

(e) reviewing responsive records and determining applicable FOIA exemptions in accordance with the provisions of the FOIA and GSA regulations 41 C.F.R. §§ 105-60, *et seq.*;

(f) reviewing correspondence related to FOIA requests; and

(g) preparing responses to FOIA requests.

2. As GSA's sole FOIA Officer, I have the authority to determine which records should be released and/or withheld pursuant to the FOIA and to explain the rationale for GSA's disclosure determinations. The statements I make in this declaration are based on my review of the official files and records of GSA, my own personal knowledge acquired through the performance of my official duties, and information learned from others while performing my official responsibilities at GSA.

3. Due to the nature of my official duties, I am familiar with the procedures followed by GSA in responding to Plaintiff Citizens for Responsibility and Ethics in Washington's ("Plaintiff CREW") FOIA request which was assigned tracking number GSA-2018-001496 and is at issue in the instant case ("Plaintiff's FOIA Request"). This declaration explains the procedures that were followed by GSA in responding to Plaintiff's FOIA Request.

4. By facsimile dated July 30, 2018, Plaintiff CREW submitted Plaintiff's FOIA Request seeking the copies of all communications from January 20, 2017, to the present (which, when processed by GSA was July 30, 2018) between GSA and the White House concerning the renovation of FBI Headquarters.

GSA'S SEARCH AND RESPONSE TO PLAINTIFF'S FOIA REQUEST

5. I am aware from my communication with GSA's Office of General Counsel that Plaintiff, via email dated October 22, 2018, requested that GSA conduct a search for responsive records using the following search parameters:

Date range: January 20, 2017 to July 30, 2018

Custodians: emails between any GSA email address and any White House/EOP email address

Search terms:

headquarters

HQ

demoli!

renov!

rebuild

demo! W/3 rebuild [**explanation:** looking for all variations of demo! within three words of rebuild]

"demolish rebuild"

remodel!

"construction project"

"new construction"

President W/10 order! OR direct! OR instruct! OR decide! OR want! [**explanation:** looking for all

variations of these words within 10 words of President]

POTUS W/10 order! OR direct! OR instruct! OR decide! OR want! [**explanation:** looking for all variations of these words within 10 words of POTUS]

operating lease

leaseback

PA Ave!

Pennsylvania Avenue.

6. Upon becoming aware of Plaintiff's proposed search terms, I tasked GSA's Office of the Chief Information Officer (OCIO) to conduct a search for responsive records using said terms. The OCIO is the office within GSA that has access to all of the agency's electronic records and conducts all of the agency's electronic discovery searches for any potentially responsive documents. The OCIO searched all agency employees' emails for responsive electronic records via the search parameters requested by the FOIA requester.

7. GSA's search for electronic documents and subsequent review for relevancy returned 52 pages of responsive records using the terms as requested by Plaintiff. Upon reviewing the documents and conversing with our Office of the General Counsel, I sent Plaintiff a letter dated

December 7, 2018, stating that GSA has determined that these responsive documents are exempt from release pursuant to exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5).

8. After a subsequent communication with our Office of General Counsel, I sent a subsequent communication to Plaintiff further explaining that within those 52 pages of responsive documents, GSA withheld 25 pages of these responsive records in their entirety pursuant to FOIA exemption 5, 5 U.S.C. § 552(b)(5), based upon the presidential communications privilege. Additionally, within these 25 pages, portions thereof are also being withheld pursuant to FOIA exemption 5 based upon the deliberative process privilege, as well as exemption 6, 5 U.S.C. § 552(b)(6), and exemption 7(C), 5 U.S.C. § 552(b)(7)(C), because disclosure of the withheld material could reasonably be expected to constitute an unwarranted invasion of personal privacy, and exemption 7(E), 5 U.S.C. § 552(b)(7)(E), as this information reflects the investigatory methodologies/procedures by GSA's Office of the Inspector General. The remaining 27 pages of responsive records are being withheld in their entirety pursuant to FOIA exemption 5 based upon the deliberative process privilege.

