

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

DEMOCRACY FORWARD FOUNDATION,  
655 15th St NW, Suite 800  
Washington, DC 20005

*Plaintiff,*

vs.

U.S. DEPARTMENT OF LABOR  
200 Constitution Ave NW  
Washington, DC 20210

*Defendant.*

Case No. 1:21-cv-2008

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**COMPLAINT FOR INJUNCTIVE RELIEF**

1. Plaintiff, Democracy Forward Foundation (“Democracy Forward”), brings this action under the Freedom of Information Act, 5 U.S.C § 552 (“FOIA”), to compel the production of documents from Defendant, Department of Labor (“DOL”).

2. On May 4, 2017, the Office of the President issued Executive Order 13798 on Promoting Free Speech and Religious Liberty. Exec. Order 13798, 82 Fed. Reg. 21,675. It states, in pertinent part, that “the Attorney General shall, as appropriate, issue guidance interpreting religious liberty protections in Federal law.” *Id.*

3. On October 6, 2017, the Attorney General issued a memorandum regarding such guidance. Office of the Att’y Gen., Memorandum for All Executive Departments and Agencies: Federal Law Protections for Religious Liberty (Oct. 6, 2017), <https://www.justice.gov/opa/press-release/file/1001891/download>. That memorandum provides, in pertinent part, that “the federal government may not condition receipt of a federal grant or contract on the effective

relinquishment of a religious organization's hiring exemptions or attributes of its religious character.” *Id.* at 6.

4. On January 16, 2020, the Office of Management and Budget (“OMB”) issued a memorandum directing all grant-administering agencies to “publish policies detailing how they will administer Federal grants in compliance with E.O. 13798, the Attorney General’s memorandum, and this Memorandum.” OMB, M-20-09, Memorandum for the Heads of Executive Departments and Agencies: Guidance Regarding Federal Grants and Executive Order 13798 (Jan. 16, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/01/M-20-09.pdf>.

5. On January 15, 2021, DOL published a “Guidance Regarding Department of Labor Grants” for the purpose of “ensur[ing] that all organizations are treated equally in the issuance of awards and sub-awards of Department grant funds, and that Federal law’s protections for religious liberty are faithfully adhered to.” 86 Fed. Reg. 4126, 4126. To this end, the guidance provides a way for faith-based organizations to apply for “an exemption from the application of a religious non-discrimination provision” by submitting a certification

[A]ttesting that: (1) Receiving the grant is important to the recipient; (2) employing individuals of a particular religion is important to the religious identity, autonomy, or communal religious exercise of the recipient; and (3) conditioning receipt of the grant on compliance with the non-discrimination provision substantially burdens its religious exercise.

*Id.* at 4128.

6. To date, there is no publicly available information about the number of such exemptions sought, the number granted, or the circumstances under which DOL has rejected such certifications, if any.

7. Such information is important for setting expectations and for the uniform and predictable application of religious exemptions in the grantmaking context; transparency as to

such exemptions is vital for both faith-based organizations seeking DOL grants, and for organizations committed to equal religious freedom.

8. On March 23, 2021, Democracy Forward requested that DOL produce records related to any and all requests for exemptions pursuant to the January 15, 2021 guidance.

9. To date, Defendant has not complied with its obligations under the FOIA.

10. Accordingly, Democracy Forward seeks an injunction directing Defendant to comply with FOIA and to search for and produce all responsive documents.

### **JURISDICTION AND VENUE**

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

12. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

### **PARTIES**

13. Plaintiff Democracy Forward is a not-for-profit media organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Democracy Forward's work includes the promotion of transparency and accountability in government by educating the public on government actions and policies. Among other things, Democracy Forward posts information it receives from FOIA requests on the internet and writes about them in various media.

Democracy Forward's FOIA investigations have led to numerous stories of significant public interest.

14. Defendant DOL is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C.

### **FACTUAL ALLEGATIONS**

15. Democracy Forward submitted a FOIA request to DOL on March 23, 2021. *See* Ex. A, attached.

16. The March 23, 2021 request sought the following records:

Any and all requests for exemption from nondiscrimination requirements submitted pursuant to the January 15, 2021 “Guidance Regarding Department of Labor Grants,” 86 Fed. Reg. 4126.

*See* Ex. A at 1.

17. Democracy Forward sought a waiver of search and duplicating fees for the FOIA request under 5 U.S.C. § 552(a)(4)(A)(iii), which require waiver of fees if the disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. *See id.*

18. On March 23, 2021, DOL responded to the request via email, assigning it tracking number 2021-F-06336.

19. On May 26, 2021, Democracy Forward sent an email to DOL requesting an update on the request, explaining that the DOL’s online FOIA request portal, available at <https://efoia.dol.gov/app/CheckStatus.aspx>, indicated that the request had been closed, with an estimated delivery date of April 20, 2021; however Democracy Forward had not received any document or response to date.

20. On June 2, 2021, Democracy Forward sent another email to DOL requesting an update on the request, again explaining that the portal indicated that the request was closed, but that Democracy Forward had received no communications regarding the request since the initial acknowledgement of receipt.

21. As of July 21, 2021, the DOL portal still indicated that the request is closed, with an estimated delivery date of April 20, 2021.

22. Democracy Forward has not received any additional communications regarding its FOIA request from DOL. It has not received any determination on its request for a fee waiver.

23. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Defendant was required to determine whether to comply with the FOIA request within twenty business days of receipt of the request and to notify Democracy Forward immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. When there are “unusual circumstances,” Defendant may extend this deadline by ten working days, as provided in subsection 552(a)(6)(B)(iii).

24. The statutory deadline for Defendant to respond to the FOIA request has passed.

25. Defendant DOL has not produced any records in response to the FOIA request or advised Democracy Forward of any determination whether to comply with the FOIA request.

26. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B)(i), Democracy Forward is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

#### **CLAIM FOR RELIEF**

27. Democracy Forward incorporates by reference the foregoing paragraphs as if fully set forth herein.

28. By failing to respond to Democracy Forward’s request within the statutorily mandated time period, Defendant has violated its duties under FOIA, 5 U.S.C. § 552, including but not limited to its duties to conduct a reasonable search for responsive records, to take reasonable steps to release all reasonably segregable nonexempt information, and to not withhold responsive records.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Democracy Forward prays that this Court:

1. order Defendant to conduct a search for any and all responsive records to Democracy Forward's FOIA requests and demonstrate that they employed search methods reasonably likely to lead to discovery of all responsive records;
2. order Defendant to produce, by a date certain, any and all nonexempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin Defendant from continuing to withhold any and all nonexempt responsive records;
4. order Defendants to grant Democracy Forward's request for a fee waiver;
5. award Democracy Forward its attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. grant Democracy Forward any other relief this Court deems appropriate.

Dated: July 23, 2021

Respectfully submitted,

/s/ Robin F. Thurston  
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