

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

SOPHIA HELENA IN ‘T VELD)

72, Avenue Jules de Trooz)

B-1150 Brussels)

Belgium,)

Plaintiff,)

v.)

C. A. No. _____)

DEPARTMENT OF HOMELAND SECURITY)

Washington, DC 20528,)

DEPARTMENT OF JUSTICE)

950 Pennsylvania Avenue, N.W.)

Washington DC 20530,)

and)

DEPARTMENT OF STATE)

2201 C Street, N.W.)

Washington, DC 20520)

Defendants.)

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff seeks injunctive and other appropriate relief for the processing and release of agency records requested by plaintiff from defendants Department of Homeland Security, Department of Justice and Department of State. Notwithstanding the statutory time limit of twenty business days for an agency response to FOIA requests and administrative appeals, defendants have failed to respond to plaintiff’s requests and appeals in a timely manner.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Sophia Helena In 't Veld is a citizen of the Netherlands and a member of the European Parliament for the Dutch social-liberal party D66. Among her parliamentary activities, plaintiff serves on the Committee on Civil Liberties, Justice and Home Affairs. In that capacity, she has been actively engaged in the development of policies concerning European Union-United States agreements governing the exchange of Passenger Name Record (“PNR”) data.

4. Defendant Department of Homeland Security (“DHS”) is a Department of the Executive Branch of the United States Government. DHS is an “agency” within the meaning of 5 U.S.C. § 552(f). U.S. Customs and Border Protection (“CBP”) and the Transportation Security Administration (“TSA”) are components of defendant DHS.

5. Defendant Department of Justice (“DOJ”) is a Department of the Executive Branch of the United States Government. DOJ is an “agency” within the meaning of 5 U.S.C. § 552(f). The Federal Bureau of Investigation (“FBI”) is a component of defendant DOJ.

6. Defendant Department of State (“State”) is a Department of the Executive Branch of the United States Government. State is an “agency” within the meaning of 5 U.S.C. § 552(f).

Background

7. For several years, the United States (“U.S.”) and European Union (“EU”) have engaged in an ongoing and highly controversial debate concerning the weakness of legal protections for Passenger Name Record (“PNR”) data processed and transferred to defendant DHS from airlines traveling between the EU and U.S. In the course of her service in the European Parliament, plaintiff has repeatedly expressed concern that the level of protection afforded such data by the U.S. is inadequate to protect the fundamental rights of EU citizens.

8. In November 2006, defendant DHS and its component, Customs and Border Protection, published a public notice stating that it maintains a system of records called the Automated Targeting System (“ATS”). The ATS, as described by DHS, is a data-mining system that the agency uses to create “risk assessments” for tens of millions of travelers crossing U.S. borders, drawing on PNR and other personal data maintained by the defendants in such information systems as the Non Immigrant Information System (“NIIS”), Suspect and Violator Indices (“SAVI”), Treasury Enforcement Communications System (“TECS”), Advanced Passenger Information System (“APIS”), the Department of State visa databases, and information from the consolidated and integrated terrorist watch list maintained by the Terrorist Screening Center. Prior to DHS’s announcement, the existence of ATS had not been disclosed to the European Parliament, despite the contentious EU-U.S. PNR negotiations. In December 2006, European Commissioner for Freedom, Security and Justice Franco Frattini told the European Parliament that the manner in which PNR data were handled within ATS violated commitments made by DHS concerning the agency’s use of European passenger

data.

9. Defendant DHS has repeatedly represented that the FOIA provides a means of access to PNR and related data, permitting any person, regardless of nationality or country of residence, to obtain relevant agency records unless they are specifically exempted from public disclosure under the FOIA.

Plaintiff's FOIA Request to Defendant DHS

10. By letter sent by facsimile to defendant DHS on October 17, 2007, counsel for plaintiff requested under the FOIA the following agency records:

all records concerning Sophie In 't Veld (including but not limited to electronic records) maintained in the Non Immigrant Information System (NIIS), Suspect and Violator Indices (SAVI), and the Treasury Enforcement Communications System (TECS).

Accompanying the FOIA request was a statement executed by plaintiff authorizing defendant DHS to release the requested information to plaintiff's counsel.

11. By letter to plaintiff's counsel dated October 29, 2007, defendant DHS acknowledged that it had received plaintiff's FOIA request on October 17, 2007.

12. By letter to plaintiff's counsel dated March 6, 2008, defendant DHS provided its "final response" to plaintiff's FOIA request. Defendant DHS informed plaintiff's counsel that

[w]e conducted a comprehensive search of files within Customs and Border Protection (CBP), United States Citizenship and Immigration Services (USCIS), Office of Policy (PLCY), Privacy Office (PRIV), and United States Immigration and Customs Enforcement (USICE) for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records.

Defendant DHS further stated that “you have the right to appeal this determination that no records exist within CBP, USCIS, PLCY, PRIV and USICE that would be responsive to your request.”

13. By letter to defendant DHS dated May 5, 2008, counsel for plaintiff appealed the determination set forth in defendant DHS’s letter dated March 6, 2008.

14. By letter to plaintiff’s counsel dated June 26, 2008, defendant DHS rendered a decision on plaintiff’s appeal and stated that “U.S. Customs and Border Protection (CBP) may have records about your client” and that “we are therefore remanding your request to CPB for processing and their direct response to you.”

15. By its letter to plaintiff’s counsel dated June 26, 2008, defendant DHS made a final determination that no DHS components other than CBP “may have records about” plaintiff.

16. In its letter to plaintiff’s counsel dated June 26, 2008, defendant DHS advised plaintiff that “you may obtain judicial review of this decision . . . in the United States District Court . . . in the District of Columbia.”

