

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION,

Plaintiff,

v.

ADMINISTRATION FOR CHILDREN AND
FAMILIES,

Civil Action No. 1:16-cv-0

Defendant.

TVPA, Defendant Administration for Children and Families (“Defendant” or “ACF”) provides an array of services to these individuals, including medical services, to help them become self-sufficient. In 2006, Defendant provided a multi-year, multi-million dollar contract to USCCB to distribute as subcontracts to organizations that directly serve trafficked individuals. In that contract, Defendant permitted USCCB to prohibit all subcontractors from using federal funds to pay for abortion and contraception services and referrals, based solely on USCCB’s religious beliefs.

4. Denying reproductive health services, and referrals for these services, can further victimize trafficked individuals. Victims of severe forms of human trafficking frequently need reproductive health care services and referrals to lead safe lives, become self-sufficient, and protect themselves and others. These services, and referrals to these services, include emergency contraception, condoms, and in some cases abortion.

5. In 2009, the ACLU filed a lawsuit alleging that Defendant violated the Establishment Clause by permitting USCCB to impose its religiously based restrictions on the types of services trafficked individuals can receive with taxpayer funds. The suit was based in part on documents received by the ACLU in response to a previous FOIA request.

6. In 2012, a federal district court ruled in favor of the ACLU, and held that Defendant’s contract with USCCB violated the Establishment Clause. On appeal from the district court’s decision, Defendant successfully

13. Plaintiff ACLU is a non-profit organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The ACLU has filed multiple FOIA requests pertaining to the government's policies. The ACLU is a nationwide, non-profit, non-partisan organization with more than 500,000 members dedicated to the constitutional principles of liberty and equality.

14. Defendant ACF, a subdivision of the U.S. Department of Health and Human Services ("HHS"), is an agency within the meaning of 5 U.S.C. § 552(f)(1).

Defendant's 2006 Contract with USCCB

15. In 2006, the O

18. The Freedom Network—a national coalition of anti-trafficking organizations—raised concerns about the contract,

can safely assume that for the foreseeable future the challenged contract terms will not recur.” The court gave particular weight “to the fact that the defendants are high-ranking federal officials, including a cabinet member, who have, as a matter of policy, abandoned the prior practice and adopted a concededly constitutional replacement.”

Defendant’s 2015 Grant to USCCB

23. In 2015, ORR issued a new Funding Opportunity Announcement, HHS-2015-ACF-ORR-ZV-0976, stating that “it will accept competing applications for cooperative agreements to administer the Trafficking Victim Assistance Program (TVAP).”

24. The FOA explicitly addressed potential religious objections to the Trafficking Victim Assistance Program’s service and referral requirements. It states: “If an organization has a religious objection to providing any of the services or referrals required in the program, it may propose an approach to meeting its grant obligations consistent with ACF’s faith-based policy. The alternative approach must be one that accomplishes the goal of ensuring that trafficking victims understand the full range of services available to them, including reproductive health services, and that there is a

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members as part of the Trafficking Victim Assistance Program.” In its announcement, USCCB stated that it will serve HHS Regions 3 and 6, which include: Arkansas, Delaware, the District of Columbia, Louisiana, Maryland, New Mexico, Oklahoma, Pennsylvania, Texas

U.S.C. § 552 (a)(6)(A)(i). That time limit can be shortened to 10 days, if the requestor demonstrates a compelling need for the documents. *Id.* § 552 (a)(6)(E).

31. Under HHS regulations, HHS is to decide whether to release records within 10 working days, and must provide the records as soon as possible after that decision. 45 C.F.R. § 5.35(b)(1).

32. Given that HHS voluntarily shortens the deadline for responding to requests to match the statutory framework for expedited requests, Plaintiff did not ask for expedited processing here.

33. If HHS fails to “meet the deadline[], [the requester] may proceed as if [it] had denied [the] request.” *Id.* § 5.35(a).

34. Plaintiff therefore has instituted this action to ask the Court to order Defendant to disclose the requested documents.

Plaintiff’s Entitlement to a Waiver of or Reduced Processing Fees

35. Plaintiff also asked for a waiver or reduction of document search, review, and duplication fees because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 45 C.F.R. § 5.45(a).

36. The records sought in the instant request will significantly contribute to the public understanding of the operations and activities of HHS and its grantees. In addition, disclosure is not in Plaintiff’s commercial interest. Plaintiff will evaluate the disclosed documents and, depending on what is contained in the documents, may well disseminate the information to the public. If Plaintiff publicly discloses information obtained through the FOIA, it will do so at no cost to the public. *See Ex. A.*

37. Plaintiff is also entitled to a waiver or reduction of fees because it qualifies as a “representative of the news media” and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 45 C.F.R. § 5.45(b)(3).

38. Plaintiff is a representative of the news media for the purposes of FOIA because it is an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.

39. Plaintiff does not seek the requested information for commercial reasons. Plaintiff summarizes, explains, and disseminates the information it gathers through FOIA requests at no cost to the public.

Causes of Action

40. Plaintiff repeats and realleges paragraphs 1-39.

41. Defendant’s failure to timely make available the records sought by Plaintiff’s request violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and Defendant’s corresponding regulation, 45 C.F.R. § 5.35(b)(1).

42. Defendant’s failure to grant Plaintiff’s request for a waiver or reduction of fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A), and Defendant’s corresponding regulation, 45 C.F.R. § 5.45.

43. Defendant’s failure to grant Plaintiff’s requests for a waiver or reduction of fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A), and Defendant’s corresponding regulation, 45 C.F.R. § 5.45(b).

Requested Relief

WHEREFORE, Plaintiff prays that this Court:

