

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Kimberly P. Mayfield

Plaintiff,

v.

U. S. Department of Housing
and Urban Development,

and

U.S. Office of Personnel Management.

Defendants.

Civil Action No: 4:21-cv-1048

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Kimberly P. Mayfield (“Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory, injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld by the U.S. Department of Housing and Urban Development (“HUD”) and the U.S. Office of Personnel Management (“OPM”). The agency records concern: (1) OPM training for attorneys in HUD’s Office of General Counsel (OGC”), Region VI, in Fort Worth, Texas (“Region VI”); and (2) the contractor for HUD that conducts searches of email records via electronic discovery subject to requests for HUD records under the FOIA and/or other litigation matters. (*See specifically*, records at issue in paragraphs 22, 31, 45, 55, 65, and 84, set out *infra*.)

2. Plaintiff submitted the FOIA requests at issue in this action to determine whether HUD has continued to provide favorable treatment to young, male attorneys in Region VI

through OGC's approval of OPM training, and to determine whether the contractor that conducts eDiscovery searches for HUD is complying with its contract with HUD.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

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

III. PARTIES

5. Plaintiff, co-counsel in this proceeding, is an Attorney-Advisor in Region VI, and resides in Burleson, Johnson County, Texas.

6. Defendant HUD is a federal agency of the United States within the meaning of the FOIA, 5 U.S.C. § 552(f)(1), and is headquartered at 451 7th Street S.W., Washington D.C. 20410. HUD has possession, custody, and/or control of records responsive to FOIA requests 20-FI-HQ-01840, 21-FI-HQ-00388, and 21-FI-HQ-01158.

7. Defendant OPM is a federal agency of the United States within the meaning of the FOIA, 5 U.S.C. § 552(f)(1), and is headquartered at 1900 E Street, NW, Washington, DC 20415. OPM has possession, custody, and/or control of records responsive to Plaintiff's FOIA request 2021-04261.

IV. FACTS

8. To qualify for supervisory and managing attorney positions within OGC, HUD has required applicants to have, among other things, experience managing or supervising attorneys or paralegals, or comparable management and leadership experience developed through training, project management, team leadership or other non-Departmental activities.

9. HUD has considered training, seminars, courses, lectures, and/or conferences on management, supervisory, and/or leadership development ("Management Training") conducted by OPM, as comparable management and leadership experience to qualify for supervisory and/or managing attorney positions within OGC.

10. On or about January 29, 2020, Region VI, on behalf of Plaintiff, requested approval from OGC, via email and attached Standard Form 182's, to attend Supervisory Development 1: Fundamentals ("Supervisory Development 1"), conducted by OPM on or about September 14-18, 2020; and Supervisory Development 2: Learning to Lead ("Supervisory Development 2"), conducted by OPM on or about April 6-9, 2020. On the Standard Form 182's, Plaintiff stated that the training objective was to "obtain developmental training to become a supervisor."

11. While Plaintiff was able to attend Supervisory Development 1, conducted by OPM on October 5-9, 2020, Plaintiff has not been able to attend Supervisory Development 2, despite requesting to attend such course in fiscal year 2020.

12. OGC has had limited funds for training for fiscal year 2021, which began on October 1, 2020, and ends on September 31, 2021. OGC, therefore, only has been approving and/or using funds for training requests in fiscal year 2021 that are "mission critical." OGC does not consider Management Training to be "mission critical" unless the training is mandatory for current supervisors. Because Management Training is not "mission critical" for Plaintiff, as a non-supervisor, Plaintiff has not requested Management Training in fiscal year 2021.

13. Upon information and belief, HUD authorized, approved, and/or paid for one or more male attorneys in Region VI, who are younger than Plaintiff, to attend Management Training conducted by OPM, between January 1, 2020, and February 28, 2021.

14. Upon information and belief, one or more male attorneys in Region VI, who are younger than Plaintiff, attended Management Training conducted by OPM, between January 1, 2020, and February 28, 2021.

15. The Requisition for Supplies, Equipment, Forms, Publications and Procurement Services (“form HUD-10.4”) shows payments made by HUD for Management Training for attorneys in Region VI. HUD maintains executed copies of all form HUD-10.4’s electronically and/or in HUD files and records.

16. Upon information and belief, HUD has used form HUD-10.4’s as authorization and approval of payments to OPM for Plaintiff and other HUD attorneys to attend Management Training between January 1, 2020, and February 28, 2021.

17. OPM sends emails to participants registered for its Management Training, confirming their attendance in the courses. Upon information and belief, OPM also maintains copies of registration forms, applications, attendance records, and/or attendance lists of participants who registered for and/or attended its Management Training.

18. Leidos Innovations Global (“Leidos”) is the contractor for HUD that conducts searches of email records via electronic discovery subject to requests for HUD records under the FOIA and/or other litigation matters. Leidos has been the contractor for HUD since at least October 1, 2020.

19. The current contract between Leidos and HUD is “Version 1.1” of the Performance Work Statement (PWS) eDiscovery Bridge Contract between Leidos and HUD (“Leidos Contract”), dated March 30, 2021. The contract between Leidos and HUD in effect from October 1, 2020, to March 29, 2021, contains the same terms and conditions as Sections 5.1.1. and 5.1.5. in the Leidos Contract, set out in paragraphs 20 and 21 *infra*.

20. In Section 5.1.1. of the Leidos Contract, Leidos is required to “[e]stablish the schedule for specific data collections and notify the requestor within one business day of receipt of the data collection request.” Leidos also is required to “[c]omplete collections or identify issues that HUD must address within the following timeframes calculated from the receipt of the request: [(1)] 90% of data collection are completed in 14 or fewer calendar days; [(2)] 5% or more of data collections are completed in 10 or fewer calendar days; [and (3)] 5% or more of data collections are completed in 7 or fewer calendar [days].”

21. In Section 5.1.5. of the Leidos Contract, “[o]nce a case is completed, HUD will submit a request to update the status of the case to Case Closed using the eDiscovery Workflow system. [Leidos] shall change the activity of the case in the system to non-active.”

A. FOIA Request 20-FI-HQ-01840 (“HUD FOIA 1”)

22. On or about September 13, 2020, via HUD’s FOIA Public Access Website (“HUD Website”), Plaintiff requested HUD send her copies of all documents maintained, controlled, and/or stored, both electronically and in HUD’s files and records, in the Office of General Counsel (“OGC”) in Washington, D.C., from January 1, 2020, to December 31, 2020, showing:

- (a) Requests from, or on behalf of, all Attorney-Advisors, Trial Attorneys, and Supervisory Attorneys in the Office of Regional Counsel, Region VI, Fort Worth, Texas (“Region VI Attorneys”) for Management Training; and
- (b) Approvals, authorizations, and/or payments for Region VI Attorneys to attend Management Training, including, but not limited to, all forms HUD-10.4 and Standard Forms 182.

23. HUD received HUD FOIA 1 electronically on the same day that it was sent, assigning it the tracking number 20-FI-HQ-01840.

24. OGC has possession, custody, and/or control of records responsive to HUD FOIA 1. All records responsive to HUD FOIA 1 are in emails, including, but not limited to, the email address OGCtraining@hud.gov.

25. Prior to its October 8, 2020 response to Plaintiff regarding HUD FOIA 1, HUD manually searched the email address of OGCtraining@hud.gov, and/or other HUD email addresses, for responsive records subject to HUD FOIA 1.

26. Prior to its October 8, 2020 response to Plaintiff regarding HUD FOIA 1, HUD obtained Standard Form 182's in the email address of OGCtraining@hud.gov, and/or other HUD email addresses, responsive to HUD FOIA 1.

27. Prior to its October 8, 2020 response to Plaintiff regarding HUD FOIA 1, HUD obtained the incoming and outgoing emails that contained Standard Forms 182's in the email address of OGCtraining@hud.gov, and/or other HUD email addresses, responsive to HUD FOIA 1.

28. Prior to its October 8, 2020 response to Plaintiff regarding HUD FOIA 1, HUD obtained form HUD-10.4's in the email address of OGCtraining@hud.gov, and/or other HUD email addresses, responsive to HUD FOIA 1.

29. By email and attached letter, dated October 8, 2020, HUD sent Plaintiff an interim response to HUD FOIA 1. In this response, HUD "established a cut-off date of October 2, 2020, for [HUD FOIA 1] based on when the Department began a search for responsive records;" released 139 pages containing Standard Form 182's for twenty-seven (27) training requests by Region VI Attorneys "that resulted from a manual search conducted by the Office of General Counsel – Administration Management and Human Resources Division;" claimed "unusual circumstances" to conduct a search of "email records for the OGC training email account via electronic discovery, which may include a voluminous amount of potentially

responsive material to review;” and stated that “a final response to [HUD FOIA 1] will require additional time for potentially responsive records to be collected and processed.”

30. Twenty (20) of the Standard Form 182’s, submitted by HUD in its October 8, 2020 interim response to HUD FOIA 1, discussed in paragraph 29 *supra*, are not for Management Training. The approximate amount of pages for those 20 training requests totals 97 pages. Accordingly, only seven (7) of the Standard Form 182’s, totaling approximately 42 pages, are responsive records to HUD FOIA 1.

