

PARTIES

4. Plaintiff Democracy Forward Foundation is a not-for-profit organization incorporated under the laws of the District of Columbia, and based in Washington, D.C. Plaintiff works to promote transparency and accountability in government, in part by educating the public on government actions and policies.

5. Defendant CFPB is a federal agency within the meaning of the FOIA, *see* 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C. CFPB has possession, custody, and control of records to which Plaintiff seeks access.

FACTUAL ALLEGATIONS

Plaintiff's January 10, 2020 FOIA Request

6. On January 10, 2020, Plaintiff sent the first of two FOIA requests to CFPB requesting the following records related to the Taskforce:

1. All records of past and future Taskforce meetings, including dates, times, places, communication methods, participation, and/or attendance.
2. All minutes, transcripts, recordings, notes, readouts, and/or other records that reveal the contents of Taskforce meetings.
3. All records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, and/or other documents which were made available to or prepared for or by the Taskforce.
4. All communications between (1) J. Howard Beales, III, Thomas Durkin, Jean Noonan, and/or Todd J. Zywicki and (2) Kathleen Kraninger, Matt Cameron, Brian Johnson, Kirsten Sutton, Yasaman Sutton, Robert Cameron, Kate Fulton, and/or Tom Pahl.
5. All records held by Kathleen Kraninger, Matt Cameron, Brian Johnson, Kirsten Sutton, Yasaman Sutton, Robert Cameron, Kate Fulton, and/or Tom Pahl that reference J. Howard Beales, III, Thomas Durkin, Jean Noonan, and/or Todd J. Zywicki.
6. All applications for membership for the Taskforce
7. Records related to the selection process and/or criteria for Taskforce membership and composition.
8. All records related to the application of government ethics, conflict of interest, or transparency requirements, including waiver thereof, to the Taskforce or its members.

Ex. A at 1–2.

7. Plaintiff specified that the date range for this request is October 1, 2019 until the date on which the search for responsive documents is complete. *Id.* at 2.

8. Plaintiff sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii), which requires a fee waiver if the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See id.* at 2–7.

9. Plaintiff never received a formal acknowledgement letter of its January 10, 2020 FOIA request.

10. On January 21, 2020, CFPB emailed Plaintiff to ask whether Plaintiff would agree to exclude draft and duplicate attachments from emails that were responsive to Plaintiff’s request in order to expedite the agency’s processing. The subject line of CFPB’s email referenced a FOIA request number CFPB-2020-0099-F, which Plaintiff infers is the number assigned to their January 10, 2020 request. Plaintiff agreed to exclude draft and duplicate attachments, reserving the right to request such attachments after reviewing the initial production.

11. On February 28, 2020, CFPB emailed Plaintiff to ask whether Plaintiff would agree to exclude all attachments in the initial responsive production to narrow the scope of responsive documents. Plaintiff agreed, reserving the right to request attachments after reviewing the initial productions.

12. On March 18, 2020, Plaintiff requested an update on the agency’s anticipated production schedule. CFPB responded that it could potentially begin production in 3 weeks from the date of that email (*i.e.*, on April 8, 2020).

13. Following several further email exchanges, CFPB made an initial production on April 15, 2020 of 522 pages, 451 of which were withheld in full under FOIA Exemption 6. Ex.

B. Pursuant to CFPB's prior email correspondence, Plaintiff understands that CFPB identified approximately 400 additional pages of documents responsive to Plaintiff's request.

14. As of the date of this Complaint, CFPB has failed to produce those additional records. In response to further inquiries, CFPB has declined to inform Plaintiff whether or when it will produce all requested records. CFPB has also failed to demonstrate that it is lawfully exempt from production. Nor has CFPB notified Plaintiff of the scope of any responsive records the agency intends to produce or withhold, and the reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

15. Because CFPB has "fail[ed] to comply with the applicable time limit provisions" of the FOIA, Plaintiff is "deemed to have exhausted [its] administrative remedies." 5 U.S.C. § 552(a)(6)(C)(i).

