

November 20, 2007

Office of Information Programs and Services
A/ISS/IPS/RL
U.S. Department of State, SA-2
Washington, D.C. 20522-8100

Re: FOIA Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington ("CREW") makes this request for records, regardless of format, medium, or physical characteristics, including electronic records and information, electronically stored information, audiotapes, videotapes and photographs, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, et seq.

Specifically, CREW seeks any and all documents and records from any office within the Department of State, its agencies, offices, and its components, dating from January 26, 2005, to the present, concerning the Department of State's policy or policies governing the Secretary of State's methods of communicating via electronic mail (e-mail) with individuals and entities both internal and external to the U.S. government.

CREW also specifically seeks representative copies of e-mails that have been sent by the Secretary of State from her U.S. government-issued e-mail account and that pertain to official government business, dating from January 26, 2005 to the present. As used in this request, the term "representative copies" means as follows:

"Representative" copies. CREW requests copies of individual e-mails sent by the Secretary of State from her government-issued e-mail account, one each on a bi-monthly time basis for the time period dating from January 26, 2005 through the present. Thus, the response to this request should consist of at least one e-mail for each of the seventeen time periods dating from 1) January 26, 2005 through March 26, 2005; 2) March 27, 2005 through May 26, 2005; and so on, up to and including 17) September 27, 2007 through the date of this request.

CREW is not seeking any information in any of these e-mails that would be subject to an exception under the FOIA.

To the extent that the Department of State possesses copies of e-mail messages that have been sent by the Secretary of State from any private e-mail account and that pertain to official government business, this letter additionally requests representative copies of such e-mails, up to seventeen in total, for the time period dating from January 26, 2005 through the present.

Please search for responsive records regardless of format, medium, or physical characteristics. Cleary, Gottlieb, Steen & Hamilton v. Dep't of Health and Human Services, 844 F. Supp. 770, 773 (D.D.C. 1993) (“For the purposes of complying with FOIA's mandate to segregate information stored on computers, our Circuit has ruled that FOIA does not distinguish ‘between records maintained in manual and computer storage systems.’”) (quoting Yeager v Drug Enforcement Admin., 678 F.2d 315, 321 (D.C. Cir. 1982)). We seek records of any and all kind, including electronic records, audiotapes, videotapes, and photographs. Our request includes information about scheduled meetings and/or discussions, whether in-person or over the telephone, during which policies governing the Secretary of State’s methods of communicating with the White House and any agency or agency component of the Executive Branch were discussed, agendas for those meetings and/or discussions, participants included in those meetings and/or discussions, minutes of any such meetings and/or discussion, the topics discussed at those meetings and/or discussions, e-mail or facsimiles sent as a result of those meetings and/or discussions, and transcripts or notes of any such meetings and/or discussions.

If it is your position that any portion of the requested records is exempt from disclosure, CREW requests that you provide 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. United States Dep't of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” Id. at 224, citing Mead Data Central v. United States Dep't of the Air Force, 566 F.2d 242, 251 (D.C. Cir. 1977).

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) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt ...”); see also Schiller v. Nat'l Labor Relations Bd., 964 F.2d 1205, 1209 (D.C. Cir. 1992). 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 documents. Mead Data Central, 566 F.2d at 261. Claims of non-segregability must be made

with the same degree of detail as required for claims of exemption 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) and agency regulations 22 C.F.R. Part 171, 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. 5 U.S.C. §552(a)(4)(A)(iii). See, e.g., McClellan Ecological v. Carlucci, 835 F.2d 1282, 1285 (9th Cir. 1987). Specifically, these records are likely to contribute to the public's understanding of the degree to which the administration and the Secretary of State have adopted a policy or practice of not using email to avoid creating a publicly accessible record of their actions. This subject is of particular interest and importance to the public in light of Secretary Rice's recent disclosure that she does not make use of a Blackberry handheld e-mail device, apparently due to an internal State Department policy prohibiting her use of such a device. See Interview by Maria Bartiromo with Secretary Condoleezza Rice (July 6, 2007) (stating, "they don't let me play with almost anything technological now.") (Attached as Exhibit 1).

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue code. CREW is committed to protecting the right of citizens 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. 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 will likely 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. Currently, the CREW website contains links to thousands of pages of documents acquired from 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. In addition, CREW will disseminate any documents it acquires from its request to the public through www.governmentdocs.org, an interactive website CREW founded that includes thousands of pages of public documents from a number of organizations in addition to CREW.

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

Conclusion

Please respond to this request in writing within 20 days as requested under 5 U.S.C. §552(a)(6)(A)(I). If all of the requested documents are not available within that time period, CREW requests that you provide it with all requested documents or portions of documents that are available within that time period.

If you have any questions about this request or foresee problems in releasing fully the requested records within the 20-day period, please call me within that time period. I can be reached at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact me immediately upon making such a determination. Please send the requested documents to William C. Holmes, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Holmes", written in a cursive style.

William C. Holmes
Counsel
Citizens for Responsibility and Ethics in Washington