

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

AMERICAN OVERSIGHT,  
1030 15th Street NW, B255  
Washington, DC 20005

*Plaintiff,*

v.

Case No. 20-cv-3783

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

*Defendant.*

**COMPLAINT**

1. Plaintiff American Oversight brings this action against the U.S. Department of Justice under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

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

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from

continuing to withhold agency records and ordering the production of agency records improperly withheld.

### **PARTIES**

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Justice (DOJ) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Office of Information Policy (OIP) is a component of DOJ and processes FOIA requests on behalf of itself and several other DOJ components including the Offices of the Attorney General (OAG), Deputy Attorney General (ODAG), Associate Attorney General (OASG), Legislative Affairs (OLA), and Legal Policy (OLP). The Executive Office for United States Attorneys (EOUSA) is a component of DOJ and accepts and processes FOIA requests on behalf of U.S. Attorneys' offices. DOJ has possession, custody, and control of the records that American Oversight seeks.

**STATEMENT OF FACTS**

*Brady Order and Written Approval FOIA*

7. On February 14, 2020, American Oversight submitted a FOIA request to both OIP and EOUSA seeking the following:

- 1) The written approval of the Attorney General or Deputy Attorney General authorizing U.S. Attorney for the Western District of Pennsylvania Scott Brady, or anyone in his office, to create and/or administer a process for receiving purported investigatory information from Rudy Giuliani concerning matters that relate to former Vice President Biden, a declared presidential candidate.[FN]
- 2) A copy of the Attorney General's order (and any attachments to that order) directing U.S. Attorney for the Western District of Pennsylvania Scott Brady, or anyone in his office, to conduct an evaluation, review, probe, assessment, "intake process," preliminary investigation, or other investigation of any information received from Rudy Giuliani, including information that may concern former Vice President Biden, or for any other matters outside his ordinary jurisdiction as U.S. Attorney for the Western District of Pennsylvania.

American Oversight expects this request for two readily-identifiable, specific documents will be assigned to the Simple Processing track given the relative ease of conducting a search for these records. As described below, this record concerns a matter of significant public concern, American Oversight expects that DOJ will, consequently, respond expeditiously.

Please provide all responsive records from November 1, 2019, through the date the search is conducted.

8. OIP acknowledged this FOIA request on March 13, 2020, assigning the request tracking number FOIA-2020-00226 and administratively aggregating the request with the Brady Directives, Guidance, & Communications FOIA below.

9. EOUSA assigned this request tracking number EOUSA-2020-001605.

10. On February 20, 2020, EOUSA represented to American Oversight by phone that it would plan to refer any responsive records to OIP, and consequently American Oversight agreed to withdraw the request from EOUSA's processing for administrative efficiency.

11. American Oversight has not received any further communications from DOJ regarding this request.

*Giuliani Directives, Guidance, & Communications FOIA*

12. Also on February 14, 2020, American Oversight submitted a FOIA request to DOJ seeking the following:

- 1) All directives or guidance provided to U.S. Attorney for the Western District of Pennsylvania Scott Brady, or anyone in his office, regarding an evaluation, review, probe, assessment, "intake process," preliminary investigation, or other investigation of any information received from Rudy Giuliani, including information that may concern former Vice President Biden, or for any other matters outside his ordinary jurisdiction as U.S. Attorney for the Western District of Pennsylvania.

To be clear, talking points, notes, or other records used in preparation for or during oral communications in which U.S. Attorney Brady or anyone in his office was provided direction or guidance are responsive to this request.

- 2) All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the Office of the Attorney General or the Office of the Deputy Attorney General and (2) U.S. Attorney for the Western District of Pennsylvania Scott Brady, or anyone in his office, regarding an evaluation, review, probe, assessment, preliminary investigation, or other investigation of any information received from Rudy Giuliani, including information that may concern former Vice President Biden, or for any other matters outside his ordinary jurisdiction as U.S. Attorney for the District of Western Pennsylvania.

