

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

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
1331 F Street NW, Suite 900
Washington, DC 20004,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue NW
Washington, DC 20530,

Defendant.

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, against Defendant U.S. Department of Justice (“DOJ”) seeking records from DOJ’s Office of Professional Responsibility (“OPR”) relating to complaints of professional misconduct by federal judges.

2. CREW seeks declaratory relief that DOJ is in violation of FOIA, and injunctive relief requiring DOJ 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). OPR is a component of DOJ. DOJ has possession, custody, and control of the requested records.

Factual Background

7. Under DOJ policy, “[a]llegations that ... judges have committed misconduct shall be reported to OPR to determine whether to refer the allegation to appropriate disciplinary authorities. If OPR determines that a referral is appropriate, it will report the allegation to the disciplinary authority.”¹

8. OPR’s Annual Reports show that, between 2010 and 2021, OPR received several professional misconduct complaints against federal judges and referred some of those complaints to disciplinary bodies.²

¹ DOJ, Justice Manual § 1-4.340, “Reporting Allegations of Professional Misconduct Concerning Non-Department of Justice Attorneys or Judges,” <https://www.justice.gov/jm/jm-1-4000-standards-conduct#1-4.340>; *see also* OPR 2021 Annual Report at 28, <https://www.justice.gov/opr/page/file/1522161/download> (“OPR is responsible for determining whether the Department should refer allegations of possible professional misconduct by . . . members of the judiciary to state bar and judicial disciplinary authorities.”).

² *See* OPR Annual Reports (2005-2021), <https://www.justice.gov/opr/opr-annual-reports>.

9. For example, OPR’s 2021 Annual Report shows that between FY 2019 and 2021, the agency received nine complaints against members of the federal judiciary and referred four of those complaints to disciplinary authorities, as shown in the chart below:³

Complaints against Members of the Judiciary		
	Complaints	Referrals
FY 19	3	3
FY 20	4	1
FY 21	2	0

10. To help answer questions about these issues, CREW submitted two FOIA requests to OPR on January 20, 2022.

11. CREW’s first FOIA request sought “the following records from January 1, 2010 to the date this request is processed:

1. All complaints or other submissions to DOJ’s Office of Professional Responsibility (“OPR”) regarding possible professional misconduct by any U.S. Supreme Court Justice.
2. All referrals made by OPR to any judicial disciplinary authority, state bar, or any other external entity regarding possible professional misconduct by any U.S. Supreme Court Justice.
3. All OPR reports, conclusions, or findings relating to items 1 or 2 above.
4. All records relating to notifying any U.S. Supreme Court Justice about possible conflicts of interest or other matters potentially requiring their recusal or disqualification from a particular matter.
5. All OPR policies or procedures relating to notifying members of the judiciary about possible conflicts of interest or other matters potentially requiring their recusal or disqualification from a particular matter.”

12. CREW’s second FOIA request sought “the following records from January 1, 2010 to the date this request is processed:

³ OPR 2021 Annual Report at 30, <https://www.justice.gov/opr/page/file/1522161/download>.

1. All complaints or other submissions to DOJ's Office of Professional Responsibility ("OPR") regarding possible professional misconduct by any federal court of appeals judge, district court judge, magistrate judge, or bankruptcy judge.
 2. All referrals made by OPR to any judicial disciplinary authority, state bar, or any other external entity regarding possible professional misconduct by any federal court of appeals judge, district court judge, magistrate judge, or bankruptcy judge.
 3. All OPR reports, conclusions, or findings relating to items 1 or 2 above."
13. CREW's requests sought fee waivers.
14. OPR acknowledged receiving CREW's requests on January 20, 2022. It assigned the first request tracking number F22-00033 and the second request tracking number F22-00034.
15. By letters dated April 12, 2022, OPR denied both of CREW's FOIA requests. OPR stated it "does not maintain the type of records" requested and suggested (incorrectly) that OPR only has jurisdiction to review allegations involving DOJ attorneys.
16. On April 13, 2022, CREW administratively appealed OPR's determinations to DOJ's Office of Information Policy ("OIP") and requested that OPR conduct a new search. OIP assigned Appeal No. A-2022-01086 to Request No. F22-00033, and it assigned Appeal No. A-2022-01087 to Request No. F22-00034.
17. By letters dated May 25, 2022, OIP granted CREW's administrative appeals and remanded both requests to OPR to search for responsive records.
18. By emails dated September 9 and 15, 2022, CREW asked OPR for updates on the processing status of its requests.
19. By email dated September 30, 2022, OPR estimated it would not respond to CREW's requests until 2023.

20. To date, CREW has received no further communications from OPR regarding its FOIA requests.

CREW'S CLAIM FOR RELIEF

**OPR's Wrongful Withholding of Records
Responsive to CREW's FOIA Requests**

21. CREW repeats and re-alleges the preceding paragraphs.
22. In its January 20, 2022 FOIA requests, CREW properly asked for records within the possession, custody, and control of OPR, a component of DOJ.
23. OPR has failed to conduct an adequate search in response to CREW's requests.
24. OPR is wrongfully withholding records responsive to CREW's requests.
25. By failing to timely release all requested records in full to CREW, OPR is in violation of FOIA.
26. CREW has constructively exhausted its administrative remedies.
27. 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 DOJ to immediately and fully process CREW's FOIA requests and disclose all non-exempt records to CREW;
2. Declare 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: October 6, 2022

Respectfully Submitted,

/s/ Nikhel S. Sus

Nikhel S. Sus

(D.C. Bar No. 1017937)

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