



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

September 28, 2021

FOIA Officer  
U.S. Customs and Border Protection  
FOIA Division  
90 K Street NE  
Washington, DC 20229

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) submits this request for records to U.S. Customs and Border Protection (“CBP”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Homeland Security (“DHS”) regulations.

Specifically, CREW requests all records from January 1, 2021 to the date this request is processed relating to CBP’s deployment or use of the encrypted messaging app platform Wickr for official agency business, including without limitation the following records:

1. All records reflecting CBP’s operative records management requirements, policies, procedures, or technological specifications relating to the creation, maintenance, and preservation of federal records on Wickr, including policies or procedures for ensuring that federal records created by CBP personnel via Wickr are properly preserved in accordance with the Federal Records Act (“FRA”) and implementing regulations.
2. All records reflecting any discussion of Wickr’s “auto-burn” feature, through which messages are permanently deleted from a user’s device after a certain period of time.
3. All communications with the National Archives and Records Administration (“NARA”) relating to CBP’s deployment or use of Wickr.
4. All records reflecting any determination, analysis, or consideration by CBP, NARA, or any other agency of whether CBP’s use of Wickr complies with the FRA and implementing regulations.
5. Records sufficient to identify which Wickr product(s) CBP will deploy or use for official agency business.

The above request excludes agency records consisting solely of news articles, press clippings, and other publicly-available material, so long as the records include no accompanying discussion by agency officials.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, and anyone who was cc'ed or bcc'ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access these documents. Accordingly, because litigation reasonably is foreseeable, the agency should institute an agency-wide preservation hold on documents potentially responsive to this request.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A) and agency regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On September 28, 2021, Vice reported that CBP is “deploying encrypted messaging app platform Wickr across ‘all components’ of the organization, according to public procurement records.”<sup>1</sup> Wickr allows “users to send end-to-end encrypted messages and voice calls.” “The app also offers an auto-burn feature, where messages are deleted from a user’s device after a certain period of time, with the company claiming these messages ‘can never be uncovered.’”<sup>2</sup>

---

<sup>1</sup> Joseph Cox, *Customs and Border Protection to Use Encrypted App Wickr Widely*, *Vice*, Sept. 28, 2021, <https://www.vice.com/en/article/dyvmjm/customs-and-border-protection-cbp-wickr>.

<sup>2</sup> Joseph Cox, *Customs and Border Protection Paid \$700,000 to Encrypted App Wickr*, *Vice*, April 8, 2021, <https://www.vice.com/en/article/m7ammn/customs-border-protection-wickr-dhs>.

The FRA and its implementing regulations require CBP to adopt “effective controls” to ensure records documenting official agency business are properly maintained and preserved.<sup>3</sup> Given Wickr’s capability to auto-delete messages permanently, CBP’s widespread use of the platform to generate federal records raises questions about the agency’s compliance with the FRA. The requested records will shed light on this issue of substantial public interest.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW’s financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a “representative of the news media” and broadly interpreting the term to include “any person or organization which regularly publishes or disseminates information to the public”).

CREW routinely and systematically disseminates information to the public in several ways. CREW’s website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website.

Under these circumstances, CREW fully satisfies the criteria for a fee waiver.

### **Conclusion**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or [nsus@citizensforethics.org](mailto:nsus@citizensforethics.org). Also, if CREW’s request for a fee waiver is denied, please contact our office immediately upon making such a determination.

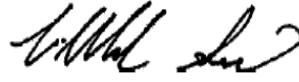
Where possible, please produce records in electronic format. Please send the requested records to me at either [nsus@citizensforethics.org](mailto:nsus@citizensforethics.org) or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 1101 K St., N.W., Suite 201, Washington, D.C. 20005.

---

<sup>3</sup> See 44 U.S.C. §§ 3101, 3102.

September 28, 2021  
Page 4

Sincerely,

A handwritten signature in black ink, appearing to read "Nikhel Sus". The signature is written in a cursive style with a large, sweeping flourish at the end.

Nikhel Sus  
Senior Counsel