CREW

CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

October 31, 2024

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 Department of Justice ("DOJ") regulations.

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

1. Complaints or other submissions to DOJ's Office of Professional Responsibility ("OPR") regarding possible professional misconduct by any member of the federal judiciary as acknowledged by the 2023 OPR Annual Report.[1]
2. All referrals made by OPR to any judicial disciplinary authority, state bar, or any other external entity regarding possible professional misconduct by any member of the federal judiciary as acknowledged by the 2023 OPR Annual Report.
3. All OPR reports, conclusions, or findings relating to items 1 or 2 above.

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

[1] OPR Annual Reports (2023) at 39, https://www.justice.gov/d9/2024-03/opr-annual-report-2023.pdf.

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).

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 financial year 2022 and financial year 2023, OPR received a total of five complaints and issued two referrals against members of the federal judiciary.[3]

The D.C. Circuit has held that "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. " *Bartko v. U.S. Dep't of Just.*, 898 F.3d 51, 69 (D.C. Cir. 2018) (cleaned up). 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.

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

[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] OPR Annual Reports (2023) at 39, https://www.justice.gov/d9/2024-03/opr-annual-report-2023.pdf.

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 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 (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 [redacted] and foia@citizensforethics.org or by mail to Kalyn Mizelle McDaniel, Citizens for Responsibility and Ethics in Washington, [redacted].

Sincerely,

Kalyn Mizelle McDaniel
Legal Fellow