

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

**REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS**

1156 15th Street NW, Suite 1020
Washington, D.C. 20005

Plaintiff,

v.

OFFICE OF THE ATTORNEY GENERAL

United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530,

and

**OFFICE OF THE DEPUTY ATTORNEY
GENERAL**

United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530,

and

OFFICE OF INFORMATION POLICY

United States Department of Justice
Sixth Floor
441 G Street NW
Washington, DC 20530

and

**UNITED STATES DEPARTMENT
OF JUSTICE**

950 Pennsylvania Avenue NW
Washington, DC 20530

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Reporters Committee for Freedom of the Press (“Reporters Committee” or “RCFP”), by and through its 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 by the Reporters Committee against the Office of the Attorney General at the United States Department of Justice (“OAG”), the Office of the Deputy Attorney General at the United States Department of Justice (“ODAG”), the Office of Information Policy at the United States Department of Justice (“OIP”), and the United States Department of Justice (“DOJ”) (collectively, “Defendants”).

2. By this action, the Reporters Committee seeks to compel Defendants to comply with their obligations under FOIA to release records regarding DOJ’s “Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media,” that were requested by RCFP in January of 2021. RCFP is statutorily entitled to the disclosure of these records and Defendants have improperly withheld them in violation of FOIA.

JURISDICTION AND VENUE

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

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

PARTIES

5. Plaintiff Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to preserving the First Amendment’s guarantee of a free press and

vindicating the rights of the news media and the public to access government records. The Reporters Committee is located at 1156 15th Street NW, Suite 1020, Washington, D.C. 20005.

6. Defendant OAG is an agency of the federal government within the meaning of 5 U.S.C. §552(f) and 5 U.S.C. § 702 that has possession, custody, and/or control of the records that Plaintiff seeks. OAG is a component of Defendant United States Department of Justice, and located at 950 Pennsylvania Avenue, NW Washington, D.C. 20530.

7. Defendant ODAG is an agency of the federal government within the meaning of 5 U.S.C. §552(f) and 5 U.S.C. § 702 that has possession, custody, and/or control of the records that Plaintiff seeks. OAG is a component of Defendant United States Department of Justice, and located at 950 Pennsylvania Avenue, NW Washington, D.C. 20530.

8. Defendant OIP is an agency of the federal government within the meaning of 5 U.S.C. §552(f) and 5 U.S.C. § 702 that has possession, custody, and/or control of the records that Plaintiff seeks. OIP is a component of Defendant United States Department of Justice. OIP is located at the United States Department of Justice, Sixth Floor, 441 G St. NW, Washington, D.C. 20530.

9. Defendant DOJ is an agency of the federal government within the meaning of 5 U.S.C. §552(f) and 5 U.S.C. § 702 that has possession, custody, and/or control of the records that Plaintiff seeks. DOJ's headquarters are located at 950 Pennsylvania Avenue NW, Washington, D.C. 20530.

FACTS

Plaintiff's FOIA Requests

10. On January 29, 2021, Adam A. Marshall ("Marshall") submitted a FOIA request to OAG via OIP on behalf of the Reporters Committee (the "First Request"). A true and correct copy of the First Request is attached as Exhibit 1.

11. In the First Request, RCFP requested access to and copies of the following records:

1. All versions of DOJ's Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media, that have been in effect since January 21, 2017;

2. All emails sent or received since January 21, 2017 that include proposed or enacted modifications to the Justice Department's Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media;

3. All emails and/or email attachments sent to, from, copying, or blind copying former Acting Attorney General Matthew Whitaker, between November 7, 2018 and March 5, 2019, that include the phrase "policy regarding obtaining information from, or records of, members of the news media"; and

4. All emails and/or email attachments sent to, from, copying, or blind copying Attorney General William Barr, since February 14, 2019, that include the phrase "policy regarding obtaining information from, or records of, members of the news media";

Ex. 1.

12. The First Request included a request for a fee benefit as a representative of the news media under 5 U.S.C. § 552(a)(4)(A) and set forth facts in support thereof. *See* Ex. 1.

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

14. On January 29, 2021, Marshall submitted a second FOIA request to ODAG via OIP on behalf of the Reporters Committee (the “Second Request”). A true and correct copy of the Second Request is attached as Exhibit 2.

