

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

THE HERITAGE FOUNDATION )  
214 Massachusetts Avenue, NE )  
Washington, D.C. 20002; )

Civil Action No.

MIKE HOWELL )  
214 Massachusetts Avenue, NE )  
Washington, D.C. 20002 )

*Plaintiffs,* )

v. )

FEDERAL BUREAU OF )  
INVESTIGATION )  
935 Pennsylvania Avenue, NW )  
Washington, DC 20535; )

U.S. DEPARTMENT OF JUSTICE )  
Civil Rights Division )  
950 Pennsylvania Avenue, NW )  
Washington, DC 20530; )

U.S. DEPARTMENT OF HOMELAND )  
SECURITY )  
2707 Martin Luther King Jr., Ave, SE )  
Washington, DC 20528; )

U.S. DEPARTMENT OF HEALTH )  
AND HUMAN SERVICES )  
200 Independence Avenue, SW )  
Washington, DC 20201; )

and, )

U.S. DEPARTMENT OF EDUCATION )  
400 Maryland Avenue, SW )  
Washington, DC 20202 )

*Defendants.* )

\_\_\_\_\_ )

## COMPLAINT

COMES NOW Plaintiffs Heritage Foundation (“Heritage”) and Mike Howell (collectively “Plaintiffs”) to bring this action against The Federal Bureau of Investigation, the U.S. Department of Justice’s Civil Rights Division, the U.S. Department of Homeland Security, the U.S. Department of Health and Human Services, and the U.S. Department of Education to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. In support thereof, Plaintiffs state the following:

1. This matter, pursuant to the Freedom of Information Act seeks the disclosure of records held by the United States Government concerning actions that each Defendant has or is planning on taking following the Southern Poverty Law Center (“SPLC”) designation of Moms For Liberty (“MFL”) as an anti-government extremist group.

2. This matter is of the utmost public importance as the interest of government transparency and accountability are paramount. Plaintiffs seek to determine what response the United States Government has to a baseless designation by the SPLC. Furthermore, Plaintiffs have a vested interest in determining whether limited government resources are being used to monitor and counteract a grass-roots organization founded by mothers advocating for their children.

## **PARTIES**

3. Plaintiff The Heritage Foundation is a Washington, D.C.-based nonpartisan public policy organization with a national and international reputation whose mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Foundation, *About Heritage*, found at <https://www.heritage.org/about-heritage/mission> (last visited Sept. 25, 2023). Heritage is a not-for-profit section 501(c)(3) organization which engages

in substantial dissemination of information to the public. Heritage operates a national news outlet, *The Daily Signal*.

4. Plaintiff Mike Howell leads The Heritage Foundation's Oversight Project and is an author for *The Daily Signal*. The Oversight Project is an initiative aimed at obtaining information via Freedom of Information Act requests and other means in order to best inform the public and Congress for the purposes of Congressional oversight. The requests and analysis of information are informed by Heritage's deep policy expertise. By function, the Oversight Project is primarily engaged in disseminating information to the public. See, e.g., Oversight Project, found at <https://www.heritage.org/oversight> (last visited Sept. 28, 2023); Twitter, found at @OversightPR (last visited Sept. 28, 2023). Staff for the Oversight Project routinely appear on television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate.

5. Defendant Federal Bureau of Investigation ("FBI") is a law enforcement agency of the United States government charged with the investigations and intelligence gathering of potential threats to national security from domestic and international terrorism and of violations of federal criminal law. The FBI is an agency within the meaning of 5 U.S.C. § 552(f)(1) and, upon information and belief, has in its possession, custody, and control records to which the Plaintiff seeks access.

6. Defendant Civil Rights Division of the DOJ ("DOJ Civil Rights Division") is the United States agency responsible for the enforcement of all Federal civil rights statutes. The DOJ Civil Rights Division is an agency within the meaning of 5 U.S.C. § 552(f)(1) and, upon information and belief, has in its possession, custody, and control records to which the Plaintiff seeks access.

7. Defendant U.S. Department of Homeland Security (“DHS”) is an Executive Branch department of the United States Government. Relevant to the herein matter, DHS is charged with protection of the United States from terrorism and other homeland security threats. DHS is an agency within the meaning of 5 U.S.C. § 552(f)(1) and, upon information and belief, has in its possession, custody, and control records to which the Plaintiff seeks access.

8. Defendant U.S. Department of Health and Human Services (“HHS”) is an Executive Branch department of the United States Government charged with enhancing the health and well-being of all Americans. HHS is an agency within the meaning of 5 U.S.C. § 552(f)(1) and, upon information and belief, has in its possession, custody, and control records to which the Plaintiff seeks access.

