

COMPLAINT

THE PARTIES

1. Property of the People, Inc. is a 501(c)(3) charitable organization dedicated to governmental transparency in the service of democracy.

2. Plaintiff Ryan Noah Shapiro is a founder of Property of the People and a Ph.D. candidate in the Department of Science, Technology, and Society (HASTS) at the Massachusetts Institute of Technology, as well as a former Research Affiliate at the Berkman Klein Center for Internet & Society at Harvard University. Plaintiff Ryan Noah Shapiro is a historian of national security, the policing of dissent, and governmental transparency.

3. Defendants Department of Justice (DOJ), Department of Homeland Security (DHS), United States Army (Army), and the Office of the Director of National Intelligence (ODNI) are agencies of the United States.

4. The National Protection and Programs Directorate (NPPD) is a component of Defendant DHS.

5. The Office of Intelligence and Analysis (I&A) is a component of Defendant DHS.

6. The United States Secret Service (USSS) is a component of Defendant DHS.

7. The Federal Bureau of Investigation (FBI) is a component of Defendant DOJ.

8. FBI, DHS NPPD, DHS I&A, USSS, Army, and ODNI and have possession, custody and control of the records Plaintiffs seek.

JURISDICTION AND VENUE

9. This action arises under the Freedom of Information Act (“FOIA”), 5 USC § 552.

10. This Court has jurisdiction over the parties and subject matter pursuant to 5 USC § 552(a)(4)(B).

11. Venue is proper in this district pursuant to 5 USC § 552(a)(4)(B).

STATEMENT OF FACTS

Background

12. The Antifa movement is an amalgamation of various anti-fascist groups in the United States who notably voice their opposition to white supremacy and racism.

Plaintiffs' FOIA Requests

Department of Homeland Security

National Protection and Programs Directorate

13. On October 16, 2017, Plaintiffs submitted to DHS National Protection and Programs Directorate (DHS NPPD) via fax a FOIA request for intelligence and threat assessments, specified analysis reports, specified correspondence, training materials, and other specified material referring to "Antifa" and affiliated groups.

14. Also on October 16, 2017, DHS NPPD acknowledged receipt of Plaintiffs' FOIA request, assigned it tracking number 2018-NPFO-00043, granted Plaintiffs media status for fee purposes, and invoked a 10-day extension for processing the request.

15. More than 30 business days have elapsed since Plaintiffs submitted the FOIA request to DHS NPPD, but as of the filing of this Complaint, Plaintiffs have not received a response from DHS NPPD with a final determination as to whether DHS NPPD will release the requested records.

Office of Intelligence and Analysis

16. On October 16, 2017, Plaintiffs submitted to DHS Office of Intelligence and Analysis (I&A) via fax a FOIA request for intelligence and threat assessments, specified analysis reports,

specified correspondence, training materials, and other specified material referring to “Antifa” and affiliated groups.

17. On October 17, 2017, DHS I&A acknowledged receipt of Plaintiffs’ October 16, 2017 request, assigned it tracking number 2018-IAFO-00017, granted Plaintiffs educational status for fee purposes, and invoked a 10-day extension for processing the request.

18. On January 10, 2018, DHS I&A sent via email a final response to Plaintiffs regarding their October 16, 2017 request. DHS I&A found 87 responsive pages to Plaintiffs’ request and decided to withhold all 87 pages from disclosure.

19. On January 15, 2018, Plaintiffs administratively appealed DHS I&A’s January 10, 2018 decision in its entirety, including but not limited to DHS I&A’s invoking exemptions 522(b)(1), (3), and (7) to withhold the responsive documents.

20. On February 23, 2018, acknowledged receipt of Plaintiffs’ administrative appeal and assigned it tracking number 2018-HQAP-00183.

21. More than 20 business days have elapsed since Plaintiffs submitted the appeal to DHS, but as of the filing of this Complaint, Plaintiffs have not received a response from DHS with a final determination as to whether DHS will release the requested records.

DHS Headquarters

22. On October 16, 2017, Plaintiffs submitted to DHS Headquarters Directorate (DHS HQ) via fax a FOIA request for intelligence and threat assessments, specified analysis reports, specified correspondence, training materials, and other specified material referring to “Antifa” and affiliated groups.

23. On November 2, 2017, DHS HQ acknowledged receipt of Plaintiffs' October 16 request, assigned it tracking number 2018-HQFO-00149, granted Plaintiffs media status for fee purposes, and invoked a 10-day extension for processing the request. Additionally, DHS HQ referred Plaintiffs' request to DHS I&A and the United States Secret Service (USSS) for processing.

24. More than 20 business days have elapsed since Plaintiffs submitted their FOIA request to DHS HQ, but as of the filing of this Complaint, Plaintiffs have not received a response from DHS HQ with a final determination as to whether DHS HQ will release the requested records.