9. On March 15, 2019, after additional communications with our Office of General Counsel, I informed Plaintiff that GSA was providing the 25 pages of responsive documents that previously had been withheld in their entirety based on the Presidential Communications Privilege. However, within those documents, GSA withheld:

- 1) Per the fifth exemption of FOIA, certain draft documents in their entirety as they represent the agency's deliberative process and the attachment to page 23 of the responsive document pursuant to the Presidential Communications Privilege;
- 2) Specific email addresses and employee cellular telephone numbers pursuant to both exemption 6 and exemption 7(C) of the FOIA, because disclosure of the withheld

material could reasonably be expected to constitute an unwarranted invasion of personal privacy; and

3) Information on page 6 pertaining to investigatory methodologies/procedures by GSA's Office of the Inspector General pursuant to the FOIA, 5 U.S.C. § 552(b)(7)(E), at the request of the GSA Office of Inspector General.

10. Thus, of the 52 responsive pages, GSA released in full 2 total pages of documents and 23 partially redacted pages of documents. The remaining 27 pages of documents were withheld in full. Where documents or portions of documents were partially or fully withheld, a description of those withholdings and the reasons for those withholdings are provided in the accompanying Vaughn Index.

11. Beyond the search for electronic records, I also ensured that there were no paper records in the agency's possession that were responsive to Plaintiff's FOIA request. Each GSA employee that had responsive records per the OCIO search query using the terms provided by Plaintiff has confirmed that they do not have any paper records that pertain to or are responsive to Plaintiff's FOIA request.

12. Plaintiff later commented that it viewed a communication in materials publicized by Congress which were not included in the documents released by GSA.

13. To address this, on September 4, 2019, Duane Smith from the GSA Office of General Counsel requested OCIO conduct a second e-mail search using the following parameters:

Email addresses: gsa.gov

Dates: January 20, 2017 to July 30, 2018

Terms:

- Joseph G. Lai
- Tim A. Pataki
- Joyce Y. Meyer
- Amy H. Swonger

- Daniel Q. Greenwood
- Andrew D. Abrams
- Kathleen L. Kraninger
- Daniel Z. Epstein

14. The e-mail search returned tens of thousands of pages. Those were further reviewed using the key terms “EPW” and “FBI”. The search parameters were communicated to the Plaintiff and no objection was received.

15. A total of 13 pages were subsequently found to be responsive. Of those, 1 page was fully releasable and 12 pages were partially redacted. Of those 12 pages, some were repetitive. The withholdings and the reasons for those withholdings are provided in the accompanying Vaughn Index.

**DESCRIPTION OF FOIA EXEMPTION 5, EXEMPTION 6, AND EXEMPTION 7
WITHHOLDINGS APPLIED TO RECORDS PROVIDED TO PLAINTIFF**

16. As described in the accompanying Vaughn Index, GSA applied the FOIA’s fifth exemption in redacting information reflecting the agency’s deliberative process, draft documents, attorney work product by GSA’s Office of General Counsel, and a document pursuant to the Presidential Communications privilege. GSA applied the FOIA’s sixth exemption in redacting specific email addresses and cellular phone numbers of agency employees, as release of this information would constitute a clearly unwarranted invasion of personal privacy. GSA also applied the FOIA’s seventh exemption in redacting both personal information in law and information which would disclose techniques or procedures for law enforcement investigations.

17. The communications and draft documents withheld under FOIA’s fifth exception contain the full exchange of ideas by employees and the process by which agency officials developed plans for the FBI Headquarters project and the strategy to respond to questions about the project. The release of opinions and draft documents reflecting the agency’s deliberative

process regarding the FBI Headquarters project would stifle honest and frank communications about matters under consideration. Disclosure of these materials would chill collaborative discussions involving matters significant to GSA and the Executive Branch by discouraging candid discussion about policy matters and proposed agency actions, thereby undermining the agency's ability to perform its functions.

SEGREGABILITY

18. 5 U.S.C. § 552(b) requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of portions which are exempt.”

