

**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 JUSTICE  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

*Defendant.*

Case No. 1:21-cv-2006

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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 Justice (“DOJ”).

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, No. 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, the U.S. Department of Justice published a “Guidance Regarding Department of Justice Grants and Executive Order 13798” outlining faith-based organizations’ right to participate in the Department’s programs. *Available at*

<https://www.justice.gov/file/1298191/download>. It provides, in pertinent part, that:

[W]here a law governing a Department program prohibits religion-based employment practices, to obtain an exemption, a faith-based organization . . . must certify . . . it sincerely believes that providing the programs or services funded under the award by the Department is an expression of its religious beliefs, that employing individuals of a particular religious belief is important to its religious mission or identity, and that having to abandon its religious hiring practice to receive Department funding would substantially burden its religious exercise.

*Id.* at 9.

6. To date, there is no publicly available information about the number of such exemptions sought, the number granted, or the circumstances under which DOJ 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 DOJ grants, and for organizations committed to equal religious freedom.

8. On March 23, 2021, Democracy Forward requested that DOJ produce records related to any and all requests for exemptions pursuant to DOJ's "Guidance Regarding Department of Justice Grants and Executive Order 13798."

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 the 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 DOJ 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 DOJ on March 23, 2021. *See* Ex. A, attached.

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

Any and all requests for exemption from nondiscrimination requirements submitted pursuant to the January 2021 “Guidance Regarding Department of Justice Grants and Executive Order 13798,”  
<https://www.justice.gov/file/1298191/download>.

*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 24, 2021, DOJ sent a letter acknowledging receipt of the FOIA request and assigning it tracking number EMRUFOIA032321-2. The letter stated that the central receipt and referral unit had forwarded the request to the Office of Justice Programs (“DOJ-OJP”).

19. On April 16, 2021, DOJ-OJP sent a letter acknowledging receipt of the FOIA request and assigning it reference number 21-FOIA-00157. This letter also stated that the request falls within “unusual circumstances” because the records sought “require a search in another OJP office” and that DOJ would extend the time to respond “beyond the ten additional days provided by the statute.”

20. Democracy Forward has not received any additional communications regarding its FOIA request from DOJ; nor has it received any determination on its request for a fee waiver.

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21. 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).

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

23. Defendant DOJ 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.

24. 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**

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

26. 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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