

October 31, 2017

BY EMAIL: OPR.FOIA@usdoj.gov

Lyn Hardy
Senior Counsel
Office of Professional Responsibility
Department of Justice
950 Pennsylvania Avenue, N.W.
Suite 3529
Washington, D.C. 20530

Re: Expedited Freedom of Information Act Request

Dear Ms. Hardy:

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 the Justice (“DOJ”) regulations.

Specifically, CREW requests all documents related to any investigation or inquiry conducted by the Office of Professional Responsibility (“OPR”) of, involving, or relating to Robert J. Higdon, Jr., from January 2011 to the present.

By way of background, Mr. Higdon served as chief of the criminal division of the U.S. Attorney’s Office for the Eastern District of North Carolina from 2002 until 2013. In 2013, U.S. Attorney Thomas Walker announced he had removed Mr. Higdon from this position.¹ Thereafter, Mr. Higdon served as a senior trial counsel for DOJ’s Public Integrity Section until 2015. This year, he was nominated by President Trump to be the U.S. Attorney for the Eastern District of North Carolina, a position for which he was confirmed on September 28, 2017.²

Mr. Higdon’s removal coincided with an opinion from the U.S. Court of Appeals for the Fourth Circuit, *United States v. Bartko*, 728 F.3d 327 (4th Cir. 2013), harshly criticizing the practices and behavior of the criminal division Mr. Higdon led, directing the Clerk of the Court to serve a copy of its opinion on the Attorney General and OPR, and noting that “[s]anctions or disciplinary action are also options.” 728 F.3d at 342.

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

¹ U.S. Attorney’s Office in Eastern N.D. Reassigns as Chief Prosecutor, *Associated Press*, Sept. 8, 2013, available at <http://www.jdnews.com/20130908/us-attorneys-office-in-eastern-nc-reassigns-chief-prosecutor/309089962>.

² Press Release, *Meet the U.S. Attorney Robert J. Higdon, Jr.*, U.S. Department of Justice, available at <https://www.justice.gov/usao-ednc-meet-us-attorney>.

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, as well as emails to which the subjects of this request were cc'ed or bcc'ed.

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 DOJ 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).

As U.S. Attorney, Mr. Higdon currently serves in a position of great public trust. Moreover, pursuant to an Executive Order President Trump issued on March 31, 2017, *Providing an Order of Succession Within the Department of Justice*, Mr. Higdon is fourth in the line of succession. The requested records will shed light on the integrity of Mr. Higdon and the extent to which he has properly been placed in such a high-ranking and significant position given the serious lapses outlined by the Fourth Circuit. As a top DOJ official, Mr. Higdon's privacy interests clearly are outweighed by the public interest in the requested information.

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.

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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 reports 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, and that site 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 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.