

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

JIMMY TOBIAS,)
124 Washington Place)
New York, NY 10014)

Plaintiff,)

v.)

NATIONAL PARK SERVICE,)
1849 C Street NW,)
Washington, D.C. 20240)

U.S. DEPARTMENT OF INTERIOR,)
1849 C Street NW,)
Washington, D.C. 20240)

Defendants.)

COMPLAINT

1. Plaintiff JIMMY TOBIAS brings this suit to overturn Defendants NATIONAL PARK SERVICE’s and U.S. DEPARTMENT OF INTERIOR’s failure to timely respond to TOBIAS’s Freedom of Information Act requests for various records regarding the deployment of the U.S. Park Police to Lafayette Square during any protests or unrest that occurred in Washington D.C. between May 26, 2020 and the date the requests are processed. Further, TOBIAS specifically sought records or communications concerning the Park Police’s decision to clear Lafayette Square of protestors on the late afternoon and evening of Jun 1, 2020. In violation of FOIA, Defendants have not produced any records.

PARTIES

2. Plaintiff JIMMY TOBIAS is an independent reporter with The Guardian and The Nation, among other media outlets, and is the FOIA requester in this case.

3. Defendant NATIONAL PARK SERVICE (“NPS”) is a federal agency, a component of U.S. DEPARTMENT OF INTERIOR, and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendant U.S. DEPARTMENT OF INTERIOR (“DOI”) is a federal agency and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

5. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

JUNE 3, 2020, FIRST FOIA REQUEST TO NPS (CHIEF PARK POLICE PROTESTS)

7. On June 3, 2020, TOBIAS submitted a FOIA request to NPS for “[a]ny written or electronic communications, including attachments, sent or received by the Chief of the Park Police concerning the deployment of the Park Police to Lafayette Square during any protests or unrest that occurred in Washington D.C. between May 26, 2020 and the date this request is processed. This request also specifically seeks any records or communications concerning the Park Police’s decision to clear Lafayette Square of protestors on the late afternoon and evening of Jun 1, 2020.” Exhibit A.

8. On June 3, 2020, NPS acknowledged receipt of the request and informed TOBIAS that the request has been “routed to the US Park Police FOIA Office for processing.” Exhibit A.

9. On June 11, 2020, NPS assigned reference number NPS-2020-00886 to the matter and informed TOBIAS that the request has been placed in the complex track. Exhibit A at 2.

10. On July 13, 2020, having received no further correspondence from NPS, TOBIAS sought an estimated completion date of the request, but NPS never responded. Exhibit A at 2.

11. As of the date of this filing, NPS has not issued a determination letter and has produced no responsive records to this request. Nor have Defendants complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated completion date when requested.

**JUNE 3, 2020, SECOND FOIA REQUEST TO NPS
(LAFAYETTE SQUARE PROTEST PARK POLICE)**

12. On June 3, 2020, TOBIAS submitted a FOIA request to NPS for “[a]ny and all memos, incident reports, case files, guidance[], or other reports or documentation regarding the planning, implementation and/or aftermath of the U.S. Park Police’s dispersal of protestors out of Lafayette Square in Washington D.C. on June [1], 2020.” In his request, TOBIAS included a link to the article reporting the incident. Exhibit B.

13. On June 3, 2020, NPS acknowledged receipt of the request and informed TOBIAS that the request has been “routed to the US Park Police FOIA Office for processing.” Exhibit B.

14. On June 11, 2020, NPS assigned reference number NPS-2020-00887 to the matter and informed TOBIAS that the request has been placed in the complex track. Exhibit B at 2.

15. On July 13, 2020, having received no further correspondence from NPS, TOBIAS sought an estimated completion date of the request, but NPS never responded. Exhibit B at 2.

16. As of the date of this filing, NPS has not issued a determination letter and has produced no responsive records to this request. Nor have Defendants complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated completion date when requested.

**JUNE 3, 2020, THIRD FOIA REQUEST TO NPS
(MUNITIONS PARK POLICE PROTEST)**

17. On June 3, 2020, TOBIAS submitted a FOIA request to NPS for “[a]ny and a records, including lists, notes, case files, or other documents, that reference the number and/or type of non-lethal projectiles or munitions (e.g. rubber bullets, tear gas, etc.) deployed by Park Service police in Washington D.C. on June 1, 2020.” Exhibit C.

18. On June 3, 2020, NPS acknowledged receipt of the request and informed TOBIAS that the request has been “routed to the US Park Police FOIA Office for processing.” Exhibit C.

