

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAITLIN KELLY HENRY)	
1201 Martin Luther King Jr. Way #200)	
Oakland, CA 94612)	Judge _____
)	Civil Action No. _____
JESSE STOUT,)	
280 Fell Street #301)	
San Francisco, CA 94102)	
PLAINTIFFS)	
vs.)	
)	
DEPARTMENT OF JUSTICE,)	
950 Pennsylvania Ave., NW)	
Washington, DC 20530)	
DEFENDANT)	

COMPLAINT

THE PARTIES

1. Plaintiffs Caitlin Kelly Henry and Jesse Stout are citizens of California whose addresses are 1201 Martin Luther King Way #200, Oakland, CA 94612 and 280 Fell Street #301, San Francisco, CA 94102, respectively.
2. The Plaintiffs are attorneys engaged in scholarship and political activism.
3. Defendant Department of Justice (DOJ) is an agency of the United States.
4. The Federal Bureau of Investigation (FBI) is a component of the DOJ. The FBI has possession, custody, and control of the records the Plaintiffs seek.

JURISDICTION AND VENUE

5. This action arises under the Freedom of Information Act (“FOIA”).

6. This Court has jurisdiction over the parties and subject matter pursuant to 5 USC § 552(a)(4)(B).

7. Venue is proper in this district pursuant to 5 USC § 552(a)(4)(B).

STATEMENT OF FACTS

BACKGROUND

8. The Plaintiffs are attorneys licensed in California, legal scholars, and political activists.

9. Plaintiff Henry worked with Asian Law Caucus on research for the report “Returning Home: How U.S. Government Practices Undermine Civil Rights At Our Nation’s Doorstep.” This included investigating the Department of Justice, Department of Homeland Security, United States Customs and Immigration Service, Immigration and Customs Enforcement, Customs and Border Patrol, Terrorist Screening Center, Terrorist Screening Database, No Fly List, and other monitoring entities.

10. Plaintiff Henry, through UC Hastings College of the Law, investigated: the impact of the Holder v. Humanitarian Law Project, 561 U.S. ___ (2010), 130 S.Ct 2705 decision on attorneys and legal advocates who could be accused of providing material support to terrorism; the Office of Foreign Assets Control and its lists such as the Sanctions List and the Specially Designated Nationals (SDNs) list; Anwar Al-Awlaki, Nasser Al-Awlaki, targeted killings, and drones; and the Animal Enterprise Terrorism Act and its relation to selective prosecutions and placements in Federal Bureau of Prisons Communications Management Units.

11. The Plaintiffs have published and will publish on the California Corrections Crisis blog, and intend to share records in a forthcoming National Lawyers Guild publication on this topic. The Plaintiffs also have been invited by the National Lawyers Guild to publish information in a forthcoming report on Mass Surveillance of Legal Professionals.

12. Plaintiff Stout engaged in criminal justice reform advocacy for Americans for Safe Access, California Corrections Crisis blog, Coalition for Cannabis Policy Reform, Council on Crime Prevention, Drug Policy Alliance, Legal Services for Prisoners with Children, National Lawyers Guild Drug Policy Committee, Marijuana Policy Project, Multidisciplinary Association for Psychedelic Studies, National Organization for the Reform of Marijuana Laws, Rhode Island Patient Advocacy Coalition, Rhode Island Right to Vote Campaign, and Students for Sensible Drug Policy.

13. Plaintiff Stout also worked with government entities including the: San Francisco Public Defender, San Diego Public Defender, Marin County Public Defender, and the California State Assembly Public Safety Committee.

14. Both Plaintiffs are members of the National Lawyers Guild and worked to defend people arrested in conjunction with the “Occupy” movement.

15. The Plaintiffs submitted FOIA/PA requests to the FBI in order to obtain records related to law enforcement surveillance of themselves.

16. There is presently a vigorous and extraordinarily important debate in the United States about the authority of the government to conduct surveillance of domestic activists and attorneys in the absence of court-issued warrants. The records sought by the Plaintiffs would likely be an invaluable contribution to the public discourse on this issue.

