

ultimate sovereignty. As part of this mission, Plaintiff seeks to inform public understanding of operations and activities of the government by gathering and disseminating information that is likely to contribute significantly to the public understanding of executive branch operations and activities. Plaintiff regularly requests such information pursuant to FOIA. Plaintiff intends to give the public access to documents transmitted via FOIA on its website, www.protectdemocracy.org, and to provide information about and analysis of those documents as appropriate.

4. Defendant U.S. Department of Health and Human Services is an agency of the executive branch of the federal government of the United States. Defendant is headquartered at 200 Independence Ave., SW, Washington, DC 20201. Defendant has possession, custody, and control of the documents that Plaintiff seeks in response to its FOIA request.

STATEMENT OF FACTS

5. On February 15, 2017, Plaintiff sent a FOIA request to Defendant seeking the following records:

- (1) Any and all records created or transmitted between November 9, 2016 and the present date by or between Department of Health and Human Services (HHS) employees regarding or including Presidential Transition Team questionnaires about or referring to the “Affordable Care Act,” the “ACA,” or “Obamacare” including but not limited to communications between, from, or concerning the following individuals: Donald Trump, Stephen Bannon, Reince Priebus, Stephen Miller, Kellyanne Conway, Sean Spicer, Michael Pence, Jared Kushner, Andrew Bremberg, Paula Stannard, Scott Gottlieb, Eric Hargan, Nina Owcharenko Schaefer, Tom Price, Renee Amooore, John Brooks, Kamran Daravi, Ed Haislmaier, Manuel Iglesias, Demetrios Kouzoukas, Patrick Lawler, Marie Meszaros, and Maggie Wynne.
- (2) Any and all records created or transmitted between November 9, 2016 and the present date by or between HHS employees regarding or including Presidential Transition Team questionnaires about or referring to the abortion policy and/or staff working on abortion or birth control policy including but not limited to communications between, from, or concerning the following individuals: Donald

Trump, Stephen Bannon, Reince Priebus, Stephen Miller, Kellyanne Conway, Sean Spicer, Michael Pence, Jared Kushner, Andrew Bremberg, Paula Stannard, Scott Gottlieb, Eric Hargan, Nina Owcharenko Schaefer, Tom Price, Renee Amore, John Brooks, Kamran Daravi, Ed Haislmaier, Manuel Iglesias, Demetrios Kouzoukas, Patrick Lawler, Marie Meszaros, and Maggie Wynne.

- (3) Any and all records created or transmitted between November 9, 2016 and the present date by or between HHS employees regarding or including personnel or assignment changes within the agency including but not limited to communications between, from, or concerning the following individuals: Donald Trump, Stephen Bannon, Reince Priebus, Stephen Miller, Kellyanne Conway, Sean Spicer, Michael Pence, Jared Kushner, Andrew Bremberg, Paula Stannard, Scott Gottlieb, Eric Hargan, Nina Owcharenko Schaefer, Tom Price, Renee Amore, John Brooks, Kamran Daravi, Ed Haislmaier, Manuel Iglesias, Demetrios Kouzoukas, Patrick Lawler, Marie Meszaros, and Maggie Wynne.

See Exhibit A (FOIA request).

6. Plaintiff also requested a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) or 5 U.S.C. § 552(a)(4)(A)(ii)(II). *See* Exhibit A.

7. Plaintiff received a letter from Defendant dated March 2, 2017, acknowledging receipt of the request on February 28, 2017, stating that a search for documents responsive to the request had been initiated, and granting Plaintiff's request for a fee waiver. *See* Exhibit B.

8. On April 6, 2017, Benjamin L. Berwick, one of the undersigned counsel for Plaintiff, spoke with Natasha Taylor, a FOIA Officer for Defendant, who represented that the agency had not yet determined which offices, components, or individuals are reasonably likely to have records responsive to Plaintiff's request, and could not yet provide an estimate of how long it will take for Defendant to process the request.

9. Pursuant to FOIA, within 20 business days of receipt of Plaintiff's request – that is, by March 28, 2017 – Defendant was required to “determine . . . whether to comply with such request” and to “immediately notify” Plaintiff of “such determination and the reasons therefor,” Plaintiff's right “to seek assistance from the FOIA Public Liaison of the agency,” and, in the case

of an adverse determination, Plaintiff's appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).

10. To date, Defendant has failed to make the required determination and notifications.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

11. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

12. Defendant is in violation of FOIA by failing to respond to Plaintiff's request within the statutorily prescribed time limit and by unlawfully withholding records responsive to Plaintiff's request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

(1) Order Defendant, by a date certain, to conduct a search that is reasonably likely to lead to the discovery of any and all records responsive to Plaintiff's request;

(2) Order Defendant, by a date certain, to demonstrate that it has conducted an adequate search;

(3) Order Defendant, by a date certain, to produce to Plaintiff any and all non-exempt records or portions of records responsive to Plaintiff's request, as well as a *Vaughn* index of any records or portions of records withheld due to a claim of exemption;

(4) Enjoin Defendant from improperly withholding records responsive to Plaintiff's request;

(5) Grant Plaintiff an award of attorney fees and other reasonable litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E);

(6) Grant Plaintiff such other relief as the Court deems appropriate.

Date: April 27, 2017

/s/ David J. Sandler

David H. Bernstein

Bar No. NY0228

dhbernstein@debevoise.com

David J. Sandler

Bar No. 988900

dsandler@debevoise.com

Debevoise & Plimpton LLP

919 Third Ave

New York, NY 10022

212-909-6000

Benjamin L. Berwick (MA Bar No. 679207)

(admission pending)

Counsel, The Protect Democracy Project

2020 Pennsylvania Ave. NW, #163

Washington, DC 20006

Ben.Berwick@protectdemocracy.org

202-599-0466

Counsel for Plaintiff