

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

Center to Advance Security in America,
1802 Vernon Street NW
Suite 2095
Washington, DC 20009

Plaintiff,

v.

U.S. Department of State
2201 C Street N.W., Suite B266
Washington, D.C. 20520-0000

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, the Declaratory Judgment Act, and 28 U.S.C. §§ 2201 and 2202, for injunctive, declaratory, and other appropriate relief. Plaintiff Center for Advancing Security in America (“CASA”) challenges the failure of U.S. Department of State (“DOS”) to disclose to CASA records pertaining to a July 2021 State Department memo, related vetting of Afghan refugees, and the number of U.S. citizens and lawful residents that were or were not evacuated from Afghanistan.

2. This case seeks declaratory relief that DOS is in violation of FOIA, 5 U.S.C. § 552(a)(6)(E), DOS’s regulations, and 28 C.F.R. § 16.5(e), and for injunctive relief ordering DOS to immediately process and release to CASA the requested records in their entirety.

Jurisdiction and Venue

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(c)(i). This Court

also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

4. Plaintiff CASA is an unincorporated association of individuals dedicated to preserving the safety and well-being of Americans through transparency and education of their government's most impactful policies and decisions.

5. Defendant DOS is an executive department of the U.S. federal government responsible for the nation's foreign policy and international relations. DOS has possession and control of the requested records and is responsible for fulfilling CASA's FOIA requests.

Statutory and Regulatory Background

6. FOIA requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

7. An agency must notify a party making a FOIA request within 20 working days of, *inter alia*, the agency's determination and the reasons therefor and of the requester's right to appeal the determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

Factual Background

8. On April 14, 2021, President Biden announced that U.S. troops would withdraw from Afghanistan.

9. In the months following that announcement, the U.S.-supported Afghan government lost territory to the Taliban, which governed Afghanistan before U.S. military action in that country in 2001.

10. On or about August 15, 2021, the U.S.-supported Afghan government collapsed, which effectively led to a takeover of the government by the Taliban.

11. In the wake of that collapse, members of the House and Senate, as well as the media and the general public, questioned whether the Executive Branch knew or should have known that the U.S.-supported Afghan government would collapse so precipitously and leave behind Americans, citizens of other allied nations, and Afghans entitled to legal residency in the United States. Those questions included ambiguity about what the DOS position was regarding U.S. withdrawal, whether it would lead to a collapse of the government and, if so, when.

12. Indicative of the ambiguity regarding what the Executive Branch (and DOS in particular) knew, on August 19, 2021, the Wall Street Journal published an article entitled “Internal State Department Cable Warned of Kabul Collapse.” That article identified an internal State Department memo from July of 2021 that preceded the collapse of Kabul that “warned top agency officials of the potential collapse of Kabul soon after the U.S.’s Aug. 31 troop withdrawal deadline in Afghanistan” The article suggested that the Executive Branch knew that the Taliban’s advance was imminent, and that Afghanistan’s military may be unable to stop it.

13. Likewise, on August 19, 2021, the New York Post published an article entitled “Diplomats in Kabul Told Blinken About Rapid Taliban Advance, Contradicting Biden Claim.” That article stated:

Nearly two dozen diplomats signed the July 13 memo urging the State Department to start processing vulnerable Afghans for visas to the US and to begin evacuations by Aug. 1, well before they gained momentum. The memo, signed by 23 embassy staffers, was submitted through the State Department’s Dissent Channel, a rarely utilized forum through which foreign service officers are able to raise internal concerns about US policy.

That article also raised important questions regarding who was responsible for the sequence of decisions that led to the collapse of the Afghan government and the return to power of the Taliban.

14. Following the collapse of the Afghan government, an emergency evacuation of U.S. citizens, green card holders, recipients of special immigrant visas (SIVs), and other undisclosed categories of people ensued. That evacuation, however, conducted in a country controlled by a hostile government previously overthrown by U.S. forces, was marked by chaos and ambiguity regarding who was, and who was not, being evacuated. That ambiguity extended to, for example, how many SIVs—at risk due to their support of the U.S.—were evacuated; furthermore, it was unclear whether the U.S. was vetting Afghan evacuees to ensure that they did not pose a national security, or other, risk to the U.S.

15. Indicative of that chaos and ambiguity, on August 30, 2021, the New Yorker published an article entitled “Biden’s Chaotic Withdrawal from Afghanistan Is Complete.” The article indicated the U.S. left up to 20,000 SIVs behind in Afghanistan, at the mercy of the Taliban.

16. Similarly, on October 27, 2022, the Wall Street Journal published an article entitled “Republican Lawmakers Question Vetting Standards for Afghans Brought to U.S.” The article indicated most of the 100,000 Afghan nationals flown out of that country lacked visas or any other status to be admitted, but nearly 70,000 were allowed to enter the United States anyway, and that at least ten of these Afghan evacuees who had been brought to the United States have since been detained as national security risks.

