

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
PUBLIC CITIZEN, INC.)	
1600 20th Street, NW)	
Washington, DC 20009)	
	PLAINTIFF,)	
)	
v.)	
)	
UNITED STATES OFFICE OF SPECIAL)	
COUNSEL)	Civil Action No. _____
1730 M Street, NW, Suite 218)	
Washington, DC 20036-4505,)	
	DEFENDANT.)	
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action seeks an order compelling the United States Office of Special Counsel (OSC) to produce documents sought by Public Citizen under the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION

2. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Public Citizen is a nonprofit research, litigation, and advocacy organization that represents consumer interests before Congress, the executive branch, and the courts. Its mission is to increase openness and democratic accountability in government. Public Citizen regularly publishes reports based on information acquired through FOIA and will likely do so with the information sought in this action if the information concerns the public interest.

4. Defendant United States Office of Special Counsel is an independent federal investigative and prosecutorial agency. Part of its mission is to enforce and issue advisory opinions interpreting the Hatch Act, 5 U.S.C. §§ 7321–7326, which regulates the partisan political activities of certain federal employees.

STATEMENT OF FACTS

5. By letter dated January 2, 2009, plaintiff submitted a FOIA request to OSC. The letter requested all records in OSC’s possession created on or after January 20, 2001 (a) sent to or from Karl Rove; (b) concerning Mr. Rove’s rights and/or obligations under any statute, rule, regulation, policy, and/or program administered, overseen, or interpreted by OSC; or (c) mentioning Mr. Rove’s name. A copy of the request is attached and incorporated as if set out here in full.

6. Under 5 U.S.C. § 552(a)(6)(A)(i), OSC had 20 working days to respond to Public Citizen’s FOIA request. On February 2, 2009, OSC’s FOIA officer informed Public Citizen’s attorney that it would take between three weeks and three months for OSC to process Public Citizen’s request. On May 6, 2009, having received no further word from OSC, Public Citizen’s attorney inquired about the status of plaintiff’s request and was told that OSC would not process its request for an additional two to three months.

7. Under 5 U.S.C. § 552(a)(6)(C), a person making a FOIA request who does not receive a response within 20 working days has exhausted his or her administrative remedies. More than 20 days have passed since OSC received Public Citizen’s FOIA request, and OSC has not responded to the request.

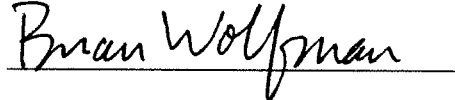
CLAIM FOR RELIEF

8. Plaintiff has a statutory right under FOIA to the records it seeks, and no legal basis exists for OSC's refusal to disclose them to plaintiff.

For the reasons stated above, plaintiff is entitled to the following relief:

- A. A declaration that OSC's failure to disclose the records sought by Public Citizen is unlawful;
- B. An order compelling OSC to release the records requested by Public Citizen;
- C. Reasonable attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E); and
- D. All other proper relief.

Respectfully submitted,



Brian Wolfman
(D.C. Bar No. 427491)
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001
wolfmanb@law.georgetown.edu
(202) 661-6582

October 16, 2009

PUBLIC CITIZEN LITIGATION GROUP

1600 20th STREET, N.W.
WASHINGTON, D.C. 20009

(202) 588-1000
(202) 588-7795 (FAX)

BRIAN WOLFMAN
DIRECT DIAL: (202) 588-7730
E-MAIL: BRIAN@CITIZEN.ORG

January 2, 2009

Via fax: (202) 653-5151

FOIA Officer
United States Office of Special Counsel
1730 M St., N.W., Suite 218
Washington, DC 20036-4505

To the FOIA Officer:

I am submitting this Freedom of Information Act (FOIA) request on behalf of Public Citizen, a national non-profit advocacy organization. The references in this letter to Karl Rove are to the famous person by that name who served as a political advisor and White House employee in the Administration of President George W. Bush.

Public Citizen requests disclosure of the following records:

- 1) All records created on or after January 20, 2001, sent by Karl Rove (or by anyone acting on Mr. Rove's behalf) to the United States Office of Special Counsel, and all records created on or after January 20, 2001 sent by the United States Office of Special Counsel to Mr. Rove (or to anyone acting on his behalf); and
- 2) All records created on or after January 20, 2001, concerning in any respect Karl Rove's rights and/or obligations under any statute, rule, regulation, policy, and/or program administered, overseen, or interpreted by the United States Office of Special Counsel.
- 3) All records created on or after January 20, 2001, mentioning Mr. Rove's name.

If any or all of these records are available in readily searchable, electronic form, please disclose the records in that form, as FOIA requires.

Public Citizen requests a waiver of all fees incurred in connection with this request under 5 U.S.C. 552(a)(4)(A)(iii), because it does not seek the records for a commercial purpose and

FOIA Request
January 2, 2009
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disclosure would be “in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.” Public Citizen is a nonprofit research, litigation, and advocacy organization that represents consumer interests before Congress, the executive branch, and the courts, and that works for openness and democratic accountability in government. Public Citizen regularly publishes reports based on information acquired through FOIA, and it will likely do so with respect to the information sought in this FOIA request if the information concerns the public interest. Public Citizen disseminates its reports by publication, through its website, and through various newsletters that are distributed to consumers, lawyers, academics, and other interested parties free of charge. Accordingly, Public Citizen requests a waiver of fees for locating and duplicating the requested records. Alternatively, if a “public interest” waiver is not granted, Public Citizen is entitled to a waiver of all search costs as a representative of the news media because Public Citizen regularly “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. 552(a)(4)(A)(ii)(II). If no fee waiver or only a partial waiver is granted, please advise me of the amount of any proposed search, review, and reproduction charges before those activities are carried out.

I expect a response to this request within 20 business days as FOIA requires. Thank you for responding to this request. If you have any questions, please contact me.

Sincerely,

Brian Wolfman