

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

CITIZENS FOR RESPONSIBILITY AND ETHICS
IN WASHINGTON,

Plaintiff,

v.

UNITED STATES GENERAL SERVICES
ADMINISTRATION,

Defendant.

Civil Action No. 18-377 (CRC)

SECOND DECLARATION OF TRAVIS LEWIS

I, Travis Lewis, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

INTRODUCTION

1. I am the Director of the Freedom of Information Act (“FOIA”) & Records Management Division of the Office of Administrative Services for the U.S. General Services Administration (“GSA”) headquartered at 1800 F Street, NW, Washington, D.C. As the FOIA Officer for GSA, a position I have held since February 4, 2013, my responsibilities include:

- (a) reviewing requests for access to GSA records filed under the FOIA, 5 U.S.C. § 552;
- (b) assigning FOIA requests to GSA FOIA Analysts for processing;
- (c) identifying offices within GSA (often referred to as “business units”) likely to possess responsive records;
- (d) liaising with business units to help identify specific custodians of records and collect responsive records;

(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 and my own personal knowledge acquired through the performance of my official duties.

3. This declaration further explains the procedures that were followed by GSA in responding to Plaintiff's FOIA Request per the issues raised in Plaintiff's Opposition to Defendant GSA's Motion for Summary Judgment.

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

4. In my capacity as GSA's FOIA Officer, I have gained institutional knowledge regarding both: 1) the decision to cancel the procurement of a new FBI headquarters and 2) the decision to renovate the current FBI Headquarters. Specifically I have learned that the decision to cancel the procurement of a new FBI facility was reached by GSA in July, 2017. Approximately (6) six months later, in January, 2018, GSA made the decision to renovate the current FBI headquarters. Plaintiff's FOIA request was for records related to GSA's decision to cancel the procurement of a new FBI facility, which is a wholly separate matter from GSA's decision to renovate the current FBI headquarters. Plaintiff CREW submitted Plaintiff's FOIA Request seeking the following six categories of records:

- (1) “copies of all records from January 20, 2017 to the present explaining the decision of GSA, announced on July 11, 2017, to cancel the procurement for the new FBI headquarters consolidation project. This request includes, but is not limited to, records from GSA Public Buildings Service, GSA Office of the Administrator, and the National Capital Region”;
- (2) “copies of communications between GSA Regional Commissioner Mary Gibert and GSA Administrator Tim Horne from January 20, 2017 to the present concerning GSA's decision to cancel the procurement for the new FBI headquarters consolidation project”;
- (3) “copies of email communications between either Mary Gibert and Tim Horne and any individual at the eop.gov domain from January 20, 2017 to the present concerning GSA’s decision to cancel the procurement for the new FBI headquarters consolidation project”;
- (4) “copies of communications between FBI officials and GSA concerning GSA’s decision to cancel the procurement for the new FBI headquarters consolidation project”;
- (5) “copies of communications between the Office of Management and Budget and GSA concerning GSA’s decision to cancel the procurement for the new FBI headquarters consolidation project”; and
- (6) “copies of records sufficient to show the amount of federal funds expended to evaluate the final three locations designated by GSA as possible sites for the new FBI headquarters in Fairfax, Virginia and Prince George’s County, Maryland.”

Plaintiff did not make any request for records related to GSA’s decision to renovate the current the FBI headquarters, a decision that was made several months later after the decision to cancel the procurement of a new FBI headquarters.¹

¹ In July 2018, Plaintiff did submit a separate FOIA request, which is not the subject of this litigation, requesting documents “concerning the *renovation* of the FBI headquarters.” A copy of that FOIA request is attached hereto as Exhibit A.

5. In Paragraph 7 of my affidavit dated August 6, 2018, I explained that the time period for GSA's search for responsive records was from January 20, 2017 through February 23, 2018. February 23, 2018 is the date that the initial search was conducted. As I further explained in my initial affidavit, due to an inadvertent misspelling, the search was later redone using that same cutoff date.

6. GSA did not only search within its Office of the Chief Information Officer ("OCIO") for responsive records. OCIO is the office within GSA that has access to the entirety of GSA's electronic records and conducts all of the agency's electronic discovery searches for potentially responsive documents to FOIA requests. In my capacity as FOIA Officer, I have tasked the OCIO to conduct thousands of searches for records in response to FOIA requests. When OCIO conducts a search for responsive records, a search is conducted agency wide for any potentially responsive records and not only for records located within OCIO as a singular office.

7. GSA did not use the terms "JEH" or "Hoover" in the search query. As the responsive documents to Plaintiff's FOIA request illustrate, the aforementioned terms appear in very few places. It is my determination from my over five (5) years as FOIA Officer for GSA that an additional search including the terms "JEH" or "Hoover" would not return any additional responsive records pertaining to Plaintiff's FOIA request for records related to GSA's decision to cancel the FBI procurement.

8. GSA's search was reasonably calculated to locate records related to a purported dispute between OMB and GSA over the FBI relocation project that are responsive to Plaintiff's FOIA request. The decision to cancel the procurement of a new FBI facility is a wholly separate entity/ issue than the issue to renovate the current FBI headquarters. GSA's decision to cancel the FBI procurement occurred in July, 2017, and the decision to renovate the current FBI

headquarters was not reached by the agency until February, 2018. Thus any records related to any purported dispute between OMB and GSA is beyond a reasonable interpretation of Plaintiff's FOIA request.

9. GSA's search was reasonably calculated to locate records pertaining to Michael Gerber, GSA's then- Acting Public Service Commissioner held by the Senate Committee on Environment and Public Works ("EPW"). GSA has provided Plaintiff with all responsive records in its possession. Specifically, GSA provided Plaintiff with an email dated July 10, 2017, which included the Agency's Determination and Findings related to the decision to cancel the procurement for a new FBI facility. Furthermore, GSA does not have a record of Mr. Gelber's testimony to the EPW. While Plaintiff may take umbrage with the volume of responsive documents, I aver that Plaintiff has received all of the Agency's records related to this issue as well.

10. I aver that GSA properly invoked the deliberative process privilege, pursuant to FOIA Exemption 5, 5 U.S.C. § 552(b)(5). GSA withheld the FBI headquarters' appraised value and information related to the amount of development teams GSA planned to proceed with to a subsequent phase of the procurement as this information reflects the Agency's deliberative process prior to reaching the decision to cancel the procurement. GSA maintains that the predecisional nature of the redacted information has not changed because it was ultimately part of the agency's deliberations in deciding whether or not to cancel the procurement.

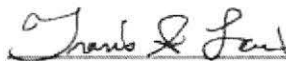
CONCLUSION

11. As detailed above and in my initial declaration, GSA conducted a reasonable and appropriate search for documents responsive to Plaintiff CREW's FOIA request and produced to Plaintiff all responsive nonexempt records located as a result. I aver that the 28 pages of

responsive documents represent the entirety of documents in GSA's possession related to Plaintiff's FOIA request for records concerning GSA's decision to cancel the procurement for the new FBI headquarters consolidation project. GSA furthermore did not exclude any sources in the agency where responsive records may exist.

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

Executed this 8th day of November, 2018, in Washington, D.C.



Travis Lewis
FOIA and Records Management Director
U.S General Services Administration
1800 F Street, NW, 7th floor, Wing 3
Washington, D.C. 20405

EXHIBIT A

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 (HIF)
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>.

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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/c11c7c8a-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.

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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.

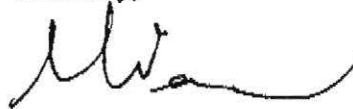
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

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