

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JACQUELINE STEVENS, Pro Se,	)	
	)	
Plaintiff	)	
	)	18 C 5391
v.	)	
	)	Judge Andrea R. Wood
UNITED STATES AGENCY FOR	)	
GLOBAL MEDIA, ET AL.,	)	
	)	
Defendant	)	

PLAINTIFF'S STATUS REPORT

OVERVIEW

On August 8, 2018, after federal agencies failed to produce all documents responsive to 29 requests for information, plaintiff, pro se, filed a complaint seeking injunctive relief pursuant to the Freedom of Information Act (FOIA) 5 U.S.C. § 552.<sup>1</sup> A status hearing was held on October 10, 2018. The Assistant U.S. Attorney (AUSA) suggested that the large number of requests across 12 agencies provided grounds for the delay. He further stated that the agencies were working on their responses. Plaintiff stated that precisely because her 29 requests were spread across 12 agencies, no one agency was excessively burdened. Referencing the specific statutory time frames obligating the government to produce responsive documents, plaintiff expressed her frustration that several agencies had still produced no documents responsive to her request and

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<sup>1</sup> The first named defendant on the lawsuit, U.S. Broadcasting Board of Governors, has changed its name to United States Global Media. <https://www.bbg.gov/>.

her concern about agency foot-dragging as a strategy to avoid accountability in real-time.

The AUSA requested a new status hearing in 60 days. In response to a request of the court that the responses be completed prior to the next status hearing, the plaintiff understood the AUSA to indicate that this would occur. (Please note that the Mr. Prashant Kolluri, the AUSA on record for this case, was not present for this hearing and states in an email to plaintiff of December 7, 2018 that his colleague made no such commitment to the court.)

A second status hearing was held on December 6, 2018, *120 days after the complaint was filed*. The Defendant stated that the litigation was for 25 cases across 12 agencies. He stated for *five cases* defendant agencies had produced zero documents responsive to plaintiff's requests. He provided estimates of early 2019 for providing documents for these five cases.

Plaintiff stated only two cases were closed. She explained her concern that a large number of the responses were represented by the agencies as complete and final, but the responses were demonstrably missing copious categories of documents. She indicated that as a result of this, she would be unable to provide timely information to representatives of the media, including about Southwest Key, a non-profit that had its fraudulent business dealings reported in the recent Sunday *New York Times*.<sup>2</sup> The contracts and associated materials she requested would be of great interest to the public but she was unable to convey it in her ongoing interviews with the news media.<sup>3</sup> Plaintiff also referenced another request made to the Department for Health and Human Services (DHHS) to which the only response was a link to a public website. She stated that none of the contracts with a dentist in Austin reassessing juvenile ages were released.<sup>4</sup>

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2 Kim Barker, Nicholas Kulish, Rebecca Ruiz, "He Built an Empire with Detained Migrant Children as Bricks," *New York Times*, December 2, 2018. <https://www.nytimes.com/2018/12/02/us/southwest-key-migrant-children.html>

3 Plaintiff uses the requested documents for her own scholarly research; the timeline of this is months or years. In the meantime, she frequently releases time-sensitive to journalists in interviews and through her blog "States Without Nations," <https://stateswithoutnations.blogspot.com/>.

4 See Complaint, Doc. 1, ¶¶ 44-57 for DHHS requests.

She gave as another example a supposedly "final response" from Immigration and Customs Enforcement that included just six pages of screenshots from a database, even though the actual records responsive to plaintiff's request should number well above 100 pages.<sup>5</sup> Plaintiff stated that these agencies were simply withholding responsive documents and not indicating any privileged exemption for their failure to produce them.<sup>6</sup> Plaintiff stated that she had been sending emails to the AUSA on receipt of productions missing documents as soon as she had reviewed them, and that she had noted omitted fields and missing documents.

Judge Wood asked plaintiff if she knew the number of documents she had received. Plaintiff stated that the number varied across agencies and she did not know the answer to this question.