19. On June 11, 2020, NPS assigned reference number NPS-2020-00889 to the matter and informed TOBIAS that the request has been placed in the complex track. Exhibit C at 2.

20. On July 13, 2020, having received no further correspondence from NPS, TOBIAS sought an estimated completion date of the request, but NPS never responded. Exhibit C at 2.

21. As of the date of this filing, NPS has not issued a determination letter and has produced no responsive records to this request. Nor have Defendants complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated completion date when requested.

**JUNE 10, 2020, FOIA REQUESTS TO NPS
(FLYNN & VELA PARK POLICE PROTESTS)**

22. On June 10, 2020, TOBIAS submitted two separate FOIA requests to NPS seeking, [1] “[a]ny written or electronic communications, including email attachments, sent or received by Associate Director Jennifer Flynn concerning the deployment of the Park Police to Lafayette Square during any protests or unrest that occurred in Washington D.C. between May 26, 2020 and the date this request is processed” and [2] “[a]ny written or electronic communications, including email attachments, sent or received by David Vela concerning the

deployment of the Park Police to Lafayette Square during any protests or unrest that occurred in Washington D.C. between May 26, 2020 and the date this request is processed.” Both requests specifically sought “any records or communications concerning the Park Police’s decision to clear Lafayette Square of protestors on the late afternoon and evening of June 1, 2020.” Exhibit D at 1, 6.

23. On June 11, 2020, NPS proposed consolidating these two requests under a single tracking number and conducting one email search using the following parameters: “to/from Jennifer Flynn or David Vela; date range May 26, 2020 to Search Date; keyword: Lafayette.” Exhibit D at 2-3 and 6-7.

24. TOBIAS engaged in the consolidation process on the “Vela Park Police Protests” page on Muckrock.

25. On June 11, 2020, TOBIAS agreed to the consolidation of the two requests and added additional search terms, “Floyd,” “protest,” “protests,” “riot,” “Black Lives Matter,” “BLM,” “tear gas,” and/or “pepper spray.” TOBIAS excluded the search of news clippings. Exhibit D at 2.

26. On June 11, 2020, NPS asked if it could “treat as non-responsive any results where that acronym is used to refer to the Bureau of Land Management and the records have no relationship to Black Lives Matter or events at Lafayette Square.” TOBIAS agreed to the exclusion. Exhibit D at 2-3.

27. On June 15, 2020, NPS assigned reference number NPS-2020-00949 to the matter and informed that the request has been placed in the normal track. Exhibit D at 3, 7.

28. NPS also stated that there are “3 expedited, 11 simple, and 128 normal requests ahead of this request in the processing queue.” Exhibit D at 3.

29. On July 13, 2020, after NPS's statutory deadline to respond, TOBIAS asked for an estimated completion date of the request. Exhibit D at 4.

30. On July 13, 2020, NPS responded that there are "3 expedited, 11 simple, and 90 normal requests ahead of this request in the processing queue," but NPS did not offer a timeline. Exhibit D at 4.

31. As of the date of this filing, NPS has not issued a determination letter and has produced no responsive records to this request. Nor have Defendants complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated completion date when requested.

**JUNE 10, 2020, FIRST FOIA REQUEST TO DOI
(BERNHARDT PARK POLICE PROTESTS)**

32. On June 10, 2020, TOBIAS submitted a FOIA request to DOI for "[a]ny written or electronic communications, including email attachments, sent or received by David Bernhardt concerning the deployment of the Park Police to Lafayette Square during any protests or unrest that occurred in Washington D.C. between May 26, 2020 and the date this request is processed. This request also specifically seeks any records or communications concerning the Park Police's decision to clear Lafayette Square of protesters on the late afternoon and evening of June 1, 2020." Exhibit E.

33. On June 15, 2020, DOI acknowledged receipt of the request and assigned reference number OS-2020-00630 to the matter. Exhibit F.

34. On July 13, 2020, after DOI's statutory deadline to respond, TOBIAS sought an estimated completion date of the request. Exhibit E at 2.

35. On July 13, 2020, DOI sent TOBIAS an extension letter dated July 10, 2020. Exhibit E at 2.

36. In that letter, DOI sought an extension of ten-workdays. Exhibit G.

37. On July 17, 2020, DOI informed TOBIAS that the request “was assigned to a processor on the 15th and is currently being worked on,” but did not offer a timeline of the processing. Exhibit E at 2.

38. As of the date of this filing, DOI has not issued a determination letter and has produced no responsive records to this request. Nor have Defendants complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated completion date when requested.

