

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

DEMOCRACY FORWARD
FOUNDATION, 1333 H St. NW
Washington, DC 20005,

Plaintiff,

v.

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

Defendant.

Case No.

COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to compel the production of documents pertaining to Defendant U.S. Department Health and Human Services’ (“HHS”) use of funds appropriated by Congress for the Teen Pregnancy Prevention Program (“TPP Program”).

Parties

2. Plaintiff Democracy Forward is a not-for-profit organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Democracy Forward works to promote transparency and accountability in government by, among other things, educating the public on government actions and policies.

3. Defendant HHS is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. HHS has possession, custody, and control of records to which Democracy Forward seeks access.

Jurisdiction and Venue

4. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

Factual Allegations

6. Since January 2018, HHS's actions relating to the TPP Program have been the subject of numerous legal challenges that have resulted in six federal courts vacating and/or enjoining HHS's unlawful attempts to redirect funding for the program.

7. HHS's actions have generated intense and continuing scrutiny from both the media and Congress.

8. On November 2, 2018, Democracy Forward submitted a FOIA request (attached hereto, with accompanying exhibits, as Exhibit 1) to HHS seeking the following:

- i. A copy of the "supplemental agreement for work within scope" referenced in Exhibit B [to the FOIA request] as well as any contract proposals, solicitations, orders for supplies and services, or subawards associated with this agreement.
- ii. A copy of Contract No. HHSP233201700025U referenced in Exhibit B.
- iii. Any and all communications between any official, employee or contractor within HHS and anyone associated with the MITRE Corporation pertaining to the "supplemental agreement for work within scope," including any contract proposals, solicitations, orders for supplies and services, or subawards associated with this agreement.
- iv. Any and all communications within HHS regarding Exhibit A [to the FOIA request], including pertaining to the disposition of the \$19.4 million in Tier 1 funding referenced in Exhibit A.

- v. Any and all communications between any official, employee or contractor within HHS and any of the 41 “intended” grantees listed in the first table of Exhibit A regarding the subject of either Exhibit A or Exhibit B.

9. As reflected in the November 2, 2018 request, Democracy Forward sought a waiver of all fees associated with processing the request. Democracy Forward also sought expedited processing because of the “compelling need” for the information, 5 U.S.C. § 552(a)(6)(E)(i)(I), in light of the “urgent need to inform the public about [this issue,]” 45 C.F.R. § 5.27(b)(2), given “HHS’s persistent lack of transparency about its actions,” “questions concerning the agency’s lawful use of appropriated funds,” and “questions about the government’s integrity.” Ex. 1 at 5.

10. On November 8, 2018, HHS confirmed receipt of the request and noted that “unusual and exceptional circumstances” could cause the agency to utilize a “10 working day extension to process [Democracy Forward’s] request.”

11. On November 19, 2018, HHS rejected Democracy Forward’s request for expedited processing.

12. On December 21, 2018, Democracy Forward filed with HHS a letter (attached hereto as Exhibit 2) renewing its request for expedited processing in light of subsequent factual developments and, alternatively, appealing from the agency’s November 19 denial of expedited processing.

13. On December 28, 2018, HHS notified Democracy Forward that the agency had “received [Democracy Forward’s] appeal” on December 26, 2018 “contesting the denial of expedited processing.”

14. Pursuant to 5 U.S.C. § 552(a)(6), HHS had, at most, 30 working days to notify Democracy Forward of its determination regarding the FOIA request, its reasons therefore, and the right to appeal any adverse determination.

15. As of the date of this Complaint, HHS has not complied with its statutory obligations. Because HHS has “fail[ed] to comply with the applicable time limit provisions” of the FOIA, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” 5 U.S.C. § 552(a)(6)(C)(i).

Count One

(Violation of the FOIA, 5 U.S.C. § 552)

16. Plaintiff Democracy Forward incorporates by reference the foregoing paragraphs as if fully set forth herein.

17. By failing to respond to Democracy Forward’s FOIA request within the statutorily mandated time frame, HHS has violated its duties under 5 U.S.C. § 552, including, but not limited to, the duties to conduct a reasonable search for responsive records, to take reasonable steps to release all non-exempt information, and to not withhold responsive records.

Requested Relief

WHEREFORE, Plaintiff Democracy Forward prays that this Court:

1. order HHS to conduct searches for any and all records responsive to Democracy Forward’s FOIA request using search methods reasonably likely to lead to the discovery of all responsive records;
2. order HHS to produce any and all non-exempt records responsive to Democracy Forward’s FOIA request at no cost to Democracy Forward and a *Vaughn* index of any responsive records withheld under a claim of exemption;

3. enjoin HHS from continuing to withhold any and all non-exempt responsive records; and
4. grant any other relief this Court deems appropriate.

Dated: January 10, 2018

Respectfully submitted,

/s/ Josephine Morse

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