

**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 JUSTICE,
950 Pennsylvania Avenue, NW
Washington, DC 20530,

U.S. DEPARTMENT OF HOMELAND
SECURITY,
245 Murray Lane, SW
Washington, DC 20528,

U.S. DEPARTMENT OF DEFENSE,
1600 Pentagon 3E788
Washington, DC 20301-1600,

U.S. DEPARTMENT OF THE ARMY,
104 Army Pentagon
Washington, DC 20310-0104, and

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

Defendants.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking records relating to the January 6, 2021 insurrection at the U.S. Capitol from Defendants U.S. Department of Justice (“DOJ”), U.S. Department of Homeland Security (“DHS”), U.S. Department of

Defense (“DOD”), U.S. Department of the Army (“Army”), and U.S. Department of the Interior (“Interior”).

2. CREW seeks declaratory relief that Defendants have violated FOIA by failing to timely respond to CREW’s requests, and injunctive relief requiring Defendants 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 those efforts, CREW uses government records it obtains under FOIA.

6. Defendant DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Federal Bureau of Investigation (“FBI”) is a component of DOJ. DOJ has possession, custody, and control of records responsive to CREW’s FOIA requests.

7. Defendant DHS is an agency within the meaning of 5 U.S.C. § 552(f)(1). The U.S. Secret Service (“Secret Service”), the Federal Protective Service (“FPS”), and the Office of Intelligence & Analysis (“I&A”) are components of DHS. DHS has possession, custody, and control of records responsive to CREW’s FOIA request.

8. Defendant DOD is an agency within the meaning of 5 U.S.C. § 552(f)(1). DOD has possession, custody, and control of records responsive to CREW’s FOIA requests.

9. Defendant Army is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Army has possession, custody, and control of records responsive to CREW’s FOIA requests.

10. Defendant Interior is an agency within the meaning of 5 U.S.C. § 552(f)(1). The U.S. Park Police (“Park Police”) is a component of Interior. Interior has possession, custody, and control of records responsive to CREW’s FOIA request.

Factual Background

11. On January 6, 2021, a violent mob of Trump supporters stormed the U.S. Capitol Building to prevent Congress from certifying the results of the 2020 presidential election.¹

12. The horrific attack led to multiple deaths and injuries, defacement of government property, and removal of sensitive government records.² It is regarded as the most significant breach of the U.S. Capitol since the War of 1812.³

13. Soon after January 6, it became clear that the insurrection had been openly planned for weeks in advance, raising widespread concern about the government’s lack of security preparedness.⁴

¹ Associated Press Timeline of events at the Capitol, *Associated Press*, Jan. 6, 2021, <https://bit.ly/396br3O>.

² *Id.*

³ John Haltiwanger, The attempted coup by a pro-Trump mob was the most significant breach of the Capitol since the War of 1812, *Business Insider*, Jan. 6, 2021, <https://bit.ly/2OdsEka>.

⁴ Logan Jaffe, Capitol Rioters Planned for Weeks in Plain Sight. The Police Weren’t Ready, *ProPublica*, Jan. 7, 2021, <https://bit.ly/380QS8k>; W.J. Hennigan and Vera Bergengruen, Insurrectionists Openly Planned for Weeks to Storm the Capitol. Why Were Police So Easily Overwhelmed?, *Time*, Jan. 7, 2021, <https://bit.ly/3868eRc>; Ben

14. The U.S. Capitol Police officers' labor union has called this "lack of planning" by various agencies a "failure of leadership at the very top."⁵

15. To help answer questions about these issues, CREW submitted FOIA requests on January 8, 2021 to DOJ, the FBI, DOD, and the Army. On January 10, 2021, CREW submitted another set of FOIA requests to DOJ, the FBI, DOD, the Army, DHS, and the Park Police.

January 8, 2021 FOIA Requests to DOJ, FBI, DOD, and the Army

16. On January 8, 2021, CREW submitted four materially identical FOIA requests to DOJ, the FBI, DOD, and the Army seeking the following:

1. All records from December 1, 2020 to January 6, 2021 relating to securing the U.S. Capitol Building during the January 6, 2021 congressional session to count electoral votes.
2. All records from December 1, 2020 to January 6, 2021 reflecting any request by the U.S. Capitol Police for assistance or support to secure the U.S. Capitol Building during the January 6, 2021 congressional session to count electoral votes, and any response to such requests.
3. All records from December 1, 2020 to January 6, 2021 reflecting any offer by the [Defendant agencies] to provide assistance or support to U.S. Capitol Police to secure the U.S. Capitol Building during the January 6, 2021 congressional session to count electoral votes, and any response to such offers.

