

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**COUNCIL ON AMERICAN-ISLAMIC
RELATIONS--CHICAGO,**

Plaintiff,

v.

Case No.

**UNITED STATES CITIZENSHIP &
IMMIGRATION SERVICES, and UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 against defendant United States Citizenship & Immigration Services (“USCIS”) and the U.S. Department of Homeland Security (“DHS”) (collectively, “the Defendants”), for declaratory, injunctive, and other appropriate relief, seeking the disclosure of records concerning a policy called the Controlled Application Review & Resolution Program (“CARRP”), which imposes extra-statutory rules and criteria to delay and deny immigration benefits to which applicants are entitled. Defendants have failed to respond to a request properly made by Plaintiff Council on American-Islamic Relations—Chicago (“CAIR-Chicago”), and have unreasonably denied a request to expedite the requested records.

INTRODUCTION

1. Under the CARRP program, Muslim applicants for numerous immigration benefits, including those seeking to naturalize as American citizens, have had their applications delayed and ultimately denied without legal authority, and without even being informed of the existence of the program.

2. In order to obtain information about the extent of the CARRP's program impact on Muslim applicants for immigration benefits, on August 1, 2017, Plaintiff submitted a FOIA request to Defendants seeking the release of agency records concerning demographic information and processing times for individuals applying for naturalization, change of status, and asylum since April 11, 2008, when USCIS instituted CARRP. On September 6, 2017, Plaintiff revised the timeframe for which it is seeking the associated records.

3. Plaintiff also requested that Defendants expedite processing of the request under 5 U.S.C. § 552(a)(6) based upon the urgency to inform the public about religious discrimination against Muslim applicants—which is the subject of great public interest—and based upon the status of the Plaintiff as an organization primarily engaged in civil rights advocacy and disseminating information to the public about civil rights violations.

4. The Defendants' denial of the Plaintiffs' request for expedited processing, and the Defendants' failure to make any determination concerning the requested records within the statutory time period, violates FOIA and is impeding the Plaintiffs' efforts to educate the public about important government activities.

5. The requested information is of interest to a wide cross-section of the public given the breadth and nature of the CARRP program. Law-abiding, long-time residents of the United States, who otherwise meet the statutory criteria to be naturalized as American citizens, are subjected to protracted delays through the separate, discriminatory CARRP process. These populations have no route for recourse, often unaware of their presence on the unreviewable government watchlists used to buttress CARRP's designation of applicants presenting "national security concerns." The Defendants do not notify these populations that they consider them potential "national security concerns," do not provide the reasons why they classify them in this way, and do not afford them any opportunity to address and correct any basis for these concerns. The public interest in the release of these records lies in the public knowledge of whether this policy exhibits discriminatory practices, which will be revealed by statistical analysis of these records on the part of Plaintiff.

6. Plaintiff therefore brings this action pursuant to FOIA, 5 U.S.C. § 552, for injunctive and declaratory relief to compel the release of agency records improperly being withheld by Defendants.

PARTIES

7. Plaintiff CAIR-Chicago is a not-for-profit Muslim civil rights organization whose primary goal is “to promote and defend the constitutional rights of all Americans and to assist those who cannot attain justice themselves,” which is achieved through the provision of legal services, the dissemination of vital information and resources, and community advocacy and outreach. Plaintiff shares information with the CAIR National Office and CAIR chapters throughout the country. Plaintiff also provides the Muslim-American community with information about matters of public policy and civil rights as a service through daily news briefs, press releases and statements, community action alerts, and consulting other organizations on matters of public interest.

8. Defendant DHS is a Department of the Executive Branch of the U.S. Government and a federal agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 552a(a)(1). It is headquartered in Washington, D.C. Upon information and belief, DHS has possession and control over the records requested by Plaintiff.

9. Defendant USCIS is a component of Defendant DHS, and is an agency within the meaning of 5 U.S.C. § 552. The agency is tasked with receiving and adjudicating applications from individuals and employers for immigration benefits. It is headquartered in Washington, D.C., and has field offices throughout the country, including Chicago, Illinois. Upon information and belief, USCIS has possession and control over the records requested by Plaintiff.

