

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

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
1101 K Street, NW, Suite 201
Washington, DC 20005,

Plaintiff,

v.

U.S. DEPARTMENT OF THE
TREASURY,
1500 Pennsylvania Avenue, NW
Washington, DC 20220,

U.S. POSTAL SERVICE,
475 L'Enfant Plaza SW
Washington, DC 20260, and

U.S. POSTAL SERVICE OFFICE OF
INSPECTOR GENERAL,
1735 N. Lynn Street
Arlington, VA 22209,

Defendants.

Civil Action No. 20-cv-2256-CKK

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, in which Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) challenges the failure of Defendants U.S. Department of the Treasury (“Treasury”), the U.S. Postal Service (“USPS”), and the USPS Office of Inspector General (“USPS OIG”) to release records relating to voting by mail and the selection of Louis DeJoy as Postmaster General.

2. CREW seeks declaratory relief that Defendants are in violation of FOIA, and injunctive relief requiring Defendants to immediately process and release the requested records.

Jurisdiction and Venue

3. This Court has subject-matter jurisdiction and personal jurisdiction under 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.

4. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

5. 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.

6. Defendant Treasury is an agency within the meaning of 5 U.S.C. § 552(f). Treasury has possession, custody, and control of records responsive to CREW's FOIA request.

7. Defendant USPS is an agency within the meaning of 5 U.S.C. § 552(f). The USPS has possession, custody, and control of records responsive to CREW's FOIA request.

8. Defendant USPS OIG is an agency within the meaning of 5 U.S.C. § 552(f). The USPS OIG has possession, custody, and control of records responsive to CREW's FOIA request.

Factual Background

9. On October 16, 2019, the USPS announced that Megan Brennan, Postmaster General and Chief Executive Officer, would retire in 2020.

10. 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.

11. Mr. DeJoy is the first Postmaster General in decades who did not come through the agency's ranks.

12. According to the *Washington Post*, after Postmaster General Brennan announced her plans to retire from the USPS in October 2019, Secretary of the Treasury Steven 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*, Aug. 15, 2020, <https://wapo.st/3jaO4Zo>.

13. The selection of a Trump ally to lead the USPS has raised concerns about potential political interference at the agency, which have only intensified in the ensuing months. President Trump's repeated attacks on voting by mail are adding to worries about the selection of a Republican fundraiser and Trump donor to be Postmaster General.

14. Contrary to the President's attacks on voting by mail, the USPS OIG has noted that states have implemented such processes effectively and efficiently, with support from the USPS. *See, e.g.*, USPS OIG, Cast Your Vote via the Postal Service?, July 26, 2010, <https://bit.ly/31q5lrf>.

15. More recently, the Federal Bureau of Investigation "says it has no evidence of any coordinated fraud schemes related to voting by mail this year." Miles Parks, There's No Evidence Supporting Trump's Mail Ballot Warnings, FBI Says, *NPR*, Aug. 26, 2020, <https://www.npr.org/2020/08/26/906262573/theres-no-evidence-supporting-trump-s-mail-ballot-warnings-fbi-says>.

June 22, 2020 FOIA Request to Treasury

16. By letter dated June 22, 2020, CREW submitted a FOIA request to Treasury seeking six categories of records:
- (1) 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) 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) 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) 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) 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) 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.
17. By letter dated June 26, 2020, Treasury acknowledged receipt of CREW's request and assigned it tracking number 2020-06-174. Treasury advised CREW that it had initiated a

search for responsive records, and invoked a 10-day extension of its processing deadline due to “unusual circumstances.”

18. By letter dated July 29, 2020, Treasury provided an “interim response” to CREW’s FOIA request. The letter stated that Treasury “conducted a limited search and located three records, totaling three pages,” which the agency released in full to CREW.

19. Treasury’s July 29 letter did not indicate that it was a final determination on CREW’s request, but rather stated it was only an “interim” response.

20. Treasury’s July 29 letter did not advise CREW of any administrative appeal rights.

21. On August 17, 2020, CREW filed its initial complaint in this action, challenging Treasury’s response to CREW’s June 22, 2020 FOIA request.