17. Each of CREW's requests sought expedited processing and a fee waiver.

18. On January 8, 2021, CREW received confirmation through FOIA.gov that the Army had received CREW's request, and was provided the confirmation ID 184816.

Collins and Brandy Zadrozny, Extremists made little secret of ambitions to 'occupy' Capitol in weeks before attack, *NBC News*, Jan. 8, 2021, <https://nbcnews.to/2NU5M9q>; David Ignatius, Why weren't officials at the Capitol more prepared for this insurrection?, *Washington Post*, Jan. 6, 2021, <https://wapo.st/3rcg4js>.

⁵ John Henry (@JohnHenryWUSA), Twitter (Jan. 7, 2021), <https://bit.ly/3igysEa>.

19. By letter dated January 14, 2021, DOD acknowledged receipt of CREW's request, assigned it tracking number 21-F-0403, granted CREW's request for expedited processing, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

20. By letter dated January 14, 2021, DOJ acknowledged receipt of CREW's request, assigned it tracking number FOIA-2021-00559, granted CREW's request for expedited processing, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

21. By letter dated January 21, 2021, the FBI acknowledged receipt of CREW's request, assigned it tracking number FOIPA Request No. 1486993-000, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

22. By letter dated February 4, 2021, the FBI granted CREW's request for expedited processing.

23. To date, CREW has received no other communications from Defendants regarding its January 8, 2021 FOIA requests.

January 10, 2021 FOIA Request to DOJ

24. On January 10, 2021, CREW submitted a FOIA request to DOJ seeking the following:

1. All records from December 1, 2020 to January 6, 2021 reflecting any plans for demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021 that were identified by the DOJ or other agencies through social media monitoring, threat assessments, or other means.
2. All records from December 1, 2020 to January 6, 2021 reflecting any tips, complaints, referrals, allegations, or reports submitted to the DOJ regarding planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.

3. All records from December 1, 2020 to January 6, 2021 reflecting the DOJ's communication to other agencies—including without limitation the U.S. Capitol Police, the D.C. Metropolitan Police Department, the Department of Defense, or the Department of Homeland Security—of the risks or threats posed by planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
4. All records from December 1, 2020 to January 6, 2021 relating to the DOJ providing assistance or support to the D.C. Metropolitan Police Department or any other agency in connection with the January 6, 2021 congressional session to count electoral votes.
25. CREW's request sought expedited processing and a fee waiver.
26. By letter dated January 15, 2021, DOJ acknowledged receipt of CREW's request, assigned it tracking number FOIA-2021-00561, granted CREW's request for expedited processing, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."
27. To date, CREW has received no other communications from DOJ regarding its January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to the FBI

28. On January 10, 2021, CREW submitted a FOIA request to the FBI seeking the following:
 1. All records from December 1, 2020 to January 6, 2021 reflecting any plans for demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021 that were identified by the FBI or other agencies through social media monitoring, threat assessments, or other means.
 2. All records from December 1, 2020 to January 6, 2021 reflecting any tips, complaints, referrals, allegations, or reports submitted to the FBI regarding planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
 3. All records from December 1, 2020 to January 6, 2021 reflecting the FBI's communication to other agencies—including without limitation the U.S. Capitol Police, the D.C. Metropolitan Police Department, the Department

of Defense, or the Department of Homeland Security—of the risks or threats posed by planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.

4. All records from December 1, 2020 to January 6, 2021 relating to the FBI providing assistance or support to the D.C. Metropolitan Police Department or any other agency in connection with the January 6, 2021 congressional session to count electoral votes.
29. CREW's request sought expedited processing and a fee waiver.
30. By letter dated January 21, 2021, the FBI acknowledged receipt of CREW's request, assigned it tracking number FOIPA Request No. 1486993-000, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."
31. By letter dated February 4, 2021, the FBI granted CREW's request for expedited processing.
32. To date, CREW has received no other communications from the FBI regarding its January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to DOD

33. On January 10, 2021, CREW submitted a FOIA request to DOD seeking the following:
 1. All records from December 1, 2020 to January 6, 2021 relating to DOD, the National Guard, or the Army providing assistance or support to the D.C. Metropolitan Police Department in connection with the January 6, 2021 congressional session to count electoral votes.
 2. All records reflecting the parameters for the National Guard's deployment to D.C. on January 6, 2021, including any limitations imposed on the number of personnel deployed, their movement within the District, or their use of force.
 3. All communications with the D.C. Mayor's Office or the D.C. Metropolitan Police Department regarding the parameters for the National Guard's deployment to D.C. on January 6, 2021.

This request includes without limitation any responsive communications sent or received by Acting Secretary of Defense Christopher Miller, Chief of Staff to the Acting Secretary of Defense Kashyap Patel, or Assistant Secretary of Defense for Homeland Defense and Global Security Kenneth Rapuano.

