

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

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

Plaintiff,

vs.

FEDERAL EMERGENCY MANAGEMENT
AGENCY,
500 C Street, SW
Washington, DC 20472,

Defendant.

Case No.

COMPLAINT FOR INJUNCTIVE RELIEF

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

2. On May 3, 2018, Plaintiff submitted a FOIA request to FEMA requesting any “After-Action Report(s)” discussing hurricane damage in Puerto Rico, as well as any records or communications discussing the same.

3. FEMA has failed to respond sufficiently to Plaintiff’s request. Plaintiff therefore respectfully requests that the Court compel Defendant to comply with the FOIA.

JURISDICTION AND VENUE

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

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

PARTIES

6. 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.

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

FACTUAL ALLEGATIONS

8. Plaintiff submitted the following request for records to FEMA on May 3, 2018, via email:

- (1) Any After-Action Report(s), whether primarily authored by FEMA, a contractor, or a consultant, such as the Cadmus Group LLC, discussing, mentioning, or providing analysis on hurricane damage in Puerto Rico, including by Hurricane Maria.
- (2) Any records or communications between FEMA and contractors or consultants discussing, requesting, soliciting, or commissioning an After-Action Report on hurricane damage in Puerto Rico, including by Hurricane Maria.

Ex. A at 2.

9. The request was limited to records created from August 1, 2017, to the date on which the search is run.

10. Democracy Forward sought a waiver of search and duplicating fees for the FOIA request under 5 U.S.C. § 552(a)(4)(A)(iii), which requires waiver of fees if the disclosure 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.” Ex. A at 3 (quoting 5 U.S.C. § 552(a)(4)(A)(iii)).

11. FEMA’s determination regarding Democracy Forward’s FOIA request was due by June 1, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(i). Democracy Forward has received no communications from FEMA regarding the FOIA request.

12. As of the date of this Complaint, Defendant FEMA has failed to notify Democracy Forward whether FEMA will comply with the FOIA request, *see id.*, or to produce all requested records or demonstrate that they are lawfully exempt from production. *See id.* § 552(a)(6)(C). Nor has FEMA notified Democracy Forward of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings, or informed Democracy Forward that it may appeal any adequately specific, adverse determination.

13. Because FEMA has “fail[ed] to comply with the applicable time limit provisions” of the FOIA, even with the benefit of any extensions of time which FEMA might have claimed, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” *Id.* § 552(a)(6)(C)(i).

CLAIM FOR RELIEF

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

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

15. By failing to respond to Plaintiff’s request within the statutorily mandated time period, Defendant 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.

16. 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 this Court:

1. order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it 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 its 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: July 5, 2018

Respectfully submitted,

/s/ Robin F. Thurston
Javier M. Guzman (D.C. Bar No. 462679)
Robin F. Thurston (D.C. Bar No. 1531399)
Democracy Forward Foundation

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