

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

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**)
1331 F Street, N.W., Suite 900)
Washington, D.C. 20004)

Plaintiff,)

v.)

Civil Action No.

**U.S. DEPARTMENT OF HOMELAND,
SECURITY,**)
245 Murray Lane, S.W.)
Washington, D.C. 20528)

Defendant.)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) challenges the failure of the U.S. Department of Homeland Security (“DHS”) to respond to a request for documents related to DHS’s Center for Prevention Programs and Partnerships (“CP3”).

2. This case seeks declaratory relief that DHS is in violation of the FOIA, specifically, 5 U.S.C. § 552(a)(3)(A), for failing to provide CREW all responsive records and 5 U.S.C. § 552(a)(6)(A), for failing to provide CREW with a determination on its request within 20 business days, as well as injunctive relief ordering defendant DHS to process and release to CREW immediately the requested records in their entirety.

Jurisdiction and Venue

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue in this district is proper under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff CREW is a non-profit, non-partisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies, and to ensuring the integrity of government officials and agencies. To advance its mission, CREW uses a combination of research, litigation, and advocacy. As part of its research, CREW uses government records made available to it under the FOIA. Additionally, CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions.

5. Defendant DHS is an agency within the meaning of 5 U.S.C. §§ 552(f)(1) and 701(b)(1). DHS has possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

Statutory and Regulatory Background

6. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination of which of the requested records

it will release, which it will withhold and why, and the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

8. An agency's failure to make this determination within 20 business days is subject to judicial review without exhausting administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

9. In "unusual circumstances" an agency may extend the time to respond to a request by no more than 10 working days provided that the agency gives the requester written notice setting forth the unusual circumstances and the date on which the agency expects to make a determination. 5 U.S.C. § 552(a)(6)(B)(i)-(iii). The FOIA defines "unusual circumstances" as including the need to search for and collect responsive records from offices other than the office processing the request; the need to search for, collect, and examine a "voluminous amount of separate and distinct records"; and the need to consult with another agency. 5 U.S.C. § 552(a)(6)(B)(iii)(I)-(III).

Factual Background

10. To counter the violent extremism that has plagued the United States for decades DHS created Countering Violent Extremism ("CVE"), a grant program designed to prevent extremism and enhance national security. Despite its facially neutral goal, the CVE program generated concerns about its effectiveness and disproportionate impact on racial and religious communities. *See, e.g.*, Betsy Woodruff Swan, DHS stands up domestic terror intelligence team, *Politico*, May 11, 2021, <https://www.politico.com/news/2021/05/11/dhs-domestic-terror-intelligence-487145>; Faiza Patel, Ending the 'National Security' Excuse for Racial and Religious Profiling, *Brennan Center for Justice*, July 22, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/ending-national-security-excuse-racial-and-religious-profiling>.

11. In 2017, the Government Accountability Office (“GAO”) conducted an audit to evaluate CVE’s effectiveness. *See* U.S. Gov’t Accountability Off., GAO-17-300, Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts, April 2017, <https://www.gao.gov/assets/gao-17-300.pdf> (“2017 GAO Report”). GAO concluded that because the government had not established a “cohesive strategy with measurable outcomes . . . to guide the multi-agency CVE effort towards its goals” GAO “could not determine the extent to which the United States is better off today as a result of its CVE effort than it was in 2011.” 2017 GAO Report at 16.

12. CVE was subsequently updated and re-named the Targeted Violence and Terrorism Prevention Program (“TVTP”). Like CVE, TVTP’s stated goal was to “provide funding for state, local, tribal, and territorial governments, nonprofits, and institutions of higher education . . . to establish or enhance capabilities to prevent targeted violence and terrorism.” Dep’t of Homeland Security, Targeted Violence and Terrorism Prevention Grant Program, <https://www.dhs.gov/tvtpgrants>. And like CVE, TVTP was criticized for employing the same discriminatory approach to domestic terrorism. *See, e.g.*, Harsha Panduranga, Community Investment, Not Criminalization, *Brennan Center for Justice*, June 17, 2021, <https://www.brennancenter.org/our-work/research-reports/community-investment-not-criminalization> (“2021 Brennan Center Report”).

13. In July 2021, GAO issued a second report that evaluated the TVTP program. U.S. Gov’t Accountability Off., GAO-21-507, Countering Violent Extremism: DHS Can Further Enhance Its Strategic Planning and Data Governance Efforts, July 2021, <https://www.gao.gov/assets/gao-21-507.pdf>. GAO found that the TVTP lacked key elements “of a comprehensive strategy” necessary to achieve its goals, such as needed “resources and investments” and external

factors[.]” *Id.* at 18-19. Other missing elements included “fully established data governance leadership and policies associated with targeted violence and terrorism prevention”; “an inventory of targeted violence and terrorism prevention-related data assets”; and “opportunities to increase staff and data skills.” *Id.* at 24. GAO further noted that DHS did not even have “a department-wide definition of targeted violence.” *Id.* at 19.

