

IN THE UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

DEFENDING RIGHTS & DISSENT,)
1325 G St. NW Suite 500)
Washington, D.C. 20005)

Plaintiff,)

v.)

NATIONAL GEOSPATIAL-INTELLIGENCE)
AGENCY,)
Office of Corporate Communications)
MS N73)
7500 GEOINT Drive)
Springfield, VA 22150-7500)

U.S. DEPARTMENT OF DEFENSE,)
1155 Defense Pentagon)
Washington, D.C. 20301)

FEDERAL BUREAU OF INVESTIGATION,)
950 Pennsylvania Ave NW)
Washington, D.C. 20535)

U.S. DEPARTMENT OF JUSTICE,)
950 Pennsylvania Ave NW)
Washington, D.C. 20530)

NATIONAL SECURITY AGENCY,)
9800 Savage Rd., Suite 6272)
For George G. Meade, MD 20755-6000)

Defendants.)

COMPLAINT

1. Plaintiff, DEFENDING RIGHTS & DISSENT, brings this Freedom of Information Act suit to force Defendant agencies to produce records pertaining to each Defendant agency’s leak investigations in response to a series of news reports about the U.S. drone program. In violation of the Freedom of Information Act, Defendants have failed to conduct a reasonable

search for the requested records, have failed to issue a determination letter within twenty business days, failed to produce the records promptly, and/or failed to produce all non-exempt records.

PARTIES

2. Plaintiff DEFENDING RIGHTS & DISSENT is a grassroots advocacy organization that seeks to hold the government accountable and made the FOIA requests at issue in this case.

3. Defendant NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY (“NGA”) is a federal agency, a component of U.S. Department of Defense, and subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendant U.S. DEPARTMENT OF DEFENSE (“DOD”) is a federal agency and subject to the Freedom of Information Act, 5 U.S.C. § 552.

5. Defendant FEDERAL BUREAU OF INVESTIGATION (“FBI”) is a federal agency, a component of U.S. Department of Justice, and subject to the Freedom of Information Act, 5 U.S.C. § 552.

6. Defendant U.S. DEPARTMENT OF JUSTICE (“DOJ”) is a federal agency and subject to the Freedom of Information Act, 5 U.S.C. § 552.

7. Defendant NATIONAL SECURITY AGENCY (“NSA”) is a federal agency and subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

8. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

9. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

BACKGROUND

10. On July 27, 2021, U.S. Air Force veteran Daniel Hale was sentenced to 45 months in prison under the Espionage Act. Press Release, Office of Public Affairs, Department of Justice, Former Intelligence Analyst Sentenced to 45 Months in Prison for Disclosing Classified Information to Reporter (Jul. 21, 2021), <https://www.justice.gov/opa/pr/former-intelligence-analyst-sentenced-45-months-prison-disclosing-classified-information>.

11. On August 8, 2014, the FBI raided Hale's home in connection to an Espionage Act investigation.

12. According to the March 7, 2019 Indictment, Hale, while working as a Leidos contractor at the NGA, printed five or six documents on February 28, 2014. He then printed additional documents in April, May, June, and August of 2014. The copy of the indictment, which was originally filed under seal, but has since been unsealed is attached in Exhibit 1 at 7-23.

13. While the indictment and other court documents did not explicitly identify the journalist nor the publication that featured the disclosed documents from Hale, Judge Liam O'Grady identified Jeremy Scahill and *The Intercept* to by name during the sentencing hearing that took place on July 27, 2021.

AUGUST 27, 2021 FOIA REQUEST TO NGA

14. On August 27, 2021, DEFENDING RIGHTS & DISSENT submitted a FOIA request to NGA for records created between 2012 and 2021 that mention or reference the following:

[1] Leak investigations resulting from *The Intercept* publishing information about the US terror watch list in July and August 2014;

[2] Leak investigations resulting from *The Intercept* publishing classified information about the US drone program between April 2015 and December 2016;

[3] *The Intercept*'s publishing of 17 documents printed at the National Geospatial-Intelligence Agency;

[4] "The Drone Papers" an October 2015 series of articles published by *The Intercept*;

[5] *The Assassination Complex Inside the Government's Secret Drone Warfare Program*, a book published in 2017 based on aforementioned series of articles "The Drone Papers."

Ex. 1.

