

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

EMPOWER OVERSIGHT )  
 WHISTLEBLOWERS & RESEARCH, )  
 [REDACTED] )  
 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FEDERAL BUREAU OF INVESTIGATION, )  
 935 Pennsylvania Avenue, NW )  
 Washington, DC 20535, )  
 )  
 and )  
 )  
 U.S. DEPARTMENT OF JUSTICE, )  
 950 Pennsylvania Avenue NW )  
 Washington DC 20530, )  
 )  
 Defendants. )

Case Action No. 24-cv-02723

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**COMPLAINT**

Plaintiff Empower Oversight Whistleblowers & Research (“Empower Oversight”), by and through its 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”) and U.S. Department of Justice (“DOJ”) to issue determinations as to Plaintiff’s FOIA request within the statutorily prescribed time, and seeking the disclosure and release of agency records improperly withheld by Defendants. In support thereof, Plaintiff Empower Oversight 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 the authority to award declaratory relief pursuant to 28 U.S.C. § 2201.

### **PARTIES**

5. Plaintiff, Empower Oversight Whistleblowers & Research, with an office at [REDACTED] [REDACTED] is a nonprofit, nonpartisan educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. It works to help insiders document and report corruption to the proper authorities while also seeking to hold authorities accountable to act on those reports.

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 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 DOJ is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1).

9. Defendant DOJ is headquartered at 950 Pennsylvania Avenue, NW, Washington, DC 20530.

10. Defendants FBI and DOJ have possession, custody, and control of the records Plaintiff seeks.

**FACTUAL ALLEGATIONS**

**The DOJ**

11. On May 18, 2023, Plaintiff Empower Oversight submitted a written request to Defendant DOJ in accordance with 5 U.S.C. § 552. *See* Pl.’s FOIA Request to DOJ, Ex. A, incorporated by reference as if fully set forth herein. (Hereinafter 2023 FOIA).

12. To summarize, Plaintiff requested records pertaining to a DOJ official who was hired to become a congressional staffer, and her communications about FBI whistleblowers and with congressional officials. *Id.*

13. Plaintiff provided pertinent information in its Request as required by the relevant regulation, 28 C.F.R. § 16.3, “describ[ing] the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort.” Pl.’s FOIA Requests to DOJ, Ex. A.

14. Defendant DOJ assigned tracking number EMRUFOIA051823-1 and referred the 2023 FOIA to DOJ components: Office of Information Policy (OIP) and Office of Legislative Affairs. *See* Def.’s FOIA Response, Ex. B, incorporated by reference as if fully set forth herein (hereinafter 2023 FOIA Response).

15. Subsequently, the Office of Information Policy forwarded the 2023 FOIA to the Justice Management Division (JMD) on May 23, 2023. *See* JMD Def.’s 2023 FOIA Response, Ex. C, incorporated by reference as if fully set forth herein

16. The JMD responded on January 22, 2024. JMD Def.’s 2023 FOIA Response, Ex. C., incorporated by reference as if fully set forth herein.

17. JMD denied “item 2” of the 2023 Request and referred all other requests to the OIP.

18. The OIP mailed Plaintiff on January 30, 2024, saying “your request will be processed as soon as possible.” *See* Def.’s OIP FOIA Response, Ex. D, incorporated by reference as if fully set forth herein.

19. Plaintiff appealed JMD’s denial of “item 2” on April 15, 2024. *See* P.’s Admin Appeal, Ex. E, incorporated by reference as if fully set forth herein.

20. The OIP admitted receipt of the Admin. Appeal on April 15, 2024, and assigned Number A-2024-01357. *See* Def.’s Admin Appeal Response, Ex. F, incorporated by reference as if fully set forth herein.

21. Plaintiff received no further response from Defendant DOJ regarding the 2023 FOIA.

22. On June 20, 2024, Plaintiff sent a second FOIA request letter to Defendants DOJ and FBI, which identified that Defendant DOJ had failed to respond to the initial FOIA request and included additional FOIA request items related thereto and based upon new developments. Pl.’s FOIA Requests to FBI and DOJ, Ex. G (hereinafter 2024 Joint FOIA).

