

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

CABLE NEWS NETWORK, INC.,)
)
 One CNN Center)
 Atlanta, GA 30303,)
)
 Plaintiff,)
)
 v.)
)
FEDERAL BUREAU OF INVESTIGATION)
)
 935 Pennsylvania Avenue, N.W.)
 Washington, D.C. 20535-0001,)
)
 Defendant.)

Civil Action No. 1:17-cv-01167

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Cable News Network, Inc. (“CNN”) brings this suit against the Federal Bureau of Investigation (“FBI”). In support thereof, CNN 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, seeking the immediate processing of CNN’s request to the FBI for records prepared by former FBI Director James B. Comey, Jr., that document his interactions with President Donald J. Trump, and the immediate release of those records.

2. Despite the great urgency in informing the public about these records, and in absolute disregard for the U.S. Department of Justice (“DOJ”) Office of Information Policy’s (“OIP”) decision directing the expedited processing of CNN’s request, the FBI has failed to respond to the request within the time required by the FOIA.

PARTIES

3. Plaintiff CNN is a 24-hour cable news channel headquartered in Atlanta, Georgia. CNN operates nine news bureaus across the United States, including in Washington, D.C., and 31 news bureaus internationally. A trusted source of news and information, CNN reaches more individuals on television, the web and mobile devices than any other cable television news organization in the United States.

4. Defendant FBI is a component of the DOJ, a department of the Executive Branch of the United States and an agency within the meaning of 5 U.S.C. § 552(f)(1). The FBI has possession and control of the records requested by CNN.

JURISDICTION AND VENUE

5. This action arises under the 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) and (a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

6. Venue is proper in this judicial district under 5 U.S.C. § 552(a)(4)(B).

FACTUAL ALLEGATIONS

7. President Trump fired FBI Director Comey on May 9, 2017.

8. Comey had been overseeing a criminal investigation into whether President Trump's aides colluded with Russia to influence the outcome of the 2016 presidential election. The FBI was also investigating President Trump's former National Security Adviser Michael T. Flynn for his communications with Russian Ambassador Sergey I. Kislyak during the presidential transition about sanctions imposed on Russia, and for Flynn's work as a paid lobbyist for Turkey during the campaign. President Trump fired Flynn on February 13, 2017 for lying to Vice President Mike Pence, and other White House officials, about his communications

with Kislyak.

9. Comey met with President Trump in the Oval Office on February 14, 2017. During that meeting, in a one-on-one conversation, the President asked Comey to end the FBI's investigation of Flynn.

10. Comey immediately documented his conversation with the President in a memo. According to Comey's memo, President Trump said: "I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go."

11. Comey prepared a number of additional memos detailing his interactions with the President (the "Comey memos").

12. Comey provided a copy of his February 14, 2017, memo to his friend Daniel Richman, who has told CNN that he provided the memo and "all relevant materials" from Comey to the FBI.

13. On May 16, 2017, CNN producer Greg Wallace submitted a FOIA request on behalf of CNN to the FBI for "copies of all records of notes taken by or communications sent from FBI Director James Comey regarding or documenting interactions (including interviews and other conversations) with President Donald Trump. The scope of this request is records between January 20, 2017 and May 10, 2017." CNN requested a fee waiver as a member of a news organization and because the release of the requested information "is in the public interest and will contribute significantly to the public understanding of government operations and activities." CNN also requested expedited processing of the request. A copy of CNN's May 16, 2017 request is attached as Exhibit A.¹

14. Mr. Wallace submitted CNN's request through the FBI's eFOIPA system and

¹ The telephone numbers of CNN employees have been redacted from Exhibits A, B, E, G and H.

received a receipt confirming the request was received by the FBI on that same day. A copy of the eFOIPA confirmation is attached as Exhibit B.

15. On May 23, 2017, the FBI granted CNN's request for a fee waiver. A copy of the FBI's May 23, 2017 letter is attached as Exhibit C.

16. In a separate letter also dated May 23, 2017, the FBI denied CNN's request for expedited processing on the grounds that CNN "ha[d] not provided enough information concerning the statutory requirements permitting expedition." A copy of the FBI's May 23, 2017 letter denying expedited processing is attached as Exhibit D.

17. On May 26, 2017, CNN timely appealed the denial of its request for expedited processing to OIP. In the appeal, CNN noted that there is a "great urgency" in release of the Comey memos "which pertain[] directly to possible questions about the government's integrity affecting public confidence in the Presidency and the Executive Branch." A copy of CNN's May 26, 2017 appeal is attached as Exhibit E.

18. On June 2, 2017, OIP reversed the FBI's denial of CNN's request for expedited processing and remanded the request to the FBI with directions to process the request "as quickly as practicable." A copy of OIP's June 2, 2017 letter is attached as Exhibit F.

