Facebook social plug

ADVERTISEMENT

Get the safety and security of OnStar Family Vehicle.

Learn more >>

Technology are not satisfied with that explanation, claiming that they've had difficulty obtaining the necessary information from the administration to properly evaluate the matter

"Although we understand that OMB routinely reviews testimony presented by Administration officials to Congress, the fact that a four-star Air Force General was "chafed" by suggestions made in this case raises concerns about the appropriateness of the White House's suggestions," they wrote in a letter to the administration this week.

Sign In

16 Comments | Join the conversation



mloradbugger
3 HOURS AGO

Well, another example of how government decision-making and spending is by its very nature inferior to that of private parties acting in a competitive market system. You can see a very rough parallel in the academic world, where some departments e.g. physics have to compete for grant money and also strive to recruit the most talented students and faculty regardless of family connections or gender or other criteria, and departments like AA studies that do not face scholarly competition and who make personnel decisions almost solely on non-intellectual grounds, such as gender and the like.

Flag



Bill D. Catt
2 HOURS AGO

Perfect example of that would be Haliburton and Blackwater/Xe

Flag



mloradbugger
1 HOUR AGO

You know anything about the oil services business? Haliburton is a world-class firm that does a lot of cutting-edge engineering work. That's one reason why gasoline for your car is reliable and affordable. What do any of you deadbeats contribute to the social welfare, beyond a lot of self-righteous, indignant and uninformed whinging?

Flag



dswx
15 MINUTES AGO

Yes Haliburton does a lot of engineering work. So does Fluor Daniel and many others. That does not in any way at all make them a "world-class firm" however.

From someone who contributes to the "social welfare" every day on the job. You? Not so much.

Flag



snlg
8 MINUTES AGO

They cut the edge of that safety margin a little thin on that Deepwater Horizon drilling in the gulf.

Flag



Red XIV
2 HOURS AGO

Ah yes, the mythical efficiency of the free market

Flag



citizenx
1 HOUR AGO

Was that supposed to make sense?

Flag



Cy Guy
1 HOUR AGO

Perhaps, but if it were left to the market, there would be no GPS system in the first place

You can't have the Free Market regulate itself when it comes to the commons. Spectrum is part of the commons. What would you prefer, that everyone that wants to use spectrum just have at it without regard to which frequency they should use and how much power they can transmit

EXHIBIT C

POLITICO

LightSquared hits headwinds

By Eliza Krigman
June 15 2011 10:36 PM EDT

Opposition to the wireless startup LightSquared has grown so strong in recent weeks that it's raising questions about whether the company's ambitious plans for a new national broadband network are in jeopardy.

About a decade in the making, LightSquared promises to bring more competition to the wireless market by building the nation's first wholesale broadband network. Small regional carriers and device makers would pay to use the high-speed wireless network, which it's pitching as a lower-cost alternative to AT&T and Verizon.

But the signals that LightSquared's network would use operate at a frequency that effectively blinds some GPS receivers. One observer described it as trying to hear a whisper when someone is screaming nearby.

That's roused the ire of powerful interests that use GPS devices, from the Department of Defense to the Federal Aviation Administration to the GPS industry. Dozens of lawmakers from both parties have also expressed alarm about GPS interference, even as Federal Communications Commission Chairman Julius Genachowski has praised LightSquared's plans.

Citing possible aviation and marine navigation interference, two House Transportation and Infrastructure subcommittees with jurisdiction over those matters plan to hold a joint hearing on the issue next week.

LightSquared claims there are technical answers to the interference problem, but the GPS industry insists that isn't true.

"This isn't the kind of interference for which there is a technical fix," James Kirkland, the general counsel of Trimble, a developer of GPS technology, told POLITICO. "It's a physics thing."

The GPS industry "isn't looking at the data," countered Jeff Carlisle, LightSquared's executive vice president for regulatory affairs and public policy.

A lot is hanging in the balance.

LightSquared and its investors have already poured about \$1 billion into the network. As a condition of its spectrum license, the company has committed to reach 100 million Americans by the end of 2012 and 260 million by 2016.

All told, the company plans to spend \$14 billion over eight years to build the network, an undertaking it says would create 15,000 jobs. LightSquared has already announced partnerships with Cellular South, Best Buy and other companies.

Despite the escalating controversy, LightSquared CEO Sanjiv Ahuja insists the company is on track to achieve its performance goals ahead of time.

Ultimately, the FCC will decide. And that could bode well for LightSquared.

Genachowski has voiced support for LightSquared's plans and the potential to boost competition in the wireless industry — a concern that's come into focus as the debate over AT&T's bid for T-Mobile heats up. But the commission won't let LightSquared proceed unless the interference conflicts have been resolved.

According to several industry observers, the FCC has told the Obama administration that it can tout the jobs that LightSquared might produce — giving the agency a political stake in the outcome — despite the uncertainty surrounding the wireless network.

A technical working group convened by the FCC and comprising LightSquared, the GPS industry and other stakeholders, was expected to deliver a report to the agency Wednesday with the results of a comprehensive test on the interference issue. The study, which is expected to confirm the GPS interference problems, will include an analysis of possible technical fixes.

One possible outcome is that LightSquared will abandon plans to operate on a band of spectrum closest to the frequency on which GPS operates. Kirkland said the so-called lower band still presents problems, which LightSquared's Carlisle denies.

If LightSquared abandons the band closest to GPS, Carlisle maintains that it won't affect the company's business plan for the next several years. Ultimately, it will constrain its capacity some, an FCC official noted.

Some industry analysts suggest that the political resistance can be overcome.

"In some ways, it's important to not get too caught up in the political swirl because the issue will be decided on the technical merits," said Paul Gallant, an industry analyst with MF Global Holdings.

But there may be other problems for LightSquared. The company's main investor, Harbinger Capital Partners, has faced protests from individual investors that the hedge fund's assets are too tied up in the wireless network.

"There's certainly ample reason for concern on Wall Street," said Craig Moffett, an industry analyst with Sanford Bernstein. "There are engineering problems, financing issues and, most importantly, end-user demand questions."

"Building a national network," he added, "is a high-stakes, high-risk game."