

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

JUDICIAL WATCH, INC.,)
425 Third Street S.W., Suite 800)
Washington, DC 20024,)
)
Plaintiff,)

Civil Action No.

v.)
)

U.S. DEPARTMENT OF STATE,)
The Executive Office)
Office of the Legal Adviser, Suite 5.600)
600 19th Street, N.W.)
Washington, DC 20522,)

and)
)

U.S. AGENCY FOR INTERNATIONAL)
DEVELOPMENT,)
1300 Pennsylvania Avenue, N.W.)
Washington, DC 20534,)

Defendants.)

_____)

COMPLAINT

Plaintiff Judicial Watch, Inc. brings this action against Defendants U.S. Department of State and the U.S. Agency for International Development to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

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 Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests records from federal agencies pursuant to FOIA. Plaintiff analyzes the agencies' responses and disseminates both its findings and the requested records to the American public to inform them about "what their government is up to."

4. Defendant U.S. Department of State ("State Department") is an agency of the United States Government headquartered at 2201 C Street, N.W., Washington, DC 20520. The State Department has possession, custody, and control of records to which Plaintiff seeks access.

5. Defendant U.S. Agency for International Development ("USAID") is an agency of the United States Government headquartered at 1300 Pennsylvania Avenue, N.W., Washington, DC 20534. USAID has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

6. On October 16, 2017, Plaintiff submitted a FOIA request to Defendant U.S. Department of State ("State Department") seeking access to the following records:

- a) Any and all records regarding, concerning or relating to any contracts, grants or other allocations/disbursements of funds by the State Department to the Open Society Foundation-Romania ("OSFR") and/or its personnel and/or any OSFR subsidiary or affiliate. Such records shall include, but not be limited to proposals, contracts, requests for funding, payment authorizations, invoices, and similar budget records, as well as any and all related communications between State Department officials, employees or representatives and officials, employees or representatives of the U.S. Agency for International Development ("USAID").

b) Any and all records of communication between any officials, employees or representatives of the State Department, including but not limited to U.S. Ambassador Hans Klemm, and any officials, employees or representatives of Open Society Foundation-Romania, its subsidiaries and/or affiliated organizations.

c) Any and all assessments, evaluations, reports or similar records relating to the work of OSFR and/or its subsidiaries or affiliated organizations.

d) Any and all records of communication transmitted via the State Department's SMART system sent to or from any employee of the U.S. Government operating under the authority of the Chief of Mission in Bucharest that pertain to OSFR, its subsidiaries and/or affiliated organizations.

The time frame for the requests was identified as "January 1, 2015 to the present." The request to the State Department was submitted by certified U.S. Mail.

7. By letter dated November 14, 2017, the State Department acknowledged receipt of Plaintiff's request on October 24, 2017 and advised Plaintiff that the request had been assigned Case Control Number F-2017-16510. The November 14, 2017 letter was the last communication Plaintiff received from the State Department in connection with the subject FOIA request.

8. On October 16, 2017, Plaintiff submitted a FOIA request to Defendant U.S. Agency for International Development ("USAID") seeking access to the following records:

a) Any and all records regarding, concerning or relating to any contracts, grants or other allocations/disbursements of funds by USAID to the Open Society Foundation-Romania ("OSFR") and/or its personnel and/or any FOSA subsidiary or affiliate. Such records shall include, but not be limited to proposals, contracts, requests for funding, payment authorizations, invoices, and similar budget records, as well as any and all related communications between USAID officials, employees or representatives and officials, employees or representatives of the U.S. Department of State ("State Department").

- b) Any and all records of communication between any officials, employees or representatives of USAID and any officials, employees or representatives of OSFR, its subsidiaries and/or affiliated organizations.
- c) Any and all assessments, evaluations, reports or similar records relating to the work of OSFR and/or its subsidiaries or affiliated organizations.
- d) Any and all records of communication transmitted via the State Department's SMART system sent to or from any employee of the U.S. Government operating under the authority of the Chief of Mission in Bucharest that pertain to OSFR, its subsidiaries and/or affiliated organizations.

The time frame for the requests was identified as "January 1, 2015 to the present." The request to the State Department was submitted by certified U.S. Mail.

9. By e-mail dated October 23, 2017, the USAID acknowledged receipt of Plaintiff's request dated February 16, 2017, and advised Plaintiff that the request had been assigned tracking number F-00013-18. By e-mail dated October 24, 2017, the USAID notified Plaintiff that a FOIA Specialist was assigned to the subject FOIA request. The October 24, 2017 e-mail was the last communication Plaintiff received from USAID in connection with the subject FOIA request.

10. As of the date of this Complaint, both the State Department and USAID have failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (ii) notify Plaintiff of the scope of any responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I
Violation of FOIA, 5 U.S.C. § 552

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

12. Plaintiff is being irreparably harmed by reason of Defendants' violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendants are compelled to comply with FOIA.

13. To trigger FOIA's administrative exhaustion requirement, Defendants were required to determine whether to comply with Plaintiff's requests within twenty (20) working days of receiving the requests, or on or about November 22, 2017. At a minimum, Defendants were required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendants intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Comm'n*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

14. Because Defendants have failed to determine whether to comply with Plaintiff's requests within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendants to conduct searches for any and all records responsive to Plaintiff's FOIA requests and demonstrate that they employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendants to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and *Vaughn* indices of any responsive records withheld under claim of exemption; (3) enjoin Defendants 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: March 23, 2018

Respectfully submitted,

/s/ Ramona R. Cotca

Ramona R. Cotca (D.C. Bar No. 501159)

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