The defendant stated that the AUSA was in conversations with the agencies about the discrepancies plaintiff noted.

Judge Wood provided the AUSA of a deadline of January 25, 2019 for the production of all responsive documents and a log indicating specific privileges asserted for documents not produced. The plaintiff understood this to mean that each document not produced would require a specific exemption, but that the court was not requiring a Vaughn index for redactions within documents or a list of components searched.

(Please note that the AUSA, Mr. Kolluri, disagrees with plaintiff's interpretation of Judge Wood's request. He stated in an e-mail to plaintiff that he will ask agencies to "provide a brief description of the categories of documents that have been withheld, the applicable FOIA exemption(s), and a short basis for the withholding." The specifics of the log requested are not in Judge Wood's written order of December 7, 2018.)

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<sup>5</sup> See Complaint. (Doc. 1, ¶¶ 86-91).

<sup>6</sup> Plaintiff had in mind in particular the productions from United States Citizenship and Immigration Services of the contract for General Dynamics (Doc. 1, ¶¶ 138-140) and the copious missing documents for the production from U.S. (Doc. 1, ¶¶ 168-178). She does not recall if she detailed these in court.

In an email of December 7, 2018, the AUSA requested plaintiff “identify in a single email every FOIA request that an agency or I have represented to you is complete (or fully processed) that you believe is not the case...” To more fully clarify plaintiff's concerns and to establish a record for a contemplated amended complaint, plaintiff is responding to this request of the AUSA with this status report. The purpose of this status report is to state a complaint about the government's failure to enforce the law and to track the responses to date from defendants and to note plaintiff objections to responses for 27 of the 29 cases indicated in her complaint. It states her disputes with the characterization first of the law, and second her concerns about the facts developed in the course of this proceeding.

#### LEGAL STATUS AND OBJECTIONS

The sole purpose of 5 U.S.C. § 552 is to obligate federal agencies to release responsive documents within 20 days, except in the event of “unusual circumstances” or events the statute characterizes as “exceptional.” The statute includes no exceptions for agency claims of insufficient staff, presumably anticipating that agencies will turn to Congress if they need additional funding to carry out their mandates. No such requests were indicated by the AUSA.

Mr. Kolluri, the AUSA representing the defendant agencies, responded to plaintiff's concerns by stating the policy analysis was above his pay grade. Mr. Kolluri repeatedly has referenced staffing difficulties as the explanation for the delay, even though there is no statutory basis for this excuse for failing to provide responsive documents in the legally mandated time frames. There is no evidence in the record that this is the case, nor, more importantly, budget requests for additional appropriations from Congress for agency FOIA operations; nor are there any other grounds for objecting to an immediate order for the injunctive relief plaintiff seeks.

Not all operations of federal agencies have specific statutory mandates. Agencies therefore should be expected to prioritize those operations about which Congress has taken a special interest. If there are insufficient funds to respond to requests for information from U.S. citizens, the problem is the agency's allocation of resources, not the volume of requests. Components of federal agencies have offices with much greater demands for administrative attention and fund them accordingly. If the Department of Justice (DOJ), for instance, is short of funds for its FOIA functions, then it must move resources from its discretionary activities, e.g., the operations of its public affairs office or its discretionary decisions to fund litigation against states and cities that have a different view of the Constitutional rights of noncitizens. In other words, there is evidence that agencies have the funds necessary for their *mandatory* FOIA case work but are instead dedicating these funds to discretionary activities not mandated by Congress. When AUSAs and courts defer to agency priorities that are different from the priorities Congress mandates, this defeats democratic self-governance.

Plaintiff is concerned that the U.S. government is selectively administering and enforcing the law. The obligations of the FOIA are no less specific or binding -- the word "shall" is used -- than the obligations to implement other actions Congress directs. Despite the mandatory nature of the FOIA, the government and often judges treat this one law as amenable to rote, routine evasion, even though it is arguably the law whose enforcement is the most necessary to the good operation of government in a democracy. The text of the FOIA clearly states an obligation on agencies to provide documents for the purpose of near real-time agency accountability, not history lessons. There is exactly one equity ultimately protected by the FOIA statute: citizens' ability to hold accountable the federal government *in a timely fashion*. At some point, all documents will be made public. The timing of the release of information is the only controversy.

