

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

EQUITY FORWARD,
902 Broadway, 6th Floor
New York, NY 10010

Plaintiff,

v.

Case No. 19-cv-942

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

Defendant.

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). The Administration for Children and Families (ACF) is a component of HHS, and the Office of Refugee Resettlement (ORR) is an office within ACF. HHS has possession, custody, and control of the records that Equity Forward seeks.

STATEMENT OF FACTS

7. On March 16, 2018, Equity Forward submitted a FOIA request to HHS seeking: “any digital or written correspondence of spreadsheets and/or summaries detailing pregnant unaccompanied minors sent to, from or carbon copying (‘CC’) [then-ORR Director] Scott Lloyd between and including March 1, 2017 and the fulfilment of this request.”

8. On or about March 19, 2018, the FOI/Privacy Acts Division in HHS's Office of the Secretary acknowledged receipt of Equity Forward's request and assigned it tracking number: 2018-00743-FOIA-OS.

9. In acknowledging the request, the FOI/Privacy Acts Division informed Equity Forward that it had referred the FOIA request to ACF.

10. Equity Forward has not yet received a tracking number or any other communication from ACF regarding the FOIA request.

11. As of the date of this complaint, HHS has failed to (a) notify Equity Forward of any determination regarding the request, 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.

12. Through HHS's failure to respond to Equity Forward's FOIA request 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

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

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

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

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

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

18. 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 request.

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

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

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

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

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

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

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

25. Plaintiff Equity Forward is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request 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 request;
- (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 request 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 request;
- (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: April 3, 2019

Respectfully submitted,

/s/ Cerissa Cafasso

Cerissa Cafasso

D.C. Bar No. 1011003

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