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

June 16, 2020 FOIA Request to the USPS

23. On June 16, 2020, CREW submitted a FOIA request to the USPS seeking ten categories of records:

- (1) all briefing materials and or documents created by USPS employees prepared for or presented to Louis DeJoy, Postmaster General of the United States referring or relating to voting by mail from May 1, 2020 to the present;
- (2) all briefing materials and or documents created by USPS employees prepared for or presented to Postmaster General of the United States Megan Brennan referring or relating to voting by mail from May 1, 2017 to the present;
- (3) all briefing materials or documents, including testimony, or responses to questions for the record, created by USPS employees prepared for or presented to any United States Senator, member of the United States House of Representatives, or congressional staff, referring or relating to voting by mail from May 1, 2017 to the present;

- (4) all briefing materials and or documents created by USPS employees prepared for or presented to Office of Inspector General employees referring or relating to voting by mail from May 1, 2017 to the present;
- (5) all briefing materials and or documents created by USPS employees prepared for or presented to any member of the USPS Board of Governors referring or relating to voting by mail from May 1, 2017 to the present;
- (6) all briefing materials and or documents created by USPS employees prepared for or presented to any governor or mayor or their staff referring or relating to voting by mail from May 1, 2017 to the present;
- (7) all exit memos from Postmaster General of the United States Megan Brennan;
- (8) all communications between and among members of the USPS Board of Governors regarding the qualifications of Louis DeJoy to serve as Postmaster General of the United States from January 1, 2020 to present;
- (9) all communications between any members of the USPS Board of Governors and any United States Senator, member of the United States House of Representatives, or congressional staff, referring or relating to the qualifications of Louis DeJoy to serve as Postmaster General of the United States from January 1, 2020 to present; and
- (10) all written policies or guidance that the USPS has developed pertaining to voting by mail from January 1, 2016 to present.

24. By letter dated July 6, 2020, the USPS acknowledged receipt of CREW's request and assigned it tracking number 2020-FPRO-01322.

25. By letter dated July 13, 2020, the USPS referred the subparts of CREW's request to the following agency officials and components: the Postmaster General and CEO (Items 1, 2, and 7); Government Relations and Public Policy (Item 3); USPS OIG (Item 4); Board of Governors (Items 5, 8, and 9); and Chief Marketing/Sales Officer (Items 6 and 10).

26. By letter dated July 14, 2020 (which was transmitted by email dated July 15, 2020), the USPS Sales office stated that Item 6 of CREW's request was too broad and asked CREW to clarify or narrow its request.

27. By email dated July 16, 2020, CREW responded to the USPS Sales office's letter, stating that CREW had "called the number provided and could not get through to anyone" and asking to arrange a time to discuss CREW's request. To date, CREW has received no response to this email.

28. By letter dated July 14, 2020, USPS Government Relations and Public Policy invoked a 10-day extension of its processing deadline due to "unusual circumstances," and noted that its new deadline to respond to CREW's request would expire on July 29, 2020.

29. By letter dated July 14, 2020, the USPS Board of Governors invoked a 10-day extension of its processing deadline due to "unusual circumstances," and noted that its new deadline to respond to CREW's request would expire on July 29, 2020.

30. By letter dated July 28, 2020, the USPS Board of Governors provided a determination in response to Items 5, 8, and 9 of CREW's request. It noted that its search uncovered 39 pages of responsive records. It withheld those records almost in their entirety under FOIA Exemptions 5 and 6, releasing redacted versions that disclosed only email headers, salutations, and other non-substantive material.

31. By letter dated August 4, 2020, CREW administratively appealed the Board of Governors' determination, challenging the adequacy of its search and its Exemption 5 withholdings.

32. As of the date of this filing, the Board of Governors has not ruled on CREW's administrative appeal.

33. By letter dated August 6, 2020, the USPS invoked a 10-day extension of its processing deadline due to "unusual circumstances." It further claimed that its new deadline would expire on September 3, 2020, even though that deadline is 56 working days after CREW's

June 16, 2020 request and thus well beyond the maximum 30-working-day time limit set forth in 5 U.S.C. 552(a)(6).

