

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

PEOPLE FOR THE AMERICAN WAY,)	
1101 15th Street NW, Suite 600)	
Washington, DC 20005)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	
U.S. DEPARTMENT OF HOUSING AND)	
URBAN DEVELOPMENT,)	Case No. 18-cv-487
451 7th St SW)	
Washington, DC 20410, and)	
)	
U.S. DEPARTMENT OF JUSTICE,)	
950 Pennsylvania Avenue NW)	
Washington, DC 20530)	
)	
<i>Defendants.</i>)	
)	
)	

COMPLAINT

1. Plaintiff People For the American Way brings this action against the U.S. Department of Housing and Urban Development and the U.S. Department of Justice under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

- 2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.
- 3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because the Defendants have failed to comply with the applicable time-limit provisions of FOIA, People For the American Way is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agencies from continuing to withhold agency records and ordering the production of agency records improperly withheld. Specifically, as outlined below, the agencies should be ordered to release all records relating to or consisting of decisions or directives to remove references to “lesbian, gay, bisexual, transgender, and questioning,” “LGBT,” or “LGBTQ” individuals from agency materials concerning efforts to combat problems of homelessness, discrimination, and sex trafficking.

PARTIES

5. Plaintiff People For the American Way (“People For”) is a progressive advocacy organization founded to fight right-wing extremism and defend constitutional values including free expression, religious liberty, equal justice under the law, and the right to meaningfully participate in our democracy. People For is a nonprofit organization under section 501(c)(4) of the Internal Revenue Code and is incorporated under the laws of the District of Columbia.

6. Right Wing Watch (“RWW”) is dedicated to monitoring and exposing the activities and rhetoric of right-wing organizations, activists, and public officials in order to expose their agenda. Its researchers monitor dozens of broadcasts, emails, websites, and events; file FOIA requests; and use their expertise on right-wing movements to analyze and distill that information for media, allies, and the general public. By shedding light on the activities of right-wing movements, RWW helps expose the risks their extreme and intolerant agendas present to the country. RWW does not endorse the views of groups that it reports on. RWW is a project of

People For and is not a separate corporate entity; RWW filed the FOIA request that is the subject of this litigation.

7. Defendant U.S. Department of Housing and Urban Development (“HUD”) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). On information and belief, HUD has possession, custody, and control of the records that Plaintiff seeks from HUD.

8. Defendant U.S. Department of Justice (“DOJ”) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). On information and belief, DOJ has possession, custody, and control of the records that Plaintiff seeks from DOJ.

STATEMENT OF FACTS

HUD’s Failure To Properly Respond To RWW’s FOIA Request:

9. As described below, RWW filed a FOIA request with HUD seeking documents that would shed light on a matter of significant public concern: a series of three steps HUD has reportedly taken to diminish its work on combatting homelessness and discrimination among lesbian, gay, bisexual, and transgender (“LGBT”) Americans.

10. On August 22, 2017, the magazine *New York* reported that, at the behest of its leadership, HUD had taken three actions to undermine anti-homelessness and anti-discrimination efforts geared towards LGBT individuals.

11. The first reported action was the removal from HUD’s website of materials that helped train homeless shelters on ensuring they provided equal access to transgender individuals.

12. The second reported action was the cancellation of a survey of pilot programs designed to decrease LGBT homelessness in the cities of Cincinnati, Ohio and Houston, Texas.

13. The third reported action was a directive to the Policy Development and Research division of HUD not to participate in a study of LGBT housing discrimination.

14. HUD has released no documents concerning the decision or directive to undertake these actions, other than the absence of the materials described above from HUD's website.

15. On September 20, 2017, RWW submitted a FOIA request to HUD seeking access to the following records:

1) Any records relating to or consisting of any directive to HUD personnel involving "the removal of online training materials meant, in part, to help homeless shelters make sure they were providing equal access to transgender people."

2) Any records relating to or consisting of any directive to HUD personnel involving the Department's participation in "a survey regarding projects in Cincinnati and Houston to reduce LGBT homelessness."

3) Any records relating to or consisting of any directive to HUD's Policy Development and Research division "to dissociate itself from a major study it had funded on housing discrimination against gay, lesbian, and transgender people."

16. RWW sought expedited processing of its request.

17. HUD received the request that same day.

18. In a letter dated September 22, 2017, HUD acknowledged receipt of RWW's request and denied expedited processing.

19. This letter also estimated, "[b]ased upon HUD's experience and current inventory," that it needed "30 to 45 days to complete processing of [the] request."

20. To date, HUD has not made a determination regarding RWW's FOIA request described above, notwithstanding its obligation under FOIA to make a determination within twenty working days and despite several follow-up calls and emails by RWW.

21. Through HUD's failure to respond to RWW's FOIA request within the required time period, RWW has constructively exhausted its administrative remedies and seeks immediate judicial review.

22. As of the date of this complaint, HUD has failed to (a) notify RWW of any determination regarding the requests, including the scope of any responsive records HUD intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

DOJ's Failure To Properly Respond To RWW's FOIA Request:

23. As described below, RWW filed a FOIA request seeking documents that would shed light on a matter of significant public concern: the decision of DOJ to remove multiple references to "lesbian, gay, bisexual, transgender, and questioning youth" or "L.G.B.T.Q. youth" from its 2017 annual solicitation for the Mentoring for Child Victims of Commercial Sexual Exploitation and Domestic Sex Trafficking Initiative (the "Initiative").

