

**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. 07-0964 (CKK)

OFFICE OF ADMINISTRATION, :

Defendant. :

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**PLAINTIFF’S MOTION TO SUPPLEMENT OPPOSITION TO DEFENDANT’S  
MOTION FOR JUDGMENT ON THE PLEADINGS AND SUPPORTING  
MEMORANDUM**

Plaintiff CREW hereby moves to supplement its opposition to defendant’s motion for judgment on the pleadings to bring to the Court’s attention newly obtained evidence on the issue of defendant Office of Administration’s (“OA”) status as an agency under the Freedom of Information Act (“FOIA”). As grounds for this motion, plaintiff states as follows:

1. On August 21, 2007, defendant filed a motion for judgment on the pleadings arguing that the OA does not meet the definition of “agency” under the FOIA. More specifically, the government argued that the OA does not have “substantial independent authority,” relying in large part on President Jimmy Carter’s Reorganization Plan No. 1 of 1977, as well as Executive Order 12028, also issued by President Carter.

2. CREW filed its opposition to this motion on September 4, 2007. Among other things, CREW argued that the issue of whether the OA is an agency for purposes of the FOIA is a fact-bound issue that cannot be decided on the basis of the pleadings and that, as a necessary corollary, plaintiff must be afforded discovery on this issue, particularly given that much of the

relevant evidence rests solely with the government. CREW argued alternatively that the OA is an agency, relying in part on the available historical evidence demonstrating OA's agency status.

3. The OA filed a reply brief on September 11, 2007, again relying in large part on the Executive Order that established the OA in the first place.

4. On September 25, 2007, CREW was provided with copies of documents from the Carter Presidential Library that bear directly on the issue of the OA's status as an agency under the FOIA. In particular, CREW was provided a copy of a June 28, 1978 White House memorandum on the express subject of the applicability of the FOIA to White House documents in the custody of the OA. A copy of this memorandum is attached as Exhibit A.<sup>1</sup>

5. Applying the test set forth in Soucie v. David, 448 F.2d 1067 (D.D.C. 1971), the same White House that established the OA readily concluded: "OA performs functions for other offices within the EOP and there are no identifiable units within the OA which function solely to serve the President. Accordingly, it is reasonable to conclude that the Office of Administration is an 'agency' subject to the Act [the FOIA]." Memorandum for Margaret McKenna from Patrick Apodaca re. Applicability of the FOIA to White House Documents, June 28, 1978, p. 2.<sup>2</sup> The White House further concluded that "[w]ith regard to documents actually generated by OA and in its possession, it is clear that these constitute OA documents subject to the Act [the

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<sup>1</sup> CREW was provided by e-mail with copies made from actual photographs of pages from the Presidential Papers of Jimmy Carter. For purposes of clarity and legibility, CREW hereby provides the Court and the defendant with enlarged photocopies of those photographs. Should the Court wish, CREW would be happy to provide photographs or a cd-rom with the electronic versions of Attachment A.

<sup>2</sup> It is CREW's understanding that Margaret McKenna held the position of Deputy White House Counsel while Patrick Apodaca was Associate Counsel to President Carter.