31. In its October 8, 2020 interim response to HUD FOIA 1, discussed in paragraph 29 *supra*, HUD did not release the following responsive records to Plaintiff:

- (a) The emails to and from Region VI, and the attached Standard Form 182, regarding Plaintiff’s request to attend Supervisory Development 2, held on or about April 6-9, 2020;
- (b) The emails to and from Region VI, and the attached Standard Form 182, regarding Plaintiff’s request to attend Supervisory Development 2, held on or about September 8-11, 2020;
- (c) The emails to and from Region VI, regarding Plaintiff’s request to attend Supervisory Development 1, held on or about September 14-18, 2020, including, but not limited to, the email with the Standard Form 182 as an attachment;
- (d) The emails to and from Region VI, regarding Plaintiff’s approval to attend Supervisory Development 1, held on or about October 5-9, 2020;
- (e) The emails to and from OPM showing HUD’s authorization, approval, and/or payment for Plaintiff to attend Supervisory Development 1 on or about October 5-9, 2020;
- (f) The emails that contained the seven (7) Standard Form 182’s for Management Training, which HUD submitted to Plaintiff in its first interim response on or about October 8, 2020, set out in paragraph 29 *supra*;
- (g) Requests from, or on behalf of, any male Region VI Attorney, who is younger than Plaintiff, which were sent to OGC between January 1, 2020,

and October 2, 2020, for approval to attend Management Training conducted by OPM;

- (h) Approvals, authorizations, and/or payments for any male Region VI Attorney, who is younger than Plaintiff, to attend Management Training conducted by OPM between January 1, 2020, and October 2, 2020; and
- (i) The form HUD-10.4's for Management Training for Region VI Attorneys, between January 1, 2020, and October 2, 2020.

32. On or about December 3, 2020, Plaintiff sent HUD an email, stating that “it has now been fifty-five (55) business days and HUD has not released any emails from the OGC training email account or forms HUD-10.4, showing all requests and/or approvals for Management Training for Region VI Attorneys.”

33. On or about December 11, 2020, HUD informed Plaintiff via email that there was “a push, once search results show up, to get [the remaining records] to [her];” that there was “two new lines of inquiry within HUD on [HUD FOIA 1]: a newly begun search for travel records (which apparently can be searched by an employee...);” and that it was “following up on the status of an Discovery (sic) search.”

34. On or about February 3, 2021, Plaintiff sent HUD an email, stating that “[i]t has now been over 100 business days since HUD received [HUD FOIA 1] and that [she has] not received any emails or forms HUD-10.4 responsive to this request.”

35. By email and attached letter, dated February 5, 2021, HUD sent Plaintiff a second interim response to HUD FOIA 1. In this response, HUD enclosed 40 pages of travel vouchers for two Region VI Attorneys to attend training, and stated that an “eDiscovery search is in progress for other responsive items.” Plaintiff, however, did not request travel vouchers in HUD FOIA 1 and the submitted travel vouchers were not for Management Training.

36. On or about February 5, 2021, Plaintiff sent HUD an email informing it that the “agency records released today are not responsive to [HUD FOIA 1] because they are not for ‘Management Training,’ as defined in the FOIA request” and thus, she planned “to appeal the interim responses to obtain the forms HUD 10.4.” She also attached a sample form HUD 10.4 for its review.

37. In its February 5, 2021 interim response to HUD FOIA 1, discussed in paragraph 35 *supra*, HUD again failed to release to Plaintiff any records set out in paragraph 31 *supra*.

38. Sometime between October 2, 2020, and February 5, 2021, HUD sent one or more data collection request(s) to Leidos to obtain records subject to HUD FOIA 1.

39. On or about February 15, 2021, Plaintiff filed an administrative appeal with HUD’s Office of General Counsel, Ethics and Appeals Division, in Washington, D.C., challenging HUD’s failure to turnover any and all forms HUD 10.4 for Region VI Attorneys to attend Management Training from January 1, 2020, to October 2, 2020.

40. On or about March 5, 2021, HUD denied Plaintiff’s administrative appeal on the basis that “an eDiscovery request was necessary in order to conduct an adequate search because the staff was unable to manually access information relating to the older time frame of the request.” HUD held that “[u]ntil search results are provided from eDiscovery, there is no way to determine either the number or responsive documents via the OGC Training email, or whether the results will be responsive to [Plaintiff’s] request.” HUD further held that “[b]ecause the search for responsive records is ongoing and not complete [Plaintiff’s] appeal regarding the adequacy of the search for HUD 10.4 forms is not ripe for appeal.”

41. At the time this complaint was filed, approximately 248 business days have passed since HUD received HUD FOIA 1, one year ago, on or about September 13, 2020.

42. At the time this complaint was filed, HUD has failed to send Plaintiff the data collection it received from Leidos regarding HUD FOIA 1.

43. At the time this complaint was filed, HUD also has failed to make a final determination regarding HUD FOIA 1, to submit all records responsive to HUD FOIA 1, or to provide an estimate date on which it will complete action on HUD FOIA 1.