24. The Initiative funds programs that offer mentoring services to juvenile victims of sexual trafficking and exploitation. Two subunits of DOJ, the Office of Justice Programs ("OJP") and the Office of Juvenile Justice and Delinquency Prevention ("OJJDP")—itself a subunit of OJP—run this Initiative. Each year, DOJ, OJP, and OJJDP send out a solicitation for programs to request funding from the Initiative.

25. The Fiscal Year ("FY") 2016 solicitation, when describing the goals of the Initiative and the kinds of programs it would fund, made seven specific references to either

“lesbian, gay, bisexual, transgender, and questioning youth” or “L.G.B.T.Q. youth,” who are often victims of sex trafficking.

26. On September 10, 2017, the *New York Times* reported that the Trump Administration had removed these references from its description of the program. Consistent with that reporting, the FY 2017 solicitation contains no references to either “lesbian, gay, bisexual, transgender, and questioning youth” or “L.G.B.T.Q. youth.” Other than the absence of those references from the FY 2017 solicitation, DOJ has released no documents concerning the decision or directive to remove those references or to remove references to LGBTQ youth or individuals from other DOJ documents or programs.

27. On September 15, 2017, RWW submitted a FOIA request to DOJ seeking access to the following records:

Any records relating to or consisting of any decision by any Department of Justice official or any directive to or from OJP or OJJDP personnel relating to the removal of references to lesbian, gay, bisexual, transgender and questioning (L.G.B.T.Q.) youth from FY 2017 OJJDP solicitation for the Mentoring for Child Victims of Commercial Sexual Exploitation and Domestic Sex Trafficking Initiative.

28. RWW sought expedited processing of its request.

29. DOJ received the request on September 18, 2017.

30. In a letter dated October 11, 2017, DOJ acknowledged receipt of RWW’s request and granted expedited processing.

31. To date, DOJ has not made a determination regarding RWW’s FOIA request described above, notwithstanding its obligation under FOIA to make a determination within twenty working days and despite several follow-up calls and emails by RWW.

32. Through DOJ's failure to respond to RWW's FOIA request within the required time period, RWW has constructively exhausted its administrative remedies and seeks immediate judicial review.

33. As of the date of this complaint, despite the purported grant of "expedited" processing with respect to RWW's request, DOJ has failed to (a) notify RWW of any determination regarding the requests, including the scope of any responsive records DOJ intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Search for Responsive Records

34. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

35. Plaintiff properly requested records within the possession, custody, and control of both Defendants.

36. Each of the Defendants is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

37. Both of the Defendants have failed to review promptly agency records for the purpose of locating those records which are responsive to RWW's FOIA requests.

38. The Defendants' failure to search for responsive records violates FOIA.

39. Plaintiff is therefore entitled to injunctive and declaratory relief requiring each of the Defendants to promptly make reasonable efforts to search for records responsive to RWW's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Records

40. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

41. Plaintiff properly requested records within the possession, custody, and control of the Defendants.

42. Each of the Defendants is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records and provide a lawful reason for withholding any materials.

43. Both of the Defendants are wrongfully withholding agency records requested by Plaintiff by failing to produce records responsive to its FOIA requests.

44. The Defendants' failure to provide all responsive records violates FOIA.

45. Plaintiff is therefore entitled to injunctive and declaratory relief requiring each of the Defendants to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

- (1) Order each Defendant to immediately conduct a search reasonably calculated to uncover all records responsive to Plaintiff's FOIA requests submitted to HUD on September 20, 2017 and to DOJ on September 15, 2017;
- (2) Order each Defendant to produce, by such a date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiff's FOIA requests and indexes of any responsive records withheld under claim of exemption;

- (3) Enjoin the Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests;
- (4) Award Plaintiff the costs of this proceeding, including reasonable attorneys' 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 1, 2018

Respectfully submitted,

/s/ Craig Goldblatt

Craig Goldblatt

D.C. Bar No. 449229

Samuel M. Strongin (*pro hac vice* motion to follow)*

WILMER CUTLER PICKERING HALE AND
DORR LLP**

1875 Pennsylvania Avenue NW

Washington, DC 20006

(202) 663-6000 (phone)

(202) 663-6363 (fax)

craig.goldblatt@wilmerhale.com

samuel.strongin@wilmerhale.com

/s/ Diane Laviolette

Diane Laviolette

D.C. Bar No. 457844

/s/ Elliot Minberg

Elliot Minberg

D.C. Bar No. 941575

PEOPLE FOR THE AMERICAN WAY
FOUNDATION

1101 15th Street NW, Suite 600

Washington, DC 20005

(202) 467-4999

eminberg@pfaw.org

dlaviolette@pfaw.org

Counsel for Plaintiff

* Admitted to practice only in Virginia. Supervised by members of the firm who are members of the District of Columbia bar.

** Wilmer Cutler Pickering Hale and Dorr LLP appears as counsel to Plaintiff People for the American Way herein solely in connection with claims asserted against the U.S. Department of Housing and Urban Development.

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Freedom of Information Act, 5 U.S.C. 552, Failure to Respond to FOIA Request

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 03/01/2018	SIGNATURE OF ATTORNEY OF RECORD: /s/ Craig Goldblatt
------------------	--

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

People for the American Way

Plaintiff

v.

U.S. Department of Housing and Urban Developm

Defendant

)
)
)
)
)
)
)
)
)
)

Civil Action No. 18-cv-487

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Department of Housing and Urban Development
451 7th St SW
Washington, DC 20410

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Craig Goldblatt
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave. NW
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: