

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

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
1101 K Street, NW, Suite 201
Washington, DC 20005,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR,
1849 C Street, NW
Washington, DC 20240,

Defendant.

Civil Action No. 20-2960-RBW

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) challenges the failure of Defendant U.S. Department of the Interior (“Interior”) to release records relating to the agency’s repeated use of government resources to promote President Trump and his re-election campaign.

2. CREW seeks declaratory relief that Interior is in violation of FOIA, and injunctive relief requiring Interior to immediately process and release the requested records.

Jurisdiction and Venue

3. This Court has subject-matter jurisdiction and personal jurisdiction under 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

5. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of its research, CREW uses government records made available to it under the FOIA.

6. Defendant Interior is an agency within the meaning of 5 U.S.C. § 552(f). Interior has possession, custody, and control of records responsive to CREW's FOIA requests.

Factual Background

Interior's August 5, 2020 Propaganda Video and CREW's August 27, 2020 FOIA Request (Tracking No. DOI-OS-2020-002250)

7. In August 2020, Interior released a video entitled "Protecting our National Parks, Public Lands for Future Generations" (the "Video"), posting it to YouTube, Facebook, and other platforms on August 5,¹ and to Interior's website on August 6.²

8. The video serves no discernible governmental purpose relating to Interior's mission, and instead appears to be designed solely to promote President Trump amid the ongoing presidential campaign.

9. By using taxpayer funds to create what looks like a campaign ad for President Trump, Interior officials may have violated the Antideficiency Act and provisions of

¹ See <https://youtu.be/he1DMsqEi6I>;
<https://www.facebook.com/watch/?v=759596168193731&extid=stkwawqzZ8h2dyvY>.

² See <https://www.doi.gov/video/protecting-our-national-parks-public-lands-future-generations>.

appropriations law barring the unauthorized use of appropriated funds “for publicity or propaganda purposes.” See Walter Shaub, Trump Propaganda Video Featuring the National Park Service Violates the Law, *CREW*, Aug. 24, 2020, <https://www.citizensforethics.org/national-park-service-trump-propaganda-video/>.

10. The video also appears to be part of a broader pattern of President Trump utilizing Interior and the National Park Service (“NPS”) for improper political purposes. See Linnaea Honl-Stuenkel, It’s Not Just USPS: Trump is Hijacking the Park Service to Boost his Re-election, Too, *CREW*, Aug. 25, 2020, <https://www.citizensforethics.org/its-not-just-usps-trump-is-hijacking-the-park-service-to-boost-his-re-election-too/>.

11. An Interior spokesman reportedly confirmed that Interior’s ethics office and legal counsel approved the Video, but provided no explanation of the basis for that approval.

12. To help answer questions about these issues, CREW submitted a FOIA request to Interior on August 27, 2020, seeking four categories of records:

1. Records sufficient to show the total costs of developing, producing, and disseminating the video entitled “Protecting our National Parks, Public Lands for Future Generations,” which was posted on Interior’s website at <https://www.doi.gov/video/protecting-our-national-parks-public-lands-future-generations> on August 6, 2020 (the “Video”). This request includes without limitation all receipts, invoices, and other records reflecting expenditures relating to the Video.
2. Records sufficient to identify the source(s) of funds Interior expended to develop, produce, and disseminate the Video.
3. Any final opinions, guidance, decisions, memoranda, or analyses issued by officials within Interior’s Departmental Ethics Office, the Office of the Solicitor, or the Office of Budget regarding the expenditure of government funds on the Video, including without limitation any analysis of whether such expenditures were consistent with the Antideficiency Act and applicable appropriations laws.
4. All external communications between Interior officials and any individual outside of the agency, including both governmental and private parties, relating to the development, production, or dissemination of the Video.

13. CREW's request sought a fee waiver, explaining as follows: "The requested records would shed light on the total amount of taxpayer funds Interior expended on the Video, the source of those funds, whether agency ethics and legal officials in fact approved creation of the Video as well as the rationale for that approval, and communications with external parties regarding the Video. Because these records could shed light on violations of federal law by agency officials, the public has a compelling interest in their disclosure."

