

June 24, 2009

**By Fax (202-514-1009) and U.S. Mail**

Carmen L. Mallon  
Chief of Staff,  
Office of Information Policy  
U.S. Department of Justice  
Suite 11050  
1425 New York Avenue, N.W.  
Washington, D.C. 20530-0001

**Re: Freedom of Information Act Request**

Dear Ms. Mallon:

Citizens for Ethics and Responsibility in Washington (“CREW”) makes this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, pursuant to the Freedom of Information Act (“FOIA”) and U.S. Department of Justice regulations, 28 C.F.R. Part 16.

Specifically, CREW seeks records dating from March 19, 2009 to the present reflecting a decision in any litigation pending on or after March 19, 2009, to disclose material previously withheld under the FOIA as exempt from disclosure. We note that on March 19, 2009, Attorney General Holder issued his memorandum on FOIA directed to all executive departments and agencies. That memorandum specifically provides that as to pending litigation, “this guidance should be taken into account and applied if practicable when, in the judgment of the Department of Justice lawyers handling the matter and the relevant agency defendants, there is a substantial likelihood that application of the guidance would result in a material disclosure of additional information.”

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 and all kind, including electronic records, audiotapes, videotapes, photographs, and computer print-outs. Our request includes any telephone messages, voice mail messages, and daily agenda and calendars and information about scheduled meetings.

If it is your position that 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, 959 (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).

In the event that 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 and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. Mead Data Central v. U.S. Dep’t of the Air Force, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

### **Fee Waiver Request**

#### *Public Interest 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 the disclosures will likely contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes, pursuant to 5 U.S.C. §552(a)(4)(A)(iii). See, e.g., McClellan Ecological v. Carlucci, 835 F.2d 1282, 1285 (9<sup>th</sup> Cir. 1987).

Specifically, the requested records are likely to contribute to the public’s understanding of how the executive branch and the Department of Justice have implemented the attorney general’s FOIA policy, which flows from President Obama’s January 21, 2009 FOIA Memorandum and his commitment to transparency and accountability.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue code. CREW is committed to protecting the citizens’ 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.governmentdocs.org](http://www.governmentdocs.org), an interactive website CREW founded that includes thousands of pages of public documents from a number of organizations in addition to CREW. CREW’s website also contains links to thousands of pages of documents CREW

acquired from multiple FOIA requests. See [www.citizensforethics.org](http://www.citizensforethics.org). CREW's virtual reading room provides around-the-clock access to anyone interested in learning about the government activities that form the focus of CREW's FOIA requests. The CREW website also includes documents relating to CREW's FOIA litigation, Internal Revenue Service complaints, Federal Election Commission complaints and requests for investigation.

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

#### *News Media Fee Waiver Request*

CREW also seeks a fee waiver because it qualifies as a "representative of the news media" pursuant to the FOIA and 28 C.F.R. § 16.11(d). As noted above, CREW is a non-profit corporation, and routinely and systematically disseminates information in a variety of ways to accomplish its stated goal of informing the public about the activities of government officials.

First, CREW maintains a frequently visited website, [www.citizensforethics.org](http://www.citizensforethics.org), that received 114,015 visits in May 2009. The website reports the latest developments and contains in-depth information about a variety of activities of government agencies and officials.

Second, since May 2007, CREW has published an on-line newsletter, *CREWCuts*, that currently has 13,2912 subscribers. CREW 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, <http://www.citizensforethics.org/blog>, also provides links that direct readers to other articles and commentary on these issues. CREW's blog had 2,280 hits in May.

Finally, CREW has published numerous reports to educate the public about government ethics and corruption. Examples include: *The Revolving Door*, a comprehensive look into the post-government activities of 24 former members of President Bush's cabinet; *2008 Top Ten Ethics Scandals*; *2008 Most Embarrassing Re-Elected Members of Congress*; *2008 Most Corrupt Members of Congress*; and *Those Who Dared: 30 Officials Who Stood Up For Our Country*. These and all of CREW's reports are available at <http://www.citizensforethics.org/reports>.

Based on these extensive publication activities, CREW qualifies as a "representative of the news media" under the FOIA and agency regulations.

If you have any questions about this request, or foresee any problems in releasing fully the requested records, please call Anne Weismann at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a

determination. Please send the requested documents to Anne Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', with a long horizontal flourish extending to the right.

ANNE L. WEISMANN  
Chief Counsel