

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

CHINESE AMERICAN LEGAL DEFENSE
ALLIANCE,
7901 Stoneridge Drive #208,
Pleasanton, CA 94588

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION
935 Pennsylvania Ave., NW
Washington, D.C. 20535

and

UNITED STATES DEPARTMENT OF
JUSTICE NATIONAL SECURITY DIVISION
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Defendants.

Civil Action No. 24-577

COMPLAINT

Plaintiff, Chinese American Legal Defense Alliance (“CALDA” or “Plaintiff”) brings this judicial review and action against Defendant, Federal Bureau of Investigation (“FBI”) and Defendant, Department of Justice National Security Division (“NSD”) (collectively, “Defendants”). In support thereof, Plaintiff states as follows:

INTRODUCTION

1. This is an action brought pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory, injunctive, and other appropriate relief.

2. Through FOIA, Plaintiff seeks the production of all responsive records concerning the China Initiative. The best representation of Plaintiff's request is the properly submitted request attached to and made part of this Complaint as Exhibit 101.
3. Defendant NSD has violated the Freedom of Information Act by failing to issue a determination within the statutory period.
4. Defendants FBI and NSD have violated the Freedom of Information Act by failing to conduct a reasonable search and by failing to release all responsive, non-exempt records according to law.

PARTIES

5. Plaintiff CALDA is a nonprofit organization registered in New Jersey and California with a principal place of business in California. CALDA made the requests at issue in this judicial review on April 27, 2023.
6. Plaintiff works to eliminate racial discrimination and hatred against Chinese Americans. Plaintiff has the ability to widely disseminate both the records sought in this judicial review and the information to be generated from an analysis of the records sought. Plaintiff does not intend to exploit the records sought for commercial gain.
7. Defendant FBI, is an agency within the meaning of 5 U.S.C. § 552(f)(1). Plaintiff, upon knowledge and belief, alleges that Defendant FBI has possession and control of the records responsive to these requests.
8. Defendant NSD, is an agency within the meaning of 5 U.S.C. § 552(f)(1). Plaintiff, upon knowledge and belief, alleges that Defendant NSD has possession and control of the records responsive to these requests.

JURISDICTION AND VENUE

9. This action arises under FOIA. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) & (a)(6)(C)(i). This case presents a federal question that confers jurisdiction on this Court. *See* 28 U.S.C. § 1331 and 28 U.S.C. §1346.
10. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

FACTUAL ALLEGATIONS

11. On April 27, 2023, Plaintiff submitted a FOIA request for records to the FBI via the FBI FOIA portal. Exhibit 101. Plaintiff made a request for the following records:
1. All emails to or from Matthew Olsen, Assistant Attorney General for National Security, former Director of the National Counterterrorism Center, since January 1, 2014, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
 - their possible ties or affiliation with China;
 - their possible theft of U.S. technology or trade secrets for China;
 - their possible acts of espionage for China;
 - their possible failure to disclose their ties or affiliations with China; or
 - their possible failure to disclose their income received from China.
 2. All emails to or from John C. Demers, former Assistant Attorney General for National Security, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
 - their possible ties or affiliation with China;
 - their possible theft of U.S. technology or trade secrets for China;
 - their possible acts of espionage for China;
 - their possible failure to disclose their ties or affiliations with China; or
 - their possible failure to disclose their income received from China.
 3. All records, reports, training materials, policy directives, and emails to and from the Federal Bureau of Investigation concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
 - their possible ties or affiliation with China;
 - their possible theft of U.S. technology or trade secrets for China;
 - their possible acts of espionage for China;
 - their possible failure to disclose their ties or affiliations with China; or
 - their possible failure to disclose their income received from China.

Id.

12. The purpose for requesting the records is to “expose the discriminatory effect of the government’s actions surrounding the implementation of the ‘China Initiative.’ ” *Id.* at 9.

Plaintiff’s FBI FOIA Request NFP-149803

13. On April 27, 2023, Plaintiff received an email confirming submission of the request made to the FBI. Exhibit 102 is the FBI’s Confirmation of Submission of the Request and it is attached and made part of this Complaint.
14. On May 10, 2023, the FBI assigned the portions it characterized as relating to “[i]nvestigations of U.S. [u]niversity [p]rofessors [r]egarding [a]ffiliations with China” the request number NFP-149803, and denied the request as overly broad. Exhibit 103. The denial included appeal rights. *Id.* Exhibit 103 is the FBI’s Determination Letter on NFP-149803 and it is attached and made part of this Complaint.
15. On June 22, 2023, Plaintiff appealed the FBI’s determination to the Department of Justice (“DOJ”). Exhibit 104. Exhibit 104 is the Administrative Appeal on NFP-149803 and it is attached and made part of this Complaint.
16. The DOJ acknowledged Plaintiff’s appeal on June 23, 2023, and assigned appeal number A-2023-01500. Exhibit 105. Exhibit 105 is the Appeal Acknowledgement Letter on NFP-149803 and it is attached and made part of this Complaint.
17. On September 6, 2023, the DOJ denied Plaintiff’s appeal. Exhibit 106. Plaintiff has exhausted the administrative remedies available for this request. Exhibit 106 is the Appeal Determination on NFP-149803 and it is attached and made part of this Complaint.

