

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

SERVICE EMPLOYEES
INTERNATIONAL UNION,
1800 Massachusetts Avenue NW
Washington, DC 20036

Plaintiff,

v.

Case No. 18-cv-3010

U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201

and

CENTERS FOR MEDICARE AND
MEDICAID SERVICES,
7500 Security Boulevard
Baltimore, MD 21244

Defendants.

COMPLAINT

1. Plaintiff Service Employees International Union brings this action against the U.S. Department of Health and Human Services and the Centers for Medicare and Medicaid 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 the U.S. Department of Health and Human Services has failed to comply with the applicable time-limit provisions of FOIA, Service Employees International Union is deemed to have constructively 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 Service Employees International Union (SEIU) is a labor union representing approximately two million workers who work primarily in the health care, public services, and property services industries. SEIU works to uphold the dignity and worth of workers and the services they provide by promoting united action in one International Union. SEIU is a tax exempt 501(c)(5) labor organization and is headquartered in the District of Columbia.

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, DC, 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 SEIU seeks.

7. Defendant the Centers for Medicare and Medicaid Services (CMS) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Baltimore, MD. CMS has possession, custody, and control of the records that SEIU seeks.

STATEMENT OF FACTS

8. On October 12, 2018, SEIU submitted a FOIA request to CMS regarding a proposed rule that aims to prohibit independent provider home care workers from paying union dues and benefit contributions from their paychecks.

9. SEIU's request sought the following records:

1) All records reflecting communications (including emails, email attachments, text messages, Slack messages, encrypted messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any responsive communications, summaries of any responsive communications, or other materials) between: (a) Seema Verma, (b) Tim Hill, (c) Kristin Fan, (d) Janet Freeze, (e) Jeremy Silanskis, (f) Christopher Thompson; and any of the following entities or individuals:

- Freedom Foundation:
 - Including Maxford Nelsen, or
 - Individuals using emails ending in @freedomfoundation.com
- National Right to Work Legal Defense Foundation
 - William L. Messenger, or
 - Individuals using emails ending in @nrtw.org
- State Policy Network
 - Including F. Vincent Vernuccio, Jennifer Butler, Jeremy Lott, or
 - Individuals using emails ending in @spn.org
- Illinois Policy Institute
 - Including Kristina Rasmussen, or
 - Individuals using emails ending in @illinoispolicy.org
- Mackinac Center for Public Policy
 - Including Michael Reitz, or
 - Individuals using emails ending in @mackinac.org
- Capital Research Center
 - Including individuals using emails ending in @capitalresearch.org
- Free State Foundation
 - Including individuals using emails ending in @freestatefoundation.org
- MacIver Institute

- Including individuals using emails ending in @maciverinstitute.com
- (Center of the) American Experiment
 - Including Kim Crockett, or
 - Individuals using emails ending in @americanexperiment.com
- Office of Gov. Bruce Rauner
 - Including individuals using emails ending in @illinois.gov
- Rep. Cathy McMorris Rodgers or staff working for Rep. McMorris Rodgers
- Sen. Ron Johnson or staff working for Senator Johnson's personal office or on the Homeland Security and Government Affairs Committee.
- Mitchell Law PLLC or Jonathan F. Mitchell

2) All records reflecting communications (including emails, email attachments, text messages, Slack messages, encrypted messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any responsive communications, summaries of any responsive communications, or other materials) to, from, or copying (a) Seema Verma, (b) Tim Hill, (c) Kristin Fan, (d) Janet Freeze, (e) Jeremy Silanskis, (f) Christopher Thompson; that contain any of the following terms:

- SEIU
- 775
- skim
- Dues
- * Protect providers *
- Harris v. Quinn
- Harris v Quinn
- Janus
- "Union dues"
- "Home care dues"
- "Dues guidance"
- "Dues rule"
- Reassignment
- "Home care workers"
- Pam Harris
- Steven Glossip
- Rob Haynes
- Pat Haynes
- Catherine Hunter

- Jennifer Parrish
- Brad Boardman
- Rosetta Horne
- Sandra LaCelle
- Ben Olsen
- Tammy Olsen
- Mary Jane Olson
- Michelle Peterson
- Miranda Thorpe

10. SEIU's request sought all responsive records from January 20, 2017 to the date the search is conducted.

11. On November 2, 2018, CMS notified SEIU that it had assigned SEIU's request control number 101620187075 and PIN Z7RV.

12. SEIU has not received any further communication from CMS regarding its FOIA request.

Exhaustion of Administrative Remedies

13. As of the date of this Complaint, CMS has failed to (a) notify SEIU of a final determination regarding its FOIA request, including the scope of any responsive records CMS 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.

14. Through Defendants' failure to respond to SEIU's FOIA request within the time period required by law, SEIU 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 Searches for Responsive Records

15. SEIU repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

16. SEIU properly requested records within the possession, custody, and control of Defendants.

17. HHS is an agency subject to FOIA, and its component CMS must therefore make reasonable efforts to search for requested records.

18. CMS has failed to promptly review agency records for the purpose of locating those records that are responsive to SEIU's FOIA request.

19. CMS's failure to conduct adequate searches for responsive records violates FOIA.

20. Plaintiff SEIU is therefore entitled to declaratory and injunctive relief requiring CMS to promptly make reasonable efforts to search for records responsive to SEIU's FOIA request.

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

21. SEIU repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

22. SEIU properly requested records within the possession, custody, and control of Defendants.

23. HHS is an agency subject to FOIA, and its component CMS must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

24. CMS is wrongfully withholding non-exempt agency records requested by SEIU by failing to produce records responsive to its FOIA request.

25. CMS is wrongfully withholding non-exempt agency records requested by SEIU by failing to segregate exempt information in otherwise non-exempt records responsive to SEIU's FOIA request.

26. CMS's failure to provide all non-exempt responsive records violates FOIA.

27. Plaintiff SEIU is therefore entitled to declaratory and injunctive relief requiring CMS to promptly produce all non-exempt records responsive to its FOIA request and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, SEIU respectfully requests the Court to:

- (1) Order Defendants to conduct a search or searches reasonably calculated to uncover all records responsive to SEIU's FOIA request;
- (2) Order Defendants to produce, by such date as the Court deems appropriate, any and all non-exempt records responsive to SEIU's FOIA request and an index justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to SEIU's FOIA request;
- (4) Award SEIU attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant SEIU such other relief as the Court deems just and proper.

Dated: December 20, 2018

Respectfully submitted,

/s/ Hart W. Wood

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