

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

AMERICAN CENTER FOR LAW AND
JUSTICE,

Plaintiff,

VS.

FEDERAL BUREAU OF INVESTIGATION

935 Pennsylvania Avenue, NW
Washington, DC 20535

Defendant.

Case Action No. 22-cv-3711

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMPLAINT

Plaintiff American Center for Law and Justice (“AC LJ”), by and through counsel, brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, challenging the failure of the Federal Bureau of Investigation (“FBI”), a component of Defendant Department of Justice (DOJ), to issue a determination as to Plaintiff’s FOIA request within the statutorily prescribed time period, and seeking the disclosure and release of agency records improperly withheld by Defendant. In support thereof, Plaintiff alleges and states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C)(i), and 28 U.S.C. § 1331, because this action arises under FOIA, and Plaintiff has exhausted its administrative remedies.

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

3. This Court has authority to award injunctive relief pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2202.

4. This Court has authority to award declaratory relief pursuant to 28 U.S.C. § 2201.

PARTIES

5. Plaintiff, with an office at [REDACTED] is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. Plaintiff's mission is to educate, promulgate, conciliate, and where necessary, litigate, to ensure that those rights are protected under the law. Plaintiff also regularly monitors governmental activity with respect to governmental accountability. Plaintiff seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its dedication to the rule of law and public interest mission, Plaintiff regularly requests access to the public records of federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.

6. Defendant FBI is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1), and is a component of the United States Department of Justice (DOJ), which is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1).

7. Defendant FBI is headquartered at 935 Pennsylvania Avenue, NW, Washington, DC 20535.

8. Defendant FBI has possession, custody and control of the records Plaintiff seeks.

FACTUAL ALLEGATIONS

9. On August 31, 2022, Plaintiff submitted a FOIA request via Federal Express to Defendant FBI. *See*, Pl.'s FOIA Request to FBI, Ex. A, incorporated by reference as if fully set forth herein.

10. To summarize, Plaintiff's Request contained 10 subparts and sought "records pertaining to the Federal Bureau of Investigation's (FBI) interactions with and requests to social media and news platforms, including Facebook, to censor or 'be on high alert for' information in connection with the then-upcoming election, which according to Facebook's Mark Zuckerberg, resulted in censorship (or reduced 'distribution' which was 'meaningful') of information, including the Hunter Biden-related stories, on Facebook." Pl.'s FOIA Request to FBI, Ex. A.

11. "Pursuant to FBI FOIA regulation 6 C.F.R. §5.3(b), this Background addresses 'the date, title or name, author, recipient, and subject matter of the record[s]' requested, to the extent known.'" Pl.'s FOIA Requests, Ex. A, 1.

12. On September 1, 2022, Federal Express delivered Plaintiff's FOIA request to Defendant FBI, and delivery confirmations from Federal Express show that the Defendant received Plaintiff's FOIA requests on that date. *See* FedEx Delivery Confirmations attached as Exhibit B, and incorporated herein by reference.

13. On September 21, 2022, the Defendant acknowledged receipt of Plaintiff's FOIA Request again. *See* Second FBI Acknowledgement attached as Exhibit C.

14. The Acknowledgement stated, in part: "Your request has been received at FBI Headquarters for processing."

15. On October 3, 2022, the Defendant responded to Plaintiff's Request (Exhibit A), denied the entire FOIA request (including all other parts not pertaining to Hunter Biden's privacy), closed the file, and stated in relevant part: "The mere acknowledgement of the existence of FBI records on third party individuals could reasonably be expected to constitute an unwarranted invasion of personal privacy." *See* FBI Response attached as Exhibit D.

16. The ACLJ's FOIA Request contained 9 other subparts seeking various records which could not reasonably be construed as privacy invasion of Hunter Biden, yet the FBI's Response did not address those, e.g., communications to the personnel of Facebook, Twitter or other news media about being on "high alert" for "information in connection with an election" that does not include Hunter Biden.

17. Plaintiff appealed Defendant's Response on November 3, 2022. *See* Administrative Appeal attached as Exhibit E and incorporated herein by reference.

