

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

EQUITY FORWARD, 85 Broad Street New York, NY 10004)	
)	
)	
)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 18-cv-1815
)	
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, 200 Independence Avenue SW Washington, DC 20201)	
)	
)	
<i>Defendant.</i>)	
)	

COMPLAINT

1. Plaintiff Equity Forward brings this action against the U.S. Department of Health and Human Services under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, Equity Forward is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from

continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff Equity Forward is a watchdog project that seeks to hold accountable groups and individuals who are actively working to deny people access to reproductive health care services. Through research and FOIA requests, Equity Forward uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government regarding reproductive health through its own public information campaigns and dissemination of information to other public interest groups.

6. Defendant the U.S. Department of Health and Human Services (HHS) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HHS has possession, custody, and control of the records that Equity Forward seeks.

STATEMENT OF FACTS

7. On May 31, 2018, Equity Forward submitted a FOIA request to HHS seeking access to the following records:

(1) Any travel records concerning trips taken by HHS officials in Texas, Arkansas, or any other state concerning military installations intended to shelter undocumented immigrant children or unaccompanied minors.

(a) This should include but not be limited to: all records documenting itineraries, schedules, receipts, written approvals, accommodations, expenses reimbursed costs, and any other documents outlining any travel undertaken by HHS official(s) during the stated time frame.

(2) Any calendars noting times and dates of scheduled meetings involving HHS official(s) with other federal officials or personnel responsible for sheltering unaccompanied minors, including lists of

attendees for scheduled meetings with any other relevant individual, group, task force, agency, or organization during the time frame stated above.

(3) All digital correspondence, written correspondence, and phone records involving HHS official(s) pertaining to this topic since January 1, 2018.

(a) “Digital correspondence” should include but not be limited to copies of all emails sent by, sent to, or carbon copying (“CC”) any of these HHS officials and any correspondence sent by or to any of these HHS officials via messaging platform(s), including but not limited to Google Hangouts (Gchat), Slack, Lync, or Signal.

(4) Any and all written documentation or any form of public or private communication including but not limited to memorandums, presentations, notes, speeches, meetings, agendas, meeting notes including but not limited to HHS officials’ participation in site visits at any and all military installations and/or bases in Texas and Arkansas or any other state.

(5) Any records as outlined above as well as any and all communication or digital correspondence between HHS officials Alex Azar, Eric Hargan, Steven Wagner, Maggie Wynne, and Scott Lloyd and Department of Defense (DOD) officials.

(6) Any records as outlined above as well as any and all communication or digital correspondence between Alex Azar, Eric Hargan, Steven Wagner, Maggie Wynne, and Scott Lloyd and Department of Homeland Security (DHS) officials.

8. Equity Forward sought all responsive records from January 1, 2018, through the date of the search. A copy of the request is attached hereto as Exhibit A and incorporated herein.

9. HHS assigned the request tracking number 2018-01050-FOIA-OS.

Exhaustion of Administrative Remedies

10. As of the date of this complaint, HHS has failed to (a) notify Equity Forward of any determination regarding its FOIA request, including the scope of any responsive records HHS intends to produce or withhold and the reasons for any withholdings; or (b) produce the

requested records or demonstrate that the requested records are lawfully exempt from production.

11. Through HHS's failure to respond to Equity Forward's FOIA request within the time period required by law, Equity Forward has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Search for Responsive Records

12. Equity Forward repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

13. Equity Forward properly requested records within the possession, custody, and control of HHS.

14. HHS is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

15. HHS has failed to promptly review agency records for the purpose of locating those records which are responsive to Equity Forward's FOIA request.

16. HHS's failure to conduct an adequate search for responsive records violates FOIA.

17. Plaintiff Equity Forward is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Equity Forward's FOIA request.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

18. Equity Forward repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

19. Equity Forward properly requested records within the possession, custody, and control of HHS.

20. HHS is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

21. HHS is wrongfully withholding non-exempt agency records requested by Equity Forward by failing to produce non-exempt records responsive to its FOIA request.

22. HHS is wrongfully withholding non-exempt agency records requested by Equity Forward by failing to segregate exempt information in otherwise non-exempt records responsive to Equity Forward's FOIA request.

23. HHS's failure to provide all non-exempt responsive records violates FOIA.

24. Plaintiff Equity Forward is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Equity Forward respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Equity Forward's FOIA request;

- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Equity Forward's FOIA request and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Equity Forward's FOIA request;
- (4) Award Equity Forward the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant Equity Forward such other relief as the Court deems just and proper.

Dated: August 2, 2018

Respectfully submitted,

/s/ Cerissa Cafasso

Cerissa Cafasso

D.C. Bar No. 1011003

/s/ John E. Bies

John E. Bies

D.C. Bar No. 483730

/s/ Austin R. Evers

Austin R. Evers

D.C. Bar No. 1006999

/s/ Hart W. Wood

Hart W. Wood

D.C. Bar No. 1034361

AMERICAN OVERSIGHT

1030 15th Street NW, B255

Washington, DC 20005

(202) 869-5244

cerissa.cafasso@americanoversight.org

john.bies@americanoversight.org

austin.evers@americanoversight.org
hart.wood@americanoversight.org

Counsel for Plaintiff Equity Forward