

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

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**)
1101 K Street N.W., Suite 201)
Washington, D.C. 20005,)

Plaintiff,)

v.)

Civil Action No.

U.S. DEPARTMENT OF STATE,)
2201 C Street, N.W.)
Washington, D.C. 20520,)

**U.S. AGENCY FOR INTERNATIONAL
DEVELOPMENT,**)
1300 Pennsylvania Avenue, N.W.)
Ronald Reagan Building, Room 2.07C)
Washington, DC 20523,)

Defendants.)

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 Defendants U.S. Department of State (“State”) and U.S. Agency for International Development (“USAID”) to release records in response to CREW’s FOIA requests for documents relating to a briefing call on international religious freedom held by Secretary of State Mike Pompeo on March 18, 2019.

2. This case seeks declaratory relief that Defendants are in violation of FOIA, 5 U.S.C. § 552(a)(3)(a), by refusing to provide CREW all responsive, non-exempt documents, and

injunctive relief ordering Defendants 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 State is an agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 701. State has possession and control of the requested records and is responsible for fulfilling Plaintiff's FOIA request.

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

Factual Background

7. On March 18, 2019, Secretary of State Mike Pompeo held a briefing call on international religious freedom in advance of a planned trip to the Middle East.

8. The State Department allowed only “faith-based media” to participate in the March 18 briefing call; blocked other news outlets from joining; rejected media requests for a transcript of the call, a list of faith-based media outlets allowed to participate, or the criteria to be invited to join the call; and refused to answer questions about whether a range of faiths were represented by the call participants.

9. To help answer questions about the March 18 briefing call, CREW sent State a FOIA request on March 19, 2019, seeking:

all documents referencing, concerning, or relating to the briefing call on international religious freedom held by Secretary of State Mike Pompeo on March 18, 2019. This request includes without limitation any (1) transcript of the call; (2) list of participants in the call; (3) invitations from the State Department to outside entities or individuals to participate in the call; (4) requests from outside entities or individuals to the State Department to participate in the call; (5) communications reflecting decisions by State Department officials as to whether specific individuals or entities could participate in the call; and (6) documents reflecting any criteria used by State Department officials to determine who could participate in the call.

10. CREW sought a waiver of fees associated with processing its request.

11. A certified mail receipt confirms State’s receipt of CREW’s FOIA request on March 19, 2019.

12. To date, State has not responded to or provided a determination on CREW’s March 19 FOIA request.

13. By email dated March 20, 2019, CREW submitted a FOIA request to USAID, seeking the same records as those sought in CREW’s March 19 request to State.

14. Later that same day, USAID sent CREW an email confirming receipt of its FOIA request and assigning it tracking number USAID FOIA No. F-00123-19.

15. USAID's email further stated that CREW's FOIA request "does not adequately describe how the records sought pertain to USAID; therefore, we are unable to process it at this time." The email added "[i]f you wish to pursue your request, please provide as much information as possible, such as: how the subject matter relates to USAID; name of the country and/or program/project; and/or persons involved."

16. Following an email exchange between the parties, USAID ultimately agreed, by email dated March 22, 2019, to conduct a search for the following records in response to CREW's request:

All documents referencing, concerning, or relating to the briefing call on international religious freedom held by Secretary of State Mike Pompeo on March 18, 2019, which are in the possession, custody, or control of the USAID Center for Faith and Opportunity Initiatives (CFOI), or CFOI officials Kirsten Evans, Brian Klotz, Camille Q. Solberg, and Marsha Baxter. This request includes without limitation: 1. Any transcript of the call 2. List of participants in the call 3. Invitations from the State Department to USAID, USAID personnel, or any non-governmental outside entity to participate in the call 4. Requests from USAID, USAID personnel, or any non-governmental outside entity to the State Department to participate in the call 5. Communications reflecting decisions by the State Department as to whether USAID or any non-governmental outside entity could participate in the call 6. Documents reflecting any criteria used by State Department officials to determine who could participate in the call.

17. Separately, by email dated March 22, 2019, USAID stated it had placed CREW in the "News Media Fee Category" and deemed its fee-waiver request moot, because "the only applicable fee is duplication, and USAID routinely furnishes responsive records to FOIA requesters in electronic format," and thus it is "most likely there will be no duplication fees to assess."

18. By email dated May 2, 2019, CREW asked USAID for an update on the status of its FOIA request.

19. USAID responded the next day, stating the “current status of your request is we are still awaiting responsive records from our internal program office.”

20. To date, USAID has not provided a determination on CREW’s March 20 FOIA request.

21. CREW has exhausted all administrative remedies applicable to its FOIA requests.

PLAINTIFF’S CLAIMS FOR RELIEF

COUNT 1

(State’s Wrongful Withholding of Non-Exempt Records)

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

23. In its March 19, 2019 FOIA request, Plaintiff properly asked for records within the custody and control of Defendant State.

24. Defendant State wrongfully withheld from disclosure agency records requested by Plaintiff in its March 19, 2019 FOIA request.

25. By failing to release the records Plaintiff requested, Defendant State violated FOIA.

26. Plaintiff is therefore entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the records requested in its March 19, 2019 FOIA request to State.

COUNT 2

(USAID's Wrongful Withholding of Non-Exempt Records)

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

28. In its March 20, 2019 FOIA request, Plaintiff properly asked for records within the custody and control of Defendant USAID.

29. Defendant USAID wrongfully withheld from disclosure agency records requested by Plaintiff in its March 20, 2019 FOIA request.

30. By failing to release the records Plaintiff requested, Defendant USAID violated FOIA.

31. Plaintiff is therefore entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the records requested in its March 20, 2019 FOIA request to USAID.

Requested Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Order Defendants to immediately and fully process Plaintiff's FOIA requests 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 FOIA requests;
- (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.

Date: May 8, 2019

Respectfully Submitted,

/s/ Nikhel Sus

NIKHEL S. SUS

(D.C. Bar No. 1017937)

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