

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

BADER FAMILY FOUNDATION,)	
1236 N. Stafford St., Arlington, VA 22201)	
)	
Plaintiff,)	Civil Action No. 25-2587
v.)	
)	
OFFICE OF THE UNITED STATES TRADE)	
REPRESENTATIVE,)	
600 17th Street NW, Washington, DC 20508)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff alleges as follows, against the defendant, Office of the United States Trade Representative:

- 1) This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for improper withholding of agency records.
- 2) Plaintiff seeks to compel production under a FOIA request it submitted on May 16, 2025, seeking specified communications about tariffs and their legality.
- 3) Defendant has failed to provide plaintiff with either the records requested in its FOIA request, or the determination in response to plaintiff’s FOIA request mandated by 5 U.S.C. § 552(a)(6)(A)(i).
- 4) FOIA generally requires an agency to provide a determination of the number of responsive records it intends to release or withhold within 20 working days after receiving the request. As the D.C. Circuit explained, agencies must “inform the requester of the scope of the documents that the agency will produce, as well as the scope of the

documents that the agency plans to withhold under any FOIA exemptions” within the statutory deadline of 20 working days. (*CREW v. FEC*, 711 F.3d 180 (D.C. Cir. 2013)).

- 5) That 20 day deadline expired on June 16, 2025.
- 6) But on that date, Defendant neither provided a determination about what records will be produced, nor produced any records in response to plaintiff’s request.
- 7) Instead, on June 16, 2025, Defendant sent an email telling plaintiff, “Because your request will require the FOIA office to consult with external stakeholders, we require at least an additional ten working days to process due to ‘unusual circumstances.’”
- 8) That email did not, however, list an “extended” date for compliance with FOIA, or the “date on which a determination is expected to be dispatched,” as is mandated by 5 U.S.C. § 552(a)(6)(B)(i) when an agency seeks an extension based on “unusual circumstances.”
- 9) Thus, it did not validly extend the deadline for issuing a determination.
- 10) Even if citing “unusual circumstances” extended the deadline by “ten working days” despite this failure, ten additional working days elapsed on July 1, 2025.
- 11) But by that date, Defendant had neither provided a determination about what records will be produced, nor produced any records in response to plaintiff’s request.
- 12) Defendant still has provided no such determination, and no responsive records.
- 13) Due to Defendant’s failure to provide any such determination, plaintiff has filed this lawsuit to compel it to comply with the law.

PARTIES

14) The plaintiff, Bader Family Foundation (BFF), is a non-profit, 501(c)(3) tax-exempt foundation. Among other things, it supports non-profits that focus on tariffs and international trade issues.

15) The Office of the United States Trade Representative is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. Defendant has possession, custody, and control of the records Plaintiff seeks.

JURISDICTION AND VENUE

16) This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the District of Columbia, and also 28 U.S.C. § 1331, because the resolution of disputes under FOIA presents a federal question.

17) Venue is proper because FOIA vests venue in this court, regardless of the location of the parties or the records sought, *see* 5 U.S.C. § 552(a)(4)(B); *In re Scott*, 709 F.2d 717, 720 (D.C. Cir. 1983) (“Section 552(a)(4)(B) reflects an express congressional design to render the District of Columbia an all-purpose forum in FOIA cases”). Venue is also proper under 28 U.S.C. § 1391(e)(1) because defendant is located in Washington, D.C. Each is a separate and independent basis for venue.

FACTUAL AND STATUTORY BACKGROUND

18) On May 16, 2025, plaintiff submitted a FOIA request to Defendant requesting the following records:

1. All emails or memoranda sent between March 1, 2025 and the date you process this FOIA request, about whether a tariff or set of tariffs exceeds the President’s authority under the International Emergency Economic Powers Act of 1977.
2. All emails or memoranda sent between March 1, 2025 and the date you process this FOIA request, about whether a tariff or group of tariffs is unconstitutional.

3. All correspondence sent between March 1, 2025 and the date you process this request, between Tesla, General Motors, or Ford Motor Company and the Office of the United States Trade Representative, about tariffs.

4. Any response by or on behalf of the Office of the United States Trade Representative to any application for a temporary restraining order in any legal challenge to a tariff or group of tariffs, filed between March 1, 2025 and the date you process this request.

19) The FOIA request was jointly submitted by plaintiff and the blog *Liberty Unyielding*.

20) In response to the FOIA request, Defendant sent an email on May 20, 2025,

acknowledging plaintiff's FOIA request. That email stated, "The Office of the U.S.

Trade Representative (USTR) received your Freedom of Information Act (FOIA)

request dated May 19, 2025 and assigned it tracking number FY25-94. Please cite this

number in any future communications with our office regarding your request. Our office

will provide you with a determination on or before June 16, 2025." That email was sent

by defendant's FOIA Program Manager/Attorney, Monique T. Ricker.