15. On August 27, 2021, NGA acknowledged receipt of the request and assigned reference number NGA-2021-FOI-00070 to the matter. Ex. 2.

16. Having received no further correspondence from NGA, DEFENDING RIGHTS & DISSENT sought an estimated date of completion for the request on January 13, 2022. Ex. 3.

17. On January 27, 2022, NGA estimated "15 days" to complete the request. Ex. 4.

18. As of the date of this filing, NGA has not issued a determination and has not produced any records responsive to the request.

AUGUST 27, 2021 FOIA REQUEST TO FBI

19. On August 27, 2021, DEFENDING RIGHTS & DISSENT submitted a FOIA request to FBI for records created between 2012 and 2021 that mention or reference the following:

[1] Leak investigations resulting from *The Intercept* publishing information about the US terror watch list in July and August 2014;

[2] Leak investigations resulting from *The Intercept* publishing classified information about the US drone program between April 2015 and December 2016;

[3] *The Intercept*'s publishing of 17 documents printed at the National Geospatial-Intelligence Agency;

[4] "The Drone Papers" an October 2015 series of articles published by *The Intercept*;

[5] The Assassination Complex Inside the Government’s Secret Drone Warfare Program, a book published in 2017 based on aforementioned series of articles “The Drone Papers.”

Ex. 5.

20. FBI assigned reference number NFP-130894 to the matter.

21. On September 8, 2021, FBI denied the request by stating that the request is “overly broad.” FBI claimed that the request “does not provide enough detail to enable personnel to locate records ‘with a reasonable amount of effort.’” Ex. 6.

22. On November 29, 2021, DEFENDING RIGHTS & DISSENT appealed the FBI’s denial to DOJ. Ex. 7.

23. On November 29, 2021, DOJ acknowledged receipt of the appeal and assigned reference number A-2022-00363 to the matter. Ex. 8.

24. DOJ’s deadline to issue an appeal determination was December 28, 2021.

25. As of the date of this filing, DOJ has not issued its appeal determination.

26. As of the date of this filing, FBI has not complied with FOIA and has not produced any records responsive to the request.

AUGUST 27, 2021 FOIA REQUEST TO DOJ

27. On August 27, 2021, DEFENDING RIGHTS & DISSENT submitted a FOIA request to the National Security Division of DOJ for records created between 2012 and 2021 that mention or reference the following:

[1] Leak investigations resulting from The Intercept publishing information about the US terror watch list in July and August 2014;

[2] Leak investigations resulting from The Intercept publishing classified information about the US drone program between April 2015 and December 2016;

[3] The Intercept’s publishing of 17 documents printed at the National Geospatial-Intelligence Agency;

[4] “The Drone Papers” an October 2015 series of articles published by The Intercept;

[5] The Assassination Complex Inside the Government’s Secret Drone Warfare Program, a book published in 2017 based on aforementioned series of articles “The Drone Papers.”

Ex. 9.

28. On October 18, 2021, DOJ acknowledged receipt of the request and assigned reference number 21-359 to the matter. Ex. 10.

29. Having received no further correspondence from DOJ, DEFENDING RIGHTS & DISSENT sought an estimated date of completion for the request on January 13, 2022. Ex. 11.

30. On January 14, 2022, DOJ stated that it is “still searching for possible responsive documents.” *Id.*

31. On February 22, 2022, DEFENDING RIGHTS & DISSENT inquired when DOJ estimates to be done with its search, but DOJ never responded. Ex. 12.

32. As of the date of this filing, DOJ has not issued a determination and has not produced any records responsive to the request. Nor has the DOJ complied with the statutory requirement under 5 U.S.C. § 552(a)(7)(B)(ii) to furnish an estimated date of completion when requested.

AUGUST 27, 2021 FOIA REQUEST TO NSA

33. On August 27, 2021, DEFENDING RIGHTS & DISSENT submitted a FOIA request to NSA for records created between 2012 and 2021 that mention or reference the following:

[1] Leak investigations resulting from The Intercept publishing information about the US terror watch list in July and August 2014;

[2] Leak investigations resulting from The Intercept publishing classified information about the US drone program between April 2015 and December 2016;

[3] The Intercept’s publishing of 17 documents printed at the National Geospatial-Intelligence Agency;

[4] “The Drone Papers” an October 2015 series of articles published by The Intercept;

[5] The Assassination Complex Inside the Government’s Secret Drone Warfare Program, a book published in 2017 based on aforementioned series of articles “The Drone Papers.”

