

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND	:	
ETHICS IN WASHINGTON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	
OFFICE OF ADMINISTRATION,	:	
	:	
Defendant.	:	
	:	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION**

STATEMENT

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for expedited processing and release of agency records concerning the loss of over five million email from the email systems and environments of the Executive Office of the President (“EOP”). Defendant Office of Administration (“OA”), a component of the EOP, has acknowledged that the requested information fits squarely within the narrow category for which Congress has mandated expedited processing and, on April 27, 2007, purported to grant the request of plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) for expedited treatment of its FOIA requests. Nevertheless, in clear violation of the FOIA, the OA has refused to process CREW’s requests even within the 20-working-day time-frame for processing a standard FOIA request not entitled to expedition.

The OA’s failure to process CREW’s requests, or to even identify a date by which it expects to complete its processing, is in clear violation of the FOIA and in conflict with the very purpose of expedition. By granting expedition the OA rightfully recognized the compelling and

urgent need to inform the public about the record-keeping practices of the White House and the degree to which it knowingly ignored, if not outright violated, federal laws. By failing to honor the commitment to expedition, however, the OA has deprived the public of vital information and undermined the purposes of the FOIA. Accordingly, plaintiff seeks the Court's expedited consideration of this matter and entry of an order compelling the OA to process and disclose the requested records within 10 days.

FACTUAL BACKGROUND

In the wake of email problems that plagued the previous administration, the Bush administration announced early on its intention to create a White House chief information officer position to oversee the EOP email system. See Tony Lee Orr, White House CIO Will Monitor, Manage E-mail, Government Computer News, June 4, 2001 (attached as Exhibit 1). According to White House officials, they had "plans for improving electronic records management," that reportedly included "developing and updating the executive office's policies for maintaining federal and presidential records." Id. To date, however, the Bush administration has refused to make public its record-keeping policies on the ground that "we don't share internal White House memos." Alexis Simendinger, The E-Mail Trail, The National Journal, April 9, 2007 (attached as Exhibit 2).

Recently it has come to light that at least some high-level White House officials, including Karl Rove, use outside email accounts to conduct official business even though by such use they are evading their responsibilities under federal records statutes. See, e.g., Alexis Simendinger, Whose E-Mail Is It?, The National Journal, March 24, 2007 (attached as Exhibit 3) (reporting on Karl Rove's use of an outside email account maintained by the Republican

National Committee (“RNC”) for “about 95 percent” of his e-mail); John D. McKinnon, Congress Follows Email Trail, *Wall Street Journal*, April 10, 2007 (attached as Exhibit 4) (reporting on use by Susan Ralston, a top aide to Karl Rove, of at least four outside email accounts). Three congressional investigations into these practices have confirmed that “White House officials used nongovernmental e-mail accounts to conduct official business or communicate with agency officials.” Letter from Chairman Henry A. Waxman, House Committee on Oversight and Government Reform, to Eric A. Kuwana, May 1, 2007 (attached as Exhibit 5).

Following press reports of these practices, some White House aides stopped using the White House email system altogether to avoid public or congressional scrutiny of their actions, and substituted private email systems such as those available on cellular phones or blackberries. Peter Cary, Sorry, You’re Not Reading My E-mail, *U.S. News & World Report*, April 9, 2007 (attached as Exhibit 6); Separate White House E-mail Accounts Draw New Criticism, *U.S. News & World Report Blog*, March 29, 2007 (attached as Exhibit 7).

Press reports have also revealed that prior to 2004, emails sent from RNC accounts were automatically deleted every 30 days. White House Admits Misuse of Republican Party-Sponsored E-Mail, *Associated Press*, April 12, 2007 (attached as Exhibit 8). Even when the RNC excluded White House staff from its automatic deletion policy in 2004, individual White House aides -- including Karl Rove -- were still able to delete their files and avoid preservation of their emails. Id. As the White House now admits, emails from White House staff, including those transmitting official business, have been lost. Michael Abramowitz and Dan Eggan, White House E-Mail Lost in Private Accounts, *The Washington Post*, April 12, 2007 (attached as

Exhibit 9).

