

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

JASON LEOPOLD,)
)
BLOOMBERG L.P.,)
731 Lexington Ave)
New York, NY 10022)
)
Plaintiffs,)
)
v.)
)
U.S. DEPARTMENT OF JUSTICE,)
950 Pennsylvania Ave NW)
Washington, D.C. 20530)
)
Defendant.)

COMPLAINT

1. Plaintiffs JASON LEOPOLD and BLOOMBERG L.P. bring this suit to force Defendant U.S. DEPARTMENT OF JUSTICE to comply with Plaintiffs' FOIA requests and release documents regarding the transfer of President Biden's Obama-era Presidential records that were discovered at the Penn Biden Center and other locations. In violation of FOIA, Defendant has failed to issue a determination for the expedited requests and has failed to produce records responsive to the requests.

PARTIES

2. Plaintiff JASON LEOPOLD is an investigative reporter at Bloomberg News and is one of the FOIA requesters in this case.

3. Plaintiff BLOOMBERG L.P. is the owner and operator of Bloomberg News. Bloomberg's newsroom of more than 2,700 journalists and analysts delivers thousands of stories a day, producing content that is featured across multiple platforms, including digital, TV, radio,

streaming video, print and live events. BLOOMBERG L.P. is one of the FOIA requesters in this case.

4. Defendant U.S. DEPARTMENT OF JUSTICE (“DOJ”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

5. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

PLAINTIFFS’ FOUR FOIA REQUESTS TO DOJ

A. January 17, 2023 FOIA Request to DOJ’s Office of Information and Policy (“OIP”)¹

7. On January 17, 2023, Plaintiffs submitted a FOIA request to OIP for the following records:

[1] All records, such as emails (and attachments), memos, letters, text messages, reports, audits, photographs, videos, directives, mentioning or referring to or referencing President Joseph Biden, Vice President Joe Biden, classified/secret/top secret/sensitive documents or classified/secret/top secret/sensitive Vice-Presidential records, the Biden-Penn Center, the Presidential Records Act, and the National Archives. Please be sure this part of the search includes emails and any other correspondence DOJ exchanged with any current official in the Biden White House and the eop.gov domain; correspondence DOJ exchanged with all federal agencies, including FBI, the National Archives and other Justice Department component referencing Vice Presidential records from Joe Biden’s tenure marked classified that were found by representatives of Joe Biden either at his home, his personal office, the Biden-Penn Center or any other location;

[2] A copy of any criminal referral or other referral NARA sent to the Department of Justice after NARA was notified that classified, top secret or sensitive records from Vice President Joe Biden’s tenure as Vice President were found and subsequently turned over to NARA;

¹ Plaintiffs’ FOIA Request was directed to the following additional DOJ components: Office of the Attorney General; Office of the Deputy Attorney General; Office of the Associate Attorney General; Office of Legislative Affairs; Office of Public Affairs; and Office of Legal Policy. OIP maintains the initial request files of FOIA requests for records of these offices. *See* <https://www.justice.gov/oip/oip-foia>.

[3] Any declination memo or letter;

[4] All records mentioning or referring to or referencing final decisions by the Office of the Attorney General to appoint a special counsel to investigate the presence of records marked classified/secret/top secret/sensitive or other classification markings that were found at President Joe Biden's home, office, Penn Biden Center or other locations managed by Mr. Biden or his staff; [and]

[5] Talking points prepared for the Attorney General relating or referring to or referencing decisions to appoint a special counsel to investigate the presence of classified records found at Mr. Biden's home and office and talking points prepared for the Attorney General to discuss the presence of classified records found at Mr. Biden's home and office.

A copy of the FOIA request, submitted via DOJ's FOIA portal, is attached as Exhibit 1.

8. Plaintiffs sought expedited processing for the request.

9. On January 18, 2023, OIP acknowledged receipt and assigned reference number FOIA-2023-00511 to the request. A true and correct copy of OIP's acknowledgement letter is attached as Exhibit 2.

10. OIP stated that the request falls within "unusual circumstances" under 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) and therefore has "not yet completed a search to determine whether there are records within the scope" of the request. *Id.*

11. OIP granted expedited processing for the request. *Id.*

12. On March 6, 2023, Plaintiffs sought an estimated date of completion for the FOIA request. A true and correct copy of the email correspondence is attached as Exhibit 3.

13. There is an urgency to inform the public concerning actual or alleged Federal Government activity that is implicated by the records sought in the request.

14. On March 17, 2023, in response to Plaintiffs' request for an estimated completion date, OIP asserted the "unusual circumstances" provision of FOIA and provided an estimated

completion date of “415.13 days.” A true and correct copy of the OIP’s email is attached as Exhibit 4.

15. Thus, according to OIP, the public must wait until September 13, 2024 (less than two months before the next Presidential election), to receive records about government records kept by President Biden in his office, home, and other locations.

