

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

FEDERATION FOR AMERICAN)	
IMMIGRATION REFORM,)	
25 Massachusetts Ave., NW, Suite 330,)	
Washington, D.C. 20001,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
U.S. CITIZENSHIP AND)	
IMMIGRATION SERVICES)	
20 Massachusetts Ave, NW,)	
Washington, D.C. 20001)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Federation for American Immigration Reform (“FAIR”) brings this action for injunctive and other appropriate relief against United States Citizenship and Immigration Services (“USCIS”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff alleges the following grounds:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(A)(vii), 552(a)(4)(B), 552(a)(6)(C)(i) and 28 U.S.C. § 1331. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

2. Plaintiff FAIR (“Plaintiff”) is a non-profit educational foundation organized under the laws of the District of Columbia and having its principal place of business at 25 Massachusetts Ave., NW, Suite 330, Washington, DC 20001. Plaintiff seeks to educate the citizenry on and increase public awareness of immigration issues, and to hold the nation’s leaders accountable for enforcing the nation’s immigration laws. In furtherance of its public interest mission, Plaintiff regularly requests access to the public records of federal agencies, entities, and offices, and widely disseminates its findings to the public.

3. Defendant USCIS is a component of the United States Department of Homeland Security (“DHS”), established within the Executive Branch of the United States Government, and is headquartered at 20 Massachusetts Ave., NW, Washington, DC 20001. USCIS is an agency within the meaning of 5 U.S.C. § 552(f)(1). USCIS has possession, custody, and control of certain public records to which Plaintiff seeks access.

STATUTORY FRAMEWORK

4. FOIA requires federal agencies, upon request, to make agency records “promptly available to any person.” 5 U.S.C. § 552(a)(3)(A).

5. An agency is required to determine whether to comply with a FOIA request within twenty (20) business days of receiving the request and “shall immediately notify the person making such request of such determination and the reasons therefor.” 5 U.S.C. § 552(a)(6)(A)(i).

6. In order for an agency’s response to constitute a “determination” within the meaning of FOIA, an agency must: i) gather and review the documents; ii) determine and

communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and iii) inform the requester that it can appeal whatever portion of the “determination” is adverse. *See Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180, 186-88 (D.C. Cir. 2013).

7. Although “a ‘determination’ does not require actual production of the records to the requester at the exact same time that the ‘determination’ is communicated to the requester,” it “must be more than just an initial statement that the agency will generally comply with a FOIA request and will produce non-exempt documents and claim exemptions in the future.” *Id.* at 188.

8. If an agency does not provide a determination as to a FOIA request by the statutory deadline, the requester is deemed to have exhausted administrative remedies and may immediately pursue judicial review. *See* 5 U.S.C. §§ 552(a)(6)(C)(i), 552(a)(4)(B). Put another way, when an agency does not comply with FOIA’s time limits, the requester can seek immediate judicial review despite not having filed an administrative appeal: courts refer to this as “constructive exhaustion.” *Khine v. DHS*, 943 F.3d 959, 966 (D.C. Cir. 2019)(citing *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180 (D.C. Cir. 2013); *Oglesby v. Dep’t of the Army*, 920 F.2d 57 (D.C. Cir. 1990)).

STATEMENT OF FACTS

9. On May 11, 2022, Plaintiff submitted a FOIA request by online FOIA portal to USCIS requesting the following agency records:

All records of communication, including email correspondence, between USCIS employees and Tania Mattos, currently a director of advocacy and policy at the Envision Freedom Fund, from and including January 20, 2021 up to and including May 11, 2022.

10. In Plaintiff's request, Plaintiff also requested that all fees be waived because Plaintiff qualifies as a "representative of the news media, or news media requester" under 5 U.S.C. § 552(a)(4)(A)(ii)(II), and set forth facts and law in support of its status as such and its request for a fee waiver.

11. Plaintiff received an email from USCIS dated May 11, 2022, acknowledging USCIS's receipt of Plaintiff's request, assigning the request the tracking number COW2022002412, and stating in pertinent part:

Upon initial review, United States Citizenship and Immigration Services (USCIS) does not find that you have adequately described the records sought. In accordance with 6 C.F.R. § 5.3(c), USCIS FOIA needs clarification from you regarding the records you are requesting. To the extent possible, please provide information that may assist our office with identifying the requested records, such as specific subject matters and the names of USCIS personnel you would like to have a search conducted upon. ...

In order to be considered timely, your response must be postmarked or received by electronic mail within 30 working days of the date of this letter. To aid you in adequately describing the records sought, you may contact USCIS's FOIA Public Liaison, Cynthia Munita ...

12. By email dated May 17, 2022, Plaintiff contacted USCIS FOIA Public Liaison Cynthia Munita and objected to any narrowing of Plaintiff's request, stating:

Because the request only asks for USCIS communication with one individual, we don't believe it is necessary to further confine the request to specific USCIS employees. This request for communication between USCIS employees and one, single person should not produce an unmanageable number of records.

If the source of confusion over this request is to the identity of Tania Mattos, let it be known we are referring to the longtime immigration activist who – according to online sources – currently works for the Envision Freedom Fund and previously at Freedom for Immigrants, along with other immigration-oriented employment. If there have been multiple individuals named "Tania Mattos" in communication with USCIS during our requested time frame, please include all individuals in this search, for the purposes of simplicity.

