

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

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**)
1101 K Street, N.W., Suite 201)
Washington, D.C. 20005)

Plaintiff,)

v.)

Civil Action No.

**U.S. DEPARTMENT OF THE
TREASURY,**)
1500 Pennsylvania Avenue, N.W.)
Washington, D.C. 20220)

Defendant.)

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 U.S. Department of the Treasury (“Treasury”) to disclose to CREW records and communications concerning voting by mail, the retirement of Postmaster General of the United States Megan Brennan, and Louis DeJoy, her replacement.

2. This case seeks declaratory relief that Treasury 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 Treasury 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 Treasury is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 701. Defendant has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

Statutory and Regulatory Background

6. In responding to a request, the FOIA imposes on an agency s the responsibility to conduct a search for responsive records, which it defines as “to review, manually or by

automated means, agency records for the purpose of locating those records which are responsive to a request.” 5 U.S.C. § 552(a)(3)(A)(D).

7. 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.

8. 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).

9. After making an adverse determination the agency must notify the requester, among other things, of the right to appeal to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i).

Factual Background

10. On October 16, 2019, the United States Postal Service (“USPS”) announced that Megan Brennan, Postmaster General and Chief Executive Officer, would retire in 2020. In May 2020, the USPS Board of Governors confirmed that Louis DeJoy, a North Carolina businessman and top donor to President Trump and other Republicans, would serve as the new Postmaster General of the United States.

11. Mr. DeJoy is the first Postmaster General in decades who did not come through the agency’s ranks. Josh Dawsey, Lisa Rein, and Jacob Bogage, Top Republican Fundraiser and Trump Ally Named Postmaster General, Giving President New Influence over Postal Service, *Washington Post*, May 6, 2020, https://www.washingtonpost.com/politics/top-republican-fundraiser-and-trump-ally-to-be-named-postmaster-general-giving-president-new-influence-over-postal-service-officials-say/2020/05/06/25cde93c-8fd4-11ea-8df0ee33c3f5b0d6_story.html.

12. According to the *Washington Post*, after Postmaster General and former letter carrier Megan Brennan announced her plans to retire from the USPS in October 2019, Secretary Mnuchin recruited Mr. DeJoy to succeed her. Philip Rucker, Josh Dawsey and Ashley Parker, Tracing Trump’s Postal Service Obsession — from ‘Loser’ to ‘Scam’ to ‘Rigged Election’, *Washington Post*, August 15, 2020, https://www.washingtonpost.com/politics/trump-post-office-mail-vote/2020/08/15/27a2ffd4-de5f-11ea-809e-b8be57ba616e_story.html?hpid=hp_hp-top-table-high_hearing-11am%3Ahomepage%2Fstory-ans. The selection of a Trump ally to lead the USPS has raised concerns about potential political interference at the agency, Alan Rappeport, Postal Service Pick With Ties to Trump Raises Concerns Ahead of 2020 Election, *New York Times*, May 7, 2020, <https://www.nytimes.com/2020/05/07/us/politics/postmaster-general-louis-dejoy.html>, that have only intensified. President Trump’s repeated attacks on voting by mail are adding to worries about the selection of a Republican fund-raiser and Trump donor to be the Postmaster General. *Id.*

13. Despite the President’s harsh complaints, there is little evidence to support his claims, especially as the coronavirus pandemic increases demand for voting by mail. The USPS Office of Inspector General has noted that states with vote by mail have implemented those processes effectively and efficiently, with support from the USPS. *See, e.g.*, U.S. Postal Service Office of Inspector General (“OIG”), Cast Your Vote via the Postal Service?, July 26, 2010, <https://www.uspsoig.gov/blog/cast-your-vote-postal-service>. In 2015, the USPS OIG “found the Postal Service could increase voting by mail as a way to boost volume and revenue by about \$2 million a year. U.S. Postal Service Office of Inspector General, A Vote for Election Mail, Sept. 21, 2015, <https://www.uspsoig.gov/blog/vote-election-mail>.

14. To shed light on the role, if any, Treasury has played in the selection of a Trump ally to lead the USPS, CREW submitted a FOIA request by email to Treasury on June 22, 2020, for six categories of records:

(1) any and all records or communications sent to, received by or copying, Secretary Steven Mnuchin, Deputy Secretary Justin Muzinich, Counselor to the Secretary Dan Kowalski, or Counselor to the Secretary Adam Lerrick referring or relating to voting by mail from January 1, 2019 to the present;

(2) any and all records or communications sent to, received by or copying, Secretary Steven Mnuchin, Deputy Secretary Justin Muzinich, Counselor to the Secretary Dan Kowalski, or Counselor to the Secretary Adam Lerrick referring or relating to the retirement of Postmaster General of the United States Megan Brennan from January 1, 2019 to May 8, 2020;