The White House has also admitted that over five million email generated between March 2003 and October 2005 are missing from the EOP servers. See, e.g., Patience Wait, *The Case of the Missing E-mails*, *Government Computer News*, May 1, 2007 (attached as Exhibit 10). This admission was made in the face of a report that CREW issued, based on confidential sources, exposing the fact that the EOP currently has no effective email records management system in place. See *Without a Trace: The story Behind the Missing White House E-Mails and the Violations of the Presidential Records Act*, available at <http://www.citizensforethics.org/files/04207WithoutATraceFullReport.pdf>. In October 2005, the OA discovered a problem with its email retention process that it later confirmed included hundreds of days for which emails were missing for one or more EOP components. Id. at 11-12. The White House rejected a proposal by the OA to recover the missing email, continuing to use a grossly inadequate electronic record-keeping system that had proven to be ineffective in preventing the loss of a massive amount of presidential records. Id. at 12.

Based on information provided it by confidential sources, CREW sent by facsimile and first-class mail a FOIA request to the OA on April 17, 2007, seeking records relating to the potential loss of email records of the EOP associated with any and all EOP-managed email systems and environments. Letter from Anne L. Weismann to Office of Administration FOIA Officer, April 17, 2007 (Exhibit A to Complaint).

The following day, CREW sent another FOIA request to the OA, also by facsimile and first-class mail, that clarified and supplemented its April 17, 2007 FOIA. Letter from Anne L. Weismann to Office of Administration FOIA Officer, April 18, 2007 (Exhibit B to Complaint).

Specifically, CREW's clarifying FOIA sought the following:

- (1) copies of all analyses prepared by the OA and its offices, directorates and branches between January 21, 2001 and April 13, 2007, that identify potential technical, procedural and process problems related to the potential loss of email records of the Executive Office of the President ("EOP") associated with any and all EOP-managed email systems and environments;
- (2) copies of all documents, databases, spreadsheets and inventories prepared between January 21, 2001 and April 13, 2007, that provide a detailed accounting (daily, weekly and/or monthly) of actual email messages retained or that identify potential missing email messages within the scope of all EOP-managed email records management environments;
- (3) copies of all system requirements specifications, risk assessments, project implementation documents, project concepts and other documents related to all planned, incomplete or completed implementation of any EOP email records management systems since January 21, 2001; and
- (4) copies of all statement of work ("SOW"), requests for proposal ("RFP") and requests for quote ("RFQ") issued by the OA or other government offices or agencies on behalf of the OA related to the analysis, design, implementation and support of EOP email systems implementation and migration and email records management system analysis, implementation, support and services.

Id.

CREW's clarifying FOIA also explained that CREW is not seeking "any system security, system configuration, or internal system network configuration information." Id. In addition, CREW is seeking specific documents that it has been advised were in existence at least as of July 2006, and that were either created by individuals within the OA or are in the possession of the OA. Id.

CREW also sought a waiver of fees associated with processing its request given that the request concerns the operations of the federal government, the disclosures will likely contribute

to a better understanding of relevant government procedures, and the request is primarily and fundamentally for non-commercial purposes. See Exhibits A and B to Complaint. The requested records are likely to shed light on the extent to which the White House's practices deviate from the requirements of the Presidential Records Act, 44 U.S.C. §§ 2201 et seq., as well as any White House record-keeping guidance and policies, and the extent to which the White House had prior knowledge that its practices violate federal law. Id.

For both of its FOIA requests, CREW sought expedition for the express purpose of disseminating any responsive documents to the public based on the widespread and exceptional media interest in the White House emails, the revelations about the use by high-ranking EOP officials of outside email accounts and the fact that the White House has known since the fall of 2005, that at least five million emails have been missing from its records management system. Exhibits A and B to Complaint. CREW's website contains numerous examples of its efforts in this regard, including a report it issued concerning missing White House email and the implications under the Presidential Records Act. Id.

