

Jurisdiction and Venue

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. §§ 552(a)(4)(A)(vii), (a)(4)(B), and (a)(6)(c)(i). This Court has personal jurisdiction over Defendant DOJ.
4. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

5. Plaintiff EPIC is a public-interest research organization incorporated as a 501(c)(3) non-profit corporation in Washington, D.C. EPIC conducts government oversight and analyzes the impact of government programs on civil liberties and privacy interests. EPIC publishes books, reports, and a bi-weekly newsletter. EPIC also maintains a popular website, epic.org, where EPIC publishes educational resources about emerging privacy and civil liberties issues, including documents obtained from federal agencies under the FOIA. EPIC routinely disseminates information to the public through the EPIC website, the EPIC Alert, and various other news organizations. EPIC is a representative of the news media.
6. Defendant DOJ is a federal agency within the meaning of the FOIA, 5 U.S.C. § 552(f)(1). Defendant DOJ is headquartered in Washington, D.C.

Facts

DOJ Office of the Inspector General Reports

7. The stated mission of the DOJ's Office of the Inspector General ("OIG") is "to detect and deter waste, fraud, abuse, and misconduct in DOJ programs and personnel, and to promote economy and efficiency in those programs."¹

¹ *About the Office*, Dep't of Justice, Office of the Inspector General, <https://oig.justice.gov/about/> (last updated June 2016).

8. The OIG “investigates alleged violations of criminal and civil laws by DOJ employees and also audits and inspects DOJ programs.”²

9. The OIG describes its findings and recommendations in reports (“OIG reports”), some of which are published on the agency’s website.³

10. IG reports are critical for the public to understand the measures taken to increase the efficiency and effectiveness of the DOJ, and as a mechanism to hold the agency accountable.

11. For example, in 2010, the OIG issued a report on the Federal Bureau of Investigation’s (“FBI”) use of “exigent letters” and other means to obtain telephone records from three unnamed phone companies.⁴ The 300-page report concluded that many of the FBI’s practices “violated FBI guidelines, Department policy,” and the Electronic Communications Privacy Act. The OIG report established that “the FBI’s initial attempts at corrective action were seriously deficient, ill-conceived, and poorly executed,” and proposed recommendations for improvement.

12. The OIG report led to increased public scrutiny of the FBI’s practices, including a hearing before the U.S. House of Representatives Committee on the Judiciary.⁵

13. These OIG investigations help to ensure that the DOJ is managed ethically and responsibly, and promotes public confidence in the operations of the federal agency.

² *Id.*

³ *Reports*, Dep’t of Justice, Office of the Inspector General, <https://oig.justice.gov/reports/> (last visited July 5, 2016).

⁴ *A Review of the Federal Bureau of Investigation’s Use of Exigent Letters and Other Informal Requests for Telephone Records*, Dep’t of Justice, Office of the Inspector General (Jan. 2010), <https://oig.justice.gov/special/s1001r.pdf>.

⁵ *Hearing on The Report by the Office of the Inspector General of the Department of Justice on the Federal Bureau of Investigation’s Use of Exigent Letters and Other Informal Requests for Telephone Records Before the Subcomm. on the Const., Civil Rights, & Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. 85 (2010), https://judiciary.house.gov/_files/hearings/hear_100414.html.

14. However, not all IG reports are made available to the public. As a consequence, the public is deprived of the opportunity to be fully informed of the activities of a major federal agency.

EPIC's FOIA Request

15. On November 4, 2015, EPIC submitted, via fax and email, a FOIA Request to the Ms. Deborah Waller, Government Information Specialist, at the DOJ's Office of the Inspector General.

16. EPIC's FOIA Request sought portions of non-public OIG reports. Specifically, EPIC sought:

- Title Pages, Tables of Contents, and Executive Summary of each final, non-public Inspector General report created since January 1, 2005 that falls under the following report categories listed on the Office of the Inspector General's website:
 - Audits and Reviews by Component
 - External Audits → Office of Justice Programs (OJP) Grant Audits
 - External Audits → Combined DNA Index System (CODIS) Audits

17. EPIC sought "news media" fee status under 5 U.S.C. § 552(4)(A)(ii).

18. EPIC also sought a waiver of all duplication fees under 5 U.S.C. § 552(a)(4)(A)(iii), arguing that disclosure of the requested records would "contribute significantly to public understanding of the operations or activities of the government."

19. In a letter dated November 17, 2015, the DOJ acknowledged EPIC's FOIA request and assigned it FOIA Reference Number 16-OIG-029.

20. In the November 17 letter, the DOJ made no determination as to EPIC's news-media status request or fee waiver request, but advised EPIC "that fees may be charged for searching for records . . . and for duplication of copies."

21. On March 22, 2016, EPIC National Security Counsel, Jeramie Scott, called the DOJ's OIG to inquire about the status of EPIC's FOIA request. In that phone call, the agency informed Mr. Scott that apart from the November 17 acknowledgment, the agency had no update.

22. The DOJ has not made any determination as to EPIC's FOIA Request.

EPIC's Constructive Exhaustion of Administrative Remedies

23. It has been 122 days since the DOJ received EPIC's FOIA Request.

24. The DOJ has failed to make a determination regarding EPIC's FOIA Request within the time period prescribed by 5 U.S.C. §§ 552(a)(6)(A)(i), (ii) and (a)(6)(E)(iii).

25. The DOJ's failure to make a determination within the statutory limit violates the FOIA.

26. EPIC has constructively exhausted all administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i).

Count I

Violation of FOIA: Failure to Comply with Statutory Deadlines

27. Plaintiff asserts and incorporates by reference paragraphs 1-26.

28. Defendant DOJ has failed to make a determination regarding EPIC's FOIA Request within twenty business days, and has thus violated the deadline under 5 U.S.C. § 552(a)(6)(A)(i) and 28 C.F.R. § 16.5.

29. Plaintiff has constructively exhausted all applicable administrative remedies with respect to EPIC's FOIA Request.

Count II

Violation of FOIA: Unlawful Withholding of Agency Records

30. Plaintiff asserts and incorporates by reference paragraphs 1-26.

31. Defendant has wrongfully withheld agency records requested by Plaintiff.

32. Plaintiff has constructively exhausted applicable administrative remedies with respect to Defendant's withholding of the requested records.

33. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested records.

Requested Relief

WHEREFORE, Plaintiff requests that this Court:

- A. Order Defendant to conduct a reasonable search for all responsive records;
- B. Order Defendant to disclose to Plaintiff, as soon as practicable, all responsive, non-exempt records;
- C. Order Defendant to produce a *Vaughn* Index identifying any records or portions of records withheld, if such records exist, stating the statutory exemption claimed and explaining how disclosure would damage the interests protected by the claimed exemption;
- D. Order Defendant to produce the records sought without the assessment of search fees;
- E. Order Defendant to grant Plaintiff's request for a fee waiver;
- F. Award Plaintiff costs and reasonable attorney's fees incurred in this action; and
- G. Grant such other relief as the Court may deem just and proper.

Respectfully Submitted,

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By: /s/ T. John Tran
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