

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Southern Division)**

**DAJUAN HOLMES-HAMILTON**

1202 Pickering Court  
Upper Marlboro, MD 20774; and,

**JEREMIAH WILLIAMS**

1511 Whistling Duck Drive  
Upper Marlboro, MD 20774; and,

**WILLIAM COX**

1207 Chelsea Road  
Knoxville, TN 37922,

*Plaintiffs,*

v.

**FEDERAL BUREAU OF  
INVESTIGATION**

935 Pennsylvania Avenue, NW  
Washington, DC 20535-0001,

Serve On:  
U.S. Department of Justice  
Merrick Garland, Attorney General  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

*Defendant.*

Case No.

**COMPLAINT**

Plaintiffs bring this action against the Defendant Federal Bureau of Investigation (“FBI” or “Defendant”) for violation of the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), based upon the FBI’s failure to provide any substantive timely response to Plaintiffs’ FOIA requests. This action seeks to compel the FBI to immediately release records regarding the death of Plaintiffs’ parents in the Dominican Republic.

In 2007, the Trump Organization abandoned a failed real estate development deal in the Dominican Republic. In 2016, Donald J. Trump was elected President of the United States. Despite promises during the election, the Trump Organization was reported to be actively wielding its newfound connection to power to begin new real estate development deals, including in the Dominican Republic by 2018.<sup>1</sup> In 2018, President Trump replaced the United States Ambassador to the Dominican Republic with appointee Robin Bernstein.

Ambassador Bernstein had no foreign service experience. She was, however, a founding member of the Trump Mar-a-Lago Club and the longtime insurance agent to the Trump Organization. Questions arose during her nomination about the potential for conflicts of interest given that the Trump Organization was actively pursuing a licensing deal in the Dominican Republic.<sup>2</sup>

In 2019, reports of death and severe illnesses by American tourists vacationing in the Dominican Republic skyrocketed without any obvious explanation. Tourism to the island nation cratered to an all time low, costing the island millions of dollars in revenue. Specifically at the request of the United States Department of State, the FBI was tasked with assisting in the investigation.

The FBI and United States State Department issued multiple, and often conflicting, official statements to media outlets that the deaths and severe illnesses of American tourists in the Dominican Republic were due to natural causes. The FBI and State Department claimed to have provided their complete report of the FBI investigation to Dominican Authorities as late as October of 2019. However, the nearly identical FOIA requests of these two grieving families have been

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<sup>1</sup> See e.g. *A Foreign Affair Conflicts of Interest in the White House and Trump's Dominican Republic Deal*, December 2018 report by Global Witness.

<sup>2</sup> See e.g. *Reported Trump Ambassador Pick Raises Conflict-of-interest Questions*, Marisa Kabas, February 22, 2017, Rolling Stone.

unlawfully ignored, denied and delayed by the FBI.

As the United States Department of Justice Office of Information Policy has already determined, the agency records sought here are not subject to any Exemption and there is no justification for the FBI's estimated *five-year* additional delay in producing the records.

### **PARTIES**

1. Plaintiff DaJuan Holmes-Hamilton is a United States Citizen and resides in Prince George's County, Maryland. She is the adult daughter of Nathaniel Edward Holmes. Nathaniel died on or about May 30, 2019, in the Dominican Republic.

2. Plaintiff Jeremiah Williams is a United States Citizen and resides in Prince George's County, Maryland. He is the adult son of Cynthia Ann Day. Cynthia was found dead on or about May 30, 2019 in the Dominican Republic.

3. Cynthia Day and Nathaniel Holmes, both United States Citizens, traveled to the Dominican Republic together to celebrate their engagement with a Caribbean vacation; they were found dead in their hotel room with copious amounts of frothy secretions around their nose and mouth. Days prior, another American tourist had died from respiratory failure and pulmonary edema at the same resort. The bodies of Cynthia and Nathaniel were drained of fluid and underwent an autopsy in the Dominican Republic. The embalmed bodies were later transported to the United States for a private autopsy at a laboratory retained by Cynthia and Nathaniel's family. Notably, the private autopsy findings document that their deaths, in the same hotel room within hours of one another, were *not* consistent with natural causes.<sup>3</sup>

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<sup>3</sup> Incredibly, the press office of the United States Department of State similarly claimed that the death of another American tourist at the same Dominican Resort which occurred days before Cynthia and Nathaniel was also due to natural causes. Upon information and belief, that American tourist took a sip of a mini-bottle from her in-room bar and died within minutes of respiratory failure and heart failure in front of her husband. *See e.g. 11<sup>th</sup> American Dies in the Dominican Republic-9<sup>th</sup> since April*, Lisette Voytko, Forbes. Accessible at

4. Plaintiff William Cox is a United States Citizen and resides in the State of Tennessee. He is the adult son of Leyla Cox. Leyla was found dead on or about June 10, 2019 in the Dominican Republic. Plaintiff demanded that Leyla's body be flown back to the United States for an autopsy, however he was told that this was impossible by both State Department employees and local Dominican authorities. The only known samples of Leyla's blood to escape the Dominican Republic after her death disappeared at a Federal Express processing center *en route* to a private pathology laboratory retained by William Cox. While the United States State Department has publicly reported that the FBI has performed toxicology testing on multiple specimens, including those of Leyla Cox, no results have been provided by the FBI pursuant to the FOIA request at issue in this case.

