

**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. 23-cv-1661

U.S. DEPARTMENT OF DEFENSE,  
1600 Defense Pentagon  
Washington, DC 20301

U.S. DEPARTMENT OF THE ARMY,  
101 Army Pentagon  
Washington, DC 20310

U.S. DEPARTMENT OF THE NAVY,  
1000 Navy Pentagon  
Washington, DC 20350

U.S. DEPARTMENT OF THE AIR FORCE,  
1670 Air Force Pentagon  
Washington, DC 20330

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

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

and

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

*Defendants.*

## **COMPLAINT**

1. Plaintiff American Oversight brings this action against U.S. Department of Defense, U.S. Department of the Army, U.S. Department of the Navy, U.S. Department of the Air Force, National Guard Bureau, U.S. Department of Homeland Security, and U.S. Coast Guard, 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 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). DOD has possession, custody, and control of records that American Oversight seeks.

7. Defendant U.S. Department of the Army (Army) is a component of DOD and military department, headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). Army has possession, custody, and control of records that American Oversight seeks.

8. Defendant U.S. Department of the Navy (Navy) is a component of DOD and military department, headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). Navy has possession, custody, and control of records that American Oversight seeks.

9. Defendant U.S. Department of the Air Force (USAF) is a component of DOD and military department, headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). USAF has possession, custody, and control of records that American Oversight seeks.

10. Defendant National Guard Bureau (NGB) is a component of DOD, 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 records that American Oversight seeks.

11. 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). DHS is a parent agency of Defendant U.S. Coast Guard.

12. Defendant U.S. Coast Guard (USCG) is a component of DHS, headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). USCG has possession, custody, and control of records that American Oversight seeks.

### **STATEMENT OF FACTS**

#### *DOD Request*

13. On March 15, 2023, American Oversight submitted a FOIA request to DOD 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 Department of Defense.
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 July 1, 2021, 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 Department of Defense. 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 July 1, 2021, 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 such format.

14. On March 16, 2023, DOD acknowledged this request and assigned it case number 23-F-0601.

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

*Army Request*

16. On March 14, 2023, American Oversight submitted a FOIA request to Army 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 Department of the Army.

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 June 4, 2020, 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 Department of the Army. 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 June 4, 2020, 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 such format.

17. On March 14, 2023, Army acknowledged receipt of this request.
18. As of the date of this Complaint, American Oversight has not received any further communication from Army regarding this request.

*Navy Request*

19. On March 15, 2023, American Oversight submitted a FOIA request to Navy 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 Department of the Navy.
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 February 11, 2020, 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 Department of the Navy. 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 February 11, 2020, 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 such format.

20. On March 16, 2023, Navy acknowledged this request and assigned it tracking number DON-NAVY-2023-007037.

21. On April 25, 2023, by email and letter, the Naval Criminal Investigative Service (NCIS) stated that the Office of the Chief of Naval Operations (CNO) partially referred this request to NCIS to address Part 1 of the request. NCIS assigned the matter tracking number DON-2023-007511. A copy of the April 25, 2023 NCIS Response is attached hereto as Exhibit A and incorporated herein.

22. In its letter, NCIS claimed that a portion of the records potentially responsive to American Oversight's request are "exempt from disclosure" pursuant to 5 U.S.C. § 552(b)(7)(A). Ex. A. NCIS advised American Oversight of its right to appeal the determination as a "partial denial" of the request. Ex. A ("As the official responsible for the partial denial of your request, I am advising you of your right to appeal this determination. Your appeal must be postmarked within 90 calendar days from the date of this letter . . .").

23. By email received on April 28, 2023, CNO provided a letter dated April 26, 2023, which provided a response to Parts 2 and 3 of American Oversight's request, totaling 18 pages partially withheld under 5 U.S.C. § 552(b)(6). A copy of the April 28, 2023 CNO Response is attached hereto as Exhibit B and incorporated herein. The letter advised American Oversight of

its right to appeal the determination because the request is “partially denied.” Ex. B (“Because your request is partially denied, you are advised of your right to appeal this determination[.] . . . Your appeal must be postmarked within ninety calendar days from the date of this letter.”).

24. On May 5, 2023, American Oversight submitted administrative appeals, date May 4, 2023, of both the NCIS Response and CNO Response via facsimile to the Navy Office of the Judge Advocate General (Navy JAG), objecting to NCIS and CNO’s: (1) failure to make adequate administrative determinations; (2) failure to conduct adequate searches for responsive records; and (3) improper withholdings of records pursuant to FOIA Exemptions 6 and 7(A). Copies of the CNO Administrative Appeal and the NCIS Administrative Appeal are attached hereto as Exhibit C and incorporated herein.

