

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

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|--|---|-----------------------------|
| FEDERATION FOR AMERICAN |) | |
| IMMIGRATION REFORM, |) | |
| 25 Massachusetts Ave., N.W., Suite 330 |) | |
| Washington, D.C. 20001 |) | Civil Action No. 17-cv-1834 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| U.S. DEPARTMENT OF HOMELAND |) | |
| SECURITY, |) | |
| 3801 Nebraska Ave., N.W. |) | |
| Washington, D.C. 20016, |) | |
| |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMPLAINT

Plaintiff Federation for American Immigration Reform (“FAIR”) brings this action against the U.S. Department of Homeland Security (“DHS”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff alleges the following grounds:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff FAIR (“Plaintiff”) is a non-profit, educational foundation organized under the laws of the District of Columbia and having its principal place of business at 25

Massachusetts Ave., N.W., Suite 330, Washington, D.C. 20001. Plaintiff seeks to educate the citizenry and increase public awareness of immigration issues and hold the nation's leaders accountable for enforcing the nation's immigration laws. In furtherance of its public interest mission, Plaintiff regularly requests access to the public records of federal agencies, entities, and offices, and disseminates its findings to the public.

4. Defendant DHS is an agency of the U.S. Government and is headquartered at 3801 Nebraska Ave., N.W., Washington, D.C. 20016. DHS has possession, custody, and control of certain public records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On September 7, 2016, Plaintiff submitted a FOIA request, by FOIA portal, to DHS, specifically its Science and Technology Directorate, seeking access to the following public records, time-marked October 1, 2015 to the date the agency started its document search:

1. Any and all communications, including but not limited to emails, sent to and from Jeh Johnson, David Shahoulian (Deputy General Counsel), Serena Hoy (Counselor to the Deputy Secretary), Alejandro Mayorkas (Deputy Secretary), Esther Olavarria (Deputy Assistant Secretary), mentioning or referring to "Trump", "Grassley", "Republicans", "GOP", "Judiciary", "Sessions", "Breitbart", "Immigration Reform Law Institute", "IRLI", "Southern Poverty Law Center", "SPLC", "Federation for American Immigration Reform" and/or "FAIR."

6. Plaintiff received an acknowledgement letter from DHS's Privacy Office (where the FOIA request was re-routed to) dated November 29, 2016, assigning Plaintiff's FOIA request the tracking number 2017-HQFO-00130.

7. Plaintiff received a request to narrow the FOIA request from DHS by telephone on April 26, 2017, which Plaintiff agreed to.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), DHS was required to determine whether to comply with each part of Plaintiff's FOIA request within twenty (20) working days after receipt

of each request and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Accordingly, DHS's determination of the FOIA request was due on December 27, 2016 at the latest.

9. As of the date of this Complaint, DHS has failed to: (i) determine whether to comply with Plaintiff's FOIA request; (ii) notify Plaintiff of any such determination or the reasons for such determination; (iii) advise Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

10. Because DHS has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A) with respect to the FOIA request, Plaintiff is deemed to have exhausted any and all administrative remedies with respect to both requests, pursuant to 5 U.S.C. § 552(a)(6)(C).

COUNT 1

(Violation of FOIA, 5 U.S.C. § 552)

11. Plaintiff realleges paragraphs 1 through 10 as if fully stated herein.

12. Defendant is unlawfully withholding public records requested by Plaintiff pursuant to 5 U.S.C. § 552.

13. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of the requested public records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all records responsive to Plaintiff's FOIA request, and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a Vaughn index of any responsive

records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: September 7, 2017

Respectfully submitted,

/s/ Julie B. Axelrod
D.C. Bar No. 1001557

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