

October 31, 2017, 2017

By Email: usaeo.foia.requests@usdoj.gov

Kevin Krebs
Assistant Director, FOIA/Privacy Staff
Executive Office for United States Attorneys
Department of Justice
600 E Street, N.W., Room 7300
Washington, D.C. 20530-0001

Re: Expedited Freedom of Information Act Request

Dear Mr. Krebs:

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

Specifically, CREW requests:

- (1) a copy of the letter of resignation submitted by Dana Boente, U.S. Attorney for the Eastern District of Virginia, on October 27, 2017; and
- (2) a copy of the letter Mr. Boente sent to the lawyers he oversees in the Eastern District of Virginia concerning his resignation that is referenced in an October 27, 2017 *Washington Post* article¹; and
- (3) any communications discussing or reflecting the reasons for Mr. Boente’s resignation;
- (4) all documents related to the opinion issued in and matters raised in *United States v. Bartko*, 728 F.3d 327 (4th Cir. 2013), and Robert Higdon, Jr.’s administration and supervision of the criminal division at the U.S. Attorney’s Office for the Eastern District of North Carolina;
- (5) copies of documents related to the decision to remove Mr. Higdon as criminal division head in 2013 and his assignment to work at DOJ’s Public Integrity Section; and
- (6) copies of curriculum vitae for Mr. Boente, Mr. Higdon, and John R. Parker, U.S. Attorney for the Northern District of Texas.

¹ Rachel Weiner, [Dana Boente Announces Resignation as U.S. Attorney for Eastern District of Virginia](https://www.washingtonpost.com/local/public-safety/dana-boente-resigns-as-us-attorney-for-eastern-district-of-virginia/2017/10/27/78fda97a-bb43-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.77e72a1b93e0), *Washington Post*, Oct. 27, 2017, available at https://www.washingtonpost.com/local/public-safety/dana-boente-resigns-as-us-attorney-for-eastern-district-of-virginia/2017/10/27/78fda97a-bb43-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.77e72a1b93e0.

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.

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).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and Department of Justice 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).

Just days ago, Mr. Boente announced his resignation as U.S. Attorney for the Eastern District of Virginia, effective upon the confirmation of his successor. Pursuant to an executive order President Trump issued on March 31, 2017, *Providing an Order of Succession Within the Department of Justice*, Mr. Boente, as the U.S. Attorney for the Eastern District, is third in the order of succession at DOJ following the Deputy Attorney General and the Associate Attorney General. This resignation has triggered speculation that it could afford President Trump an opportunity to influence Special Counsel Robert Mueller's investigation, should the President attempt to have Mr. Mueller fired.² Reportedly, Mr. Mueller first used a grand jury for his investigation that was impaneled in the Eastern District of Virginia. *Id.*

² See Max Kutner, [Dana Boente's Resignation as U.S. Attorney Could Endanger Mueller's Russia Investigation](http://www.newsweek.com/danaboente-eastern-district-virginia-resigns-mueller-russia-probe-695424), *Newsweek*, Oct. 27, 2017, available at <http://www.newsweek.com/danaboente-eastern-district-virginia-resigns-mueller-russia-probe-695424>.

Equally of interest is Robert Higdon who, despite being removed as head of his office's criminal division in 2013 following a sharp rebuke for that office's conduct, was selected in August 2017 by President Trump to be the U.S. Attorney for the Eastern District of North Carolina. Mr. Higdon is next in the line of succession after Mr. Boente.

The requested records would shed light on whether Mr. Boente was pressured to resign and the underlying reasons for his resignation and may better explain Mr. Higdon's appointment. Those reasons could inform the public's understanding of the extent to which the President may be attempting to influence the outcome of the Special Counsel's investigation and may be putting in place contingency plans that would make it easier for him to have Mr. Mueller fired. These issues bear directly on the integrity of the Justice Department.

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 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 the 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.

Request for Expedition

Finally, please be advised that CREW also has requested expedition of this request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity that affect public

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confidence. Pursuant to 28 C.F.R. § 16.5(e)(2), CREW submitted a request to the Director of Public Affairs; a copy of this request is enclosed.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records on an expedited basis, please contact me at (202) 408-5565 or aweismann@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 either at aweismann@citizensforethics.org or at Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel

Encl.