Claims of privacy, national security, and so forth lose their force to history, per the curiosity of our descendants to which contemporary congresses defer in their mandates of record releases in decades hence.

The AUSA advises plaintiff that the government FOIA offices are overburdened. He informs plaintiff, "No one is blowing you off." Based on the vast discrepancies between the statute's explicit preoccupation with deadlines and its implementation by government agencies, plaintiff begs to differ. The statute's section on deadlines begins with a sentence from the law's amendment in 2016:

(I) Except as provided in subclause (II), an agency shall not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) under this subparagraph if the agency has failed to comply with any time limit under paragraph (6).<sup>7</sup>

Para 6(A) was amended in 2016 to clarify the burden of the agency in making an initial response states:

Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, *shall*—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request of -

(I) such determination and the reasons therefor;

(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

(III) in the case of an adverse determination –

(aa) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services;<sup>8</sup> |

The following language is from the 2016 amendment specifying the nature of these responses. It

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<sup>7</sup> 5 U.S.C. § 552, as amended (2016), <https://www.justice.gov/oip/freedom-information-act-5-usc-552>, emphasis added.

<sup>8</sup> *Ibid.*, emphasis added.

states in part that the Government "*shall immediately* notify the person making such a request of (I) such determination *and the reasons therefor*" (emphasis added).

Further, Congress has specified narrow grounds for tolling the deadline:

(I) ...the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section.

or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the *agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.* (Emphases added.)

This clause is relevant to the failure of ICE and State to produce responsive documents after plaintiff responded to their requests for clarification.

Concerning timelines, the FOIA further states:

(II)(aa) If an agency has determined that ***unusual circumstances*** apply (as the term is defined in paragraph (6)(B)) and the agency provided a timely written notice to the requester in accordance with paragraph (6)(B), ***a failure described in subclause (I) is excused for an additional 10 days.*** If the agency fails to comply with the extended time limit, the agency may not assess any search fees (or in the case of a requester is described under clause (ii)(II) of this subparagraph, duplication fees).<sup>9</sup>

10 *days* for an extension, not ten weeks or months! Further highlighting that time is of the essence, Congress allows only 30 days for filing an answer to a complaint, not the normal 60 days available under the Federal Rules of Civil Procedure for most other suits against the federal government.

Further, whereas the agency asserts a delay or a need to limit a request because a document review would be "voluminous," the statute focuses on this only as a basis for assessing additional fees and not as grounds for not conducting the search :

(bb) If an agency has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, an agency may charge search fees (or in the case of a requester described under clause (ii) (II) of this subparagraph, duplication fees) if the agency has provided a timely written notice to the requester in accordance with paragraph 6(B) and the agency has discussed with the requester via written mail,

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<sup>9</sup> *Ibid.*, emphasis added.

electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with paragraph (6)(B)(ii).

Any further delay must be justified on grounds of "exceptional circumstances" *as ordered by a court*. The statute indicates that "Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C)." There must be a request to "reasonably modify the request or arrange an alternative time frame," to trigger the delay on grounds of "exceptional circumstances." Two cases in this complaint reasonably may be construed to trigger this; but for the rest, according to the AUSA, the grounds of delay are simply a normal, entirely unexceptional, inept officialdom that has failed to allocate resources to carry out the duties Congress mandated. Moreover, "exceptional circumstances" allow for a delay, not for failing to search or refusing to provide responsive documents in any time frame without notice or explanation, including after plaintiff specified missing documents.