44. Plaintiff has exhausted her administrative remedies with respect to HUD FOIA 1 under 5 U.S.C. § 552(a)(6)(C).

B. FOIA Request 21-FI-HQ-00388 (“HUD FOIA 2”)

45. Because HUD limited HUD FOIA 1 to agency records through October 2, 2020, Plaintiff submitted another FOIA request to HUD, via the HUD Website, on or about December 18, 2020, to extend the period to February 28, 2021 (“HUD FOIA 2”). Specifically, Plaintiff requested HUD send her copies of all documents maintained, controlled, and/or stored, both electronically and in HUD’s files and records, in OGC in Washington, D.C., from October 2, 2020, to February 28, 2021, showing:

- (a) Requests from, or on behalf of, all [Region VI Attorneys] for [Management Training]; and
- (b) Approvals, authorizations, and/or payments for Region VI Attorneys to attend Management Training, including, but not limited to, all forms HUD-10.4 and Standard Forms 182.

46. HUD received HUD FOIA 2 electronically on the same day that it was sent, assigning it the tracking number 21-FI-HQ-00388.

47. OGC has possession, custody, and/or control of records responsive to HUD FOIA 2. All records responsive to HUD FOIA 2 are in emails, including, but not limited to, the email address OGCtraining@hud.gov.

48. Prior to its December 23, 2020 response to Plaintiff regarding HUD FOIA 2, HUD manually searched the email address of OGCtraining@hud.gov, and/or other HUD email addresses, for responsive records subject to HUD FOIA 2.

49. Prior to its December 23, 2020 response to Plaintiff regarding HUD FOIA 2, HUD obtained responsive records subject to HUD FOIA 2 in the email address of OGCtraining@hud.gov, and/or other HUD email addresses.

50. By email and attached letter, dated December 23, 2020, HUD sent Plaintiff a response to HUD FOIA 2. In this response, HUD stated that in reference to Plaintiff's request shown in paragraph 45(a) *supra* ("Item 1"), the records "required a search of email records via electronic discovery, which may include a voluminous amount of potentially responsive material to review." HUD, therefore, claimed that Item 1 falls within "unusual circumstances," requiring HUD "to extend the time limit to respond to [HUD FOIA 2] beyond the ten additional days provided by the statute." HUD neither submitted any records subject to Plaintiff's request shown in paragraph 45(b) *supra* ("Item 2") nor addressed Item 2 in its December 23, 2020 response.

51. Sometime between December 18, 2020, and April 29, 2021, HUD sent one or more data collection request(s) to Leidos to obtain records subject to Item 1.

52. At the time this complaint was filed, approximately 182 business days have passed since HUD received HUD FOIA 2 on or December 18, 2020.

53. At the time this complaint was filed, HUD has failed to send Plaintiff the data collection it received from Leidos regarding Item 1.

54. At the time this complaint was filed, HUD has failed to make a determination regarding HUD FOIA 2, to submit any records responsive to HUD FOIA 2, or to provide an estimate date on which it will complete action on HUD FOIA 2.

55. HUD has not released records responsive to HUD FOIA 2 within the required time set forth in the FOIA, which Plaintiff believes include, but are not limited to, the following:

- (a) Requests from, or on behalf of, any male Region VI Attorney, who is younger than Plaintiff, which were sent to OGC, between October 2, 2020, and February 28, 2021, for approval to attend Management Training conducted by OPM;
- (b) Approvals, authorizations, and/or payments for any male Region VI Attorney, who is younger than Plaintiff, to attend Management Training conducted by OPM between October 2, 2020, and February 28, 2021; and
- (c) Forms HUD-10.4 for Management Training for Region VI Attorneys, between October 2, 2020, and February 28, 2021.

56. Plaintiff exhausted her administrative remedies with respect to HUD FOIA 2 under 5 U.S.C. § 552(a)(6)(C).

C. FOIA Request 21-FI-HQ-01158 (“HUD FOIA 3”)

57. On or about April 18, 2021, Plaintiff sent HUD an email seeking an update on the status of HUD FOIA 1 and HUD FOIA 2, stating that, as of April 19, 2021, “it has been 147 business days since HUD received [HUD FOIA 1], and 81 business days since HUD received [HUD FOIA 2]” and that HUD “has failed to release the emails and forms HUD-10.4 responsive to [HUD FOIA 1] and all records subject to [HUD FOIA 2].”

58. On or about April 29, 2021, HUD responded to Plaintiff’s April 18, 2021 email, discussed in paragraph 57 *supra*, stating that “[HUD FOIA1] (what remains to be searched, beyond the interim replies [she has] received) and [HUD FOIA 2] are still in eDiscovery.” HUD further stated that the “potential responsive documents to both requests are entirely in emails that need to [be] searched in that automated way as a manual search doesn’t permit an adequate search for the entire date range provide in [her] request.” In addition, HUD stated that “eDiscovery requests are searched in a first-in, first-out basis by a third-party contractor, and

there is a backlog of cases ahead of [her] in the queue” and that “there are too many variables to estimate how long it will take for [her] requests to clear eDiscovery.”