By letter dated April 27, 2007, the OA acknowledged receipt of CREW's FOIA requests of April 17 and 18, 2007, and granted CREW's request for expedited processing. Letter from Carol Ehrlich to Anne Weismann, April 27, 2007 (Exhibit C to Complaint). Notwithstanding this determination, the OA further stated that "unusual circumstances described in 5 U.S.C. § 552(a)(6)(A)(B)(iii)(II) exist" and that "[a]s a result of these unusual circumstances, OA cannot meet the time limits prescribed in 5 U.S.C. § 552(a)(6)(A)." Id. The OA based its finding of unusual circumstances on what it characterized as "an extensive list of records that span more than a six-year period" that CREW was seeking as well as "the day-to-day responsibilities" of

the employees within the OA tasked with processing the requests. Id. The OA did not inform CREW of an anticipated date for completing its processing of CREW's FOIA requests.

On April 30, 2007, CREW sent a letter to the OA by facsimile and first-class mail responding to the inaccuracies in the OA's letter of April 27, 2007. Letter from Anne L. Weismann to Carol Ehrlich, April 30, 2007 (Exhibit D to Complaint). As CREW explained, it is not seeking an "extensive list of records," but rather "four discrete categories of records that are described with great particularity" and that relate to one discrete issue -- "the White House's loss of over five million email from its email system." Id. And, contrary to the OA's characterization of its FOIA requests, CREW is not seeking records that span a six-year period. Rather, two of CREW's requested categories seek records that were prepared over a one-year period and the remaining two categories span only two years. Id.

The OA has never responded to this letter. Moreover, notwithstanding the OA's purported decision to expedite the processing of plaintiff's FOIA requests, to date the OA has neither produced a single document to CREW nor withheld or otherwise accounted for any responsive documents. In addition, the OA has failed to inform CREW of an anticipated date for completing the processing of plaintiff's FOIA requests and has never afforded CREW any administrative appeal rights.

ARGUMENT

I. THE COURT HAS JURISDICTION TO GRANT THE REQUESTED RELIEF.

A. Plaintiff's FOIA Claim is Ripe For Adjudication.

The FOIA confers jurisdiction on this Court, upon the filing of a complaint, “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld . . .” 5 U.S.C. § 552(a)(4)(B). A requester is deemed to have exhausted its administrative remedies “if the agency fails to comply with the applicable time limit provisions of this paragraph.” 5 U.S.C. § 552(a)(6)(C). See Oglesby v. Dep’t of the Army, 920 F.2d 57, 62 (D.C. Cir. 1990) (“If the agency has not responded within the statutory time limits, then . . . the requester may bring suit.”).

In this case, although the OA agreed to “expedite” the processing of CREW’s requests, it failed to respond within even the generally applicable 20-working-day time limit for non-expedited requests mandated by 5 U.S.C. § 552(a)(6)(A). Accordingly, plaintiff’s claim is ripe for adjudication.

B. Preliminary Injunctive Relief to Compel Defendant’s Expedited Processing of Plaintiff’s FOIA Request is Appropriate and Well Within the Court’s Jurisdiction.

Numerous courts in this district have recognized the general availability of injunctive relief to compel expedited processing of FOIA requests. Long v. Dep’t of Homeland Security, 436 F.Supp. 2d 38 (D.D.C. 2006) (denying injunctive relief in FOIA case after considering request under four-factor preliminary injunction test); Electronic Privacy Info. Ctr. v. U.S. Dep’t of Justice, 416 F.Supp. 2d 30, 35 (D.D.C. 2006) (“EPIC”) (granting preliminary injunction); Al-Fayed v. CIA, 2000 WL 34342564, at *6 (D.D.C.) (denying injunction after considering request

under four-factor preliminary injunction test), *aff'd* 254 F.3d 300 (D.C. Cir. 2001); Aguilera v. FBI, 941 F.Supp. 144, 152-53 (D.D.C. 1996) (granting preliminary injunction and ordering expedited release of documents).

In those cases, as here, the plaintiff was asserting a statutory entitlement to expedited review of its FOIA request based on the statutory prerequisite that the plaintiff had a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E). In considering the requests for preliminary injunctive relief, the courts determined that it was well within their inherently broad equitable powers “to prevent agency delay, even when exercise of such authority is preliminary in nature.” EPIC, 416 F.Supp. 2d at 36 n.4. Indeed, in the context of a non-expedited FOIA request, the D.C. Circuit has recognized that “unreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent [such] abuses.” Payne Enters. v. U.S., 837 F.2d 486, 494 (D.C. Cir. 1988), *quoted in* EPIC, 416 F.Supp. 2d at 35. Where, as here, a plaintiff is claiming entitlement to expedited treatment the words of the Payne court have even greater force.