The Plaintiffs have previously published in online and print media, and maintain the current capacity to self-publish or be published by media outlets. This national debate has become more heated and pressing since the time of the Plaintiffs' requests, since the June 2013 revelations of domestic mass surveillance made possible by whistleblower Edward Snowden.

I. PLAINTIFFS' FOIA/PA REQUESTS

A. PLAINTIFFS' FOIA/PA REQUESTS TO THE FBI

17. On May 1, 2013 the Plaintiffs sent FOIA/PA requests to the FBI Chief, Record/Information Dissemination Section, Records Management Division, via email (to foiparequest@ic.fbi.gov) seeking copies of records relating or referring to "all records (in any form or format, including multimedia and all types of electronic records) related in whole or in part to" Caitlin Kelly Henry and, then, in a separate request, those related to Jesse Stout. The Plaintiffs stated, "This includes, but should not be limited to, emails, Complaint Forms, Memorandums of Investigation, Reports of Investigation, Field Operation Worksheets, Arrest Reports, Agents' notes, arrest evaluations, and investigation." In these requests, the Plaintiffs referenced recent news items reflecting the FBI's ongoing activities directed at surveilling and deterring domestic political activism. The Plaintiffs requested fee waivers.

18. According to the FBI's reply emails, on May 2, 2013, Marcia Morgan, of the Record/Information Dissemination Section (RIDS), (Marcia.Morgan2@ic.fbi.gov) received the request transmitted by attorney Stout regarding Plaintiff Henry's records and on May 1, 2013 David Sobonya, Public Information Officer/Legal Admin Specialist,

Record/Information Dissemination Section (RIDS), (David.Sobonya@ic.fbi.gov) received the request transmitted by attorney Henry regarding Plaintiff Stout's records.

B. PLAINTIFFS' FOIA/PA REQUESTS TO THE DOJ

18. On May 1, 2013 the Plaintiffs sent a FOIA/PA request regarding Plaintiff Henry to the Department of Justice (DOJ), Justice Management Division, Mail Referral Unit via certified mail (# 7012 3460 0002 1531 2359).

19. On May 1, 2013 the Plaintiffs sent a FOIA/PA request regarding Plaintiff Stout to the Department of Justice (DOJ), Justice Management Division, Mail Referral Unit via certified mail (# 7012 3460 0002 1531 2298).

II. RESPONSES TO PLAINTIFFS' FOIA/PA REQUESTS

A. FBI RESPONSES TO PLAINTIFFS' FOIA/PA REQUESTS

**i. FBI'S RESPONSE TO PLAINTIFFS' FOIA/PA REQUESTS
REGARDING PLAINTIFF HENRY**

19. The request to the FBI regarding Plaintiff Henry resulted in the FBI sending a letter dated May 7, 2013. The FBI's letter designated this FOIA/PA Request No. 1214586-000 and stated the agency was searching Central Records System indices for responsive records. The request regarding Plaintiff Henry also resulted in a letter from the FBI dated May 9, 2013 regarding the FOIA/PA request (1214586-000). The letter stated that after searching its Central Records System, the FBI was not able to identify any main file records responsive to the request, and that "In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E)/ Privacy Act exemption (j)(2) [5 U.S.C. §

552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists" (brackets in original).

**ii. FBI'S RESPONSE TO PLAINTIFFS' FOIA/PA REQUESTS
REGARDING PLAINTIFF STOUT**

19. The request to the FBI regarding Plaintiff Stout resulted in the FBI generating a letter dated May 3, 2013. The letter designated this FOIPA Request No. 1207771-001. Request No. 1207771-001 regarding Plaintiff Stout resulted in the FBI generating a second letter dated May 6, 2013. The letter stated that after searching its Central Records System, the FBI was not able to identify any main file records responsive to the request, and that "In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E)/ Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists" (brackets in original).

**B. EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS'S
RESPONSE TO PLAINTIFFS' FOIA/PA REQUESTS**

**i. RESPONSE TO PLAINTIFFS' FOIA/PA REQUESTS
REGARDING PLAINTIFF HENRY**

20. On May 17, 2013 the Department of Justice (DOJ), Justice Management Division, Mail Referral Unit delegated the request for Plaintiff Henry's records (sent via certified mail # 7012 3460 0002 1531 2359) to the Executive Office of the United States Attorneys.