17. And on August 31, 2021, CNN posted an article entitled “The Last US Military Planes Have Left Afghanistan, Marking the End of the United States' Longest War.” That article indicated the U.S. flew over 122,000 people out of Kabul. These included a mix of U.S. citizens, green card holders, recipients of a SIV for helping the U.S. military or diplomats, refugees, and others seeking asylum. This included about 6,000 American citizens.

18. Regarding whether all U.S. citizens were evacuated from Afghanistan, on August 30, 2021, Secretary Anthony J. Blinken remarked that the administration originally claimed that “under 200 and likely closer to 100” U.S. citizens were left behind.

19. But on October 26, 2021, Roll Call posted an article entitled “Hundreds of Americans remain in Afghanistan, Pentagon official says.” That article indicated the Defense Department testified before Congress on October 26, 2021, that post-August 31, 2021, there were 753 U.S. citizens in Afghanistan, of which 243 citizens still remained in Afghanistan.

20. And on November 3, 2021, Foreign Policy posted an article entitled “State Department: Thousands of U.S. Residents Still Stuck in Afghanistan.” That article indicated the State Department testified before Congress on November 3, 2021, that 370 citizens were still in Afghanistan on November 3, 2021, and another 140 Americans had departed the week prior. They also testified as many as 14,000 U.S. legal permanent residents remained in Afghanistan as of November 3, 2021.

21. CASA’s FOIA requests in this case relate to resolving the important questions regarding the decision-making process that led to the U.S. evacuation from Afghanistan, and the actions taken in the wake of that evacuation.

22. On January 21, 2022, CASA sent a FOIA request to DOS’s Office of Information Programs and Services requesting copies of all internal and external communications, records, and documents related to the July 2021 State Department memo.¹

¹ Attached hereto as Exhibit 1.

23. On January 21, 2022, CASA sent a separate FOIA request to DOS's Office of Information Programs and Services requesting copies of all records and documents related to the to the State Department's vetting of Afghan refugees.²

24. On January 21, 2022, CASA sent a separate FOIA request to DOS's Office of Information Programs and Services requesting copies of all records and documents related to the number of U.S. citizens and lawful residents evacuated from Afghanistan by August 31, 2021, the number evacuated since that date, and how many remained in that country as of January 21, 2022.³

25. CASA sought waivers of fees associated with processing its requests. CASA explained that the requested records would be of primary benefit to the general public, and that the requested records focused on vital national security issues. *See* Ex. Nos. 1-3. In particular, the requested records relate to the vetting process used for the approximately 100,000 Afghan evacuees who are now residing in the continental U.S., the number of American citizens and others whom the U.S. was unable to evacuate during the withdrawal, and the memo describing the perils of pursuing the course of action regarding the withdrawal the U.S. ultimately took. *See* Ex. Nos. 1-3.

Reference Number F-2022-03807

26. On February 1, 2022, CASA received email acknowledgement⁴ that DOS's Office of Information Programs and Services had received the subject FOIA request, which had been assigned Reference Number F-2022-03807. That email also granted CASA's fee waiver request.

² Attached hereto as Exhibit 2.

³ Attached hereto as Exhibit 3.

⁴ Attached hereto as Exhibit 4.

27. DOS also stated that it would be unable to respond within the 20-day period provided by statute “due to ‘unusual circumstances.’” DOS stated these unusual circumstances included “the need to search for and collect requested records from other Department offices or Foreign Service posts.” *See id.*

28. On March 31, 2022, having received no documents, CASA asked, by email, the status of the subject FOIA request.⁵

29. On April 1, 2022, DOS responded to CASA’s email by stating the request was in process and there was no new information regarding the request to provide. *See id.*

30. On April 24, 2022, having received no additional information, documents, or updates for another 23 days, CASA again emailed DOS to inquire regarding the status of the subject FOIA request.⁶

31. On April 26, 2022, DOS again indicated by email that the request was still in process and there was no new information to provide. *See id.*

32. As of the filing date of this Complaint, CASA has received no further response from DOS regarding Reference Number F-2022-03807.

33. It is therefore apparent that, without litigation, DOS will not produce the requested documents. Accordingly, CASA has now exhausted all applicable administrative remedies with respect to Reference Number F-2022-03807.

Reference Number F-2022-03799

⁵ Attached hereto as Exhibit 5.

⁶ Attached hereto as Exhibit 6.

34. On February 1, 2022, CASA received email acknowledgement⁷ that DOS's Office of Information Programs and Services had received the subject FOIA request, which had been assigned Reference Number F-2022-03799. That email also granted CASA's fee waiver request.