59. On April 29, 2021, Plaintiff replied to HUD, stating that HUD FOIA 1 and HUD FOIA 2 “did not require an eDiscovery request from a third-party contractor because the emails and attachments can easily be found by a search from HUD personnel using simple terms.” Plaintiff further stated that “the SF-182’s that were provided in the first interim response in [HUD FOIA 1] were attachments to emails, as confirmed in [HUD’s] statement that ‘both requests are entirely in emails’....”

60. HUD did not respond to Plaintiff’s April 29, 2021 email, discussed in paragraph 59 *supra*.

61. Leidos did not establish a schedule for specific data collections and/or notify HUD within one business day of receipt of HUD data collection request(s) regarding HUD FOIA 1, as required in the contract between Leidos and HUD.

62. Leidos did not complete and/or identify issues that HUD must address within 14 calendar days from the receipt of HUD’s request regarding HUD FOIA 1, as required in the contract between Leidos and HUD.

63. Leidos did not establish a schedule for specific data collections and/or notify HUD within one business day of receipt of HUD data collection request(s) regarding Item 1 in HUD FOIA 2.

64. Leidos did not complete and/or identify issues that HUD must address within 14 calendar days from the receipt of HUD’s request regarding Item 1 in HUD FOIA 2.

65. On or about May 31, 2021, Plaintiff submitted a third FOIA request to HUD, via the HUD Website, requesting copies of all HUD documents maintained, controlled, and/or

stored, electronically or in HUD's files and records, showing, between January 1, 2020, to June 1, 2021 ("HUD FOIA 3"):

- (a) The contract(s) between HUD and the general contractor(s) to conduct searches of email records via electronic discovery subject to requests for HUD records under the FOIA, beginning the date of the current contract(s);
- (b) The billing statements to HUD from the general contractor(s) to conduct searches of email records via electronic discovery for HUD records subject to FOIA requests, beginning January 1, 2020;
- (c) HUD's request and/or payment to the general contractor ("Contractor 1") retained to search email records of the HUD OGC training email account via electronic discovery, pursuant to [HUD FOIA 1] (collectively "Electronic Discovery Request 1");
- (d) HUD's requests and/or payments to Contractor 1 for all searches for email records via electronic discovery, beginning March 1, 2020, which Contractor 1 had not completed at the time of Electronic Discovery Request 1;
- (e) HUD's requests and/or payments to Contractor 1 for all searches for email records via electronic discovery that Contractor 1 completed immediately before Electronic Discovery Request 1, beginning August 1, 2020;
- (f) HUD's request and/or payment to the general contractor ("Contractor 2") retained to search email records via electronic discovery, pursuant to [HUD FOIA 2] (collectively "Electronic Discovery Request 2");
- (g) HUD's requests and/or payments to Contractor 2 for all searches for email records via electronic discovery, beginning June 1, 2020, which Contractor 2 had not completed at the time of Electronic Discovery Request 2; and
- (h) HUD's requests and/or payments to Contractor 2 for all searches for email records via electronic discovery that Contractor 2 completed immediately before Electronic Discovery Request 2, beginning November 1, 2020.

66. HUD received HUD FOIA 3 electronically on the same day that it was sent, assigning it the tracking number 21-FI-HQ-01158.

67. HUD has possession, custody, and/or control of records responsive to HUD FOIA 3.

68. By email and attached letter, dated July 1, 2021, HUD sent Plaintiff a response to HUD FOIA 3. In this response, HUD stated that regarding the item shown in paragraph 65(a) *supra*, it “must provide notice to [Leidos] of the information requested that it may be required to disclose confidential commercial information under the FOIA.” HUD further stated that “[Leidos] must be given a reasonable time to object to disclosure of the requested information” and that after HUD “carefully considers any objections, it will reach a decision about disclosure of the information.” In addition, HUD stated that it would notify Plaintiff when the 10-day final notice period expired. HUD also informed Plaintiff that “multiple HUD program offices have so far weighed in on items [b – h] of [her] request, and [HUD was] about to make yet another assignment based on feedback [it] just received.”

69. HUD did not notify Plaintiff when the 10-day final notice period to Leidos had expired, as assured in its July 1, 2021 response, discussed in paragraph 68 *supra*.

70. On or about July 30, 2021, Plaintiff sent HUD an email seeking an update on HUD FOIA 3 and stated that “[i]t has been 41 business days since HUD received [HUD FOIA 3] and 20 business days since HUD sent its letter to Leidos” about HUD FOIA 3.