16. As of March 17, 2023, OIP was aware that agencies are required to process expedited requests “as soon as practicable.”

17. It is practicable for OIP to process the request in less than 415 days.

B. January 18, 2022 FOIA Request to DOJ’s Criminal Division (“CRM”)

18. On January 18, 2023, Plaintiffs submitted a FOIA request to CRM for the following records:

[1] All records, such as emails (and attachments), memos, letters, text messages, legal opinions and legal guidance, reports, audits, photographs, videos, directives, mentioning or referring to or referencing President Joseph Biden, Vice President Joe Biden, classified/secret/top secret/sensitive documents or classified/secret/top secret/sensitive Vice-Presidential records, the Biden-Penn Center, the Presidential Records Act, and the National Archives. Please be sure this part of the search includes emails and any other correspondence DOJ exchanged with any current official in the Biden White House and the eop.gov domain; correspondence DOJ exchanged with all federal agencies, including FBI, the National Archives and other Justice Department component referencing Vice Presidential records from Joe Biden’s tenure marked classified that were found by representatives of Joe Biden either at his home, his personal office, the Biden-Penn Center or any other location;

[2] A copy of any criminal referral or other referral NARA sent to the Department of Justice after NARA was notified that classified, top secret or sensitive records from Vice President Joe Biden’s tenure as Vice President were found and subsequently turned over to NARA;

[3] Any declination memo or letter in response to that referral; [and]

[4] Any letter from a sitting member of Congress or Congressional Committee sent to the DOJ components this request is addressed to mentioning or referring to or referencing the presence of classified records at Joe Biden’s office, home, the Penn Biden Center or other locations.

A true and correct copy of the request is attached as Exhibit 5.

19. On January 26, 2023, CRM acknowledged receipt of the request and assigned reference number CRM-301854209 to the request. A true and correct copy of CRM's acknowledgement letter is attached as Exhibit 6.

20. CRM stated that the request presents "unusual circumstances" under 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) and extended the time limit to respond by ten additional days as provided by the statute. *Id.*

21. CRM granted expedited processing for the request. *Id.*

22. On March 6, 2023, Plaintiffs sought an estimated date of completion for the FOIA request. A true and correct copy of the email correspondence is attached as Exhibit 7.

23. On March 9, 2023, CRM estimated that the request would be completed within 12 months. A true and correct copy of CRM's letter is attached as Exhibit 8.

C. January 18, 2023 FOIA Request to DOJ's National Security Division ("NSD")

24. On January 18, 2023, Plaintiffs submitted a FOIA request to NSD for the following records:

[1] All records, such as emails (and attachments), memos, letters, text messages, legal opinions and legal guidance, reports, audits, photographs, videos, directives, mentioning or referring to or referencing President Joseph Biden, Vice President Joe Biden, classified/secret/top secret/sensitive documents or classified/secret/top secret/sensitive Vice-Presidential records, the Biden-Penn Center, the Presidential Records Act, and the National Archives. Please be sure this part of the search includes emails and any other correspondence DOJ exchanged with any current official in the Biden White House and the eop.gov domain; correspondence DOJ exchanged with all federal agencies, including FBI, the National Archives and other Justice Department component referencing Vice Presidential records from Joe Biden's tenure marked classified that were found by representatives of Joe Biden either at his home, his personal office, the Biden-Penn Center or any other location;

[2] A copy of any criminal referral or other referral NARA sent to the Department of Justice after NARA was notified that classified, top secret or sensitive records from

Vice President Joe Biden's tenure as Vice President were found and subsequently turned over to NARA;

[3] Any declination memo or letter in response to that referral; [and]

[4] Any letter from a sitting member of Congress or Congressional Committee sent to the DOJ components this request is addressed to mentioning or referring to or referencing the presence of classified records at Joe Biden's office, home, the Penn Biden Center or other locations.

A true and correct copy of the request is attached as Exhibit 9.

25. On February 10, 2023, NSD acknowledged receipt of the request and assigned reference number NSD FOIA 23-166 to the request. A true and correct copy of NSD's acknowledgement letter is attached as Exhibit 10.

26. NSD granted expedited processing for the request. *Id.*

27. On March 6, 2023, Plaintiffs sought an estimated date of completion for the FOIA request. A true and correct copy of the email correspondence is attached as Exhibit 11.