15. In the Second Request, RCFP requested access to and copies of the following records:

1. All versions of DOJ’s Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media, that have been in effect since January 21, 2017;

2. All emails sent or received since January 21, 2017 that include proposed or enacted modifications to the Justice Department’s Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media; and

3. All emails and/or email attachments sent to, from, copying, or blind copying former Deputy Attorney General Rod Rosenstein, between April 25, 2017 and May 12, 2019, that include the phrase “policy regarding obtaining information from, or records of, members of the news media”.

Ex. 2.

16. The Second Request included a request for a fee benefit as a representative of the news media under 5 U.S.C. § 552(a)(4)(A) and set forth facts and argument in support thereof.

See Ex. 1.

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

Defendants’ Response to RCFP’s Requests

18. On February 19, 2021, RCFP received an acknowledgement letter from OIP regarding the First Request and Second Request (the “Acknowledgement”). A true and correct copy of the Acknowledgement is attached hereto as Exhibit 3.

19. In the Acknowledgment, OIP stated that “as a matter of administrative efficiency and in an effort to facilitate our records searches and the processing and consultation of potentially responsive records, and ultimately to more efficiently respond to your requests, we are aggregating your requests under the tracking number FOIA-2021-00670.” Ex 3.

20. As of the date of the filing of this Complaint, it has been approximately 101 days since the First Request and Second Request were submitted.

21. As of the date of the filing of this Complaint, RCFP has received no further communication from Defendants regarding either the First Request or Second Request.

CAUSES OF ACTION

Count I

Violation of FOIA for Failure to Comply with Statutory Deadlines

43. Plaintiff repeats and re-alleges paragraphs 1–21.

44. Defendants are agencies subject to FOIA.

45. By the First Request and Second Request (collectively, the “Requests”), Plaintiff properly asked for records within the possession, custody and/or control of Defendants.

46. Defendants failed to make a determination with respect to the Requests within the timeframe required by FOIA. 5 U.S.C. § 556(a)(6)(A).

47. Defendants’ failure to provide a determination with respect to the First Request and Second Request is a violation of FOIA.

48. Plaintiff has and/or is deemed to have exhausted applicable administrative remedies with respect to the Requests. 5 U.S.C. § 552(a)(6)(A)(ii); *id.* § 552(a)(6)(C)(i).

Count II

Violation of FOIA for Wrongful Withholding of Agency Records

49. Plaintiff repeats and re-alleges paragraphs 1–21.

50. Defendants are agencies subject to FOIA.

51. By the First Request and Second Request (collectively, the “Requests”), Plaintiff properly asked for records within the possession, custody and/or control of Defendants.

52. The Requests complied with all applicable regulations regarding the submission of FOIA requests.

53. Defendants have not released any records or portions thereof in response to the Requests.

54. Defendants have not cited any exemptions to withhold records or portions thereof that are responsive to the Requests.

55. Defendants have not identified whether or how release of the records sought by the Requests 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).

56. Defendants have improperly withheld records responsive to the Requests in violation of FOIA. 5 U.S.C. § 552(a)(3)(A).

57. Plaintiff has and/or is deemed to have exhausted applicable administrative remedies with respect to the Requests. 5 U.S.C. § 552(a)(6)(A)(ii); *id.* § 552(a)(6)(C)(i).

REQUEST FOR RELIEF

WHEREFORE, the Reporters Committee respectfully requests that the Court:

- (1) Issue a declaration that Defendants' failure to provide determinations with respect to the First Request and Second Request within the required statutory deadline is a violation of FOIA;
- (2) Order Defendants to complete its search for records responsive to the First Request and Second Request, and to issue a determination with respect to the First Request and Second Request within 10 days;
- (3) Order Defendants to release all non-exempt records or portions thereof responsive to the First Request and Second Request within 20 days;
- (4) Issue a declaration that RCFP is entitled to disclosure of the records responsive to the First Request and Second Request;
- (5) Enjoin Defendants from continuing to withhold any and all non-exempt records or portions thereof responsive to RCFP's First Request and Second Request;
- (6) Award the Reporters Committee reasonable attorney's fees and costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (7) Grant such other relief as the Court may deem just and proper.

Dated: May 11, 2021

Respectfully submitted,

/s/ Katie Townsend
Katie Townsend
D.C. Bar No. 1026115
Email: ktownsend@rcfp.org
Adam A. Marshall
D.C. Bar No. 1029423

Email: amarshall@rcfp.org
REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS
1156 15th Street NW, Suite 1020
Washington, DC 20005
Phone: 202.795.9300
Facsimile: 202.795.9310

Counsel for Plaintiff