

February 18, 2025

Charlotte Luckstone  
FOIA Officer, Office of General Counsel  
United States Marshals Service  
Department of Justice  
CG-3 15th Floor  
Washington, DC 20530-1000

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 Department of Justice ("DOJ") regulations.

Specifically, CREW requests the following records from January 1, 2021 to January 1, 2022:

1. All documents and communications related to any formal or informal policies employed by the United States Marshals Service ("USMS," "Marshals Service") or other federal entities related to requiring or not requiring deputy marshals to disclose their vaccination status;
2. All communications between the U.S. Marshal for the Northern District of South Dakota and USMS headquarters concerning the decision to remove the prisoners from the courtroom of Judge Charles Kornmann on May 10, 2021; and
3. All documents and communications that mention, reference, or relate to the U.S. Marshal for the Northern District of South Dakota's compliance with May 10, 2021 scheduling orders or in-court direction by Judge Kornmann.

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 rights under FOIA. Accordingly, because litigation is reasonably foreseeable, the agency should institute an agencywide preservation hold on all 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 *id.* § 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).

The USMS is statutorily required to “consult with the Judicial Conference of the United States on a continuing basis regarding the security requirements for the judicial branch . . . to ensure that the views of the Judicial Conference regarding the security requirements . . . are taken into account . . .” 28 U.S.C. § 566(i). However, in some cases this obligation may come in conflict with policies of the Department of Justice. Such a conflict may have emerged in 2021 when, amidst the COVID pandemic, a deputy U.S. marshal refused to disclose her vaccination status to the presiding federal judge after he ordered disclosure. When the Marshal Service maintained resistance to the court’s order, the judge said that “[t]he Department of Justice, acting through the Marshals Service, has apparently adopted a public policy to the effect that DOJ policies may trump lawful federal court orders.”<sup>1</sup> This escalated to federal judge Charles Kornmann ordering the deputy to leave his courtroom. Deputies then removed the criminal defendants in their custody from the courthouse and returned them to jail, without first notifying the court, defense, or prosecution, causing their hearings to be delayed. Eventually, John Kilgallon, chief of staff for the U.S. Marshals Service; Daniel Mosteller, U.S. Marshal in South Dakota; and Stephen Houghtaling, chief deputy U.S. Marshal for South Dakota, were charged criminally with conspiracy to obstruct justice and contempt of court.<sup>2</sup>

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<sup>1</sup> Order Appointing Special Counsel, 1:21-CR-10023 (01), (02) AND (03)-CBK (D.S.D. June 29, 2021) [https://drive.google.com/file/d/1q7Zadd3EM243SLONXBr9965\\_jNwpEV2x/view](https://drive.google.com/file/d/1q7Zadd3EM243SLONXBr9965_jNwpEV2x/view).

<sup>2</sup> *Criminal charges filed against U.S. Marshal supervisors in vaccine dispute*, Defender Services Office Training Division (June 15, 2021), <https://www.fd.org/news/criminal-charges-filed-against-us-marshal-supervisors-vaccine-dispute>.

The judge in the final opinion dismissing the criminal contempt charges stated that the case involves the “exceptional case” of an open “dispute between the Marshals Service and a Federal District Court.”<sup>3</sup> Similar issues raising concerns about what the Marshals Service is to do in instances of interbranch conflict have already arisen in the new administration.

According to media reports, President Trump’s new executive agency, the “U.S. DOGE Service” (“DOGE”), has reportedly taken the unusual action of contacting the federal judges considering the Department of Justice’s motions to dismiss the criminal cases against the remaining defendants from the January 6th insurrection “to check on the status of the cases and relay concerns about potential protests.”<sup>4</sup> This reported attempt to interfere with the independent judicial process is alarming on its own, but is even more unsettling considering that the executive branch and the USMS are entrusted not only with the protection of judges, prosecutors, and other court officials but with the enforcement of orders from the federal courts.

With the potential for further conflicts to arise, the public has a strong interest in better understanding how conflicts have been addressed and dealt with in the past to inform future action. Because it is one of very few known examples of such a conflict, information about the nature of the policies implicated in the 2021 incident and how the conflict was addressed between the field office and USMS headquarters will provide useful insight about how these conflicts may be addressed in the future.

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 disseminates information obtained through FOIA to the public in several ways. For example, CREW’s website receives over 150,000 page views every month. The website includes blogposts that report on and analyze newsworthy developments

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<sup>3</sup>*United States v. Kilgallon*, 572 F. Supp. 3d 713 (D.S.D. 2021), [https://reason.com/wp-content/uploads/2021/11/USA\\_v\\_Kilgallon\\_et\\_al\\_70-1.pdf](https://reason.com/wp-content/uploads/2021/11/USA_v_Kilgallon_et_al_70-1.pdf).

<sup>4</sup>Ruth Marcus, *Pardon me: What were the folks at DOGE thinking?*, Washington Post (Jan. 23, 2025), <https://img.washingtonpost.com/opinions/2025/01/23/doge-jan-6-marshals-federal-judges/>.

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regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. These reports frequently rely on government records obtained through FOIA. CREW also posts the documents it obtains through FOIA on its website.

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 email me at [kmm@citizensforethics.org](mailto:kmm@citizensforethics.org) and [foia@citizensforethics.org](mailto:foia@citizensforethics.org) or call me at (202) 408-5565. 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 [kmm@citizensforethics.org](mailto:kmm@citizensforethics.org) and [foia@citizensforethics.org](mailto:foia@citizensforethics.org) or by mail to Kalyn Mizelle McDaniel, Citizens for Responsibility and Ethics in Washington, P.O. Box 14596, Washington, D.C. 20044.

Sincerely,

Kalyn Mizelle McDaniel  
Legal Fellow