

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 July 5, 2022, Plaintiff submitted a FOIA request via the FOIA web portal of Defendant FBI. *See* Pl.'s FOIA Request to FBI, Ex. A, incorporated by reference as if fully set forth herein.

10. To summarize, the Plaintiff sought “records pertaining to the FBI’s noncompliance with Section 702 of the Foreign Intelligence Surveillance Act (FISA) in 2021.” Pl.’s FOIA Request to FBI, Ex. A.

11. Plaintiff provided pertinent information in its Request: “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.

12. On July 18, 2022, the Defendant acknowledged receipt of Plaintiff’s FOIA Request again. *See* FBI Acknowledgement attached as Exhibit B.

13. The Acknowledgement stated, in part: “This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI, dated July 5, 2022.” It also stated: “Future correspondence about your FOIPA Request will be provided in an email link unless the record’s file type is not supported by the eFOIPA system.”

14. Since July 18, 2022, Defendant has neither sent a determination nor produced any documents.

15. On December 27, 2022, the Defendant’s FOIPA system states, in part: “The FBI’s FOIPA Program is searching the FBI’s indices for potentially responsive documents. You may be contacted via formal letter for all fees and/or negotiation issues that may apply.” *See*, FBI FOIPA Status attached as Exhibit C.

CAUSE OF ACTION

COUNT I

Violation of the Freedom of Information Act

16. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this Complaint as if fully stated herein.

17. The FOIA establishes a 20-day deadline by which a federal agency must make and issue a decision regarding compliance with a request for records made pursuant to the statute. 5 U.S.C. § 552(a)(6)(A)(i).

18. Pursuant to 5 U.S.C. § 552(a)(6)(A), 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.

19. The Defendant's 20-day period commenced July 5, 2022, and expired on August 2, 2022.

20. 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 “pertaining to the FBI's noncompliance with Section 702 of the Foreign Intelligence Surveillance Act (FISA) in 2021.”

21. 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).

22. 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.

23. 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).

24. 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).

25. 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.

26. 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).

27. Through continued delay and outright failure to properly respond to Plaintiff’s lawful request for records, and its improper withholding of such requested records, the Defendant has failed to comply with FOIA’s prescribed deadlines for responding to a request for records and has violated Plaintiff’s statutory rights.

28. Pursuant to 5 U.S.C. § 552(a)(6)(C), because the Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request.

29. 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.

30. 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.