23. On June 21, 2024, Defendant DOJ acknowledged receipt of Plaintiff’s 2024 Joint FOIA , and assigned it the following identification: FOIA-2024-02399. *See*, Def. DOJ response letter (June 21, 2024), Ex. H.

24. Defendant DOJ stated in its letter:

The records you seek require a search in and/or consultation with another Office, and so your request falls within “unusual circumstances.” *See* 5 U.S.C. § 552 (a)(6)(B)(i)-(iii) (2018). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute.

*Id.* The letter further states Defendant DOJ assigned the FOIA request to the “complex track.”

25. Defendant DOJ provided no determination or even an estimation of the date it would issue its determination or produce records for the 2023 FOIA or the 2024 Joint FOIA.

***The FBI***

26. On July 17, 2024, Defendant FBI acknowledged receipt of Plaintiff's 2024 FOIA request and assigned a portion of it as FOIPA Request No. NFP-162885. In the top right corner, the FBI notated the subject as "Communications Involving FBI Personnel and House Select Subcommittee on Weaponization of Federal Government (January 1, 2023 – June 7, 2023). Def. FBI response letter (July 17, 2024), Ex. I.

27. This letter contained no determination or reasons for that determination as required by the statute to constitute a compliant response.

28. On July 18, 2024, Defendant FBI acknowledged receipt of Plaintiff's 2024 FOIA request and assigned a portion of it as FOIPA Request No. NFP-162884. In the top right corner, the FBI notated the subject as "Communications Involving FBI Personnel with Specific Keywords/Phrases (April 26, 2022 – June 7, 2023). Def. FBI response letter (July 18, 2024), Ex. J.

29. This letter contained no determination or reasons for that determination as required by the statute to constitute a compliant response.

30. On August 6, 2024, Defendant FBI acknowledged receipt of Plaintiff's 2024 FOIA request and assigned a portion of it as FOIPA Request No. 1640857-000. In the top right corner, Defendant FBI notated the subject as "Records Provided to Representative Goldman Counsel Damon Marx by FBI (May 2023)." Def. FBI response letter (Aug. 6, 2024), Ex. K.

31. The FBI's letter stated its view that "unusual circumstances" applied to the processing of Plaintiff's FOIPA Request No. 1640857-000 which would delay its ability to make

a determination within the statutory time frame of 20 days (excluding weekend and legal public holidays) and may necessitate the payment of pertinent fees. *Id.* The purported “unusual circumstances” included one or more of the following: a need to search for and collect records from field officers and/or other offices that are separate from RIDS, a need to search for, collect, and examine a voluminous amount of separate and distinct records, and/or a need for consultation with another agency or two or more DOJ components. *See id.*

32. According to the FBI’s letter, “The application of ‘unusual circumstances’ is not a determination of how the FBI will respond to your substantive request, this letter provides notice that these ‘unusual circumstances’ apply to the processing and delay the determination of your request.” *Id.*

33. This letter contained no determination or reasons for that determination as required by the statute to constitute a compliant response.

34. As of the date and time of filing this Complaint, Defendants FBI and DOJ have neither sent a determination nor produced any records.

## **CAUSE OF ACTION**

### **COUNT I**

#### **Violation of the Freedom of Information Act**

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

36. 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).

37. As to the first 2023 FOIA request letter sent by Plaintiff on May 18, 2023 (Ex. A), Defendant DOJ’s 20-day period commenced May 22, 2023, and expired on June 21, 2023.

38. 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 business days. 5 U.S.C. § 552(a)(6)(B)(i). The FOIA states that such an extension must set forth “the date on which a determination is expected to be dispatched,” which shall not be “a date that would result in an extension for more than ten working days.” *Id.*

39. Defendant DOJ did not assert unusual circumstances regarding the 2023 FOIA, but if it had, the extended deadline ended on July 6, 2023.

40. 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).

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

42. Defendant’s 20-day period to respond to P.’s Admin Appeal regarding “item 2” (referenced above in Para.’s 17–21) commenced on April 15, 2024, and expired on May 13, 2024.

43. As to the 2024 FOIA request letter sent by Plaintiff on June 20, 2024 (Ex. G), Defendant DOJ’s 20-day period commenced on June 21, 2024, and expired on July 22, 2024.

44. Defendant DOJ responded by letter on June 21, 2024. Ex. H, incorporated by reference as if fully set forth herein.

45. Defendant DOJ asserted that, “Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute.” DOJ response letter (June 21, 2024), Ex. H.

46. To enjoy the benefit of the “beyond the ten additional days,” an agency must have properly triggered the underlying “unusual circumstances” extension in the first place. Defendant DOJ failed to do so by failing to provide statutorily compliant reasons for the asserted “unusual circumstances” or the “date upon which the determination is expected to be dispatched.”

47. The DOJ’s extended deadline to respond to Empower Oversight’s June 2024 FOIA expired on or around August 5, 2024.

48. As to the 2024 FOIA request letter sent by Plaintiff on June 20, 2024 (Ex. G), Defendant FBI’s 20-day period commenced on June 21, 2024, and expired on July 22, 2024.

49. In responding to the 2024 FOIA on August 6, 2024, Defendant FBI did not provide a date on which a determination is expected to be dispatched when advising Plaintiff that “unusual circumstances” would apply to the processing of FBI’s FOIPA Request No. 1640857-000 and DOJ’s FOIA-2024-02399 (Defendant FBI did not assert unusual circumstances with respect to FOIPA Nos. NFP-162884 or NFP-162885).

50. The FBI’s extended deadline to properly respond to Empower Oversight’s 2024 FOIA request letter expired on or around August 20, 2024.

51. As of the date of this Complaint, Defendants have failed to advise Plaintiff Empower Oversight of a determination and the reasons for that determination, produce any records responsive to the requests, indicate when any responsive records will be produced, or demonstrate that responsive records are exempt from production and failed to meet any arguably applicable deadline.



52. Defendants failed to comply with the clear statutory requirements to trigger the extension provided by 5 U.S.C. § 552(a)(6)(B). But even assuming *arguendo* that this was done, and that Defendants stated “unusual circumstances” grounds are accurate, the extended time has still long since passed.

53. Plaintiff Empower Oversight has a statutory right to have Defendants process its FOIA requests in a timely manner and in accordance with the requirements set forth in 5 U.S.C. § 552(a)(6).

54. Defendants are unlawfully withholding records requested by Plaintiff Empower Oversight pursuant to the FOIA, 5 U.S.C. § 552.

55. 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).

56. Through continued delay, no provision of a determination or the reasons for that determination, no provision of an expected date of determination, outright failure to properly respond to Plaintiff’s lawful request for records, and its improper withholding of such requested records, Defendants have failed to comply with FOIA’s prescribed deadlines for responding to a request for records and have violated Plaintiff’s statutory rights.

57. Pursuant to 5 U.S.C. § 552(a)(6)(C), because Defendants failed to comply with the time limit and requirements set forth in 5 U.S.C. § 552(a)(6)(A) (*i.e.*, failed to issue a determination and the reasons for that determination), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA request.

58. Plaintiff Empower Oversight is being irreparably harmed by reason of Defendants unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to conform their conduct to the requirements of the law.

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

**PRAYER FOR RELIEF**

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

- (a) An Order that Defendants conduct a diligent, expedited search for any and all records responsive to Plaintiff's FOIA requests 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 Defendants;
- (b) An Order that Defendants produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of any responsive records withheld under a claim of exemption;
- (c) An Order enjoining Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- (d) An Order declaring Defendant DOJ's assertion that it can extend the deadline beyond that allowed for in the statute is unlawful without properly triggering the underlying 10-day "unusual circumstance" provision in the first place and enjoining Defendants from continuing to make such assertions or act in such a manner;
- (e) A declaration that Defendants' actions violated Plaintiff's statutory rights under 5 U.S.C. § 552;
- (f) 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
- (g) An Order granting to Plaintiff all further relief to which Plaintiff may be entitled.

Dated: September 24, 2024.

Respectfully submitted,

THE AMERICAN CENTER FOR LAW AND JUSTICE

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