

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

DEMOCRACY FORWARD FOUNDATION,
1333 H Street, NW
11th Floor
Washington, D.C. 20005

Plaintiff,

vs.

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, D.C. 20530,

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES
200 Independence Avenue, SW
Washington, D.C. 20201,

U.S. DEPARTMENT OF EDUCATION
400 Maryland Avenue, SW
Washington, D.C. 20202,

and

U.S. DEPARTMENT OF THE INTERIOR
1849 C Street, NW
Washington, D.C. 20240

Defendants.

Case No. _____

COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to compel the production of documents pertaining to Defendants U.S. Department of Justice (“DOJ”), U.S.

Department of Health and Human Services (“HHS”), U.S. Department of Education (“ED”), and U.S. Department of the Interior (“Interior”) (collectively, “Defendants”).

2. In November 2018, *The Daily Beast* reported, based on documents produced in response to a FOIA request, that U.S. Environmental Protection Agency officials expressly approved a script bolstering the Trump Administration’s policy agenda, which script was read by a news anchor in advance of then-Administrator Scott Pruitt’s May 2017 appearance on *Fox & Friends*, the morning program of Fox News Channel, without acknowledging the government’s role in creating the content.¹

3. In August 2019, *The Hollywood Reporter* reported, based on documents produced in response to a FOIA request by Democracy Forward, that officials at the U.S. Department of the Treasury had requested a number of changes to an article on the Fox Business Network website, including asking for a new social media post from Fox Business’s Twitter account, with a Fox Business Network reporter responding to a Treasury official that she “just did exactly what you asked me to do.”²

4. These actions raised concerns about possible violations of a law that prohibits the government from playing an undisclosed role in the creation and dissemination of information and opinions through the news media. *See* Ex. A, Letter from Democracy Forward & Restore

¹ *See* Maxwell Tani, ‘*Fox & Friends*’ Fed Interview Script to Trump’s EPA Chief, Emails Show, *Daily Beast*, Nov. 27, 2018, <https://www.thedailybeast.com/fox-and-friends-fed-interview-script-to-trumps-epa-chief-emails-show>.

² *See* Jeremy Barr, “*You’re the Man*”: Fox News Emails With Trump Treasury Department Reveal Coziness, *Hollywood Reporter*, Aug. 15, 2019, <https://www.hollywoodreporter.com/news/youre-man-fox-news-emails-trump-treasury-team-reveal-coziness-1231461>.

Public Trust to Charles J. Sheehan, Acting Inspector General, Environmental Protection Agency (Dec. 13, 2018) (letter requesting investigation into potential unlawful covert propaganda); Ex. B, Letter from Democracy Forward to Eric M. Thorson, Inspector General, U.S. Department of the Treasury (Aug. 28, 2019) (same).

5. In order to determine how widespread these potentially unlawful practices are, Plaintiff submitted FOIA requests to Defendants seeking records reflecting communications between agency press offices and the following media outlets: Fox News Channel, Breitbart News, CRTV.com, The Blaze, NewsMax, Daily Caller, Daily Wire, One America News Network, and Sinclair Broadcast Group.

6. Defendants have failed to respond sufficiently to Plaintiff's requests. Plaintiff therefore respectfully requests that the Court compel Defendants to comply with FOIA and produce all responsive, non-exempt records.

JURISDICITON AND VENUE

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

8. Venue in this Court is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

9. Plaintiff Democracy Forward Foundation is a not-for-profit public interest 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.

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

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

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

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

STATEMENT OF FACTS

DOJ FOIA Request

14. Plaintiff submitted a FOIA request to DOJ via FOIA Online on December 13, 2018, requesting the following records:

- (1) All records containing or documenting communications sent to or received by all staff, including officers, employees and contractors, in DOJ's Office of Public Affairs with the following organizations and domains:
 - Fox News or @foxnews.com
 - Breitbart News Network or @breitbart.com
 - CRTV.com or @crtv.com
 - The Blaze or @theblaze.com
 - NewsMax or @newsmaxtv.com
 - Daily Caller or @dailycaller.com
 - Daily Wire or @dailywire.com
 - One America News or @oann.com
 - Sinclair Broadcast Group or @sgbi.net

Ex. C (“DOJ FOIA Request”) at 2.

15. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10, which require 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.” *See* DOJ FOIA Request at 3.

16. On December 18, 2018, Democracy Forward received a message confirming submission of the DOJ FOIA Request, as well as a message assigning it the tracking number DOJ-2019-001567.

17. On January 31, 2019, Democracy Forward received an acknowledgment letter from DOJ claiming that the FOIA request fell within DOJ’s “unusual circumstances” category and would thus require more time for DOJ to process than the FOIA time limit and the ten additional days provided by the statute.

18. Democracy Forward has received no further communication from DOJ since DOJ’s January 31 acknowledgement letter.

19. DOJ’s response to Democracy Forward’s FOIA request was due January 29, 2019. *See* 5 U.S.C. §§ 552(a)(6)(A)(i) & (a)(6)(B)(i).

20. As of the date of this Complaint, DOJ has not produced any records responsive to Plaintiff’s FOIA Request, nor has DOJ notified Plaintiff of the scope of any responsive records the agency intends to produce or withhold, or any reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

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

HHS FOIA Request

22. Plaintiff submitted a FOIA request to HHS via email on December 13, 2018, requesting the following records:

(1) All records containing or documenting communications sent to or received by all staff, including officers, employees and contractors, in HHS’s Office of the Assistant Secretary for Public Affairs (ASPA) with the following organizations and domains:

- Fox News or @foxnews.com
- Breitbart News Network or @breitbart.com
- CRTV.com or @crtv.com
- The Blaze or @theblaze.com
- NewsMax or @newsmaxtv.com
- Daily Caller or @dailycaller.com
- Daily Wire or @dailywire.com
- One America News or @oann.com
- Sinclair Broadcast Group or @sgbi.net

Ex. D (“HHS FOIA Request”) at 2.

23. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, which require 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.” *See* HHS FOIA Request at 3.

24. HHS’s response to Democracy Forward’s FOIA request was due January 14, 2019. *See* 5 U.S.C. § 552(a)(6)(A)(i).

25. As of the date of this Complaint, HHS has not communicated with Plaintiff at all concerning the HHS FOIA Request, nor has HHS produced any records responsive to Plaintiff's FOIA Request. HHS has not informed Plaintiff whether it will comply with the FOIA Request, nor has HHS notified Plaintiff of the scope of any responsive records it intends to produce or withhold, or any reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

26. Because HHS has "fail[ed] to comply with the applicable time limit provisions" of the FOIA, even with the benefit of any extensions of time that HHS might have claimed, Plaintiff is "deemed to have exhausted [its] administrative remedies." *See id.* § 552(a)(6)(C)(i).

ED FOIA Request

27. Plaintiff submitted a FOIA request to ED via email on December 13, 2018, requesting the following records:

(1) All records containing or documenting communications sent to or received by all staff, including officers, employees and contractors, in ED's Office of Communications and Outreach with the following organizations and domains:

- Fox News or @foxnews.com
- Breitbart News Network or @breitbart.com
- CRTV.com or @crtv.com
- The Blaze or @theblaze.com
- NewsMax or @newsmaxtv.com
- Daily Caller or @dailycaller.com
- Daily Wire or @dailywire.com
- One America News or @oann.com
- Sinclair Broadcast Group or @sgbi.net

Ex. E ("ED FOIA Request") at 2.

28. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. Part 5, Subpart D, which require 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.” *See* ED FOIA Request at 3.