14. CREW's request also sought expedited processing, based on its "compelling need" to obtain the requested records.

15. By letter dated September 11, 2020, Interior acknowledged receipt of CREW's FOIA request, assigned it control number DOI-OS-2020-002250, and granted CREW's requests for a fee waiver and expedited processing.

16. By letter dated September 25, 2020, Interior invoked a 10-workday extension.

17. By email dated October 12, 2020, CREW asked Interior for an update on the status of CREW's request, and asked that Interior prioritize processing Part 1 of the request.

18. By letter dated October 13, 2020, Interior informed CREW that it is "unable to make a determination on [CREW's] request" within statutory time limits.

19. By email dated October 14, 2020, Interior informed CREW that "[w]e are waiting on the program offices to send us all potentially responsive records for the request that you inquired about . . . Once we have those records, we can begin processing them."

20. The email added that Interior would "make a note for the processors that [CREW] would like part 1 of the [request] first, if possible."

21. To date, CREW has received no further communications from Interior regarding its FOIA request.

The NPS's Involvement in the RNC Fireworks Display and CREW's August 28, 2020 FOIA Request (Tracking No. DOI-NPS-2020-002257)

22. This year's Republican National Convention ("RNC") culminated in an elaborate fireworks display on the Washington Monument grounds, with fireworks spelling out "Trump 2020" over the National Mall. See Sophia Ankel, The RNC ended with a firework display over the Washington Monument spelling out 'TRUMP', *Business Insider*, Aug. 28, 2020, <https://www.businessinsider.com/last-night-rnc-ends-with-trump-fireworks-over-washington-monument-2020-8>.

23. The NPS, a component of Interior, approved the RNC fireworks display by permit issued August 24, 2020. See Elliot Henney, Park Service approves RNC request for fireworks on National Mall Thursday, *ABC7 WJLA*, Aug. 26, 2020, <https://wjla.com/news/local/rnc-fireworks-national-mall>.

24. Although the Republican National Committee reportedly agreed to reimburse the NPS for the costs of the display, a heavily redacted copy of the permit makes it unclear what those expenses are or how they will be calculated. See Rebecca Beitsch, Park Service under fire for role in GOP convention, *The Hill*, Aug. 27, 2020, <https://thehill.com/policy/energy-environment/513856-park-service-under-fire-for-role-in-gop-convention>.

25. To help answer questions about these issues, CREW submitted a FOIA request to the NPS on August 28, 2020, seeking five categories of records:

1. Records sufficient to show the total amount of government funds and resources expended in connection with the aerial fireworks display on the Washington Monument grounds hosted by the Republican National Convention ("RNC") on August 27, 2020, as approved by the National Park Service ("NPS") in Public Gathering Permit No. 20-1063, issued on August 24, 2020 (the "RNC Fireworks Display"). This request includes without limitation all receipts, invoices, timesheets, inventories, or other records reflecting such expenditures by NPS.

2. All records reflecting the terms of any agreement under which the RNC or any other party will reimburse the NPS for costs incurred as a result of the RNC Fireworks Display.
3. All communications regarding the RNC Fireworks Display between the NPS and the following: the RNC, President Trump, the White House (including any individual with an *.eop.gov email address), or the Office of the Secretary of the Interior.
4. All records reflecting any complaints, analysis, inquiries, opinions, or determinations regarding whether the federal government's involvement in the RNC Fireworks Display complied with applicable federal laws, including without limitation the Hatch Act.
5. All records reflecting any discussion of (1) either the RNC Fireworks Display or the video entitled "Protecting our National Parks, Public Lands for Future Generations," <https://www.doi.gov/video/protecting-our-national-parks-public-lands-future-generations> (posted August 6, 2020), and (2) President Trump's donation of his presidential salary to the NPS.

