

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the immediate processing and release of agency records requested by Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation from Defendant Department of Justice (“DOJ”).

2. On March 29, 2013, Plaintiffs submitted a FOIA request (the “Request”) to the DOJ seeking records related to the government’s use of evidence derived from surveillance authorized by the FISA Amendments Act

United States Attorneys (“EOUSA”), and the Federal Bureau of Investigation (“FBI”)—to process the Request immediately. Plaintiffs also seek an order enjoining Defendant from assessing fees for the processing of the Request.

JURISDICTION AND VENUE

6. This Court has both subject-matter jurisdiction of the FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), (a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

7. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

8. Plaintiff American Civil Liberties Union (“ACLU”) is a nationwide non-profit and non-partisan organization with more than 500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that the American government complies with the Constitution and laws, including its international legal obligations, in matters that affect civil liberties and human rights. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights.

9. Plaintiff American Civil Liberties Union Foundation is a separate 501(c)(3) organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties.

10. Defendant DOJ is a department of the executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). The DOJ is headquartered in Washington, D.C.

FACTUAL BACKGROUND

United States v. Gojali, No. 12-cr-00092 (C.D. Cal.); *United States v. Nafis*, No. 12-cr-00965 (E.D.N.Y.); *United States v. Muhtorov*, No. 12-cr-00033 (D. Colo.); *United States v. El Khalifi*, No. 12-cr-00037 (E.D. Va.); *United States v. Osmakac*, No. 12-cr-00045 (M.D. Fl.); and *United States v. Arbabsiar*, No. 11-cr-00897 (S.D.N.Y.). While the Senate Select Committee on Intelligence has since claimed, in a September 16, 2013 letter, that Senator Feinstein did not mean to state that FAA surveillance was used in any or all of these cases, that assertion is difficult to square with her testimony. In urging her colleagues and the public to support reauthorization of the FAA, Senator Feinstein said, “So I believe the FISA Amendments Act is important and these cases show the program has worked.”

16. In the five years since the FAA was enacted, not a single criminal defendant has received notice

22. Plaintiffs also sought a waiver of search and review fees on the grounds that the ACLU qualifies as a “representative of the news media” and that the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii); 28 C.F.R. § 16.11(d).

The Government’s Response to the Request

23. In spite of the urgent public interest surrounding the requested documents, more than six months after Plaintiffs filed their Request, three components within the DOJ—the National Security Division, the Criminal Division, and the EOUSA—have neither released responsive records nor explained their failure to do so.

24. The twenty-day statutory limit for the DOJ to respond to Plaintiffs’ Request has elapsed. *See* 5 U.S.C. § 552(a)(6).

25. A fourth DOJ component, the FBI, improperly denied Plaintiffs’ Request in its entirety. Plaintiffs administratively appealed from this denial.

26. The twenty-day statutory limit for the DOJ to respond to Plaintiffs’ appeal of the FBI’s denial has elapsed with no determination. *See* 5 U.S.C. § 552(a)(7)(G); 28 C.F.R. § 16.11(d).

Federal Bureau of Investigation

39. By letter dated April 12, 2013, the DOJ FOIA office acknowledged receipt of Plaintiffs' Request and stated that it was forwarding the Request to the FBI and the EOUSA.

40. By letter dated May 3, 2013, the FBI acknowledged receipt of Plaintiffs' Request.

41. On June 4, 2013, the FBI denied Plaintiffs' Request, stating that the first category of records sought was "too broad and vague" and therefore was not obtainable under FOIA. The FBI's denial did not address the second or third categories of records identified in Plaintiffs' Request.

42. Plaintiffs appealed from the FBI's denial of their Request on July 30, 2013.

43. By letter dated August 13, 2013, the Office of Information Policy stated that it had received Plaintiffs' appeal on August 1, 2013.

44. Plaintiffs have received no determination in response to their appeal from the FBI's denial of the Request.

CAUSES OF ACTION

45. Defendant's failure to make a reasonable effort to search for records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3), and Defendant's corresponding regulations.

46. Defendant's failure to promptly make available the records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(6)(A), and Defendant's corresponding regulations.

47. Defendant's failure to process Plaintiffs' request expeditiously and as soon as practicable violates FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendant's corresponding regulations.

48. Defendant's failure to grant Plaintiffs' request for a waiver of search, review, and duplication fees violates FOIA, 5 U.S.C. § 552(a)(4), (a)(6), and Defendant's corresponding regulations.