21. On August 27, 2013, Susan Gerson of the Executive Office for United States Attorneys's Freedom of Information and Privacy Staff sent a letter to attorney Stout regarding Plaintiff Henry's requests. The letter addressed Request Numbers 13-1987 (Northern District of California), 13-1988 (Eastern District of California), 13-1989 (Central District of California), 13-1990 (Southern District of California), 13-1991 (Eastern District of New York), 13-1992 (Southern District of New York), 13-1993 (Western District of New York), 13-1994 (Northern District of Illinois), and 13-1995 (Southern District of Illinois). The letter indicated a search was conducted for 13-1988, 13-1990, 13-1991, 12-1992, 12-1994, and 13-1995 and revealed no responsive records. The letter stated that results for requests 13-1987 and 13-1993 were still pending. The letter did not address request 13-1989. The letter denied the request for a fee waiver on the basis that the records were not likely to contribute to the public's understanding and that Plaintiffs did not demonstrate that Plaintiffs had the intend and ability to disseminate the records.

22. As of the filing of this Complaint, the Plaintiffs have not received a response from the Executive Office for US Attorneys making a determination as to the outstanding FOIA/PA requests regarding Plaintiff Henry, and numbered 13-1987, 13-1989, 13-1993.

23. Under 5 USC § 552(a)(6)(C)(i), Plaintiff Henry is deemed to have exhausted her administrative remedies because Defendant has failed to comply with the statutory time limit on requests 13-1987, 13-1989 and 13-1993.

**ii. RESPONSE TO PLAINTIFFS' FOIA/PA REQUESTS
REGARDING PLAINTIFF STOUT**

24. On May 17, 2013 the Department of Justice (DOJ), Justice Management Division, Mail Referral Unit delegated the request for Plaintiff Stout's records (sent via certified mail # 7012 3460 0002 1531 2298) to the Executive Office of the United States Attorneys.

25. On August 27, 2013, Susan Gerson of the Executive Office for United States Attorneys's Freedom of Information and Privacy Staff sent letters to the Plaintiffs regarding the request for Plaintiff Stout's records. The letters marked Request Numbers 13-1998 (Southern District of California) and 13-2001 (Eastern District of California), stated that no responsive records were revealed. The letter noted that separate responses would also be received for Request Numbers 13-1996 (New Jersey), 13-1997 (Rhode Island), 13-1999 (Northern District of California), and 13-2000 (Central District of California).

26. As of the filing of this Complaint, the Plaintiffs have not received a response from the Executive Office for US Attorneys making a determination as to these outstanding FOIA/PA requests regarding Plaintiff Stout: 13-1996, 13-1997, 13-1999, and 13-2000.

27. Under 5 USC § 552(a)(6)(C)(i), Plaintiff Stout is deemed to have exhausted administrative remedies because Defendant has failed to comply with the statutory time limit on requests.

III. ADMINISTRATIVE APPEALS OF PLAINTIFFS' FOIA/PA REQUESTS TO THE FBI

**A. ADMINISTRATIVE APPEALS OF PLAINTIFFS' FOIA/PA
REQUESTS TO THE FBI REGARDING PLAINTIFF HENRY**

28. On May 29, 2013, the Plaintiffs sent a letter to the Department of Justice, Office of Information Policy (OIP) Director via Certified Mail (#7012 0470 0000 6667 4749) appealing the FBI's denial of the requests for records regarding Plaintiff Henry under FOIA/PA (1214586-000). The appeal, challenged the sufficiency of the searches and provided a list of locations not searched by the FBI which could reasonably be expected to contain responsive records.

29. In a letter dated June 20, 2013, OIP acknowledged that it received the Plaintiffs' appeal from the denial of the FOIA/PA request (1214586-000) regarding Plaintiff Henry on June 4, 2013 and advised the Plaintiffs that the appeal had been assigned tracking number AP-2013-0738.