5. Leyla Cox, a United States Citizen, travelled to the Dominican Republic for a Caribbean vacation. She was traveling alone and was found dead in her hotel room.

6. In 2019, multiple United States Citizens vacationing in the Dominican Republic died or became severely ill. The FBI, at the request of the United States Department of State, began investigating the unexplained deaths and illnesses.

7. Through their Attorneys, Plaintiffs made virtually identical FOIA requests which are at issue in this case.

8. Pursuant to communication from the FBI, the FOIA requests for Cynthia Day, Nathaniel Holmes and Leyla Cox "share the same file."

9. The Defendant is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

#### **JURISDICTION AND VENUE**

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<https://www.forbes.com/sites/lisettevoytko/2019/06/26/11th-american-dies-in-the-dominican-republic9th-since-april/?sh=2d17bfb5c7db> last accessed March 8, 2021.

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), because the cause of action asserted in this Complaint arises under the Freedom of Information Act, 5 U.S.C. 552 *et seq.*

11. The Plaintiffs have exhausted available agency administrative remedies.

12. This Court has jurisdiction to grant declaratory and further proper relief pursuant to 28 U.S.C. §§ 2201-2202.

13. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B), because the Day and Holmes Plaintiffs reside in Prince George's County, Maryland.

14. This Court can and should exercise jurisdiction over the Cox Plaintiff's claims inasmuch as the Cox FOIA was nearly identical to those of Day and Holmes, submitted at approximately the same time, the FBI regards the Plaintiffs' FOIA requests as substantially similar and the legal issues involved are substantially similar.

**FOIPA REQUEST NO.: 1453704-000 REGARDING DAY AND HOLMES**

15. On November 27, 2019, Plaintiffs Holmes-Hamilton and Williams requested the following records from the Defendant:

1. A copy of all communications, including but not limited to all FD-159's regarding the FBI involvement in the investigation of the deaths of the above-referenced United States' citizens Cynthia Ann Day and Nathaniel Edward Holmes.

a. This request includes communications with foreign governments as well as other federal agencies.

b. This request includes communications where the FBI involvement in this investigation was first requested.

2. All interview notes, investigative notes, reports of toxicological studies, and FD-302s, relating or referring to the investigation of the deaths above-referenced United States' citizens Cynthia Ann Day and Nathaniel Edward Holmes.

3. All communications by the FBI with the United States State Department regarding the basis of the FBI assertion as shared by the State Department on or about October 19, 2019 that the above

referenced United States' citizens Cynthia Ann Day and Nathaniel Edward Holmes died of natural causes.

- a. This request specifically includes communications with the Office of United States Ambassador Robin S. Bernstein.

16. The request was submitted electronically and by certified mail. A true and correct copy of that correspondence is attached hereto as **Exhibit 1**. ("Request").

17. On December 6, 2019, the Defendant acknowledged receipt of the Request and assigned it FOIPA Request No.: 1453704-000. A true and correct copy of that correspondence is annexed hereto as **Exhibit 2**. ("Acknowledgment").

18. On December 10, 2019, the Defendant denied the request claiming that the records sought were located in an investigative file which was exempt from disclosure. *See Exhibit 3*. ("Denial").

19. Specifically, the Defendant's denial stated that the material sought is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A) because the records were located in an "investigative file" exempt from disclosure because the requested material constitutes:

Records or information compiled *for law enforcement purposes*, but only to the extent that the production of *such law enforcement records or information*...could reasonably be expected to interfere with *enforcement proceedings*...

**Exhibit 3**, *Id.* (Emphasis supplied).

20. The Defendant made no attempt to explain how such records could be for law enforcement purposes much less how production could reasonably be expected to interfere with enforcement proceedings. This denial was either intentional wrong-doing by the FBI or recklessly negligent given the multiple official press statements made *by the FBI* that they were not investigating any federal crimes and were only providing assistance to Dominican Republic authorities at the request of the United States Department of State.

21. The Defendants' denial was unquestionably wrong. The Defendant was not investigating any federal crime. As explained by the Defendant's representative by email of July 11, 2019 sent to Sonya Jackson, Cynthia Day's sister:

The FBI was asked to assist with the ongoing investigation at the request of the Dominican authorities. The FBI continues to assist with the ongoing local investigation, to include support with toxicology and the arrival of a small team of FBI personnel in the Dominican Republic. *However, because there is not, at this time, evidence of a federal crime within FBI jurisdiction, the nature of the assistance the FBI may provide is limited. Furthermore, despite any level of FBI involvement, the Dominicans are the lead for any ongoing investigative efforts and will be responsible for providing updates on their findings.* Communication with families should be facilitated through State Department officials and we defer to authorities in the Dominican Republic as to whatever measures are appropriate for matters in their jurisdiction.

Redacted July 11, 2019, Email attached as **Exhibit 4**.

