

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES CAPITOL POLICE, et al.,

Defendants.

Case No. 1:21-cv-00401-ACR

SECOND DECLARATION OF JAMES W. JOYCE

I, James W. Joyce, declare as follows:

1. I am a Senior Counsel in the Office of the General Counsel, General Law Division, for the U.S. Capitol Police (USCP or Department). In this position, I provide general legal advice and legal assistance on, among many other things, criminal matters, constitutional matters, appropriations and procurement matters, matters concerning tort claims, and the overall operations of the Department. I have worked for the USCP in the Office of the General Counsel since November 2004. This declaration is based on my personal knowledge and information provided to me in my official capacity.

2. I submit this declaration to supplement my declaration dated August 6, 2021, ECF No. 12-3 (Joyce Declaration), which was filed with the USCP's motion for summary judgment, ECF No. 12, and to respond to the Court's minute order dated August 15, 2023. That minute order required Defendants to "submit additional information regarding the set of 271 emails described in paragraph 7 of the declaration at Dkt. 12-3," but stated that the USCP "need not provide additional information on those categories of emails that Plaintiff conceded at oral argument were likely not public records."

3. Relevant to the instant declaration, by letter dated January 21, 2021, Plaintiff Judicial Watch submitted a request to USCP, which sought, among other requests:

Email communications between the U.S. Capitol Police Executive

Team and the Capitol Police Board concerning the security of the Capitol on January 6, 2021. The timeframe of this request is from January 1, 2021 through January 10, 2021.

See ECF No. 12-4 at 1. The 271 emails that I described in paragraph 7 of my August 6, 2021 declaration were those that resulted from a search that was conducted for emails between members of the USCP Executive Team (the Capitol Police Chief, the Assistant Chief of Police – Protective and Intelligence Operations, the Assistant Chief of Police – Uniformed Operations, the Chief Administrative Officer, and the General Counsel) and the Capitol Police Board (the House Sergeant at Arms, the Senate Sergeant at Arms, and the Architect of the Capitol) for the January 1 to January 10, 2021 time period. Joyce Declaration ¶ 6. The majority of these 271 emails were duplicates of one another. *Id.*

4. In paragraph 7 of the Joyce Declaration, I described the categories into which these 271 emails fell. I also concluded that none of the emails constituted “public records” to which Plaintiff’s asserted common law right of access would apply. *Id.* ¶¶ 7-8. In response to the Court’s August 15, 2023 minute order, I conducted an additional review of these 271 emails to determine which, if any, are actually responsive to Plaintiff’s request and might conceivably be considered to reflect some action by the USCP, notwithstanding my prior and continuing conclusion that none of these emails is a “public record.” My understanding is that Plaintiff, during the Court’s August 15, 2023 motion hearing and in meeting and conferring with the USCP’s Department of Justice counsel, has focused on the following categories of emails that I previously identified: correspondence regarding situational security updates, updates on police personnel issues, and updates about news media reports. I provide additional detail below about emails in these categories.

Correspondence Regarding Situational Security Updates

5. In my re-review I located the following nine emails (or email threads) that (1) fall into the category I described in my August 6, 2021 declaration as “correspondence regarding situational security updates,” *see* Joyce Declaration ¶ 7; (2) might conceivably be considered to

reflect action by the USCP; and (3) might conceivably “concern[] the security of the Capitol on January 6, 2021,” per Plaintiff’s request.

a. A January 3, 2021 email, with attachment, from the USCP Deputy Chief to a Board member and others at USCP and in Congress providing a detailed “special event assessment” of anticipated protest activity in advance of the January 6, 2021 Joint Session of Congress. The attached document is marked on each page “For Official Use Only/Law Enforcement Sensitive.”

b. A January 5, 2021 email, with map attachment, from the USCP Chief to two Board members detailing a proposed “bike rack” security perimeter for January 6, 2021, and proposing further discussion.

c. A January 5, 2021 email, with map attachment, from the USCP Chief to two Board members detailing a proposed security perimeter for January 6, 2021.

d. A January 5, 2021 email, with social media post and map attachments, from the USCP Deputy Chief to a Board member and others at USCP and in Congress reporting “a significant uptick in new visitors” to a “historical website” containing information on Capitol system tunnels. The Deputy Chief describes proposed attempts by unauthorized individuals to block members of Congress from entering the Capitol building, through tunnels or otherwise.

e. A January 5, 2021 email from the USCP Deputy Chief to a Board member and others at USCP and in Congress alerting them to an online website soliciting information on high-level government officials and their expected whereabouts on January 6, 2021, and linking to the website’s article entitled *Why the Second American Revolution Starts Jan 6*.

f. A January 6, 2021 email from the USCP Chief to Board members and others at USCP and in Congress relaying that the President had completed a speech at the Ellipse and that a large group was preparing to approach the Capitol.