JURISDICTION AND VENUE

10. This Court has both subject-matter jurisdiction over this FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552 (a)(4)(B) and (a)(6)(E)(iii); 28 U.S.C. § 1331; and 5 U.S.C. §§ 701-06.

11. Venue in the Northern District of Illinois is proper under 5 U.S.C. § 552(a)(4)(B).

STATEMENT OF FACTS

12. On April 11, 2008, USCIS released a memorandum titled, “Policy for Vetting and Adjudicating Cases with National Security Concerns,” wherein the agency instituted a covert vetting program now known as the Controlled Application Review and Resolution Program (“CARRP”). *See* Exhibit A. Since 2008, USCIS has used CARRP—an internal policy that has neither been approved by Congress nor subjected to public notice and comment—to investigate and adjudicate applications deemed to present potential “national security concerns.” Regional offices of the Council on American-Islamic Relations (“CAIR”) and their litigation partners have previously filed lawsuits against USCIS to challenge inordinate, unreasonable delays due to CARRP. *See* Group Exhibit B.

13. On August 1, 2017, Plaintiff submitted an electronic FOIA request to the USCIS National Records Center FOIA/PA Office seeking: “information on all individuals who have applied for naturalization, change of status, and asylum through forms N-400, I-589, and I-485 since April 11, 2008,” specifically “the associated immigration benefit and form submitted by each applicant, the processing time for each application, the processing status for each application, the region and country of origin or asserted citizenship of each applicant, the number of times each applicant was interviewed by USCIS agents, and the number, if any, of subsidiary applicants and the status of their citizenship applications – including those who have had citizenship granted.” *See* Group Exhibit C.

14. USCIS received Plaintiff’s request on August 15, 2017, and placed it on the agency’s complex track (Track 2), with a specific average processing time of 111 days. *See* Group Exhibit D.

15. In a letter dated August 16, 2017, USCIS claimed that it could not provide the records within the statutory time limit, citing unusual circumstances, due to the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request. *See* 5 U.S.C. § 552(6)(B)(iii). USCIS failed to provide a

date by which processing of the request could be expected to be completed. *See* 6 C.F.R. § 5.5(c).

16. On August 28, 2017, USCIS instructed Plaintiff via e-mail to narrow the scope of the request to no more than two fiscal years. *See* Group Exhibit D.

17. On September 6, 2017, Plaintiff altered the scope of the original request to “include forms I-751 (Petition to Remove Conditions on Residence), I-129F (Petition for Alien Fiancé(e)), and I-130 (Petition for Alien Relative) in addition to forms N-400, I-589, and I-485.” Plaintiff also narrowed the scope to “eight fiscal quarters, or two fiscal years in total, from FY2001 to FY2015.” *See* Group Exhibit C.

18. The Plaintiff’s altered request also sought expedited processing and a waiver of fees. Pursuant to 5 U.S.C. § 552(a)(6)(E), agencies shall provide expedited processing of records where “the person requesting the records demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i)(I). A compelling need exists when there is, “with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v).

19. Plaintiff is an organization that has a primary goal of disseminating information to the public and has a compelling need for the requested information, requiring expedited processing. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).

20. On September 8, 2017, USCIS granted a waiver of fees and denied the request for expedition on the grounds that DHS standards for granting expedited processing are “very strict,” and Plaintiff failed to show that there exists an “urgency to inform the public about an actual or alleged federal government activity.” *See* Group Exhibit D.

21. In its letter of September 8, 2017, USCIS did not indicate that it would comply with Plaintiff’s narrowed request within 20 working days, did not cite any “unusual circumstances” that would extend the time for making such a determination, and did not otherwise provide Plaintiff with a time period in which it intended to provide the requested records.

22. On December 6, 2017, Plaintiff filed an administrative appeal of USCIS's denial of a request for expedited processing, affirming that there exists a "compelling need" for the information, as the subject of the request relates to "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). Namely, the appeal states that questions arise regarding CARRP's violation of the Immigration and Nationality Act, Article I of the Constitution, and the Due Process Clause by creating additional, non-statutory, substantive criteria for adjudicating immigration applications, and its violation of the Administrative Procedure Act, 5 U.S.C. § 553, because the application of CARRP to Muslim applications constitutes a substantive rule that was promulgated without providing a notice-and-comment period prior to implementation. *See* Group Exhibit C.

