

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

**JASON LEOPOLD,** )  
6824 Lexington Avenue )  
Los Angeles, CA 90038 )  
)  
**BUZZFEED INC.,** )  
111 East 18th Street, 13th Floor )  
New York, NY 10003 )  
)  
**Plaintiffs,** )  
)  
**v.** )  
)  
**U.S. DEPARTMENT OF JUSTICE,** )  
950 Pennsylvania Ave NW )  
Washington, DC 20530 )  
)  
**U.S. DEPARTMENT OF HOMELAND** )  
**SECURITY,** )  
2707 Martin Luther King Jr. Ave SE )  
Washington, D.C. 20528 )  
)  
**Defendants.** )

**COMPLAINT**

1. Plaintiffs, JASON LEOPOLD and BUZZFEED INC., bring this Freedom of Information Act suit to force Defendants U.S. DEPARTMENT OF JUSTICE and U.S. DEPARTMENT OF HOMELAND SECURITY to produce records regarding the attack on the United States Capitol on January 6, 2021.

**PARTIES**

2. Plaintiffs JASON LEOPOLD and BUZZFEED INC. are members of the media and made the FOIA requests at issue in this case.

3. Defendant U.S. DEPARTMENT OF JUSTICE (“DOJ”) is a federal agency and subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”) is a federal agency and subject to the Freedom of Information Act, 5 U.S.C. § 552.

#### **JURISDICTION AND VENUE**

5. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

#### **JANUARY 11, 2021, FOIA REQUEST TO DOJ AND ITS TWO COMPONENTS**

7. On January 11, 2021, Plaintiffs submitted the following request to the DOJ and its components:

[1] All records, such as emails, text messages, memos, letters, directives, intelligence bulletins and intelligence assessments, threat assessments, situation report, mentioning or referring to the protests in Washington, DC on January 6, 2021 by supporters of President Donald Trump referred to as SAVE AMERICA RALLY and STOP THE STEAL and MARCH FOR TRUMP and First Amendment demonstrations and OPERATION FIRST AMENDMENT. Please be sure this search includes any correspondence sent and received by fusion centers, data centers and joint terrorism task forces; FBI, the White House, Office of the President and Vice President and the Executive Office of the President; Washington, DC Mayor's Office and Metropolitan Police Department; Department of Interior; Department of Defense and National Guard Bureau in DC; any individual Senator and Congressman/Congresswoman and any House and Senate committee; the US Capitol Police. The timeframe for this part of my request is December 1, 2020 through the date the search for responsive records is located;

[2] All records, such as emails, text messages, memos, letters, reports, after action reports, intelligence assessments and bulletins, intelligence memoranda, social media postings, mentioning or referring to the January 6, 2021 speech by President Trump at the Washington, DC protest and the subsequent insurrection and siege and STORM THE CAPITOL, that took place at the Capitol building in Washington, DC on that date. The timeframe for this part of my request is January 6, 2021 through the date the search for responsive records is conducted;

[3] Photographs of these January 6, 2021 protests and the siege/insurrection that took place at the Capitol building;

[4] All records mentioning or referring to tweets by Donald Trump that contain the words PROTESTS, RALLY, RALLIES[,] ELECTION FRAUD, FRAUD, JANUARY SIXTH; [and]

[5] The call logs and briefing books for the directors of each Department of Justice component this request is addressed. Please limit this search to January 6, 2021.

Exhibit 1.

8. Of the components that received the request, only two components, the Executive Office of Immigration Review (“EOIR”) and Professional Responsibility Advisory Office (“PRAO”) are at issue in this lawsuit.

9. Plaintiffs sought expedited processing. Exhibit 1.

10. On January 20, 2021, EOIR acknowledged receipt of the request, assigned reference number EOIR FOIA 2021-13049 to the matter, and denied expedited processing of the request. Exhibit 2.

11. On February 9, 2021, PRAO acknowledged receipt of the request and assigned reference number PRAO-FOIA-21-001 to the matter. Exhibit 3.

12. In that same letter, PRAO stated that it located “two records of communication responsive” to the request but withheld them in their entirety by citing Exemption 5 of FOIA. *Id.*

13. On February 17, 2021, EOIR stated that it located “records that may be responsive” to Item 1 and Item 2 of the request. EOIR granted “partial access” to the records and withheld others in their entirety by citing Exemption 5 of FOIA. Exhibit 4.

14. Regarding Items 3 through 5 of the request, EOIR stated that no records were located. *Id.*

15. EOIR added that “the majority of the records originated from different agencies or DOJ components” and explained that the records have been “forwarded” to the appropriate agencies or components for a release of determination and direct response to Plaintiffs. *Id.*

16. Although EOIR granted partial access to the records, it did not produce any records as of the date of this filing.

17. On February 20, 2021, Plaintiffs appealed EOIR's determination in its entirety.
18. On February 21, 2021, Plaintiffs appealed PRAO's determination to withhold the entirety of records under Exemption 5. Exhibit 5.
19. On February 22, 2021, DOJ acknowledged receipt of the appeal regarding PRAO's determination and assigned reference number A-2021-01112 to the matter. Exhibit 6.
20. On February 22, 2021, DOJ acknowledged receipt of the appeal regarding EOIR's determination and assigned reference number A-2021-01113 to the matter. Exhibit 7.
21. DOJ never issued a determination regarding the appeals.
22. As of the date of this Complaint, DOJ and its components have not complied with FOIA and have produced no records responsive to the requests.