35. DOS also stated that it would be unable to respond within the 20-day period provided by statute "due to 'unusual circumstances.'" DOS stated these unusual circumstances included "the need to search for and collect requested records from other Department offices or Foreign Service posts." *See id.*

36. On March 31, 2022, having received no documents, CASA asked, by email, the status of the subject FOIA request.⁸

37. On March 31, 2022, DOS responded to CASA's email by stating the request was in process and there was no new information regarding the request to provide. *See id.*

38. On April 24, 2022, having received no additional information, documents, or updates, CASA emailed DOS a second time asking the status of the subject FOIA request.⁹

39. On April 26, 2022, DOS again indicated by email that the request was still in process and there was no new information to provide. *See id.*

40. As of the filing date of this Complaint, CASA has received no further response from DOS regarding Reference Number F-2022-03799.

41. It is, therefore, apparent that, without litigation, DOS will not produce the requested documents. Accordingly, CASA has now exhausted all applicable administrative remedies with respect to Reference Number F-2022-03799.

⁷ Attached hereto as Exhibit 7.

⁸ Attached hereto as Exhibit 8.

⁹ Attached hereto as Exhibit 9.

Reference Number F-2022-03802

42. On February 1, 2022, CASA received email acknowledgement¹⁰ that DOS's Office of Information Programs and Services had received the subject FOIA request, which had been assigned Reference Number F-2022-03802. That email also granted CASA's fee waiver request.

43. DOS also stated that it would be unable to respond within the 20-day period provided by statute "due to 'unusual circumstances.'" DOS stated these unusual circumstances included "the need to search for and collect requested records from other Department offices or Foreign Service posts. *See id.*

44. On March 15, 2022, having received no information, documents, or updates for 45 days, CASA asked, by email, the status of the subject FOIA request.¹¹

45. On March 18, 2022, DOS responded by stating the search for records in response to the request had been initiated, and that CASA would be notified of the results of the search and review efforts as soon as the information became available. *See id.*

46. On March 31, 2022, having received no additional information, documents, or updates for another 13 days, CASA emailed DOS a second time asking the status of the subject FOIA request.¹²

47. On April 1, 2022, DOS responded by stating the request was in process and there was no new information regarding the request to provide. *See id.*

¹⁰ Attached hereto as Exhibit 10.

¹¹ Attached hereto as Exhibit 11.

¹² Attached hereto as Exhibit 12.

48. On April 24, 2022, having received no additional information, documents, or updates for another 23 days, CASA emailed DOS a third time asking the status of the subject FOIA request.¹³

49. On April 26, 2022, DOS responded by again stating the request was in process and there was no new information regarding the request to provide. *See id.*

50. As of the filing date of this Complaint, CASA has received no further response from DOS regarding Reference Number F-2022-03802.

51. It is therefore apparent that, without litigation, DOS will not produce the requested documents. Accordingly, CASA has now exhausted all applicable administrative remedies with respect to Reference Number F-2022-03802.

PLAINTIFF'S CLAIMS FOR RELIEF

CLAIM ONE (Wrongful Withholding of Non-Exempt Records re Reference Number F-2022-03807)

52. CASA repeats and re-alleges paragraphs 1-51.

53. CASA properly requested records within the custody and control of DOS.

54. DOS wrongfully withheld agency records requested by CASA by failing to comply with the statutory time limits for making a determination on these FOIA requests, and by withholding from disclosure records responsive to CASA's FOIA requests to DOS.

55. CASA is therefore entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

CLAIM TWO (Wrongful Withholding of Non-Exempt Records re Reference Number F-2022-03799)

¹³ Attached hereto as Exhibit 13.

56. CASA repeats and re-alleges paragraphs 1-51.

57. CASA properly requested records within the custody and control of DOS.

58. DOS wrongfully withheld agency records requested by CASA by failing to comply with the statutory time limits for making a determination on these FOIA requests, and by withholding from disclosure records responsive to CASA's FOIA requests to DOS.

59. CASA is therefore entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

CLAIM THREE
(Wrongful Withholding of Non-Exempt Records re
Reference Number F-2022-03802)

60. CASA repeats and re-alleges paragraphs 1-51.

61. CASA properly requested records within the custody and control of DOS.

62. DOS wrongfully withheld agency records requested by CASA by failing to comply with the statutory time limits for making a determination on these FOIA requests, and by withholding from disclosure records responsive to CASA's FOIA requests to DOS.

63. CASA is therefore entitled to injunctive and declaratory relief with respect to the immediate processing and disclosure of the requested records.

Requested Relief

WHEREFORE, CASA respectfully requests that this Court:

- (1) Order defendant DOS to immediately and fully process Plaintiff CASA's January 21, 2022 FOIA requests (Reference Numbers F-2022-03807, F-2022-03799, and F-2022-03802) and disclose all non-exempt documents immediately to CASA;
- (2) Issue a declaration that CASA is entitled to immediate processing and disclosure of the requested records;

(3) Retain jurisdiction of this action to ensure no agency records are wrongfully withheld;
and

(4) Grant such other relief as this Court may deem just and proper.

Counsel for CASA further requests that the Court award reasonable attorneys' fees and other litigation costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E).

Dated: May 23, 2022

Respectfully submitted,

/s/ Paul M. Bartkowski _____

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