

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

**CITIZENS FOR RESPONSIBILITY  
AND ETHICS IN WASHINGTON,** )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
**U.S. DEPARTMENT OF JUSTICE,** )  
 )  
 )  
 Defendant. )  
\_\_\_\_\_ )

Civil Action No. 18-cv-1766 (RBW)

**PLAINTIFF’S REPLY IN SUPPORT OF ITS MOTION TO PRIORITIZE PROCESSING  
OF DOCUMENTS PERTAINING TO LISA PAGE AND MICHAEL KORTAN**

The Department of Justice’s (“DOJ”) opposition to Plaintiff’s motion to prioritize turns the Freedom of Information Act (“FOIA”) on its head, ignoring the central fact that a FOIA requester is the master of its own request. It also rests on the mistaken belief that Plaintiff seeks the ability to prioritize documents on a rolling basis. Finally, DOJ claims its need to assert privacy exemptions conflicts with Plaintiff’s request. All of these arguments lack merit.

First, when faced with a predicted lengthy delay in processing, agencies typically seek to have requesters prioritize their requested documents to ensure they get what they most want as quickly as possible. Here, however, DOJ argues CREW has no right to prioritize specific records and instead must rely completely on DOJ’s discretion as to the order of processing. Nothing in the FOIA affords DOJ this right and, more significantly, it ignores the FOIA’s central purpose: to provide the public with a “means . . . to know ‘what their Government is up to.’” *NARA v. Favish*, 541 U.S. 157, 177-73 (2004) (citation omitted). Refusing Plaintiff’s request to prioritize documents pertaining to two individuals who are at the center of DOJ’s investigation into former FBI Deputy Director Andrew McCabe—Lisa Page and Michael Kortan—conflicts

fundamentally with the FOIA's basic tenets, while failing to serve any legitimate agency interest. Tellingly DOJ has failed to explain how accommodating this request would cause the agency to proceed in a manner not consistent with agency resources.

Second, contrary to DOJ's arguments, Plaintiff is not seeking the right to prioritize on a monthly basis or what DOJ cavalierly calls a "flavor-of-the-month approach[.]" DOJ Opp. at 4. Rather, Plaintiff has requested only that DOJ first process documents related to Ms. Page and Mr. Kortan, the individuals that Mr. McCabe reportedly authorized to speak with the *Wall Street Journal*, an action that led to Mr. McCabe's termination. *See, e.g.,* Matt Zaptosky, Inspector general report faults Andrew McCabe for unauthorized disclosure of information, misleading investigators, *Washington Post* (Apr. 13, 2018), <https://wapo.st/36n7Uu0>. Once those documents are processed the agency is free to decide the subsequent processing order.

Third, processing the requested documents first implicates no legitimate privacy concerns that DOJ cannot otherwise fully and properly protect. As Plaintiff explained in its opening brief, the roles of Ms. Page and Mr. Kortan in the events leading to Mr. McCabe's termination already are well known. Indeed, in its most recent production DOJ provided portions of interviews with Ms. Page, and Mr. McCabe in his civil suit against DOJ identified Mr. Kortan as having provided information in his interview with the OIG "proved to be favorable to Plaintiff," Comp. ¶ 120, *McCabe v. Barr*, No. 1:19-cv-02399 (D.D.C. Aug. 8, 2019). With their identities and connections to the OIG investigation already publicly known, neither Ms. Page nor Mr. Kortan has a continuing privacy interest protected under the FOIA that would preclude DOJ from processing their records first.

### **CONCLUSION**

For the foregoing reasons and those set forth in Plaintiff's opening brief, Plaintiff

respectfully asks this Court to order DOJ to release interview transcripts and notes starting with former Special Counsel Lisa Page, and former FBI Assistant Director for Public Affairs Michael Kortan.

Respectfully submitted,

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