Further, this section states, "To aid the requester, each agency *shall make available its FOIA Public Liaison, who shall assist* in the resolution of any disputes between the requester and ~~the agency~~ **the agency, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services**" (as amended, 2016). The word "shall" obligates the agency to perform the actions indicated. And yet the case histories as noted in the Complaint, indicate that numerous efforts to engage FOIA officers were unsuccessful, and confirm that OGIS interventions were *pro forma* and did not assist in resolving any disputes.<sup>10</sup> Responsive documents that Congress mandated be released within 20 days were released in this case months or years later, only following litigation. Journalists have personally informed plaintiff that in response to this pattern and practice of agencies disregarding FOIA

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<sup>10</sup> See Complaint, Doc. 1, ¶¶ 18, 181, 182, 185, 189.



requests, in particular Customs and Border Protection (CBP), the Federal Bureau of Investigation (FBI), ICE, and the Department of State (DOS), these reporters have abandoned filing FOIA requests.

The Department of Justice (DOJ) attorneys who litigate these cases are well aware of these patterns and practices. However, instead of assisting in the enforcement of a law passed by Congress, the DOJ is co-dependent with agencies and enabling them in making excuses for flaunting the law, including the DOJ itself and agencies housed within it, as is evident in this Complaint.

#### FACTUAL CASE STATUS

Here is a list of each of the 29 cases and a summary of the items received and those outstanding.

##### **A. BBG FOIA Case No. 16-046-1, D3 Systems Inc.**

Defendant asserts that it has provided a final response. However, it is withholding 1,062 pages in their entirety based on an assertion of commercial privilege, (“trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b) (4)). Plaintiff disputes the adequacy of the production and the legality of the rationale for withholding responsive documents. In particular, the assertion is unlawful because it is conclusory; moreover, the nature of the documents under government control are expressly covered by the FOIA.

*Plaintiff requests the release of portions of responses documents with segregable information that may be released and a detailed account of the basis for asserting exemptions under b (4).*

**B. BIS FOIA Case No. DOC-BIS-2017-001364.** "Offsets in Defense Trade" annual reports.

Plaintiff has received no response to her appeal nor further responsive documents.

**C. BIS FOIA Case No. DOC-BIS-2017-001365,** Appendices to BIS annual reports "Offsets in Defense Trade." Plaintiff has received no response to her appeal nor further responsive documents following her appeal.

**D. BIS FOIA Case No. DOC-BIS-2017-001366,** Data entry protocols used for the production of the "Offsets on Defense Trade" reports. Plaintiff has received no response nor further responsive documents following her appeal.

On October 3, 2018, Mr. Kolluri in an e-mail stated that the Department of Commerce Bureau of Industry and Security (BIS) would send plaintiff responses to the three appeals indicated in the complaint within 14 days. No responses have been received.

*For B-D, plaintiff requests all responsive documents.*

**E. HHS FOIA Case No. 18-F-0210,** Contracts and correspondence with David Senn and ICE practices for age assessments.

No correspondence or contracts with David Senn have been produced; a link to a website was provided as a "partial response."

*Plaintiff requests all responsive documents.*

**F. HHS FOIA Case No. 18-F-0211,** HHS ORR contracts with Southwest Key Programs age assessments. A "partial response" has been provided. It consists of portions of contracts with improper redactions.

*Plaintiff requests all responsive documents and the review of the items released for removal of improper redactions.*

**G. CBP FOIA Case No. CBP-2018-068519,** Request for records for Jennifer Marenette. No

responsive documents.

*Plaintiff avers a production has been made and that this case is closed, notwithstanding portions that were improperly redacted.*

**H. ICE FOIA Case No. 2018-ICFO-25719**, PLAnet records of claims to United States citizenship. On June 1, 2018, ICE sent a 36-page pdf of a spreadsheet produced from a database. Plaintiff in her appeal to ICE and in several communications with the AUSA has pointed out to that the production is incomplete and that the database is missing responsive fields, including the dates and the outcomes of the cases tracked.

On October 3, 2018, ICE through its attorney averred that its response of 36 pages was a final response.