That preliminary injunctive relief is an appropriate form of relief in a FOIA case is highlighted by the language of the FOIA itself, which mandates that FOIA cases “take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.” 5 U.S.C. § 552(a)(3). See also Renegotiation Bd. v. Bannerkraft Clothing Co., Inc., 415 U.S. 1, 13 (1974) (acknowledging that under section 552 “the FOIA suit generally is to take precedence on the court’s docket and is to be expedited on the calendar”).

Under this clear statutory and judicial authority, this Court has jurisdiction to consider

CREW's request for a preliminary injunction.

II. CREW IS ENTITLED TO A PRELIMINARY INJUNCTION.

A. Standards for Preliminary Injunctive Relief

This Circuit employs a four-part test to determine whether preliminary injunctive relief is warranted: (1) the plaintiff's likelihood of success on the merits; (2) irreparable injury to the plaintiff absent the requested relief; (3) harm to other interested parties; and (4) the public interest. Mova Pharm. Corp. v. Shalala, 140 F.3d 1060, 1066 (D.C. Cir. 1998), *quoting* CityFed Fin. Corp. v. Office of Thrift Supervision, 58 F.3d 738, 746 (D.C. Cir. 1995); *see also* EPIC, 416 F.Supp. 2d at 35-36; Bancoult v. McNamara, 227 F.Supp. 2d 144, 150 (D.C. Cir. 2002). These factors are balanced against each other on a sliding scale and a stronger showing on one factor can compensate for a weaker showing on another. CSX Transp., Inc. v. Williams, 406 F.3d 667 (D.C. Cir. 2005). "An injunction may be justified, for example, where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable injury." CityFed. Fin. Corp., 58 F.3d at 747.

B. CREW Has a Likelihood of Success on the Merits

There is no legitimate dispute here that CREW is entitled to expedited processing of its FOIA requests to the OA; the OA has already concluded administratively that CREW's requests meet the prerequisites for expedition. The only issue is whether, having granted CREW's request for expedition, the OA has in fact processed the requests in an expedited manner within the time-frame mandated by the FOIA. On this issue plaintiff is likely to prevail.

Amendments to the FOIA, enacted in 1996 as the Electronic Freedom of Information Act Amendments, require among other things that agencies provide for expedited processing of

FOIA requests in certain cases. 5 U.S.C. § 552(a)(6)(E). When an agency grants a request for expedited processing, it is statutorily obligated to process the request “as soon as practicable.” 5 U.S.C. § 552(a)(6)(E)(iii).

The legislative history to these amendments makes clear that while Congress did not impose a specific deadline on agencies to complete expedited processing, “its intent was to ‘give the request priority for processing *more quickly than otherwise would occur.*’” EPIC, 416 F.Supp. 2d at 38 (emphasis in original), *quoting* S. Rep. No. 104-272 at 17 (1996).

Although the OA has never promulgated regulations implementing the expedited processing requirements of the FOIA, its regulations provide that non-expedited FOIA requests are to be processed within 10 working days from receipt of the request. 5 C.F.R. § 2502.8. OA regulations permit the agency to take additional time where, *inter alia*, “[i]t is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request . . .” Id. at § 2502.8(a)(1). In such cases, however, the extended deadline “may not exceed 10 additional workdays.” Id. at § 2502.8(b).

When read together with FOIA’s expedited processing provisions, OA regulations make clear that any delay beyond 20 working days does not satisfy FOIA’s command that expedited requests be processed “as soon as practicable.” As the court reasoned in EPIC, “[i]nterpreting FOIA to allow the agency *more* time than that provided in situations involving standard FOIA requests neither hastens the release of information nor does it allow for processing ‘more quickly than otherwise would occur.’” 416 F.Supp. 2d at 39 (emphasis in original). Having failed to process CREW’s request within the processing time OA regulations mandate for non-expedited requests, the OA clearly violated FOIA’s command that expedited requests be processed “as

soon as practicable.”