34. CREW's request sought expedited processing and a fee waiver.

35. By letter dated January 14, 2021, DOD acknowledged receipt of CREW's request, assigned it tracking number 21-F-0408, granted CREW's request for expedited processing, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

36. By letter dated January 22, 2021, DOD stated that it was partially referring CREW's request to the U.S. National Guard Bureau for processing.

37. To date, CREW has received no other communications from DOD regarding its January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to the Army

38. On January 10, 2021, CREW submitted a FOIA request to the Army seeking the following:

1. All records from December 1, 2020 to January 6, 2021 relating to DOD, the National Guard, or the Army providing assistance or support to the D.C. Metropolitan Police Department in connection with the January 6, 2021 congressional session to count electoral votes.
2. All records reflecting the parameters for the National Guard's deployment to D.C. on January 6, 2021, including any limitations imposed on the number of personnel deployed, their movement within the District, or their use of force.
3. All communications with the D.C. Mayor's Office or the D.C. Metropolitan Police Department regarding the parameters for the National Guard's deployment to D.C. on January 6, 2021.

This request includes without limitation any responsive communications sent or received by Secretary of the Army Ryan McCarthy or Chief of Staff of the Army General James McConville.

39. On January 10, 2021, CREW received confirmation through FOIA.gov that the Army had received CREW's request, and was provided the confirmation ID 185206.

40. To date, CREW has received no other communications from the Army regarding its January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to DHS

41. On January 10, 2021, CREW submitted a FOIA request to DHS seeking the following:

1. All records from December 1, 2020 to January 6, 2021 reflecting any plans for demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021 that were identified by any DHS component—including without limitation the Office of Intelligence & Analysis (“I&A”) and the Federal Protective Service (“FPS”)—or other agencies through social media monitoring, threat assessments, or other means.
2. All records from December 1, 2020 to January 6, 2021 reflecting any tips, complaints, referrals, allegations, or reports submitted to any DHS component—including without limitation I&A and FPS—regarding planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
3. All records from December 1, 2020 to January 6, 2021 reflecting DHS's communication to other agencies—including without limitation the U.S. Capitol Police, the D.C. Metropolitan Police Department, the Federal Bureau of Investigation, the Department of Justice, or the Department of Defense—of the risks or threats posed by planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
4. All records from December 1, 2020 to January 6, 2021 relating to any DHS component—including without limitation I&A and FPS—providing assistance or support to the U.S. Capitol Police, the D.C. Metropolitan Police Department, or any other agency in connection with the January 6, 2021 congressional session to count electoral votes.

42. CREW's request sought expedited processing and a fee waiver.

43. By letter dated January 20, 2021, DHS acknowledged receipt of CREW's request, assigned it tracking number 2021-HQFO-00392, granted CREW's request for expedited processing, conditionally granted CREW's request for a fee waiver, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

44. DHS's January 20, 2021 letter noted that it was referring CREW's request to FPS, I&A, and the Secret Service for processing.

45. By letter dated January 21, 2021, DHS acknowledged receipt of CREW's request, assigned it tracking number 2021-FPFO-00060, granted CREW's request for expedited processing, conditionally granted CREW's request for a fee waiver, and invoked a 10-working day extension to its response deadline due to "unusual circumstances."

46. By letter dated January 21, 2021, the Secret Service acknowledged receipt of CREW's request, assigned it tracking number 20210320, and granted CREW's request for expedited processing.

47. By letter dated March 1, 2021, the Secret Service noted it had completed its search and located potentially responsive records, but did not state that it had made any determination on releasing records to CREW.

48. On March 3, 2021, FPS issued a final response to CREW's request, releasing four pages in full and 81 pages in part, and withholding nine pages in full.

49. To date, CREW has received no other communications from DHS or its components regarding CREW's January 10, 2021 FOIA request.

January 10, 2021 FOIA Request to the Park Police

50. On January 10, 2021, CREW submitted a FOIA request to the Park Police seeking the following:

1. All records from December 1, 2020 to January 6, 2021 relating to the U.S. Park Police (“USPP”) providing assistance or support to the U.S. Capitol Police, the D.C. Metropolitan Police Department, or any other agency in connection with the January 6, 2021 congressional session to count electoral votes.
2. All records from December 1, 2020 to January 6, 2021 reflecting any plans for demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021 that were identified by the USPP or other agencies through social media monitoring, threat assessments, or other means.
3. All records from December 1, 2020 to January 6, 2021 reflecting any tips, complaints, referrals, allegations, or reports submitted to the USPP regarding planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.
4. All records from December 1, 2020 to January 6, 2021 reflecting the USPP’s communication to other agencies—including without limitation the U.S. Capitol Police, the D.C. Metropolitan Police Department, the Federal Bureau of Investigation, the Department of Justice, the Department of Defense, or the Department of Homeland Security—of the risks or threats posed by planned demonstrations, gatherings, disruptions, attacks, or riots in Washington, D.C. on January 6, 2021.