g. A January 6, 2021 email thread between the USCP Chief, two Board members, and congressional staffers responding to questions on the status of evacuations and relocations of certain buildings on the Capitol Grounds on January 6, 2021, and relaying information on crowds gathering near the Washington Monument and on Capitol Grounds on January 6, 2021.

h. A series of four January 6, 2021 emails from the USCP Deputy Chief to a Board member and others at the USCP and in Congress providing four updates throughout the course of January 6, 2021. These updates contain intelligence assessments, information on arrests, coordination with other law enforcement agencies, crowd estimates, scheduling of high-level government officials, threat and incident reports, medical responses, and officer deployment status.

i. A January 7, 2021 email, with photo attachment, from the USCP Deputy Chief to Board member and others in Congress providing an update on the arrest and subsequent charging of an armed individual found in a “suspicious vehicle” on January 6, 2021.

6. None of the emails described above were created to memorialize or record any official action by the USCP. Nor have any of these emails been kept for that purpose. To the extent that the USCP takes official action, it has existing processes in place to create and keep official records of that action. None of those existing processes to memorialize official USCP action consist of sending or receiving emails.

Updates on Police Personnel Issues

7. In my re-review I located the following five emails (or email threads) that (1) fall into the category I described in my August 6, 2021 declaration as “updates on police personnel issues,” *see* Joyce Declaration ¶ 7; (2) might conceivably be considered to reflect action by the USCP; and (3) might conceivably “concern[] the security of the Capitol on January 6, 2021,” per Plaintiff’s request.

a. A January 7, 2021 email from the USCP Chief to all Board members and others at the USCP and in Congress providing an update on the medical condition of a USCP officer following the events of January 6, 2021.

b. A January 7, 2021 email from the USCP Chief to all Board members and others at USCP and in Congress providing an update on the medical condition of a USCP officer following the events of January 6, 2021.

c. A January 7, 2021 email from the USCP Chief to all Board members and others at USCP and in Congress providing an update on the death of a USCP officer following the events of January 6, 2021.

d. A January 8, 2021 email from the USCP Chief to a Board member and others at USCP and in Congress concerning the lowering of flags to half-staff in recognition of a USCP officer who died in the line of duty on January 6, 2021.

e. A January 9, 2021 email from the USCP Acting Chief to all Board members providing an update on when autopsy results could be expected for a deceased USCP officer following the events of January 6, 2021.

8. None of the emails described above were created to memorialize or record any official action by the USCP. Nor have any of these emails been kept for that purpose. To the extent that the USCP takes official action, it has existing processes in place to create and keep official records of that action. None of those existing processes to memorialize official USCP action consist of sending or receiving emails.

Updates About News Media Reports

9. In my re-review I located the following one email that (1) falls into the category I described in my August 6, 2021 declaration as “updates about news media reports,” *see* Joyce Declaration ¶ 7; (2) might conceivably be considered to reflect action by the USCP; and (3) might conceivably “concern[] the security of the Capitol on January 6, 2021,” per Plaintiff’s original request.

a. A January 7, 2021 email, with attachment, from the USCP Chief to all Board members and others at USCP and in Congress providing an anticipated statement by the USCP on the events that transpired at the Capitol on January 6, 2021.

10. The email described above was not created to memorialize or record any official action by the USCP. Nor has this email been kept for that purpose. To the extent that the USCP takes official action, it has existing processes in place to create and keep official records of that action. None of those existing processes to memorialize official USCP action consist of sending or receiving emails.

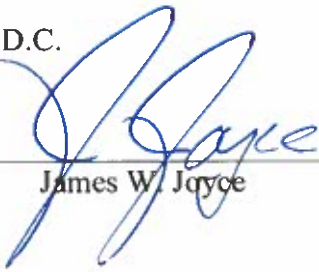
* * *

11. The remaining emails from the 271 identified in the Joyce Declaration either (1) are not responsive to Plaintiff's request because they are not "communications . . . concerning the security of the Capitol on January 6, 2021"; or (2) are emails that I understand Plaintiff to have conceded, either at oral argument or in subsequent discussions with Department of Justice counsel, as not likely to be public records.¹ My re-review of those remaining emails that are potentially responsive to the request confirms that they could not conceivably be considered to reflect action by the USCP, and rather reflect recommendations, internal questions and responses, proposed courses of action, or routine communications about scheduling and availability. Furthermore, as I stated in the Joyce Declaration, none of these remaining emails or the emails identified above from my re-review, are "public records"—even in the context of the case law that Plaintiff relies upon for its asserted common law right of access.

¹ Attached to one of the 271 emails identified as potentially responsive is a Memorandum dated January 7, 2021 from Chief Steven A. Sund to the Board members notifying them of his resignation from the Department. Although this Memorandum is not responsive to Plaintiff's request, I understand that a copy of this Memorandum has been made available to the public through at least one internet website, and the USCP has in its discretion accordingly elected to provide it directly to Plaintiff.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 14th day of September, at Washington, D.C.



James W. Joyce