

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

PROTECT THE PUBLIC’S TRUST )  
712 H Street, N.E. )  
Suite 1682 )  
Washington, D.C. 20002, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
U.S. DEPARTMENT OF HOMELAND )  
SECURITY )  
245 Murray Lane, S.W. )  
Washington, D.C. 20528, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Case No. 1:22-cv-00138

**COMPLAINT**

1. Plaintiff Protect the Public’s Trust brings this action against the United States Department of Homeland Security under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Declaratory Judgement Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.
3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

**PARTIES**

4. Plaintiff Protect the Public’s Trust (“PPT”) is an unincorporated association of retired and former public servants and concerned citizens that is dedicated to restoring public trust in

government by promoting the fair and equal application of the rules and standards of ethical conduct to all public servants. *See* D.C. Code § 29–1102(5). Consistent with Justice Brandeis’s aphorism that “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman,” PPT seeks to promote transparency and broadly disseminate information so that the American people can evaluate the integrity and ethical conduct of those who act in their name. Louis Brandeis, *OTHER PEOPLE’S MONEY AND HOW BANKERS USE IT* (1914), <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v>.

5. Defendant United States Department of Homeland Security (“DHS” or “the Department”) is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Department has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

### **STATEMENT OF FACTS**

6. On October 7, 2021, PPT submitted a FOIA request (attached as Exhibit A) to the Department seeking the following records relating to political appointees from August 21, 2021 to the date the search was performed:
  1. Meeting Requests: All records for meeting requests, meeting memos, briefing documents schedules, communications, and any other records related to the National School Boards Association (NSBA). This should include but not be limited to records and communications relating to meetings among DHS officials, between DHS and other federal agencies, between DHS officials and the White House, and with any state officials or outside organizations (e.g., National Education Association) discussing citizen protests or school board meetings raising concerns about COVID-19 policies or critical race theory educational curriculum.
  2. External and Internal Communications: Any and all communications, documents, and other records pertaining to the NSBA letter dated September 30, 2021, domestic terrorism concerns raised by local school boards over protests or threats by parents or other citizens, or other outreach to NSBA

- before or after receiving the letter. This should include, but not be limited to, any communication with the NSBA, White House, Department of Education or Department of Justice on adopting any of the letter's recommendations, responding to the letter, or the need to address the issues raised therein.
3. Data and Analysis: Any and all records that support the use of federal resources, including law enforcement resources, to investigate threats made against local school boards, superintendents, or similarly positioned local education officials.
  4. Records related to the Attorney General's letter on the issues raised in the NSBA letter, including the decision to draft a response, dedicate federal resources, the basis for federal intervention in local school board matters, and public communications efforts to defend or promote the AG letter's messages or actions.
7. The release of these documents is in the public interest because they will help contribute to the public understanding of the role DHS officials played in the controversy over deploying federal resources, including law enforcement resources, to investigate parents and citizens upset over local school board policies. The need to clarify the public record regarding this controversial episode has only become more salient since Plaintiff submitted its original request. On January 11, 2022, press reports indicated that there are emails between officials at the National School Board Association ("NSBA") suggesting that the Education Secretary requested that the NSBA send information to the White House. See Callie Patterson, *Email Suggests Education Secretary Miguel Cardona Asked for School Board "Domestic Terror" Letter*, N.Y. Post (Jan. 11, 2022), <https://nypost.com/2022/01/11/miguel-cardona-asked-for-school-board-domestic-terror-letter/>. These same reports state that the Department of Education denied soliciting a letter from NSBA. *Id.* The requested documents have the potential to help clarify the role political officials played in the genesis of this letter, as well as their response thereto.

8. On October 7, 2021, the Department acknowledged receipt of Plaintiff's request and assigned it reference request number 2022-CRFO-00004.
9. On December 15, 2021, the Department updated the status of Plaintiff's request to "In Process."
10. Also on December 15, 2021, the Department Office for Civil Rights and Civil Liberties sent a letter (attached as Exhibit B) stating in part "The processing of your request identified certain materials, which originated within other DHS Headquarter Offices were referred to the DHS Privacy Office (PRIV) for processing and direct response to you." This letter also stated "You have a right to appeal the above withholding determination."
11. On January 5, 2021, the Department sent a letter from the Privacy Office (attached as Exhibit C) that stated: "While processing your request, the Office of Civil Rights and Civil Liberties located records that fall under the purview of the Department of Homeland Security (DHS). Accordingly, your request and 23 pages of responsive records were referred to this office for processing and direct response to you. Your request was received in this office on December 15, 2021." This letter also assigned Plaintiff's request a new reference number, 2022-HQFO-00410.
12. Plaintiff's FOIA request was addressed to the Privacy Office and the Office of Civil Rights and Civil Liberties. *See* Exhibit A. It is not clear why the Department Privacy Office did not receive Plaintiff's request until December 15, 2021.
13. To date, the Department has not begun producing responsive records, nor has it indicated a date when it will do so.
14. Notwithstanding the appeal language in the December 15 letter, the Department has not made a determination of whether it will comply with Plaintiff's request within the

meaning of the FOIA. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). To wit, while the Department appears to have begun gathering and reviewing documents, it has not determined and communicated the scope of the documents it intends to produce and withhold, or the reason for withholding any documents.

15. The Department cannot escape the statutory deadlines in the FOIA by shuffling records and requests between different agency components, particularly where, as in this case, both the Office for Civil Rights and Civil Liberties and the Privacy Office were included in Plaintiff's original request.
16. As of today, Plaintiff's request has been pending for more than over 100 days – well beyond the statutory period for federal agencies to make a determination with respect to a FOIA request. 5 U.S.C. § 552(a)(6)(A)-(B).
17. Through the Department's failure to make a determination within the time period required by law, PPT has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

18. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
19. PPT properly requested records within the possession, custody, and control of the Department.

20. The Department is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.
21. The Department is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
22. The Department is wrongfully withholding non-exempt agency records requested by PPT by failing to segregate exempt information in otherwise non-exempt records responsive to the PPT FOIA request.
23. The Department's failure to provide all non-exempt responsive records violates FOIA and Department regulations.
24. Plaintiff PPT is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

**REQUESTED RELIEF**

Protect the Public's Trust respectfully requests this Court:

- (1) Assume jurisdiction in this matter, and maintain jurisdiction until the Defendant complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order Defendant to produce, within ten days of the Court's order, or by other such date as the Court deems appropriate, any and all non-exempt records responsive to PPT's FOIA request and indexes justifying the withholding of all or part of any responsive records withheld under claim of exemption.

- (3) Enjoin the Defendant from continuing to withhold any and all non-exempt responsive records.
- (4) Award PPT the costs of this proceeding, including reasonable attorney's fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E).
- (5) Grant PPT other such relief as the Court deems just and proper.

Dated: January 20, 2022

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST  
By Counsel:

/s/ Gary M. Lawkowski  
Gary M. Lawkowski  
D.D.C. Bar ID: VA125  
DHILLON LAW GROUP, INC.  
2121 Eisenhower Avenue, Suite 402  
Alexandria, Virginia 22314  
Telephone: 703-965-0330  
Facsimile: 415-520-6593  
[GLawkowski@Dhillonlaw.com](mailto:GLawkowski@Dhillonlaw.com)

*Counsel for the Plaintiff*