34. To date, CREW has received no further communications from the USPS in response to its June 16, 2020 FOIA request.

June 16, 2020 FOIA Request to the USPS OIG

35. By letter dated June 16, 2020, CREW submitted a FOIA request to the USPS OIG seeking five categories of records:

- (1) all briefing materials and or documents created by OIG employees prepared for or presented to Louis DeJoy, Postmaster General of the United States referring or relating to voting by mail from May 1, 2020 to the present;
- (2) all briefing materials or documents, including testimony, or responses to questions for the record, created by USPS OIG employees prepared for or presented to any United States Senator, member of the United States House of Representatives, or congressional staff, referring or relating to voting by mail from May 1, 2017 to the present;
- (3) all OIG audits, investigations, surveys, blog posts, or other reports created by USPS OIG employees referring or relating to voting by mail from May 1, 2010 to the present;
- (4) documents related to any recommendations made by USPS OIG to USPS leadership referring or relating to voting by mail from May 1, 2017 to the present; and
- (5) all communications between any USPS OIG employees and any United States Senator, member of the United States House of Representatives, or congressional staff, referring or relating to the qualifications of Louis DeJoy to serve as Postmaster General of the United States from January 1, 2020 to present.

36. By letter dated July 9, 2020, the USPS OIG acknowledged receipt of CREW's request and assigned it tracking number 2020-IGFP-00454.

37. The USPS OIG's letter stated that "we probably cannot comply with the statutory time requirement for processing this request. We regret the necessity of this delay, but we assure you your request will be processed as soon as possible."

38. To date, CREW has received no further communications from the USPS OIG in response to its June 16, 2020 FOIA request.

CREW'S CLAIMS FOR RELIEF

COUNT I

(Treasury's Wrongful Withholding of Records Responsive to CREW's June 22, 2020 FOIA Request)

39. CREW repeats and re-alleges the foregoing paragraphs.

40. In its June 22, 2020 FOIA request, CREW properly asked for records within the possession, custody, and control of Treasury.

41. Treasury is wrongfully withholding records responsive to CREW's FOIA request.

42. Treasury has failed to conduct an adequate search in response to CREW's FOIA request.

43. By failing to timely release all requested records in full to CREW, Treasury is in violation of FOIA.

44. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its June 22, 2020 FOIA request to Treasury.

COUNT II

(USPS's Wrongful Withholding of Records Responsive to CREW's June 16, 2020 FOIA Request)

45. CREW repeats and re-alleges the foregoing paragraphs.

46. In its June 16, 2020 FOIA request, CREW properly asked for records within the possession, custody, and control of the USPS.

47. The USPS is wrongfully withholding records responsive to CREW's FOIA request.

48. The USPS has failed to conduct an adequate search in response to CREW's FOIA request.

49. By failing to timely release all requested records in full to CREW, the USPS is in violation of FOIA.

50. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its June 16, 2020 FOIA request to the USPS.

**COUNT III
(USPS OIG's Wrongful Withholding of Records Responsive to CREW's June 16, 2020
FOIA Request)**

51. CREW repeats and re-alleges the foregoing paragraphs.

52. In its June 16, 2020 FOIA request, CREW properly asked for records within the possession, custody, and control of the USPS OIG.

53. The USPS OIG is wrongfully withholding records responsive to CREW's FOIA request.

54. The USPS OIG has failed to conduct an adequate search in response to CREW's FOIA request.

55. By failing to timely release all requested records in full to CREW, the USPS OIG is in violation of FOIA.

56. CREW is therefore entitled to injunctive and declaratory relief requiring immediate processing and disclosure of the records requested in its June 16, 2020 FOIA request to the USPS OIG.

Requested Relief

WHEREFORE, CREW respectfully requests that this Court:

1. Order Defendants to immediately and fully process CREW's FOIA requests and disclose all non-exempt documents to CREW;
2. Issue a declaration that CREW 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 CREW its costs and reasonable attorneys' fees in this action; and
6. Grant such other relief as the Court may deem just and proper.

Date: September 2, 2020

Respectfully Submitted,

/s/ Nikhel Sus

Nikhel S. Sus

(D.C. Bar No. 1017937)

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