9. Defendant U.S. Department of Education (“Dept. of Ed.”) is an Executive Branch department of the United States Government charged with promotion of educational achievement and preparation for global competitiveness. Dept. of Ed. is an agency within the meaning of 5 U.S.C. § 552(f)(1) and, upon information and belief, has in its possession, custody, and control records to which the Plaintiff seeks access.

#### **JURISDICTION AND VENUE**

10. The Court has subject matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

11. Venue lies in this district pursuant to 28 U.S.C. section 1391(e).

12. Plaintiff seeks declaratory relief under 28 U.S.C. §§ 2201-2202 and Rule 57 of the Federal Rules of Civil Procedure.

## STATEMENT OF FACTS

13. On or about July 13, 2023, Plaintiffs submitted a separate FOIA request to each Defendant. (Ex. A).

14. Each FOIA request sought the following records:

1) First priority search, all records regarding the below terms:

- Moms for Liberty
- Tiffany Justice
- Tina Descovich

2) Second priority search, all records regarding the below e-mail domain.

- @splcenter.org.” *Id.*

15. Each request was limited in scope from January 1, 2020 to the present. *Id.*

16. The requests further sought a fee waiver. *Id.*

17. The requests also sought expedited processing pursuant to 28 C.F.R. § 16.5(e)(1)(iv) because the requests concern a matter of “exceptional media interest in which there exists possible questions about the government’s integrity which affect public confidence.” *Id.* In requesting expedited processing, Plaintiffs noted that media scrutiny of MFL has amplified since the SPLC designation and noted that, in the past, the FBI has based its own designations of extremist groups on SPLC resources. *Id.* As it is plausible that MFL has already been designated an extremist group by the United States Government, there exists “possible questions about the government’s integrity that affect public confidence.” In support of the expedited processing, Plaintiffs provided an appendix with a compilation of media pieces demonstrating the awareness of the SPLC designation. (Ex. B).

18. Twenty business days from July 13, 2023 is August 10, 2023.

19. Thirty business from July 13, 2023 is August 24, 2023.

20. Defendant FBI has never substantively responded to the request. On July 19, 2023, the FBI sent Plaintiffs a letter acknowledging receipt of the request and providing its assigned

number. (Ex. C). In a separate letter dated the same day, the FBI noted that pursuant to U.S.C. § 552(a)(6)(B)(iii) that unusual circumstances applied to the processing. (Ex. D). The application of unusual circumstances extends the agency's deadline to provide a determination by ten business days. No explanation surrounding the "unusual circumstances" was provided. On July 31, 2023, the FBI denied the request for expedited processing stating that Heritage had not provided sufficient information "concerning the statutory requirement for expedition." (Ex. E). As of the date of this Complaint, the FBI has neither otherwise responded to nor produced documents in response to the request.

21. Defendant DOJ Civil Rights Division has never substantively responded to the request. On July 26, 2023, Plaintiffs received an email from DOJ Civil Rights Division's FOIA email address stating that the request was ". . . unduly burdensome and overly broad and certainly a fishing expedition through the agency files. The unfocused and blanket nature . . . untied to any discrete subject matter or issue is far removed from the accepted functions and purposes of FOIA." (Ex. F). The email suggested that Plaintiffs narrow their request. In response, on July 28, 2023, Plaintiffs replied via email stating, "I would like to narrow it down to political appointees." *Id.* DOJ Civil Rights Division has never directly responded to Plaintiffs' narrowing. On August 3, 2023, the DOJ Civil Rights Division sent Plaintiffs a letter acknowledging receipt of the request and providing its assigned number. (Ex. G). In that letter, the DOJ Civil Rights Division noted that pursuant to U.S.C. § 552(a)(6)(B)(i)-(iii) that unusual circumstances applied to the processing. *Id.* The application of unusual circumstances extends the agency's deadline to provide a determination by ten business days. No explanation surrounding the "unusual circumstances" was provided. As of the date of this Complaint, DOJ Civil Rights Division has neither otherwise responded to nor produced documents in response to the request.

22. Defendant DHS has never substantively responded to the request. DHS' SecureRelease Portal notes receipt on July 13, 2023. (Ex. H). There has been no contact from DHS since the date of receipt. Additionally, the Portal wrongly notes that expedited processing was not requested. As of the date of this Complaint, DHS has neither otherwise responded to nor produced documents in response to the request.

