

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

WASHINGTON BLADE
[REDACTED]

and

CHRIS JOHNSON
[REDACTED]

Plaintiffs,

v.

**UNITED STATES
DEPARTMENT OF LABOR**
[REDACTED]

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Washington Blade and Chris Johnson (“Johnson”) (collectively, “Plaintiffs”), by and through undersigned counsel, hereby allege as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA” or the “Act”), for declaratory, injunctive, and other appropriate relief brought by the Washington Blade and its Chief Political and White House Reporter Chris Johnson.

2. By this action, Plaintiffs seek to compel the United States Department of Labor (“DOL”) to comply with its obligations under FOIA to release records that Plaintiffs requested

from DOL's Office of Federal Contract Compliance Programs. Plaintiffs are statutorily entitled to disclosure of the requested records, which Defendant has withheld in violation of the Act.

PARTIES

3. Plaintiff Washington Blade was founded in 1969 and covers issues pertaining to the LGBTQ community in and around Washington, D.C. and abroad. It is the oldest LGBTQ newspaper in the United States. Its office is located at [REDACTED] Washington, D.C. 20009.

4. Plaintiff Chris Johnson is the Chief Political and White House Reporter at the Washington Blade, where he covers developments concerning LGBTQ issues with respect to the White House, Congress, and the federal courts. His office is located [REDACTED] Floor, Washington, D.C. 20009.

5. Defendant United States Department of Labor is an agency of the federal government within the meaning of 5 U.S.C. § 551 and 5 U.S.C. § 552(f) that has possession, custody, and/or control of the records that Plaintiffs seek. DOL's headquarters is located at [REDACTED]

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action and personal jurisdiction over Defendant pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

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

FACTS

Plaintiffs' FOIA Request

8. On August 29, 2019, Johnson, on behalf of himself and the Washington Blade, submitted a FOIA request to the DOL via email (the "Request"). A true and correct copy of the Request is attached hereto as **Exhibit A** and is incorporated by reference herein.

9. The Request was directed to DOL's Office of Federal Contract Compliance Programs. The Request sought "all emails to and from the persons in the roles of director, deputy director and director of policy including the words 'religion' or 'religious' from Jan. 20, 2017 to Aug. 30, 2019." Ex. A. The Request identified Johnson and the Washington Blade as representatives of the news media. *Id.*

10. The Request sought expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). *Id.*

11. By letter dated September 13, 2019, DOL acknowledged receipt of the Request and assigned it tracking number 882203. A true and correct copy of the DOL's acknowledgment letter is attached hereto as **Exhibit B**. In its acknowledgement letter, DOL stated that it had granted Johnson fee status as a representative of the news media. Ex. B. DOL also stated that it was extending the time to provide a determination by an additional ten business days. *Id.*

12. On November 7, 2019, DOL FOIA staff emailed Johnson asking to modify the "[R]equest to limit the search to the body of the letter and not the attachments[.]" A true and correct copy of DOL's November 7, 2019 email is attached hereto as **Exhibit C**.

13. By email that same day, Johnson agreed to DOL's request to limit its search to the body of emails and not attachments. *See id.*

14. On March 4, 2020, Johnson emailed DOL to ask for an estimated date of completion for the Request. *See id.*

15. By email that same day, DOL FOIA staff informed Johnson that there was no estimated date of completion for the Request. *See id.*

16. On May 4, 2020, Johnson administratively appealed DOL's failure to timely respond to the Request (the "Administrative Appeal") via email. A true and correct copy of the Administrative Appeal is attached hereto as **Exhibit D** and is incorporated by reference herein.

17. By letter dated May 14, 2020, DOL's Appeals Unit acknowledged receipt of the Administrative Appeal, assigning it tracking number 200120, and informed Johnson that the appeal was "being processed." A true and correct copy of DOL's acknowledgement of the Administrative Appeal is attached hereto as **Exhibit E**.

