



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

IN REPLY REFER TO:
7202.4-DOI-OS-2020-002250
7202.4-DOI-OS-2021-000590
7202.4-DOI-OS-2021-000594

January 27, 2021

Via email: nsus@citizensforethics.org

Nikhel S. Sus
Citizens for Responsibility and Ethics in Washington
1101 K Street, N.W., Suite 201
Washington, D.C. 20005

Re: 1:20-cv-02960 (Citizens for Responsibility and Ethics in Washington)

Dear Mr. Sus:

This communication concerns the FOIA lawsuit captioned as *CREW v. U.S. Dep't of the Interior*, No. 20-cv-02960 (D.D.C.). As we understand matters, the requests at issue in the lawsuit are FOIA requests tracked as:

- DOI-OS-2020-002250 (Records regarding “Protecting our National Parks, Public Lands for Future Generation” video)
- DOI-OS-2021-000590 (Records regarding “President Trump’s Conservation Record” or “Trump Administration Conservation Record” video)
- DOI-OS-2021-000594 (Office of Communications records regarding the use of @realDonaldTrump Twitter handle)

At this time, enclosed please find a partial release consisting of one (1) file in response to DOI-OS-2020-002250 consisting of three pages and one (1) file in response to DOI-OS-2021-000594 consisting of 19 pages. This release is being made from 501 pages that were initially reviewed in this period from request DOI-OS-2020-002250, none of which were found to be responsive. The three pages with respect to DOI-OS-2020-002250 that were identified for consultation during December’s review are being released in full. There were 20 pages reviewed in response to DOI-OS-2021-000594 for this period. Of the 20 pages reviewed in response to DOI-OS-2021-000594 during this period, 12 pages are undergoing consultation with the Office of the Solicitor and eight pages are being released in part. Finally, the 11 pages

Mr. Nikhel Sus

with respect to DOI-OS-2021-000594 that were identified for consultation during December's review are now being released in full.

Portions of these materials are being withheld under the following FOIA Exemptions.

Exemption 5

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency." [5 U.S.C. § 552\(b\)\(5\)](#). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. We are withholding one page in part under Exemption 5 because it qualifies to be withheld both because it meets the Exemption 5 threshold of being inter-agency or intra-agency and under the following privilege:

Attorney-Client Privilege

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information.

The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients related to legal matters for which the client sought professional legal assistance and services. Additionally, the Office of the Secretary employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the Office of the Secretary has held this information confidential and has not waived the attorney-client privilege.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Michele Dearing, Attorney-Advisor, in the Office of the Solicitor, was consulted in reaching this decision. Should you have concerns about our production, we will timely communicate

Mr. Nikhel Sus

through our attorney of record, John Truong of the U.S. Attorney's Office,
john.truong@usdoj.gov.

Sincerely,

Wendy Schumacher
Office of the Secretary
FOIA Office

cc: John Truong, Assistant U.S. Attorney

Electronic Enclosure