

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DOMINIQUE BRAVO and AMERICAN OVERSIGHT,

*Plaintiffs,*

v.

U.S. DEPARTMENT OF JUSTICE,

*Defendant.*

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**COMPLAINT**

18-cv-1414

1. Plaintiffs Dominique Bravo and American Oversight bring this action against the U.S. Department of Justice 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 Defendant has 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 the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

**PARTIES**

5. Plaintiff Dominique Bravo is a natural person who resides in Kings County, New York, within this judicial district. Ms. Bravo has no commercial purpose for requesting the records at issue in this action and seeks only to facilitate the release of these records to the public.

6. 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 the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, 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.

7. Defendant the U.S. Department of Justice (DOJ) is a department of the executive branch of the U.S. government, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Federal Bureau of Investigation (FBI) and the National Security Division (NSD) are both components of DOJ. The FBI and NSD have possession, custody, and control of the records that Plaintiffs seek.

**STATEMENT OF FACTS**

*FISA Identification FOIA*

8. On February 2, 2018, Plaintiffs submitted a FOIA request to the FBI and NSD seeking access to the following records on an expedited basis:

1. Records sufficient to identify the FISC judge or judges who approved the FISA application seeking surveillance of Carter Page submitted on or about October 21, 2016, as referenced in the declassified HPSCI memorandum, and each of the three FISA

renewals that were issued for continuation of that surveillance, as referenced in that memorandum.

2. Records sufficient to identify all of the attorneys who signed or appeared on the FISA application seeking surveillance of Carter Page submitted on or about October 21, 2016, as referenced in the declassified HPSCI memorandum, and who signed or appeared on each of the three FISA renewals that were issued for continuation of that surveillance, as referenced in that memorandum.

A copy of the FISA Identification FOIA is attached hereto as Exhibit A and incorporated herein.

9. The FBI assigned the FISA Identification FOIA tracking number 1395472-000, and NSD assigned the request tracking number 18-093.

10. On February 16, 2018, the FBI granted expedited processing of the FISA Identification FOIA.

11. On February 21, 2018, NSD granted expedited processing of the FISA Identification FOIA.

*FISA Application FOIA*

12. On February 2, 2018, Plaintiffs submitted a FOIA request to the FBI and NSD seeking the following records on an expedited basis:

1. A copy of the FISA application submitted on or about October 21, 2016, seeking surveillance of Carter Page, as referenced in the declassified HPSCI memorandum, including any related certifications or exhibits.
2. Any order or other approval from the FISC regarding the FISA application submitted on or about October 21, 2016, seeking surveillance of Carter Page.
3. A copy of each of the three applications for renewal of the surveillance authority referenced in the HPSCI memorandum, including any related certifications or exhibits.
4. Any orders or approvals from the FISC regarding requests for renewal of the surveillance authority referenced in the HPSCI memorandum.

A copy of the FISA Application FOIA is attached hereto as Exhibit B and incorporated herein.

13. The FBI assigned the FISA Application FOIA tracking number 1395480-000, and NSD assigned the request tracking number 18-092.

14. On February 16, 2018, the FBI granted expedited processing of the FISA Application FOIA.

15. On February 21, 2018, NSD granted expedited processing of the FISA Application FOIA.

*Exhaustion of Administrative Remedies*

16. As of the date of this complaint, DOJ has failed to (a) notify Plaintiffs of any determinations regarding the requests, including the scope of any responsive records DOJ intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

17. Through DOJ's failure to respond to Plaintiffs' FOIA request within the time period required by law, Plaintiffs have constructively exhausted their administrative remedies and seek immediate judicial review.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Failure to Conduct Adequate Searches for Responsive Records**

18. Plaintiffs repeat the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

19. Plaintiffs properly requested records within the possession, custody, and control of DOJ.

20. DOJ is an agency subject to FOIA, and its components, the FBI and NSD, must therefore make reasonable efforts to search for requested records.

21. DOJ, through its components the FBI and NSD, has failed to promptly review agency records for the purpose of locating those records which are responsive to Plaintiffs' FOIA requests.

22. DOJ's failure to conduct adequate searches for responsive records violates FOIA.

23. Plaintiffs are therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Plaintiffs' FOIA requests.

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

24. Plaintiffs repeat the allegations in the foregoing paragraphs and incorporate them as though fully set forth herein.

25. Plaintiffs properly requested records within the possession, custody, and control of DOJ.

26. DOJ is an agency subject to FOIA, and its components, the FBI and NSD, must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

27. DOJ, through its components the FBI and NSD, is wrongfully withholding non-exempt agency records requested by Plaintiffs by failing to produce non-exempt records responsive to their FOIA requests.

28. DOJ is wrongfully withholding non-exempt agency records requested by Plaintiffs by failing to segregate exempt information in otherwise non-exempt records responsive to Plaintiffs' FOIA requests.

29. DOJ's failure to provide all non-exempt responsive records violates FOIA.

30. Plaintiffs are therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to their FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

### **REQUESTED RELIEF**

WHEREFORE, Plaintiffs respectfully request the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Plaintiffs' FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiffs' FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiffs' FOIA requests;
- (4) Award Plaintiffs 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 Plaintiffs such other relief as the Court deems just and proper.

Dated: March 7, 2018

Respectfully submitted,

/s/ Austin R. Evers

Austin R. Evers

Cerissa Cafasso

(*pro hac vice* motion forthcoming)

Daniel A. McGrath

(*pro hac vice* motion forthcoming)

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