

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CITIZENS FOR RESPONSIBILITY AND )  
ETHICS IN WASHINGTON, )

Plaintiff-Appellee, )

v. )

UNITED STATES DEPARTMENT OF )  
HOMELAND SECURITY, et al., )

Defendants-Appellants. )

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No. 09-5014

(Consolidated with 09-5015)

**APPELLANTS' RESPONSE TO SHOW CAUSE ORDER**

**INTRODUCTION AND SUMMARY**

Defendants-appellants, the Department of Homeland Security and the Archivist of the United States, respectfully respond to this Court's order of April 14, 2009, directing appellants to show cause why this appeal should not be dismissed for lack of appellate jurisdiction.

This case arises from a Freedom of Information Act ("FOIA") request by Citizens for Responsibility and Ethics in Washington ("CREW") to the Secret Service for "all records relating to any visit" by nine named individuals to "the White House or the residence of the Vice President from January 1, 2001, to the present," specifically including visits to "any office within the Executive Office of

the President” and “the residence of the President.” A9.<sup>1</sup> In 2007, the district court concluded that the records at issue were records of the Secret Service, subject to the FOIA rather than presidential records subject to the requirements of the Presidential Records Act. See A8.

The government appealed, and this Court dismissed for lack of jurisdiction. This Court emphasized that it was “entirely possible that the government will never have to turn over a single document” because the parties had yet to litigate exemptions from disclosure under the FOIA. CREW v. U.S. Dep’t of Homeland Sec., 532 F.3d 860, 863 (D.C. Cir. 2008). The Court anticipated that the government might “issue[] a blanket claim of privilege over all responsive Secret Service visitor records,” noting potential reliance on the presidential communications privilege. Id. at 867-68.

On January 9, 2009, the district court rejected the government’s invocation of the presidential communications privilege and held that because the records that plaintiff seeks do not fall within that privilege, the documents “are not shielded from disclosure by FOIA Exemption 5.” CREW v. U.S. Dep’t of Homeland Sec., 592 F. Supp. 2d 111, 119 (D.D.C. 2009). The court ordered the Department of Homeland Security (“DHS”) to “immediately process plaintiff’s Freedom of

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<sup>1</sup>“A\_” denotes a citation to the addendum to this response.

Information Act request and produce all responsive agency records that are not exempt from disclosure.” A5. In addition, the court awarded judgment to plaintiff on its separate claim that DHS’ deletion and nonretention of certain White House and Vice President’s Residence visitor records violated the Federal Records Act. A6. The court accordingly enjoined the Acting Archivist to “request that the Attorney General initiate legal action to recover” the deleted records, “with corresponding notice to Congress, as required by the Federal Records Act.” Ibid.

The government filed a motion for a stay pending appeal, which was granted by the district court. As part of this motion, the government submitted a declaration from the Secret Service’s Freedom of Information and Privacy Acts Officer stating that there is “[a]t least one record responsive to plaintiff’s FOIA request” as to which the Secret Service would invoke no exemption other than the blanket Exemption 5 claim based on presidential communications already rejected by the district court. A2, ¶ 4.

This Court has previously explained that an order under the FOIA that “requires the disclosure of documents for which the agencies claim no basis for non-disclosure beyond the argument already rejected by the district court” is an appealable injunction under 28 U.S.C. § 1292(a)(1). Judicial Watch, Inc. v. Dep’t of Energy, 412 F.3d 125, 128 (D.C. Cir. 2005).

Therefore, the jurisdictional defects cited by this Court in its previous decision are not present here, and the Court has jurisdiction to resolve the issues on appeal.

### **STATEMENT**

A. Congress has directed that the President and Vice President receive protection from the United States Secret Service. See 18 U.S.C. § 3056(a). To accommodate this protection, the Secret Service is notified when the President, Vice President, and their respective staffs wish to receive visitors in their offices or official residences.