19. I reviewed each record, line-by-line, to identify information exempt from disclosure. With respect to the records that were released in part, all information not exempted from disclosure pursuant to the FOIA as specified above, was correctly segregated and non-exempt portions were released.

CONCLUSION

20. As detailed above, GSA conducted a reasonable and appropriate search for documents responsive to Plaintiff CREW's FOIA request. GSA used the terms provided by Plaintiff in conducting its first search for any responsive records and communicated to Plaintiff the parameters of the second search, without objection. GSA produced to Plaintiff all responsive nonexempt records, and portions thereof, that were located as a result.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 16th day of March 2020, in Washington, D.C.



Travis Lewis

Deputy Director, Office of Accountability & Transparency

U.S. General Services Administration

CREW

 | citizens for responsibility
and ethics in washington

455 Massachusetts Ave. NW
Washington, D.C. 20001
Phone: 202-408-5565
Fax: 202-588-5020

FACSIMILE TRANSMITTAL SHEET

TO:

FOIA Officer

FROM:

Anne L. Weismann

COMPANY:

General Services Administration

DATE:

JULY 30, 2018

RECIPIENT'S FAX NUMBER:

202-501-2727

PAGE 1 OF 4

RECIPIENT'S PHONE NUMBER:

RE:

Please see enclosed FOIA request

NOTES/COMMENTS:

Pages transmitted are privileged and confidential.



CREW

citizens for responsibility
and ethics in washington

July 30, 2018

BY FACSIMILE: (202) 501-2727

U.S. General Services Administration
FOIA Requester Service Center (H1F)
1800 F Street, N.W., Room 7308
Washington, D.C. 20405-0001

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and General Services Administration ("GSA") regulations.

Specifically, CREW requests copies of all communications from January 20, 2017 to the present between GSA and the White House concerning the renovation of the FBI headquarters. This request includes, but is not limited to, records from GSA Public Buildings Service, GSA Office of the Administrator, and the National Capital Region.

CREW makes this request in light of recent reporting that President Donald Trump is "obsessed" with renovating the FBI headquarters, wants to be personally involved with the details of any renovation, and has met with FBI officials and GSA to discuss the renovation.¹

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

¹ Alex Lockie, Trump Is Reportedly 'Obsessed' With Redoing FBI HQ and Treating it Like a Trump Tower Project, *Business Insider*, July 2018, available at <https://www.businessinsider.com/trump-obsessed-with-remodeling-fbi-hq-like-trump-tower-2018-7>; Jonathan Swan, Scoop: Trump's Obsession With the 'Terrible' FBI Building, *Axios*, July 29, 2018, available at <https://www.axios.com/donald-trump-obsession-fbi-building-headquarters-65d36fb9-b1a2-42ca-8cbd-3dbbe59de907.html>; Margaret Hartmann, Why Trump Is 'Obsessed' With Revamping the FBI Building: 5 Theories, *New York Magazine*, July 30, 2018, available at <http://nymag.com/daily/intelligencer/2018/07/trumps-fbi-building-revamp-obsession-5-theories.html>.

FOIA Officer
 July 30, 2018
 Page 2

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 GSA 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).

The sudden and unexpected decision of GSA to cancel what it termed the "new FBI headquarters consolidation project,"² announced on July 11, 2017, generated criticism and controversy. Members of Congress described the cancellation as "putt[ing] America's national security at risk," while local officials commented on the significant amount of "time and energy wasted."³ The latest revelations about President Trump's personal involvement and desire to oversee the details of any renovation⁴ raise questions about what is behind the intensity of his interest, especially given the concerns of GSA "that the building can't be rehabilitated particularly given the security requirements[.]"⁵ The requested records will help answer these questions and assist the public in evaluating the merits of the any renovation, which is expected to cost significantly more than the costs of relocating the FBI to a more secure location where virtually the entire FBI staff could be housed.