23. On December 12, 2017, Associate Counsel with DHS affirmed USCIS's denial of a request for expedited processing for the purported failure to "adequately state that lack of expedited treatment of [Requester's] request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or states a particular urgency to inform the public, beyond just a desire to inform the public, generally." In this letter, DHS also included information about mediation services offered by the Federal FOIA Ombudsman's Office, the Office of Government Information Services (OGIS). *See* Group Exhibit D.

24. In its letter of December 12, 2017, USCIS stated that it "has no intention of delaying release of the information," yet the agency again failed to provide a reasonable timeframe within which it expects to process Plaintiff's request, in violation of statutory and regulatory framework. *See* 6 C.F.R. § 5.5(c).

25. On December 27, 2017, Plaintiff sent a letter to OGIS requesting mediation services to resolve the dispute between USCIS and the Requester. This letter cites the difficulty with obtaining expedited processing, the approaching agency-specific average time periods for releasing requested documents, and the minimal progress in processing the request according to USCIS's online FOIA status check as of that date. *See* Group Exhibit E.

26. On February 20, 2018, OGIS notified the Requester that the request was incorrectly placed in Track Two by USCIS. OGIS clarified that on that same day, USCIS placed the request in Track One for non A-file material, with an average processing time of 78 days. *See* Group Exhibit E. As of the date of this Complaint's filing, the request has moved up 15 spots since it was placed on Track One, up to 42 out of 268 pending requests.¹

27. On April 10, 2018, Plaintiff sent a letter to USCIS seeking an estimated completion date for the request. *See* Group Exhibit G. While USCIS provided Plaintiff with the opportunity to alter the scope of the request to obtain an alternative time period for processing, USCIS has not provided Plaintiff a date by which processing of the request will be completed. *See* 6 C.F.R. § 5.5(c).

28. In its response letter dated April 19, 2018, USCIS provided Plaintiff with the pending request's placement in the queue under Track One. The letter did not provide a date by which processing of the request can be expected to be completed. *See* Group Exhibit G. As of the date of this Complaint, Plaintiff has not received an estimated completion date from USCIS.

29. FOIA mandates that an agency issue a response within 20 business days of receiving a FOIA request, *see* 5 U.S.C. § 552(a)(6)(A)(I). By the terms of 5 U.S.C. § 552(a)(6)(C) and 5 U.S.C. § 552(a)(6)(B)(ii), the time in which USCIS was required to comply with statutory and agency-specific average processing times to respond to Plaintiff's narrowed request of September 6, 2017, has expired, and USCIS has neither processed this modified request in an appropriate time frame nor offered an alternative time frame for processing the modified request. As a result, Plaintiff is deemed to have exhausted all administrative remedies regarding its FOIA request. 5 U.S.C. § 552(a)(6)(C)(i).

30. Defendants have unjustifiably denied CAIR-Chicago's request for expedited processing and wrongfully delayed the release of the records sought by them. There is a

¹ As of February 20, 2018, Plaintiff is unable to retrieve information on the request's progress in processing through Track Two, where it was originally placed. Such lack of transparency leads to questions of whether the request is being processed in a timely manner, as Plaintiff is unable to know whether the request has remained the same priority or moved up in the queue.

substantial public interest in the timely disclosure of the documents requested, and Defendants' refusal to release this information and address Plaintiff's appeal claim in its entirety and in a timely and appropriate manner constitutes an abuse of discretion. Further, the tenure of CAIR-Chicago staff directly handling this research project is temporary and ending on July 5, 2018. Plaintiff is therefore prejudiced by the undue delay in processing this request.

COUNT I
VIOLATION OF THE FREEDOM OF INFORMATION ACT
WRONGFUL DELAY OF RELEASE OF RECORDS

31. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 30 above as though fully set forth verbatim.