71. On or about July 30, 2021, HUD stated that it would “be able to send [Plaintiff] an update early next week on the status of the requester notice (and odds are it will be good news).”

72. On or about July 30, 2021, Plaintiff also sent HUD an email seeking an update on the status of HUD FOIA 1 and HUD FOIA 2, stating that “it has been 218 [business] days since HUD received [HUD FOIA 1], and 152 [business] days since HUD received [HUD FOIA 2].”

73. HUD did not respond to Plaintiff’s July 30, 2021 email, discussed in paragraph 72, *supra*.

74. HUD did not provide an update to Plaintiff by August 6, 2021, as stated in its email discussed in paragraph 71, *supra*.

75. On or about August 13, 2021, Plaintiff sent HUD an email asking when it will “be responding to [HUD FOIA 3].” Plaintiff also stated that “[i]t now has been 51 business days since HUD received [HUD FOIA 3] and 30 business days since HUD sent its letter to Leidos.”

76. On or about August 13, 2021, Plaintiff also sent HUD an email asking when it “plan[s] to send the final agency records subject to [HUD FOIA 1] and any and all agency records subject to [HUD FOIA 2].” Plaintiff also stated that “[i]t now has been 228 business days since HUD received [HUD FOIA 1] and 162 days since HUD received [HUD FOIA 2].”

77. HUD did not respond to either of Plaintiff’s August 13, 2021 emails, discussed in paragraphs 75 and 76, *supra*.

78. On or about August 26, 2021, Plaintiff sent HUD an email advising it that she has “retained legal counsel and plan[s] to file a complaint in federal district court unless HUD turns over the agency records subject to [HUD FOIA 1, HUD FOIA 2, and HUD FOIA 3] by **Friday, September 10, 2021.**”

79. By email and attached letter, dated September 3, 2020, HUD sent Plaintiff an interim response to HUD FOIA 3. In this response, HUD provided records responsive to Plaintiff’s request set out in paragraph 65(a) *supra*, which included a copy of the Leidos Contract, “an eDiscovery quality assurance surveillance plan,” and “a memorandum on mask and social distancing.” HUD did not send Plaintiff any contract between HUD and Leidos that was in effect prior to March 30, 2021, or any other responsive records subject to HUD FOIA 3.

80. At the time this complaint was filed, approximately 70 business days have passed since HUD received HUD FOIA 3 on or about May 31, 2020.

81. At the time this complaint was filed, HUD has failed to make a final determination regarding HUD FOIA 3, to submit all contracts with Leidos subject to the item set out in paragraph 65(a) *supra*, to submit any records subject to the items set out in paragraphs 65(b) – (h) *supra*, or to provide an estimate date on which it will complete action on HUD FOIA 3.

82. Plaintiff exhausted her administrative remedies with respect to HUD FOIA 3 under 5 U.S.C. § 552(a)(6)(C).

D. FOIA Request 2021-04261 (“OPM FOIA”)

83. On or about July 18, 2021, Plaintiff sent OPM a FOIA request via email, seeking, among other things, copies of all documents maintained, controlled, and/or stored, electronically or in OPM’s files and records, showing “[a]ll registrations and/or payments made by HUD, from January 1, 2020, to March 30, 2021, for attorneys in HUD’s Office of General Counsel in Region VI, in Fort Worth, Texas, to attend supervisory, leadership, and/or management training, seminars, courses, lectures, and/or conferences, conducted by OPM.”

84. On or about July 20, 2021, Plaintiff amended her request to: “[a]ll registration forms and/or applications received by OPM (and/or attendance records and/or lists created by OPM), from January 1, 2020, to March 30, 2021” for five (5) specifically listed Region VI Attorneys, including Plaintiff, to attend Management Training conducted by OPM.

85. On or about July 20, 2021, OPM acknowledged receipt of Plaintiff’s amended FOIA request (“OPM FOIA”) and asked Plaintiff to “provide more specific information about the type of training, seminars, courses, lectures, fellowships, and/or conferences.” Later that same day, Plaintiff sent OPM an email, replying that the only OPM course she attended was Supervisory Development conducted by OPM’s Center for Leadership on or about October 5-9,

2020. Plaintiff also stated that she believed the other four (4) HUD attorneys listed in her request may have taken additional courses offered by other departments within OPM.

86. On or about July 27, 2021, OPM informed Plaintiff that OPM FOIA was “logged in as request number 2021-04261 and assigned to the proper OPM program office.”

87. On or about August 26, 2021, Plaintiff sent OPM an email stating that “[i]t has been over twenty business days since OPM received [OPM FOIA],” and seeking an update on the status of OPM FOIA.