18. Defendant acknowledged Plaintiff's appeal that same day. *See* Appeal Acknowledgement attached as Exhibit F. No further response has been received from the FBI.

CAUSE OF ACTION

COUNT I

Violation of the Freedom of Information Act

19. Plaintiff realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully stated herein.

20. The federal FOIA establishes a 20-day deadline by which a federal agency must make and issue a determination regarding an administrative appeal regarding a request for records made pursuant to the statute. 5 U.S.C. § 552(a)(6)(A)(ii).

21. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), the Defendant was required to determine whether to comply with Plaintiff's request within twenty (20) days, excepting Saturdays, Sundays, and legal public holidays. Pursuant to this same provision, the Defendant was also required to notify Plaintiff immediately of the determination, the reasons therefor, and the right to appeal any adverse determination to the head of the agency.

22. The Defendant's 20-day period commenced November 3, 2022, and expired on December 7, 2022.

23. As of the date of this Complaint, the Defendant has failed to produce any records responsive to the request and has not indicated when (or even whether) any responsive records will be produced, or demonstrated that responsive records are exempt from production – particularly as regarding the requested records to the personnel of Facebook, Twitter or other news media about being on “high alert” for “information in connection with an election” that does not include Hunter Biden.

24. The Defendant has not requested information from the Plaintiff that would toll the 20-day period as contemplated by 5 U.S.C. § 552(a)(6)(A)(i)(I).

25. The FOIA permits a federal agency, in unusual circumstances, to extend the 20-day response deadline for a period not to exceed ten (10) additional working days. 5 U.S.C. § 552(a)(6)(B)(i), if it identifies “the date on which a determination is expected to be dispatched,” and which shall not be “a date that would result in an extension for more than ten working days.” *Id.*

26. Defendant FBI has failed to invoke this provision, and, there are no “unusual circumstances” that justify Defendant’s prolonged delay in responding as required by law to Plaintiff’s lawful FOIA requests. In any event, Defendant did not comply with the clear statutory requirements to trigger the extension provided by 5 U.S.C. § 552(a)(6)(B).

27. Plaintiff has a statutory right to have Defendant process Plaintiff’s FOIA request in a timely manner and in accordance with the requirements set forth in 5 U.S.C. § 552(a)(6)(ii).

28. The Defendant is unlawfully withholding records requested by the Plaintiff American Center for Law and Justice pursuant to the FOIA, 5 U.S.C. § 552.

29. The FOIA provides a cause of action for a complainant from whom a federal agency has withheld requested records. 5 U.S.C. § 552(a)(4)(B).

30. Through continued delay and outright failure to properly respond to Plaintiff's lawful appeal, and its improper withholding of such requested records, the Defendant has failed to comply with FOIA's prescribed deadlines for responding to an administrative appeal and has violated Plaintiff's statutory rights.

31. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), because the Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(ii), Plaintiff is has a statutory right to seek judicial review.

32. Plaintiff is being irreparably harmed by reason of the Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless the Defendant is compelled to conform its conduct to the requirements of the law.

33. The FOIA imposes no limits on courts' equitable powers in enforcing its terms, and this Court should exercise its equitable powers to compel the Defendant to comply with the clear requirements of the FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against the Defendant, and provide Plaintiff with the following relief:

- (a) An Order that the Defendant conduct a diligent, expedited search for any and all records responsive to Plaintiff's FOIA request and demonstrate that they employed reasonable search methods most technologically likely to lead to the discovery of records responsive to Plaintiff's FOIA request, selected from among those methods available to Defendant;
- (b) An Order that the Defendant produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;
- (c) An Order enjoining the Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;

- (d) A declaration that the Defendant's actions violated Plaintiff's statutory rights under 5 U.S.C. § 552;
- (e) An Order awarding to Plaintiff its reasonable attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and,
- (f) An Order granting to Plaintiff all further relief to which Plaintiff may be entitled.

Dated: December 13, 2022.

Respectfully submitted,
THE AMERICAN CENTER FOR LAW AND JUSTICE

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