21) FOIA, in 5 U.S.C. § 552(a)(6)(A)(i), requires an agency to make a determination in

response to a FOIA request within 20 working days from its date of receipt.

22) But Defendant did not make a determination in response to plaintiff's request within 20

business days from its date of receipt.

23) June 16, 2025 was 20 working days after the day Defendant received plaintiff's request.

24) No determination in response to plaintiff's FOIA request was made by then.

25) Nor has any such determination been made, as of the date this lawsuit was filed, even

though more than 20 working days have passed since plaintiff's FOIA request was

received by the defendant.

26) Instead, on June 16, Defendant sent an email telling plaintiff, "Because your request will

require the FOIA office to consult with external stakeholders, we require at least an

additional ten working days to process due to ‘unusual circumstances.’” This email was sent by defendant’s FOIA Program Manager/Attorney, Monique T. Ricker.

- 27) That email did not, however, list an “extended” date for compliance with FOIA, or the “date on which a determination is expected to be dispatched,” as is mandated by 5 U.S.C. § 552(a)(6)(B)(i) when an agency seeks an extension based on “unusual circumstances.”
- 28) Thus, it did not validly extend the deadline for issuing a determination.
- 29) Even if citing “unusual circumstances” extended the deadline by “ten working days” despite this failure, ten additional working days elapsed on July 1, 2025.
- 30) Extensions based on unusual circumstances are presumptively for no more than “ten working days.” *See* U.S.C. § 552(a)(6)(B)(i).
- 31) But by July 1, 2025, Defendant had neither provided a determination about what records will be produced, nor produced any records in response to plaintiff’s request.
- 32) More importantly, Defendant did not make the findings that must accompany an extension of more than ten days.
- 33) Defendant’s June 16 email did not, as 5 U.S.C. § 552(a)(6)(B)(ii) mandates for extensions of greater than ten days, "provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request."
- 34) While defendant’s June 16 email did provide contact information “if you have any questions or wish to discuss limiting the scope of your request,” it did not indicate that

the agency would process plaintiff's FOIA request more swiftly, or within ten working days, if plaintiff would limit the scope of plaintiff's FOIA request.

- 35) Nor did plaintiff receive any other or earlier communication from defendant providing plaintiff with the opportunity to have its request processed within FOIA's 20-working-day deadline if plaintiff would limit the scope of its request.
- 36) So even if Defendant validly extended the deadline with its "unusual circumstances" claim, it did not extend the deadline by more than ten working days, so Defendant could not take more than 30 working days to issue a determination in response to plaintiff's request.
- 37) More than 30 working days have elapsed since Defendant received plaintiff's request.
- 38) Even if "unusual circumstances" had existed for an extension, it would not justify the protracted delay in issuing a determination in response to plaintiff's request that has occurred.
- 39) The only purported unusual circumstance cited by defendant was the need for its "FOIA office to consult with external stakeholders," which is not particularly unusual, and does not require a protracted delay in responding to a FOIA request, as FOIA makes clear.
- 40) When an agency cites as "unusual circumstances" the mere need to consult with external stakeholders, FOIA requires that such "consultation...shall be conducted with all practicable speed." 5 U.S.C. § 552(a)(6)(B)(iii).
- 41) Defendant has not acted "with all practicable speed."
- 42) Much more time has passed than the additional "ten working days" that presumptively govern an extension under 5 U.S.C. § 552 (a)(6)(B)(i).

- 43) Even if “unusual circumstances” did exist for a delay in providing a determination, the large amount of time taken by defendant to respond to plaintiff’s FOIA request was not “necessary to the proper processing of the particular request,” as FOIA requires. *See* 5 U.S.C. § 552(a)(6)(B)(iii).
- 44) Even if “unusual circumstances” did exist for a delay in providing a determination, the failure to produce the responsive records despite the passage of months and no need for a protracted delay violates the agency’s duty to “make the records ‘promptly available’” to the requester in response to the request. *See CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013) (quoting 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i)).
- 45) Under FOIA, an agency must “inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions” within the statutory deadline. (*CREW v. FEC*, 711 F.3d 180 (D.C. Cir. 2013)).
- 46) Defendant provided no such information to plaintiff, even though plaintiff’s request reasonably described the records it sought.
- 47) Nor has Defendant provided any responsive records.
- 48) Instead, Defendant has improperly withheld agency records.
- 49) Due to Defendant’s failure to comply with the statutory deadline, plaintiff has exhausted administrative remedies, and can now sue.
- 50) FOIA provides that a requester is "deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions." 5 U.S.C. § 552(a)(6)(C)(i); *see CREW v. FEC*, 711 F.3d 180, 189 (D.C. Cir. 2013).

