

**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 20530-0001

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLATORY AND INJUNCTIVE 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 relating to states blocking DOJ’s deployment of election monitors to polling sites during the 2022 midterm elections.

2. DOJ violated FOIA by failing to respond to CREW’s November 9, 2022 FOIA request within the time period allotted by statute. 5 U.S.C. §§ 552(a)(6)(A)(i), (B)(i)-(iii). CREW requests declaratory relief that DOJ has violated 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). DOJ has possession, custody, and control of the requested records.

Factual Background

7. On November 7, 2022, DOJ announced plans to place personnel in 24 states, including Florida and Missouri, to monitor the November 8, 2022 general election for compliance with federal voting rights laws.¹

8. The Secretaries of State of Florida and Missouri rejected the DOJ's plan to station election monitors inside polling stations during the election.²

9. To shed light on how DOJ responded to the states' resistance to federal election oversight, as well as DOJ's policies and procedures for deploying election monitors where states

¹ "Justice Department to Monitor Polls in 24 States for Compliance with Federal Voting Rights Laws," DOJ, Office of Public Affairs, Nov. 7, 2022, <https://www.justice.gov/opa/pr/justice-department-monitor-polls-24-states-compliance-federal-voting-rights-laws>.

² Patricia Mazzei and Glen Thrush, *Florida's secretary of state is blocking federal monitors from entering polling sites*, New York Times, Nov. 8, 2022, <https://www.nytimes.com/2022/11/08/us/politics/florida-federal-voting-monitors.html>.

have objected to such deployments, CREW submitted a FOIA request to DOJ's Civil Rights Division on November 9, 2022.

10. CREW's FOIA request, attached as Exhibit 1, sought the following records from January 1, 2022 to the date this request is processed:

- a. "All records relating to the deployment of DOJ personnel to monitor elections in Florida, including but not limited to any responsive communications with Florida state, county, or local officials.
- b. All records relating to the deployment of DOJ personnel to monitor elections in Missouri, including but not limited to any responsive communications with Missouri state, county, or local officials.
- c. All records relating to the deployment of DOJ personnel to monitor elections in any state (other than Florida and Missouri) that declined to authorize or otherwise objected to the presence of DOJ election monitors at or near polling places, including but not limited to any responsive communications with state, county, or local officials.
- d. All DOJ policies, procedures, guidance, memoranda, or similar records concerning the deployment of DOJ election monitors to polling places where state, county, or local officials decline to authorize or otherwise object to the presence of DOJ election monitors at or near polling places."

11. CREW's request sought a fee waiver on the basis that this information is likely to contribute to the understanding of DOJ's operations and activities regarding enforcement of federal law and this information is not primarily in CREW's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii). Further, CREW sought a fee waiver on the basis that it qualifies as a member of the news media. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

12. In a response letter dated November 18, 2022, DOJ acknowledged receiving CREW's request on November 9, 2022 and assigned the request the tracking number 23-00036-F.

13. In this letter, DOJ asserted that due to a need "to examine a voluminous amount of records," DOJ would need the time to respond extended by ten days due to "unusual circumstances" under 5 U.S.C. § 552(a)(6)(B)(i)-(iii).

14. This extension changed DOJ's obligation to respond to CREW's FOIA request from 20 days to 30 days (excluding Saturdays, Sundays, and legal public holidays). 5 U.S.C. § 552(a)(6)(A)(i).

15. This 30-day deadline passed on December 22, 2022.

16. DOJ has not yet responded to CREW's November 9, 2022 FOIA request.

CREW'S CLAIM FOR RELIEF

**DOJ's Unlawful Withholding of Records
Responsive to CREW's FOIA Request**

17. CREW repeats and realleges the preceding paragraphs.

18. In its November 9, 2022 FOIA request, CREW properly asked for records within the possession, custody, and control of DOJ.

19. DOJ has failed to respond to CREW's request within the timeframe dictated by statute. 5 U.S.C. §§ 552(a)(6)(A)(i), (B)(i)-(iii).

20. DOJ is wrongfully withholding records responsive to CREW's request.

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

22. Because DOJ failed to timely respond to CREW's request, CREW has constructively exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

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

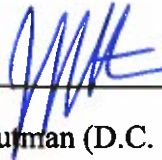
Requested Relief

WHEREFORE, CREW respectfully requests that this Court:

24. Order Defendant to immediately and fully process CREW's November 9, 2022 FOIA request and disclose all non-exempt records to CREW;
25. Issue a declaration that CREW is entitled to immediate processing and disclosure of the requested records;
26. Grant CREW's fee waiver request pursuant to 5 U.S.C. § 552(a)(4)(A);
27. Retain jurisdiction of this action to ensure that no agency records are wrongfully withheld;
28. Award CREW its costs and reasonable attorneys' fees in this action; and
29. Grant such other relief as the Court may deem just and proper.

Date: January 30, 2023

Respectfully Submitted,



Jeffrey Gutman (D.C. Bar No. 416954)
Holly Eaton (D.C. Bar No. 440702)
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/s/ Nikhel Sus

Nikhel Sus (D.C. Bar No. 1017937)
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EXHIBIT 1



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

November 9, 2022

Killian B. Kagle
FOIA/PA Branch
Civil Rights Division
4CON, Room 6.153
950 Pennsylvania Ave, N.W.
Washington, DC 20530
CRT.FOIArequests@usdoj.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") submits this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and U.S. Department of Justice ("DOJ") regulations.

Specifically, CREW requests the following records from January 1, 2022 to the date this request is processed:

1. All records relating to the deployment of DOJ personnel to monitor elections in Florida, including but not limited to any responsive communications with Florida state, county, or local officials.
2. All records relating to the deployment of DOJ personnel to monitor elections in Missouri, including but not limited to any responsive communications with Missouri state, county, or local officials.
3. All records relating to the deployment of DOJ personnel to monitor elections in any state (other than Florida and Missouri) that declined to authorize or otherwise objected to the presence of DOJ election monitors at or near polling places, including but not limited to any responsive communications with state, county, or local officials.
4. All DOJ policies, procedures, guidance, memoranda, or similar records concerning the deployment of DOJ election monitors to polling places where state, county, or local officials decline to authorize or otherwise object to the presence of DOJ election monitors at or near polling places.

1331 F St NW, Suite 900, Washington, DC 20004
info@citizensforethics.org 202.408.5565

CITIZENSFORETHICS.ORG

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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.

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). In the event 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).

Despite increased threats of voter intimidation and political violence across the country, state officials blocked DOJ election monitors from being deployed to polling sites in Florida and Missouri for the 2022 election.¹ The states' actions likely impeded the ability of DOJ's Civil Rights Division to monitor elections and protect federal voting rights in Florida and Missouri. The requested records will shed light on how DOJ responded to the states' resistance to federal election oversight, as well as DOJ's policies and procedures for deploying election monitors where states have objected to such deployments.

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

¹ Patricia Mazzei and Glen Thrush, *Florida's secretary of state is blocking federal monitors from entering polling sites*, New York Times, Nov. 8, 2022, <https://www.nytimes.com/2022/11/08/us/politics/florida-federal-voting-monitors.html>.

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documents it acquires from this request to the public through its website, 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 documents it receives under the FOIA on its website, which has been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully 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. Also, if CREW's request for a fee waiver is not granted in full, 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 or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 1331 F St. NW, Suite 900, Washington, D.C. 20004. Thank you for your assistance.

Sincerely,



Nikhel Sus
Senior Counsel