*Plaintiff is seeking all responsive documents*, including screenshots indicated in her original request, as well as a new spreadsheet that includes all field outputs for the PLAnet database. She further is requesting that the response be updated so that it provides information through “the present,” as indicated in her original request.

**I. ICE FOIA Case No. 2018-ICFO-26000**

Private contractor use of detainee labor. No responsive documents produced.

*Plaintiff seeks responsive documents.*

**J. ICE FOIA Case No. 2018-ICFO-34217**, Request for records for Ramatu Kiadii-Soko was submitted on May 4, 2018.

No responsive documents have been produced.

*Plaintiff seeks responsive documents.*

**K. ICE FOIA Case No. 2018-ICFO-34225**, Request for records for Manuel Herrera-Diego.

Prior to litigation, plaintiff received from ICE just six pages of screenshots from a database and

not the underlying documents, nor copious other materials responsive to her request, even though her initial request flagged previous productions along these lines as in violation of 5 U.S.C§ 552. (Doc. 1, ¶¶87-91). During the pendency of litigation, no additional documents have been produced.

*Plaintiff continues to seek all documents responsive to her request, as stated in the Complaint:*

All system records and other items maintained, produced, or distributed by ICE pertaining to Manuel A.Herrera Diego. His "alien number" 021-178-645. He was born in Honduras. His date of birth is [REDACTED]. I am interested in all system records pertaining to Mr. Herrera-Diego and all ICE correspondence with other government agencies, individuals, or attorneys pertaining to Mr. Herrera-Diego. Please include as well: (1) All records of all grievances filed by Mr. Herrera-Diego orally or in writing and under the control of ICE or its components, including county jails or private prisons with which ICE has contracted; (2) Commissary account data, including but not limited to information tracking funds reimbursed to him on his release; (3) All correspondence, notes, and other records pertaining to his assertion of U.S. citizenship. (Doc. 1, ¶ 86).

**L. ICE FOIA Case No. 2018-ICFO-36215**, Request for records for Arthur Godfrey.

The situation is identical to the one above. (Doc. 1, ¶¶ 92 -96.)

*Plaintiff continues to seek all documents responsive to her request.*

All system records and other items maintained, produced, or distributed by ICE pertaining to Arthur Godfrey. His "alien number" 031-447-509. He was born in Guyana. His date of birth is [REDACTED]. I am interested in all system records pertaining to Arthur Godfrey and all ICE correspondence with other government agencies, individuals,

or attorneys pertaining to him as well. Please include as well: (1) All records of all grievances filed by Mr. Godfrey orally or in writing and under the control of ICE or its components, including county jails or private prisons with which ICE has contracted; (2) Commissary account data, including but not limited to information tracking funds reimbursed to him on his release; (3) All correspondence, notes, and other records pertaining to his assertion of U.S. citizenship; (4) Screen shots of all tabs for interfaces to databases consulted for responsive records, including but not limited to PLAnet.

**M. ICE FOIA Case No. 2018-ICFO-46983**, Infectious Disease at Polk County Jail.

No responsive documents have been produced. Defendant has stated a production will be forthcoming in January, 2019.

*Plaintiff seeks all responsive documents.*

**N. ICE FOIA Case No. 2018-ICFO-46999**, New ICE facility at Conroe.

On August 15, 2018, one week after plaintiff filed her complaint referencing this case, ICE sent an email stating in relevant part, "This request is extremely voluminous. Can you please narrow down the content of your search? The search and processing for these documents would be extremely time consuming and costly."

Plaintiff replied immediately, stating in part:

Please note that earlier this week ICE and the DOJ received by certified mail copies of a FOIA complaint I filed in the Northern District of Illinois on August 8, 2018 that includes this request. If you would like to provide an immediate release of all email responsive to my request in partial fulfillment of my request, I would appreciate this. The email below provides no specific information as to why you find the request "voluminous" nor a legal basis for requiring that I limit my request, nor any logical grounds for me to do so. Please note that the topics about which I inquired are of great interest to the public and your response is well past the statutory deadline.