30. Pursuant to 5 USC § 552(a)(6)(A)(ii), responses to the Plaintiffs' FOIA/PA appeals (AP-2013-03738) were due within 20 working days, or July 19, 2013.

31. As of the filing of this Complaint, Plaintiff Henry has not received a response from OIP making a determination as to her FOIA/PA appeal.

32. Under 5 USC § 552(a)(6)(C)(i), Plaintiff Henry is deemed to have exhausted her administrative remedies because Defendant has failed to comply with the statutory time limit.

**B. ADMINISTRATIVE APPEALS OF PLAINTIFFS' FOIA/PA
REQUESTS TO THE FBI REGARDING PLAINTIFF STOUT**

33. On May 29, 2013, the Plaintiffs sent a letter to OIP via Certified Mail (#7012 0470 0000 6667 4732) appealing the denial of requests for records regarding Plaintiff

Stout under FOIA/PA (1207771-001). In his appeal, Plaintiff Stout challenged the sufficiency of the searches and provided a list of locations not searched by the FBI which could reasonably be expected to contain responsive records; the FBI's failure to release segregable portions of records; and the FBI's invocation of exemptions (b)(6) and (b)(7)(C). The Plaintiffs' appeal demonstrated that any privacy interest involved is minimal, while the public interest is extraordinary. In support of this position, the Plaintiffs cited extensively to news media coverage of related controversies.

34. In a letter dated June 20, 2013, OIP acknowledged that it received the Plaintiffs appeal from the denial of the FOIA/PA request for Plaintiff Stout's records (120777-001) on June 4, 2013 and advised Plaintiff that the appeal had been assigned tracking number AP-2013-03741.

35. Pursuant to 5 USC § 552(a)(6)(A)(ii), a response to FOIA/PA appeal (AP-2013-03741) regarding Plaintiff Stout's records was due within 20 working days, or July 19, 2013. On September 10, 2013 the Plaintiffs received an email response from Sean R. O'Neill, Chief, Administrative Appeals Staff, Department of Justice, OIP, concerning Plaintiff Stout's records (AP-2013-03741, Request No. 1207771-001). The letter attached to the email indicated that OIP determined that the FBI's response was correct and that it conducted an adequate, reasonable search for Plaintiff Stout's records, and found no records it deemed both responsive and eligible for disclosure.

36. The Plaintiffs have exhausted administrative remedies and are exercising the right to appeal the requests regarding Plaintiff Stout under 5 U.S.C. § 552(a)(4)(B).

COUNT I:

VIOLATION OF THE FOIA

37. This Court re-alleges and incorporates by reference all of the preceding paragraphs.

38. Each of the documents referred to in this Complaint is incorporated herein by reference.

39. Defendant has violated FOIA by failing to adequately search for and produce records responsive to the Plaintiffs' FOIA/PA requests (1214586-000; 1207771-001; 13-1987, 13-1989,13-1993,13-1996, 13-1997, 13-1999, and 13-2000).

40. Defendant has violated FOIA by improperly invoking exemptions (b)(7)(E) and (j)(2) in response to Plaintiffs' FOIA/PA requests (1214586-000; 1207771-001), and by failing to release segregable portions of responsive records.

41. Defendant has violated FOIA by failing to timely respond with a determination as to the Plaintiffs FOIA/PA appeal (AP-2013-0738;).

42. The Plaintiffs have been and will continue to be irreparably harmed until Defendant is ordered to comply with the Plaintiffs' FOIA/PA requests.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

- (1) Declare Defendant's failure to comply with FOIA to be unlawful;
- (2) Enjoin Defendant from continuing to withhold the records responsive to the Plaintiffs' FOIA/PA requests and otherwise order Defendant to produce the requested records without further delay;

- (3) Grant the Plaintiffs an award of attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC § 552(a)(4)(E)(i);
- (4) Grant the Plaintiffs such other and further relief that the Court deems proper.

Respectfully Submitted,

/s/ Jesse Stout
/s/ Caitlin Kelly Henry

December 21, 2013

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