23. Defendant HHS has never substantively responded to the request. On July 29, 2023, HHS sent Plaintiffs a letter acknowledging receipt of the request and providing its assigned number. (Ex. I). The letter further noted that pursuant to U.S.C. § 552(a)(6)(B)(iii) that unusual circumstances applied to the processing. The application of unusual circumstances extends the agency's deadline to provide a determination by ten business days. No explanation surrounding the "unusual circumstances" was provided. HHS further stated that it estimated requiring more than the statutorily provided ten extra business days to respond and asked if Heritage would like to narrow its request. *Id.* On September 19, 2023, HHS sent Plaintiffs a letter seeking additional clarification regarding the subject matter of the FOIA Request. (Ex. J). The letter specifically asked Plaintiffs to provide additional information on (1) the agencies, offices, or individuals involved, and (2) author, recipient, case number, file designation, or other reference number, if available. *Id.* The letter further informed Plaintiffs that the request had been placed in "tolled" status pending clarification. *Id.* As of the date of this Complaint, HHS has neither otherwise responded to nor produced documents in response to the request.

24. Defendant Dept. of Ed. Has never substantively responded to the request. On July 17, 2023, Education sent Plaintiffs a letter acknowledging receipt of the request and providing the assigned number. (Ex. K). That same day, Dept. of Ed. sent Plaintiffs two separate letters denying Plaintiffs' expedited processing request (Ex. L) and granting Plaintiffs' fee waiver request (Ex.

M). On August 14, 2023, Dept. of Ed. sent Plaintiffs a letter providing a status update on the request, noting that the request was still being processed. (Ex. N). As of the date of this Complaint, Dept. of Ed. Has neither otherwise responded to nor produced documents in response to the request.

25. As of the date of this filing, Defendants have failed to produce any records, responsive or other, in response to this request nor have they otherwise demonstrated that the requested records are exempt from production. Additionally, Defendants DHS, DOJ Civil Rights Division, and Dept. of Ed. have failed to meet the twenty business day time frame to provide a determination. *See* 5 U.S.C. § 552(a)(6)(A). Defendants FBI and HHS have failed to meet its thirty business day time frame to provide a determination.

26. Pursuant to federal law, Plaintiffs are deemed to have exhausted their administrative remedies as Defendants failed to make a determination within the applicable time frame. *See* 5 U.S.C. § 552(a)(6)(C)(i).

**CLAIMS**

**COUNT I**

***Against All Defendants***

**Violation of FOIA, 5 U.S.C. § 552**

**Failure to Conduct Searches for Responsive Records**

27. Plaintiffs incorporate by reference all preceding paragraphs and incorporates each paragraph of each count as applicable to each other count.

28. Plaintiffs properly requested records within the possession, custody, and control of Defendants.

29. Defendants have failed to produce any responsive records.

30. Defendants are subject to FOIA and therefore must comply with 5 U.S.C § 552 and make reasonable efforts to search for requested records. Plaintiffs have a legal right to obtain such



records, and no legal basis exists for Defendants' failure to conduct reasonable searches for records.

31. Plaintiffs have a statutory right to the information that they seek, are being irreparably harmed by Defendants' unlawful failure to comply with FOIA and failure to conduct searches for responsive records and Plaintiffs will continue to be irreparably harmed unless Defendants are compelled to comply with applicable federal statutes.

32. 5 U.S.C. § 552(a)(4)(B) authorizes the grant of injunctive relief to Plaintiffs as Defendants continue to violate the FOIA provisions and improperly withhold responsive records.

33. 28 U.S.C. § 2201 authorizes declaratory relief because an action and justiciable controversy exists regarding Defendants' actions.

**COUNT II**  
***Against All Defendants***

**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

34. Plaintiffs incorporate by reference all preceding paragraphs and incorporates each paragraph of each count as applicable to each other count.

35. Plaintiffs properly requested records within the possession, custody, and control of the Defendants.

36. Defendants are subject to FOIA and therefore must release any non-exempt records and provide lawful reasons for withholding any materials deemed exempt.

37. Defendants are wrongfully withholding non-exempt records requested by Plaintiffs by failing to produce any records response to Plaintiffs' request.

38. No basis exists for Defendants' failures to provide responses to Plaintiffs' request. Plaintiffs have constructively exhausted its administrative remedies under FOIA by virtue of each Defendant's failure to reach a determination on the request and release responsive records.

39. Plaintiffs have a statutory right to the information that it seeks, is being irreparably harmed by Defendants unlawful failure to comply with FOIA and failure to conduct searches for responsive records and Plaintiffs will continue to be irreparably harmed unless Defendants are compelled to comply with applicable federal statutes.

**COUNT III**  
***Against Defendants FBI, DOJ Civil Rights Division,  
DHS, and HHS***

**Violation of FOIA, 5 U.S.C. § 552  
Wrongful Denial of Fee Waiver**

40. Plaintiffs incorporate by reference all preceding paragraphs and incorporate each paragraph of each count as applicable to each other count.