26. CREW's request sought a fee waiver, explaining that the requested records would shed light on matters of considerable public interest, including the "total amount of government funds expended on the RNC Fireworks Display, the terms of any reimbursement agreement with the RNC, whether the NPS communicated with the White House or other political appointees regarding the display, whether the NPS considered legal issues concerning the display (including its compliance with the Hatch Act), and whether the NPS engaged in any communications about the fireworks display or other activities designed to promote President Trump in connection with President Trump's donation of his presidential salary to the NPS."

27. On August 28, 2020, the NPS confirmed receipt of CREW's FOIA request, assigned it tracking number DOI-NPS-2020-002257, and granted CREW's request for a fee waiver.

28. By email dated August 28, 2020, the NPS informed CREW that it “will be conducting further searches for records responsive to your request,” and that CREW “should expect [the NPS’s] determination by October 13, 2020.”

29. By email dated October 13, 2020, CREW asked the NPS for an update on the status of its request.

30. The NPS responded the same day, stating, among other things, that “we have gathered the responsive material and conducted an initial survey to identify the quantity and nature of the records. However, we have not reached a final decision on whether responsive materials [are] exempt from release.”

31. To date, CREW has received no further communications from the NPS regarding its FOIA request.

Interior’s October 27, 2020 Propaganda Video and CREW’s November 3, 2020 FOIA Request (Tracking No. DOI-OS-2021-000590)

32. On October 27, 2020—just seven days before the presidential election—Interior released another promotional video for President Trump. The video was entitled “President Trump’s Conservation Record” on some platforms, and “Trump Administration Conservation Record” on others. The agency posted the video to Interior’s official YouTube, Facebook, and Instagram pages,³ as well as Secretary David Bernhardt’s official Twitter account.⁴

33. The video touts the “Trump Administration’s conservation record.” It includes several shots of the President and a series of quotes—none of which are attributed to any source—heaping praise on the Trump Administration’s actions. It closes with footage of the President stating, “We’re here today to celebrate our incredible record of natural [sic]

³ <https://www.youtube.com/watch?v=VLECGKY7PSA;>
[https://www.facebook.com/USInterior/videos/2400115553629426;](https://www.facebook.com/USInterior/videos/2400115553629426) [https://www.instagram.com/p/CG3OX18Bq8K/.](https://www.instagram.com/p/CG3OX18Bq8K/)

⁴ [https://twitter.com/SecBernhardt/status/1321174874426167297?s=20.](https://twitter.com/SecBernhardt/status/1321174874426167297?s=20)

conservation and environmental protection over the last four years. We've been working very hard to . . . re-commit ourselves to preserving the awesome majesty of God's great creation."

The closing shot shows Interior's official seal.

34. In response to press inquiries, Interior confirmed "its ethics office signed off on the video and Bernhardt's tweet promoting it," but declined to "provide copies of the written ethics guidance for the video or those governing their tweets."⁵

35. Because the video appears to be nothing more than a taxpayer funded campaign ad for President Trump, Interior's production and dissemination of the video may have violated the Hatch Act, a provision of appropriations law forbidding the use of federal funds "for publicity or propaganda purposes within the United States not heretofore authorized by Congress";⁶ the Antideficiency Act, 31 U.S.C. § 1341; and the Purpose Statute, 31 U.S.C. § 1301.

36. To help answer questions about these issues, CREW submitted a FOIA request to Interior on November 3, 2020, seeking six categories of records:

1. Records sufficient to show the total amount of government funds and resources used to develop, produce, and disseminate the video entitled "President Trump's Conservation Record" or "Trump Administration Conservation Record," which Interior and Secretary of the Interior David Bernhardt posted on official agency social media platforms on October 27, 2020 (the "Video"). This request includes without limitation all receipts, invoices, checks, and other records reflecting expenditures relating to the Video.
2. Records sufficient to identify the source(s) of funds Interior expended to develop, produce, and disseminate the Video.
3. Any final opinions, guidance, decisions, memoranda, or analyses issued by officials within the Office of the Secretary, the Departmental Ethics Office, the

⁵ Rebecca Beitsch, *Interior 'propaganda' video and tweets may violate ethics laws, experts say*, *The Hill*, <https://thehill.com/policy/energy-environment/523184-interior-propoganda-video-and-tweets-defending-it-may-violate>.