*Plaintiff seeks a response to her request.* Please note that the request includes a number of specific documents about which there can be no confusion. None of these have been produced.

- 1) The Request for Proposals, including all questions and answers, attachments, and correspondence;
- 2) All bids, including attachments and related correspondence;
- 3) The contract with GEO, including but not limited to the Scope of Work , performance evaluation standards, and all details for the detainee work program;
- 4) All communications about the logistics of relocating detainees currently held in other locations to the new GEO facility;
- 5) All correspondence to and from OPLA about the opening of the new facility in Conroe;
- 6) All correspondence to and from OPLA about the closing of facilities in the region, including but not limited to Polk County;
- 7) All communications between ICE acquisitions officers or other ICE officials and officials of Polk County;
- 8) All communications with GEO and its subcontractors about the design and building of the new facility, including but not limited to land purchases.

**0. ICE FOIA Case No. 2018-ICFO-47097**, Grievance logs at Polk (Jan. 1, 2018 to present).

On December 4, 2018, the AUSA indicated that the agency stated this production was complete.

Plaintiff has no responsive documents.

*Plaintiff seeks responsive documents.*

**P. ICE FOIA Case No. 2018-ICFO-47101**, Grievance logs at Polk (Jan. 1, 2016 to Dec. 31, 2017).

On December 4, 2018, the AUSA indicated that the agency stated this production was complete.

Plaintiff has no responsive documents.

*Plaintiff seeks responsive documents.*

**Q. ICE FOIA Case No. 2018-ICFO-50378**, Request for records for Jennifer Marenette.

On October 4, 2018, Plaintiff received communications indicating that 604 pages responsive to her request had been identified and that 515 pages would be released after having been redacted. However, only 285 pages were included in the pdf. Moreover, the redactions are far in excess of those permitted by law. She possesses similar releases with similar information that was not redacted in this fashion. The government cannot bear its burden to show these redactions were done in conformity with the statute and precedents.

*Plaintiff seeks additional pages indicated in the cover letter; all responsive documents, and a reconsideration of redactions.*

**R. USCIS FOIA Case No. COW2018000623, Northwestern University E-Verify data** -- responsive information received with fields missing. USCIS states this is a "final response." On November 9, 2018, plaintiff via email advised defendant's attorney of missing fields. ("I need \*all the fields and all the dates\* except those with PII--including but not limited to requests for more information, responses, dates of final authorization, and responses with characterization of how case was closed after USCIS informs NU of noneligibility, and dates for this.")

On December 4, 2018 by phone she reiterated her concern about the incomplete nature of the response. In response, the AUSA indicated that this response was "final" and that no further fields or documents would be included.

*Plaintiff seeks all information responsive to her request, including an output with the fields indicating dates and decisions for cases without verification, per the E-Verify mandatory protocols.*

**S. USCIS FOIA Case No. COW2018000625**, Universities providing E-Verify information.

*Plaintiff received responsive documents after the complaint was filed and avers this case is closed.*

**T. USCIS FOIA Case No. NRC2018074108**, Request for records for Manuel Herrera-Diego.

No responsive records have been produced. On December 4, 2018, AUSA stated that the records will be produced within 60 days.

*Plaintiff seeks all responsive records.*

**U. USCIS FOIA Case No. NRC2018074187**, Request for records for Ramatu Kiadii-Soko--

On September 30, 2018, USCIS sent plaintiff a production of 687, of which 152 pages were referred to ICE.

*Plaintiff stipulates that that the USCIS production is complete and will not object to improper redactions.*

**V. USCIS FOIA Case No. NRC2018079441**, Request for records for Arthur Godfrey

The AUSA on December 4, 2018 stated USCIS fulfilled request and that this case is closed.

Plaintiff has received no responsive documents.