Plaintiff's March 23, 2020 FOIA Request

16. On March 23, 2020, Plaintiff sent a second FOIA request to CFPB requesting the following additional records relating to the Taskforce:

1. All publications and announcements related to the application process to become a Taskforce member, including application instructions and any materials describing the position and selection criteria.
2. The following records related to the appointment of J. Howard Beales, III, Thomas Durkin, Jean Noonan, Todd J. Zywicki, and William McLeod: appointment and/or offer letters, as well as records describing authorities used to appoint members, compensation, benefits, titles, and the work schedule members are expected to work.
3. All calendars kept by Taskforce members and / or records of hours worked by each member.
4. All communications between (1) William Macleod and (2) Kathleen Kraninger, Matt Cameron, Brian Johnson, Kirsten Sutton, Yasaman Sutton, Robert Cameron, Kate Fulton, and/or Tom Pahl.
5. All records held by Kathleen Kraninger, Matt Cameron, Brian Johnson, Kirsten Sutton, Yasaman Sutton, Robert Cameron, Kate

Fulton, and/or Tom Pahl that reference William Macleod.

Ex. C at 1.

17. Plaintiff specified that the date range for this request is October 1, 2019 until the date on which the search for responsive documents is complete. *Id.*

18. Plaintiff sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii), which requires a fee waiver if the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See id.* at 2–7.

19. By letter dated March 24, 2020, CFPB acknowledged having received Plaintiff’s March 23, 2020 FOIA request, and having assigned it number CFPB-2020-0168-F. Ex. D. The March 24, 2020 letter notified Plaintiff that it has “invoke[d] a 10-day extension” to the statutorily prescribed time-limits “[d]ue to the need of consulting with two or more agency components[.]” *Id.* at 2.

20. As of the date of this Complaint, CFPB has failed to inform Plaintiff whether it will comply with the FOIA requests, produce all requested records, or demonstrate that it is lawfully exempt from production. Nor has CFPB notified Plaintiff of the scope of any responsive records the agency intends to produce or withhold, and the reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

21. Because CFPB has “fail[ed] to comply with the applicable time limit provisions” of the FOIA, even with the benefit of any extensions of time that CFPB might have claimed, Plaintiff is “deemed to have exhausted [its] administrative remedies.” 5 U.S.C. § 552(a)(6)(C)(i).

CLAIMS FOR RELIEF

Count One (Violation of the FOIA, 5 U.S.C. § 552, January 10, 2020 FOIA Request)

22. Plaintiff repeats and incorporates by reference the foregoing paragraphs as if fully

set forth herein.

23. By failing to fully comply with Plaintiff's January 10, 2020 request within the statutorily prescribed time limit, Defendant has violated its duties under 5 U.S.C. § 552, including, but not limited to, its duties to produce all responsive, reasonably segregable, non-exempt information.

24. Plaintiff is being irreparably harmed by Defendant's violation of the FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

Count Two (Violation of the FOIA, 5 U.S.C. § 552, March 23, 2020 FOIA Request)

25. Plaintiff repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

26. By failing to respond to Plaintiff's March 23, 2020 request within the statutorily prescribed time limit, Defendant has violated its duties under 5 U.S.C. § 552, including, but not limited to, its duties to conduct a reasonable search for responsive records, and to produce all responsive, reasonably segregable, non-exempt information.

27. Plaintiff is being irreparably harmed by Defendant's violation of the FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests;

2. order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests;
4. order Defendant to grant Plaintiff's request for a fee waiver;
5. grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. grant any other relief this Court deems appropriate.

Dated: May 7, 2020

Respectfully submitted,

/s/ Kristen P. Miller

Kristen P. Miller (D.C. Bar No. 229627)
Democracy Forward Foundation
1333 H St NW
Washington, DC 20005
(202) 701-1782
kmiller@democracyforward.org

Attorney for Plaintiff