

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiff,

v.

Case No. 23-1395

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

U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT,
500 12th Street SW
Washington, DC 20536,

U.S. CUSTOMS AND
BORDER PROTECTION,
1300 Pennsylvania Avenue NW
Washington, DC 20229,

and

U.S. CITIZENSHIP AND
IMMIGRATION SERVICES,
P.O. Box 648010
Lee's Summit, MO 64064

Defendants.

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Homeland Security and its components U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services, 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 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 agencies from continuing to withhold agency records and ordering the production of 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 the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, 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 Homeland Security (DHS) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of

the federal government within the meaning of 5 U.S.C. § 552(f)(1). The DHS Privacy Office (DHSHQ) coordinates FOIA requests for several DHS components, including the Office of the Secretary and Deputy Secretary, the Office of the Executive Secretary, the Office of Intergovernmental Affairs, the Management Directorate, the Office of Policy, the Office of Legislative Affairs, and the Office of Public Affairs. DHS has possession, custody, and control of records that American Oversight seeks.

7. Defendant U.S. Immigration and Customs Enforcement (ICE) is a component of DHS, headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). ICE has possession, custody, and control of records that American Oversight seeks.

8. Defendant U.S. Customs and Border Patrol (CBP) is a component of DHS, headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). CBP has possession, custody, and control of records that American Oversight seeks.

9. Defendant U.S. Citizenship and Immigration Services (USCIS) is a component of DHS, headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). USCIS has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

10. On September 30, 2019, American Oversight submitted a FOIA request to DHS, ICE, CBP, and USCIS seeking access to the following records:

1. All email communications sent to any of the following entities, including messages where those individuals/organizations were carbon copied (cc) or blind carbon copied (bcc). This request includes all prior

messages (whether incoming or outgoing) reflected in any responsive emails and any attachments to any responsive emails.

- a. Any employee or representative of Federation for American Immigration Reform (including any emails sent to or received from an address ending in @fairus.org)
 - b. Any employee or representative of Immigration Reform Law Institute (including any emails sent to or received from an address ending in @irli.org)
 - c. Any employee or representative of Center for Immigration Studies (including any emails sent to or received from an address ending in @cis.org)
 - d. Any employee or representative of NumbersUSA (including any emails sent to or received from an address ending in @numbersusa.com)
 - e. Any employee or representative of The Remembrance Project (including any emails sent to or received from an address ending in @theremembranceproject.org)
 - f. Any employee or representative of Heritage Foundation (including any emails sent to or received from an address ending in @heritage.org)
 - g. Any employee or representative of VDARE (including any emails sent to or received from an address ending in @vdare.com)
 - h. Kris Kobach (including but not limited to emails sent to or received from kkobach@gmail.com, kris@kriskobach.com)
2. Any email communications (including emails, email attachments, and calendar invitations), handwritten communications, and/or calendar entries involving any person at the White House Office (including anyone with an email address ending in @who.eop.gov) regarding the Migrant Protection Protocols (MPP).

11. American Oversight requested that DHS search the records of Kevin McAleenan, Kirstjen Nielsen, David Pekoske, Chad Wolf, Christina Bobb, John Mitnick, Miles Taylor, Michael Dougherty, Dimple Shah, Cameron Quinn, Julie Kirchner, and anyone serving in the capacity of White House Liaison or Advisor.

12. American Oversight requested that ICE search the records of Mark Morgan, Tracy Short, Ronald Vitiello, Matthew Albence, Derek Benner, Thomas Blank, Chris Kelly, Jon Feere, Barbara Gonzalez, and anyone serving in the capacity of White House Liaison or Advisor.

13. American Oversight requested that CBP search the records of Kevin McAleenan, Ronald Vitiello, Carla Provost, Meghann Peterlin, Patrick Flanagan, and anyone serving in the capacity of White House Liaison or Advisor.

14. American Oversight requested that USCIS search the records of Ken Cuccinelli, L. Francis Cissna, Robert Law, Jennifer B. Higgins, Joseph Edlow, Mark Koumans, John Lafferty, Ted Kim, Elizabeth Mura, Jennifer Rellis, Craig Symons, Lora Ries, Kathy Nuebel Kovarik, John Zadrozny, and anyone serving in the capacity of White House Liaison or Advisor.

15. American Oversight asked that Defendants provide all responsive records from May 29, 2019, through the date the search is conducted.

16. On October 1, 2019, CBP assigned the FOIA request tracking number CBP-2019-089363.

17. On October 16, 2019, DHS assigned the FOIA request tracking number 2020-HQFO-00012.

18. On March 22, 2023, in response to an inquiry from DHS, American Oversight advised DHS that it agreed to limit Part 2 of the request (regarding White House communications) to only those communications sent between DHS staff and the White House—thereby excluding communications with other agencies that would have equities in the records and require consultation prior to release—and containing the terms “MPP” or “remain in Mexico.”

19. In the same message, American Oversight asked that DHS’s search with respect to Part 1 (regarding other external communications) remain unchanged. American Oversight emphasized that DHS should produce any responsive emails sent to the listed external entities, without applying any limiting terms, and including if other agencies have equities in the records.

American Oversight also noted that any emails in a chain below messages sent to a listed external entity should be considered a responsive communication and produced.

20. DHS acknowledged the amendment and communication specified above in Paragraphs 18–19 on March 22, 2023.

21. As of the date of this filing, American Oversight has received no further communication regarding its FOIA request from DHS or CBP.

22. As of the date of this filing, American Oversight has received no communication regarding its FOIA request from ICE or USCIS.

Exhaustion of Administrative Remedies

29. As of the date of this Complaint, Defendants have failed to (a) notify American Oversight of any determinations regarding American Oversight’s FOIA request, 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.

30. Through Defendants’ failure to make determinations as to American Oversight’s FOIA request 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

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

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

25. Defendants are an agency subject to and within the meaning of FOIA, and components thereof, and they must therefore make reasonable efforts to search for requested records.

26. Defendants have failed to promptly and adequately review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA request.

27. Defendants' failures to conduct adequate searches for responsive records violate FOIA.

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

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

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

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

31. Defendants are an agency subject to and within the meaning of FOIA, and components thereof, and they must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

32. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA request.

33. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA request.

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

35. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA request 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 or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA request;
- (2) Order Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA request and indexes justifying the withholding 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 request;
- (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: May 17, 2023

Respectfully submitted,

/s/ Hart W. Wood

Hart W. Wood

D.C. Bar No. 1034361

AMERICAN OVERSIGHT

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