*Plaintiff seeks responsive documents.*

**W. USCIS, General Dynamics Contract, assigned case no. CNT2018000017 on October 18, 2018, after litigation commenced**

On October 18, 2018, USCIS sent plaintiff 137 pages released in their entirety and 216 pages released in part. The cover letter incorrectly states the date on which the agency received plaintiff's request was August 9, 2018. Plaintiff can prove that the true date USCIS received plaintiff's request was May 22, 2018.

Plaintiff has advised the AUSA that the response is missing numerous documents and is improperly and excessively redacted, especially for assertions of b (4) privileges. The agency



assertion of its efforts to locate documents was not designed to search in places the records were most likely to be located.

Furthermore, plaintiff can show similar documents without the price information redacted and also submissions by General Dynamics and competitors to contract review agencies in which the companies and the government release to the public information redacted in this production.

Plaintiff notes as well the vast discrepancy between the scope of the production and redactions for the USGS contract information and documents and the production of similar materials by USCIS for the USCIS IT contract with General Dynamics.<sup>11</sup>

*Plaintiff seeks all documents responsive to her original request.*

The initial Scope of Work, attachments, renewals, and email associated with the contract to General Dynamics with Award ID HSSCCG07J00120 and IDV HSHQDC06D00024, with additional details available. Here:

<https://www.fpds.gov/common/jsp/LaunchWebPage.jsp?command=execute&requestid=87789429&version=1.5>

#### **X. USGS FOIA Case No. 2018-00160, Request about Northwestern University Contracts**

The AUSA on December 4, 2018 asserted that the production is complete.

Since litigation commenced USGS has produced additional responsive documents. The USGS is to be commended for its productions of contractual documents that comply with the FOIA and illuminate the deficiencies of the other agencies.

*Plaintiff avers this production is largely complete but appears to be missing referenced*

*communications. Plaintiff requests only underlying communications on which email of*

*December 14, 2016 referencing “staffing changes” is based -- See p. 3 of “Interim Response 3”*

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<sup>11</sup> See General Accounting Office, *Matter of General Dynamics Information Technology*, B-415568; B-415568.2, January 25, 2018, <https://www.gao.gov/assets/690/689911.pdf>, p. 5. Moreover, presumably competitors have access to information redacted in the contract or appeals such as this one could not be filed.

and USGS file name “2018-00160 - 725 Records (6 pages).”

**Y. DOJ FOIA Case No. DOJ-2017-006478.** Requesting names of authors of memorandum mandating case load quotas for immigration judges.

On November 21, 2018, plaintiff received 22 pages of documents responsive to her request.

On December 4, 2018, the AUSA stated that the production was complete.

However, the production does not include key information requested by the plaintiff and withheld in violation of the FOIA. The cover letter states, “The Office of Public Affairs was consulted in preparing this release.” The passive voice is a problem. Consulted by whom? The production is missing the initial policy draft and instructions from someone outside the Office of Public Affairs to the individuals in the OPA whose correspondence was released.

*Plaintiff requests the correspondence from outside the OPA to officials in the OPA.*

**Z. FBI FOIA Case No. 1404050-000.** This is a request for records Northwestern University biotechnology development contracts. In cover letter dated November 16, 2018, the FBI represented the production as a “final response.” The production also included a privilege log stating “90 pages were reviewed and 50 pages are being released.” The privileges asserted were b (3), b (4), and b (6). The assertions failed to reference the nature of any of the withheld documents and were entirely conclusory.

After a review of the contract produced, on 11/27/2018 plaintiff sent an email to the AUSA:

The recently received FBI production and cover letter address only a small portion of the documents requested. The 50 pages withheld in their entirety a) seem to be only associated with the Northwestern contract; b) understate the number of responsive pages associated with the Northwestern contract withheld; and c) disregard the balance of my

request as indicated in the Complaint: "I write under the Freedom of Information Act to obtain: (1) a copy of the Request for Proposals associated with this procurement number, and all related attachments and communications with the public, including but not limited to interested potential contractors; (2) all draft and final proposals responsive to this RFP; (3) All materials related to an increase in the contract amount from \$1,036,987 to \$1,924,321, including email, new bids, and changes in technical requirements... The Request for Proposals and its associated communications are not included nor is any communication with NU or other bidders. (If it is a single source contract, the RFP will indicate this.) Referenced "attachment A" also is omitted. The response also includes no email or other records of communications and assessments of the contract, modifications, and evaluations even though the contract itself references anticipated e-mail.