United States Secret Service

25. On October 16, 2017, Plaintiffs submitted to the United States Secret Service (USSS) via fax a FOIA request for records about a 2017 protest against President Trump at which Antifa was present.

26. On October 25, 2017, USSS acknowledged receipt of Plaintiffs' October 16 request, assigned it tracking number 20180095, and granted Plaintiffs educational status for fee purposes.

27. On November 15, 2017, USSS acknowledged receipt of the November 2, 2017 referral that DHS HQ made to the USSS and assigned it tracking numbers 20180211-20180225.

28. More than 20 business days have elapsed since Plaintiffs submitted their October 16, 2017 FOIA request to USSS, but as of the filing of this Complaint, Plaintiffs have not received a response from USSS with a final determination as to whether USSS will release the requested records.

29. More than 20 business days have elapsed since USSS received DHS HQ's November 2, 2017 referral of Plaintiffs' FOIA request, but as of the filing of this Complaint, Plaintiffs have

not received a response from USSS with a final determination as to whether USSS will release the requested records.

United States Army

30. On October 16, 2017, Plaintiffs submitted to the Army via email a FOIA request for intelligence and threat assessments and training material referring to Antifa and affiliated groups.

31. Also on October 26, 2017, the Army acknowledged via email receipt of the October 16, 2017 FOIA request but informed Plaintiffs that the request was not perfected and required more detail.

32. On October 27, 2017, Plaintiffs submitted to the Army via email an updated FOIA request, explaining what sorts of records may constitute training material and threat assessments.

33. On October 24, 2017, the Army emailed Plaintiffs once more to deem Plaintiffs' request too broad, still. The same day, Plaintiffs again submitted an updated request with a narrowed scope.

34. On October 26, 2017, the Army emailed Plaintiffs thanking Plaintiffs for their updated request. No tracking number was assigned.

35. On December 5, 2017, the Army informed Plaintiffs in a letter that no records responsive to Plaintiffs' October 24 FOIA request were found.

36. On December 8, 2017, Plaintiffs sent via USPS an administrative appeal to the Army challenging the Army's letter in its entirety, including but not limited to the adequacy of the search.

37. On December 19, 2017, the Army acknowledged receipt of Plaintiffs' administrative appeal and assigned it tracking number 0210F-18.

38. On January 19, 2018, the Army mailed a letter to Plaintiffs informing Plaintiffs that the administrative appeal had reached the Army General Counsel's office.

39. More than 20 business days have elapsed since Plaintiffs submitted their appeal to the Army, but as of the filing of this Complaint, Plaintiffs have not received a response from Army with a final determination regarding the adequacy of the search and the requested records.

Office of the Director of National Intelligence

40. On October 16, 2017, Plaintiffs submitted to ODNI via email a FOIA request for records referring to "Antifa" and affiliated groups.

41. On November 8, 2017, ODNI acknowledged receipt of Plaintiffs' October 16, 2017 request, assigned it tracking number DF-2018-00023, and granted Plaintiffs' request for a fee waiver.

42. More than 20 business days have elapsed since Plaintiffs submitted their request to ODNI, but as of the filing of this Complaint, Plaintiffs have not received a final determination as to whether ODNI will release the requested records.

Federal Bureau of Investigation

43. On October 16, 2017, Plaintiffs submitted to FBI via fax a FOIA request for records referring to "Antifa" and affiliated groups.

44. On October 17, 2017, FBI acknowledged receipt of Plaintiffs' October 16, 2017 request and assigned the 18 subparts of the request the collective tracking number 1386855-000.

45. On October 25, 2017, FBI assigned one component of Plaintiffs' request (a 2016 joint intelligence assessment) tracking number 1387141-000.

46. On October 25, 2017, FBI assigned one component of Plaintiffs' request (John Brown Anti-Klan Committee) tracking number 1387090-000.

47. On October 25, 2017, FBI assigned one component of Plaintiffs' request (Hoosier Anti-Racist Movement) tracking number 1387089-000.

48. On October 25, 2017, FBI assigned one component of Plaintiffs' request (Anti-Racist Action) tracking number 1387065-000.

49. On October 25, 2017, FBI assigned one component of Plaintiffs' request (John Brown Gun Club) tracking number 1387086-000.

50. On October 25, 2017, FBI assigned one component of Plaintiffs' request (Direct Action Alliance) tracking number 1387057-000.

51. On October 25, 2017, FBI assigned one component of Plaintiffs' request (DHS/FBI report on anarchist extremists) tracking number 1387141-000.

52. On October 25, 2017, FBI assigned one component of Plaintiffs' request (Antifa) tracking number 1387128-000.

53. On October 25, 2017, FBI assigned one component of Plaintiffs' request (One People's Project) tracking number 1387126-000.

54. On October 25, 2017, FBI assigned one component of Plaintiffs' request (Smash Racism D.C.) tracking number 1387108-000.

55. On October 25, 2017, FBI assigned one component of Plaintiffs' request (Antifaschistische Aktion) tracking number 1387094-000.

56. On October 26, 2017, FBI informed Plaintiffs that for request # 1387094-000 (Antifaschistische Aktion), potentially responsive records are housed at the National Archives and Records Administration in College Park, MD.

57. Also on October 26, 2017, FBI informed Plaintiffs that for request #s 1387108-000 and 1387089-000 (Smash Racism D.C. and Hoosier Anti-Racist Movement, respectively), no records were found.

58. On October 27, 2017, FBI informed Plaintiffs that for request # 1387057-000 (Direct Action Alliance), no records were found.

59. On November 6, 2016, Plaintiffs submitted an administrative appeal to the DOJ Office of Information Policy (OIP) challenging the FBI's decision for request #s 1387057-000, 1387108-000, and 1387089-000 (Direct Action Alliance, Smash Racism D.C., and Hoosier Anti-Racist Movement, respectively) in their entirety, including but not limited to the adequacy of the search.

60. On November 14, 2017, OIP acknowledged receipt of Plaintiffs' November 6, 2017 appeals and assigned them tracking numbers DOJ-AP-2018-000882 (Direct Action Alliance), DOJ-AP-2018-000880 (Smash Racism D.C.), and DOJ-AP-2018-000879 (Hoosier Anti-Racist Movement).

61. On November 30, 2017, OIP, in appeal # DOJ-AP-2018-000879, informed Plaintiffs that it was affirming the FBI's finding regarding request # 1387089 (Hoosier Anti-Racist Movement).

62. On December 6, 2017, FBI informed Plaintiffs that for request #s 1387078-000 (D.C. Anti-Fascist Coalition) and 1387081 (Bay Area Anti-Repression Committee), no records were found.

63. On December 7, 2017, FBI informed Plaintiffs that for request # 1387086-000 (John Brown Gun Club), a search for records was conducted but the records were unable to be retrieved because they were lost.

64. On December 12, 2017, Plaintiffs submitted an administrative appeal to OIP challenging the FBI's findings for request #s 1387078-000 (D.C. Anti-Fascist Coalition) and 1387081 (Bay Area Anti-Repression Committee) in their entirety, including but not limited to the adequacy of the search.

65. On December 13, 2017, OIP, in appeal # DOJ-AP-2018-000880, informed Plaintiffs that OIP was affirming the FBI's decision regarding request # 1387108-000 (Smash Racism D.C.).

66. On December 18, 2017, Plaintiffs submitted an administrative appeal to OIP challenging the FBI's letter for request # 1387086-000 (John Brown Gun Club) in its entirety, including but not limited to the adequacy of the search.

67. On December 20, 2017, OIP acknowledged receipt of Plaintiffs' December 12, 2017 appeal regarding D.C. Anti-Fascist Coalition and assigned it tracking number DOJ-AP-2018-001597.

68. On January 4, 2018, OIP, in appeal #DOJ-AP-2018-001598, informed Plaintiffs that OIP was affirming the FBI's finding regarding request # 1387081 (Bay Area Anti-Repression Committee).

69. On January 19, 2018, OIP, in appeal # DOJ-AP-2018-001597, informed Plaintiffs that OIP was affirming the FBI's finding regarding request number 1387078 (D.C. Anti-Fascist Coalition).

70. More than 20 business days have elapsed since Plaintiffs submitted their request to FBI, but as of the filing of this Complaint, Plaintiffs have still not received tracking numbers for three individual components of their initial request (By Any Means Necessary, It's Going Down, and Skinheads Against Racial Prejudice).

71. More than 20 business days have elapsed since Plaintiffs submitted their request to FBI, but as of the filing of this Complaint, Plaintiffs have not received a final determination as to whether FBI will release the requested records.

72. More than 20 business days have elapsed since Plaintiffs submitted their appeals to OIP, but as of the filing of this Complaint, Plaintiffs have not received a final determination as to their administrative appeals.

COUNT I:
VIOLATION OF FOIA

73. This Count realleges and incorporates by reference all of the preceding paragraphs. All documents referenced in this Complaint are incorporated by reference as if set forth fully herein.

74. DHS, DOJ, Army, and ODNI have improperly withheld responsive records.

75. DHS, DOJ, and Army have failed to grant or even rule on Plaintiffs' request for a waiver of fees.

76. Plaintiffs are entitled to a full waiver of fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Declare Defendants' failure to comply with FOIA to be unlawful;
- (2) Order DHS, DOJ, Army and ODNI to immediately process and release all non-exempt records without payment of fees;
- (3) Grant Plaintiffs an award of attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC § 552(a)(4)(E)(i); and

(4) Grant Plaintiffs such other and further relief which the Court deems proper.

Respectfully Submitted,

/s/ Jeffrey Light

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