When the President, Vice President, or their staffs wish to receive a visitor at the White House Complex, an authorized employee typically enters the details of the proposed visit into a White House computer system, and the information is transmitted to the Secret Service. These details include identifying information, such as the visitor's name, birth date, and Social Security number, as well as the time and location of the planned visit, the name of the person to be visited, and the type of visitor.<sup>2</sup> After receipt of the information, a Secret Service employee may

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<sup>2</sup>Visitor-access records are also generated when the Vice President receives visitors at his official residence. The Secret Service monitors and controls access to the Vice President's Residence through the use of a permanent access list, daily access lists, and post entry logs, as well as lists of invited guests for special events. When the Vice President wishes to receive a visitor at his residence, an authorized

annotate the record with information from criminal background checks or include instructions to Secret Service officers, or other incidental details. The resulting records are held in a Secret Service computer system known as the Worker and Visitor Entrance System (“WAVES”).

Once a visitor is cleared into the White House Complex, the individual typically receives an electronic pass, which is swiped over pass-readers at the gates to the Complex. Swiping the pass automatically creates a record in the Access Control Records System (“ACR”). An ACR record includes the entrant’s name and badge number, the time and date of the swipe, and the post at which the swipe was recorded.

B. In October 2006, plaintiff submitted to the Secret Service a FOIA request for “all records relating to any visit” by nine named individuals to “the White House or the residence of the Vice President from January 1, 2001, to the present,” specifically including visits to “any office within the Executive Office of the President” and “the residence of the President.” A9.

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staff member typically supplies the necessary details to the Secret Service, including the visitor’s name, birth date, and Social Security number, the date of the visit and the expected time of arrival. The Secret Service performs necessary background checks and generates the daily access list of cleared visitors. When a person on the daily access list actually enters the Vice President’s Residence, a Secret Service officer at the gate records the visitor’s entry by hand in a post entry log.

On December 17, 2007, the district court rejected the Secret Service's contention that visitor-access records for the White House Complex and Vice President's Residence are presidential records subject to the Presidential Records Act, 44 U.S.C. § 2201, rather than "agency" records subject to the FOIA. CREW v. Dep't of Homeland Sec., 527 F. Supp. 2d 76, 98 (D.D.C. 2007). The court opined that it was "unlikely" that disclosing visitor records would impinge on the confidentiality of Executive Branch deliberations but held that the Secret Service was free to assert any applicable FOIA exemptions on a record-by-record basis. Id. at 99. The district court directed DHS to "immediately process Plaintiff's Freedom of Information Act request and produce all responsive records that are not exempt from disclosure within 20 days of the Court's order." A8.

The government appealed. After briefing and oral argument, this Court dismissed the appeal for lack of jurisdiction. CREW, 532 F.3d at 868. The Court recognized that orders requiring the immediate disclosure of documents are appealable as injunctions under 28 U.S.C. § 1292(a)(1). Id. at 863. The Court emphasized, however, that the district court had not yet ruled on the applicability of particular FOIA exemptions, id. at 863-64, and the Court noted the possibility that the government might "issue[] a blanket claim of privilege over all responsive Secret Service visitor records," id. at 867.

C. On remand, the government urged that disclosing the existence of meetings between visitors and the President, Vice President, or their advisors would implicate the presidential communications privilege and that, under Exemption 5 of the FOIA, the government should not be required to confirm or deny the existence of such records in response to specific FOIA requests.

On January 9, 2009, the district court held that the records plaintiff seeks “do not fall within the presidential communications privilege and thus are not shielded from disclosure by FOIA Exemption 5.” 592 F. Supp. 2d at 119. The court ordered DHS to “immediately process plaintiff’s Freedom of Information Act request and produce all responsive agency records that are not exempt from disclosure.” A5. In addition, the court awarded judgment to plaintiff on its separate claim that DHS’ deletion and nonretention of certain White House and Vice President’s Residence visitor records violated the Federal Records Act. A6. The court ordered the Acting Archivist to “request that the Attorney General initiate legal action to recover” the deleted records, “with corresponding notice to Congress, as required by the Federal Records Act.” Ibid.

The government filed a notice of appeal on January 14, 2009, and the district court granted the government’s motion for a stay of the court’s order pending appeal. In support of its stay motion, the government submitted a

declaration from the Secret Service's Freedom of Information and Privacy Acts Officer stating that there is "[a]t least one record responsive to plaintiff's FOIA request" as to which the Secret Service would invoke no exemption other than the blanket Exemption 5 claim based on presidential communications privilege that the district court rejected. A2, ¶ 4.