Ex. 13.

34. On September 24, 2021, NSA acknowledged receipt of the request and assigned reference number 112682 to the matter. Ex. 14.

35. On September 30, 2021, NSA denied the request in its entirety by citing Exemptions 1 and 3 of FOIA. Ex. 15.

36. On November 1, 2021, DEFENDING RIGHTS & DISSENT appealed the denial.

Ex. 16.

37. On November 30, 2021, NSA affirmed its denial. Ex. 17.

38. NSA has not demonstrated that the records responsive to the request are exempt.

39. As of the date of this filing, NSA has not complied with FOIA and has not produced any records responsive to the request.

**COUNT I – NGA’S FOIA VIOLATION:
FAILURE TO ISSUE A DETERMINATION**

40. The above paragraphs are incorporated herein.

41. The request seeks the disclosure of agency records and was properly made.

42. NGA is a federal agency and subject to FOIA.

43. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

44. NGA has failed to issue a determination within the statutory deadline.

**COUNT II – NGA’S FOIA VIOLATION:
FAILURE TO CONDUCT A REASONABLE SEARCH**

45. The above paragraphs are incorporated herein.
46. The request seeks the disclosure of agency records and was properly made.
47. NGA is a federal agency and subject to FOIA.
48. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.
49. NGA has failed to conduct a reasonable search for records responsive to the request.

**COUNT III – NGA’S FOIA VIOLATION:
FAILURE TO PRODUCE RECORDS**

50. The above paragraphs are incorporated herein.
51. The request seeks the disclosure of agency records and was properly made.
52. NGA is a federal agency and subject to FOIA.
53. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.
54. NGA has failed to produce records responsive to the request.

**COUNT IV – FBI’S FOIA VIOLATION:
FAILURE TO CONDUCT A REASONABLE SEARCH**

55. The above paragraphs are incorporated herein.
56. The request seeks the disclosure of agency records and was properly made.
57. FBI is a federal agency and subject to FOIA.
58. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

59. FBI has failed to conduct a reasonable search for records responsive to the request.

**COUNT V – FBI’S FOIA VIOLATION:
FAILURE TO PRODUCE RECORDS**

60. The above paragraphs are incorporated herein.

61. The request seeks the disclosure of agency records and was properly made.

62. FBI is a federal agency and subject to FOIA.

63. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

64. FBI has failed to produce records responsive to the request.

**COUNT VI – DOJ’S FOIA VIOLATION:
FAILURE TO ISSUE A DETERMINATION**

65. The above paragraphs are incorporated herein.

66. The request seeks the disclosure of agency records and was properly made.

67. DOJ is a federal agency and subject to FOIA.

68. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

69. DOJ has failed to issue a determination within the statutory deadline.

**COUNT VII – DOJ’S FOIA VIOLATION:
FAILURE TO CONDUCT A REASONABLE SEARCH**

70. The above paragraphs are incorporated herein.

71. The request seeks the disclosure of agency records and was properly made.

72. DOJ is a federal agency and subject to FOIA.

73. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

74. DOJ has failed to conduct a reasonable search for records responsive to the request.

**COUNT VIII – DOJ’S FOIA VIOLATION:
FAILURE TO PRODUCE RECORDS**

75. The above paragraphs are incorporated herein.

76. The request seeks the disclosure of agency records and was properly made.

77. DOJ is a federal agency and subject to FOIA.

78. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

79. DOJ has failed to produce records responsive to the request.

**COUNT IX – NSA’S FOIA VIOLATION:
FAILURE TO PRODUCE RECORDS**

80. The above paragraphs are incorporated herein.

81. The request seeks the disclosure of agency records and was properly made.

82. NSA is a federal agency and subject to FOIA.

83. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

84. NSA has failed to produce records responsive to the request.

WHEREFORE, DEFENDING RIGHTS & DISSENT asks the Court to:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct a reasonable search for records;
- iii. order Defendants to issue a determination where appropriate;
- iv. order Defendants to produce all non-exempt requested records or portions of records promptly;
- v. enjoin Defendants from withholding non-exempt public records under FOIA;

- vi. award Plaintiff attorneys' fees and costs; and
- vii. award such other relief the Court considers appropriate.

Dated: April 29, 2022

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorney for Plaintiff,
DEFENDING RIGHTS & DISSENT

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