88. OPM did not respond to Plaintiff’s August 26, 2021 email, discussed in paragraph 87 *supra*.

89. On or about September 6, 2021, Plaintiff sent OPM an email advising it that she has “retained legal counsel and plan[s] to file a complaint in federal district court against OPM unless OPM turns over the agency records subject to [OPM FOIA] by **Friday, September 10, 2021.**”

90. At the time this complaint was filed, approximately 38 business days have passed since OPM received OPM FOIA on or about July 20, 2020.

91. At the time this complaint was filed, OPM has failed to make a determination regarding OPM FOIA, to submit any records responsive to OPM FOIA, or to provide an estimate date on which it will complete action on OPM FOIA.

92. Plaintiff exhausted her administrative remedies with respect to OPM FOIA 3 under 5 U.S.C. § 552(a)(6)(C).

V. CLAIMS FOR RELIEF

A. Count I: **HUD’s Failure to Meet the FOIA’s Mandatory Determination Deadline**

93. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

94. Plaintiff has a statutory right to a prompt release of the records she requested under the FOIA, 5 U.S.C. § 552(a)(3)(A).

95. Plaintiff has a statutory right to a final determination from her FOIA requests in a manner that complies with the FOIA. 5 U.S.C. § 552(a)(6)(A)(i).

96. HUD has violated Plaintiff's statutory rights by unlawfully delaying its response to HUD FOIA 1, HUD FOIA 1, and/or HUD FOIA 3, beyond the deadline that the FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

97. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, HUD will continue to violate Plaintiff's rights to receive public records under the FOIA.

98. Plaintiff is entitled to reasonable costs of litigation and attorney fees pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

B. Count II: OPM's Failure to Meet the FOIA's Mandatory Determination Deadline

99. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

100. Plaintiff has a statutory right to a prompt release of the records she requested, under the FOIA, 5 U.S.C. § 552(a)(3)(A).

101. Plaintiff has a statutory right to a final determination from her FOIA request in a manner that complies with the FOIA. 5 U.S.C. § 552(a)(6)(A)(i).

102. OPM has violated Plaintiff's statutory rights by improperly delaying its response to OPM FOIA beyond the deadline that the FOIA mandates. 5 U.S.C. § 552(a)(6)(A)(i).

103. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, OPM will continue to violate Plaintiff's rights to receive public records under the FOIA.

104. Plaintiff is entitled to reasonable costs of litigation and attorney fees pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

C. Count III: HUD's Failure to Promptly Produce Responsive Records

105. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

106. HUD is required, upon receipt of a request for records from a requester, to make records promptly available unless they may be withheld under one of the FOIA's narrow exemptions. 5 U.S.C. § 552(a)(3)(A), (b).

107. Plaintiff, through her FOIA requests, properly asked for records within HUD's possession, custody, and/or control.

108. HUD has not produced all records responsive to HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3.

109. HUD violated the FOIA and HUD's implementing regulations for the FOIA by failing to make responsive records promptly available.

110. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, HUD will continue to violate Plaintiff's rights to receive public records under the FOIA.

111. Plaintiff is entitled to reasonable costs of litigation and attorney fees pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

D. Count IV: OPM's Failure to Promptly Produce Responsive Records

112. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

113. OPM is required, upon receipt of a request for records from a requester, to make records promptly available unless they may be withheld under one of the FOIA's narrow exemptions. 5 U.S.C. § 552(a)(3)(A), (b).

114. Plaintiff, through her FOIA requests, properly asked for records within OPM's possession, custody, and/or control.

115. OPM has not produced any records responsive to OPM FOIA.

116. OPM violated the FOIA by failing to make responsive records promptly available.

117. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court, OPM will continue to violate Plaintiff's rights to receive public records under the FOIA.

118. Plaintiff is entitled to reasonable costs of litigation and attorney fees pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

E. Count V: HUD's Failure to Provide an Estimated Date of Completion on Which HUD Will Complete Action

119. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

120. HUD is statutorily required to provide Plaintiff with an estimated date on which HUD will complete action on HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3. 5 U.S.C. § 552(a)(7)(B)(ii).

121. HUD violated Plaintiff's rights in this regard when it improperly failed to provide an estimated date on which it would complete action on HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3.

122. Unless enjoined and made subject to a declaration of Plaintiffs legal rights by this Court, HUD will continue to violate Plaintiff's rights to receive public records under the FOIA.

123. Plaintiff is entitled to reasonable costs of litigation and attorney fees pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

F. Count VI: OPM's Failure to Provide an Estimated Date of Completion on Which OPM Will Complete Action

124. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

125. OPM is statutorily required to provide Plaintiff with an estimated date on which OPM will complete action on OPM FOIA. 5 U.S.C. § 552(a)(7)(B)(ii).

126. OPM violated Plaintiff's rights in this regard when it improperly failed to provide an estimated date on which it would complete action on OPM FOIA.

127. Unless enjoined and made subject to a declaration of Plaintiffs legal rights by this Court, OPM will continue to violate Plaintiff's rights to receive public records under the FOIA.

