

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

DEMOCRACY FORWARD FOUNDATION,
1333 H Street NW, 11th Floor
Washington, DC 20005

Plaintiff,

v.

U.S. AGENCY FOR GLOBAL MEDIA,
330 Independence Avenue SW
Washington, DC 20237

Defendant.

Case No. 20-cv-2852

COMPLAINT

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action against Defendant the U.S. Agency for Global Media (“USAGM”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

2. On July 8, 2020, Democracy Forward submitted a FOIA request to USAGM seeking records relating to staffing and policy changes made by USAGM’s recently confirmed Chief Executive Officer, Michael Pack.

3. Through this records request, Democracy Forward seeks to shed light on the nature, extent, and motivation behind these policy and staffing changes and to understand—and communicate to the public—whether they reflect reasoned decision-making and adherence to the journalistic norms that have long guided the work of USAGM and its affiliate.

4. Defendant has failed to respond sufficiently to Democracy Forward’s request. Democracy Forward therefore respectfully requests that the Court compel USAGM to comply with FOIA and produce the requested records.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

6. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

7. 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. Democracy Forward works to promote transparency and accountability in government by educating the public on government actions and policies.

8. Defendant U.S. Agency for Global Media¹ is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. USAGM has possession, custody, and control of records that Democracy Forward seeks.

FACTUAL ALLEGATIONS

9. On June 4, 2020, Michael Pack, a conservative filmmaker with close ties to former Breitbart News executive and White House advisor Stephen Bannon, was confirmed by the United States Senate to lead USAGM. Press reports indicate that his confirmation, long delayed out of concern that he would fail to adhere to the journalistic norms of independence and

¹ Prior to August 2018, USAGM was known as the Board of Broadcasting Governors or BBG. *See* Press Release, USAGM, U.S. Government Media Agency Rebrands: Statement from CEO John F. Lansing (Aug. 22, 2018), <https://www.prnewswire.com/news-releases/us-government-media-agency-rebrands-300701142.html>. USAGM is still referred to by its previous name in certain statutes, regulations, and official records. *See, e.g.*, 22 C.F.R. Pt. 503. Accordingly, and as explained in the request, *see* Ex. A at 1 n.1, the terms “U.S. Agency for Global Media” and “USAGM” should be construed to include the terms “Board of Broadcasting Governors” and “BBG” where appropriate.

integrity that have historically guided USAGM’s work, proceeded only after President Trump personally intervened on his behalf.²

10. In the course of his campaign on Mr. Pack’s behalf, President Trump suggested that the leadership change was necessary because the Voice of America (“VOA”)—an outlet under USAGM’s purview—was filled with “communists” serving as the “voice of the Soviet Union.”³

11. Concerns that Mr. Pack’s leadership of USAGM would result in seismic and troubling shifts in its operation were soon realized.⁴ Mere weeks after his confirmation, senior leadership at many of the outlets USAGM oversees either felt compelled to resign, were “stripp[ed] ... of their authority,” or were fired outright by Mr. Pack.⁵

12. In particular, VOA’s Director (Amanda Bennett) and Deputy Director (Sandy Sugawara) resigned on June 15, 2020, and in a single evening on June 17, 2020, Mr. Pack fired the officials in charge of Middle East Broadcasting Networks (“MEB”), Radio Free Asia

² Catie Edmondson, *Senate Confirms Conservative Filmmaker to Lead U.S. Media Agency*, N.Y. Times (June 4, 2020), <https://www.nytimes.com/2020/06/04/us/politics/senate-confirms-michael-pack-voa.html>.

³ See Paul Farhi & Elahe Izadi, *Top Voice of America Editors Resign Amid Strife With White House, Arrival of New Trump-appointed Director*, Wash. Post (June 15, 2020), https://www.washingtonpost.com/lifestyle/media/top-voice-of-america-editors-resign-amid-strife-with-white-house-arrival-of-new-trump-appointed-director/2020/06/15/5880a684-af1f-11ea-8758-bfd1d045525a_story.html.

⁴ See David Folkenflik, *Trump’s New Foreign Broadcasting CEO Fires News Chiefs, Raising Fears Of Meddling*, NPR: Morning Edition (June 18, 2020), <https://www.npr.org/2020/06/18/879873926/trumps-new-foreign-broadcasting-ceo-fires-news-chiefs-raising-fears-of-meddling>.

⁵ *Id.*

(“RFA”), Radio Free Europe/Radio Liberty (“RFE/RL”), the Office of Cuba Broadcasting (“OCB”), and the Open Technology Fund (“OTF”).⁶

13. Press reports also indicated at the time that Jeffrey Shapiro, who is also closely connected to Mr. Bannon, would soon be named to lead OCB.⁷ His installation at OCB became official on June 30, 2020, when it was announced that he would serve as the Acting Director and Principal Deputy Director of OCB.⁸ James M. Miles was also appointed as the interim chief executive of OTF.⁹

Democracy Forward’s FOIA Request

14. Democracy Forward submitted a request for records to USAGM on July 8, 2020, seeking the following within twenty (20) business days:

1. All records sent or received by Michael Pack discussing leadership changes at USGAM or any of its subsidiaries, including, without limitation, VOA, MEB, RFA, RFE/RL, OCB, and OTF. Please search for records created between June 4, 2020 and the date on which the search is completed.
2. All records sent between Michael Pack and Jeffrey Shapiro created between June 4, 2020 and the date on which the search is completed.
3. All records sent between Michael Pack and James M. Miles created between June 4, 2020 and the date on which the search is completed.
4. All records sent between Michael Pack and Amanda Bennett created between June 4, 2020 and June 18, 2020.

