

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

JASON LEOPOLD,)
6824 Lexington Avenue)
Los Angeles, CA 90038)

BUZZFEED INC.,)
111 East 18th Street, 13th Floor)
New York, NY 10003)

Plaintiffs,)

v.)

CENTER FOR DISEASE CONTROL,)
395 E Street, S.W.)
Suite 9100)
Washington, D.C. 20201)

Case No. 20-CV-00722

U.S. DEPARTMENT OF HEALTH AND)
HUMAN SERVICES,)
200 Independence Ave., S.W.)
Washington, D.C. 20201)

FEDERAL EMERGENCY MANAGEMENT)
AGENCY,)
500 C Street, S.W.)
Washington, D.C. 20472)

U.S. DEPARTMENT OF HOMELAND)
SECURITY,)
2707 Martin Luther King Jr. Avenue SE)
Washington, D.C. 20528)

Defendants.)

COMPLAINT

1. Plaintiffs, JASON LEOPOLD and BUZZFEED INC., bring this Freedom of Information Act suit to force Defendants CENTER FOR DISEASE CONTROL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FEDERAL EMERGENCY MANAGEMENT AGENCY, and U.S. DEPARTMENT OF HOMELAND SECURITY to

produce various records regarding “COVID-19,” which has spread worldwide reaching as high as 125,000 cases as of March 13, 2020, and now determined to be a pandemic by World Health Organization. After Plaintiffs limited the scope of these requests in response to issues raised by the agencies, the agencies granted these requests expedited processing but have failed to issue determinations within the presumptive deadline for expedited requests.

PARTIES

2. Plaintiffs JASON LEOPOLD and BUZZFEED INC. are members of the media and made the FOIA requests at issue in this case.

3. Defendant CENTER FOR DISEASE CONTROL (“CDC”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552. CDC is a component of U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

4. Defendant DEPARTMENT OF HEALTH AND HUMAN SERVICES (“DHHS”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

5. Defendant FEDERAL EMERGENCY MANAGEMENT SYSTEM (“FEMA”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552. FEMA is a component of U.S. DEPARTMENT OF HOMELAND SECURITY.

6. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

7. 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.

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

FEBRUARY 12, 2020, FOIA REQUEST TO CDC

9. On February 12, 2020, Plaintiffs submitted a FOIA request to CDC for [1] “all emails sent and received from CDC Director mentioning or referring to Coronavirus”; [2] all internal CDC studies on the Coronavirus”; [3] “all policy and legal guidance provided to CDC and policy guidance CDC has provided to its staff on the Coronavirus”; [4] “any and all internal memos and letters mentioning or referring to the Coronavirus”; and [5] “any and all draft and final talking points on the Coronavirus.” Exhibit A.

10. Plaintiffs also requested expedited processing and a fee waiver for this request. Exhibit A.

11. On February 18, 2020, CDC acknowledged receipt of the request and assigned reference number #20-00610-FOIA to the matter. Exhibit B.

12. In that same letter, CDC stated that the request is “overly broad” and sought clarification. Exhibit B.

13. On February 18, 2020, Plaintiffs appealed CDC’s claim that the request is overly broad and specified the timeframe of the records they seek. Exhibit C.

14. On February 20, 2020, CDC rescinded its earlier letter and informed Plaintiffs that it would initiate search for the documents. Exhibit D.

15. On February 21, 2020, Plaintiffs and CDC agreed to limit the timeframe of the request to December 19, 2019 through January 31, 2020. They also agreed to limit the search to the Director, of both CDC and the Centers involved in the search, and their immediate aids or deputies. Exhibit E.

16. On February 25, 2020, CDC granted Plaintiffs expedited processing and sought an extension. Exhibit F.

17. On February 26, 2020, Plaintiffs further narrowed the timeframe of the search to February 1, 2020 through the present or when the search begins. CDC agreed to the narrowed timeframe. Exhibit G.

18. On February 28, 2020, CDC sent a letter to memorialize the scope of the request, given recent changes to date and search terms. Exhibit H.

19. As of the date of this filing, CDC has not issued a determination and has produced no records responsive to the request.

FEBRUARY 12, 2020, FOIA REQUEST TO FEMA

20. On February 12, 2020, Plaintiffs submitted a FOIA request to FEMA for [1] “any and all contingency plans for a[] Coronavirus outbreak in possession of FEMA”; [2] “any and all records mentioning or referring to said FEMA contingency plan document”; and [3] “any and all records, including but not limited to emails, letters, memos, in which FEMA officials discuss any contingency plans in the event of a[] Coronavirus outbreak.” Exhibit I.

21. On February 27, 2020, FEMA acknowledged receipt of the request and assigned reference number 2020-FEFO-00371 to the matter. Exhibit J.

22. In that same letter, FEMA granted expedited processing. Exhibit J.

23. On March 5, 2020, Plaintiffs and FEMA narrowed the scope of the request to [1] “all contingency plans for the members of public for a Coronavirus outbreak in possession of FEMA” and [2] “emails, memos, discussions, letters, correspondence mentioning or referring to FEMA contingency plans for members of the public in the event of a Coronavirus outbreak from the following FEMA officials from January 7, 2020 – February 14, 2020: Carlos Castillo, Chad Gorman, Jeffrey Jackson, Pete Gaynor, Eric Heighberger, Myung Kim, Traci Clever, Eric Leckey, David Bibo, Jeffrey Dorko, Damon Penn, Keith Turi, John Rabin.” Exhibit K.

24. As of the date of this filing, FEMA has not issued a determination and has produced no records responsive to the request.

COUNT I – CDC’S FOIA VIOLATION

- 25. The above paragraphs are incorporated herein.
- 26. DHHS and CDC are federal agencies, subject to FOIA.
- 27. The requested records are not exempt under FOIA.
- 28. DHHS and CDC have refused to produce the requested materials in a timely manner.

COUNT II – FEMA’S FOIA VIOLATION

- 29. The above paragraphs are incorporated herein.
- 30. DHS and FEMA are federal agencies, subject to FOIA.
- 31. The requested records are not exempt under FOIA.
- 32. DHS and FEMA have refused to produce the requested materials in a timely manner.

WHEREFORE, Plaintiffs ask the Court to:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct a reasonable search for records and to produce the requested records;
- iii. enjoin Defendants from withholding non-exempt public records under FOIA;
- iv. award Plaintiffs attorneys’ fees and costs; and
- v. award such other relief the Court considers appropriate.

Dated: March 13, 2020

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorney for Plaintiffs
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BUZZFEED INC.

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