

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

GOVERNMENT ACCOUNTABILITY)
PROJECT,)
1612 K. St. NW, Suite #1100)
Washington DC, 20006)
)
Plaintiff,)
)
v.)
)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY,)
OFFICE OF GENERAL COUNSEL)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY)
WASHINGTON, DC, 20528)
)
Defendant.)

COMPLAINT

Plaintiff GOVERNMENT ACCOUNTABILITY PROJECT brings this suit to overturn Defendant UNITED STATES DEPARTMENT OF HOMELAND SECURITY’s refusal, in violation of the Freedom of Information Act, to produce records in a timely manner relating to correspondence between White House staff and DHS concerning ideological tests at the U.S. border and records related to search protocols for citizens and non-citizens at the U.S. border.

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the United States to foster democracy and allow any person to obtain copies of the records of agencies for any public or private purpose consistent with the terms of the federal Freedom of Information Act, 5 U.S.C. § 552.

PARTIES

2. Plaintiff GOVERNMENT ACCOUNTABILITY PROJECT is a non-profit organization serving the public by protecting government and corporate whistleblowers who expose wrongdoing.

3. Defendant UNITED STATES DEPARTMENT OF HOMELAND SECURITY is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because a plaintiff may always bring a federal FOIA suit in the U.S. District Court for the District of Columbia.

GAP'S FOIA REQUEST

6. On April 4, 2017, GAP requested from DHS all non-exempt "correspondence between White House staff and the DHS concerning ideological tests at the U.S. border," as well as "all correspondence concerning searches of cellphones, the protocols, information about who was searched (with identifying information redacted), search rates, protocols if a search is refused, etc., for citizens and non-citizens, at the U.S. border." GAP also requested "any records generated in connection with topics listed above that raised or were responding to compliance of 5 U.S.C. § 2302(b)(8)." A true and correct copy of the request is attached as Exhibit A.

7. On April 6, 2017, DHS acknowledged receipt of GAP's request and invoked a 10-day extension pursuant to the FOIA statute. A true and correct copy of the response is attached as Exhibit B.

8. As of the date of filing, over five months have passed since DHS invoked a 10-day extension and DHS has failed to produce any records or follow-up with GAP in any way.

COUNT I – VIOLATION OF FOIA

9. The above paragraphs are incorporated by reference.
10. Defendant DHS is an agency subject to FOIA.
11. The requested records are not exempt under FOIA.
12. Defendant DHS has refused to produce the requested records in a timely manner.

WHEREFORE, GAP asks that the Court:

- i. declare that DHS has violated FOIA;
- ii. order DHS to conduct a reasonable search for records and to produce the requested records;
- iii. enjoin DHS from withholding non-exempt public records under FOIA;
- iv. award Plaintiff reasonable attorney's fees and costs;
- v. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Joshua Hart Burday

Attorneys for Plaintiff
GOVERNMENT ACCOUNTABILITY
PROJECT

Matthew Topic
Joshua Burday
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com
Atty. No. 41295

Subject: FOIA

Date: Tuesday, April 4, 2017 at 9:23:06 AM Central Daylight Time

From: Zack Kopplin

To: foia@hq.dhs.gov

Government Accountability Project

4/3/2017

Zack Kopplin, GAP Investigator
832 Valence Street
New Orleans, Louisiana 70115
225-715-5946

Re: FOIA Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I am requesting any and all documents and records, as defined by the Act, that are not currently in the public domain, related to:

Any and all nonexempt, unclassified correspondence between White House staff and the DHS concerning ideological tests at the U.S. border. Any and all correspondence concerning searches of cellphones, the protocols, information about who was searched (with identifying information redacted), search rates, protocols of a search is refused, etc, for citizens and non-citizens, at the U.S. border.

In addition, I would ask that you search for any records generated in connection with topics listed above that raised or were responding to compliance of 5 U.S.C. § 2302(b)(8).

Thank you very much for your assistance.

If any of the material covered by this request has been destroyed or removed, please provide all surrounding documentation including, but not limited to, a description of the action taken regarding the materials and justification for those actions taken. For any documents or portions you deny due to a specific FOIA exemption, please provide a detailed justification of your grounds for claiming such exemption, explaining why the exemption is relevant to the document or portion of the document withheld.

The Government Accountability Project requests that all fees incurred in connection with the attached request be waived, because "disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester." 5 U.S.C. §552 (a)(4)(A)(iii).

In my individual capacity, I also request fees be waived because as an investigator for the Government Accountability Project, I am primarily involved in gathering information about alleged and actual government activity and disseminating it to the public. I have written for a wide variety of national and international news outlets, including *The Atlantic*, *Slate Magazine*, *Politico Magazine*, *Science Magazine*, the *Daily Beast*, and *The Guardian*, and will disseminate what I receive in the news media.

The Government Accountability Project consents to the deletion of any material that would violate an individual's rights under the Privacy Act. We will work with your office to prioritize responsive data for this

request, further refine the request if you find any terms too imprecise, conduct searches for unclassified responsive records, or engage in any other reasonable activities that would lessen the agency's burden and costs.