Current Status of the Request

18. As of the filing of this Complaint, Plaintiffs have received no further communication from DOL with respect to the Request.

19. As of the filing of this Complaint, Plaintiffs have received no further response to their Administrative Appeal of DOL's failure to timely respond to the Request.

20. As of the filing of this Complaint, Plaintiffs have received neither a final determination nor any records in response to the Request.

21. As of the filing of this Complaint, the Request has been pending for 378 days.

CAUSES OF ACTION

COUNT I

**VIOLATION OF FOIA FOR FAILURE TO COMPLY
WITH STATUTORY DEADLINES**

22. Plaintiffs repeat, reallege, and incorporate the allegations set forth in the foregoing Paragraphs 1 through 21 as though fully set forth herein.

23. Defendant is an agency subject to FOIA. 5 U.S.C. §§ 552(f), 551.

24. The Request properly seeks records within the possession, custody, and/or control of Defendant under FOIA.

25. The Request complied with all applicable regulations regarding the submission of FOIA requests.

26. Defendant failed to make a timely determination regarding Plaintiffs' Request, violating the statutory deadline imposed by FOIA. 5 U.S.C. § 556(a)(6)(A).

27. Plaintiffs have or are deemed to have exhausted applicable administrative remedies with respect to the Request. 5 U.S.C. § 552(a)(6)(C)(i).

COUNT II

VIOLATION OF FOIA FOR UNLAWFUL WITHHOLDING OF AGENCY RECORDS

28. Plaintiffs repeat, reallege, and incorporate the allegations set forth in the foregoing Paragraphs 1 through 21 as though fully set forth herein.

29. Defendant is an agency subject to FOIA. 5 U.S.C. §§ 552(f), 551.

30. The Request properly seeks records within the possession, custody, and/or control of Defendant under FOIA.

31. The Request complied with all applicable regulations regarding the submission of FOIA requests.

32. Defendant has not released any records or portions thereof in response to the Request.

33. Defendant has not cited any exemptions to withhold records or portions thereof that are responsive to the Request.

34. Defendant has not identified whether or how release of the records sought by the Request would foreseeably harm an interest protected by a FOIA exemption and/or why disclosure is prohibited by law. 5 U.S.C. § 552(a)(8).

35. Defendant has improperly withheld records responsive to the Request in violation of FOIA. 5 U.S.C. § 552(a)(3)(A).

36. Plaintiffs have and/or are deemed to have exhausted applicable administrative remedies with respect to the Request. 5 U.S.C. § 552(a)(6)(A)(ii); *id.* § 552(a)(6)(C)(i).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

- (1) order Defendant to conduct a search reasonably calculated to identify all records responsive to the Request,
- (2) Order Defendant to immediately disclose, in their entirety, all records responsive to Request that are not specifically exempt from disclosure under FOIA;
- (3) issue a declaration that Plaintiffs are entitled to disclosure of the requested records;
- (4) enjoin Defendant from continuing to withhold any and all non-exempt records or portions thereof responsive to the Request;
- (5) award Plaintiffs reasonable attorney fees and costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) grant such other relief as the Court may deem just and proper.

Dated: September 15, 2020

Respectfully submitted,

/s/ Katie Townsend

Katie Townsend
D.C. Bar No. 1026115

Adam A. Marshall
D.C. Bar No. 1029423

Gunita Singh
D.C. Bar No. 1601923

THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS



Counsel for Plaintiffs

EXHIBIT A



Chris Johnson <cjohnson@dcagenda.com>

FOIA request — Emails using word "religion" and "religious"

2 messages

Chris Johnson [redacted] Thu, Aug 29, 2019 at 1:06 PM

To: [redacted]

Greetings!

I'm writing to submit a FOIA request for the Office of Federal Contract Compliance Programs. I'm seeking all emails to and from the persons in the roles of director, deputy director and director of policy including the words "religion" or "religious" from Jan. 20, 2017 to Aug. 30, 2019. Please delete all duplicates.