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

² GSA Statement on FBI Headquarters, July 11, 2017

³ Robert McCartney, *For D.C. Area, Demise of FBI Plan Means 'a Lot of Time and Energy Wasted'*, *Washington Post*, July 11, 2017, available at https://www.washingtonpost.com/local/for-dc-area-demise-of-fbi-plan-means-a-lot-of-time-and-energy-wasted/2017/07/11/c11c7cba-6632-11e7-9928-22d00a47778f_story.html?hpid=hp_local-news_fbi-headquarters-1145am%3Ahomepage%2Fstory&utm_term=.e951a48375c1.

⁴ See n. 1, *supra*.

⁵ Lockie, *Business Insider*, July 2018.

FOIA Officer
July 30, 2018
Page 3

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 a blog that reports on and analyzes 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 at its website.

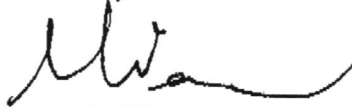
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please 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

Nebeker, Mark (USADC)

From: Duane Smith <duane.smith@gsa.gov>
Sent: Thursday, October 25, 2018 10:24 AM
To: Nikhel Sus
Cc: Nebeker, Mark (USADC)
Subject: Re: Activity in Case 1:18-cv-02071-CKK CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON v. GENERAL SERVICES ADMINISTRATION Order

Hey Nik-

Yes, we are running a subsequent search with your proposed search terms. I'll get back to you as soon as practicable on the results of the search.

On Thu, Oct 25, 2018 at 10:15 AM, Nikhel Sus <nsus@citizensforethics.org> wrote:
Duane and Mark,

Any update on whether GSA can implement our search terms? Happy to discuss.

Thanks,
Nik

On Mon, Oct 22, 2018 at 11:33 AM, Nikhel Sus <nsus@citizensforethics.org> wrote:
Duane and Mark,

Thanks for speaking with me earlier. We propose the following search terms/parameters for this FOIA request:

- **Date range:** January 20, 2017 to July 30, 2018
- **Custodians:** emails between any GSA email address and any White House/EOP email address
- **Search terms:**
 - headquarters
 - HQ
 - demoli!
 - renov!
 - rebuild
 - demo! W/3 rebuild [**explanation:** looking for all variations of demo! within three words of rebuild]
 - "demolish rebuild"
 - remodel!
 - "construction project"
 - "new construction"
 - President W/10 order! OR direct! OR instruct! OR decide! OR want! [**explanation:** looking for all variations of these words within 10 words of President]
 - POTUS W/10 order! OR direct! OR instruct! OR decide! OR want! [**explanation:** looking for all variations of these words within 10 words of POTUS]
 - operating lease
 - leaseback
 - PA Ave!



o Pennsylvania Avenue

We developed these terms based on the publicly-released docs I mentioned below concerning the FBI HQ project. Please let me know if you would like to discuss.

Thanks,
Nik

On Thu, Oct 18, 2018 at 3:27 PM, Nikhel Sus <nsus@citizensforethics.org> wrote:
Hi Mark,

Thanks for speaking with me earlier. To recap, our July 30, 2018 FOIA request seeks "all communications from January 20, 2017 to the present between GSA and the White House concerning the renovation of the FBI headquarters." On our call this afternoon, the GSA rep said that the agency's search uncovered no responsive records. Today, however, HOCR released the following documents: <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Emails%20on%20FBI%20HQ%20Decision.pdf>. This release includes emails between GSA and White House officials that are responsive to our request (e.g. 002281, a Jan. 25, 2018 email between Joseph Lai and Brennan Hart discussing "a path forward for the new FBI Headquarters announcement"). This indicates GSA does in fact have responsive records.

As discussed, our plan was for GSA to review these docs and for us to discuss next steps on Monday at 10:00am. Look forward to discussing more then.

Best,
Nik

On Thu, Oct 18, 2018 at 2:38 PM, Nebeker, Mark (USADC) <Mark.Nebeker@usdoj.gov> wrote:

I cannot get through to you. Could you call me back, please?

W. Mark Nebeker

Assistant United States Attorney

Civil Division

555 4th Street, N.W.

Washington, DC 20530

(202) 252-2536