

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

CITIZENS FOR RESPONSIBILITY AND)
 ETHICS IN WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 U.S. DEPARTMENT OF HOMELAND)
 SECURITY, et al.,)
)
 Defendants.)

Civil No. 1:06cv01912 (RMU)

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S SECOND
MOTION FOR EXTENSION OF TIME**

Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) hereby opposes the second motion for an extension of time to respond to plaintiff’s complaint filed by the U.S. Department of Homeland Security (“DHS”). As grounds for its opposition, plaintiff states as follows.

This case concerns a complaint CREW filed on November 9, 2006, against DHS and Allen Weinstein in his official capacity as Archivist of the United States. CREW’s complaint was based on DHS’s failure to fulfill plaintiff’s request, made under the Freedom of Information Act (“FOIA”), for documents relating to any visits that specified individuals made to the White House or the residence of the vice president between January 1, 2001, to the present. Complaint, ¶1. The complaint also alleges that DHS’s record-keeping guidelines and directives are arbitrary, capricious, and contrary to the Federal Records Act (“FRA”) because they fail to ensure preservation of all Worker and Visitor Entry System (“WAVES”) records and other visitor records. *Id.* at ¶2. Plaintiff seeks declaratory and injunctive relief, including an

injunction requiring the Archivist to fulfill his mandatory statutory duty to notify Congress and to request the Attorney General to initial legal action to ensure that DHS complies fully with its obligations under the FRA and to ensure the recovery of copies of WAVES and other visitor records that the Secret Service, a component of DHS, has transferred to the White House after deleting the agency's copies. Id.

This complaint was assigned to this Court as a related case to The Washington Post v. Dep't of Homeland Security, Civil No. 06-1737 (RMU). The Washington Post also involved a request of the Secret Service for specified records of visits to the Office of the Vice President. At the time CREW filed its complaint, The Washington Post was before the U.S. Court of Appeals for the D.C. Circuit based on the government's appeal of this Court's entry of a preliminary injunction, and CREW had also filed suit against DHS based on another FOIA request for Secret Service visitor records, CREW v. U.S. Dep't of Homeland Security, Civil No. 06-0083 (JGP) ("CREW v. DHS").¹

On December 1, 2006, defendants sought an extension of time to respond to the FOIA count in this case, asking that their time be extended to coincide with the answer date for the non-FOIA counts, or January 12, 2007. The Court granted the request, which gave the government a total of 60 days in which to respond to CREW's complaint.

Now, days before that deadline, the government is seeking yet another extension of three weeks, or until February 2, 2007, to respond to the Complaint. If defendants are granted this extension, DHS would have a full 81 days in which to respond to CREW's FOIA claims.

¹ When CREW filed its complaint here it filed a related case designation noting the pendency of both cases.

According to the government, it needs the additional time because it is preparing a summary judgment motion that will require “a significant degree of coordination between the Secret Service and the White House and OVP.” Defendants’ Motion for Extension of Time and Memorandum of Points and Authorities in Support Thereof (Ds’ 2nd Mem.”), p. 2. In particular, the government alleges that it needs more time “to prepare the necessary declaration or declarations.” Id.

The government’s second request for an extension is not justified and should be denied. The issues raised in CREW’s complaint already have been well developed; in The Washington Post case alone the government has filed multiple briefs both before this Court and the D.C. Circuit that included multiple declarations from individuals within the White House and the Secret Service.² Likewise, the government has filed dispositive motions on the merits of CREW’s claims in CREW v. DHS that included multiple declarations. Simply stated, the government has had ample time to prepare a response and has been aided by the significant labors of numerous other government attorneys.

Moreover, CREW and the public will be harmed by any further delay. At the heart of the complaint is the concern that, absent judicial interference, the defendants will continue their unlawful policy of destroying agency records. Just as troubling is the apparent policy of DHS to treat all of their records of White House visits as not subject to the FOIA, thereby depriving CREW and the public of a valuable piece of historical evidence.³

² Today *The Washington Post*, with the consent of the government, filed a voluntary dismissal of its action.

³ This “apparent” policy is based on the position DHS has taken in The Washington Post. Here, by contrast, the government has not responded in any way to CREW’s request for

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