I'm a member of the media. I'd also like to request expedited handling for this FOIA request.

Thank you.

--
Chris Johnson
Washington Blade
Chief Political & White House Reporter
Follow me on Twitter:
<https://twitter.com/chrisjohnson82>

Postmaster <postmaster@dol.gov> Thu, Aug 29, 2019 at 1:07 PM

To: [redacted]

The following message to [redacted] was undeliverable.
The reason for the problem:
5.1.0 - Unknown address error 550-'5.7.0 <[redacted]> ... Invalid address'

Final-Recipient: [redacted]
Action: failed
Status: 5.1.0
Remote-MTA: dns; [128.182.58.100]
Diagnostic-Code: smtp; 5.1.0 - Unknown address error 550-'5.7.0 <[redacted]> . Invalid address' (delivery attempts: 0)

----- Forwarded message -----
From: Chris Johnson [redacted]
To: [redacted]
Cc:
Bcc:
Date: Thu, 29 Aug 2019 13:06:50 -0400
Subject: FOIA request — Emails using word "religion" and "religious"

noname
OK

EXHIBIT B

U.S. Department of Labor

Office of Federal Contract
Compliance Programs



SEP 13 2019

Chris Johnson
Chief Political & White House Reporter
Washington Blade

RE: Freedom of Information Act Request Acknowledgement – Tracking No. 882203

Dear Mr. Johnson:

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request submitted to [REDACTED]. The Office of the Solicitor assigned your request to the Office of Federal Contract Compliance Programs (OFCCP) on September 3, 2019. Please refer to the above-referenced FOIA tracking number in any future correspondence regarding your FOIA request. You requested:

... all emails to and from the persons in the roles of director, deputy director and director of policy including the words “religion” or “religious” from January 20, 2017, to August 31, 2019.

We consider you to be a representative of the news media as defined by the U.S. Department of Labor FOIA regulations at 29 CFR § 70.40(c)(3), therefore, only reproduction costs will be assessed, excluding charges for the first 100 pages. DOL’s FOIA regulations at 29 CFR § 70.42(a) deem that the filing of a FOIA constitutes an agreement by the requester to pay all fees up to \$25.00.

Due to the volume and complexity of the FOIA requests in receipt of this agency, we anticipate that providing a full response will take longer than 20 business days to fulfill. Accordingly, OFCCP will take an additional 10 business days to fulfill your request as afforded by the FOIA at 5 U.S.C. § 552(a)(6)(B)(i). We will contact you if we are unable to fulfill your request in 30 business days.

If you need further assistance or would like to discuss any aspect of your request, please do not hesitate to contact this office at [REDACTED] or by email at [REDACTED]. Alternatively, you may wish to contact the DOL FOIA Public Liaison, Thomas Hicks, at (202) [REDACTED] or by email at [REDACTED].

You may also contact the Office of Government Information Services (OGIS), within the National Archives and Records Administration (NARA), to inquire about the mediation services

they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. You can also reach that office by email at ogis@nara.gov, by phone at [REDACTED] 5770, by fax at (202) 741-5769, or by calling toll-free at 1(877) 684-6448.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the Solicitor of Labor within 90 days from the date of this letter. In the appeal, you must state in writing the grounds for the appeal, and may include any supporting statements or arguments, but such statements are not required. To facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the initial request and copy of this letter. Clearly mark "Freedom of Information Act Appeal" on the envelope and letter of the appeal. You must make any amendment to the appeal in writing and we must receive it prior to a decision. Address the appeal to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. You may submit your appeal by email to foiaappeal@dol.gov. The Department does not accept appeals submitted to any other email address.

Using the tracking number above, you may query the status of your request online at <http://www.dol.gov/foia>.

Sincerely,



D. Lissette Geán
Special Assistant

EXHIBIT C



Chris Johnson <cjohnson@dcagenda.com>

FOIA Request No. 882203

5 messages

OFCCP NO FOIA
To: Chris Johnson

Thu, Nov 7, 2019 at 1:47 PM

Hello,

Can I modify your request to limit the search to the body of the letter and not the attachments?

