CREW

CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

August 26, 2024

VIA FOIA.gov

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Supervisory Government Information Specialist
Office of the Inspector General
Department of Justice
950 Pennsylvania Ave., NW, Room 4726
Washington, DC 20530

Carmen Smith Carter
Assistant Counsel for the FOIA and the Privacy Act
Office of Professional Responsibility
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Arla Witte-Simpson
FOIA Public Liaison, FOIA/Privacy Staff
Executive Office for United States Attorneys
U.S. Department of Justice
175 N Street, NE, Suite 5.400
Washington, DC 20530-0001

Re: Freedom of Information Act Request

Dear Deborah M. Waller, Carmen Smith Carter & Arla Witte-Simpson:

Citizens for Responsibility and Ethics in Washington ("CREW") makes 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 February 18, 2020 to the date this request is processed:

1. All communications between any employees of the Office of the United States Attorney for the District of Alaska (USAO Alaska) and any employees of the Office of the Federal Defender for the District of Alaska (OFD Alaska), concerning former Federal Judge Joshua Kindred (Judge Kindred)'s actual or potential conflicts of interest or alleged

failure to recuse in cases he presided over during his tenure as a federal judge.

2. All records of the Assistant United States Attorney (AUSA) from whom Judge Kindred received nude photographs (as found by the Judicial Council of the Ninth Circuit on May 23, 2024),[1] that pertain to proven, alleged, or suspected violations by said AUSA, arising from or relating to any of said AUSA's communication with Judge Kindred, of any provisions of law or constitution, any provisions of the United States Attorneys' Manual adopted by the Department of Justice, any ethical duties imposed upon said AUSA in their capacity as a government prosecutor as set forth in the Alaska Rules of Professional Conduct, or any other proven or alleged professional misconduct.
3. All communications among any employees of the USAO Alaska, including but not limited to those involving the AUSA from whom Judge Kindred received nude photographs (as found by the Judicial Council of the Ninth Circuit on May 23, 2024),[2] in regard to any actual or potential conflicts of interest, arising from or relating to any of said AUSA's communication with Judge Kindred.
4. All records of any DOJ investigations, actions (including but not limited to case assignments, promotion or demotion, and disciplinary measures), or decisions not to take action, in regard to any communication between Judge Kindred and the AUSA from whom Judge Kindred received nude photographs (as found by the Judicial Council of the Ninth Circuit on May 23, 2024).[3]
5. All communications among any employees of the USAO Alaska, including but not limited to those involving the AUSA who was a former law clerk to Judge Kindred and was subject to his sexual harassment in October 2022 (as found by the Judicial Council of the Ninth Circuit on May 23, 2024),[4] in regard to any actual or potential conflicts of interest, arising from or relating to any of Judge Kindred's private conduct towards said AUSA.

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

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[1] *In re Complaint of Judicial Misconduct*, No. 22-90121, at 5, 16, 21, 24-25 (9th Cir. Jud. Council May 23, 2024), https://cdn.ca9.uscourts.gov/datastore/ce9/2024/22-90121%20News%20Release%208%20Order%20and%20Certification.pdf, *aff'd*, C.C.D. No. 24-02 (U.S. Jud. Conf. Aug 22, 2024), https://fingfx.thomsonreuters.com/gfx/legaldocs/movaqajwbva/08232024alaska.pdf.

[2] *Id.*

[3] *Id.*

[4] *Id.* at 6-8, 12, 21-23, 24.

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 agency wide 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).

On May 23, 2024, the Judicial Council of the Ninth Circuit issued an order and certification, later affirmed by the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States, finding misconduct of the now-former U.S. District Judge for the District of Alaska Joshua Kindred, and ordering: "(1) That Judge Kindred is publicly reprimanded by the Judicial Council for the conduct described in this order and further admonishes Judge Kindred that his actions violated the Rules of the Judicial Conduct and Disability Act and the Code of Conduct for United States Judges and are prejudicial to the effective and expeditious administration of the business of the courts and the administration of justice. (2) That Judge Kindred is requested to resign voluntarily from the position of U.S. District Judge for the District of Alaska. (3) That this matter be referred to the Judicial Conference to consider impeachment pursuant to the Certification below."[5]

As relevant here, the Judicial Council of the Ninth Circuit found that "Judge Kindred received nude photographs from another, more senior AUSA who practiced before him," in addition to his inappropriate relationship with his former clerk who then became an AUSA.[6] This more senior AUSA had a "flirtatious rapport" with Judge Kindred.[7] "Judge Kindred stated that he did not have a personal, inappropriate relationship with that AUSA and that they never exchanged any inappropriate communications, including inappropriate photographs. At the Judicial Council meeting, confronted again with that contemporaneous evidence, he performed an about-face, stating that he received nude photographs from that senior AUSA and that some flirtation occurred."[8]

[5] *Id.* at 27.
[6] *Id.* at 16.
[7] *Id.* at 21.
[8] *Id.* at 25.

Judge Kindred also "committed misconduct by engaging in sexual flirtation and fostering an inappropriately sexualized relationship with a law clerk during her clerkship. He also committed misconduct by continuing that sexualized relationship and engaging in two sexual encounters in the weeks following her clerkship at a time when the law clerk was employed in the office of the United States Attorney in Anchorage."[9] The Judicial Council found that the two sexual encounters with the former clerk who became an AUSA "constituted sexual harassment."[10]

As the D.C. Circuit held, "the public has an interest in knowing that a government investigation itself is comprehensive, that the report of an investigation released publicly is accurate, that any disciplinary measures imposed are adequate, and that those who are accountable are dealt with in an appropriate manner. That is how FOIA helps to hold the governors accountable to the governed. That interest crescendos when the misfeasance of a federal prosecutor with the power to employ the full machinery of the state in scrutinizing any given individual is at stake. The public must have assurance that those who would wield this power will be guided solely by their sense of public responsibility for the attainment of justice." *Bartko v. U.S. Dep't of Just.*, 898 F.3d 51, 69 (D.C. Cir. 2018) (cleaned up). Given the severe misconduct here committed by a senior AUSA, as well as the sexual harassment another AUSA was subjected to by a federal judge before whom the office routinely appears, the public has a significant interest in the disclosure of DOJ's knowledge thereof and response thereto.

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. 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 hundreds 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. These

[9] *Id.* at 20.
[10] *Id.* at 21.

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 [redacted] and foia@citizensforethics.org or call me at [redacted]. 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 [redacted], and foia@citizensforethics.org or by mail to Chun Hin Jeffrey Tsoi, Citizens for Responsibility and Ethics in Washington, [redacted] Thank you for your assistance in the matter.

Sincerely,

CHJ Tsoi

Chun Hin Jeffrey Tsoi
Senior Fellow

Laura Iheanachor
Senior Counsel