

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

CENTER TO ADVANCE SECURITY)
IN AMERICA)
1802 Vernon Street NW)
PMB 2095)
Washington, D.C. 20009,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF DEFENSE)
1400 Defense Pentagon)
Washington, D.C. 20301,)
)
Defendant.)
_____)

Civil Case No. 1:24-cv-02745

COMPLAINT

1. Plaintiff Center to Advance Security in America (“CASA”) brings this action against the U.S. Department of Defense (“DOD” or the “Department”) under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), 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.
3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

4. Plaintiff CASA is an unincorporated association dedicated to improving the safety and security of the American people. CASA educates and informs the American people about

the actions of their government and its officials that impact their safety; peace and security; democracy, civil rights, and civil liberties; and privacy.

5. Defendant DOD is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). DOD has possession, custody, and control of records responsive to Plaintiff's FOIA request.

STATEMENT OF FACTS

6. On March 24, 2024, CASA submitted a FOIA request (attached as Exhibit A) to DOD, seeking the following records related to DOD's diversity, equity, and inclusion initiatives:

1. All meeting requests, calendar entries, virtual meeting invitations, call logs and any chats in the relevant virtual platforms (e.g., Microsoft Teams, Zoom, Webex, etc.) pertaining to the demographic breakdown of promotions.

2. We are seeking the disaggregated demographic breakdown of promotions and nominations for the last five fiscal years.

3. We are seeking records on this topic exchanged between and among the relevant following officials:

- Ashish S. Vazirani
- Shawn G. Skelly
- Peter Belk
- Lester Martinez-Lopez
- Grier Martin
- Beth Foster
- Jeff Register
- Ann Lee

4. We are seeking all emails, text messages, chat sessions, or other forms of written or electronic communication used to discuss the "demographic breakdown of promotions" above containing the following phrases and/or words: "demographic", "quotas", "incentives", "promotions", "nominations", "interagency", "diversity, equity, and inclusion", "DEI", "diversity", "equity", "inclusion", "equality", "inclusive", "justice", "disaggregated", "prioritize", "social construct", "race", "racism", "racist", "gay", "LGBTQ", "LGBTQ+", "LGBTQIA", "sexual orientation", "intersectionality".

5. All records exchanged by or between any official listed above with any individual working for one of the following media outlets (with suggested email addresses) on the topic of the demographic breakdown of promotions:

- Politico (@politico.com)
- Military Times (@militarytimes)
- New York Times (@nytimes.com)
- Washington Post (@washingtonpost.com)
- NBC News (@nbcnews.com)
- ABC News (@abcnews.com)
- LA Times (@latimes.com)
- CBS News (@cbsnews.com)
- Fox News (@foxnews.com)
- Wall Street Journal (@wsj.com)
- USA Today (@usatoday.com)
- Fortune (@fortune.com)
- Forbes (@forbes.com)
- Vanity Fair (@vanityfair.com)
- CNN (@cnn.com)
- Associated Press (@ap.com)
- George Washington University's Project for Media and National Security
- PBS (@pbs.org)

6. The timeline for the records requested is from January 1, 2019, to the date the search begins.
7. The release of these documents is in the public interest because it will help the public understand the effect, if any, of DOD's DEI initiatives on national security. CASA's explicit purpose in requesting these documents is to inform the public so it can be engaged with its leaders and ensure their decisions are consistent with America's best interests.
8. On March 24, 2024, federal government receipt of CASA's request was acknowledged through a confirmation page on FOIA.gov, reflecting that the request had been received and was "being sent to the Office of the Secretary and Joint Staff."
9. Beyond this confirmation page on FOIA.gov, DOD did not acknowledge or otherwise respond to the request. To date, CASA has received neither a further response nor any other further communication from DOD regarding the request.

10. As the record above indicates, over 180 days have elapsed since CASA submitted its request to DOD, yet DOD still has not made a determination with respect to it. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). DOD has not produced responsive documents to CASA, has not communicated to CASA the scope of the documents it intends to produce or withhold—along with the reasons for any such withholding—and has not informed CASA of its ability to appeal any adverse portion of its determination.
11. Given these facts, DOD has not met its statutory obligations to provide the requested records for the request.
12. Through DOD’s failure to make a determination within the time period required by law, CASA has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

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

13. CASA repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
14. CASA’s request was a properly submitted request for records within the possession, custody, and control of DOD.
15. DOD is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.
16. DOD is wrongfully withholding non-exempt agency records requested by CASA by failing to produce non-exempt records responsive to its request.

17. DOD's failure to provide all non-exempt responsive records violates FOIA.
18. Plaintiff CASA is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

Center to Advance Security in America respectfully requests this Court:

- (1) Assume jurisdiction in this matter and maintain jurisdiction until Defendant complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order Defendant to produce, within ten days of the Court's order, or by other such date as the Court deems appropriate, any and all non-exempt records responsive to CASA's request and an index justifying the withholding of all or part of any responsive records withheld under claim of exemption.
- (3) Award CASA the costs of this proceeding, including reasonable attorney's fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E).
- (4) Grant CASA other such relief as the Court deems just and proper.

Dated: September 26, 2024

Respectfully submitted,

CENTER TO ADVANCE SECURITY
IN AMERICA
By Counsel:

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