

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

AMERICA FIRST LEGAL
FOUNDATION,
611 Pennsylvania Ave., SE #231
Washington, D.C. 20003

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE,
1400 Independence Ave., S.W.
Washington, D.C. 20250

Defendant.

Civil Action No.: 24-597

COMPLAINT

1. Plaintiff America First Legal Foundation (“AFL”) brings this action against the United States Department of Agriculture (“USDA”), to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

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. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

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

PARTIES

4. The Plaintiff, AFL, is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public.

5. The Defendant, USDA, is an agency under 5 U.S.C. § 552(f), with its headquarters at 1400 Independence Ave., SW, Washington, DC 20250.

6. The Defendant has possession, custody, and control of the requested records.

BACKGROUND

7. The Biden Administration has stated that it is committed to a transparent, open, and ethical government.¹

¹ *FACT SHEET: Biden-Harris Administration Prioritizes Effectiveness, Accountability, and Transparency in Bipartisan Infrastructure Law Implementation*, THE WHITE HOUSE (Apr. 29, 2022), <https://tinyurl.com/bdhrccyk>; *Biden White House Pledges Data, Transparency, Respect for Free Press*, REUTERS (Jan. 20, 2021), <https://tinyurl.com/3fzz25mf>; *Mark Joyella, Biden's White House Press Secretary Promises 'Trust and Transparency,'* FORBES (Jan. 20, 2021), <https://tinyurl.com/2p8729wz>.

8. “Timely disclosure of records is also essential to the core purpose of FOIA.” U.S. DEPT JUST., Freedom of Information Act Guidelines (Mar. 15, 2022), <https://tinyurl.com/2yd463dv>.

AFL’S FOIA REQUESTS

Communications Request

9. On October 6, 2022, AFL submitted a FOIA request to the USDA seeking communications between USDA and three specified email domains. *Ex. 1.*

10. The request named the custodians for the requested documents and communications and established a timeframe for the search – August 16, 2022 through the date the FOIA was fully processed. *Id.*

11. This request sought a fee waiver. *Id.*

12. On October 6, 2022, USDA acknowledged the request via email. *Ex. 2.*

13. This email assigned the request tracking number 2023-OGC-00081-F. *Id.*

14. On October 27, 2022, USDA requested clarification about the records sought under this request. *Ex. 3.*

Standards Request

15. On October 6, 2022, AFL submitted a FOIA request to the USDA seeking records that would show the standards “set and enforced by the secretary” under Section 22007 of the Inflation Reduction Act, and other records referencing Section 22007 of the Inflation Reduction Act. *Ex. 4.*

16. This request sought a fee waiver. *Id.*

17. On October 6, 2022, USDA acknowledged the request via email. *Ex. 5.*

18. This email assigned the request tracking number 2023-OGC-00080-F.

Id.

Both Requests

19. Between October 27, 2022, and August 4, 2023, USDA and AFL negotiated regarding the scope of both requests described above.² *Ex. 6.*

20. On August 4, 2023, AFL and USDA agreed to limit the custodians for the searches and to exclude news blast-type communications from both requests. *Id.*

21. On February 1, 2024, AFL requested a status update on the requests.

Id.

22. Later that day, on February 1, 2024, USDA responded that it was “working diligently to complete [AFL’s] request.”

23. Also on February 1, 2024, AFL asked for an estimated date of production and received no response.

24. On February 13, 2024, AFL again requested an estimated date of production and cited the USDA’s FOIA report, which states that complex requests are averaging about 190 days, with a median time of 55 days.³

25. At that time, AFL’s request had been outstanding for 466 days.

² These negotiations were contained in a single email thread (*see Ex. 6*), and the suggested measures applied to both requests.

³ UNITED STATES DEPARTMENT OF AGRICULTURE, FREEDOM OF INFORMATION ACT ANNUAL REPORT FY 2022 at 31-32 (available at <https://bit.ly/3wkXEES>).

26. USDA responded and again assured AFL that it was “working diligently” and that the request would be “processed as quickly as possible,” without providing any concrete details.

27. As of the date of this filing, Defendant USDA has not provided any records under either of the above requests nor given an estimated date of production for either request.

CLAIM FOR RELIEF

Violation of the FOIA, 5 U.S.C. § 552

28. AFL incorporates paragraphs 1–27 by reference.

29. AFL properly requested records within the possession, custody, and control of the Defendant.

30. The Defendant failed to conduct searches for responsive records.

31. Moreover, because Defendant failed to conduct searches, it has failed to disclose any segregable, non-exempt portions of responsive records. *See* 5 U.S.C. § 552(b).

32. The Defendant has failed to respond to AFL’s requests within the statutory time period. *See* 5 U.S.C. § 552(a)(6).

33. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

34. The Defendant has violated the FOIA by failing to reasonably search for records responsive to AFL’s FOIA request and release nonexempt records within the prescribed time limit.

PRAYER FOR RELIEF

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought by AFL's requests must be disclosed pursuant to 5 U.S.C. § 552;
- ii. Order the Defendant to search immediately, demonstrating search methods reasonably likely to lead to the discovery of responsive records;
- iii. Order the Defendant to produce by a date certain all non-exempt records responsive to AFL's FOIA requests, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under a claim of exemption;
- iv. Order the Defendant to grant AFL's requests for fee waivers;
- v. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant AFL such other and further relief as this Court deems proper.

Date: March 1, 2024

Respectfully Submitted

/s/ Jacob Meckler
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