



**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C)(i), and 28 U.S.C. § 1331, because this action arises under FOIA, and Plaintiff has exhausted its administrative remedies.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).
3. This Court has authority to award injunctive relief pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2202.
4. This Court has authority to award declaratory relief pursuant to 28 U.S.C. § 2201.

**PARTIES**

5. Plaintiff, with offices at [REDACTED], is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. Plaintiff's mission is to educate, promulgate, conciliate, and where necessary, litigate, to ensure that those rights are protected under the law. Plaintiff also regularly monitors governmental activity with respect to governmental accountability. Plaintiff seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. In furtherance of its dedication to the rule of law and public interest mission, Plaintiff regularly requests access to the public records of federal, state, and local government agencies, entities, and offices, and disseminates its findings to the public.
6. Defendant NSA is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1) and is headquartered at [REDACTED]. Defendant NSA is in control and possession of some of the records sought by Plaintiff.

7. Defendant ODNI is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1) and is headquartered at [REDACTED]. Defendant ODNI is in control and possession of some of the records sought by Plaintiff.

**FACTUAL ALLEGATIONS**

8. Plaintiff summarized its request to Defendant NSA as follows: “this Request seeks records pertaining to National Security Agency (“NSA”) officials’ input into the deliberations concerning the ‘Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333,’ their review of those procedures, their approval of those procedures, and their discussions with former Director of National Intelligence James Clapper who executed the procedures on December 15, 2016, and former Attorney General Loretta Lynch who executed the procedures on January 3, 2017, concerning the procedures and the timing of their completion and approval.” Pl.’s NSA FOIA Request Ex. A, 1.

9. Plaintiff summarized its request to Defendant ODNI as follows: “this Request seeks records pertaining to the Director of National Intelligence James R. Clapper’s input into the deliberations concerning the ‘Procedures for the Availability or Dissemination of Raw Signals Intelligence Information by the National Security Agency Under Section 2.3 of Executive Order 12333,’ his review of those procedures, his approval of those procedures, which he executed on December 15, 2016, and his discussions with former Attorney General Loretta Lynch, who approved and executed those procedures on January 3, 2017.” Pl.’s ODNI FOIA Request Ex. B, 1.

10. Plaintiff set forth a “Background” section in each request addressing, as contemplated in the applicable FOIA regulations of the respective Defendant agencies, “the date, title or name, author, recipient, subject matter of the record[s]” requested, to the extent known, 28 C.F.R. §16.3(b), 32 CFR 1700.5(a), and additional relevant contextual information, to the extent known, that contributed to the reasonableness of the records sought. 32 CFR 299.2(a)(1). *See* Pl.’s Exs. A-B, at 2, respectively (Pl.’s NSA and ODNI FOIA Requests). Said Requests are hereby incorporated as if fully set forth herein.

11. Plaintiff identified, in each of its FOIA requests, the specific records it seeks. Pl.’s Exs. A-B, at 3-5, respectively.

12. Plaintiff specified in each of its FOIA requests that the term “record” includes “any information” that qualifies under FOIA, 5 U.S.C. § 552(f), and provided a non-exhaustive list of types of information to be included in the term “record.” *See* Pl.’s Exs. A-B, at 3, respectively.

13. Plaintiff further specified in each of its FOIA requests the applicable definitions of the terms “briefing,” “DOJ official,” “NSA official,” and “ODNI official.” Pl.’s Exs. A-B, at 3, respectively.

14. Plaintiff specified in each of its FOIA requests that, unless otherwise indicated, the timeframe of records requested herein is November 7, 2016, to January 20, 2017. Pl.’s Exs. A-B, at 3, respectively.

15. In each of its FOIA requests, Plaintiff requested that the Defendant agencies support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index. Pl.’s Ex. A-B, at 6.

16. In each of its FOIA requests, Plaintiff asserted its entitlement to expedited processing and a waiver of all associated fees, as explained in a memorandum accompanying each request and

referenced therein, and reserved its right to appeal any agency withholding of records and/or any agency denial of Plaintiff's requests for expedited processing and a waiver of fees. Pl.'s Exs. A-B, at 6, respectively.

17. Plaintiff sent its NSA FOIA request to Defendant NSA's FOIA/PA Office. *See* Pl.'s Ex. A, at 1.

18. Plaintiff sent its ODNI FOIA request to Defendant ODNI's Director, Information Management Division. *See* Pl.'s Ex. B, at 1.

19. Both Defendant agencies received Plaintiff's FOIA request letters on February 24, 2017, as indicated by the Federal Express delivery notification emails and proof of delivery confirmation forms.

20. On March 8, 2017, Defendant NSA notified Plaintiff by letter that its request for expedited processing had been denied, and that Plaintiff's FOIA request had been assigned Case number 101004. In this same letter, Defendant NSA notified Plaintiff that it does "not know if there will be assessable fees. Therefore, we have not addressed your fee category or your request for a fee waiver at this time."

21. Attached to Defendant NSA's letter of March 8, 2017, is Plaintiff's FOIA request with a date stamp of March 1, 2017 and the word "Rec'd" indicating that NSA received Plaintiff's FOIA request on March 1.

22. Defendant NSA did not notify Plaintiff, within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of Plaintiff's request, of Defendants' determination and the reasons therefor.

23. Defendant NSA did not inform Plaintiff, within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of Plaintiff's request, of the scope of the documents Defendant NSA had determined it would produce.