22. On February 24, 2020, the Plaintiffs appealed the Agency determination. (**Exhibit 5**). On or about June 3, 2020, the Department of Justice Office of Information Policy ("OIP") granted Plaintiffs' appeal holding that the FBI's invocation of Exemption 7(A) exemption was "no longer applicable to withhold the records in full." Undated letter from DOJ OIP, **Exhibit 6**.

23. As of July 30, 2020, the FBI has acknowledged receipt of the remanded appeal and estimated a production date in excess of five (5) years from the date of the remand. The delay in production is unlawful. *See e.g. Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180, 188-9 (D.C. Cir. 2012)(Holding that "[a]s to actual production, FOIA requires that the agency make the records 'promptly available,' which depending on the circumstances typically would mean within days or a few weeks of a 'determination,' not months or years. 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i).").

24. The FBI has simply refused to participate in FOIA. Whether through baseless

denials or disingenuous offers to provide the records in five years, the agency has ignored FOIA regulations and attempted to game the system by inflicting one delay after another.

25. Plaintiffs DaJuan Holmes-Hamilton and Jeremiah Williams have exhausted all available administrative remedies.

**FOIPA REQUEST NO.: 1454587 REGARDING COX**

26. On December 11, 2019, Plaintiff William Cox requested the following records from the Defendant:

1. A copy of all communications, including but not limited to all FD-159's regarding the FBI involvement in the investigation of the deaths of the above-referenced United States' citizens Leyla Ann Cox.
  - a. This request includes communications with foreign governments as well as other federal agencies.
  - b. This request includes communications where the FBI involvement in this investigation was first requested.
2. All interview notes, investigative notes, reports of toxicological studies, and FD-302s, relating or referring to the investigation of the deaths above-referenced United States' citizens Leyla Ann Cox.
3. All communications by the FBI with the United States State Department regarding the basis of the FBI assertion as shared by the State Department on or about October 19, 2019 that the above referenced United States' citizen Leyla Ann Cox died of natural causes.
  - a. This request specifically includes communications with the Office of United States Ambassador Robin S. Bernstein.

27. The request was submitted electronically and by certified mail. A true and correct copy of that correspondence is attached hereto as **Exhibit 7**. ("Request").

28. On December 11, 2019, the Defendant acknowledged receipt of the electronically filed request. A true and correct copy of that correspondence is attached hereto as **Exhibit 8**. ("E-mail acknowledgment"). No additional response was provided by the agency to either the e-FOIA request or the written request served by certified mail.



29. On December 17, 2019, the FOIA request was assigned the above request number.

30. Despite the fact that the Holmes and Day FOIA, which was nearly identical to the Cox FOIA, was also submitted and accepted electronically, on December 17, 2019 the FBI communicated that the Cox FOIA was not consistent with the FBI eFOIPA portal terms of service. **Exhibit 9** (December 17, 2019 Letter from FBI FOIA David M. Hardy).

31. No further communication from the FBI regarding the Cox FOIA was forthcoming.

32. Left with no other alternative, William Cox filed an agency appeal of *both* the FBI's failure to respond to either the written or the electronically submitted FOIA request as well as the agency determination that the FOIA submitted electronically did not meet the agency's terms of service. **Exhibit 10** (February 24, 2020 Appeal).

33. On June 17, 2020, the FBI FOIA Negotiation Team communicated by e-mail that the Cox FOIA was being processed as a complex large track request and would require nearly five years to complete. **Exhibit 11** (June 17, 2020 E-mail from FBI FOIA Negotiation Team).

34. On September 8, 2020, the administrative appeal was dismissed because the OIP determined that the FBI had not "as of yet" made an adverse determination. There was no explanation by the author of the letter which of the two complaints were considered. **Exhibit 12** (Correspondence of September 8, 2020 from U.S. Department of Justice OIP).

35. As of June 17, 2020, the FBI has acknowledged receipt of the Cox FOIA and estimated a production date in excess of five (5) years from the date of the request. The delay in production is unlawful. *See e.g. Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180, 188-9 (D.C. Cir. 2012)(Holding that "[a]s to actual production, FOIA requires that the agency make the records 'promptly available,' which depending on the circumstances typically would mean within days or a few weeks of a 'determination,' not months or years. 5 U.S.C. §

552(a)(3)(A), (a)(6)(C)(i).”).

36. The FBI has simply refused to participate in FOIA. Whether through improper denials or disingenuous offers to provide the records in five years, the agency has ignored FOIA regulations and attempted to game the system by inflicting one delay after another.

37. Plaintiff William Cox has exhausted all available administrative remedies.

**COUNT I – VIOLATION OF FOIA**

38. The above paragraphs are incorporated herein.

39. Defendant is an agency subject to FOIA.

40. Plaintiffs made a proper FOIA request to Defendant for agency records of the Defendant which include agency records of other agencies.

41. As determined by the OIP, the requested records are not exempt from disclosure.

42. Defendant has failed to promptly produce the requested records.

**WHEREFORE**, Plaintiffs ask the Court to:

- i. Order Defendant to conduct a reasonable search for records and to produce all requested records;
- ii. Award Plaintiffs attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

DATED: March 19, 2021

MURPHY, FALCON & MURPHY

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