⁶ Consolidated Appropriations Act, 2020, Pub. L. 116-93, div. C, title VII, § 718, 133 Stat. 2317, 2488 (Dec. 20, 2019).

Office of the Solicitor, or the Office of Budget relating to the Video, including without limitation any such records addressing compliance with the Hatch Act, applicable appropriations laws, the Antideficiency Act, or the Purpose Statute.

4. All external communications between Interior officials and any individual outside of the agency, including both governmental and private parties, relating to the development, production, or dissemination of the Video.
5. All records relating to the following tweet of the Interior Press Secretary on October 27, 2020: “Our tweets are approved by career ethics attorneys and thankfully no longer overseen by you. @Interior increased the number ethics staff by 250% to remove the rotten stench from the blatant failure of the prior administration to invest in the ethics program.” This request includes without limitation any responsive records in the possession, custody, or control of Interior Press Secretary Ben Goldey. This request excludes external communications with any member of the media concerning the foregoing tweet that occurred after the tweet was posted.
6. Records sufficient to identify the agency official(s) who drafted and sent the Interior Press Secretary tweet described above in Part 5 of this request.

37. CREW’s request sought a fee waiver, explaining that “[t]he requested records would shed light on the total amount of taxpayer funds Interior expended on the Video, the source of those funds, whether agency ethics and legal officials in fact approved creation of the Video as well as the rationale for that approval, and other communications relating to the Video. Because these records could shed light on abuses of government funds and violations of federal law by agency officials, the public has a compelling interest in their disclosure.”

38. By email dated November 3, 2020, CREW received confirmation through FOIAonline that Interior had received its request, and assigned it tracking number DOI-OS-2021-000590.

39. By email dated November 18, 2020, CREW received confirmation through FOIAonline that Interior had granted its fee waiver request in full.

40. To date, CREW has received no further communications from Interior regarding its FOIA request.

Interior’s Office of Communications’ Instruction to Tag the @realDonaldTrump Twitter Handle in Official Agency Tweets and CREW’s November 3, 2020 FOIA Request (Tracking No. DOI-OS-2021-000594)

41. On October 21, 2020, a reporter disclosed a purportedly internal email from an official at the U.S. Geological Survey (“USGS”) describing a directive from Interior’s Office of Communications to “tweet about an op-ed” that cast the Trump Administration in a positive light, and to tag the President’s “@realDonaldTrump twitter handle.”⁷

42. The USGS official noted that this “was the second time we were told to use this handle,” and that he or she had “queried the legality of doing so under the Hatch Act and was given a clear and unambiguous ruling by the Office of the Solicitor” that it was legal. The official added that “Bureau leads have subsequently been told in clear terms by [the Office of Communications] that we should use [the President’s @realDonaldTrump Twitter] handle when requested.”

43. A review of USGS’s Twitter account shows that it did, in fact, tweet the favorable op-ed and tag the @realDonaldTrump account on October 16.⁸

44. To help answer questions about these issues, CREW submitted a FOIA request to Interior on November 3, 2020, seeking

all records from Interior’s Office of the Secretary, the Office of Communications, or Press Secretary Ben Goldey from January 1, 2020 to the date this request is processed reflecting any directive, instruction, guidance, request, or proposal to agency personnel to tag President Trump’s “@realDonaldTrump” Twitter handle in any tweet. This request includes without limitation any such records relating to the following October 16, 2020 tweet by the U.S. Geological Survey: “The @realDonaldTrump administration has made significant investments in science and technology to help state and local partners more effectively manage invasive species and diseases.”

⁷ Adam Federman (@adamfederman), Twitter, Oct. 21, 2020, <https://twitter.com/adamfederman/status/1318907396358656000?s=20>.