17. Plaintiff has exhausted the applicable administrative remedies.

18. Defendant DHS has wrongfully withheld the requested records from plaintiff.

Plaintiff’s FOIA Request to Defendant DHS’s Component CBP

19. By letter sent by facsimile to CBP on October 17, 2007, counsel for plaintiff requested under the FOIA the following agency records:

all records concerning Ms. In ‘t Veld (including but not limited to electronic records) maintained in the Passenger module of the Automated Targeting System (ATS-P) and Advanced Passenger Information System (APIS).

Accompanying the FOIA request was a statement executed by plaintiff authorizing CBP to release the requested information to plaintiff's counsel.

20. On information and belief, CBP received the letter from plaintiff's counsel described in ¶17 by facsimile on October 17, 2007.

21. To date, CBP has not responded to plaintiff's FOIA request.

22. CBP has violated the applicable statutory time limit for the processing of FOIA requests.

23. Plaintiff has exhausted the applicable administrative remedies.

24. CBP has wrongfully withheld the requested records from plaintiff.

Plaintiff's FOIA Request to Defendant DHS's Component TSA

25. By letter sent by electronic mail to TSA on May 15, 2008, counsel for plaintiff requested under the FOIA the following agency records: "all records concerning Sophie In 't Veld (including but not limited to electronic records) maintained by TSA." Accompanying the FOIA request was a statement executed by plaintiff authorizing TSA to release the requested information to plaintiff's counsel.

26. On May 16, 2006, plaintiff's counsel received a voice message from Kevin Janet, TSA's FOIA Officer, acknowledging that TSA received the letter from plaintiff's counsel described in ¶23.

27. To date, TSA has not responded to plaintiff's FOIA request.

28. TSA has violated the applicable statutory time limit for the processing of FOIA requests.

29. Plaintiff has exhausted the applicable administrative remedies.

30. TSA has wrongfully withheld the requested records from plaintiff.

Plaintiff's FOIA Request to Defendant DOJ's Component FBI

31. By letter sent by facsimile to the FBI on October 17, 2007, counsel for plaintiff requested under the FOIA the following agency records:

all records concerning Ms. In 't Veld (including but not limited to electronic records) in the consolidated and integrated terrorist watch list maintained by the Terrorist Screening Center.

Accompanying the FOIA request was a statement executed by plaintiff authorizing the FBI to release the requested information to plaintiff's counsel.

32. By letter to plaintiff's counsel dated October 29, 2007, the FBI the execution and return of a "Privacy Waiver and Certification of Identity Form," a copy of which the FBI attached to its letter.

33. By letter sent by U.S. Mail to the FBI on December 6, 2007, counsel for plaintiff provided the FBI with a "Privacy Waiver and Certification of Identity Form" executed and signed by plaintiff.

34. By letter to plaintiff's counsel dated December 18, 2007, the FBI stated that "[n]o records responsive to your FOIPA request were located by a search of the automated indices [of main files in the central records system at FBI Headquarters]." The FBI informed plaintiff's counsel that an appeal of the FBI's determination could be submitted to defendant DOJ's Office of Information and Privacy.

35. By letter sent by facsimile to defendant DOJ's Office of Information and Privacy on January 22, 2008, counsel for plaintiff submitted an administrative appeal of the determination contained in the FBI's letter dated December 18, 2007.

36. By letter to plaintiff's counsel dated January 25, 2008, defendant DOJ's Office of Information and Privacy acknowledged receipt of plaintiff's administrative appeal.

37. To date, defendant DOJ's Office of Information and Privacy has not responded to plaintiff's appeal of the agency's adverse determination, nor has the FBI disclosed or otherwise accounted for any agency records responsive to plaintiff's FOIA requests.

38. Defendant DOJ and its component, the FBI, have violated the applicable statutory time limit for the processing of FOIA requests.

39. Plaintiff has exhausted the applicable administrative remedies.

38. Defendant DOJ and its component, the FBI, have wrongfully withheld the requested records from plaintiff.

Plaintiff's FOIA Request to Defendant State

40. By letter sent by U.S. Mail to defendant State on February 22, 2008, counsel for plaintiff requested under the FOIA the following agency records: "all records concerning Ms. In 't Veld (including but not limited to electronic records) maintained in the Department of State visa databases." Accompanying the FOIA request was a statement executed by plaintiff authorizing defendant State to release the requested information to plaintiff's counsel.

41. By letter to plaintiff's counsel dated March 24, 2008, defendant State acknowledged its receipt of plaintiff's "request dated February 22, 2008."

42. To date, defendant State has not responded to plaintiff's FOIA request.

43. Defendant State has violated the applicable statutory time limit for the processing of FOIA requests.

44. Plaintiff has exhausted the applicable administrative remedies.

45. Defendant State has wrongfully withheld the requested records from plaintiff.

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

46. Plaintiff repeats and realleges paragraphs 1-45.

47. Defendants have wrongfully withheld agency records requested by plaintiff by failing to comply with the statutory time limits for the processing of requests and administrative appeals submitted under the FOIA requests.

48. Plaintiff has exhausted the applicable administrative remedies with respect to defendants' wrongful withholding of the requested records.

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

Requested Relief

WHEREFORE, plaintiff prays that this Court:

A. order defendants to process immediately the requested records in their entirety;

B. order defendants upon completion of such processing, to disclose the requested records in their entirety and make copies available to plaintiff;

C. provide for expeditious proceedings in this action;

D. award plaintiff its costs and reasonable attorneys fees incurred in this
action; and

E. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/David L. Sobel/
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