Plaintiff then conducted research for the project referenced in the contract online and sent a second email referencing stating she had uncovered further evidence of withheld documents on a federal government website:

It appears as though the contract is responsive to this RFP -- the FBI contract references IARPA as the origin. If this is correct, then all of this should have been produced, along with all the other materials indicated in this package. I found all this through this interface: <https://www.iarpa.gov/index.php/research-programs/bic> Note that the ODNI is participating in the review, per the RFP indicated here. And please note as well that Northwestern is indicated as a participating university and the scope of work and time frame match those in the documents I received.

The AUSA replied that he would follow up with the agency. No further document or explanation was received.

*Plaintiff requests all responsive documents, including but not limited to those referenced in the correspondence above.*

**AA. OJP FOIA Case No. 17-00208**, Bureau of Justice Statistics ("BJS") grant management, system output protocols for SCAAP.

No responsive documents have been received. On December 4, 2018, the AUSA stated that responsive documents would be produced in about two weeks.

*Plaintiff seeks all responsive documents.*

**AB. DOS FOIA Case No. F-2018-00851**, Passport Management Protocols from 1993 to present.

On December 10, 2018, plaintiff received an e-mail with a heading indicating that the State Department was providing documents responsive to the first of the three parts of her requests. This is the first production of responsive documents. Parties are negotiating the scope of the response to a second part of the request based on a second e-mail also received on December 10, 2018.

*Plaintiff will review and provide further guidance after the submission of this status report.*

**AC. USAID FOIA Case No. F-00040-16**, Northwestern USAID request, submitted October 18, 2015 –

Plaintiff received a “final response” on August 30, 2018. Plaintiff then notified the AUSA about her concerns that large numbers of document responsive to her request were missing. On September 20, 2018 USAID produced an additional 80 pages. However, responsive documents and email were still missing and the redactions based on assertions of proprietary information were not consistent with the FOIA and case law, USAID's assertions to contrary notwithstanding.

On October 1, 2018, plaintiff sent the following e-mail to the AUSA, including evidence

that USAID was withholding responsive documents. She pointed out specific components likely to have responsive documents that were not searched:

Dear Prashant,

Thank you for this update.

Please note that there are several additional components that would appear to have responsive documents. Based on the list you have provided today, USAID has failed to task these with my request. I am therefore calling into question the adequacy of the search.

Please note that one component clearly involved with the mini-MBA program is USAID's managing the mini-MBA program with Northwestern is the West Bank/Gaza office, which is omitted among those USAID lists.

<https://www.usaid.gov/sites/default/files/documents/1883/11052013-fact-sheet-mini-mba.pdf>

The West Bank/Gaza Office is part of the Office of Middle East Affairs, which is within the Bureau for the Middle East. Not only are these offices omitted from the list of components tasked for a records search, but the Bureau for the Middle East contains several other offices likely to have responsive records. A [sic]

I would appreciate it if USAID would contact them to obtain information responsive to my request. The components that should have been searched but USAID admits were not include at the very least:

Office of the Assistant Administrator

Office of Middle East Affairs

Office of Strategic Planning Operations

Office of Technical Support

Administrative Management Services

No further documents have been produced and no representation has been made that these components have been searched.

*Plaintiff seeks an adequate search and all responsive documents*, as well as the review of unlawful redactions, especially those asserted under b (4) and b (6).

Conclusion

The defendant agencies have failed to produce records responsive to the FOIA statute; they also have improperly withheld and redacted documents responsive to plaintiff's requests.

The agency staffing excuses shared with plaintiff are not lawful.

Respectfully submitted,

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