51. CREW’s request sought expedited processing and a fee waiver.

52. By email sent through foiaonline.gov on January 10, 2021, the Park Police acknowledged receipt of CREW’s request and assigned it tracking number DOI-NPS-2021-001744.

53. To date, CREW has received no other communications from the Park Police regarding its January 10, 2021 FOIA request.

CREW'S CLAIMS FOR RELIEF

COUNT I

**DOJ's Wrongful Withholding of Records Responsive to
CREW's January 8 and 10, 2021 FOIA Requests**

(DOJ Tracking Nos. FOIA-2021-00559 and FOIA-2021-00561)
(FBI FOIPA Request No. 1486993-000)

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

55. In its January 8, 2021 FOIA requests, CREW properly asked for records within the possession, custody, and control of DOJ and its component the FBI.

56. In its January 10, 2021 FOIA requests, CREW properly asked for records within the possession, custody, and control of DOJ and its component the FBI.

57. DOJ and the FBI are wrongfully withholding records responsive to CREW's FOIA requests.

58. DOJ and the FBI have failed to conduct adequate searches in response to CREW's FOIA requests.

59. By failing to timely release all requested records in full to CREW, DOJ and the FBI are in violation of FOIA.

60. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 8 and 10, 2021 FOIA requests to DOJ and the FBI.

COUNT II

**DHS's Wrongful Withholding of Records Responsive to
CREW's January 10, 2021 FOIA Request**

(DHS Tracking Nos. 2021-HQFO-00392 and 2021-FPFO-00060)
(Secret Service Tracking No. 20210320)

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

62. In its January 10, 2021 FOIA request, CREW properly asked for records within the possession, custody, and control of DHS and its components.

63. DHS and its components are wrongfully withholding records responsive to CREW's FOIA request.

64. DHS and its components have failed to conduct adequate searches in response to CREW's FOIA request.

65. By failing to timely release all requested records in full to CREW, DHS and its components are in violation of FOIA.

66. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 10, 2021 FOIA request to DHS.

COUNT III
DOD's Wrongful Withholding of Records Responsive to
CREW's January 8 and 10, 2021 FOIA Requests

(DOD Tracking Nos. 21-F-0403 and 21-F-0408)

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

68. In its January 8 and 10, 2021 FOIA requests, CREW properly asked for records within the possession, custody, and control of DOD and its components.

69. DOD and its components are wrongfully withholding records responsive to CREW's FOIA requests.

70. DOD and its components have failed to conduct adequate searches in response to CREW's FOIA requests.

71. By failing to timely release all requested records in full to CREW, DOD and its components are in violation of FOIA.

72. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 8 and 10, 2021 FOIA requests to DOD.

COUNT IV
The Army's Wrongful Withholding of Records Responsive to
CREW's January 8 and 10, 2021 FOIA Requests

(Army Tracking Nos. 184816 and 185206)

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

74. In its January 8 and 10, 2021 FOIA requests, CREW properly asked for records within the possession, custody, and control of the Army.

75. The Army is wrongfully withholding records responsive to CREW's FOIA requests.

76. The Army has failed to conduct an adequate search in response to CREW's FOIA requests.

77. By failing to timely release all requested records in full to CREW, the Army is in violation of FOIA.

78. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 8 and 10, 2021 FOIA requests to the Army.

COUNT V
Interior's Wrongful Withholding of Records Responsive to
CREW's January 10, 2021 FOIA Request

(Interior Tracking No. DOI-NPS-2021-001744)

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

80. In its January 10, 2021 FOIA request, CREW properly asked for records within the possession, custody, and control of Interior and its component the Park Police.

81. Interior and the Park Police are wrongfully withholding records responsive to CREW's FOIA request.

82. Interior and the Park Police have failed to conduct adequate searches in response to CREW's FOIA request.

83. By failing to timely release all requested records in full to CREW, Interior and the Park Police are in violation of FOIA.

84. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its January 10, 2021 FOIA request to Interior.

Requested Relief

WHEREFORE, CREW respectfully requests that this Court:

1. Order Defendants to immediately and fully process CREW's FOIA requests and disclose all non-exempt documents 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: March 4, 2021

Respectfully Submitted,

/s/ Nikhel S. Sus

Nikhel S. Sus

(D.C. Bar No. 1017937)

Laura C. Beckerman

(D.C. Bar No. 1008120)

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