

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 Energy ("Defendant" or "DOE") is an agency of the U.S. Government and is headquartered at 1000 Independence Avenue SW, Washington, DC 20585. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. In a January 12, 2024 motion to compel discovery in his criminal prosecution in the U.S. District Court for the Southern District of Florida, former president Donald J. Trump asserted that DOE attempted to terminate his security clearance retroactively after his June 2023 indictment and asked the Court to order discovery into the matter. *See United States v. Trump, et al.*, Case No. 9:23-cr-80101-AMC (S.D. Fla.), ECF No. 262 at 38-42.

6. On January 18, 2024, Plaintiff submitted a FOIA request to DOE seeking access to the following records:

Records and communications, including emails, email chains, email attachments, text messages, meeting minutes, voice recordings, video recordings, photographs, charts, correspondence, statements, letters, memoranda, reports, presentations, notes, or other form of record, concerning retroactively termination former President Donald J. Trump's security clearance and/or access to classified information.

The time frame of the request was identified as "January 1, 2021, to present."

7. DOE acknowledged receiving Plaintiff's request in a letter dated January 19, 2024 and advised Plaintiff that the request had been assigned tracking number HQ-2024-00811-F.

8. In a February 2, 2024 response to the former president's motion, Special Counsel Jack Smith acknowledged the existence of a June 28, 2023 memorandum prepared by a DOE official regarding the security clearance. *See United States v. Trump, et al.*, Case No. 9:23-cr-

80101-AMC (S.D. Fla.), ECF No. 277 at 49-50. The Special Counsel described the memorandum's contents and asserted that it had produced the record to former President Trump. The Special Counsel also acknowledged requesting and receiving additional "responsive" records from DOE, including "approximately 30 pages of records and eight emails. *Id.* at 50. The Special Counsel asserted that he was "now producing" the 30 pages to former President Trump and withholding the eight emails. *Id.*

9. As of the date of this Complaint, DOE has failed to: (i) determine whether to comply with Plaintiff's request; (ii) notify Plaintiff of any such determination or the reason(s) therefor; (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.

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

10. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

11. Defendant is in violation of FOIA.

12. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

13. Plaintiff has no adequate remedy at law.

14. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make final a determination on Plaintiff's request by February 16, 2024, at the latest. Because Defendant failed to make a final determination on Plaintiff's request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to search for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request 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 request; (4) grant Plaintiff an award of attorney's 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 14, 2024

Respectfully submitted,

/s/ Paul J. Orfanedes
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