- 3) All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) within the Office of the Attorney General or the Office of the Deputy Attorney General regarding any evaluation, review, probe, assessment, “intake process,” preliminary investigation, or other investigation of any information received from Rudy Giuliani, including information which may concern former Vice President Biden.

To be clear, records reflecting communications with individuals outside DOJ, such as Mr. Giuliani, as well as records reflecting internal communications between DOJ personnel are both responsive to this item of the request.

For all parts of this request, provide all responsive records from November 1, 2019, through the date the search is conducted.

13. EOUSA acknowledged this request on February 20, 2020 and assigned the request tracking number EOUSA-2020-001606.
14. OIP acknowledged this request on March 13, 2020, assigning the request tracking number DOJ-2020-00226 and aggregating the request with the Brady Order and Written Approval FOIA citing administrative efficiency.
15. American Oversight has not received any further communications from DOJ regarding this request.

*Brady-Giuliani Communications FOIA*

16. Also on February 14, 2020, American Oversight submitted a FOIA request to EOUSA seeking the following:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp),

telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) U.S. Attorney for the Western District of Pennsylvania Scott Brady or anyone else supervised by Mr. Brady in the course of any evaluation, review, probe, assessment, “intake process,” preliminary investigation, or other investigation of any information received from Rudy Giuliani and (2) Rudy Giuliani, or any of Mr. Giuliani’s personal assistants or others communicating on his behalf, including but not limited to Jo Ann Zafonte, Christianne Allen, or Beau Wagner.

To be clear, any report or any other records (including any supplementary documents, videos, or other materials) sent or provided by Mr. Rudy Giuliani to Mr. Brady, containing any findings from Mr. Giuliani’s December 2019 trip to Ukraine, Hungary, and Austria or any other efforts by Mr. Giuliani to provide DOJ with materials of purported investigative value, are considered responsive to this request.

Please provide all responsive records from November 1, 2019, through the date the search is conducted.

17. EOUSA acknowledged this request on February 20, 2020 and assigned the request tracking number EOUSA-2020-001607.

18. American Oversight has not received any further communications from DOJ regarding this request.

*Brady-White House Communications FOIA*

19. On March 20, 2020, American Oversight submitted a FOIA request to EOUSA seeking the following:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) U.S. Attorney for the Western District of

Pennsylvania Scott Brady or anyone else supervised by Mr. Brady in the course of any evaluation, review, probe, assessment, “intake process,” preliminary investigation, or other investigation of any information received from Rudy Giuliani and (2) anyone at the White House Office (including email communications with email addresses ending @who.eop.gov and phone logs reflecting calls with numbers beginning (202) 456-xxxx).

Please provide all responsive records from November 1, 2019, through the date the search is conducted.

20. EOUSA acknowledged this request on March 24, 2020 and assigned the request tracking number EOUSA-2020-002020/USAO-PAW.

21. American Oversight has not received any further communications from DOJ regarding this request.

*Exhaustion of Administrative Remedies*

22. As of the date of this complaint, DOJ has failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records DOJ intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

23. Through DOJ’s failure to respond to American Oversight’s FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552**

**Failure to Conduct Adequate Searches for Responsive Records**

24. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

25. American Oversight properly requested records within the possession, custody, and control of DOJ.

26. DOJ is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

27. DOJ has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

28. DOJ's failure to conduct an adequate search for responsive records violates FOIA and DOJ regulations.

29. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

**COUNT II**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

30. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

31. American Oversight properly requested records within the possession, custody, and control of DOJ.

32. DOJ is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

33. DOJ is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.



34. DOJ is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

35. DOJ's failure to provide all non-exempt responsive records violates FOIA and DOJ regulations.

36. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

**REQUESTED RELIEF**

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: December 22, 2020

Respectfully submitted,

/s/ Daniel A. McGrath

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