

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

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**)
455 Massachusetts Ave., N.W., Sixth Floor)
Washington, D.C. 20001)

Plaintiff,)

v.)

Civil Action No.

**GENERAL SERVICES
ADMINISTRATION,**)
1800 F Street, N.W.)
Washington, D.C. 20405)

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 refusal of the General Services Administration (“GSA”) to disclose to CREW in response to a FOIA request records pertaining to GSA’s decision, announced on July 11, 2017, to cancel the procurement for the new FBI headquarters.

2. This case seeks declaratory relief that GSA is in violation of the FOIA, 5 U.S.C. § 552(a)(3)(a), by refusing to provide CREW all responsive, non-exempt documents, and injunctive relief ordering the defendant GSA to process and release to CREW immediately the requested records.

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). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district 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. 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. 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.

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

Factual Background

6. For years, GSA has been involved in an effort to move the FBI headquarters from its current location in Washington, D.C. to a more spacious and secure location that consolidates all FBI components. In 2017, after a multi-year search, three sites were identified as final choices: Greenbelt and Landover in Maryland and Springfield, Virginia.

7. Notwithstanding this progress on relocating the FBI headquarters, on July 11, 2017, GSA announced its sudden and unexpected decision to cancel what it termed the “new FBI headquarters consolidation project.” GSA Statement on FBI Headquarters, July 11, 2017, available at <https://www.gsa.gov/node/87972>. GSA cited the lack of full funding for the project as grounds for the cancellation. At that time, Congress had agreed to provide \$523 million for the estimated \$1.4 billion project, with the remaining funds expected to come from trading the Hoover Building – which occupies a prime spot in downtown Washington – to a developer.

8. Members of Congress criticized the cancellation as “putt[ing] America’s national security at risk,” and local officials commented on the significant amount of “time and energy wasted.” Robert McCartney, For D.C. Area, Demise of FBI Plan Means ‘a Lot of Time and Energy Wasted’, *Washington Post*, July 11, 2017, available at https://www.washingtonpost.com/local/for-dc-area-demise-of-fbi-plan-means-a-lot-of-time-and-energy-wasted/2017/07/11/c11c7cba-6632-11e7-9928-22d00a47778f_story.html?utm_term=.f778186f90f7.

9. The abrupt cancellation raised questions about its cause, specifically whether it was due to “uncertainty in the White House and Congress over whether to spend the necessary funds to build the new headquarters and to delays in appointing top officials at the FBI and the [GSA].” *Id.*

10. To help answer those questions, CREW submitted a FOIA request by facsimile to GSA on July 12, 2017, seeking six categories of records: (1) records explaining GSA’s decision to cancel the procurement; (2) communications between GSA Regional Commissioner Mary Gilbert and GSA Administrator Tim Horne concerning the cancellation decision; (3) communications between either Ms. Gilbert or Mr. Horne and any individual at the eop.gov domain concerning the cancellation decision; (4) communications between FBI officials and

GSA concerning the cancellation decision; (5) communications between the Office of Management and Budget and GSA concerning the cancellation decision; and (6) records sufficient to show the amount of federal funds expended to evaluate the final three locations designated by GSA as possible sites for the new FBI headquarters.

11. CREW sought a waiver of fees associated with processing its request, explaining the requested records would help answer why GSA had cancelled the procurement and would assist the public in evaluating the merits of the cancellation decision, especially in light of the significant amount of money that already had been spent on this project.

12. By email dated July 19, 2017, GSA confirmed receipt of CREW's request. GSA inexplicably labelled the request as submitted on July 19, 2017.

13. By email dated July 20, 2017, GSA advised CREW its request for a fee waiver "has been determined to be not applicable as the request is not billable." GSA did not explain the reasoning behind this decision or what, in particular, made CREW's request "not billable."

14. More recently, on February 12, 2018, GSA in a months-overdue report to the Senate Environmental and Public Works Committee, announced that instead of relocating the FBI headquarters to a new location, it planned to rebuild on the FBI's current headquarters at a cost of \$3.3 billion – nearly \$2 billion more than the previously estimated cost of relocating the FBI in 2017. Jonathan O'Connell, In abrupt shift, federal government proposes keeping FBI downtown, *Washington Post*, Feb. 12, 2018, available at https://www.washingtonpost.com/news/business/wp/2018/02/12/in-abrupt-shift-federal-government-proposes-keeping-fbi-downtown/?utm_term=.6009e41a3440.

15. Under this proposal, the current FBI location would no longer be a mixed-use development that likely would have included a luxury hotel to take advantage of the prime

location. This suggests GSA's decision may have been made, at least in part, to eliminate any direct competition with the Trump International Hotel Washington, D.C., which is just down the street from the FBI headquarters. *See, e.g.,* Charles S. Clark, New GSA Brass Struggles to Explain Revised Plan for FBI HQ, *Government Executive*, Feb. 15, 2018, available at <http://www.govexec.com/management/2018/02/new-gsa-brass-struggles-explain-revised-plan-fbi-hq/146042/>.

16. To date, GSA has neither provided CREW with a determination on its request, nor provided CREW any information on the status of its request. CREW therefore has exhausted all applicable administrative remedies with respect to its July 12, 2017 FOIA request.

PLAINTIFF'S CLAIM FOR RELIEF

(Wrongful Withholding of Non-Exempt Records)

17. Plaintiff repeats and re-alleges the preceding paragraphs.

18. In its July 12, 2017 FOIA request, plaintiff properly asked for records within the custody and control of GSA.

19. Defendant GSA wrongfully withheld from disclosure agency records requested by plaintiff in its July 12, 2017 FOIA request.

20. By failing to release the records as plaintiff specifically requested, defendant violated the FOIA.

21. Plaintiff therefore is entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the records requested in its July 12, 2017 FOIA request.

Requested Relief

WHEREFORE, plaintiff respectfully requests that this Court:

(1) Order defendant GSA to immediately and fully process plaintiff's July 12, 2017 FOIA

request and disclose all non-exempt documents immediately to plaintiff;

(2) Issue a declaration that plaintiff is entitled to immediate processing and disclosure of the records requested in its July 12, 2017 FOIA request;

(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,

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