25. On May 8, 2023, by email and letter, Navy JAG denied American Oversight’s NCIS Administrative Appeal, claiming it was improperly submitted due to the submission method, and further stating, “Even if you had properly submitted your appeal, I still would have denied it as not ripe, as the [initial denial authority (IDA)] has not issued its final disposition of the request. Upon the IDA’s final disposition, you may resubmit your appeal, pursuant to SECNAVINST 5720.42G, on whatever grounds you believe are appropriate.” A copy of the May 8, 2023 Navy JAG Determination is attached hereto as Exhibit D and incorporated herein. Based upon Navy JAG’s representation that the IDA had not yet issued a final determination and the NCIS Administrative Appeal was not ripe, American Oversight did not re-submit its NCIS Administrative Appeal.

26. On May 8, 2023, American Oversight resubmitted its May 5, 2023 administrative appeal of the CNO Response—substantively identical to the May 5, 2023 appeal described above, *supra* ¶ 24—via USPS Priority Mail Express to Navy JAG. According to USPS tracking,



the appeal was delivered on May 9, 2023. A copy of the Resubmitted CNO Administrative Appeal is attached hereto as Exhibit E and incorporated herein.

27. By email dated May 22, 2023, Navy acknowledged American Oversight's appeal as submitted on May 8, 2023, and assigned it appeal tracking number DON-NAVY-2023-011010.

28. As of the date of this Complaint, American Oversight has not received any further communication from Navy or Navy JAG regarding this request or administrative appeals.

*USAF Request*

29. On March 15, 2023, American Oversight submitted a FOIA request to USAF 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 Department of the Air Force.
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 March 12, 2020, 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 Department of the Air Force. 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 March 12, 2020, 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 such format.

30. As of the date of this Complaint, American Oversight has not received any communication from USAF regarding this request.

*NGB Request*

31. On March 15, 2023, American Oversight submitted a FOIA request to NGB seeking the following:

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.

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.

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 February 27, 2022, 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. 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 February 27, 2022 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 such format.

32. By email received on April 17, 2023, NGB provided a letter, dated April 14, 2023, acknowledging this request and assigning it tracking number J-23-0146. Stating that it “[found] this request is a duplicate of [a prior American Oversight FOIA] request J-21-0172-L made on May 10, 2021,” NGB closed FOIA request No. J-23-0146. A copy of the April 17, 2023 NGB Letter is attached hereto as Exhibit F and incorporated herein.

33. On April 17, 2023, American Oversight through its counsel emailed the NGB FOIA office to clarify that its FOIA request No. J-23-0146 is not a duplicate of FOIA request J-21-0172-L. American Oversight noted that “[b]oth requests seek the same types of records, but the earlier request sought records from January 1, 2017 through the date of the search, while # J-23-0146 seeks records from the more recent date range of February 27, 2022 through the date of the search.” American Oversight requested that NGB immediately re-open the request and provide all responsive records for the date range requested. A copy of the April 17, 2023 American Oversight Email is attached hereto as Exhibit G and incorporated herein.

34. On April 26, 2023, by email, NGB stated, “Your email has been received and your request is being processed as normal.” A copy of the April 26, 2023 NGB Email is attached hereto as Exhibit H and incorporated herein.

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

*Coast Guard Request*

36. On March 15, 2023, American Oversight submitted a FOIA request to USCG 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 U.S. Coast Guard.
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 May 22, 2020, 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.

For request items 1-3, please provide all responsive records from May 22, 2020, through the date the search is conducted.

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.

For request item 4, please provide all responsive records from July 16, 2021, 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 July 16, 2021, 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.

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

*Exhaustion of Administrative Remedies*

38. With respect to two of the three discrete portions of American Oversight's Navy Request, *see supra* ¶¶ 19–27, Defendant Navy informed American Oversight of a final determination on April 28, 2023. American Oversight timely submitted an administrative appeal, which Navy received on May 9, 2023. Defendant Navy has not issued a determination on the appeal. Therefore, American Oversight has exhausted all available administrative remedies.

39. With respect to the third portion of American Oversight's Navy Request, *see supra* ¶¶ 22, 25, and American Oversight's other FOIA requests identified in this Complaint, *see supra* ¶¶ 13–18, 29–37, as of the date of this Complaint, Defendants have failed to (a) notify

American Oversight of any final 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.

40. Through Defendants' failure to make determinations as to American Oversight's FOIA requests within the time periods 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**

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

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

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

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

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

46. 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**

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

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

49. 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.

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

51. 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.

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

53. 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 or searches 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: June 8, 2023

Respectfully submitted,

/s/ Mehreen Rasheed

Mehreen Rasheed

D.C. Bar No. 144880

AMERICAN OVERSIGHT

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