29. ED’s response to Democracy Forward’s FOIA request was due January 14, 2019. *See* 5 U.S.C. § 552(a)(6)(A)(i).

30. As of the date of this Complaint, ED has not communicated with Plaintiff at all concerning the ED FOIA Request, nor has ED produced any records responsive to Plaintiff’s FOIA Request. ED has not informed Plaintiff whether it will comply with the FOIA Request, nor has ED notified Plaintiff of the scope of any responsive records it intends to produce or withhold, or any reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

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

DOI FOIA Request

32. Plaintiff submitted a FOIA request to DOI via email on December 13, 2018, requesting the following records:

- (2) All records containing or documenting communications sent to or received by all staff, including officers, employees and contractors, in DOI’s Office of the Secretary with the following organizations and domains:
 - Fox News or @foxnews.com
 - Breitbart News Network or @breitbart.com
 - CRTV.com or @crtv.com
 - The Blaze or @theblaze.com
 - NewsMax or @newsmaxtv.com
 - Daily Caller or @dailycaller.com
 - Daily Wire or @dailywire.com
 - One America News or @oann.com
 - Sinclair Broadcast Group or @sgbi.net

Ex. F (“DOI FOIA Request”) at 2.

33. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. § 2.48, which require 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.” *See* DOI FOIA Request at 3.

34. DOI’s response to Democracy Forward’s FOIA request was due January 14, 2019. *See* 5 U.S.C. § 552(a)(6)(A)(i).

35. As of the date of this Complaint, DOI has not communicated with Plaintiff at all concerning the DOI FOIA Request, nor has DOI produced any records responsive to Plaintiff’s FOIA Request. DOI has not informed Plaintiff whether it will comply with the FOIA Request, nor has DOI notified Plaintiff of the scope of any responsive records it intends to produce or withhold, or any reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

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

CLAIMS FOR RELIEF

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

37. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

38. By failing to respond to Plaintiff's request within the statutorily prescribed time limit, DOJ 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 and to produce all responsive, reasonably segregable, non-exempt information, and to not withhold responsive records.

39. Plaintiff is being irreparably harmed by DOJ's violation of the FOIA and will continue to be irreparably harmed until DOJ is compelled to comply with the FOIA.

Count Two (Violation of the FOIA by HHS), 5 U.S.C. § 552

40. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

41. By failing to respond to Plaintiff's request within the statutorily prescribed time limit, HHS 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 and to produce all responsive, reasonably segregable, non-exempt information, and to not withhold responsive records.

42. Plaintiff is being irreparably harmed by HHS's violation of the FOIA and will continue to be irreparably harmed until HHS is compelled to comply with the FOIA.

Count Three (Violation of the FOIA by ED), 5 U.S.C. § 552

43. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

44. By failing to respond to Plaintiff's request within the statutorily prescribed time limit, ED 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 and to produce all responsive, reasonably segregable, non-exempt information, and to not withhold responsive records.

45. Plaintiff is being irreparably harmed by ED's violation of the FOIA and will continue to be irreparably harmed until ED is compelled to comply with the FOIA.

Count Four (Violation of the FOIA by DOI), 5 U.S.C. § 552

46. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

47. By failing to respond to Plaintiff's request within the statutorily prescribed time limit, DOI 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 and to produce all responsive, reasonably segregable, non-exempt information, and to not withhold responsive records.

48. Plaintiff is being irreparably harmed by DOI's violation of the FOIA and will continue to be irreparably harmed until DOI is compelled to comply with the FOIA.

Request for Relief

WHEREFORE, Plaintiff prays that this Court:

1. order Defendants to conduct a search for any and all responsive records to Plaintiff's FOIA requests using search methods reasonably likely to lead to discovery of all responsive records;
2. order Defendants to produce, by a date certain, any and all non-exempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin Defendants from continuing to withhold any and all non-exempt responsive records;

4. order Defendants 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: September 3, 2019

Respectfully submitted,

/s/ Aman George

Javier Guzman (D.C. Bar No. 462679)

Aman George (D.C. Bar No. 1028446)

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