**JUNE 10, 2020, SECOND FOIA REQUEST TO DOI
(GOLDEY PARK POLICE PROTESTS)**

39. On June 10, 2020, TOBIAS submitted a FOIA request to DOI for “[a]ny written or electronic communications, including email attachments, sent or received by Ben Goldey concerning the deployment of the Park Police to Lafayette Square during any protests or unrest that occurred in Washington D.C. between May 26, 2020 and the date this request is processed. This request also specifically seeks any records or communications concerning the Park Police’s decision to clear Lafayette Square of protesters on the late afternoon and evening of Jun 1, 2020.” Exhibit H.

40. On June 15, 2020, DOI acknowledged receipt of the request and assigned reference number OS-2020-00632 to the matter. Exhibit I.

41. On June 25, 2020, DOI sought an extension of ten-workdays. Exhibit J.

42. On July 13, 2020, TOBIAS asked for an estimated completion date of this request. Exhibit H at 2.

43. On July 13, 2020, DOI sent TOBIAS an extension letter dated July 10, 2020. Exhibit H at 2.

44. In that letter, DOI indicated that it has been “unable to make a determination on [the] request” and apologized for the delay. DOI did not indicate how long it will take to make the determination. Exhibit K.

45. On July 17, 2020, DOI informed TOBIAS that it is “still waiting for a response from the program office for this one” and indicated that the last follow up was “just yesterday,” but it did not provide a timeline for the processing of this request. Exhibit H at 2-3.

46. As of the date of this filing, DOI has not issued a determination and has produced no responsive records. Nor have Defendants complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated completion date when requested.

**JUNE 10, 2020, THIRD FOIA REQUEST TO DOI
(JORJANI PARK POLICE PROTESTS)**

47. On June 10, 2020, TOBIAS submitted a FOIA request to DOI for “[a]ny written or electronic communications, including email attachments, sent or received by Daniel Jorjani concerning the deployment of the Park Police to Lafayette Square during any protests or unrest that occurred in Washington D.C. between May 26, 2020 and the date this request is processed. This request also specifically seeks any records or communications concerning the Park Police’s decision to clear Lafayette Square of protesters on the late afternoon and evening of June 1, 2020.” Exhibit L.

48. On June 11, 2020, DOI acknowledged receipt of the request and assigned reference number SOL-2020-00166 to the matter. Exhibit M.

49. On July 13, 2020, having received no further correspondence from DOI, TOBIAS sought an estimated completion date of the request, but DOI never responded. Exhibit L at 2.

50. As of the date of this filing, DOI has not issued a determination and has produced no responsive records.

**JUNE 10, 2020, FOURTH FOIA REQUEST TO DOI
(WALLACE PARK POLICE PROTESTS)**

51. On June 10, 2020, TOBIAS submitted a FOIA request to DOI for “[a]ny written or electronic communications, including email attachments, sent or received by Assistant Secretary Robert Wallace concerning the deployment of the Park Police to Lafayette Square during any protests or unrest that occurred in Washington D.C. between May 26, 2020 and the date this request is processed. This request also specifically seeks any records or communications concerning the Park Police’s decision to clear Lafayette Square of protesters on the late afternoon and evening of Jun 1, 2020.” Exhibit N.

52. On June 15, 2020, DOI acknowledged receipt of the request and assigned reference number OS-2020-00631 to the matter. Exhibit O.

53. On June 29, 2020, DOI sent TOBIAS an extension letter dated June 26, 2020. Exhibit N at 2.

54. In that letter, DOI sought an extension of ten-workdays. Exhibit P.

55. On July 9, 2020, DOI sent TOBIAS an extension letter dated July 8, 2020. Exhibit N at 2.

56. In that letter, DOI indicated that it has been “unable to make a determination on [the] request” and apologized for the delay. DOI did not indicate how long it will take to make the determination. Exhibit Q.

57. On July 13, 2020, TOBIAS asked for the estimated completion date of the request. Exhibit N at 2.

58. On July 17, 2020, DOI informed TOBIAS that it is “currently waiting on a response from the program office” and “cannot provide an estimated completion date.” Exhibit N at 2-3.

59. As of the date of this filing, DOI has not issued a determination and has produced no responsive records. Nor have Defendants complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated completion date when requested.

