

**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 JUSTICE)
950 Pennsylvania Ave., N.W.)
Washington, D.C. 20530)

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 Office of Legal Counsel (“OLC”), a component of defendant U.S. Department of Justice (“DOJ”), to disclose to CREW opinions OLC has written that discuss the power of the president to invoke emergency powers to declare a national emergency including, *inter alia*, the president’s power to invoke those powers to build a wall or other type of barrier along the U.S. border with Mexico

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

Statutory and Regulatory Background

6. 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.

7. 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).

8. An agency's failure to make this determination within 20 days is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

Factual Background

9. During the most recent government shutdown, President Donald Trump and his White House suggested he might invoke emergency powers and declare a national emergency to bypass Congress' refusal to fund his wall along the Mexican border and to direct federal officials to proceed with wall construction.

10. Vice President Mike Pence stated publicly that the White House Counsel's Office was examining the president's ability to declare a national emergency to fund the border wall.

11. President Trump's threatened declaration of a national emergency for these purposes raised serious questions among the public and Congress that the president was considering actions of doubtful legality based on misstated facts and outright falsehoods to make an end-run around Congress' constitutional authority to make laws and appropriate funds.

12. To shed light on the legal authority for the president's contemplated action, CREW sent a FOIA request by email to OLC on January 10, 2019. CREW requested all opinions written by OLC that discuss in any way the power of the president to invoke emergency powers to declare a national emergency including, but not limited to, the president's power to invoke these powers to build a wall or other type of barrier along the U.S. border with Mexico.

13. CREW also requested expedition of its request because its subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government's integrity that affect public confidence.

14. By letter dated February 12, 2019, OLC acknowledged receiving CREW's request on January 10, 2019. OLC also advised that based on the determination of DOJ's Office of Public Affairs ("OPA") CREW's request for expedition was denied because in OPA's judgment the regulatory criteria for expedition, set forth at 28 C.F.R. § 16.5(e)(1)(iv), were not satisfied.

15. OLC further advised that it was unable to comply with the 20-day statutory deadline for responding to CREW's request but did not provide an alternative date for response or cite "unusual circumstances" that required a 10-day time extension.

16. To date, CREW has received no other communications from OLC.

17. CREW has now exhausted all applicable administrative remedies with respect to its request of OLC.

PLAINTIFF'S CLAIM FOR RELIEF

18. Plaintiff repeats and re-alleges paragraphs 1-17.

19. Plaintiff properly asked for records within the custody and control of DOJ.

20. Defendant DOJ wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request.

21. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Order defendant Department of Justice to immediately and fully process plaintiff's January 10, 2019 FOIA request to OLC 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,



Anne L. Weismann
(D.C. Bar No. 298190)
Adam J. Rappaport
(D.C. Bar No. 479866)
Citizens for Responsibility and Ethics
in Washington
455 Massachusetts Ave., N.W.
Washington, D.C. 20001
Phone: (202) 408-5565
Facsimile: (202) 588-5020

Dated: February 15, 2019

Attorneys for Plaintiff