19. On June 7, 2017, the U.S. Senate Select Committee on Intelligence released Comey's prepared statement to the Committee in advance of his public testimony the next day.

20. In his prepared statement, Comey detailed the contents of the memos. He specifically noted that the Comey memos are not classified.

21. On that same day, CNN, through its attorney, emailed David M. Hardy, FBI Section Chief, Record/Information Dissemination Section, Records Management Division, as to the status of its public records request. CNN wrote: "Given that today Mr. Comey publicly

confirmed that the memos exist, are not classified, and he divulged the details of those memos, it would now be appropriate for the FBI to comply with CNN's FOIA request immediately."

CNN's June 7, 2017 email to Mr. Hardy is attached as Exhibit G.

22. On June 8, 2017, Comey testified before the Committee. He provided further details about his communications with President Trump and the contents of the Comey memos. He reiterated that the memos were not classified.

23. More than 19 million people watched the live broadcast of Comey's testimony.

24. The White House has disputed the accuracy of the information in the Comey memos.

25. On June 8, 2017, the FBI responded to CNN's email stating that the request would be processed "as soon as practicable," but provided no timetable for production. A copy of the FBI's June 8, 2017 email is attached as Exhibit H.

26. On June 12, 2017, the FBI provided the following status update by email: "The FBI's FOIPA Program is searching the FBI's indices for potentially responsive documents. You may be contacted via formal letter for all fees and/or negotiation issues that may apply." A copy of the FBI's June 12, 2017 email is attached as Exhibit H.

27. On June 13, 2017—one day before the 20-day statutory time period to respond to standard FOIAs expired, and in spite of the previous status updates provided by the agency—the FBI formally acknowledged OIP's ruling directing it to expedite the processing of CNN's request. A copy of the FBI's June 13, 2017 letter is attached as Exhibit I.

28. The urgency and national public importance in release of the Comey memos is unquestionable.

29. It is inconceivable that locating and producing the small number of Comey

memos, particularly given their prominence in current public debate, requires any significant amount of the FBI's time or resources.

30. There is no basis to withhold the Comey memos under the FOIA.

31. Nevertheless, as of the date of this filing, the FBI's eFOIPA system continues to reflect that "[t]he FBI's FOIPA Program is searching the FBI's indices for potentially responsive documents. You may be contacted via formal letter for all fees and/or negotiation issues that may apply."

32. As of the date of this filing, and despite OIP's grant of expedited processing for CNN's request, the FBI has not produced any of the requested public records.

CLAIM FOR RELIEF

COUNT I

(Declaratory and Injunctive Relief: Violation of the Freedom of Information Act, 5 U.S.C. § 552)

33. CNN realleges and incorporates by reference all previous paragraphs as if fully set forth herein.

34. The FOIA provides this Court with "jurisdiction to enjoin [the FBI] 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).

35. The documents requested by CNN are agency records within the FBI's control.

36. The FOIA requires that within 20 working days of receiving a request an agency, like the FBI, notify a requester of the scope of the documents that the agency will produce, the scope of the documents that the agency plans to withhold under any FOIA exemptions, the right to seek assistance from a FOIA Public Liaison or the Office of Government Information Services, and the right to administratively appeal any adverse determination. 5 U.S.C. § 552(a)(6)(A)(i).

37. The FBI received CNN's FOIA request on May 16, 2017.

38. Pursuant to the FOIA, the FBI was required to respond to CNN's request within 20 working days, or by June 14, 2017, at the very latest and particularly given OIP's order for expedited treatment.

39. As of the date of this filing, the FBI has not provided any substantive response to CNN. It has not produced any of the requested records.

40. The FBI has, thus, wrongfully withheld agency records in violation of the FOIA.

41. CNN has exhausted its administrative remedies with respect to the FBI's failure to respond to its request and failure to produce the requested records. 5 U.S.C. § 552(a)(6)(C)(i).

42. CNN requests a declaratory judgment that the FBI has violated FOIA and that CNN is entitled to immediately receive the records referenced above.

43. CNN further requests that, pursuant to 5 U.S.C. § 552(a)(4)(B), the Court issue an injunction to the FBI to process CNN's request and produce the requested records.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare that the FBI's failure to provide responsive documents is unlawful under FOIA;
- B. Enter an injunction that directs the FBI to immediately process CNN's May 16, 2017, public records request;
- C. Enter an injunction that directs the FBI to make all requested records available to CNN, unredacted, and without further delay;
- D. Provide for expeditious proceedings in this action;
- E. Award CNN its costs and reasonable attorneys' fees incurred in this action

pursuant to 5 U.S.C. § 552(a)(4)(E); and

F. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Counsel for Plaintiff Cable News Network, Inc.

Dated: June 15, 2017