Thank you,

Bruce Andersen

Chris Johnson
To: OFCCP NO F

Thu, Nov 7, 2019 at 2:05 PM

Yes, that would be fine.

[Quoted text hidden]

--
Chris Johnson
Washington Blade
Chief Political & White House Reporter
Follow me on Twitter:
<https://twitter.com/chrisjohnson82>

OFCCP NO FOIA
To: Chris Johnson

Thu, Nov 7, 2019 at 4:08 PM

Thank you.

[Quoted text hidden]

Chris Johnson
To: OFCCP NO F

Wed, Mar 4, 2020 at 4:29 PM

I'd like to follow up on this FOIA request. Do you expect documents will be available soon?

[Quoted text hidden]

OFCCP NO FOIA
To: Chris Johnson
Cc: "Hicks, Thoma

Wed, Mar 4, 2020 at 4:45 PM

Dear Mr. Johnson,

When we spoke last year, I indicated that this was a large request, and that there were several other large requests ahead of this one in our queue.

This has not changed since we last spoke. There is not set date for completion.

I am copying the DOL FOIA Public Liaison, Thomas Hicks, on this request. If you have concerns not addressed by this response, you can reach out to him.

Cordially,

Bruce Andersen

[Quoted text hidden]

EXHIBIT D



Chris Johnson <cjohnson@dcagenda.com>

FOIA Appeal — Tracking No. 882203

1 message

Chris Johnson

Mon, May 4, 2020 at 12:15 PM

To: foiaappeal@ [REDACTED]

Greetings!

I'd like to submit an appeal of a Freedom of Information Act request given Tracking No. 882203.

I submitted the request to the Office of Federal Contract Compliance on Aug. 29, 2019. I last received an email from the FOIA office on March 3, 2020 in response to a request for an update, but I still have received no material.

I believe an appeal is warranted because I think this material should be public before the upcoming election. Our readers are interested in the information sought, which is "all emails to and from the persons in the roles of director, deputy director and director of policy including the words "religion" or "religious" from Jan. 20, 2017 to Aug. 30, 2019."

Thanks for any help with this appeal.

Chris Johnson



Chris Johnson

Washington Blade

Chief Political & White House Reporter

Follow me on Twitter:

<https://twitter.com/chrisjohnson82>

EXHIBIT E

U.S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210



Appeals Unit
Freedom of Information Act/Privacy Act
Division of Management and Administrative Legal Services
200 Constitution Avenue, N.W., Suite N-2420

Phone [REDACTED]

Fax: [REDACTED]

May 14, 2020

To: Chris Johnson
Washington Blade
Chief Political & White House Reporter
[REDACTED]

From: Raymond E. Mitten Jr.
Counsel for FOIA Appeals

Re: Your Appeal to the Solicitor of Labor under the Freedom
of Information Act and/or Privacy Act

Date of your appeal: 5/4/2020

Subject of your appeal. TRACKING NO. 882203.

Appeal Reference No.: 200120

This is to acknowledge receipt of your letter appealing a denial of information by a Department of Labor component agency. Your appeal is being processed.

The law requires that appeals be sequenced for action on a first-in first-out basis, consistent with the guidance provided by the courts. *See Open America v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976). The number of appeals currently waiting for review is substantial. However, the Freedom of Information Act permits multitrack processing of requests based on the amount of processing work or time, or both, involved. 5 U.S.C. § 552(a)(6)(D)(i). Thus, we are authorized, to schedule for faster action those appeals which require limited staff time – i.e., those that involve limited scope or complexity.

Should you have any questions about the status of your appeal, have any additional information which you believe should be brought to our attention, or wish to limit or withdraw your appeal, please contact this office at the phone or address listed above.

To help us serve you, please direct your inquiries to Linda Robinson at the number noted above, and refer to our appeal reference number when making your inquiry. Thank you.