

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CITIZENS FOR RESPONSIBILITY  
AND ETHICS IN WASHINGTON,**  
455 Massachusetts Ave., N.W.  
Washington, D.C. 20001

Plaintiff,

v.

**U.S. DEPARTMENT OF JUSTICE**  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

Defendant.

Civil Action No.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) challenges the failure of the Federal Bureau of Investigation (“FBI”), a component of defendant U.S. Department of Justice (“DOJ”), to disclose to CREW documents related to the now-closed investigation of former FBI Deputy Director Andrew McCabe by the FBI’s Office of Professional Responsibility (“OPR”).

2. This case seeks declaratory relief that DOJ is in violation of the FOIA, 5 U.S.C. § 552(a)(6)(E)(i), for failing to provide CREW all responsive records, and injunctive relief ordering defendant DOJ to process and release to CREW immediately the requested records in their entirety.

### **Jurisdiction and Venue**

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

### **Parties**

4. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of its research, CREW uses government records made available to it under the FOIA.

5. Defendant DOJ is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 701. The FBI is a component within DOJ. Defendant has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

### **Statutory and Regulatory Background**

6. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination of which of the requested records

it will release, which it will withhold and why, and the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

8. An agency's failure to make this determination within 20 days is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

### **Factual Background**

9. On the evening of March 16, 2018, less than two days before then-FBI Deputy Director Andrew McCabe was to retire from public service, Attorney General Jeff Sessions announced publicly he had fired Mr. McCabe. The Attorney General justified the firing by citing investigations by both DOJ's Office of Inspector General and the FBI's OPR that reportedly had found that Mr. McCabe had made an unauthorized disclosure to the news media and also that he had displayed a lack of candor, including under oath, on multiple occasions.

10. According to public reports, OPR had recommended that Mr. McCabe be fired.

11. The firing of Mr. McCabe triggered widespread speculation that the decision to fire Mr. McCabe was a political one made at the urging of President Donald Trump.

12. To shed light on the underlying basis for Mr. McCabe's termination and to allow the public to assess the credibility of allegations of political motivation and the role the President may have played in the Attorney General's decision, CREW sent a FOIA request by facsimile to the FBI on March 19, 2018. CREW requested all documents related to any investigation or inquiry conducted by the FBI's OPR of, involving, or relating to Mr. McCabe, who was fired by Attorney General Sessions on March 16, 2017.

13. By letter dated April 18, 2018, the FBI responded to CREW's request. The FBI stated that to avoid charging unnecessary duplication fees, records responsive to CREW's request would be made available in the FBI's FOIA Library on the FBI's public website,

<http://vault.fbi.gov>. The FBI specifically advised CREW it would notify CREW when releases are available.

14. The FBI further noted that the FOIA excludes three categories of law enforcement and national security records from the FOIA's requirements but indicated this should not be construed as an indication that such records do or do not exist.

15. To date, CREW has received no other communications from the FBI, nor has the FBI posted on its website documents responsive to CREW's FOIA request.

16. CREW has now exhausted all applicable administrative remedies with respect to its request of the FBI.

#### **PLAINTIFF'S CLAIM FOR RELIEF**

17. Plaintiff repeats and re-alleges paragraphs 1-16.

18. Plaintiff properly asked for records within the custody and control of DOJ.

19. Defendant DOJ wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request.

20. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

#### **Requested Relief**

WHEREFORE, plaintiff respectfully requests that this Court:

(1) Order defendant Department of Justice to immediately and fully process plaintiff's March 19, 2018 FOIA request to the FBI and disclose all non-exempt documents immediately to plaintiff;

(2) Issue a declaration that plaintiff is entitled to immediate processing and disclosure



of the requested records;

- (3) Provide for expeditious proceedings in this action;
- (4) Retain jurisdiction of this action to ensure no agency records are wrongfully

withheld;

- (5) Award plaintiff its costs and reasonable attorneys' fees in this action; and
- (6) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



Anne L. Weismann  
(D.C. Bar No. 298190)

Adam J. Rappaport  
(D.C. Bar No. 479866)

Citizens for Responsibility and Ethics  
in Washington

455 Massachusetts Ave., N.W.

Washington, D.C. 20001

Phone: (202) 408-5565

Facsimile: (202) 588-5020

Dated: July 30, 2018

*Attorneys for Plaintiff*