

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY  
and CHARLIE SAVAGE,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY,  
DEPARTMENT OF STATE, and  
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,

Defendants.

**COMPLAINT**

Plaintiffs THE NEW YORK TIMES COMPANY and CHARLIE SAVAGE (jointly, “The Times”), by and through their undersigned attorneys, allege as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), to obtain an order for the production of agency records from the Central Intelligence Agency (“CIA”), the Department of State (“DOS”), and the Office of the Director of National Intelligence (“ODNI”) in response to requests properly made by Plaintiffs.

**PARTIES**

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and [www.nytimes.com](http://www.nytimes.com). The Times is headquartered in this judicial district at 620 Eighth Avenue, New York, NY 10018.

3. Plaintiff Charlie Savage is a reporter employed by The New York Times Company.

4. Defendants are agencies within the federal government that have possession and control of the records that The Times seeks.

### **JURISDICTION AND VENUE**

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

6. Venue is premised on The Times's place of business and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. FOIA requires that agencies respond to FOIA requests within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A).

8. Plaintiffs have exhausted all administrative remedies available pursuant to 5 U.S.C. § 552(a)(6)(C).

### **FACTS**

#### **The CIA Request**

9. On September 27, 2022, The Times submitted a FOIA request to the CIA seeking “all records related to requests for briefings by former presidents since 1953,” including the identity of the ex-president, the date of the request, the topic, and whether the briefing was provided, among other details.

10. On October 25, 2022, the CIA acknowledged receipt of the request and assigned it reference number F-2023-00026.

11. The Times has received no further communications about the request.

#### **The DOS Request**

12. On September 27, 2022, The Times submitted an identical FOIA request to the DOS.

13. On September 28, 2022, the DOS acknowledged receipt of the request and assigned it reference number F-2022-13344.

14. The DOS stated in its response that it would be unable to respond to the request within the 20-day statutory time period due to “unusual circumstances,” namely, “the need to search for and collect requested records from other Department offices or Foreign Service posts.”

15. The Times has received no further communications about the request.

#### The ODNI Request

16. On September 27, 2022, The Times submitted an identical FOIA request to the ODNI.

17. On October 27, 2022, the ODNI acknowledged receipt of the request and assigned it reference number DF-2022-00427.

18. The ODNI stated in its response, “After a thorough review of your request, we determined that our record systems are not configured in a way that would allow us to perform a search reasonably calculated to lead to responsive records without an unreasonable effort.” Therefore, the ODNI “decline[d] to process [The Times’s] request.”

19. On November 19, 2022, The Times administratively appealed.

20. The Times has received no response to the appeal.

#### **FIRST CAUSE OF ACTION**

21. The Times repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

22. Defendant CIA is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request

and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

23. Defendant CIA has failed to meet the statutory deadlines set by FOIA. 5 U.S.C. § 552(a)(6)(A)–(B). Accordingly, The Times is deemed to have exhausted its administrative remedies under FOIA.

24. Defendant CIA is permitted to withhold documents or parts of documents only if one of FOIA’s enumerated exemptions apply.

25. No exemptions permit the withholding of the documents sought by the request.

26. Accordingly, Plaintiffs are entitled to an order compelling Defendant CIA to produce the records responsive to the request.

### **SECOND CAUSE OF ACTION**

27. The Times repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

28. Defendant DOS is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

29. Defendant DOS has failed to meet the statutory deadlines set by FOIA. 5 U.S.C. § 552(a)(6)(A)–(B). Accordingly, The Times is deemed to have exhausted its administrative remedies under FOIA.

30. Defendant DOS is permitted to withhold documents or parts of documents only if one of FOIA’s enumerated exemptions apply.

31. No exemptions permit the withholding of the documents sought by the request.

32. Accordingly, Plaintiffs are entitled to an order compelling Defendant DOS to produce the records responsive to the request.

**THIRD CAUSE OF ACTION**

33. The Times repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

34. Defendant ODNI is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

35. Defendant ODNI has failed to meet the statutory deadlines set by FOIA, 5 U.S.C. § 552(a)(6)(A)–(B). Accordingly, The Times is deemed to have exhausted its administrative remedies under FOIA.

36. Defendant ODNI is permitted to withhold documents or parts of documents only if one of FOIA's enumerated exemptions apply.

37. No exemptions permit the withholding of the documents sought by the request.

38. Accordingly, Plaintiffs are entitled to an order compelling Defendant ODNI to produce the records responsive to the request.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

39. Declare that the documents sought by the requests, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

40. Order Defendants to undertake an adequate search for the requested records and provide them to Plaintiffs within 20 business days of the Court's order;

41. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

42. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, NY  
March 3, 2023

/s/ David E. McCraw

David E. McCraw  
Legal Department  
The New York Times Company  
620 8th Avenue  
New York, NY 10018  
Phone: (212) 556-4031  
E-mail: [mccraw@nytimes.com](mailto:mccraw@nytimes.com)

*Counsel for Plaintiffs*