Plaintiff's NSD FOIA Request

18. On April 27, 2023, Plaintiff submitted a FOIA request for records to the FBI via the FBI FOIA portal as detailed *supra* in paragraph 11.
19. On May 9, 2023, the FBI assigned the portions of the request which it characterized as “[e]mails to or from Matthew Olsen [c]oncerning [i]nvestigations of U.S. [u]niversity [p]rofessors [r]egarding [a]ffiliations with China” request number NFP-149804 and transferred the request to the DOJ Mail Referral Unit (“MRU”). Exhibit 107. Exhibit 107 is the FBI Transfer Letter on NFP-149804 and it is attached and made part of this Complaint.
20. On May 9, 2023, the FBI assigned the portions of the request which it characterized as “[e]mails to or from John C. Demers [c]oncerning [i]nvestigations of U.S. [u]niversity [p]rofessors [r]egarding [a]ffiliations with China” request number NFP-149805 and transferred the request to the MRU. Exhibit 108. Exhibit 108 is the FBI Transfer Letter on NFP-149805 and it is attached and made part of this Complaint.
21. On May 19, 2023, the MRU referred both request numbers NFP-149804 and NFP-149805 to the NSD. Exhibit 109. Exhibit 109 is the MRU Transfer Letters on NFP-149804 and NFP-149805 and it is attached and made part of this Complaint.
22. On June 12, 2023, the NSD acknowledged receipt of the entirety of the Plaintiff’s request in Exhibit 101 – not just those portions relating to NFP-149804 and NFP-149805 – and assigned the entire request request number 23-381. Exhibit 110. Exhibit 110 is the NSD Acknowledgement Letter and it is attached and made part of this Complaint.

23. On January 27, 2024, after not hearing from the NSD, Plaintiff submitted an Estimated Completion Date (“ECD”) demand to Defendant. Exhibit 111. Exhibit 111 Plaintiff’s ECD Demand and NSD’s Response and it is attached and made part of this Complaint.
24. On February 6, 2024, the NSD stated only that the request number 23-381 was being processed but provided no timeline for completion. *Id.*
25. More than 20 working days have elapsed since Plaintiff’s request was received by Defendant NSD and NSD has not issued a final determination.
26. NSD has not provided an accurate estimated date of completion on Plaintiff’s request.
27. Defendants FBI and NSD have not provided Plaintiff with the requested records.
28. Plaintiff has constructively exhausted all administrative remedies as to the NSD, and actually exhausted all administrative remedies as to the FBI, and this matter is ripe for de novo judicial review.

LEGAL FRAMEWORK OF FOIA

29. FOIA requires, inter alia, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).
30. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. 5 U.S.C. §552(a)(4)(B).
31. Under FOIA, the federal agencies have the burden to sustain its actions. *Id.*

32. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

COUNT I – DEFENDANT NSD’S FAILURE TO ISSUE A DETERMINATION WITHIN THE STATUTORY PERIOD

33. Plaintiff realleges paragraphs 1 through 32 above as if fully set forth herein.

34. The request in this matter seeks the disclosure of all agency records responsive to Plaintiff’s request and was properly made.

35. Defendant NSD is a federal agency subject to the FOIA.

36. Included within the scope of the request is one or more records or portions thereof that are not exempt under FOIA.

37. Defendant NSD failed to issue a determination within the statutory deadline.

COUNT II – DEFENDANTS’ FAILURE TO CONDUCT A REASONABLE SEARCH

38. Plaintiff realleges paragraphs 1 through 37 above as if fully set forth herein.

39. Defendant FBI is a federal agency subject to the FOIA.

40. Defendants FBI and NSD have failed to conduct a reasonable search for records responsive to the requests.

COUNT III – DEFENDANTS’ FAILURE TO RELEASE RECORDS

41. Plaintiff realleges paragraphs 1 through 40 above as if fully set forth herein.

42. Defendants FBI and NSD have failed to promptly release all records, or portions of records, responsive to the Plaintiff’s request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff asks the Court to:

- i. Declare that Defendants violated FOIA;

- ii. Order Defendants to conduct a reasonable search for records;
- iii. Order NSD to issue a determination;
- iv. Order Defendants to make all non-exempt records or portions of records promptly available to Plaintiff;
- v. Enjoin Defendants from withholding all non-exempt public records under FOIA;
- vi. Award Plaintiff's attorney fees and costs; and,
- vii. Award such other relief the Court considers appropriate.

Dated: February 29, 2024

RESPECTFULLY SUBMITTED,

/s/ C. Peter Sorenson

C. Peter Sorenson, DC Bar #438089

Sorenson Law LLC

PO Box 10836

Eugene, OR 97440

(541) 606-9173

peter@sorensonfoialaw.com

Lead attorney for Plaintiff