

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

FEDERATION FOR AMERICAN	)	
IMMIGRATION REFORM,	)	
25 Massachusetts Ave. NW, Suite 330,	)	
Washington, D.C. 20001,	)	Civil Action No. 18-216
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
DEPARTMENT OF JUSTICE,	)	
950 Pennsylvania Ave. NW,	)	
Washington D.C. 20530,	)	
	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

Plaintiff Federation for American Immigration Reform (“FAIR”) brings this action against the U.S. Department of Justice (“DOJ”) 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, NW, Suite 330, Washington, DC 20001. Plaintiff seeks to educate the citizenry on 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 DOJ is an agency of the U.S. Government and is headquartered at 950 Pennsylvania Ave, NW, Washington DC. DOJ has possession, custody, and control of certain public records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

5. On January 31, 2017, Plaintiff submitted a FOIA request ("the January 31, 2017, FOIA request"), by email, to DOJ, specifically to DOJ's Office of Information Policy, seeking access to the following public records:

1. Any and all email communications to and from Ms. Sally Yates, in her previous capacity as Deputy Attorney General and Acting Attorney General time-marked January 1 to January 31, 2017.

6. Plaintiff received an acknowledgement email from DOJ on January 31, 2017, assigning the January 31, 2017, FOIA request the tracking number DOJ-2017-001986.

7. On March 3, 2017, Plaintiff agreed to limit the scope of the requested emails to those that contain the terms "Trump," "Muslim ban," "Muslim registry," or "13769." The term "Trump" was limited to the context of the name, Donald Trump, and the term "13769" was limited to the context of Executive Order 13769.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), DOJ was required to determine whether to comply with 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, DOJ's determination of Plaintiff's January 31, 2017, FOIA request was due by March 1, 2017, at the latest.

9. On February 23, 2017, Plaintiff submitted another FOIA request ("the February 23, 2017, FOIA request"), by email, to DOJ, specifically to DOJ's Office of Information Policy, seeking access to the following public records:

1. Any and all records of communications, including but not limited to emails, between any employees or representatives of the American Civil Liberties Union (any and all chapters) or the National Immigration Law Center and Ms. Sally Yates from November 1, 2016, to January 31st, 2017.

10. Plaintiff received an acknowledgement letter from DOJ's Office of Information Policy dated March 23, 2017, stating that the February 23, 2017 FOIA request was received on February 23, 2017, and assigning the request the tracking number DOJ-2017-002495.

11. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), DOJ was required to determine whether to comply with Plaintiff's February 23, 2017, FOIA request within twenty (20) working days after receipt of the request and to notify Plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination. Accordingly, DOJ's determination of the February 23, 2017, FOIA request was due by March 23, 2017, at the latest.

12. As of the date of this Complaint, DOJ has failed to: (i) determine whether to comply with Plaintiff's January 31, 2017, FOIA request and Plaintiff's February 23, 2017, FOIA request; (ii) notify Plaintiff of any such determinations or the reasons for such determinations; (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.

13. Because DOJ has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A) with respect to the January 31, 2017, FOIA request and the February 23, 2017,

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)

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

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

16. 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 January 31, 2017, FOIA request and February 23, 2017, FOIA request, and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests 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 requests; (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: January 31, 2018

Respectfully submitted,

/s/ Julie B. Axelrod  
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