

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

CODEBREAKER FILMS LLC

817 Erie Street
Oakland, CA 94610

Plaintiff,

v.

**FEDERAL BUREAU OF
INVESTIGATION**

935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

and

**UNITED STATES DEPARTMENT OF
JUSTICE**

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Codebreaker Films LLC (“Plaintiff”), by and through undersigned counsel, hereby alleges as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA” or the “Act”), for declaratory, injunctive, and other appropriate relief against the Federal Bureau of Investigation (“FBI”) and United States Department of Justice (“DOJ”) (collectively, “Defendants”). Defendants have unlawfully withheld agency records requested by Plaintiff pursuant to FOIA.

PARTIES

2. Plaintiff Codebreaker Films LLC, is a documentary film production company incorporated in California, with offices in California and New York.

3. Defendant Federal Bureau of Investigation (“FBI”), headquartered at 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535, is a component of DOJ and an agency of the federal government within the meaning of 5 U.S.C. § 551 and 5 U.S.C. § 552(f) that has possession, custody, and/or control of records that Plaintiff seeks.

4. Defendant United States Department of Justice is an agency of the federal government within the meaning of 5 U.S.C. § 551 and 5 U.S.C. § 552(f) that has possession, custody, and/or control of the records that Plaintiff seeks. DOJ’s headquarters is located at 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

JURISDICTION AND VENUE

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

6. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

FACTS

7. On or about April 12, 2019, Plaintiff submitted a FOIA request to the FBI via online portal (the “Request”).

8. The Request sought: “all video, audio and images related to the FBI investigation of Reality Leigh Winner, born on Fed R Civ P 5.2, 1991, conducted between May 2017 and February 2018.”

9. The Request further sought “the audio recording of the FBI interview with Reality Leigh Winner conducted at her residence at 1957 Battle Row, Augusta, GA 30904, on June 3,

2017 (file name: 170603_01.wav), photographs, and undated recorded phone calls (including but not restricted to file names: Booking.wav, Winner3.wav, Winner4.wav).”

10. The Request further stated that “[t]he official transcript of the audio recording of the FBI interview with Reality Leigh Winner on June 3, 2017, has already been declassified and released to the public by the U.S. government. We would like to request all video, audio and images related to this particular transcript and all additional images, video and audio footage included in or related to the investigation of Reality Winner.”

11. By letter dated May 28, 2019, the FBI denied the Request, which it assigned tracking number 1434086-000, claiming that the responsive records were exempt pursuant to FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A).

12. On or about June 28, 2019, Plaintiff, through its representative, submitted an administrative appeal challenging the FBI’s denial of the Request to the Office of Information Policy (“OIP”) at DOJ.

13. By letter dated October 18, 2019, OIP reversed the FBI’s blanket denial, stating that Exemption 7(A) “is no longer applicable to withhold the records in full[.]” and that the FBI “will process and send all releasable records to [Plaintiff] directly[.]”

14. By letter dated December 4, 2019, the FBI claimed that “unusual circumstances” applied to the processing of the Request. It further extended the opportunity to reduce the scope of the Request.

15. Plaintiff subsequently narrowed the scope of the Request to 50 photos depicting Ms. Winner, as well as all the audio and video files originally requested.

16. On or about March 28, 2020, a representative for Plaintiff submitted a DOJ-361 form signed by Reality Winner to the FBI in connection with the Request.

17. As of the date of the filing of this complaint, it has been approximately 370 business days and 537 calendar days since the Request was submitted to FBI.

18. As of the date of this filing, Defendants have not released any records in response to the Request.

19. Following remand from OIP, Defendants have not cited any exemption to withhold records responsive to the Request.

CAUSES OF ACTION

COUNT 1: VIOLATION OF FOIA FOR FAILURE TO COMPLY WITH STATUTORY DEADLINES

20. Plaintiff repeats, realleges, and incorporates the allegations set forth in the foregoing Paragraphs 1 through 19 as though fully set forth herein.

21. Defendants are agencies subject to FOIA. 5 U.S.C. §§ 552(f), 551.

22. The Request properly seeks records under FOIA that are within the possession, custody, and/or control of Defendants.

23. The Request complied with all applicable regulations regarding the submission of FOIA requests.

24. Following remand from OIP, Defendants failed to make a determination regarding the Request within the statutory deadlines as required by FOIA. 5 U.S.C. § 552(a)(6)(A).

25. The failure of Defendants to make a determination with respect to the Request within FOIA's statutory deadlines violates their obligations under FOIA. 5 U.S.C. § 552(a)(6)(A).

26. Plaintiff has or is deemed to have exhausted applicable administrative remedies with respect to the Request. 5 U.S.C. § 552(a)(6)(C)(i).

**COUNT II: VIOLATION OF FOIA
FOR UNLAWFUL WITHHOLDING OF AGENCY RECORDS**

27. Plaintiff repeats, realleges, and incorporates the allegations set forth in the foregoing Paragraphs 1 through 19 as though fully set forth herein.
28. Defendants are agencies subject to FOIA. 5 U.S.C. §§ 552(f), 551.
29. The Request properly seek records under FOIA that are within the possession, custody, and/or control of Defendants.
30. The Request complied with all applicable regulations regarding the submission of FOIA requests.
31. Defendants have not released any records or portions thereof in response to the Request.
32. Following remand from OIP, Defendants have not cited any FOIA exemptions to withhold records or portions thereof that are responsive to the Request.
33. Defendants have not identified how disclosure of each of the records or portions thereof sought by the Request would foreseeably harm an interest protected by a FOIA exemption and/or why disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A).
34. Records responsive to the Request are required to be released under FOIA.
35. Defendants have improperly withheld agency records responsive to the Request, in violation of FOIA. 5 U.S.C. § 552(a)(3)(A).
36. Plaintiff has or is deemed to have exhausted applicable administrative remedies with respect to the Request. 5 U.S.C. § 552(a)(6)(C)(i).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

- 1) order Defendants to conduct a search reasonably calculated to identify all records

responsive to the Request;

- 2) enjoin Defendants from withholding all records or portions thereof responsive to the Request that may not be withheld under FOIA;
- 3) issue a declaration that Plaintiff is entitled to disclosure of the records sought by the Request;
- 4) issue a declaration that the failure of Defendants to provide a timely determination in response to the Request violates their obligations under FOIA;
- 5) award Plaintiff reasonable attorney fees and costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- 6) grant such other relief as the Court may deem just and proper.

Dated: September 30, 2020

Respectfully submitted,

/s/ Katie Townsend

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