28. NSD never responded to Plaintiffs' request for an estimated date of completion.

D. January 18, 2023 FOIA Request to DOJ's Office of Legal Counsel ("OLC")

29. On January 18, 2023, Plaintiffs submitted a FOIA request to OLC for the following records:

[1] All records, such as emails (and attachments), memos, letters, text messages, legal opinions and legal guidance, reports, audits, photographs, videos, directives, mentioning or referring to or referencing President Joseph Biden, Vice President Joe Biden, classified/secret/top secret/sensitive documents or classified/secret/top secret/sensitive Vice-Presidential records, the Biden-Penn Center, the Presidential Records Act, and the National Archives. Please be sure this part of the search includes emails and any other correspondence DOJ exchanged with any current official in the Biden White House and the eop.gov domain; correspondence DOJ exchanged with all federal agencies, including FBI, the National Archives and other Justice Department component referencing Vice Presidential records from Joe Biden's tenure marked classified that were found by representatives of Joe Biden either at his home, his personal office, the Biden-Penn Center or any other location;

[2] A copy of any criminal referral or other referral NARA sent to the Department of Justice after NARA was notified that classified, top secret or sensitive records from Vice President Joe Biden's tenure as Vice President were found and subsequently turned over to NARA;

[3] Any declination memo or letter in response to that referral; [and]

[4] Any letter from a sitting member of Congress or Congressional Committee sent to the DOJ components this request is addressed to mentioning or referring to or referencing the presence of classified records at Joe Biden's office, home, the Penn Biden Center or other locations.

A true and correct copy of the request is attached as Exhibit 12.

30. On January 26, 2023, OLC acknowledged receipt of the request and assigned reference number FY23-031 to the request. A true and correct copy of OLC's acknowledgement letter is attached as Exhibit 13.

31. OLC granted expedited processing for the request. *Id.*

32. On March 6, 2023, Plaintiffs sought an estimated date of completion for the FOIA Request. A true and correct copy of the email correspondence is attached as Exhibit 14.

33. OLC never responded to Plaintiffs' request for an estimated date of completion.

34. As of the date of this filing, DOJ and its components have not issued a determination for the four above-referenced requests, which were granted expedited processing.

35. As of the date of this filing, DOJ has not complied with FOIA and has released no records responsive to the four above-referenced requests.

**COUNT I – JANUARY 17, 2023 FOIA REQUEST TO OIP
DOJ'S FOIA VIOLATION**

36. The above paragraphs are incorporated by reference.

37. Plaintiffs' FOIA request seeks the disclosure of agency records and was properly made.

38. Defendant DOJ and its component OIP are federal agencies subject to FOIA.

39. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

40. Defendant DOJ has failed to conduct a reasonable search for records responsive to the request.

41. Defendant DOJ has failed to issue a complete determination within the statutory deadline.

42. Defendant DOJ has failed to produce all non-exempt records responsive to the request.

**COUNT II – JANUARY 18, 2023 FOIA REQUEST TO CRM
DOJ’S FOIA VIOLATION**

43. The above paragraphs are incorporated by reference.

44. Plaintiffs’ FOIA request seeks the disclosure of agency records and was properly made.

45. Defendant DOJ and its component CRM are federal agencies subject to FOIA.

46. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

47. Defendant DOJ has failed to conduct a reasonable search for records responsive to the request.

48. Defendant DOJ has failed to issue a complete determination within the statutory deadline.

49. Defendant DOJ has failed to produce all non-exempt records responsive to the request.

**COUNT III – JANUARY 18, 2023 FOIA REQUEST TO NSD,
DOJ’S FOIA VIOLATION**

50. The above paragraphs are incorporated by reference.

51. Plaintiffs’ FOIA request seeks the disclosure of agency records and was properly made.

52. Defendant DOJ and its component NSD are federal agencies subject to FOIA.

53. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

54. Defendant DOJ has failed to conduct a reasonable search for records responsive to the request.

55. Defendant DOJ has failed to issue a complete determination within the statutory deadline.

56. Defendant DOJ has failed to produce all non-exempt records responsive to the request.

**COUNT IV – JANUARY 18, 2023 FOIA REQUEST TO OLC,
DOJ’S FOIA VIOLATION**

57. The above paragraphs are incorporated by reference.

58. Plaintiffs’ FOIA request seeks the disclosure of agency records and was properly made.

59. Defendant DOJ and its component OLC are federal agencies subject to FOIA.

60. Included within the scope of the request are one or more records or portions of records that are not exempt under FOIA.

61. Defendant DOJ has failed to conduct a reasonable search for records responsive to the request.

62. Defendant DOJ has failed to issue a complete determination within the statutory deadline.

63. Defendant DOJ has failed to produce all non-exempt records responsive to the request.

WHEREFORE, Plaintiffs asks the Court to:

- i. declare that Defendant has violated FOIA;
- ii. order Defendant to conduct a reasonable search for records responsive to the requests;
- iii. order Defendant to produce all non-exempt requested records or portions of records promptly;
- iv. enjoin Defendant from withholding non-exempt public records under FOIA;
- v. award Plaintiffs attorneys' fees and costs; and
- vi. award such other relief the Court considers appropriate.

Dated: March 28, 2023

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

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