

continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff Equity Forward is a nonpartisan organization committed to the promotion of transparency and accountability in the area of reproductive health, the education of the public about government activities related to reproductive health, and ensuring accountability for malfeasance, fraud, unethical practices and false information in the area of reproductive health. Through research and FOIA requests, Equity Forward uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government regarding reproductive health through its own public information campaigns and dissemination of information to other public interest groups.

6. Defendant the U.S. Department of Health and Human Services (HHS) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HHS has possession, custody, and control of the records that Equity Forward seeks.

STATEMENT OF FACTS

7. On March 29, 2018, Equity Forward submitted a FOIA request to HHS seeking all records reflecting correspondence between three specifically identified HHS officials and any employees or representatives of specific persons or entities.

8. Equity Forward identified the following HHS officials for the following time periods:

- a. Valerie Huber, Chief of Staff for the Assistant Secretary of Health, from May 1, 2017, until the fulfillment of this request;

- b. Teresa Manning, OPA Former Deputy Assistant Secretary, from January 20, 2017, until January 16, 2018; and
 - c. Steven Valentine, Deputy Chief of Staff for the Assistant Secretary of Health, from January 22, 2017, until the fulfillment of this request.
9. Further Equity Forward identified the following persons and entities:
- a. Americans United for Life;
 - b. Susan B. Anthony List;
 - c. Charlotte Lozier Institute;
 - d. Billy Valentine;
 - e. Steven Valentine, Sr.;
 - f. The Office of Rep. Chris Smith;
 - g. The Office of Rep. Vicky Hartzler; and
 - h. The Office of Rep. Dan Lipinski.
10. HHS assigned the request tracking number 2018-00810-FOIA-OS.

Exhaustion of Administrative Remedies

11. As of the date of this complaint, HHS has failed to (a) notify Equity Forward of any determination regarding its FOIA request, including the scope of any responsive records HHS 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.

12. Through HHS's failure to respond to Equity Forward's FOIA request within the time period required by law, Equity Forward has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Search for Responsive Records

13. Equity Forward repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

14. Equity Forward properly requested records within the possession, custody, and control of HHS.

15. HHS is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

16. HHS has failed to promptly review agency records for the purpose of locating those records which are responsive to Equity Forward's FOIA request.

17. HHS's failure to conduct an adequate search for responsive records violates FOIA.

18. Plaintiff Equity Forward is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Equity Forward's FOIA request.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

19. Equity Forward repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

20. Equity Forward properly requested records within the possession, custody, and control of HHS.

21. HHS is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

22. HHS is wrongfully withholding non-exempt agency records requested by Equity Forward by failing to produce non-exempt records responsive to its FOIA request.

23. HHS is wrongfully withholding non-exempt agency records requested by Equity Forward by failing to segregate exempt information in otherwise non-exempt records responsive to Equity Forward's FOIA request.

24. HHS's failure to provide all non-exempt responsive records violates FOIA.

25. Plaintiff Equity Forward is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, Equity Forward respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Equity Forward's FOIA request;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Equity Forward's FOIA request and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Equity Forward's FOIA request;

- (4) Award Equity Forward 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 Equity Forward such other relief as the Court deems just and proper.

Dated: May 4, 2018

Respectfully submitted,

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