This appeal was consolidated with No. 09-5015, a separate FOIA case raising similar issues regarding a request for records of visits by a specified individual to the White House and the Vice President's Residence. The district court issued a similar decision in that case based on its ruling in this case, see CREW v. Dep't of Homeland Sec., 592 F. Supp. 2d 127 (D.D.C. 2009), and the court also stayed that disclosure order pending appeal. The government submitted a similar declaration in that case explaining that there is "[a]t least one record responsive to plaintiff's FOIA request" as to which the Secret Service would invoke no exemption other than the blanket Exemption 5 claim based on presidential communications privilege that the district court rejected. A4, ¶ 4.

## DISCUSSION

### **This Court Has Jurisdiction To Review the Orders on Appeal.**

As this Court has held, an order under the FOIA that “requires the disclosure of documents for which the agencies claim no basis for non-disclosure beyond the argument already rejected by the district court” is an appealable injunction under 28 U.S.C. § 1292(a)(1). Judicial Watch, 412 F.3d at 128. In Judicial Watch, the district court held that FOIA Exemption 5 did not apply to communications between the White House and the Office of the Vice President and agency personnel because those communications did not reflect the deliberative process of a FOIA agency. Id. at 127. The court ordered the government to produce responsive records, subject to otherwise available privileges. The government appealed, and identified two specific records that would be subject to disclosure under the district court’s order because they would be unprotected by any other privilege. This Court then held that that showing was sufficient to establish appellate jurisdiction in that case. See id. at 128.

That ruling governs the issue of appellate jurisdiction here. The district court has held that a category of records are agency records, rather than presidential records, and are not subject to the presidential communications privilege made applicable by FOIA Exemption 5. As in Judicial Watch, there is at

least one record that will be subject to disclosure as a result. A2, ¶ 4. The order is therefore an appealable injunction.

The order is also an appealable injunction because it enjoins the Acting Archivist to take specific remedial steps under the Federal Records Act. That injunction is premised on the same error that underlies the district court's FOIA ruling – that the records at issue are not presidential records subject to the Presidential Records Act, but rather are “agency” records subject to the FOIA and the Federal Records Act. Thus, for the same reason that the Secret Service lacks the authority to disclose the records under the FOIA, the Acting Archivist has no authority to seek their recovery under the Federal Records Act.

The jurisdictional defects cited by the Court in dismissing the government's prior appeal are therefore not present here. At that time, the government had identified no document that would be necessarily disclosed under the district court's order. This Court emphasized that it was “entirely possible that the government will never have to turn over a single document” because the parties had yet to litigate FOIA exemptions. CREW, 532 F.3d at 863. The Court anticipated that the government would “issue[] a blanket claim of privilege over all responsive Secret Service visitor records,” noting the likely assertion of the presidential communications privilege. Id. at 867-68.

The district court has now rejected a blanket claim of privilege based on the presidential communications privilege, and, in support of its motion for a stay pending appeal, the government provided a sworn declaration that the order will result in the disclosure of at least one record. A2, ¶ 4; see also A4, ¶ 4. The prerequisites for appellate jurisdiction are fully satisfied.


### CONCLUSION

For the foregoing reasons, this Court has jurisdiction over this appeal.

Respectfully submitted,

TONY WEST  
Assistant Attorney General

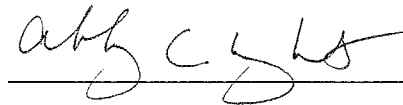
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950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

## CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2009, I caused an original and four copies of the foregoing Response to be filed with the Court by hand delivery and served upon the following counsel by hand delivery and electronic mail:

Anne L. Weismann, Esq.  
Citizens for Responsibility and Ethics in Washington  
1400 Eye St., NW, Suite 450  
Washington, D.C. 20005  
(202) 408-5565, Ext. 108  
aweismann@citizensforethics.org

A handwritten signature in black ink, appearing to read 'abby c wright', is written over a horizontal line.

ABBY C. WRIGHT

# ADDENDUM

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

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	1:06-cv-01912-RCL
	)	
U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF CRAIG W. ULMER**  
**SPECIAL AGENT IN CHARGE, LIAISON DIVISION AND**  
**FREEDOM OF INFORMATION AND PRIVACY ACTS OFFICER,**  
**UNITED STATES SECRET SERVICE**

I, Craig W. Ulmer, hereby declare as follows:

1. I am the Special Agent in Charge of the Liaison Division and the Freedom of Information and Privacy Acts (FOI/PA) Officer for the United States Secret Service (hereinafter "Secret Service"), which is a component of the Department of Homeland Security ("DHS"). I have been the Secret Service FOI/PA Officer since August 5, 2007, and have been employed with the Secret Service as a-Special Agent (GS-1811) since April 28, 1985.

2. As the Secret Service's FOI/PA Officer, I am familiar with the FOIA request that is at issue in this case. By letter dated October 4, 2006, and received by the Secret Service FOI/PA Office on October 20, 2006, the plaintiff submitted to the Secret Service a FOIA request for:

all records relating to any visit that any and all of the following individuals made to the White House or the residence of the Vice President from January 1, 2001, to the present. As used herein, the term 'White House' includes, but is not limited to, any office within the Executive Office of the President, the residence of the President, the Old and New Executive Office Buildings, and any other office or space on the grounds of the White

House. Specifically, we seek any record of visits to the White House or the Vice President's residence by the following individuals: James Dobson[,] Gary L. Bauer[,] Wendy Wright[,] Louis P. Sheldon[,] Andrea Lafferty[,] Paul Weyrich[,] Tony Perkins[,] Donald Wildmon [and] Jerry Falwell.

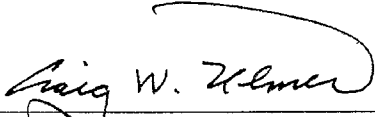
3. As stated in my letter to the plaintiff dated September 24, 2008, the Secret Service has conducted a search for records responsive to this request. With the authorization of presidential and vice presidential personnel, the Secret Service included in that search those presidential and vice presidential records retained by the Secret Service that may fall within the request.

4. At least one record responsive to plaintiff's FOIA request was found in the search referred to above as to which the Secret Service would invoke no FOIA exemption other than the presidential communications privilege (Exemption 5) invoked in my letter of September 24, 2008.

5. The information provided in this declaration concerning the search for responsive Secret Service records is based on information known to me in my position as the Secret Service FOI/PA Officer, and on information provided to me by other Secret Service employees in connection with my position as the Secret Service FOI/PA Officer.

I declare under penalty of perjury that the foregoing is true and correct.

JANUARY 14, 2009  
Date

  
\_\_\_\_\_  
Craig W. Ulmer  
SAIC, Liaison Division  
FOIA Officer

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<hr/>		)	
CITIZENS FOR RESPONSIBILITY AND		)	
ETHICS IN WASHINGTON,		)	
		)	
	Plaintiff,	)	
		)	CIVIL ACTION NO.
v.		)	1:08-cv-01535-RCL
		)	
U.S. DEPARTMENT OF HOMELAND		)	
SECURITY,		)	
		)	
	Defendant.	)	
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**DECLARATION OF CRAIG W. ULMER**  
**SPECIAL AGENT IN CHARGE, LIAISON DIVISION AND**  
**FREEDOM OF INFORMATION AND PRIVACY ACTS OFFICER,**  
**UNITED STATES SECRET SERVICE**

I, Craig W. Ulmer, hereby declare as follows:

1. I am the Special Agent in Charge of the Liaison Division and the Freedom of Information and Privacy Acts (FOI/PA) Officer for the United States Secret Service (hereinafter "Secret Service"), which is a component of the Department of Homeland Security ("DHS"). I have been the Secret Service FOI/PA Officer since August 5, 2007, and have been employed with the Secret Service as a Special Agent (GS-1811) since April 28, 1985.

2. As the Secret Service's FOI/PA Officer, I am familiar with the FOIA request that is at issue in this case. By letter dated July 15, 2008, and received by the Secret Service FOI/PA Office on July 25, 2008, the plaintiff submitted to the Secret Service a FOIA request for:

all records relating to any visit that Stephen Payne made to the White House or the residence of the Vice President from January 1, 2001, to the present. As used herein, the term "White House" includes, but is not limited to, any office within the Executive Office of the President, the residence of the President, the Old and

New Executive Office Buildings, and any other office or space on the grounds of the White House.

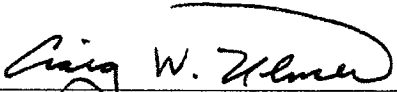
3. The Secret Service has started, but not completed, a search for records responsive to this request.

4. At least one record responsive to plaintiff's FOIA request was found in the search referred to above as to which the Secret Service would invoke no FOIA exemption other than the presidential communications privilege (Exemption 5).

5. The information provided in this declaration concerning the search for responsive Secret Service records is based on information known to me in my position as the Secret Service FOI/PA Officer, and on information provided to me by other Secret Service employees in connection with my position as the Secret Service FOI/PA Officer.

I declare under penalty of perjury that the foregoing is true and correct.

JANUARY 21, 2009  
Date

  
\_\_\_\_\_  
Craig W. Ulmer  
SAIC, Liaison Division  
FOIA Officer

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____		)	
CITIZENS FOR RESPONSIBILITY	)		
AND ETHICS IN WASHINGTON,	)		
	)		
Plaintiff,	)		
	)		
v.	)	Civil Action No. 06-1912 (RCL)	
	)		
U.S. DEPARTMENT OF	)		
HOMELAND SECURITY, et al.,	)		
	)		
Defendants.	)		
_____		)	

ORDER

Upon consideration of parties Cross Motions for Summary Judgment ([64] and [68]) on Claims One and Two, the oppositions and replies thereto, and the record herein, it is, for the reasons contained in the accompanying Memorandum Opinion, hereby

ORDERED that defendants' motion [64] is DENIED; and it is further

ORDERED that plaintiff's motion [68] is GRANTED.

In accordance with this Order, it is further

ORDERED that defendant U.S. Department of Homeland Security shall immediately process plaintiff's Freedom of Information Act request and produce all responsive agency records that are not exempt from disclosure.

Upon consideration of plaintiff's Motion [51] for Summary Judgment on Claims Three and Four, the opposition and reply thereto, and the record herein, it is, for the reasons contained in the accompanying Memorandum Opinion, hereby

ORDERED that plaintiff's Motion be GRANTED IN PART and DENIED IN PART. It is

DECLARED that the U.S. Department of Homeland Security's deletion of WAVES records prior to October 2004 was contrary to the Federal Records Act; and it is further

DECLARED that the U.S. Department of Homeland Security's nonretention of VPR visit records (as described in the Memorandum Opinion) prior to June 2006 was contrary to the Federal Records Act; and it is further

DECLARED that the failure of Adrienne Thomas, Acting Archivist of the United States, to request that the Attorney General initiate legal action to recover the deleted WAVES records was contrary to the Federal Records Act; and it is further

ORDERED that Adrienne Thomas, Acting Archivist of the United States, request that the Attorney General initiate legal action to recover the deleted WAVES records, with corresponding notice to Congress, as required by the Federal Records Act; and it is further

ORDERED that in all other respects plaintiff's Motion [51] is DENIED.

SO ORDERED.

Signed by Royce C. Lamberth, Chief Judge, on January 9, 2009.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CITIZENS FOR RESPONSIBILITY	)	)
AND ETHICS IN WASHINGTON,	)	)
	)	)
Plaintiff,	)	)
	)	)
v.	)	Civil Action No. 08-1535 (RCL)
	)	)
U.S. DEPARTMENT OF	)	)
HOMELAND SECURITY,	)	)
	)	)
Defendant.	)	)
<hr/>		)

**ORDER**

The Court having considered defendant's Motion [9] for Summary Judgment, plaintiff's Cross Motion [11] for Summary Judgment, the oppositions and replies thereto, and the entire record herein, for the reasons contained in the accompanying Memorandum Opinion it is hereby

ORDERED that defendant's Motion [9] for Summary Judgment is DENIED; and it is further

ORDERED that plaintiff's Cross Motion [11] for Summary Judgment is GRANTED. Defendant shall immediately process plaintiff's FOIA request and produce all responsive records that are not exempt from disclosure.

SO ORDERED.

Signed by Royce C. Lamberth, Chief Judge, on January 9, 2009.

*UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA*

CITIZENS FOR RESPONSIBILITY )  
AND ETHICS IN WASHINGTON, )

Plaintiff, )

v. )

Civil Action No. 06-1912 (RCL)

UNITED STATES DEPARTMENT OF )  
HOMELAND SECURITY, et al., )

Defendant. )

**ORDER**

For the reasons contained in the accompanying memorandum opinion, it is hereby

**ORDERED** that Defendant's Motion For Summary Judgment [29] is **GRANTED IN PART** and **DENIED IN PART**. The motion is **GRANTED** with respect to the nineteen pages of additional security-related documents that the Defendant withheld pursuant to Exemptions 2, 6, 7(C), 7(E) and 7(F) of the Freedom of Information Act. The motion is **DENIED** in all other respects; it is further

**ORDERED** that Defendant shall immediately process Plaintiff's Freedom of Information Act request and produce all responsive records that are not exempt from disclosure within 20 days of the Court's order; and it is further

**ORDERED** that Plaintiff's request for discovery is **DENIED as MOOT**.

**SO ORDERED.**

Signed by Royce C. Lamberth, United States District Judge, December 17, 2007.

# CREW | citizens for responsibility and ethics in washington

October 4, 2006

United States Secret Service  
Freedom of Information and Privacy Acts Branch  
245 Murray Drive  
Building 410  
Washington, D.C. 20223

## Re: Freedom of Information Act Request

Dear Sir/Madam:

Citizens for Ethics and Responsibility in Washington ("CREW") makes this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, pursuant to the Freedom of Information Act ("FOIA") and U.S. Department of Homeland Security ("DHS") regulations, 6 CFR part 5.

This request is for all records relating to any visit that any and all of the following individuals made to the White House or the residence of the Vice President from January 1, 2001, to the present. As used herein, the term "White House" includes, but is not limited to, any office within the Executive Office of the President, the residence of the President, the Old and New Executive Office Buildings, and any other office or space on the grounds of the White House. Specifically, we seek any record of visits to the White House or the Vice President's residence by the following individuals:

James Dobson  
Gary L. Bauer  
Wendy Wright  
Louis P. Sheldon  
Andrea Lafferty  
Paul Weyrich  
Tony Perkins  
Donald Wildmon  
Jerry Falwell

We seek records of any and all kind, including electronic records, audiotapes, videotapes, photographs, and computer print-outs. Our request includes any telephone messages, voice mail messages, and daily agenda and calendars.

If it is your position that 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), *cert. denied*, 415 U.S. 977 (1972). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." Founding Church of Scientology v. Bell, 603

F.2d 945, 959 (D.C. Cir. 1979). Moreover, the Vaughn index must “describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” King v. U.S. Dep’t of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly 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 and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. Mead Data Central v. U.S. Dep’t of the Air Force, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

### **Fee Waiver Request**

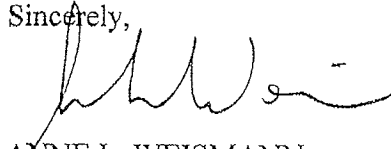
In accordance with 5 U.S.C. §552(a)(4)(A)(iii), CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government and the disclosures will likely contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes, pursuant to 5 U.S.C. §552(a)(4)(A)(iii). See, e.g., McClellan Ecological v. Carlucci, 835 F.2d 1282, 1285 (9<sup>th</sup> Cir. 1987). Specifically, the requested records are likely to contribute to the public’s understanding of the influence that conservative Christian leaders have, or attempt to have, on the President in the exercise of his authority.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue code. CREW is committed to protecting the citizens’ right to be aware of the activities of government officials and to ensuring the integrity of those officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the government decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW’s financial interest. CREW will analyze the information responsive to this request and intends to share its analysis with the public, either through memoranda, reports, or press releases. CREW has an established record of carrying out these types of activities, as evidenced through its website, [www.citizensforethics.org](http://www.citizensforethics.org). Currently, the CREW website contains links to thousands of pages of documents acquired from multiple FOIA requests. See <http://citizensforethics.org/activities/foia.php>. Visitors to CREW’s website can peruse the FOIA request letters, the responses from government agencies, and a growing number of documents responding to FOIA requests. CREW’s virtual reading room provides around-the-clock access to anyone interested in learning about the government activities that were the focus of CREW’s FOIA requests. The CREW website also includes documents relating to CREW’s FOIA litigation, Internal Revenue Service complaints, and Federal Election Commission complaints.

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

If you have any questions about this request, or foresee any problems in releasing fully the requested records on an expedited basis, please call Anne Weismann at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination. Please send the requested documents to Anne Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', written over a horizontal line.

ANNE L. WEISMANN  
Chief Counsel  
Citizens for Responsibility and Ethics  
in Washington