24. Defendant NSA did not inform Plaintiff, within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of Plaintiff's request, of the scope of the documents Defendant NSA had determined it would withhold under any FOIA exemptions.

25. Defendant NSA did not inform Plaintiff of any unusual circumstances requiring an extension of the 20-day time period referenced in the three preceding paragraphs.

26. In a letter dated March 10, 2017, Defendant ODNI informed Plaintiff that it received Plaintiff's FOIA request on March 1, 2017, and that all fees associated with the processing of Plaintiff's FOIA request have been waived. In this same letter, Defendant ODNI denied Plaintiff's request for expedited processing.

27. Defendant ODNI did not notify Plaintiff, within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of Plaintiff's request, of Defendants' determination and the reasons therefor.

28. Defendant ODNI did not inform Plaintiff, within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of Plaintiff's request, of the scope of the documents Defendant ODNI had determined it would produce.

29. Defendant ODNI did not inform Plaintiff, within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of Plaintiff's request, of the scope of the documents Defendant ODNI had determined it would withhold under any FOIA exemptions.

30. Defendant ODNI did not inform Plaintiff of any unusual circumstances requiring an extension of the 20-day time period referenced in the three preceding paragraphs.

31. Plaintiff also separately sent its FOIA request to the Department of Justice (DOJ), which by letter of March 17, 2017, acknowledged receipt of Plaintiff's FOIA request and informed Plaintiff of "unusual circumstances" requiring extension of the time limit to respond beyond the ten additional days provided by statute.

**CAUSE OF ACTION**

**COUNT I**

**Violation of the Freedom of Information Act, 5 U.S.C. § 552**

32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 31 of this Complaint as if fully stated herein.

33. The federal FOIA establishes a 20-day deadline by which a federal agency must make and issue a determination regarding compliance with a request for records made pursuant to the statute. 5 U.S.C. § 552(a)(6)(A)(i).

34. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendants were required to determine whether to comply to Plaintiff's request within twenty (20) days, excepting Saturdays, Sundays, and legal public holidays. Pursuant to this same provision, Defendants also were required to notify Plaintiff immediately of such determination and the reasons therefor.

35. Pursuant to 5 U.S.C. § 552(a)(6)(A), the 20-day period commenced on March 1, 2017, for Defendant ODNI. Excluding weekends, Defendant ODNI was required to make its determination and provide Plaintiff with the requisite notifications by March 29, 2017.

36. Pursuant to 5 U.S.C. § 552(a)(6)(A), the 20-day period commenced on March 1, 2017 for Defendant NSA. Excluding weekends, Defendant NSA was required to make its determination and provide Plaintiff with the requisite notifications by March 29, 2017.

37. As of the date of this Complaint, Defendants have failed to notify Plaintiff of any determination, or the reasons therefor.

38. As of the date of this Complaint, Defendants have failed to produce any records responsive to Plaintiff's requests, indicate when any responsive records will be produced, or demonstrate that responsive records are exempt from production.

39. Defendants have not requested information from the Plaintiff that would toll the 20-day period as contemplated by 5 U.S.C. § 552(a)(6)(A)(i)(I).

40. FOIA permits a federal agency, in unusual circumstances, to extend the 20-day response deadline for a period not to exceed ten (10) additional working days. 5 U.S.C. § 552(a)(6)(B).

41. Defendants have not asserted the existence of any "unusual circumstances." As such, Defendants have not implicated the tolling provision set forth in 5 U.S.C. § 552(a)(6)(B)(i).

42. There are no "unusual circumstances" that justify Defendants' prolonged delay in responding to Plaintiff's lawful FOIA requests.

43. Plaintiff has a statutory right to have Defendants process Plaintiff's FOIA requests in a timely manner and in accordance with the requirements set forth in 5 U.S.C. § 552(a)(6).

44. Defendants are unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

45. FOIA provides a cause of action for a complainant from whom a federal agency has withheld requested records. 5 U.S.C. § 552(a)(4)(B).

46. Through their continued delay and failure to properly respond to Plaintiff's lawful request for records, and their improper withholding of such requested records, Defendants have failed to comply with FOIA's prescribed deadlines for responding to a request for records and has violated Plaintiff's statutory rights.



47. Pursuant to 5 U.S.C. § 552(a)(6)(C), because Defendants failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to its FOIA requests.

48. Plaintiff is being irreparably harmed by reason of Defendants' unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to conform their conduct to the requirements of the law.

### **PRAYER FOR RELIEF**

49. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendants NSA and ODNI, and provide Plaintiff with the following relief:

- (a) An Order that Defendants issue a determination and that Defendants shall conduct a diligent search for any and all records responsive to Plaintiff's FOIA request and demonstrate that they employed reasonable search methods most technologically likely to lead to the discovery of records responsive to Plaintiff's FOIA request, selected from among those methods available to Defendants;
- (b) An Order that Defendants 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;
- (c) An Order enjoining Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests;
- (d) A declaratory judgment that Defendants' actions violated Plaintiff's statutory rights under 5 U.S.C. § 552;
- (e) An Order awarding to Plaintiff its reasonable attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and,
- (f) An Order granting to Plaintiff all further relief to which Plaintiff may be entitled.

Dated: April 12, 2017

Respectfully submitted,

THE AMERICAN CENTER FOR LAW AND JUSTICE

*/s/ Abigail A. Southerland*

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