32. Defendants are government agencies subject to FOIA, 5 U.S.C. § 552(f), and therefore must release in response to a FOIA request any disclosable records in their possession at the time of the request and provide a lawful reason for withholding any materials as to which they claim an exemption, pursuant to 5 U.S.C. § 552(a)(3).

33. Plaintiff has a legal right under FOIA to obtain the agency records they requested on August 1, 2017, and there exists no legal basis for the Defendants' failure to make available these records in a timely manner.

34. Defendants are obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to the FOIA request and to issue a determination concerning that request within the time period set forth in 5 U.S.C. § 552(a)(6)—20 working days, to be extended by no more than 10 working days in the event that the agency finds the existence of “unusual circumstances.”

35. Defendants' failure to show that unusual circumstances exist and that the agency is exercising due diligence in responding to Plaintiff's modified request violates 5 U.S.C. § 552(a)(6)(C). Defendants have also failed to provide a date by which processing of the request could be expected to be completed. *See* 6 C.F.R. § 5.5(c).

36. Defendants' failure to make promptly available the records sought by CAIR-Chicago's request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and the applicable regulations promulgated thereunder.

37. Defendants have wrongfully withheld agency records requested by Plaintiff. Plaintiff has exhausted all applicable administrative remedies with respect to Defendants' withholding of the requested records. 5 U.S.C. § 552(a)(6)(C)(i).

38. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Honorable Court award the following relief:

- A. Declare that Defendants violated the FOIA by failing to produce in a timely manner records that respond to Plaintiff's request;
- B. Order Defendants to immediately conduct a reasonable search for all responsive records and disclose the requested records to Plaintiff on an expedited basis at no cost, and enter an injunction prohibiting Defendants from continuing to withhold the requested records from the public;
- C. Award Plaintiff its reasonable costs and fees incurred in this action; and
- D. Grant such other relief as this Honorable Court may deem just and equitable.

COUNT II
VIOLATION OF THE FREEDOM OF INFORMATION ACT
FAILURE TO GRANT EXPEDITED PROCESSING

39. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 30 above as though fully set forth verbatim herein.

40. Defendants denied Plaintiff's request for expedited processing. By appealing the adverse decision on expedited processing, Plaintiff has exhausted its administrative remedies.

41. Plaintiff is entitled to expedited processing because it has a primary goal of disseminating information to the public, and there is an urgency to inform the public concerning actual or alleged Federal Government activity, specifically the existence and contours of a covert vetting program for certain immigrant applicants. 5 U.S.C. § 552(a)(6)(E)(v).

42. Defendants' failure to grant Plaintiff's request for expediting processing violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and the applicable regulations promulgated thereunder.

43. Plaintiff is entitled to injunctive relief providing for the expedited processing of its FOIA request.

44. The interests of Plaintiff and the public in the expeditious processing of the requested records are irreparably harmed by Defendants' denial of expedited processing. That harm outweighs any burden placed on Defendants in expeditiously processing Plaintiff's request, which is a burden that Congress chose to impose on the agencies.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Honorable Court award the following relief:

A. Declare that Defendants violated the FOIA by failing to grant Plaintiff's request for expedited processing;

B. Order Defendants to immediately conduct a reasonable search for all responsive records and disclose the requested records to Plaintiff on an expedited basis at no cost, and enter an injunction prohibiting Defendants from continuing to withhold the requested records from the public;

C. Award Plaintiff its reasonable costs and fees incurred in this action; and

D. Grant such other relief as this Honorable Court may deem just and equitable.

Date: May 1, 2018.

Respectfully Submitted,

CAIR-CHICAGO
Plaintiff

BY: /s/ Phillip J. Robertson
One of its Attorneys

Phillip J. Robertson, Esq.
CAIR-Chicago
17 N. State St., Ste. 1500
Chicago, IL 60602
Phone: (312) 212-1520
FAX: (312) 212-1530
Atty. No. 6209869
probertson@cair.com

Kalman D. Resnick
Chirag G. Badlani
Hughes Socol Piers Renick & Dym, Ltd.
70 W. Madison St., Suite 4000
Chicago, IL 60602
(312) 580-0100
kresnick@hsplegal.com
cbadlani@hsplegal.com