- 51) Since defendant did not comply with FOIA's deadlines for issuing a determination, it has waived the right to collect fees, such as search fees, for processing plaintiff's FOIA request.
- 52) In *Bensman v. National Park Service*, 806 F.Supp.2d 31 (D.D.C. 2011), this Court noted that "the 2007 [FOIA] Amendments ... impose consequences on agencies that fail to comport with FOIA's requirements....To underscore Congress's belief in the importance of the statutory time limit, the 2007 Amendments declare that '[a]n agency shall not assess search fees... if the agency fails to comply with any time limit' of FOIA." *See also* 5 U.S.C. § 552(a)(4)(A)(viii)(I).
- 53) Even if defendant's invocation of "unusual circumstances" had been valid, which it was not, it cannot charge search or duplication fees because it did not respond within "an additional ten days" of the general 20 working day deadline for responding to plaintiff's FOIA requests. *See* 5 USC § 552(a)(4)(A)(viii)(I) & 5 USC 552(a)(4)(A)(viii)(II)(aa).
- 54) Moreover, it would be inappropriate to charge fees for an additional reason: the records sought in plaintiff's FOIA request are of great public interest, and producing them would be of public benefit. The records sought in its FOIA request focus on operations and activities of the government that are newsworthy and are the subject of extensive press coverage. *See, e.g.*, James Fanelli & Gavin Bade, *Trade Court Strikes Down Trump's Global Tariffs*, Wall Street Journal, May 29, 2025, www.wsj.com/politics/policy/trade-court-strikes-down-trumps-liberation-day-tariffs-9befa448; Zach Schonfeld, *Trump Sued Over 'Liberation Day' Tariffs*, The Hill, April 14, 2025, <https://thehill.com/regulation/court-battles/5247999-trump-sued-liberation-day-tariffs/>.

55) Plaintiff's FOIA request accordingly contained a request for a fee waiver, based both on that fact, and the fact that its FOIA request was jointly submitted by a media entity, the Liberty Unyielding blog.¹

56) When responsive records are produced to plaintiff in FOIA lawsuits, they are disseminated to the Liberty Unyielding blog, which publicly posts such records, and thus makes them available to the public, resulting in news coverage.²

57) Accordingly, plaintiff is entitled to the production of the responsive records without paying any fees.

FIRST CLAIM FOR RELIEF

Duty to Produce Records – Declaratory Judgment

58) Plaintiff re-alleges paragraphs 1-57 as if fully set out herein.

59) Defendant is improperly withholding agency records.

60) Plaintiff asks this Court to enter a judgment declaring that:

- a. Plaintiff is entitled to the records described in its FOIA request, and any attachments thereto;
- b. Defendant's processing of plaintiff's FOIA request was not in accordance with the law, and did not satisfy Defendant's obligations under FOIA;
- c. Defendant has a duty to produce the records responsive to plaintiff's FOIA request;

¹ See *Cause of Action v. FTC*, 799 F.3d 1108 (D.C. Cir. 2015) (blog deemed media under FOIA).

² See, e.g., Ashe Schow, *Biden Administration Knew Its Racial Preferences For COVID Relief Were Unconstitutional, Went Ahead Anyway*, Daily Wire, Aug. 21, 2021 (quoting & linking to records posted by the Liberty Unyielding blog that were produced in a Bader Family Foundation FOIA lawsuit) (available at <https://www.dailywire.com/news/biden-administration-knew-its-racial-preferences-for-covid-relief-were-unconstitutional-went-ahead-anyway>). Daily Wire stories have many readers. Similarweb stated that the Daily Wire had 12.9 million visits to its web site in July. See <https://www.similarweb.com/website/dailywire.com/> (visited Aug. 7, 2025).

- d. Defendant has a duty to produce them without charging any fees.

SECOND CLAIM FOR RELIEF
Duty to Produce Records – Injunctive Relief

- 61) Plaintiff re-alleges paragraphs 1-60 as if fully set out herein.
- 62) Plaintiff is entitled to injunctive relief compelling Defendant to produce the records described in plaintiff's FOIA request, without charging any fees.
- 63) Plaintiff asks the Court to issue an injunction ordering Defendant to produce to plaintiff, within 10 business days of the date of the order, the records sought in plaintiff's FOIA request, and any attachments thereto.

THIRD CLAIM FOR RELIEF
Costs And Fees – Injunctive Relief

- 64) Plaintiff re-alleges paragraphs 1-63 as if fully set out herein.
- 65) Pursuant to 5 U.S.C. § 552(a)(4)(E), the Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
- 66) This Court should enter an injunction ordering Defendant to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

WHEREFORE, Plaintiff requests the declaratory and injunctive relief herein sought, and an award for its attorney fees and costs and such other relief as the Court shall deem proper.

Respectfully submitted this 7th day of August, 2025,

/s/ Hans F. Bader
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