**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF COLUMBIA**

CENTER TO ADVANCE SECURITY )

IN AMERICA )

1802 Vernon Street NW )

PMB 2095 )

Washington, D.C. 20009, )

)

Plaintiff, )

)

v. ) Civil Case No. \_\_\_\_\_\_\_\_

)

U.S. AIR FORCE )

1670 Air Force Pentagon )

Washington, D.C. 20330-1670 )

)

Defendant. )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

**COMPLAINT**

1. Plaintiff Center to Advance Security in America (“CASA”) brings this action against the U.S. Air Force (“USAF”) under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331.
2. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

**PARTIES**

1. Plaintiff CASA is an unincorporated association dedicated to improving the safety and security of the American people. CASA educates and informs the American people about the actions of their government and its officials that impact their safety; peace and security; democracy, civil rights, and civil liberties; and privacy.
2. Defendant USAF is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). USAF has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

**STATEMENT OF FACTS**

1. On August 7, 2023, CASA submitted a FOIA request (attached as Exhibit A) seeking the following records related to a USAF memo on diversity, equity, and inclusion goals in USAF’s recruitment:
2. All meeting requests, calendar entries, virtual meeting invitations, call logs and any chats in the relevant virtual platforms (e.g., Microsoft Teams, Zoom, Webex, etc.) pertaining to the development of “Officer Source of Commission Applicant Pool Goals”.
3. We are seeking records on this topic exchanged between and among the relevant following officials:

a. Charles Q. Brown Jr.

b. Frank Kendall

c. David W. Allvin

d. Joanne S. Bass

e. Kristyn E. Jones

f. Caroline M. Miller

g. James C. Slife

h. Brian S. Robinson

i. James R. Sears

j. Chad Bickley

k. Matthew A. Leard

l. Paul Swenson

m. Eric Badger

n. Andrea D. Tullos

o. Christopher Amrhein

p. Christopher A. Miller

q. Floyd Dunstan

r. Randy P. Oakland

1. We are seeking all emails, text messages, chat sessions, or other forms of written or electronic communication used to discuss the development of the USAFA’s “Officer Source of Commission Applicant Pool Goals” and communications by and between those in #2 above containing the following phrases and/or words; “Officer Source of Commission Applicant Pool Goals”, “Diversity, Equity, and Inclusion”, “DEI”, “race”, “ethnicity”, “gender”, “quotas”, “racial”, “white”, “black”, “Hispanic”, “African-American”, “Latino”, “Indian”, “Asian”, “American Indian”, “Native Alaskan”, “Native Hawaiian”, “Other Pacific Islander”, “male”, “female”, “transgender”, “non-binary”, “pool”.
2. All records exchanged by or between any official listed above with any individual working for one of the following media outlets (with suggested email addresses) on the topic of development of “Officer Source of Commission Applicant Pool Goals” or mandatory “Diversity Equity and Inclusion” or “DEI” training:
   1. i. Politico (@politico.com)
   2. ii. Military Times (@militarytimes)
   3. iii. New York Times (@nytimes.com)
   4. iv. Washington Post (@washingtonpost.com)
   5. v. NBC News (@nbcnews.com)
   6. vi. ABC News (@abcnews.com)
   7. vii. LA Times (@latimes.com)

viii. CBS News (@cbsnews.com)

* 1. ix. Fox News (@foxnews.com)
  2. x. Wall Street Journal (@wsj.com)
  3. xi. USA Today (@usatoday.com)
  4. xii. Fortune (@fortune.com)
  5. xiii. Forbes (@forbes.com)
  6. xiv. Vanity Fair (@vanityfair.com)
  7. xv. CNN (@cnn.com)
  8. xvi. Associated Press (@ap.com)
  9. xvii. George Washington University’s Project for Media and National Security
  10. xviii. PBS (@pbs.org)

1. All communications exchanged between any of the above officials identified as an employee, agent, consultant, or representative of one of the following organizations:
   1. a. National Association of Diversity Officers in Higher Education
   2. b. Pacific Education Group
   3. c. Courageous Conversations
   4. d. Restorative Justice Project
   5. e. Casel
   6. f. Southern Poverty Law Center
   7. g. Panorama Education
   8. h. PIVOT Learning
   9. i. CT3 Learning
   10. j. Insight Education Group
   11. k. American Civil Liberties Union
   12. l. Black Lives Matter
   13. m. Color of Change
   14. n. NAACP Legal Defense and Educational Fund, Inc.
   15. o. Seramount
2. The timeline for the records requested is from May 1, 2022, to the date the search begins.
3. The release of these documents is in the public interest because it will help the public understand whether the U.S. government is prioritizing military readiness and is appropriately using taxpayer resources to keep Americans safe. CASA’s explicit purpose in requesting these documents is to inform the public so they can be engaged with their leaders and ensure their decisions are consistent with America’s best interests.
4. On August 8, 2023, USAF confirmed receipt of CASA’s request and assigned it tracking # 2023-05524-F.
5. On September 26, 2023, USAF sent CASA a response letter to its request. Exhibit B. The letter stated that USAF was providing a “No Records” response because its search produced no responsive records.
6. On October 6, 2023, CASA appealed USAF’s “No Records” response. As part of its appeal, CASA submitted a letter (Exhibit C) explaining that USAF’s “No Records” determination, and the search process USAF described it used to reach it, were insufficient:

In its response, the Air Force claims that there are “no records” responsive to the request when the specific public documents referenced in the request contain the very search words which the Air Force claims there are no records for. For example, the August 9, 2022, directive entitled “Officer Source of Commission Applicant Pool Goals” from CQ Brown, Frank Kendall, Gina Ortiz Jones, and John Raymond, uses the terms “White”, “Black”, “Asian”, “Hispanic”, “American Indian”, and “Officer Source of Commission Applicant Pool Goals”, and “diversity and inclusion”. All of these search terms were included in the original FOIA request. In its response, the Air Force claims there were “electronic searches performed” using these keywords and that “no records were found”. This cannot be accurate. Further, the Air Force’s response ignored the other parts of the FOIA request, which asked for communications between Air Force officials and media organizations as well as third party non-profit organizations.

Accordingly, CASA requested that USAF “reopen the request, continue the search, and promptly process and release all responsive records that are found.

1. On October 16, 2023, USAF sent an email acknowledging CASA’s appeal of the “No Records” determination and assigning the request a new tracking number, 2024-00004-A. Exhibit D. USAF’s email stated that CASA’s request had now been placed “in the Complex processing track” and that it estimated it would “provide a response to [CASA’s] request within 30 working days.” *Id*. The email also stated that CASA’s request for a fee waiver had been granted.
2. To date, CASA has received no further response or other communication from USAF regarding request number 2024-00004-A.
3. USAF’s October 16 acknowledgment letter appears to grant CASA’s appeal. For example, the October 16 letter indicates that it has placed CASA’s request in the “complex” processing track and notes that CASA’s request for a fee waiver is “granted.” These designations only make sense if CASA’s request is a live, active request.
4. As the record described above indicates, over 175 days have elapsed since USAF acknowledged receipt of CASA’s appeal and reopened its request on October 16, 2023, and over 245 days have elapsed since CASA initially submitted its request on August 7, 2023. Yet USAF still has not determined whether it will comply with CASA’s request. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). USAF has not produced responsive documents to CASA, has not communicated to CASA the scope of the documents it intends to produce or withhold—along with the reasons for any such withholding—and has not informed CASA of its ability to appeal any adverse portion of its determination.
5. In the alternative, if the October 16 acknowledgement letter does not indicate that USAF has granted CASA’s appeal, then USAF has failed to make a determination with respect to CASA’s appeal within the requisite statutory time period. *See* 5 U.S.C. § 552(a)(6)(a)(ii). In such case, CASA has constructively exhausted its administrative remedies and seeks judicial relief to rectify the wrongful withholding of responsive records.
6. Given these facts, it appears that USAF has not met its statutory obligations to provide the requested records, nor intends to meet them absent litigation.
7. Through USAF’s failure to make a determination within the time period required by law, CASA has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552**

**Wrongful Withholding of Non-Exempt Responsive Records**

1. CASA repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
2. CASA properly submitted a request for records within the possession, custody, and control of USAF.
3. USAF is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.
4. USAF is wrongfully withholding non-exempt agency records requested by CASA by failing to produce non-exempt records responsive to its request.
5. USAF’s failure to provide all non-exempt responsive records violates FOIA.
6. Plaintiff CASA is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

**REQUESTED RELIEF**

Center to Advance Security in America respectfully requests this Court:

1. Assume jurisdiction in this matter and maintain jurisdiction until Defendant complies with the requirements of FOIA and any and all orders of this Court.
2. Order Defendant to produce, within ten days of the Court’s order, or by other such date as the Court deems appropriate, any and all non-exempt records responsive to CASA’s FOIA request and an index justifying the withholding of all or part of any responsive records withheld under claim of exemption.
3. Award CASA the costs of this proceeding, including reasonable attorney’s fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E).
4. Grant CASA other such relief as the Court deems just and proper.

Dated: April \_\_, 2024 Respectfully submitted,

CENTER TO ADVANCE SECURITY

IN AMERICA

By Counsel:

/s/Gary M. Lawkowski

Gary M. Lawkowski

D.D.C. Bar ID: VA125

Dhillon Law Group, Inc.

2121 Eisenhower Avenue, Suite 608

Alexandria, Virginia 22314

Telephone: 703-574-1654

[GLawkowski@Dhillonlaw.com](mailto:GLawkowski@Dhillonlaw.com)

Jacob W. Roth

D.D.C. Bar #

Dhillon Law Group, Inc.

1601 Forum Place, Suite 403

West Palm Beach, FL 33401

Telephone: 415-433-1700, ext. 646

[JRoth@DhillonLaw.com](mailto:JRoth@DhillonLaw.com)

*Counsel for the Plaintiff*