128. Plaintiff is entitled to reasonable costs of litigation and attorney fees pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

G. Count VII: HUD Improperly Withheld Non-Exempt Records

129. Plaintiff re-alleges and incorporates the foregoing paragraphs as if set forth in full.

130. Plaintiff properly asked for records within the possession, custody and control of HUD pursuant to 24 C.F.R. § 15.102.

131. HUD improperly failed to make reasonable and adequate efforts to manually search for records responsive to HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3, in violation of Plaintiff's rights under FOIA, including but not limited to 5 U.S.C. § 552(a)(3)(C).

132. HUD improperly failed to disclose withheld agency records and information responsive to HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3, and the basis for withholding such records and information, in violation of Plaintiff's rights to those records under FOIA, including but not limited to 5 U.S.C. § 552(a)(3)(A) and 24 C.F.R. § 15.105(d)(2).

133. HUD improperly withheld agency records responsive to HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3, without a legal basis for withholding such records, in violation of

Plaintiff's rights to those records under FOIA, including but not limited to 5 U.S.C. § 552(a)(3)(A) and 24 C.F.R. § 15.105(d)(2).

134. HUD has a pattern and practice of failing to release documents in compliance with the FOIA, 5 U.S.C. § 552.

135. Plaintiff is entitled to reasonable costs of litigation and attorney fees pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(E).

VI. PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court:

- A. Issue an order and judgment requiring HUD to conduct a search for any and all records responsive to HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3, and to demonstrate that it employed search methods reasonably likely to lead to the discovery of all records responsive to Plaintiff's FOIA requests;
- B. Issue an order and judgment requiring OPM to conduct a search for any and all records responsive to OPM FOIA, and to demonstrate that it employed search methods reasonably likely to lead to the discovery of all records responsive to this FOIA request;
- C. Issue an order and judgment requiring HUD to make a final determination regarding HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3;
- D. Issue an order and judgment requiring OPM to make a determination regarding OPM FOIA.
- E. Issue an order and judgment requiring HUD to provide Plaintiff with an estimated date on which it will complete action on HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3;

- F. Issue an order and judgment requiring OPM to provide Plaintiff with an estimated date on which it will complete action on OPM FOIA;
- G. Issue an order and judgment permanently enjoining HUD from continuing to improperly withhold any and all non-exempt records in this case that are responsive to HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3;
- H. Issue an order and judgment permanently enjoining OPM from continuing to improperly withhold any and all non-exempt records in this case that are responsive to OPM FOIA;
- I. Declare that HUD improperly failed to: (1) make a timely and lawful determination on HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3; (2) timely submit the records and information responsive to HUD FOIA 1, HUD FOIA 2 and/or HUD FOIA 3; and (3) provide Plaintiff with an estimated date on which HUD would complete action on HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3;
- J. Declare that OPM improperly failed to: (1) make a timely and lawful determination on OPM FOIA; (2) timely submit the records and information responsive to OPM FOIA; and (3) provide Plaintiff with an estimated date on which OPM would complete action on OPM FOIA
- K. Declare that HUD improperly failed to conduct an adequate search for documents in HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3;
- L. Declare that HUD improperly failed to disclose withheld documents, or portions thereof, in HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3, and unlawfully failed to provide the basis for withholding such documents, the name and title or

position of the person responsible for their denial, and a brief statement of the reason(s) for the denial;

- M. Declare that HUD improperly withheld documents, or portions thereof, in HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3;
- N. Order HUD to promptly disclose any portion of released records that it has improperly withheld in HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3, and to provide the name and title or position of the person responsible for their denial, and a brief statement of the reason(s) for the denial;
- O. Order HUD to make any and all requested records available to Plaintiff at no cost and without delay;
- P. Order OPM to make any and all requested records available to Plaintiff at no cost and without delay;
- Q. Retain jurisdiction to ensure HUD provides Plaintiff, by a date on which all parties and this Court can agree, all the responsive records to HUD FOIA 1, HUD FOIA 2, and/or HUD FOIA 3, and the reasonably segregable portions of any lawfully exempt records sought in this action;
- R. Retain jurisdiction to ensure OPM provides Plaintiff, by a date on which all parties and this Court can agree, all the responsive records to OPM FOIA and the reasonably segregable portions of any lawfully exempt records sought in this action;
- S. Award all reasonable attorneys' fees and other litigation costs to Plaintiff pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

- T. Grant all other appropriate relief, including, but not limited to, issuing a written finding that the circumstances surrounding HUD's withholding raise questions whether HUD personnel acted arbitrarily or capriciously with respect to the improper withholding, under 5 U.S.C. § 552(a)(4)(F)(i),

Dated: September 13, 2021

Respectfully submitted,

/s/ Kimberly P. Mayfield
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