13. By email dated June 27, 2022, Ms. Munita indicated that documents related to Plaintiff's request had been electronically delivered to Plaintiff's account on USCIS's online

FOIA portal. No such records appear to have actually been so delivered, but the portal indicated an estimated completion date of August 23, 2022.

14. By email to USCIS dated September 30, 2022, Plaintiff noted that no documents still appeared to have been delivered to Plaintiff's account on USCIS's online FOIA portal and inquired as to any possible updated estimated completion date.

15. By email dated October 3, 2022, USCIS indicated that Plaintiff's request was currently number 1335 of 1580 pending requests and that "[t]he estimated completion date is only an estimate. It depends on the complexity of the case and the complexity of the cases in line. The number in line is the best estimate of when your case will be completed."

16. After its October 3, 2022 email, USCIS did not make or provide any determination regarding Plaintiff's request, produce any records in response to the request, further communicate with Plaintiff regarding the request, or otherwise materially respond to the request.

17. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), USCIS was required to make a determination whether to comply with Plaintiff's request within twenty (20) working days after receipt and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Accordingly, USCIS's determination of Plaintiff's request was due by June 9, 2022, at the latest.

18. As of the date of this Complaint, more than seventeen months after USCIS's determination of Plaintiff's request was due, and well over a year since USCIS's last email to Plaintiff regarding the request, USCIS has still failed to: (i) determine whether to comply with the request; (ii) notify Plaintiff of any such determination or the reasons for such determination; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce any of the

requested records or otherwise demonstrate that the requested records are exempt from production.

19. Because USCIS has failed to comply with the time limits set forth in 5 U.S.C. §§ 552(a)(6)(A)(ii) and 552(a)(6)(E)(iii) with respect to Plaintiff's FOIA request, Plaintiff is deemed to have exhausted any and all administrative remedies with respect to the request, pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

COUNT I

Violation of FOIA: Failure to Comply With Statutory Deadlines

20. Plaintiff realleges paragraphs 1 through 19 as if fully stated herein.

21. Defendant's failure to make and provide a determination regarding Plaintiff's request has violated and continues to violate the statutory deadlines imposed by FOIA, including the deadlines set forth in 5 U.S.C. §§ 552(a)(6)(A)(ii) and 552(a)(6)(E)(iii).

COUNT II

Violation of FOIA: Unlawful Withholding of Agency Records

22. Plaintiff realleges paragraphs 1 through 21 as if fully stated herein.

23. As described above, Defendant has failed to make responsive records available to Plaintiff.

24. Defendant has unlawfully withheld any and all responsive agency records from Plaintiff and continues to do so.

25. As a result of this ongoing unlawful withholding, Plaintiff and the public have been denied, and continue to be denied, access to agency records to which Plaintiff is lawfully entitled under FOIA, 5 U.S.C. § 552(a)(3)(A).

COUNT III

Violation of FOIA: Failure to Grant News Media Fee Status

26. Plaintiff realleges paragraphs 1 through 25 as if fully stated herein.
27. In its request, Plaintiff set forth facts and law in support of a determination that it is entitled to media requester fee status.
28. By its non-response, Defendant has failed to make a determination as to Plaintiff's media requester fee status.
29. Plaintiff is entitled to a determination that it is a media requester for fee waiver purposes as Defendant failed to comply with the time limits under 5 U.S.C. §§ 552(a)(6)(A)(ii) and 552(a)(6)(E)(iii). *See* 5 U.S.C. § 552(a)(4).

COUNT IV

Violation of FOIA: Failure to Grant a Fee Waiver

30. Plaintiff realleges paragraphs 1 through 29 as if fully stated herein.
31. In its request, Plaintiff set forth facts and law in support of a fee waiver.
32. By its non-response, Defendant has failed to make a determination on Plaintiff's fee waiver request.
33. Plaintiff is entitled to injunctive relief providing for a fee waiver in this matter as a consequence of Defendant's failure to make determinations on the fee waiver request.
34. Plaintiff is also entitled to a fee waiver in this matter as Defendant has failed to comply with the time limits under 5 U.S.C. §§ 552(a)(6)(A)(ii) and 552(a)(6)(E)(iii). *See* 5 U.S.C. § 552(a)(4)(A)(viii).

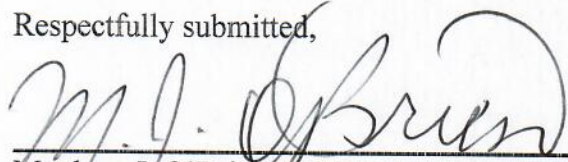
REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (A) order Defendant to conduct a reasonable search for any and all agency records responsive to Plaintiff's FOIA request, and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request;
- (B) order Defendant to produce, by a date certain, any and all non-exempt agency records responsive to Plaintiff's FOIA request and a detailed *Vaughn* index of any responsive agency records or portions of records withheld under claim of exemption;
- (C) enjoin Defendant from continuing to withhold any and all non-exempt agency records responsive to Plaintiff's FOIA request;
- (D) order Defendant to grant Plaintiff media requester status;
- (E) order Defendant to grant Plaintiff a fee waiver;
- (F) award Plaintiff its costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (G) grant Plaintiff such other relief as the Court deems just and proper.

Dated: November 15, 2023

Respectfully submitted,



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