

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

FUNCTIONAL GOVERNMENT INITIATIVE)
6218 Georgia Avenue, N.W.)
Suite 1-1235)
Washington, D.C. 20011,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF THE TREASURY)
1500 Pennsylvania Avenue, N.W.)
Washington, D.C. 20220,)
)
Defendant.)
_____)

Civil Case No. _____

COMPLAINT

1. Plaintiff, Functional Government Initiative (“FGI”), brings this action against the United States Department of the Treasury (“Treasury”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, requesting declaratory and injunctive relief to compel Defendant’s compliance with FOIA.

JURISDICTION AND VENUE

- 2. This Court has jurisdiction over this FOIA matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.
- 3. Venue in this Court is appropriate as provided for by 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES TO THE ACTION

4. Plaintiff, FGI, is an unincorporated association of individuals dedicated to improving the American public's access to information about the officials, decisions, actions, and priorities of their government. *See* D.C. Code § 29-1102(5).
5. FGI accomplishes its mission through investigative research, analysis, and dissemination of the information it obtains. The records FGI obtains under FOIA are vital to accomplishing its mission.
6. Defendant, the U.S. Department of the Treasury ("Treasury"), is an executive department and therefore an "agency" within the meaning of and subject to FOIA as provided for by §§ 5 U.S.C. § 551(1) and § 552(f)(1).

STATEMENT OF FACTS

7. On March 9, 2022, FGI submitted a FOIA request to Treasury identifying twenty-one Treasury employees by name and title whose records were to be searched for "[a]ll records, especially emails with attachments, meeting requests, memos, briefing documents, and schedules, pertaining to the renomination of Jerome Powell as Chair of the Federal Reserve of the United States."

A copy of FGI's FOIA request to Treasury is attached as Exhibit 1.

8. The release of the documents requested by FGI from Treasury under FOIA is in the public interest because it will provide American citizens with insight into their government's decision making regarding the renomination of Jerome Powell as Chair of the Board of Governors of the Federal Reserve.
9. FGI reasonably anticipates that officials and staff at Treasury discussed and participated in making and implementing this important decision. The public does not currently have an

ability to easily evaluate the decision making surrounding the renomination of Federal Reserve Chair Powell.

10. The decision to renominate Federal Reserve Chair Powell is especially significant given that the Nation continues to confront a range of economic challenges, including high and rising inflation, which may have been exacerbated by policies implemented by the Federal Reserve while the renomination of Federal Reserve Chair Powell was under consideration. The release of the documents requested by FGI will advance the public's knowledge of these issues which, to date, have not been fully revealed.
11. Treasury acknowledged receipt of FGI's FOIA and assigned it a case number in emails dated March 10, 2022.
12. By letter dated April 4, 2022, a FOIA analyst for Treasury indicated that she had initiated a search for records responsive to FGI's FOIA request.
13. The letter also provided, however, that "unusual circumstances exist regarding the search for and review of potentially responsive records which *may* delay our response. This *may* include the need to consult with multiple program offices, to review a voluminous quantity of records, or to search for records stored in multiple locations." Emphasis added.
14. The letter did not identify any specific unusual circumstances that actually existed, nor did it set forth the date when a determination on FGI's FOIA request was expected to be dispatched. 5 U.S.C. 552(a)(6)(B)(i).
15. The letter did not identify any specific concern about the scope of FGI's FOIA request or say that the request could not be completed as submitted and did not request any information from FGI to address the unspecified unusual circumstances.

16. To the contrary, FGI requested that Treasury search for records of specific individuals, regarding one specific topic. *See* Ex. 1
17. Having heard nothing further from the FOIA analyst since April 4, 2022, on May 13, 2022, FGI requested an update on the status of the search and when it would be completed.
18. The FOIA analyst responded on May 16, 2022, that although the search was ongoing, “Treasury has a backlog of FOIA requests to process” and invited FGI to request an update in 60 days.
19. The FOIA analyst did not provide FGI with a date by which the search would be completed nor did the analyst indicate that the backlog was anything but the result of the predictable workload of responding to FOIA requests.
20. After waiting 60 days and having heard nothing further from the FOIA analyst, on July 18, FGI requested an update on the status of the search and when it would be completed.
21. On July 19, 2022, the FOIA analyst responded, indicating no progress on the request. The update was nearly identical to the last one, including the same invitation to check back again in 60 days.
22. The FOIA analyst did not provide FGI with a date by which the search would be completed nor indicate that the backlog was anything but the result of the predictable workload of responding to FOIA requests.
23. As of the filing of this Complaint, Treasury has not produced any responsive documents, communicated to FGI the scope of the documents it intends to produce and withhold along with the reasons for any withholding, provided FGI with a date by which it will comply with FGI’s request, or informed FGI of any adverse determination pursuant to which FGI could file an administrative appeal.

24. As of the filing of this Complaint, FGI's FOIA request has been pending for considerably longer than the statutory period within which Treasury is required to complete its search.
25. Because Treasury has failed to provide FGI with a determination within the applicable statutory time limits, FGI is deemed to have exhausted its administrative remedies. 5 U.S.C. § 552 (a)(6)(C)(i).
26. Absent the filing of this lawsuit, FGI will not obtain the records to which it is entitled under FOIA.
27. Accordingly, FGI may now pursue relief in this Court to compel release of responsive, non-exempt records improperly withheld by Treasury. *See* 5 U.S.C. § 552 (a)(4)(B).

COUNT I
Wrongful Withholding of Non-Exempt Responsive Records By Defendant
In Violation of FOIA, 5 U.S.C. § 552

28. FGI restates and incorporates by reference all the preceding paragraphs.
29. FGI properly requested records within the possession, custody, and control of Treasury.
30. Because Treasury is an "agency" subject to FOIA, it must release all non-exempt records and provide legitimate reasons for withholding any records.
31. By failing to produce all responsive, non-exempt records, Treasury is wrongfully withholding agency records subject to release under FOIA.
32. Additionally, by failing to segregate exempt information in otherwise non-exempt records responsive to FGI's FOIA request, Treasury is wrongfully withholding agency records subject to release under FOIA.

33. Because Treasury has failed to provide a determination within the applicable statutory time limits in response to FGI's FOIA request, FGI is deemed to have exhausted its administrative remedies. 5 U.S.C. § 552 (a)(6)(C)(i).
34. Accordingly, FGI is entitled to declaratory and injunctive relief requiring Treasury to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records under a claim of exemption.

REQUESTED RELIEF

FGI respectfully requests this Court:

- (1) Take and maintain jurisdiction over this case until Treasury complies with the requirements of FOIA and the orders of this Court.
- (2) Order Treasury to produce all non-exempt records responsive to FGI's FOIA requests, and indexes justifying the withholding all or part of any responsive records under claim of exemption.
- (3) Order Treasury to produce all non-exempt records within ten days or such other time as the Court deems appropriate.
- (4) Enjoin Treasury from continuing to withhold all non-exempt responsive records.
- (5) Award the reasonable attorney's fees and other litigation costs reasonably incurred in this action, as provided for by 5 U.S.C. § 552(a)(4)(E).
- (6) Grant FGI such other relief as this Court deems to be necessary and proper.

Dated: July 27, 2022

Respectfully submitted,

FUNCTIONAL GOVERNMENT INITIATIVE

/s/ Richard W. Goeken

D.D.C. Bar # 441217

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