

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Advocates for Basic Legal Equality, Inc.)
and the American Immigration Council,)

Plaintiffs,)

v.)

United States Customs and Border)
Protection,)

Defendant.)

Case No. _____

COMPLAINT

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking disclosure of records from United States Border Patrol (“BP”), an agency within Defendant Customs and Border Protection (“CBP”), United States Department of Homeland Security (“DHS”), concerning the enforcement activities of the Sandusky Bay Border Patrol Station located in northern Ohio. Plaintiffs Advocates for Basic Legal Equality and the American Immigration Council seek injunctive and other appropriate relief to compel the production of agency records improperly withheld from them by Defendant.

2. To facilitate the public’s understanding of Border Patrol activities in Ohio, the Plaintiffs filed three FOIA requests in March 2021 seeking records relating to: a) forms documenting apprehensions; b) policies; and c) communications within the Sandusky Bay Station of the Border Patrol.

3. Although the agency acknowledged the FOIA requests, negotiations related to the production of documents responsive to the requests have not resulted in the production of any documents regarding two of the FOIA requests, those for CBP policies and communications. Additionally, while CBP has begun to produce documents responsive to the FOIA for forms

regarding apprehension information, CBP has redacted data regarding “Arrest Method” that it previously released in a similar FOIA action filed in 2014. *The Ohio State University Moritz College of Law Civil Clinic, et al. v. U.S. Customs and Border Protection*, No. 3:15-cv-833 (N.D. Ohio) (Zouhary, J.).

4. Through this lawsuit, Plaintiffs seek declaratory relief that Defendant is in violation of FOIA, 5 U.S.C. § 552(a)(3), for failure to disclose responsive records; and 5 U.S.C. § 552(a)(6)(A), for failure to comply with statutory deadlines. Plaintiffs seek injunctive relief ordering Defendant to release the records that have been unlawfully withheld.

I. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C)(i), and 28 U.S.C. § 1331.

6. Venue in this district and division is proper under 5 U.S.C. § 552(a)(4)(B). Plaintiff ABLE is located in Toledo, Ohio.

II. PARTIES

7. Advocates for Basic Legal Equality (“ABLE”) is a 501(c)(3) nonprofit, nonpartisan legal services organization that represents low-income people and groups in civil matters. ABLE represents clients in thirty-two (32) counties in northwestern and west central Ohio and migrant farmworkers throughout all of Ohio. A substantial portion of its work is representing immigrants and their families.

8. The American Immigration Council is a 501(c)(3) nonprofit established to increase public understanding of immigration law and policy. The Immigration Council advocates for the fair and just administration of U.S. immigration laws, protects the legal rights of noncitizens and citizens, and educates the public about the enduring contributions of immigrants. Through the pursuit of

transparency and impact litigation, the Immigration Council seeks to hold the government accountable for unlawful conduct, restrictive interpretations of the law, and for failing to ensure that the immigration laws are implemented and executed in a manner that comports with due process.

9. Defendant CBP is a component of the U.S. Department of Homeland Security (“DHS”) and is an agency within the meaning of 5 U.S.C. § 552(f). Among other responsibilities, CBP is tasked with enforcing immigration laws at the borders and other ports of entry to the United States. Upon information and belief, CBP has possession of and control over records requested by Plaintiffs.

III. LEGAL FRAMEWORK

The Freedom of Information Act

10. The FOIA statute, 5 U.S.C. § 552, requires federal agencies to release records to the public upon request, except those protected from disclosure by one or more statutory exemptions.

11. An agency must respond to a FOIA request within twenty (20) working days after receipt of the request, notifying the requester of the agency’s determination whether to comply with such request – providing the scope of documents it will produce, exemptions it will claim (if any), and reasons for its determination – and informing the requester of their right to appeal an adverse determination to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i).

12. In “unusual circumstances,” an agency may extend its time to respond to a FOIA request or appeal by up to ten working days. 5 U.S.C. § 552(a)(6)(B).

13. A FOIA requester is “deemed to have exhausted [its] administrative remedies with respect to [the FOIA] request if the agency fails to comply with the applicable time limit provisions” under FOIA. 5 U.S.C. § 552(a)(6)(C)(i). The requester may then file suit in federal court to obtain the

requested records.

14. A district court “has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

IV. STATEMENT OF FACTS

15. To gain insight into the Border Patrol’s immigration enforcement activities in Ohio, the Plaintiffs, ABLE and the Council, submitted three FOIA requests to Customs and Border Protection about the Sandusky Bay Station Border Patrol Station in Port Clinton, Ohio. These three separate FOIA requests covered what the Plaintiffs have denominated as Policies, Communications, and Forms.

A. Policies FOIA, CBP-2021-041935

16. Plaintiffs submitted an online FOIA request to CBP on March 12, 2021, for copies of various policies of the Sandusky Bay Border Patrol Station. This request was assigned the tracking number CBP-2021-041935 (attached hereto as Exhibit A). After discussions with CBP counsel in Detroit concerning redundancies within the Policies and Communications FOIAs, Plaintiffs submitted an amended request on May 7, 2021 (attached hereto as Exhibit B).

B. Communications FOIA, CBP-2021-041913

17. Plaintiffs submitted an online FOIA request to CBP on March 12, 2021, for copies of communications by Sandusky Bay Border Patrol Station. This request was assigned tracking number CBP-2021-041913 (attached hereto as Exhibit C). After discussions with CBP counsel in Detroit concerning redundancies within the Policies and Communications FOIAs, Plaintiffs submitted an amended request on May 7, 2021 (attached hereto as Exhibit D).