**JUNE 11, 2020, FOIA REQUEST TO DOI
(LAFAYETTE SQUARE PROTEST PARK POLICE)**

60. On June 11, 2020, TOBIAS submitted a FOIA request to DOI for “[a]ny and all memos, incident reports, case files, guidance[], or other reports or documentation regarding the planning, implementation and/or aftermath of the U.S Park Police’s dispersal of protestors out of Lafayette Square in Washington D.C. on June 1, 2020.” In his request, TOBIAS included a link to the article reporting the incident. Exhibit R.

61. On June 19, 2020, DOI acknowledged receipt of the request and assigned reference number OS-2020-00639 to the matter. Exhibit S.

62. On July 13, 2020, TOBIAS asked for the estimated completion date of the request. Exhibit R at 2.

63. On July 17, 2020, DOI informed TOBIAS that it “heard from two of three program offices” and “expect to have records from the third office shortly.” DOI stated that once it “receives those records, [it] should be able to provide [TOBIAS] a preliminary determination.” Exhibit R at 2.

64. As of the date of this filing, DOI has not issued a determination and has produced no responsive records.

**COUNT I – JUNE 3, 2020, FIRST FOIA REQUEST TO NPS
(CHIEF PARK POLICE PROTESTS)**

65. The above paragraphs are incorporated by reference.

66. Defendant NPS is a component of DOI and a federal agency subject to FOIA.

67. The requested records are not exempt under FOIA.

68. Defendants have not complied with FOIA.

**COUNT II – JUNE 3, 2020, SECOND FOIA REQUEST TO NPS
(LAFAYETTE SQUARE PROTEST PARK POLICE)**

69. The above paragraphs are incorporated by reference.

70. Defendant NPS is a component of DOI and a federal agency subject to FOIA.

71. The requested records are not exempt under FOIA.

72. Defendants have not complied with FOIA.

**COUNT III – JUNE 3, 2020, THIRD FOIA REQUEST TO NPS
(MUNITIONS PARK POLICE PROTEST)**

73. The above paragraphs are incorporated by reference.

74. Defendant NPS is a component of DOI and a federal agency subject to FOIA.

75. The requested records are not exempt under FOIA.

76. Defendants have not complied with FOIA.

**COUNT IV – JUNE 10, 2020, FOIA REQUESTS TO NPS
(FLYNN & VELA PARK POLICE PROTESTS)**

77. The above paragraphs are incorporated by reference.

78. Defendant NPS is a component of DOI and a federal agency subject to FOIA.

79. The requested records are not exempt under FOIA.

80. Defendants have not complied with FOIA.

**COUNT V – JUNE 10, 2020, FIRST FOIA REQUEST TO DOI
(BERNHARDT PARK POLICE PROTESTS)**

81. The above paragraphs are incorporated by reference.

82. Defendant DOI is a federal agency subject to FOIA.

83. The requested records are not exempt under FOIA.

84. DOI has not complied with FOIA.

**COUNT VI – JUNE 10, 2020, SECOND FOIA REQUEST TO DOI
(GOLDEY PARK POLICE PROTESTS)**

85. The above paragraphs are incorporated by reference.
86. Defendant DOI is a federal agency subject to FOIA.
87. The requested records are not exempt under FOIA.
88. DOI has not complied with FOIA.

**COUNT VII – JUNE 10, 2020, THIRD FOIA REQUEST TO DOI
(JORJANI PARK POLICE PROTESTS)**

89. The above paragraphs are incorporated by reference.
90. Defendant DOI is a federal agency subject to FOIA.
91. The requested records are not exempt under FOIA.
92. DOI has not complied with FOIA.

**COUNT VIII – JUNE 10, 2020, FOURTH FOIA REQUEST TO DOI
(WALLACE PARK POLICE PROTESTS)**

93. The above paragraphs are incorporated by reference.
94. Defendant DOI is a federal agency subject to FOIA.
95. The requested records are not exempt under FOIA.
96. DOI has not complied with FOIA.

**COUNT IX – JUNE 11, 2020, FOIA REQUEST TO DOI
(LAFAYETTE SQUARE PROTEST PARK POLICE)**

97. The above paragraphs are incorporated by reference.
98. Defendant DOI is a federal agency subject to FOIA.
99. The requested records are not exempt under FOIA.
100. DOI has not complied with FOIA.

WHEREFORE, TOBIAS asks the Court to:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct a reasonable search for records and to produce the requested records;
- iii. enjoin Defendants from withholding non-exempt public records under FOIA;
- iv. award TOBIAS attorneys' fees and costs; and
- v. award such other relief the Court considers appropriate.

Dated: July 30, 2020

RESPECTFULLY SUBMITTED,

/s/ Merrick J. Wayne

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JIMMY TOBIAS

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