#### **JANUARY 11, 2021, FOIA REQUEST TO DHS**

23. On January 11, 2021, Plaintiffs submitted the following request to DHS and its many components:

[1] All records, such as emails, text messages, memos, letters, directives, threat assessments, suspicious activity reporting, intelligence reports and intelligence bulletins and assessments and intelligence products, social media postings, collected by DHS and its component personnel, legal opinions, legal guidance, legal memos mentioning or referring to the **planning** of protests in Washington, DC on January 6, 2021 by supporters of President Donald Trump referred to as SAVE AMERICA RALLY and STOP THE STEAL and MARCH FOR TRUMP and First Amendment demonstrations and OPERATION FIRST AMENDMENT. Please be sure this search includes any correspondence sent and received by fusion centers, data centers and joint terrorism task forces; FBI, the White House, Office of the President and Vice President and the Executive Office of the President; Department of Justice, US Marshals Service, Washington, DC Mayor's Office and Metropolitan Police Department; the National Park Service and Department of Interior; Department of Defense and National Guard Bureau in DC; any individual Senator and Congressman/Congresswoman and any House and Senate committee; the US Capitol Police. The timeframe for this part of my request is December 1, 2020 through the date the search for responsive records is located;

[2] All records, such as emails, text messages, memos, letters, reports, after action reports, intelligence assessments and bulletins, intelligence memoranda mentioning or referring to the insurrection, the siege, STORM THE CAPITOL,

that took place at the Capitol building in Washington, DC on January 6, 2021. The timeframe for this part of my request is January 6, 2021 through the date the search for responsive records is conducted;

[3] Photographs and audio and video of these January 6, 2021 protests and the siege/insurrection that took place at the Capitol building;

[4] All records, as described in part 1, mentioning or referring to Million MAGA March;

[5] All records mentioning or referring to tweets by Donald Trump that contain the words PROTESTS, RALLY, RALLIES[,] ELECTION FRAUD, FRAUD, JANUARY SIXTH; [and]

[6] A copy of each assessment, report, and product provided to DHS from the National Capital Region Threat Intelligence Consortium, a DHS-recognized fusion center, between December 20, 2020 through the date the search for responsive records is conducted. You may limit this request to records providing risk assessments, warnings, alerts, emails, after-action reports, and other documents regarding marches, protests, rallies, mob action, riots, break-ins, or other similar activity within Washington, DC. Please interpret this request BROADLY. You may limit this search to those DHS offices most likely to receive fusion center data products from the National Capital Region Threat Intelligence Consortium.

Exhibit 8.

24. Of the many components, this lawsuit only concerns Plaintiffs' request to the Cybersecurity and Infrastructure Security Agency (CISA), Office of Intelligence and Analysis, and the Privacy Office.

25. Plaintiffs sought expedited processing. *Id.*

26. On February 16, 2021, CISA acknowledged receipt of the request, assigned reference number 2021-NPFO-00025 to the matter, and stated that it was "unable to locate or identify any responsive records." Exhibit 9.

27. On February 17, 2021, Plaintiffs appealed CISA's determination. Exhibit 10.

28. DHS or CISA has not acknowledged receipt of the appeal.

29. As of the date of this filing, DHS has not issued a response regarding Plaintiffs' appeal regarding CISA's February 16, 2021 determination letter.

30. On February 19, 2021, DHS stated that DOJ's EOIR forwarded the records that fall under the purview of DHS for its processing. DHS assigned reference number 2021-HQFO-00576 to the matter. Exhibit 11.

31. DHS also invoked a 10-day extension to process the request. *Id.*

32. On March 29, 2021, DHS determined that "this is a matter under the purview of the Office of Intelligence and Analysis (I&A)" upon further review. Exhibit 12.

33. DHS informed Plaintiffs that it transferred the "request and responsive records to the FOIA Officer for I&A, for processing and direct response" to Plaintiffs. *Id.*

34. As of the date of this Complaint, DHS and its components have not complied with FOIA or produced any records responsive to the request.

**COUNT I – DOJ'S FOIA VIOLATION: FAILURE TO PRODUCE RECORDS**

35. The above paragraphs are incorporated herein.

36. The requests seek the disclosure of agency records and were properly made.

37. DOJ and its components are federal agencies or components of federal agencies, subject to FOIA.

38. The requested records are not exempt under FOIA.

39. DOJ and its components have failed to produce the records responsive to the request as soon as practicable.

**COUNT II – DHS'S FOIA VIOLATION: FAILURE TO ISSUE A DETERMINATION OR PRODUCE RECORDS**

40. The above paragraphs are incorporated herein.

41. The request seeks the disclosure of agency records and was properly made.

42. DHS and its components are federal agencies or components of federal agencies, subject to FOIA.

43. The requested records are not exempt under FOIA.

44. DHS and its components have failed to issue a determination within twenty business days or produce the records responsive to the request as soon as practicable.

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

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct a reasonable search for records and to produce the requested records;
- iii. enjoin Defendants from withholding non-exempt public records under FOIA;
- iv. award Plaintiffs attorneys' fees and costs; and
- v. award such other relief the Court considers appropriate.

Dated: April 6, 2021

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

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BUZZFEED INC.

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