

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

EQUITY FORWARD, 85 Broad Street New York, NY 10004)	
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)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 18-cv-1509
)	
)	
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, 200 Independence Avenue SW Washington, DC 20201)	
)	
)	
<i>Defendant.</i>)	
)	

COMPLAINT

1. Plaintiff Equity Forward brings this action against the U.S. Department of Health and Human Services 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, Equity Forward 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 Equity Forward is a nonpartisan organization committed to the promotion of transparency and accountability in the area of reproductive health, the education of the public about government activities related to reproductive health, and ensuring accountability for malfeasance, fraud, unethical practices, and false information in the area of reproductive health. Through research and FOIA requests, Equity Forward uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government regarding reproductive health through its own public information campaigns and dissemination of information to other public interest groups.

6. Defendant the U.S. Department of Health and Human Services (HHS) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HHS has possession, custody, and control of the records that Equity Forward seeks.

STATEMENT OF FACTS

Travel Records FOIA

7. On January 31, 2018, Equity Forward submitted a FOIA request to HHS seeking: all travel records related to any trips taken by Scott Lloyd, Kenneth “Ken” Tota, and Jonathan White at any point since and including February 1, 2017 until the fulfillment of this request.

8. Equity Forward further clarified that responsive records should include, but not be limited to: all records documenting itineraries, schedules, receipts, written approvals,

accommodations, expenses, reimbursed costs, and any other documents outlining any travel undertaken by the aforementioned individuals during the stated time frame.

9. HHS assigned the Travel Records FOIA tracking number 2018-00526-FOIA-OS.

10. On information and belief, on or about February 13, 2018, HHS referred the Travel Records FOIA to the Administration for Children and Families (ACF).

11. ACF assigned the Travel Records FOIA tracking number 18-F-0112.

Lloyd Communications FOIA

12. On March 16, 2018, Equity Forward submitted two FOIA requests to HHS.

13. The first March 16, 2018 FOIA request was submitted to HHS seeking: all records reflecting communications (including, but not limited to, emails, email attachments, text messages, instant messages, telephone call logs, calendar invitations, or meeting notices) to or from Scott Lloyd, involving or mentioning any of the following independent groups or individuals from March 1, 2017 to the date of this request's fulfillment:

- i. Stuart "Stu" Nolan
- ii. Shenan J. Boquet
- iii. Brian Clowes
- iv. Felix Sternfels
- v. Patricia Bainbridge
- vi. Jerry Pokorsky
- vii. Jerome Fasano
- viii. C-FAM (email addresses ending in @C-Fam.org)
- ix. Front Royal Pregnancy Center (email addresses ending in @frontroyalpregnancy.org)

- x. Human Life International (email addresses ending in @hli.org)
 - xi. Knights of Columbus (email addresses ending in @kofc.org)
 - xii. LegalWorks (email addresses ending in @legalworks.com)
 - xiii. Lifesite News (email addresses ending in @LifesiteNews.com)
 - xiv. Population Research Institute (email addresses ending in @pop.org)
 - xv. WitnessWorks
14. HHS assigned the Lloyd Communications FOIA tracking number 2018-00742-FOIA-OS.
15. On or about March 19, 2018, HHS referred the Lloyd Communications FOIA to ACF.
16. Equity Forward has not received a tracking number from ACF for the Lloyd Communications FOIA.

Lloyd Calendar FOIA

17. The second March 16, 2018 FOIA request was submitted to HHS seeking: all calendars or calendar entries, schedules, and/or travel itineraries for the months of December 2017, January 2018, and February 2018 for ORR Director, E. Scott Lloyd.
18. Equity Forward further clarified that for calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, notes, and attachments.
19. Equity Forward further stated that HHS should not limit its search to Outlook calendars; Equity Forward requested the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how Mr. Lloyd allocates his time on agency business.

20. HHS assigned the Lloyd Calendar FOIA tracking number 2018-00733-FOIA-OS.
21. On or about April 12, 2018, HHS referred the Lloyd Calendar FOIA to ACF.
22. Equity Forward has not received a tracking number from ACF for the Lloyd Calendar FOIA.

Leadership Calendar FOIA

23. On May 9, 2018, Equity Forward submitted a FOIA request to HHS seeking: all calendars or calendar entries, schedules, and/or travel itineraries for the months of March 2018, April 2018, and May 2018 for the following HHS officials:

- i. Alex Azar, Secretary
- ii. March Bell, Chief of Staff for the Office for Civil Rights
- iii. Matthew “Matt” Bowman, Deputy General Counsel
- iv. Brett Giroir, Assistant Secretary for Health
- v. Brian Harrison, Deputy Chief of Staff
- vi. Valerie Huber, Chief of Staff to the Assistant Secretary for Health
- vii. Scott Lloyd, Director of the Office of Refugee Resettlement
- viii. Shannon Royce, Director of Faith Based and Neighborhood Partnerships
- ix. Roger Severino, Director of the Office for Civil Rights
- x. Paula Stannard, Counsel
- xi. Heidi Stirrup, Deputy Director, Office of White House Liaison
- xii. Peter Urbanowicz, Chief of Staff
- xiii. Steven Valentine, Deputy Chief of Staff to the Assistant Secretary for Health
- xiv. Margaret “Maggie” Wynne, Counselor

24. Equity Forward further clarified that for calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, notes, and attachments.

25. Equity Forward further stated that HHS should not limit its search to Outlook calendars; Equity Forward requested the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

26. HHS assigned the Leadership Calendar FOIA tracking number 2018-00972-FOIA-OS.

Exhaustion of Administrative Remedies

27. As of the date of this complaint, HHS has failed to (a) notify Equity Forward of any determination regarding its FOIA requests, including the scope of any responsive records HHS 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.

28. Through HHS’s failure to respond to Equity Forward’s FOIA requests within the time period required by law, Equity Forward has constructively exhausted its administrative remedies and seeks immediate judicial review.

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

29. Equity Forward repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

30. Equity Forward properly requested records within the possession, custody, and control of HHS.

31. HHS is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

32. HHS has failed to promptly review agency records for the purpose of locating those records which are responsive to Equity Forward's FOIA requests.

33. HHS's failure to conduct an adequate search for responsive records violates FOIA.

34. Plaintiff Equity Forward is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Equity Forward's FOIA requests.

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

35. Equity Forward repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

36. Equity Forward properly requested records within the possession, custody, and control of HHS.

37. HHS is an agency subject to FOIA and must therefore release in response to a FOIA requests any non-exempt records and provide a lawful reason for withholding any materials.

38. HHS is wrongfully withholding non-exempt agency records requested by Equity Forward by failing to produce non-exempt records responsive to its FOIA requests.

39. HHS is wrongfully withholding non-exempt agency records requested by Equity Forward by failing to segregate exempt information in otherwise non-exempt records responsive to Equity Forward's FOIA requests.

40. HHS's failure to provide all non-exempt responsive records violates FOIA.

41. Plaintiff Equity Forward is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Equity Forward respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Equity Forward's 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 Equity Forward's 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 Equity Forward's FOIA requests;
- (4) Award Equity Forward 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 Equity Forward such other relief as the Court deems just and proper.

Dated: June 26, 2018

Respectfully submitted,

/s/ Cerissa Cafasso
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D.C. Bar No. 1011003

/s/ John E. Bies
John E. Bies
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