41. Plaintiffs properly requested records within the possession, custody, or control of Defendants.

42. Defendants have constructively denied Plaintiffs' application for a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) & (iii) and 6 C.F.R. § 5.11(d)(2).

43. The Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs' commercial interest.

44. Plaintiffs are members of the news media as they "gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience" via Heritage's major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

45. Disclosure of the information sought by the Request also “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii).

46. Defendants have “failed to comply with a[]time limit under paragraph (6)” as to the Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

47. Plaintiffs have a statutory right to a fee waiver.

48. Defendants are in violation of FOIA by denying a fee waiver.

49. Plaintiffs are being irreparably harmed by reason of Defendants’ violation of FOIA. Plaintiffs are being denied a fee waiver to which they are statutorily entitled and that is important to carrying out Plaintiffs’ functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

50. Plaintiffs have no adequate remedy at law.

51. Plaintiffs have constructively exhausted their administrative remedies.

**COUNT IV**

***Against Defendants FBI, DOJ Civil Rights Division,  
DHS, and HHS***

**Violation of FOIA, 5 U.S.C. § 552  
Statutory Bar Against Charging Fees**

52. Plaintiffs incorporate by reference all preceding paragraphs and incorporate each paragraph of each count as applicable to each other count.

53. Plaintiffs properly requested records within the possession, custody, or control of Defendants.

54. The Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs' commercial interest.

55. Plaintiffs are members of the news media as they “gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience” via Heritage’s major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

56. Disclosure of the information sought by the Request also “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii).

57. Defendants have “failed to comply with a[]time limit under paragraph (6)” as to the Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

58. Defendants are currently statutorily barred from charging fees related to Plaintiffs' FOIA Request. Therefore, Plaintiffs have a statutory right to have their request processed without being charged any fees.

59. Plaintiffs are being irreparably harmed by reason of Defendants' violation of FOIA. Plaintiffs will continue to be irreparably harmed unless Defendants are compelled to comply with the law.

60. Plaintiffs have no adequate remedy at law.

61. Plaintiffs have constructively exhausted their administrative remedies.

**COUNT V**  
***Against All Defendants***

**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Denial of Expedited Processing**

62. Plaintiffs incorporate by reference all preceding paragraphs and incorporates each paragraph of each count as applicable to each other count.

63. Plaintiffs properly requested records within the possession, custody, or control of Defendants.

64. Plaintiffs properly asked that DHS expedite the processing of Plaintiffs' FOIA Request, based upon Plaintiffs' showing that the Request concerns "an urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information." 6 C.F.R. § 5.5(e)(1)(ii).

65. Defendants refused in part to expedite Plaintiffs' FOIA Request, contrary to the factual and legal showing Plaintiffs made demonstrating their entitlement to expedition.

66. Defendants are in violation of FOIA.

67. Plaintiffs are being irreparably harmed by reason of Defendants' violation of FOIA. Plaintiffs are being denied information to which they are statutorily entitled to on an expedited basis and that is important to carrying out Plaintiffs' functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

68. Plaintiffs have no adequate remedy at law.

69. Plaintiffs are entitled to seek immediate judicial relief for EPA's denial of expedited processing. *See* 5 U.S.C. § 552(a)(6)(E)(iii) ("Agency action to deny . . . a request for expedited processing pursuant to this subparagraph . . . shall be subject to judicial review."); *ACLU v. DOJ*, 321 F.Supp.2d 24, 28–29 (D.D.C. 2004).

**PRAYER FOR RELIEF**

For these reasons, Plaintiffs asks this Court to:

- a. Declare unlawful Defendants' refusal to disclose requested records;
- b. Declare that Defendants' failure to make determinations to Plaintiffs' request within the statutory time frame violates FOIA;
- c. Order the Defendants to conduct a search for any and all records responsive to Plaintiffs' FOIA request and demonstrate that they employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiffs' FOIA request;
- d. Order the Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiffs' FOIA request as well as a Vaughn index of any responsive records withheld under claim of exemption;
- e. Enjoin the Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiffs' FOIA request;
- f. Award Plaintiffs the costs of this action and reasonable attorney's fees; and
- g. Grant such other and further relief as this Court deems equitable and just.

Dated: September 28, 2023

Respectfully submitted,

/s/ Joseph B. Edlow  
JOSEPH B. EDLOW  
Bar No.: MD0147  
The Law Offices of Joseph Edlow LLC  
1201 Seven Locks Road, Suite 360  
Rockville, Maryland 20854  
Telephone: 410-303-1450

Email: joseph@edlowlaw.com

SAMUEL EVERETT DEWEY

(No. 999979)

Chambers of Samuel Everett Dewey, LLC

Telephone: (703) 261-4194

Email: samueledewey@sedchambers.com

*Counsel for Plaintiff*