That the OA has failed to expedite its processing of CREW’s requests is also evident in the excuses it offered for not meeting its normal 10-day processing time. The OA characterized CREW’s request as seeking “an extensive list of records that span more than a six-year period.” Exhibit C to Complaint. As CREW pointed out in its responsive letter, however, this description is not accurate. CREW is not seeking “an ‘extensive list of records,’ but rather four discrete categories of records that are described with great particularity.” Exhibit D to Complaint. Equally fallacious is the OA’s description of the request as spanning a six-year period. To the contrary, two of CREW’s requested categories of documents “were prepared over a one-year period and the remaining two categories span only two years.” Id. Finally, the subject of the request is the discrete issue of “the White House’s loss of over five million email from its email system.” Id. Mischaracterizing the nature of CREW’s requests will not excuse the OA’s failure to process those requests as soon as practicable.

The OA also failed to comply with its own regulations that require the agency, when exceeding the 10-day processing time, to indicate “the date by which a determination will be forthcoming” (but not to exceed “10 additional workdays”). 5 C.F.R. § 2502.8(b). The OA gave no such time and, instead, demanded that CREW either limit the scope of its request or “arrange an alternate time frame to process these records.” Exhibit C to Complaint. This unauthorized approach is more likely the product of a reluctant agency fearful of releasing documents that will cast it and the administration in a poor light and subject it to even greater congressional and public scrutiny. This, however, is not an acceptable reason for failing to fulfill its promise of expedition.

The government may argue, as it has in the past, that by granting plaintiff's request for expedition and prioritizing its request over all others it has already fulfilled its obligations under the FOIA. See EPIC, 416 F.Supp. 2d at 41. As the court in EPIC properly found, "[t]his argument stretches the limits of plausibility." Id. Here, as in EPIC, what matters to CREW "is not how the requests are labeled by the agency, but rather when the documents are actually released." Id.

On the basis of this record it is clear that plaintiff has a substantial likelihood, if not a certainty, of prevailing on the merits of its claim that the defendant has failed to expedite CREW's FOIA request.

C. Plaintiff Will Suffer Irreparable Injury Absent the Requested Injunctive Relief

Unless the Court immediately enjoins the OA from failing to comply with its obligations to expedite its processing of plaintiff's FOIA requests, plaintiff will suffer irreparable injury. The very essence of the right plaintiff seeks to vindicate through this action -- expedited processing -- depends upon the agency's timeliness. As the courts have recognized, where "time is of the essence" preliminary injunctive relief is appropriate. See, e.g., U.S. v. BNS, Inc., 838 F.2d 456, 465 (9th Cir. 1988); Martin-Marietta Corp. v. Bendix Corp., 690 F.2d 558, 568 (6th Cir. 1982).

There can be no question that time is of the essence here, where plaintiff is seeking expedited processing based on the "urgency to inform the public concerning actual or alleged Federal Government activity," 5 U.S.C. § 552(a)(6)(D)(v)(II,) and the OA has already concluded that CREW's request satisfies this requirement and accordingly merits expedition. See also EPIC, 416 F.Supp. 2d at 40. As Congress recognized in enacting the FOIA, "delay in complying

with FOIA requests is ‘tantamount to denial.’” EPIC, *supra* at 40, *quoting* H.R. Rep. No. 93-876 at 6 (1974). These concerns are heightened where expedition is being sought, as the value of stale information diminishes significantly with the passage of time. EPIC, 416 F.Supp. 2d at 41.

The very reason that CREW sought expedition is because of the significant public interest in the unfolding story of the White House’s record-keeping practices and the degree to which it ignored, if not outright violated, federal records laws. The public, as well as the congressional committees considering these matters, need to learn the true facts underlying the five million or more missing email from the EOP record-keeping systems that span a critical two and one-half year period, particularly when viewed against the use by top White House officials of outside email accounts to avoid creating records subject to preservation laws. Through these practices the public is being deprived of a significant body of historical evidence that belongs ultimately to the public.