(3) any and all records or communications sent to, received by or copying, Secretary Steven Mnuchin, Deputy Secretary Justin Muzinich, Counselor to the Secretary Dan Kowalski, or Counselor to the Secretary Adam Lerrick referring or relating to Louis DeJoy from September 1, 2019 to May 8, 2020;

(4) any and all records or communications between Secretary Steven Mnuchin, Deputy Secretary Justin Muzinich, Counselor to the Secretary Dan Kowalski, or Counselor to the Secretary Adam Lerrick and any member of the USPS Board of Governors referring or relating to replacing Postmaster General of the United States Megan Brennan from September 1, 2019 to May 8, 2020;

(5) any and all communications between Secretary Steven Mnuchin, Deputy Secretary Justin Muzinich, Counselor to the Secretary Dan Kowalski, Counselor to the Secretary

Adam Lerrick, or Assistant Secretary for Legislative Affairs, Drew Maloney with any United States Senator, member of the United States House of Representatives, or congressional staff, referring or relating to replacing Postmaster General of the United States Megan Brennan from September 1, 2019 to May 8, 2020; and

(6) any and all communications between Secretary Steven Mnuchin, Deputy Secretary Justin Muzinich, Counselor to the Secretary Dan Kowalski, Counselor to the Secretary Adam Lerrick, or Assistant Secretary for Legislative Affairs, Drew Maloney with any representative or agent of the national executive search firm Russel Reynolds or the advisory service firm Chelsea Partners from September 1, 2019 to May 8, 2020.

15. By letter dated June 23, 2020, and sent by email Treasury advised CREW that Treasury's Departmental Offices had initiated a search for responsive records. Treasury also claimed that due to the existence of unusual circumstances Treasury required a 10-day processing extension.

16. By email dated July 29, 2020, Treasury advised CREW it was forwarding responsive records based on what it described as "a limited search." The email further stated that Treasury "believe[s] that these are responsive and may satisfy your interest in the matter." Accompanying the email were three records totaling three pages. The letter did not advise CREW of any administrative appeal rights.

17. The first document Treasury produced, a one-page December 23, 2019 letter from Treasury Secretary Mnuchin to the members of the Board of Governors, conveys two requests: (1) that the Board undertake an empirical evaluation of the USPS pricing model; and (2) that the Board keep him apprised of its progress in finding a new Postmaster General.

18. The second document is a one-page letter from Rep. Val Butler Demings to Speaker Nancy Pelosi, Majority Leader Mitch McConnell, and Secretary Mnuchin dated March 23, 2020, asking that Congress do its part to encourage voter participation by imposing a nationwide requirement that absentee ballots be mailed with postage-prepaid envelopes.

19. The third and last document Treasury produced in response to CREW's request is a one-page letter from the Chairman of the Board of Governors to Secretary Mnuchin, dated March 31, 2020, advising him of the status of its search for a new Postmaster General, and advising that the Board's Audit and Finance Committee will be hiring an independent consultant to review the Postal Service's costing and pricing strategies.

20. To date, CREW has received no further response from Treasury in response to its June 22, 2020 FOIA request.

PLAINTIFF'S CLAIM FOR RELIEF

21. Plaintiff repeats and re-alleges the foregoing paragraphs.

22. Plaintiff properly asked for records within the custody and control of Treasury.

23. By producing only three documents to CREW and ignoring the vast majority of documents CREW requested, including but not limited to its requests for email communications on six different subjects, Defendant Treasury failed to conduct an adequate search reasonably designed to uncover all responsive records.

24. Treasury's failure to provide CREW with documents responsive to the vast majority of CREW's request or to otherwise account for their absence constitutes an adverse determination.

25. Because Treasury had made an adverse determination within the meaning of the FOIA, Treasury was required to provide CREW with its appeal rights.

26. Treasury's failure to do so excuses CREW from the requirement that it exhaust all applicable administrative remedies with respect to its request of Treasury before filing suit.

27. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the records requested in CREW's June 22, 2020 FOIA request.

Requested Relief

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Order defendant Treasury to immediately and fully process plaintiff's June 22, 2020 FOIA request to Treasury 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,

/s/ Anne L. Weismann
Anne L. Weismann
(D.C. Bar No. 298190)
Adam J. Rappaport
(D.C. Bar No. 479866)
Citizens for Responsibility and Ethics
in Washington
1101 K Street, N.W., Suite 201
Washington, D.C. 20005
Phone: (202) 408-5565
Facsimile: (202) 588-5020

aweismann@citizensforethics.org

Dated: August 17, 2020

Attorneys for Plaintiff