

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

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

Case No. 21-cv-3047

NATIONAL GUARD BUREAU,
111 South George Mason Drive
Arlington, VA 22024

U.S. DEPARTMENT OF DEFENSE,
1600 Pentagon 3E788
Washington, DC 20301-1600

U.S. COAST GUARD,
2703 Martin Luther King, Jr. Avenue SE
Washington, DC 20593

and

U.S. DEPARTMENT OF HOMELAND
SECURITY,
245 Murray Lane SW
Washington, DC 20528

Defendants.

COMPLAINT

1. Plaintiff American Oversight brings this action against the National Guard Bureau, the U.S. Department of Defense, the U.S. Coast Guard, and the U.S. Department of Homeland Security under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

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

4. Because Defendants have failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the Defendants from continuing to withhold department or agency records and ordering the production of department or agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Defense (DOD) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1).

7. Defendant National Guard Bureau (NGB) is a component of DOD, which is department of the executive branch of the U.S. government, headquartered in Arlington, VA, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). NGB has possession, custody, and control of the records that American Oversight seeks.

8. Defendant U.S. Department of Homeland Security (DHS) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1).

9. Defendant U.S. Coast Guard (USCG) is a component of DHS, which is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1).

STATEMENT OF FACTS

National Guard Request

10. On May 10, 2021, American Oversight submitted a FOIA request to NGB seeking the following:

1. Any report of an incident of white supremacist, white nationalist, white separatist, far-right, alt-right, or pro-Nazi activity or ideology among military personnel.
2. Any study concerning incidents of white supremacist, white nationalist, white separatist, far-right, alt-right, or pro-Nazi activity or ideology among military personnel in the possession of or created, utilized, maintained, received, or distributed by the National Guard Bureau.
3. Records sufficient to identify the number of incidents or reports of white supremacist, white nationalist, white separatist, far-right, alt-right, or pro-Nazi activity or ideology among military personnel, and any ensuing action recommended or executed by your agency, since January 1, 2017, or the earliest date thereafter for which this information is available.

To the extent that this information is aggregated and maintained in a database or spreadsheet,^[1] we would accept as responsive a printout from the database containing fields reflecting the date and key facts of each incident or report as well as any ensuing action recommended or executed by the National Guard Bureau or the National Guard of the United States. American Oversight does not object to the redaction of names, addresses, or other personally identifying information from records responsive to this request.

Please provide all responsive records from January 1, 2017, through the date the search is conducted.

^[1] American Oversight requests responsive data in a Microsoft Excel spreadsheet format, to the extent that your agency maintains such data in a database or other format that can be readily exported into an Excel spreadsheet.

11. On June 9, 2021, NGB acknowledged this request and assigned it case number J-21-0172.
12. As of the date of this Complaint, American Oversight has not received any further communication from NGB regarding this request.

Coast Guard Request

13. On July 12, 2021, American Oversight submitted a FOIA request to USCG seeking the following:

1. Any Anti-Harassment and Hate Incident (AHHI) database entry concerning any incident of white supremacist, white nationalist, white separatist, far-right, alt-right, or pro-Nazi activity or ideology among military personnel and any ensuing action recommended or executed by your agency.

Please provide all responsive records from January 1, 2017, through the date the search is conducted.

2. Records sufficient to identify the number of AAHI database entries concerning incidents or reports of white supremacist, white nationalist, white separatist, far-right, alt-right, or pro-Nazi activity or ideology among military personnel and any ensuing action recommended or executed by your agency, since January 1, 2017, or the earliest date thereafter for which this information is available.

To the extent that this information is aggregated and maintained in a database or spreadsheet,^[1] we would accept as responsive a printout from the database containing fields reflecting the date and key facts of each incident or report as well as any ensuing action recommended or executed by the U.S. Coast Guard. American Oversight does not object to the redaction of names, addresses, or other personally identifying information from records responsive to this request.

^[1] American Oversight requests responsive data in a Microsoft Excel spreadsheet format, to the extent that your agency maintains such data in a database or other format that can be readily exported into such format.

14. On July 13, 2021, USCG acknowledged this request and assigned it tracking number 2021-CGFO-01790.

15. As of the date of this Complaint, American Oversight has not received any further communication from USCG regarding this request.

Exhaustion of Administrative Remedies

16. As of the date of this Complaint, Defendants have failed to (a) notify American Oversight of any determinations regarding American Oversight's FOIA requests, including the full scope of any responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (b) produce all of the requested records or demonstrate that the requested records are lawfully exempt from production.

17. Through Defendants' failure to make determinations as to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records

18. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

19. American Oversight properly requested records within the possession, custody, and control of Defendants.

20. Defendants are agencies, or components of agencies, subject to FOIA and must therefore make reasonable efforts to search for requested records.

21. Defendants have failed to promptly review agency records for the purpose of locating those records that are responsive to Plaintiff's FOIA requests.

22. Defendants' failure to conduct adequate searches for responsive records violates FOIA.

23. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendants to promptly make reasonable efforts to search for records responsive to Plaintiff's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Withholding of Non-Exempt Responsive Records

24. American Oversight repeats allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

25. American Oversight properly requested records within the possession, custody, and control of Defendant.

26. Defendants are agencies, or components of agencies, subject to FOIA and must therefore release in response to FOIA requests any non-exempt records and provide a lawful reason for withholding materials.

27. Defendants are wrongfully withholding non-exempt agency records requested by Plaintiff by failing to produce non-exempt records responsive to its FOIA requests.

28. Defendants are wrongfully withholding non-exempt agency records requested by Plaintiff by failing to segregate exempt information in otherwise non-exempt records responsive to its FOIA requests.

29. Defendants' failure to provide all non-exempt records violates FOIA.

30. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendants to conduct a search reasonably calculated to uncover all records responsive to American Oversight's FOIA requests submitted to Defendants identified in this Complaint;
- (2) Order Defendants to produce, within twenty days of the Court's order, any and all non-exempt records responsive to American Oversight's FOIA requests and *Vaughn* indexes of any responsive records withheld under claim of exemption;

- (3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: November 17, 2021

Respectfully submitted,

/s/ Mehreen Rasheed

Mehreen Rasheed

D.C. Bar No. 144880

AMERICAN OVERSIGHT

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