

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

Case No. 21-14462-Civ

STATE OF FLORIDA,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY; U.S.
CUSTOMS AND BORDER
PROTECTION; U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT;
U.S. CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF AND
TO COMPEL PRODUCTION OF DOCUMENTS**

The State of Florida (Florida) brings this action against the U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE) to compel compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

PARTIES

1. Plaintiff State of Florida is a sovereign State and has the authority and responsibility to protect its public fisc and the health, safety, and welfare of its citizens and to seek information related to these duties.

2. Defendant Department of Homeland Security (DHS) is an agency of the United States Government. DHS has possession, custody, and control of certain public records to which Florida seeks access.

3. Defendant U.S. Citizenship and Immigration Services (USCIS) is a component of Defendant DHS. USCIS has possession, custody, and control of certain public records to which Florida seeks access.

4. Defendant U.S. Customs and Border Protection (CBP) is a component of Defendant DHS. CBP has possession, custody, and control of certain public records to which Florida seeks access.

5. Defendant U.S. Immigration and Customs Enforcement (ICE) is a component of Defendant DHS. ICE has possession, custody, and control of certain public records to which Florida seeks access.

JURISDICTION AND VENUE

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

7. Venue lies in this district pursuant to 28 U.S.C. § 1391(e)(1) because the State of Florida is a resident of every judicial district in its sovereign territory, including

this judicial district (and division). *See California v. Azar*, 911 F.3d 558, 570 (9th Cir. 2018).¹

STATEMENT OF FACTS

8. On October 11, 2021, Florida sent a FOIA request to the Defendants via email that requests several records. *See Ex. 1.*

9. The request was sent to foia@hq.dhs.gov, uscis.foia@uscis.dhs.gov, and ice-foia@dhs.gov, the email addresses provided for the privacy offices of DHS, USCIS, and ICE respectively.²

10. Florida also sent the request to CBP via the FOIAOnline portal and received confirmation of receipt. *See Ex. 2.*

11. On October 12, 2021, CBP notified Florida via email that its requests for expedited processing and fee waiver had been denied. *See Ex. 3–4.*

12. Under 5 U.S.C. § 552(a)(6)(A)(i), Defendants were required to respond to Florida's request within twenty working days of receipt, that is by November 8, 2021.

13. Section 552(a)(6)(B) allows an agency to take an extension of ten working days if “unusual circumstances” require more time for completion of the request.

¹ *Accord Alabama v. U.S. Army Corps of Eng'rs*, 382 F. Supp. 2d 1301, 1329 (N.D. Ala. 2005); *see also Atlanta & F.R. Co. v. W. Ry. Co. of Ala.*, 50 F. 790, 791 (5th Cir. 1892) (explaining that “the state government . . . resides at every point within the boundaries of the state”).

² DHS provides FOIA contact information for its component agencies at <https://www.dhs.gov/foia-contact-information>.

14. On October 12, 2021, CBP notified Florida that it would invoke the ten-day extension pursuant to 6 C.F.R § 5.5(a)–(c) due to the fact that Florida’s request “require[s] a thorough and wide-ranging search,” “seeks a voluminous amount of separate and distinct records,” and involves subject matter “of substantial interests to two or more components of CBP or . . . another agency.” Ex. 5.

15. In a letter dated October 13, 2021, USCIS also invoked the ten-day extension and denied expedited processing but granted a fee waiver.

16. Even with the invocation of a ten-day extension, CBP and USCIS were required to respond to Florida’s request by November 23, 2021. And because DHS and ICE have not requested an extension, they were required to respond by November 8, 2021.

17. As of the date of this Complaint, Defendants have failed to (i) determine whether to comply with the request; (ii) notify Florida of any such determination or the reasons therefor; (iii) advise Florida of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

COUNT I

Violation of the Freedom of Information Act, 5 U.S.C. § 552

18. Florida repeats and incorporates by reference ¶¶ 1–17.

19. The Defendants have failed to process and make a determination regarding Florida’s October 11, 2021 FOIA request within the statutory time limit and are unlawfully withholding records requested by Florida under 5 U.S.C. § 552.

20. Because Defendants failed to make a final determination on Florida's request within the time limits set by FOIA, Florida is deemed to have exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

21. Defendants' actions harm Florida by continuously denying Florida access to documents that it has a legal right to. This harm is irreparable because no monetary damages can compensate Florida for this loss. Florida will continue to be irreparably harmed unless and until Defendants are compelled to conform its conduct to the requirements of the law.

PRAYER FOR RELIEF

For these reasons, Florida asks the Court to:

- a) Order the Defendants to conduct a search for any and all records responsive to Florida's FOIA request, and to demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the requests;
- b) Order Defendants to produce, by a date certain, any and all non-exempt records responsive to Florida's FOIA request and an index of any responsive records withheld under claim of exemption;
- c) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Florida's FOIA request;
- d) Award Florida costs and reasonable attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e) Award such other relief as the Court deems equitable and just.

Respectfully submitted,

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