Under these circumstances, there can be no question that without a preliminary injunction directing the OA to process plaintiff’s FOIA request on an expedited basis, plaintiff will lose altogether its statutory rights on a time-sensitive issue of great public interest. The essence of plaintiff’s statutory entitlement to expedition will be lost “[u]nless the requests are processed without delay.” EPIC, 416 F.Supp. 2d at 41.

D. An Injunction Will Not Harm the Interests of Others

Requiring the OA to comply with the law will not impose a burden on the government. The injunctive relief CREW seeks requires nothing more than that the OA fulfill its obligation to expedite its processing of CREW’s FOIA requests.

Moreover, given the relatively small FOIA caseload of the OA and the fact that it handles

few, if any expedited requests, the requested injunction will not impose an undue burden on the OA. The OA's statistics indicate that for Fiscal Year 2006 it processed only four requests on an expedited basis, and in two of the last six years it processed no requests on an expedited basis.¹ As the court in EPIC recognized under similar circumstances, requiring expedition "should not be unduly burdensome to [the agency] and should not cause any delay to other expedited FOIA requests." 416 F.Supp. 2d at 41.

E. The Public Interest Favors the Requested Relief

As the D.C. Circuit has recognized, "there is an overriding public interest . . . in the general importance of an agency's faithful adherence to its statutory mandate." Jacksonville Port Auth. v. Adams, 556 F.2d 52, 59 (D.C. Cir. 1977), *quoted in EPIC*, 416 F.Supp. 2d at 42. This is no more important than in the context of the FOIA, which has as one of its core purposes "shedding light on an agency's performance of its statutory duties." Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 733 (1989), *quoted in EPIC, supra*. And here, where there is great public and media interest in the record-keeping practices of the White House, the public interest is "particularly well-served by the timely release of the requested documents." EPIC, supra. In short, the public interest favors the issuance of an order directing defendant OA to immediately process and release the requested information.

¹ See Office of Administration FOIA Annual Reports (Fiscal Years 2006, 2004, 2001). These statistics, submitted annually, are available at <http://www.whitehouse.gov/oa/foia/index.html>. For the Court's convenience, copies are attached as Exhibit 11.

III. THE COURT SHOULD ORDER THE OA TO PROCESS PLAINTIFF'S FOIA REQUESTS IMMEDIATELY.

Although preliminary injunctive relief is not the norm in FOIA cases, it is plainly appropriate and necessary here to give meaning to the statute's expedited processing provisions. Through the FOIA Congress required agencies to act on requests for expedited processing within 10 calendar days, 5 U.S.C. § 552(a)(6)(E)(ii)(I), and provided for immediate judicial review of adverse determinations, 5 U.S.C. § 552(a)(6)(E)(iii). Courts have recognized the corresponding need to act quickly to vindicate the right to expedition. See, e.g., American Civil Liberties Union v. Dep't of Justice, 321 F.Supp. 2d 24, 28-29 (D.D.C. 2004) (exhaustion of administrative remedies not a prerequisite to judicial review of agency expedition decision).

Given this context, the entry of a preliminary injunction here compelling the OA to process CREW's FOIA requests immediately is both necessary and appropriate. CREW satisfies the four prerequisites for the entry of a preliminary injunction. First, because the OA has not even satisfied the time restrictions that apply to standard FOIA requests, CREW has a likelihood of success on the merits. Second, CREW will lose forever its right to timely release of the requested documents if its FOIA requests are not processed immediately. Third, the entry of injunctive relief would serve the public's compelling interest in and need for the requested documents, while doing no harm to any interest of the government.

Finally, the requested documents will shed light on a serious question of possible government malfeasance and illegality. It is troubling to say the least that the OA has not only failed to satisfy its legal mandate to expedite CREW's requests, but has attempted to justify its delay by gross mischaracterizations of those requests. Through the entry of a preliminary injunction this Court can hold the OA responsible for fulfilling its obligations to CREW and the

public.

Under these circumstances, the Court should direct the agency to immediately process CREW's requests and to produce all non-exempt, responsive records within 10 days.

CONCLUSION

For the foregoing reasons, CREW's request for a preliminary injunction should be granted. CREW also requests that, pursuant to Local Rule 65.1(d), the Court schedule a hearing on this motion at the Court's earliest convenience.

Respectfully submitted,

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