

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN OVERSIGHT,)	
)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 20-cv-2088
)	
)	
FEDERAL BUREAU OF INVESTIGATION,)	
)	
<i>Defendant.</i>)	
)	

COMPLAINT

1. Plaintiff American Oversight brings this action against the Federal Bureau of Investigation 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 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B), as the agency records requested by Plaintiff American Oversight are situated in this district.

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight 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 American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media.

6. Defendant Federal Bureau of Investigation (FBI) is a component of the U.S. Department of Justice (DOJ), a department of the executive branch of the U.S. government, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). FBI, in particular the New York Field Office, has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

7. Public reports and the testimony of former Federal Bureau of Investigation (FBI) director Jim Comey strongly suggest that FBI agents in the New York Field Office had politically sensitive, and potentially improper, contacts with Rudy Giuliani—who now serves as the president’s personal lawyer—around the time of the 2016 presidential election. *See* Byron Tau & Natalie Andrews, *Comey Tells House Panel He Suspected Giuliani Was Leaking FBI Information to the Media*, Wall. St. J. (Dec. 8, 2019, 9:25 PM), <https://www.wsj.com/articles/comey-tells-house-panel-he-suspected-giuliani-was-leaking-fbi->

[information-to-media-1544322346](https://www.cnn.com/2019/12/11/politics/doj-ig-giuliani-fbi-leaks/index.html); Marshall Cohen, *Justice Department Watchdog Investigating Possible FBI Leaks to Giuliani in 2016*, CNN (Dec. 11, 2019, 2:58 PM), <https://www.cnn.com/2019/12/11/politics/doj-ig-giuliani-fbi-leaks/index.html>.

8. On December 13, 2019, American Oversight submitted a FOIA request to FBI for the following:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, memos to file, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (i) any agent, official, or employee in the FBI New York Field Office (NYFO) and (ii) Rudy Giuliani, or any personal assistants or others communicating on his behalf, including, but not limited to, Jo Ann Zafonte or Beau Wagner.

Please provide all responsive records from January 1, 2016, through December 31, 2016.

9. On information and belief, FBI employees, officials, or agents had contact with Mr. Giuliani, or his agents, during the time period covered by the request.

10. On February 10, 2020, FBI acknowledged American Oversight's request and assigned the request tracking number 1455000-000.

11. American Oversight has not received any further communication from FBI regarding its FOIA Request.

Exhaustion of Administrative Remedies

12. As of the date of this complaint, Defendant has failed to (a) notify American Oversight of any determination regarding its FOIA request, including the scope of any responsive records Defendant 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.

13. Through Defendant's failure to respond to American Oversight's FOIA request within the time period required by law, American Oversight 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

14. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

15. American Oversight properly requested records within the possession, custody, and control of Defendant.

16. Defendant is a component of an agency and is therefore subject to FOIA and must therefore make reasonable efforts to search for requested records.

17. Defendant failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA request.

18. Defendant's failure to conduct an adequate search for responsive records violates FOIA and DOJ regulations.

19. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA request.

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

20. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

21. American Oversight properly requested records within the possession, custody, and control of Defendant.

22. Defendant is a component of an agency and is therefore subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

23. Defendant is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA request.

24. Defendant is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA request.

25. Defendant's failure to provide all non-exempt responsive records violates FOIA and DOJ regulations.

26. Plaintiff American Oversight 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, American Oversight respectfully requests the Court to:

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

Dated: March 9, 2020

Respectfully submitted,

/s/ Daniel A. McGrath
Daniel A. McGrath
Austin R. Evers

AMERICAN OVERSIGHT
1030 15th Street NW, B255
Washington, DC 20005
(202) 897-4213
daniel.mcgrath@americanoversight.org
austin.evers@americanoversight.org

Counsel for Plaintiff