14. Recognizing the flaws in TVTP, the Biden administration rebranded DHS’s violence prevention activities as the Center for Prevention Programs and Partnerships (“CP3”), which DHS launched on May 11, 2021. Dep’t of Homeland Security, DHS Creates New Center for Prevention Programs and Partnerships and Additional Efforts to Comprehensively Combat Domestic Violent Extremism, Press Release, May 11, 2021, <https://www.dhs.gov/news/2021/05/11/dhs-creates-new-center-prevention-programs-and-partnerships-and-additional-efforts>.

16. CP3 has been criticized as simply representing an old approach with a new name. 2021 Brennan Center Report at 3. Specifically, “much of CP3’s prevention activities rest on the empirically disproven premise that there are identifiable markers that can predict who is going to commit an act of violence[.]” *Id.* While CP3 has broadened the focus from Muslims “to a wider spectrum of political violence,” that expansion also “expands the reach of the ineffective and discriminatory CVE model.” *Id.* Moreover, DHS’s model “ignore[s] the reality of structural racism” and uses “markers of potential violence” that “are so vague as to open the door to bias[.]” *Id.*

The FOIA Request At Issue

17. By letter dated August 20, 2021, and submitted through the online portal on that date, CREW made a FOIA request to DHS seeking seven categories of records concerning CP3 from January 1, 2021 to the present. Specifically, CREW requested:

- (1) All records and communications regarding the origins and creation of CP3, including but not limited to funding and priorities for the Center;
- (2) Documents sufficient to identify all senior agency leadership involved in creating and running CP3;
- (3) All records and communications relating to CP3 regarding collaboration with, outreach to, or input from religious or community groups such as the Arab-American Anti-Discrimination Committee, and external entities or private sector partners including but not limited to, corporations, religious groups, technology companies, contractors, airports, civil society, academia, allies, and foreign partners;
- (4) All records and communications relating to CP3 regarding collaborations or partnerships with federal, state, local, tribal, or territorial law enforcement agencies;
- (5) All records and communications relating to the actual or potential impact of CP3 on any racial or religious communities, or individuals affiliated with particular ideologies;
- (6) All records and communications referencing the creation of or updates to a compilation of potential indicators of terrorism- or domestic terrorism-related mobilization, including iconography, symbology, phraseology, actions or other appearances, and previous or future Federal Government's Mobilization Indicators booklets; and
- (7) All records and communications created or received by CP3 staff and containing the keywords: "Countering Violent Extremism," "CVE," "Targeted Violence and Terrorism Prevention," "TVTP," "Muslim," "Islam," "Mosque," "Masjid," "Jihad," "White Supremacist," "Nationalist," "White Nationalist," "White Supremacy," "Black Lives Matter," "Riot," "Protests," "January 6th," "1/6," "Insurrection," "September 11th,"

“9/11,” “Religion,” “Equitable,” “Bias,” “Disparate impact,” “Discriminatory,” “Structural racism,” “People of color,” “Marginalization,” “Equitable,” “Race,” “Racial,” “Racist,” “IG,” or “Inspector General.”

18. CREW sought a waiver of fees associated with processing its request. In support of its request for a fee waiver CREW explained that while CP3 has been marketed as an overhaul of TVTP and CVE, given its discriminatory history it is unclear if that will be true in practice. The requested records will provide a clearer picture for the American public of what has been included in the updated program and whether CP3 has made the necessary changes or instead still continues the same harmful practices of CVE and TVTP.

19. CREW further explained that it is a non-profit organization committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money in politics. CREW noted its intent to analyze the information response to its request and share its analysis with the public, and that the release of the information is in not in CREW’s financial interest.

20. CREW further requested that it not be charged search or review fees because it qualifies as a member of the news media. CREW explained the ways that it routinely and systematically disseminates information to the public.

21. To date, plaintiff CREW has received no response to its request from DHS.

22. Under 5 U.S.C. § 552(a)(6)(C)(i), CREW has now effectively exhausted all applicable administrative remedies with respect to its request of DHS.

PLAINTIFF’S CLAIM FOR RELIEF

23. Plaintiff repeats and re-alleges paragraphs 1-22.

24. Plaintiff properly asked for records within the custody and control of the U.S. Department of Homeland Security.

25. Defendant DHS wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limit for making a determination on plaintiff's request, and by withholding from disclosure records responsive to plaintiff's request.

26. Plaintiff CREW is therefore entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the records requested in its August 20, 2021 FOIA request.

Requested Relief

WHEREFORE, plaintiff respectfully requests that this Court:

- (1) Order defendant to immediately and fully process plaintiff's August 20, 2021 FOIA request to the U.S. Department of Homeland Security and to disclose all non-exempt documents immediately to plaintiff;
- (2) Issue a declaration that plaintiff is entitled to immediate processing and disclosure of the requested records;
- (3) Provide for expeditious proceedings in this action;
- (4) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
- (5) Award plaintiff its costs and reasonable attorneys' fees in this action; and
- (6) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Anne L. Weismann
Anne L. Weismann
(D.C. Bar No. 298190)

5335 Wisconsin Avenue, N.W., Suite 640
Washington, D.C. 20015
Phone: 301-717-6610
Weismann.anne@gmail.com

Adam J. Rappaport
(D.C. Bar No. 479866)
Citizens for Responsibility and
Ethics in Washington
1331 F Street, N.W., Suite 900
Washington, D.C. 20004
Phone: (202) 408-5565
Facsimile: (202) 588-5020

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Attorneys for Plaintiff