⁶ *Id.*

⁷ Jennifer Hansler & Brian Stelter, *'Wednesday Night Massacre' as Trump Appointee Takes Over at Global Media Agency*, CNN (last updated June 18, 2020), <https://www.cnn.com/2020/06/17/media/us-agency-for-global-media-michael-pack/index.html>.

⁸ Press Release, USAGM, *USAGM CEO Michael Pack thanks interim heads of agency’s five broadcasting networks* (June 30, 2020), <https://www.usagm.gov/2020/06/30/usagm-ceo-michael-pack-thanks-interim-heads-of-agencys-five-broadcasting-networks/>.

⁹ Pranshu Verma & Edward Wong, *New Trump Appointee Puts Global Internet Freedom at Risk, Critics Say*, N.Y. Times (July 4, 2020), <https://www.nytimes.com/2020/07/04/us/politics/michael-pack-china-internet.html>.

5. All records sent between Michael Pack and Sandy Sugawara created between June 4, 2020 and June 18, 2020.
6. Copies of a June 17, 2020 memorandum sent by then-RFE/RL director Jamie Fly regarding his departure, as well as any and all communications discussing or responding to that memorandum. Please search for records created between June 4, 2020 and the date on which the search is completed.
7. Copies of a June 15, 2020 memorandum sent by Amanda Bennet or Sandy Sugawara to VOA staff regarding their departure, as well as any and all communications discussing or responding to that memorandum. Please search for records created between June 4, 2020 and the date on which the search is completed.
8. All records sent between Michael Pack and any individuals affiliated with Fox News, Breitbart News Network, or One America News Network or using email addresses with @foxnews.com, @foxbusiness.com, @breitbart.com, or @oann.com website domains. Excluding news stories or press releases from these organizations that do not contain commentary added by Mr. Pack, please search for records created between June 4, 2020 and the date on which the search is completed.
9. All records sent between Michael Pack and Stephon Bannon created between June 4, 2020 and the date on which the search is completed.
10. All records sent between USAGM officials and anyone affiliated with The Public Media Lab or Manifold Productions, including emails sent using the website domain @manifoldproductions.com. Please search for records created between June 1, 2018 and the date on which the search is completed.

See Ex. A at 2-3 (internal citations omitted).

15. Democracy Forward also requested a waiver of document search, review, and duplication fees associated with processing records for its request. *See id.* at 4-8.

USAGM Response

16. An Assistant General Counsel for USAGM responded to Democracy Forward's FOIA request by electronic mail on July 29, 2020, attaching a letter acknowledging receipt of the request and assigning it Reference Number FOIA20-043. *See Ex. B at 2.*

17. Counsel for Democracy Forward sought status updates from USAGM on three subsequent occasions but did not receive any response to its inquiries.

18. Democracy Forward has not received any further correspondence or communication from USAGM regarding its request.

Exhaustion of Administrative Remedies

19. Because Defendant has “fail[ed] to comply with the applicable time limit provisions” of FOIA, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” 5 U.S.C. § 552(a)(6)(C)(i).

CLAIMS FOR RELIEF

(Count One)

Violation of FOIA, 5 U.S.C. § 552

USAGM’s Failure to Respond to Plaintiff’s Requests Within 20 Days

20. Democracy Forward repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

21. By failing to respond to Democracy Forward’s requests within the statutorily mandated time period, Defendant USAGM has violated its duties under FOIA, *see* 5 U.S.C. § 552 *et seq.*, including but not limited to its duties to conduct a reasonable search for responsive records, to take reasonable steps to release all reasonably segregable nonexempt information, and to not withhold responsive records.

22. Democracy Forward is being irreparably harmed by USAGM’s violation of FOIA, and Democracy Forward will continue to be irreparably harmed unless USAGM is compelled to comply with FOIA.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- (1) order Defendant to conduct a search for any and all records responsive to Plaintiff's FOIA request and demonstrate that they employed search methods reasonably likely to lead to discovery of records responsive to Plaintiff's FOIA request;
- (2) order Defendant to produce, by a date certain, any and all nonexempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under a claim of exemption;
- (3) enjoin Defendant from continuing to withhold any and all nonexempt records responsive to Plaintiff's FOIA request;
- (4) order Defendant to grant Plaintiff's request for a fee waiver;
- (5) award Plaintiff attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) grant Plaintiff such other relief as the Court deems just and proper.

Dated: October 7, 2020

Respectfully submitted,

/s/ Benjamin Seel
Benjamin Seel (D.C. Bar No. 1035286)
Sean A. Lev (D.C. Bar No. 449936)
Democracy Forward Foundation
P.O. Box 34553
Washington, DC 20043
(202) 448-9090
bseel@democracyforward.org
slev@democracyforward.org

Counsel for Plaintiff