⁸ USGS (@USGS), Twitter, Oct. 16, 2020, <https://twitter.com/USGS/status/1317148492410871813?s=20>

45. CREW's request sought a fee waiver, explaining that "the requested records would shed light on whether Interior officials did in fact instruct agency personnel to tweet pro-Trump content and tag the President's @realDonaldTrump Twitter account—a non-official account that the President has long used for partisan political purposes, including to promote his reelection campaign. Because such a directive may violate the Hatch Act and other federal laws, the public has a compelling interest in the requested records' disclosure."

46. By email dated November 3, 2020, CREW received confirmation through FOIAonline that Interior had received its request, and assigned it tracking number DOI-OS-2021-000594.

47. By email dated November 18, 2020, CREW received confirmation through FOIAonline that Interior had granted its fee waiver request in full.

48. By email dated November 18, 2020, Interior asked CREW to "provide more information" regarding its request, "such [as] who within the Office of the Secretary, who within the Office of Communications, you would like searched, etc."

49. The same day, CREW responded to Interior's email by specifying agency officials likely to have responsive records.

50. By letter dated November 20, 2020, Interior confirmed receipt of both CREW's request and the additional information CREW provided on November 18, 2020.

51. To date, CREW has received no further communications from Interior regarding its FOIA request.

CREW's Claims for Relief

COUNT I

(Wrongful Withholding of Records Responsive to CREW's August 27, 2020 FOIA Request to Interior – Tracking No. DOI-OS-2020-002250)

52. CREW repeats and re-alleges the foregoing paragraphs.
53. In its August 27, 2020 FOIA request, CREW properly asked for records within the possession, custody, and control of Interior.
54. Interior has failed to conduct an adequate search in response to CREW's FOIA request.
55. Interior is wrongfully withholding records responsive to CREW's FOIA request.
56. By failing to timely release all requested records in full to CREW, Interior is in violation of FOIA.
57. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

COUNT II

(Wrongful Withholding of Records Responsive to CREW's August 28, 2020 FOIA Request to the NPS – Tracking No. DOI-NPS-2020-002257)

58. CREW repeats and re-alleges the foregoing paragraphs.
59. In its August 28, 2020 FOIA request, CREW properly asked for records within the possession, custody, and control of the NPS, a component of Defendant Interior.
60. The NPS has failed to conduct an adequate search in response to CREW's FOIA request.
61. The NPS is wrongfully withholding records responsive to CREW's FOIA request.
62. By failing to timely release all requested records in full to CREW, the NPS is in violation of FOIA.

63. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

COUNT III
(Wrongful Withholding of Records Responsive to CREW's November 3, 2020 FOIA Request to Interior – Tracking No. DOI-OS-2021-000590)

64. CREW repeats and re-alleges the foregoing paragraphs.

65. In its November 3, 2020 FOIA request, CREW properly asked for records within the possession, custody, and control of Interior.

66. Interior has failed to conduct an adequate search in response to CREW's FOIA request.

67. Interior is wrongfully withholding records responsive to CREW's FOIA request.

68. By failing to timely release all requested records in full to CREW, Interior is in violation of FOIA.

69. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

COUNT IV
(Wrongful Withholding of Records Responsive to CREW's November 3, 2020 FOIA Request to Interior – Tracking No. DOI-OS-2021-000594)

70. CREW repeats and re-alleges the foregoing paragraphs.

71. In its November 3, 2020 FOIA request, CREW properly asked for records within the possession, custody, and control of Interior.

72. Interior has failed to conduct an adequate search in response to CREW's FOIA request.

73. Interior is wrongfully withholding records responsive to CREW's FOIA request.

74. By failing to timely release all requested records in full to CREW, Interior is in violation of FOIA.

75. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, CREW respectfully requests that this Court:

1. Order Interior to immediately and fully process CREW's FOIA requests and disclose all non-exempt records to CREW;
2. Issue a declaration that CREW is entitled to immediate processing and disclosure of the requested records;
3. Provide for expeditious proceedings in this action;
4. Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
5. Award CREW its costs and reasonable attorneys' fees in this action; and
6. Grant such other relief as the Court may deem just and proper.

Date: December 7, 2020

Respectfully Submitted,

/s/ Nikhel Sus

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