C. Forms FOIA, CBP-2021-041934

18. Plaintiffs submitted an online FOIA request to CBP on March 12, 2021 for copies of various forms documenting apprehensions by Sandusky Bay Border Patrol Station. This request was assigned tracking number CBP-2021-041934 (attached hereto as Exhibit E).

D. Developments Since the Filing of the Three FOIA Requests

19. Defendant started producing documents responsive to Plaintiffs' Forms FOIA CBP-2021-041934, but Plaintiffs communicated a dispute about the scope of the production to Defendant's counsel in an email on December 8, 2021, *i.e.*, the Defendant's redaction of the "Arrest Method" column of the Apprehension Log. The Apprehension Log is a database compiled of all persons apprehended by a Border Patrol Station which includes information about the person and apprehension in several columns, including "Arrest Method." To date, more than seven weeks later, the Defendant has not responded to Plaintiffs' communication.¹

20. Defendant has not produced any documents under the Policy and Communications FOIAs. On December 2, 2021, Defendant's counsel emailed Plaintiffs a proposal to start producing documents responsive to each of the two requests at a rate of 250 pages per month starting in May 2022, which it projected will take 12 years to complete. Plaintiffs responded on December 8, 2021 stating that they did not agree to this production schedule because of its length, and Defendant has not replied.

21. Defendant has failed to respond to Plaintiffs' Policies and Communications FOIA requests, CBP-2021-041935 and CBP-2021-041913 respectively, in violation of the statutory deadlines imposed by FOIA, including those set forth in 5 U.S.C. § 552(a)(6)(A).

¹ See Exhibit F, a document produced in the OSU FOIA litigation, which ABLE co-counseled with the OSU Civil Clinic, showing the unredacted Arrest Method column in the Apprehension Log. *The Ohio State University Moritz College of Law Civil Clinic, et al. v. U.S. Customs and Border Protection*, No. 3:15-cv-833 (N.D. Ohio) (Zouhary, J.). This exhibit was provided to Defendant's counsel on December 8, 2022.

22. Defendant has wrongly withheld responsive agency records from Plaintiffs, including improperly redacting Apprehension Log records to which Plaintiffs are entitled.

23. Plaintiffs have exhausted the applicable administrative remedies with respect to Plaintiffs' FOIA requests pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

24. Plaintiffs are entitled to injunctive relief compelling the release and disclosure of the requested agency records.

V. CAUSES OF ACTION

25. Paragraphs 1-24 above are hereby incorporated by reference as if set forth fully herein.

A. First Cause Of Action

Violation of FOIA, 5 U.S.C. § 552, for Failure to Disclose Responsive Records

26. Defendant has failed to disclose responsive documents. Defendant has produced no records responsive to the Policies, CBP-2021-041935, and Communications, CBP-2021-041913, FOIAs.

27. Defendant has failed to disclose the "Arrest Method" in the Apprehension Log it produced in response to Plaintiffs' Forms FOIA, CBP-2021-041934.

B. Second Cause Of Action

Violation of the Freedom of Information Act, 5 U.S.C. § 552: Failure to Conduct an Adequate Search for Responsive Records

28. Defendant is obligated under 5 U.S.C. § 552(a)(3)(A) to conduct a reasonable search for records responsive to Plaintiffs' FOIA Requests. Defendant failed to conduct such a search with respect to the Policies and Communications FOIA requests. Plaintiffs have a legal right to obtain such records, and no legal basis exists for Defendant's failure to search for them. Defendant's failure to conduct a reasonable search for records responsive to Plaintiffs' Requests violates 5

U.S.C. § 552(a)(3)(A).

V. REQUESTED RELIEF

WHEREFORE, Plaintiffs pray that this Court:

A. Declare that Defendant's failure to disclose the records responsive to Plaintiffs' requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), as well as the regulations promulgated thereunder;

B. Declare that Defendant's failure to promptly produce records responsive to Plaintiffs' request violates 5 U.S.C. § 552(a)(6)(A);

C. Order Defendant to immediately conduct a reasonable search for agency records responsive to Plaintiffs' FOIA requests;

D. Order Defendant to immediately produce all responsive agency records for the Policies and Communications FOIAs;

E. Order Defendant to immediately produce an Apprehension Log with the "Arrest Method" unredacted;

F. Order Defendant to waive all fees for processing Plaintiffs' FOIA requests pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 5 U.S.C. § 552(a)(4)(A)(viii);

G. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and,

H. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

s/ Mark R. Heller

Lead Attorney to be Noticed

Mark R. Heller (OH-
27027)

Eugenio Mollo, Jr. (OH-
81860)

Emily M. Brown (OH-
92553)

Kathleen Kersh (OH-
91198)

Advocates for Basic Legal
Equality, Inc.

525 Jefferson Ave., Suite 300
Toledo, Ohio 43604

Work Telephone: (419) 930-2423

Cell : (419) 508-1762

Fax: (419) 259-2880

mheller@ablelaw.org

emollo@ablelaw.org

ebrown@ablelaw.org

kkersh@ablelaw.org

Emily Creighton (Pro hac vice forthcoming)

ECreighton@immcouncil.org

American Immigration Council

1331 G St., N.W. Suite 200

Washington, D.C. 20005

T: (202) 507-7514

Claudia Valenzuela (Pro hac vice
forthcoming)

claudia@ild.org

Immigrant Legal Defense

1322 Webster St., Suite 300

Oakland, California 94612

T: (872) 256-1979