The Requesters' Public Interest Status and History

GAP is a non-profit, non-partisan, public interest organization chartered under IRS Code §501 (C)(3) as a non-profit, educational and charitable organization. We seek to serve the public through achieving governmental accountability by protecting and encouraging federal and corporate employees who observe or are victimized by wrongdoing, gross waste of public funds, threats to public health and safety, environmental contamination, corruption, abuse of the public trust and other abuses of power.

GAP accomplishes these goals primarily by conducting advocacy campaigns before Congress, through the media, and for the general public and by providing legal representation to whistleblowers to combat the retaliation they have suffered in exercising their right of occupational free speech. Our twin aims are to promote corporate and government accountability and to expose, investigate, and correct substantive problems that formed the basis of protected whistleblowing disclosures. GAP's role is well-recognized by the courts and, as an organization, has informational standing under the First Amendment protecting its receipt of disclosed information. *Taylor v. RTC*, 56 F.3d 1437 (D.C. 1995); *United States v. Garde*, 573 F. Supp. 604 (D.D.C. 1987); ~ *Generally Virginia Pharmacy Bd. v. Virginia Consumer Council*, 425 U.S. 748, 756-57 (1976).

GAP has a 20-year history of working in the public interest. GAP does not take individual cases based on the client's ability to pay, how much money GAP believes it can recover in legal fees through litigation or any other commercial interest. Rather, GAP takes cases of legitimately harassed whistleblowers, often pro-bono (without charge), that further public policy or legislative changes that make the law stronger for workers who witness and choose to tell the truth about corporate and taxpayer-financed wrongdoing and to pursue exposure and resolution of the wrongdoing. It is through this work and with the help of whistleblowers that GAP has, among other things, pushed for enactment of several whistleblower protection statutes, exposed unhealthy food at supermarket chains, pushed for independent reviews of the safety of the Alaska pipeline, exposed the threat of explosion in waste tanks at the Hanford nuclear site, and pushed for policy reform within numerous executive agencies. All this activity is done primarily with the interest of the public in mind.

Dissemination of the Requested Information

In our efforts to promote government accountability, GAP works closely with Members of Congress, the media, and the public to alert them to irregularities. The information requested will be used in connection with a campaign aimed at key decision-makers at the federal level, the general public, and self-selected subscribers. More specifically, GAP will publicize the responsive records so that all federal employees who seek assistance at OSC can be fully-informed about the office's methods for investigating their complaints.

The combined circulation and viewer-base of our national, regional, and self-subscribed outlets ensure that the information will, indeed, be widely distributed to diverse segments of the public who will benefit from knowing the manner in which OSC investigates complaints, and the efforts that OSC has taken to ensure the highest quality training and instruction for its staff. As a consequence, public understanding and trust of government operations will certainly be enhanced.

Non-commercial use of the Requested Information

Disclosure of this information by GAP is in no way connected with any commercial interest since GAP is a non-profit, tax-exempt organization under § 501 (c)(3) of the IRS Code. The information we are seeking is crucial to advance public knowledge and will not be put to any commercial use.

Please be reminded that under the Freedom of Information Act, we are entitled to a response to this request within twenty working days. Should this request be denied for any reason, we ask that a detailed explanation be provided along with the name of the person to whom administrative appeals should be addressed.

Requesting Expedited Processing

This information is of huge public interest and a potential harm exists to thousands of people who may travel to the United States as shown by this major news article this morning. Its only been a couple hours and the article is making headlines everywhere.

<https://www.wsj.com/articles/trump-administration-considers-far-reaching-steps-for-extreme-vetting-1491303602>

This information could inform a wide range of U.S. society and policies, including trade, tourism, immigration, education, and human rights among others. There is an urgent need to inform the public about DHS policy.

We will inform the public, disseminating this information in the national and international media.

Thank you in advance for your assistance and cooperation,

Zack Kopplin, Investigator and Outreach Associate
Government Accountability Project
225-715-5946



Homeland
Security

April 6, 2017

SENT VIA E-MAIL TO: ZackK@whistleblower.org

Zack Kopplin
Investigator and Outreach Associate
832 Valence Street
New Orleans, LA 70115

Re: **2017-HQFO-00612**

Dear Mr. Kopplin:

This letter acknowledges receipt of your April 4, 2017, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), for any and all nonexempt, unclassified correspondence between White House staff and the DHS concerning ideological tests at the U.S. border. Any and all correspondence concerning searches of cellphones, the protocols, information about who was searched (with identifying information redacted), search rates, protocols of a search is refused, etc, for citizens and non-citizens, at the U.S. border. This office received your request on April 4, 2017.

As it relates to your request for expedited processing and fee waiver, your request is granted.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2017-HQFO-00612**. Please refer to this identifier in any future correspondence. To check the status of your FOIA request, you may contact this office at 1-866-431-0486 or 202-343-1743, or you may check the status of your request online at <http://www.dhs.gov/foia-status>.

EXHIBIT B

Sincerely,

A handwritten signature in cursive script, appearing to read "LaEbony Livingston".

LaEbony Livingston
FOIA Program Specialist