

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

JASON LEOPOLD,)
6824 Lexington Avenue)
Los Angeles, CA 90038)

BUZZFEED INC.,)
111 East 18th Street, 13th Floor)
New York, NY 10003)

Plaintiffs,)

v.)

U.S. DEPARTMENT OF HOMELAND)
SECURITY,)
2707 Martin Luther King Jr. Avenue SE)
Washington, DC 20528)

FEDERAL PROTECTIVE SERVICE,)
301 7th Street, SW, #G217)
Washington, DC 20407)

OFFICE FOR CIVIL RIGHTS)
AND CIVIL LIBERTIES,)
2707 Martin Luther King Jr. Avenue, SE)
Washington, DC 29528-0190)

U.S. SECRET SERVICE,)
950 H Street, NW, #7800)
Washington, DC 20223)

Defendants.)

COMPLAINT

1. Plaintiffs, JASON LEOPOLD and BUZZFEED INC., bring this Freedom of Information Act suit to force Defendants to produce records regarding recent protests in the wake of the killing of George Floyd and the government's response.

PARTIES

2. Plaintiffs JASON LEOPOLD and BUZZFEED INC. are members of the media and made the FOIA requests at issue in this case.

3. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”) is a federal agency, subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendants FEDERAL PROTECTIVE SERVICE (“FPS”) and OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES are components of DHS, federal agencies, and subject to the Freedom of Information Act, 5 U.S.C § 552.

5. Defendant U.S. SECRET SERVICE (“USSS”) is a federal agency, subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

6. 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.

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

JULY 21, 2020, FOIA REQUEST

8. On July 21, 2020, Plaintiffs submitted the following FOIA request to Defendants:

[1] All documents and communications (emails, memos, letters, directives) referring or relating to the deployment of personnel from DHS or any component agency of DHS to Portland, Oregon and Chicago, Illinois including but not limited to all communications among DHS personnel; between DHS personnel and any personnel in the White House; between DHS personnel and personnel of any other Federal agency or entity, including employees of all federal facilities located in Oregon; and between DHS and all state and local authorities in Oregon;

[2] All documents referring or relating to the selection of employees of DHS and component agencies for assignment to Portland, Oregon;

[3] All standard operating procedures and/or documents referring or relating to the training provided to all DHS personnel assigned to Portland, including but not limited to:

- a. all documents referring or relating to the review of employees' training records to ensure that they are qualified for the duties to which they are assigned; and
- b. all documents referring or relating to training in riot control and response to mass demonstration completed by each DHS employee/component agency employee;

[4] All documents referring or relating to the use of any unmarked vehicle by any DHS personnel or component agency personnel for any purpose in Oregon;

[5] All documents referring or relating to the use of force by any DHS personnel or the personnel of any component agency, including but not limited to all documents referring to the authorized as well as the actual use of force;

[6] All documents referring or relating to the detention in any form and for any length of time by DHS personnel or the personnel of any component agency of DHS of any individual including but not limited to all documents referring or relating to:

- a. The date, time, and location where each detention commenced;
- b. The number individual(s) detained;
- c. The probable cause(s) that led to each detention;
- d. The titles of all DHS personnel or the personnel of any DHS component agency involved in carrying out the detention;
- e. All federal assets, including any vehicles, utilized in carrying out the detention;
- f. All location(s) in which each detained individual was held by DHS personnel or the personnel of any component agency;
- g. All charges filed in any venue against each detained individual; and
- h. The date, time, and location where each detained individual was released, including all documents referring or relating to the decision to release each individual;

[7] Internal communications, such as text messages, emails, describing any guidance provided to law enforcement personnel and the purpose of the deployment

- a. internal communications that discuss de-escalation and how to respond to threats of violence

[8] Talking points relating or referring to the deployment of federal law enforcement personnel to Portland, Oregon and Chicago, Illinois;

[9] Intelligence Bulletins, PATRIOT reports, open source intelligence and reports, Threat Assessments, Situation Reports, directives, mentioning or referring to protests in Portland, Oregon; [and]

[10] Legal opinions, legal guidance, legal memos mentioning or referring to the deployment of federal law enforcement personnel to Portland, Oregon.

Exhibit A.

9. Plaintiffs also sought expedited processing and a fee waiver. Exhibit A.

10. On July 28, 2020, DHS acknowledged receipt of the request on behalf of DHS and its component Office of Civil Rights and Civil Liberties. DHS assigned reference number 2020-HQFO-01494 to the matter. Exhibit B.

11. On July 28, 2020, in a separate letter, DHS acknowledged receipt of the request on behalf of DHS and its component Federal Protective Service. DHS assigned reference number 2020-FPFO-00208 to the matter. Exhibit C.

12. DHS granted Plaintiffs' request for expedited processing on both 2020-HQFO-01494 and 2020-FPFO-00208. Exhibits B-C.

13. On July 28, 2020, USSS acknowledged receipt of the request and assigned reference number 20200887 to the matter. Exhibit D.

14. In that letter, USSS indicated that it "searched all Program Offices and computer systems that were likely to contain potentially responsive records, and records were located." USSS also indicated that it is "processing the responsive records." Exhibit D.

15. On September 1, 2020, Plaintiffs sought an estimated date of completion of the request for 2020-FPFO-00208. Exhibit E.

16. On September 1, 2020, DHS responded that it expects to complete the processing for 2020-FPFO-00208 "within the next two to three months." Exhibit E.

17. On September 2, 2020, DHS responded to Plaintiffs' request for an estimated completions dates for various requests. One of the requests mentioned in the correspondence, 2020-HQFO-01502, is not at issue in this case. Exhibit F.

18. Regarding 2020-HQFO-01494, which is at issue in this case, DHS stated that it is "four to six months away from responding," but may change drastically based on the search

results. DHS added that it hopes to give Plaintiffs a much more “reasonable estimate” in FY 2021. Exhibit F.

19. Although 2020-HQFO-01706 was not a previously assigned number to Plaintiff’s July 21, 2020 request, DHS stated that 2020-HQFO-01494 is associated with 2020-HQFO-01706 for “administrative reasons.” Exhibit F.

20. As of the date of this Complaint, DHS and its two components have not issued a determination or produced any records.

21. On September 1, 2020, Plaintiffs asked USSS for an estimated completion date of the request. Exhibit G.

22. On September 2, 2020, USSS stated that it is “conducting a search,” but did not provide a specific timeline for the processing of the request. Exhibit G.

23. As of the date of this Complaint, USSS has not issued a determination or produced any records.

COUNTS I – DHS’S VIOLATION OF FREEDOM OF INFORMATION ACT

24. The above paragraphs are incorporated herein.

25. The requests seek the disclosure of agency records and were properly made.

26. DHS and its two components are federal agencies subject to FOIA.

27. DHS and its two components have failed to issue a determination or produce responsive records.

COUNT II – USSS’S VIOLATION OF FREEDOM OF INFORMATION ACT

28. The above paragraphs are incorporated herein.

29. The requests seek the disclosure of agency records and were properly made.

30. USSS is a federal agency subject to FOIA.

31. USSS has failed to issue a determination or produce responsive records.

WHEREFORE, Plaintiffs ask 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 Plaintiffs attorneys' fees and costs; and
- v. award such other relief the Court considers appropriate.

Dated: September 8, 2020

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorney for Plaintiffs
JASON LEOPOLD,
BUZZFEED INC.

Matthew Topic, D.C. Bar No. IL 0037
Joshua Burday, D.C. Bar No. IL 0042
Merrick Wayne, D.C. Bar No. IL 0058
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com