

# **EXHIBIT F**

Chris Johnson  
Washington Blade  
1712 14th St. NW  
Washington, DC 20009

**FREEDOM OF INFORMATION ACT APPEAL**

Feb. 15, 2021

U.S. Department of State  
Appeals Officer  
HST Room B266  
2201 C St. NW  
Washington, DC 20520

**Re: Appeal of Constructive Denial of Freedom of Information Act  
Request F-2020-08789**

To Whom It May Concern:

I am a reporter with the Washington Blade who filed the above-referenced Freedom of Information Act (“FOIA”) request with the U.S. Department of State. I am writing to appeal the failure of the U.S. Department of State (“State Department”) to respond to the request in a timely manner.

**I. The Request**

On September 25, 2020, I submitted a FOIA request with the State Department seeking copies of access to all emails to and from the persons in the role of U.S. ambassador to Germany including the words "initiative," "homosexuality," "gay" "criminalize," "decriminalize," "criminalization" or "decriminalization" from May 15, 2019 to June 30, 2020.

On September 25, 2020, the State Department acknowledged receipt of the request. In the acknowledgement, the State Department stated it had placed the request “in the complex processing track where it will be processed as quickly as possible.” The State Department had indicated it will “not be able to respond within the 20 days provided by the statute due to ‘unusual circumstances,’ citing “the need to search for and collect requested records from other Department offices or Foreign Service posts.”

On February 2, 2021, I submitted a follow-up request with the State Department to ascertain the status of the request. I also sought to expedite to the processing by asking the terms “criminalize” and “criminalization” be removed from the request.

On February 3, 2021, the State Department acknowledged receipt of the follow-up request, the request to modify the terms was forwarded "to the processing team for their information and appropriate action" and stated we will "follow-up with you as soon as possible to provide the information you requested." On February 5, 2021, the State Department sent a subsequent email stating the request "continues to be processed." The esteemed date of completion was Oct. 23, 2023.

The estimated date of completion is more than three years after the request was made. As of now, nearly five months have passed and the State Department has yet to produce a production, nor has it identified any justifiable reason for the delay or identified any basis for withholding such documents. Indeed, it is possible the State Department has failed to even begin to search for the documents.

## **II. The State Department's Failure to Respond to the Request Within the Time Period Required by the FOIA Constitutes of Constructive Denial of the Request**

The estimated date of completion of Oct. 23, 2023 is far beyond the statutory requirements under FOIA, which requires a determination on the request be made within 20 days, then to make records be "promptly available" to the requester. The Court of Appeals for the D.C. Circuit has stated that "depending on the circumstances ['promptly available'] typically would mean within days or a few weeks of a 'determination,' not months or years."

However, FOIA provides only a 10-working day extension for the initial 20 working-day requirement to make a determination. The estimated date of completion is unacceptable.

I respectfully request the State Department respond to this appeal within 20 business days. If you have questions or requirement any additional information, please contact me directly at (734)834-7985 or [cjohnson@washblade.com](mailto:cjohnson@washblade.com).

Sincerely,



Chris Johnson

