

January 20, 2022

Carmen Smith Carter
Assistant Counsel for the FOIA and the Privacy Act
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Room 3533
Washington, D.C. 20530
OPR.FOIA@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, 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.

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).

Recent reporting revealed that conflicts of interest are rampant in the federal judiciary.¹ 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.”² OPR’s Annual Reports show that, between 2010 and 2020, OPR received several professional misconduct complaints against judges and referred some of those complaints to disciplinary bodies.³ This FOIA request seeks such complaints and referrals, as well as other related documents. Disclosure of these records will shed light on OPR’s handling of judicial misconduct allegations—an issue of substantial public interest.

¹ See, e.g., James V. Grimaldi, et al., *131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest*, *Wall Street Journal*, Sept. 28, 2021, <https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421>; Michael Siconolfi, et al., *Dozens of Federal Judges Had Financial Conflicts: What You Need to Know*, *Wall Street Journal*, Jan. 2, 2022, <https://www.wsj.com/articles/dozens-of-federal-judges-broke-the-law-on-conflicts-what-you-need-to-know-11632922140>.

² 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>.

³ See OPR Annual Reports (2005-2020), <https://www.justice.gov/opr/opr-annual-reports>.

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 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.

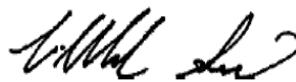
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

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 [REDACTED]. 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 [REDACTED] or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, [REDACTED]. Thank you for your assistance.

Sincerely,



Nikhel Sus
Senior Counsel